

**OCC EXHIBIT NO. \_\_\_\_\_**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke	)	
Energy Ohio, Inc., for an Increase in its	)	Case No. 12-1682-EL-AIR
Electric Distribution Rates.	)	
In the Matter of the Application of Duke	)	Case No. 12-1683-EL-ATA
Energy Ohio, Inc., for Tariff Approval.	)	
In the Matter of the Application of Duke	)	
Energy Ohio, Inc., for Approval to	)	Case No. 12-1684-EL-AAM
Change Accounting Methods.	)	

**DIRECT TESTIMONY  
OF  
BRUCE M. HAYES**

**On Behalf of  
The Office of the Ohio Consumers' Counsel**  
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***February 19, 2013***

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**I. INTRODUCTION**

***Q1. PLEASE STATE YOUR NAME, ADDRESS AND POSITION.***

***A1.*** My name is Bruce M. Hayes. My business address is 10 West Broad Street, Suite 1800, Columbus, Ohio 43215-3485. I am employed by the Office of the Ohio Consumers' Counsel ("OCC") as a Principal Regulatory Analyst.

***Q2. PLEASE BRIEFLY SUMMARIZE YOUR EDUCATIONAL AND PROFESSIONAL EXPERIENCE.***

***A2.*** I graduated from the University of Kentucky in 1973 with a Bachelor of Science in Mechanical Engineering. I joined Aetna Life and Casualty in 1973 and held various positions related to Loss Control and Safety Engineering. In 1979, I joined Columbia Gas of Kentucky ("CKY") as an Industrial Sales Engineer. I transferred to Columbia Gas of Ohio ("Columbia") in 1986 and held a variety of positions in economic development, marketing and sales. During my time at the Columbia companies, I was actively involved in the development and implementation of the industrial and commercial gas transportation programs. In the early 1980s, I was involved in expanding CKY's transportation program from a single self-help customer to over fifty industrial and large commercial customers by initially establishing special contract interstate transportation programs like the Fuel Oil Displacement and Special Marketing Programs.

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1 I was also involved in a customer issue regarding intrastate transportation and  
2 valuation of gas. Columbia modified its methodology so that valuation of gas  
3 occurred on British Thermal Units value rather than volume. This led to changes  
4 in transportation policies and billing in all the states in the Columbia Gas  
5 Distribution System.

6  
7 In the 1990s, I managed the Columbia rate flexing or rate discounting program for  
8 industrial customers. In that capacity, I arranged for long-term capacity release to  
9 large customers and arranged discounts on Columbia Gas Transmission interstate  
10 pipelines. I provided input to the transportation and gas supply departments on  
11 issues such as transportation contracts, curtailment, enhanced banking  
12 arrangements and electronic measurement for large volume customers.

13  
14 In 2002, I joined OCC as a Senior Regulatory Analyst and was promoted to  
15 Principal Regulatory Analyst in 2010. I represent OCC on the gas committee of  
16 The National Association of State Utility Consumer Advocates and have served  
17 as an Executive Committee member with the North American Energy Standards  
18 Board. I have participated in various Ohio Gas Cost Recovery Proceedings and  
19 Management/Performance Audits while at Columbia Gas of Ohio and as an  
20 analyst for the OCC. I have been involved in a number of rate cases and  
21 accelerated infrastructure replacement and recovery cases associated with the four  
22 largest investor owned gas companies in Ohio. I have also participated in a  
23 number of external working groups related to gas transportation programs and

1 external working groups related to gas distribution companies moving toward  
2 exiting the merchant function or eliminating the standard offer.

3

4 **Q3. WHAT ARE YOUR RESPONSIBILITIES AS A PRINCIPAL REGULATORY**  
5 **ANALYST?**

6 **A3.** My duties include research, investigation and analysis of gas and electric filings at  
7 the state and federal levels, participation in special projects, and assisting in  
8 policy development and implementation. I am also the assigned leader of the  
9 OCC gas team since June 1, 2008, and coordinate the activities of the members of  
10 the agency's gas team.

11

12 **Q4. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY OR TESTIFIED**  
13 **BEFORE THIS COMMISSION?**

14 **A4.** Yes. I have submitted testimony or testified in the following cases before the  
15 Public Utilities Commission of Ohio ("PUCO" or "Commission"):

16 1. *Dominion East Ohio Gas Company*, Case No. 05-219-GA-  
17 GCR;

18 2. *Columbia Gas of Ohio, Inc.*, Case Nos. 04-221-GA-GCR  
19 and 05-221-GA-GCR;

20 3. *Columbia Gas of Ohio, Inc.*, Case Nos. 07-478-GA-UNC  
21 and 07-237-GA-UNC;

22 4. *Columbia Gas of Ohio, Inc.*, Case No. 08-1344-GA-EXM;

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- 1                   5.     *Dominion East Ohio Gas Company*, Case No. 12-1842-  
2                             GA-EXM;  
3                   6.     *Columbia Gas of Ohio, Inc.*, Case No. 12-2637-GA-EXM;  
4                   7.     *Duke Energy Ohio, Inc.*, Case Nos. 07-589-GA-AIR, 07-  
5                             590-GA-ALT and 07-591-GA-AAM (testimony filed);  
6                   8.     *Dominion East Ohio Gas Company*, Case No. 11-2401-  
7                             GA-ALT and 08-169-GA-ALT; and  
8                   9.     *Vectren Energy Delivery of Ohio, Inc.*, Case No. 07-1285-  
9                             GA-EXM (testimony filed).

10  
11    ***Q5.   HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE ANY***  
12                   ***OTHER STATE REGULATORY COMMISSION?***

13    ***A5.***    Yes. I submitted testimony on behalf of CKY (Columbia Gas of Kentucky),  
14                   before the Kentucky Public Service Commission in CKY, Inc. Rate Case No.  
15                   8281.<sup>1</sup> My testimony related to a long-term decrease in the forecasted throughput  
16                   for CKY.

17  
18    ***Q6.   WHAT DOCUMENTS HAVE YOU REVIEWED IN THE PREPARATION OF***  
19                   ***YOUR TESTIMONY?***

20    ***A6.***    I have reviewed relevant parts of Duke Energy Ohio, Inc.'s ("Duke" or "Utility")  
21                   standard filing requirements and supporting work papers, alternative regulation  
22                   plan, pre-filed testimony, responses to OCC discovery, responses to data requests

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<sup>1</sup> *In the Matter of An Adjustment of Rates of Columbia Gas of Kentucky, Inc.*, Case No. 8281, Order (December 30, 1981).

1 of the Staff of the Public Utilities Commission of Ohio (“Staff”), the Staff Report  
2 of Investigation (“The Staff Report”), and its supporting work papers. I have also  
3 reviewed relevant documents and Opinion and Orders from other proceedings.  
4

5 **II. PURPOSE OF TESTIMONY**

6  
7 ***Q7. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS***  
8 ***PROCEEDING?***

9 ***A7.*** The purpose of my testimony is to review Duke’s proposed Facilities Relocation -  
10 Mass Transportation Rider FRT (“Rider FRT”). I testify in support of OCC  
11 Objection No. 27, and recommend that the Commission reject Rider FRT. I also  
12 explain OCC’s concerns, which supplement the PUCO Staff’s position. The  
13 subject of my testimony is how utility ratemaking and regulatory principles are  
14 compromised under the proposed Rider FRT. In addition, in my opinion, if  
15 approved as proposed, the reliance upon Rider FRT to be used as a mechanism to  
16 collect/pay relocation costs owed by the governmental entity is bad public policy.  
17 Finally, to the extent Rider FRT could result in Duke’s residential customers  
18 paying more for a relocation project than through a tax scheme, it should be  
19 deemed bad public policy, and another reason for the PUCO to deny Rider FRT.  
20 I take no position on whether any particular transportation project should be built.  
21

1   **III.   DISCUSSION AND RECOMMENDATION**

2  
3   ***Q8.   PLEASE PROVIDE AN OVERVIEW OF DUKE'S PROPOSED RIDER FRT.***

4   ***A8.***   Duke's proposal for Rider FRT seems prompted by a facilities-relocation issue  
5           related to a streetcar project in Cincinnati, but the proposal is not limited to a  
6           particular transportation project. In this context, facilities would be Duke's plant,  
7           such as wire, that another party is requesting be relocated. The proposed Rider  
8           FRT would be applicable when Duke is requested or required to build, remove,  
9           modify or relocate any facilities, equipment, or wiring related to the distribution  
10          or transmission of electric service in situations where Duke would not otherwise  
11          build, remove or relocate its facility, and is not otherwise compensated for the  
12          costs related to the required work. The request must be directly related to the  
13          construction or operation of "any mode of mass transportation, including but not  
14          limited to, light rail, heavy rail, high-speed rail, street cars, subways, trolleys,  
15          trains, or buses."<sup>2</sup>

16  
17          Rider FRT would apply to a request from a customer, a private party or a  
18          governmental entity, which includes any city, county, municipality, township or  
19          special district but excludes State or federal governmental entities.<sup>3</sup>

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<sup>2</sup> Proposed Rider FRT, Sheet No. 100 in 12-1682-EL-AIR.

<sup>3</sup> Notice of Application at 22.



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1 A customer or a private party requesting the construction would have to pay all  
2 the cost of removing or relocating the facilities regardless of the reason for the  
3 action requested.<sup>4</sup>

4  
5 For government entities, however, the addition of Rider FRT would provide at  
6 least three options for collecting the costs.<sup>5</sup> According to Duke witness Wathen,  
7 the first option (“Option 1”) would be for the governmental body to pay Duke  
8 directly for all the cost of relocating facilities, either in a lump sum or over time.  
9 The second option (“Option 2”) would allow Duke to institute Rider FRT, which  
10 would cover all the costs of the project by placing a charge on the monthly utility  
11 bills of those customers residing within the governmental entity’s boundaries.  
12 The third option (“Option 3”) would be some combination of Option 1 and Option  
13 2. According to Mr. Wathen, the charge under Option 1, Option 2 or Option 3  
14 would be sufficient to pay for the cost of relocating the facilities, plus a carrying  
15 charge at the weighted-average cost of capital established in these proceedings.<sup>6</sup>

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<sup>4</sup> Id.

<sup>5</sup> Case No. 12-1682-EL-AIR, Direct Testimony of William Don Wathen at 12 (July 20, 2012).

<sup>6</sup> Id.

**Q9. DOES THE PUCO STAFF SUPPORT DUKE'S PROPOSAL TO CREATE  
RIDER FRT IN THIS PROCEEDING?**

**A9.** No. The PUCO Staff does not support Rider FRT because, as designed, it is not well-defined and too open-ended.<sup>7</sup> The Staff enumerated these five reasons for opposing the Rider FRT:

- ◆ Duke's proposal fails to identify what type of public mass transportation projects would be eligible under Rider FRT.
- ◆ The proposal does not distinguish between projects that should be funded solely by the governmental subdivision and projects funded solely by the utility in accordance with the home rule charter of the Ohio Constitution.
- ◆ The proposal does not address the fact that many transportation projects provide various economic, social, and environmental benefits that are realized directly and indirectly. Also, it is unclear if the design of Rider FRT would ensure that the appropriate customers are being charged for the project in accordance with the principles of cost causation and recovery.
- ◆ Duke's proposal to have two options for funding mass transportation projects presents confusion. It is not clear as to what point in time, in conjunction with the project's planning and construction stages, Duke would seek

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<sup>7</sup> Staff Report at 21 (January 4, 2013).

1 Commission approval to utilize the tariff. And, it is not  
2 clear how potential cost overruns would be reviewed and/or  
3 approved by the Commission.

4 ♦ It is not clear if granting mass transportation projects, to be  
5 funded through a charge on customer's bills, would result  
6 in unintended liability and/or legal issues, such as who  
7 bears the assessment of future remediation liability.<sup>8</sup>  
8

9 ***Q10. DO YOU AGREE WITH THE PUCO STAFF THAT RIDER FRT SHOULD***  
10 ***NOT BE APPROVED BY THE COMMISSION?***

11 ***A10.*** Yes, however, it is my opinion that there are three additional reasons, beyond  
12 those identified by the Staff, why Rider FRT should be rejected. The first reason  
13 is that the Commission should reject Rider FRT because it violates the regulatory  
14 principle of aligning cost causation with cost recovery. Second, it is bad public  
15 policy because a utility should not act as a revenue or tax collector for a local  
16 governmental entity. Third, to the extent Rider FRT could result in Duke's  
17 residential customers paying more for a relocation project than though the  
18 governmental entity's tax scheme, it should be deemed bad public policy.  
19

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<sup>8</sup> Id. at 21-22.

1    ***Q11.  ON WHAT BASES DO YOU RECOMMEND THAT THE COMMISSION***  
2           ***NOT APPROVE RIDER FRT?***

3    ***A11.***  Rider FRT unfairly discriminates among customer classes because it gives  
4           members of one class -- governmental entities -- preferential treatment by  
5           providing the governmental entities with options for how Duke collects the costs  
6           associated with their requests for relocation of facilities, including the collection  
7           of those costs from other customer classes which are not the cost causers.  As I  
8           previously stated, Rider FRT violates the regulatory principle of aligning cost  
9           recovery from the entity that causes the cost.  In addition, it is bad public policy to  
10          use riders on utility bills as a means for governmental entities to help fund public  
11          works projects.  Governmental bodies have other means of collecting/paying the  
12          costs for relocating facilities associated with public projects, including levying  
13          taxes or borrowing the necessary funds (or some combination of taxation and  
14          borrowing).  Therefore, it is bad public policy for Duke's proposed Rider FRT to  
15          permit the Utility to act as a revenue or tax collector for local governmental  
16          bodies -- Cincinnati in this instance -- regarding certain aspects of transportation  
17          projects.  That should not be allowed.

18

19   ***Q12.  WILL DUKE'S PROPOSED RIDER FRT COLLECT COSTS FOR***  
20           ***TRANSPORTATION PROJECTS FROM UTILITY CUSTOMERS AT THE***  
21           ***SAME RATE AS A GOVERNMENTAL ENTITY'S TAXING SCHEME?***

22   ***A12.***  No.  The Rider FRT tariff language fails to assure fairness for customers in the  
23          treatment of city/county taxes versus tariff riders for the relocation of utilities

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1 related to a governmental subdivision's project, such as the Cincinnati streetcar  
2 project discussed in Mr. Wathen's testimony. Under Rider FRT, some Utility  
3 customers will pay more and some will pay less than they otherwise would have  
4 paid as taxpayers. In his testimony, Mr. Wathen states: "[t]he Rider [FRT] is  
5 designed to give the governmental subdivision the option of paying the [Utility]  
6 directly for the cost of relocation or, alternatively, to charge only those customers  
7 residing within its governmental boundaries for the cost of the project."<sup>9</sup>

8 However, there is no assurance that the relative cost to a Duke residential  
9 customer, through Rider FRT, would be equal to or the same as the cost to that  
10 same customer, under the City of Cincinnati's taxing authority. For example,  
11 Duke might collect the relocation costs, through Rider FRT, over a period of time  
12 not to exceed 24 months, placing a significant burden on the Utility's customers  
13 in comparison to collection through a more moderate multi-year taxing scheme.

14  
15 In addition, if the cost of relocating facilities for a project is collected through the  
16 governmental body's taxing authority, only the cost incurred by the governmental  
17 body is collected from taxpayers. However, if the cost of relocating facilities for  
18 a project is collected by Duke through a charge on customers' bills, customers  
19 will also pay carrying charges at Duke's weighted-average cost of capital. Thus,  
20 customers would pay more for the project under utility billing than it actually  
21 costs the governmental body. To the extent Rider FRT could result in Duke's  
22 residential customers paying more for a relocation project than through a tax

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<sup>9</sup> Direct Testimony of William Don Wathen at 12 (July 20, 2012).

1        scheme, it should be deemed bad public policy and another reason for the PUCO  
2        to deny Rider FRT.

3  
4        ***Q13. DOES “OPTION 2” OF RIDER FRT GUARANTEE THAT THE COSTS OF***  
5        ***RELOCATING DUKE’S FACILITIES FOR A GOVERNMENTAL BODY’S***  
6        ***PROJECT WOULD ONLY BE PAID BY RESIDENTS WITHIN THE***  
7        ***GOVERNMENTAL BODY’S JURISDICTION?***

8        ***A13.*** No. Company witness Wathen states in his testimony: “[B]ut generally, the tariff  
9        [Rider FRT] seeks to ensure that the principles of cost causation are aligned with  
10       cost recovery.”<sup>10</sup> However, the Utility is mistaken in its belief that the proposed  
11       Rider FRT tariff achieves these regulatory principles. In this instance the cost is  
12       caused by the City of Cincinnati requesting that Duke move its facilities. Thus  
13       Cincinnati should pay the relocation costs under the regulatory principle of cost  
14       causation. However, this regulatory principle would be violated if any Duke  
15       customer other than the City pays the costs.

16  
17       A second violation of the cost causation principle would occur if Duke’s  
18       uncollectibles rider, which is charged to all of Duke’s customers regardless of  
19       their location, would be used by Duke to collect the unpaid portion of customers’  
20       bills that include the Rider FRT charges. It is possible that Duke’s customers,  
21       outside the governmental body’s jurisdiction, could end up paying Rider FRT  
22       costs on behalf of Duke’s customers within the governmental body’s jurisdiction

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<sup>10</sup> Direct Testimony of William Don Wathen at 11 (July 20, 2012).

1       who fail to pay their bills. Therefore, the PUCO should determine that the  
2       proposed Rider RFT tariff should be rejected because it violates the regulatory  
3       principle of aligning cost causation with cost recovery.  
4

5       ***Q14. IS IT REASONABLE TO ENCOURAGE A UTILITY TO BECOME A***  
6       ***REVENUE OR TAX COLLECTOR FOR A GOVERNMENTAL ENTITY?***

7       ***A14.*** No, that is bad public policy. If a governmental body is responsible for relocation  
8       costs, then traditional tax collections or borrowing should be the means of raising  
9       the funds necessary to pay the relocation costs. From a public policy perspective,  
10      it is unreasonable to use a utility as a revenue collector for a governmental entity.  
11

12      ***Q15. ARE UTILITIES CURRENTLY COLLECTING CERTAIN TAXES OR***  
13      ***REVENUES FOR GOVERNMENTAL ENTITIES?***

14      ***A15.*** Yes. There are currently circumstances where a utility serves as the tax or  
15      revenue collector for a governmental entity. For example, a utility may be  
16      required to collect State and/or Local Sales or Excise Taxes and Gross Receipts  
17      Taxes from its customers on behalf of the governmental entity. However, those  
18      instances are distinguishable from Rider FRT. The State Sales and Gross  
19      Receipts Taxes represent instances where the State Legislature has deemed it  
20      appropriate for the various utilities to pay the tax and in certain circumstances  
21      ordered the utility to collect the aforementioned tax from its customers.<sup>11</sup> The  
22      current Rider FRT proposal, where it is the Utility and not the State Legislature

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<sup>11</sup> See, for example, R.C. 5727.38 and R.C. 324.03.

1 proposing the action, is highly distinguishable from a scenario where a  
2 governmental authority passes a law or ordinance requiring a utility to collect the  
3 tax.

4  
5 ***Q16. IS YOUR RECOMMENDATION CONSISTENT WITH THE PUCO STAFF'S***  
6 ***RECOMMENDATION?***

7 ***A16.*** Yes, though I have more reasons the Rider FRT should be denied, in addition to  
8 the reasons described by the PUCO Staff for denying the Rider FRT. Both OCC  
9 and the PUCO Staff oppose the Utility's proposal to create Rider FRT. The  
10 PUCO Staff does not support Rider FRT, stating that the proposal is not well-  
11 defined and too open-ended.<sup>12</sup> While OCC agrees with the Staff's assessment of  
12 Rider FRT, OCC also opposes the adoption of Rider FRT for additional reasons.  
13 Rider FRT violates the regulatory principle of aligning cost causation with cost  
14 recovery. In addition, Rider FRT is bad public policy because the Utility would  
15 be used as a tax collector for a governmental entity requesting a facility  
16 relocation. Finally, approval of Rider FRT, as proposed, is bad public policy  
17 because it could result in the unreasonable circumstance where Duke's residential  
18 customers would have to pay more for a relocation project than if the project were  
19 funded through another tax process.

20  

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<sup>12</sup> Staff Report at 21 and 22 (January 4, 2013).



1   **IV.   CONCLUSION**

2

3   ***Q17.   WHAT IS YOUR RECOMMENDATION?***

4   ***A17.***   The Commission should reject Rider FRT.

5

6   ***Q18.   DOES THIS CONCLUDE YOUR TESTIMONY AT THIS TIME?***

7   ***A18.***   Yes it does.  However, I reserve the right to incorporate new information that may  
8           subsequently become available.

### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing *Direct Testimony of Bruce M. Hayes* was served via electronic transmission to the persons listed below on this 19th day of February 2013.

/s/ Terry L. Etter

Terry L. Etter  
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Summary: Testimony Direct Testimony of Bruce M. Hayes on Behalf of the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Etter, Terry L Mr.