

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Application of Duke Energy:
Ohio, Inc., for Recovery :
of Program Costs, Lost :
Distribution Revenue, and : Case No. 13-753-EL-RDR
Performance Incentives :
Related to its Energy :
Efficiency and Demand :
Response Programs. :

- - -

PROCEEDINGS

before Ms. Christine M.T. Pirik, Deputy Director, at
the Public Utilities Commission of Ohio, 180 East
Broad Street, Room 11-A, Columbus, Ohio, called at
10 a.m. on Thursday, October 3, 2013.

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On behalf of the Residential Customers of
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On behalf of the Ohio Partners for
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Mike DeWine, Ohio Attorney General
By Mr. William L. Wright, Section Chief
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Mr. Devin D. Parram
and Mr. Ryan O'Rourke,
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On behalf of the Staff of the PUCO.

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Thursday Morning Session,
October 3, 2013.

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DEPUTY DIRECTOR PIRIK: We will go on the record. In the Matter of the Application of Duke Energy Ohio, Inc., for Recovery of Program Costs, Lost Distribution Revenue, and Performance Incentives Related to its Energy Efficiency and Demand Response Programs, Case No. 13-753-EL-RDR. The Commission has set this case for hearing at this time and place.

My name is Christine Pirik. I am the Deputy Director of the Legal Department, and I have been assigned to hear this case.

At this time I'll take appearances on behalf of the parties. On behalf of the company.

MS. WATTS: Thank you, your Honor. Amy B. Spiller and Elizabeth Watts, 139 East Fourth Street, Cincinnati, Ohio 45201.

DEPUTY DIRECTOR PIRIK: On behalf of OP&E.

MS. MOONEY: On behalf of Ohio Partners for Affordable Energy, Colleen Mooney, 231 West Lima Street, Findlay, Ohio.

DEPUTY DIRECTOR PIRIK: OCC.

MR. ETTER: Good morning, your Honor. On

1 behalf of the Office of the Ohio Consumers' Counsel
2 representing Ohio's residential utility consumers,
3 I'm Terry L. Etter, Assistant Consumers' Counsel. We
4 are at 10 West Broad Street, Suite 1800, Columbus,
5 Ohio 43215.

6 DEPUTY DIRECTOR PIRIK: Thank you. On
7 behalf of staff.

8 MR. PARRAM: Good morning. On behalf of
9 the staff of the Public Utilities Commission of Ohio,
10 Attorney General Mike DeWine, by Assistant Attorneys
11 General Devin Parram and Ryan O'Rourke, 180 East
12 Broad Street, 6th Floor, 43215, Columbus, Ohio.

13 DEPUTY DIRECTOR PIRIK: Thank you. I
14 think we might need to use the microphones. Yeah,
15 maybe we need to use the microphones so everyone in
16 the room can hear what's happening.

17 Okay. Before we begin with witnesses
18 OPAE has a pending motion. Ms. Mooney, would you
19 like to restate the motion for the record.

20 MS. MOONEY: Yes, your Honor. Our motion
21 involved having David Rinebolt subs -- be the adopter
22 of a testimony that was prefiled of Stacia Harper.
23 Stacia Harper is not in town this week. She's in a
24 NARUC training session in Michigan, and we just in
25 our motion request that David Rinebolt -- he filed

1 late-filed testimony that simply adopts as his own
2 testimony the testimony of Stacia Harper and that's
3 our motion.

4 DEPUTY DIRECTOR PIRIK: Are there any
5 objections to the motion by OP&E?

6 MS. WATTS: There are no objections from
7 the company.

8 MR. ETTER: No objections, your Honor.

9 MR. PARRAM: No objections, your Honor.

10 DEPUTY DIRECTOR PIRIK: The motion will
11 be granted.

12 MS. MOONEY: Thank you, your Honor.

13 DEPUTY DIRECTOR PIRIK: Ms. Mooney, can
14 you maybe take the microphone that's in front of
15 Mr. Rinebolt.

16 Turning to the company.

17 MS. WATTS: Yes, your Honor. Thank you.
18 Initially before I introduce Mr. Duff, I have a
19 little sheet with exhibit numbers and so forth on it
20 that I can distribute if your Honor would like to do
21 that at this point.

22 DEPUTY DIRECTOR PIRIK: That would be
23 helpful.

24 MS. WATTS: It's a long walk around. I
25 want to make a little split right in the middle.

1 DEPUTY DIRECTOR PIRIK: Okay, Ms. Watts.

2 MS. WATTS: Your Honor, if it meets with
3 your approval, I will read those into the record. So
4 Duke Energy would ask to have marked as Duke Energy
5 Ohio Exhibit 1 its application in these proceedings
6 which were filed on March 28, 2013.

7 Then we would ask to have marked as Duke
8 Energy Ohio Exhibit 2 the Direct Testimony of James
9 E. Ziolkowski, and as Duke Energy Ohio Exhibit 3 the
10 testimony of -- the Direct Testimony of Timothy J.
11 Duff, as Duke Energy Ohio Exhibit 3A the Supplemental
12 Testimony of Timothy J. Duff, as Duke Energy Ohio
13 Exhibit 4 the Testimony of Ashlie Ossege, as Duke
14 Energy Ohio Exhibit 5 the Reply Comments that were
15 filed in these proceedings on July 16, 2013, and as
16 Duke Energy Ohio Exhibit 6 the Testimony of Richard
17 G. Stevie which adopts the testimony of Ashlie
18 Ossege.

19 (EXHIBITS MARKED FOR IDENTIFICATION.)

20 DEPUTY DIRECTOR PIRIK: Miss Watts,
21 before you went on the record you mentioned there
22 were a couple of these documents that you do not have
23 copies for the court reporter so we are going to need
24 the dates of those so we can reference the docket
25 card in finding those testimonies.

1 MS. WATTS: Absolutely. And those
2 documents are as follows: The Direct Testimony of
3 Timothy J. Duff that was filed with the Commission on
4 March 28, 2013 and then the Supplemental Direct
5 Testimony of Timothy J. Duff that was filed on
6 September 13, 2013. And then in addition to those
7 two testimonies it would be the Testimony of James E.
8 Ziolkowski which was filed on March 28, 2013. And
9 those are the only documents that we need to use in
10 the hearing today that I don't have additional copies
11 of.

12 DEPUTY DIRECTOR PIRIK: Okay. Thank you.
13 Would you like to call your first witness.

14 MS. WATTS: I would, thank you, your
15 Honor. Timothy Duff.

16 - - -

17 TIMOTHY J. DUFF
18 being first duly sworn, as prescribed by law, was
19 examined and testified as follows:

20 DIRECT EXAMINATION

21 By Ms. Watts:

22 Q. Good morning, Mr. Duff.

23 A. Good morning.

24 Q. Could you tell us by whom you are
25 employed.

1 A. Duke Energy Business Services.

2 Q. And do you have before you what was
3 marked today as Duke Energy Ohio Exhibits 3 and 3A?

4 A. I do.

5 Q. And are those the testimonies that you
6 caused to be filed in this proceeding?

7 A. They are.

8 Q. If I were to ask you the questions
9 contained therein again today, would your responses
10 be the same?

11 A. Yes.

12 Q. Do you have any additions or corrections
13 to make?

14 A. Not to the best of my knowledge.

15 MS. WATTS: Mr. Duff is available for
16 cross-examination.

17 DEPUTY DIRECTOR PIRIK: Thank you.

18 OCC.

19 MR. ETTER: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Etter:

23 Q. Good morning, Mr. Duff.

24 A. Good morning.

25 Q. Let's concentrate on your supplemental

1 testimony that you recently filed in this proceeding
2 on September 13. And the purpose of that testimony
3 is to respond to the comments and reply comments that
4 were filed in this proceeding by OCC, the staff, and
5 OP&E; is that correct?

6 A. That's correct.

7 Q. And kind of in a nutshell your testimony
8 supports Duke's position that evaluation, monitoring,
9 and verification costs associated with Duke Energy's
10 efficiency program should be included in the avoided
11 costs for calculating the shared savings mechanism
12 found in the stipulation that was approved in Case
13 No. 11-4393; is that right?

14 A. No, that's not correct.

15 Q. That's not correct. What is your --

16 A. Measurement and verification are not
17 included.

18 Q. No, not included.

19 A. Not included.

20 Q. Yeah, okay. Have you read the
21 stipulation in that case?

22 A. Yes.

23 Q. Okay. And when was the last time you
24 read it?

25 A. Yesterday, I believe.

1 Q. Okay. And do you have a copy of it with
2 you here today?

3 A. If you give me a minute, I can, yes.

4 Q. Okay.

5 MR. ETTER: Your Honor, do you need a
6 copy of the stipulation?

7 DEPUTY DIRECTOR PIRIK: Yes, I do.

8 MR. ETTER: I am going to ask some
9 questions about it.

10 MS. WATTS: Mr. Etter, is this the 4393
11 stipulation?

12 MR. ETTER: Yes.

13 DEPUTY DIRECTOR PIRIK: We will need to
14 mark that as an exhibit so that the record is
15 complete, and we can go off of those documents.

16 MR. ETTER: Okay. This will be OCC 4.
17 I'm reserving the first three for our comments and
18 testimony.

19 DEPUTY DIRECTOR PIRIK: The stipulation
20 and recommendation in 11-4393 which was docketed on
21 November 18, 2011, needs to be marked as OCC Exhibit
22 4.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 Q. (By Mr. Etter) So let's focus for a
25 minute on your supplemental testimony. Excuse me.

1 At the bottom of page 2 of your supplemental
2 testimony, you discuss the application in the 11-4393
3 case, and you state that the application included a
4 proposed methodology for calculation of the shared
5 savings incentive. Do you see that?

6 A. Yes.

7 Q. That's in lines 16 to 18.

8 A. Yes.

9 Q. When was that application filed?

10 A. I can go back and look. It was -- I
11 believe it was sometime in July of 2011, July 23
12 maybe.

13 Q. Yeah, that's close enough. I think it
14 was July 20 but that's close enough. It was in July
15 of 2011, correct? And Mr. Ziolkowski's testimony
16 from the 11-4393 case where he explained the
17 calculation of the shared savings incentive and
18 included attachments detailing the calculations, was
19 that filed with the application that date you
20 reference here on lines 19 to 21?

21 A. It was.

22 Q. So it was filed on July 20, 2011,
23 correct, or thereabouts?

24 A. Correct.

25 Q. And when was the stipulation in that

1 proceeding filed -- or signed, rather?

2 A. I believe it was in October or November
3 of 2011.

4 Q. Yeah. If you will turn to page 8 of the
5 stipulation, it says November 18, 2011; is that
6 correct?

7 A. That's correct.

8 Q. So that was about four months after
9 Mr. Ziolkowski's testimony was filed, correct?

10 A. That's correct.

11 Q. Now, let's turn to the stipulation and on
12 page 4, paragraph numbered 1, the sentence beginning
13 on the third line discusses the shared savings
14 mechanism, correct?

15 A. Yes.

16 Q. And does it state there that the parties
17 agree to the shared savings mechanism proposed by
18 Mr. Ziolkowski in his testimony that was filed with
19 the application?

20 A. No. That's not what it states.

21 Q. Which shared savings proposal is
22 mentioned there?

23 A. It says it was the one proposed in the
24 OCEA or Ohio Consumer and Environmental Advocates'
25 comments submitted on 9-21-2011 but those comments

1 specifically recommended four modifications. None of
2 them modified the calculation methodology that
3 Mr. Ziolkowski supported in the application.

4 Q. But it doesn't say there the parties
5 agree to Mr. Ziolkowski's calculation, correct?

6 A. No. It says that they -- they wanted the
7 four modifications to the shared savings incentive
8 structure.

9 Q. Does the stipulation mention
10 Mr. Ziolkowski's testimony at all?

11 A. I don't believe it does.

12 Q. Well, I'll just point out that on page 6
13 there is a footnote where it mentions
14 Mr. Ziolkowski's testimony.

15 A. Oh, you are correct.

16 Q. Yeah. And that's for the purpose of
17 assigning program costs for recovery purposes to the
18 rate classes whose customers are directly
19 participating in the program, correct?

20 A. I believe so, yes.

21 Q. So specifically for that issue and no
22 other issue.

23 A. That's correct.

24 Q. And the attachment cited there in the
25 footnote is not the same attachment you mention on

1 page 3, line 22, of your supplemental testimony,
2 correct?

3 A. That's correct.

4 MR. ETTER: I have no further questions,
5 your Honor.

6 DEPUTY DIRECTOR PIRIK: Miss Mooney.

7 MS. MOONEY: No questions, your Honor.

8 DEPUTY DIRECTOR PIRIK: Mr. Parram.

9 MR. PARRAM: Yes, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Mr. Parram:

13 Q. Good morning, Mr. Duff.

14 A. Good morning.

15 Q. You have a copy of your supplemental
16 testimony in front of you?

17 A. I do.

18 Q. I would like to start at the end and jump
19 to pages 6 and 7 of your testimony.

20 A. Yes.

21 Q. There is a question regarding Commission
22 staff's testimony of Gregory Scheck and I'm
23 summarizing your testimony but you would be willing
24 to in -- I believe in this proceeding to adopt
25 Mr. Scheck's recommendation that he made in 13-431

1 which is Duke's portfolio case; is that correct?

2 A. That's correct. Mr. Scheck suggested in
3 his filing -- in his testimony in that portfolio case
4 that going forward it should be clear that
5 measurement and verification costs should be included
6 in the calculation of shared savings, and while the
7 company feels that it filed and calculated the shared
8 savings incentive consistent with the application,
9 the stipulation, and the tariffs that were -- that
10 were supported by the staff and approved by the
11 Commission, that going forward in order to avoid the
12 future concern, we would agree with Mr. Scheck if
13 that -- if the Commission deemed that appropriate.

14 Q. Okay. And I just wanted to be clear that
15 you would be -- it would be this particular case
16 where the Commission would make that -- order that?

17 A. Correct.

18 Q. By this particular case I mean 13-753.

19 A. That's correct.

20 Q. Okay. So based upon your testimony, you
21 would agree that -- that the Commission is not
22 precluded from addressing the EM&V costs and how it
23 should be calculated in the shared savings in any
24 type of way in this particular proceeding; is that
25 correct?

1 A. No. We were just saying that we
2 supported Mr. Scheck's recommendation in order to
3 resolve the concerns and the confusion that appears
4 to have occurred during the application, stipulation,
5 and approval of the tariffs with which we calculated
6 the shared savings incentive. That in order to avoid
7 that confusion and eliminate concern going forward
8 with the new portfolio that would go into effect
9 1-1-14, we would include measurement and verification
10 in the shared savings calculation.

11 Q. Okay. And just -- and my understanding
12 of your testimony is that -- that there is nothing in
13 the 11-4393 case that would necessarily preclude the
14 Commission from addressing how the EM&V should be
15 calculated as it relates to the shared savings in
16 this particular case going forward?

17 A. We feel that they already vetted that
18 issue when they approved the tariffs with the
19 workpapers that were reviewed by staff, and other
20 parties were given notice.

21 Q. So is it your opinion that the Commission
22 is precluded from addressing that issue in this case?

23 A. No.

24 Q. Okay. And if you go to page 5 of your
25 supplemental testimony, lines I believe it is 20

1 through 22, the sentence starting with the "the
2 Company." Do you see where I'm at there?

3 A. Yes.

4 Q. It says "The Company is not debating the
5 purpose or need to perform EM&V. This is quite
6 separate and apart from the need to do EM&V after the
7 program has been executed." Could you explain what
8 you are saying in those sentences there.

9 A. Essentially we are saying that M&V is
10 required by the Commission in order for -- in order
11 to comply with SB 221, and we are not making -- we
12 are not taking issue with the need to do measurement
13 and verification or that those -- that those costs
14 should be recovered.

15 We're taking issue with the fact that the
16 application, stipulation, and the tariffs that were
17 reviewed and filed excluded EM&V costs from the
18 calculation of shared savings.

19 Q. Okay. When you say -- if you can go over
20 to the next page.

21 A. Yes.

22 Q. On lines 2 to 3, there's a sentence that
23 says "Mainly that program costs for the purpose of
24 calculating the shared savings incentive necessarily
25 include EM&V costs."

1 A. Yes.

2 Q. What are you referring to there?

3 A. Mr. Scheck was making the -- making the
4 point in his testimony, as I understood it, that he
5 felt that EM&V costs were considered program costs
6 and, therefore, should be considered in the -- in the
7 shared savings calculation. That was not -- that was
8 not consistent with what we felt was put forward in
9 the application. Nowhere in any party's testimony
10 during the 11-3 -- 11-4393 case or in this case was
11 there anything that said that the EM&V had to be
12 included in the shared savings calculation.

13 Q. Okay. So it is true, isn't it, that as
14 part of the determining the cost effective -- cost
15 effectiveness of your programs, you are required and
16 have to perform EM&V; is that correct?

17 A. To do cost effectiveness for individual
18 programs does not necessarily include EM&V expense.

19 Q. Okay. Explain that to me.

20 A. EM&V expense is -- is considered -- isn't
21 necessarily considered a cost of implementation for
22 cost effectiveness. It's considered -- it's
23 considered a cost -- an overall cost of doing the
24 energy efficiency, but it's not considered a program
25 cost specifically with delivering the energy

1 efficiency.

2 Q. Do you have a separate EM&V cost as it
3 relates to just determining whether or not Duke will
4 get a shared savings incentive?

5 A. No. In fact, when EM&V -- when EM&V
6 costs are factored -- when you look at EM&V costs at
7 the portfolio level, what you are doing is you are
8 taking a 5 percent multiplied by the total portfolio
9 program costs which is another reason why we feel
10 it's quite clear that they are separate because
11 5 percent is what we use as an approximation for EM&V
12 costs when you are assessing the overall portfolio
13 cost effectiveness.

14 MR. PARRAM: That's all I have, your
15 Honor.

16 DEPUTY DIRECTOR PIRIK: Thank you.

17 MS. WATTS: Thank you, your Honor.

18 - - -

19 REDIRECT EXAMINATION

20 By Ms. Watts:

21 Q. Just a couple of questions, Mr. Duff.
22 When Mr. Parram asked you with respect to this
23 proceeding whether the Commission has any particular
24 authority to consider changes to the calculation,
25 Mr. Duff, you are not an attorney, correct?

1 A. Nope. I'm not an attorney.

2 Q. And so your understanding of what
3 authority the Commission may or may not have is not
4 based on any skilled legal --

5 A. I provided no testimony nor claim to be
6 an expert around the Commission's jurisdiction.

7 Q. Thank you. And, again, could you turn to
8 page 5 of your testimony, your supplemental
9 testimony.

10 A. Yes.

11 Q. At the bottom of page 5 you talk about
12 two different things, and correct me if this is
13 incorrect, you are talking about monitoring and
14 evaluating versus measurement and verification,
15 correct?

16 A. Yeah. We -- we monitor -- there is
17 monitoring that is included in programs that you
18 monitor how customers are doing, and so we were just
19 distinguishing the difference between monitoring and
20 measurement and verification.

21 Q. And, finally, you talked about -- in
22 response to some questions by Mr. Parram you talked a
23 little bit about the confusion that pertains here
24 today. Could you in your own words just simply
25 describe what the dispute is and why we are here

1 today.

2 A. Well, the dispute really arises that the
3 company made an application. It went through the
4 process of trying to reach a stipulation. It
5 responded directly to comments that were filed by a
6 party OCEA. In OCEA comments that are directly
7 referenced in the stipulation the company referenced
8 that it was going to adopt those modifications to the
9 shared savings as incentive it had proposed.

10 The company -- after a very drawn-out
11 proceeding, the company filed its compliance tariffs
12 in August of 2012 with the workpapers that were
13 consistent with the application for review that
14 showed that the M&V costs were excluded from the
15 shared savings incentive calculation. There was --
16 the staff found issues with the original compliance
17 filing.

18 The company resubmitted it again with
19 corrected workpapers showing EM&V excluded. The
20 staff said -- filed a note saying -- a memo saying
21 that they had reviewed the workpapers and the tariffs
22 and were fine with them. Those were ultimately
23 approved.

24 The company did the calculation of the
25 shared savings consistent with the approved tariffs

1 and workpapers as well as the application and nothing
2 had been modified through the stipulation. And then
3 when we filed to do the true-up, parties had an issue
4 with the EM&V expense.

5 And so as I mentioned earlier, we thought
6 some merit in -- in what Witness Scheck had said
7 saying that going forward it should be included, and
8 we're fine with that, but we felt we were in full
9 compliance with the Commission's orders as well as
10 with the stipulation and the order in the proceeding.

11 MS. WATTS: Thank you. I have nothing
12 further.

13 DEPUTY DIRECTOR PIRIK: Recross,
14 Mr. Etter.

15 MR. ETTER: No, no recross, your Honor.

16 DEPUTY DIRECTOR PIRIK: Miss Mooney.

17 MS. MOONEY: No.

18 DEPUTY DIRECTOR PIRIK: Mr. Parram.

19 MR. PARRAM: None, your Honor.

20 DEPUTY DIRECTOR PIRIK: Thank you very
21 much, Mr. Duff.

22 With regard to Company Exhibits 3 and 3A.

23 MS. WATTS: Yes, your Honor. We would
24 move those into evidence, please.

25 DEPUTY DIRECTOR PIRIK: Are there any

1 objections?

2 Hearing none they will be admitted into
3 the record.

4 (EXHIBITS ADMITTED INTO EVIDENCE.)

5 DEPUTY DIRECTOR PIRIK: With regard to
6 OCC Exhibit 4.

7 MR. ETTER: Yes. We move OCC Exhibit 4,
8 the stipulation from the 11-4393 case, into the
9 record.

10 DEPUTY DIRECTOR PIRIK: Any objections?
11 OCC Exhibit 4 will be admitted into the
12 record.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 DEPUTY DIRECTOR PIRIK: You can call your
15 next witness.

16 MS. WATTS: Thank you, your Honor. James
17 E. Ziolkowski.

18 - - -

19 JAMES E. ZIOLKOWSKI

20 being first duly sworn, as prescribed by law, was
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 By Ms. Watts:

24 Q. Good morning, sir. Would you state your
25 name and by whom you are employed.

1 A. My name is James E. Ziolkowski. I'm
2 employed by Duke Energy Business Services as a rates
3 manager.

4 Q. And, Mr. Ziolkowski, do you have before
5 you what's been marked as Duke Energy Ohio Exhibit 2?

6 A. Is that my direct testimony?

7 Q. Yes, it is.

8 A. Yes, I do.

9 Q. And is that -- is that, in fact, the
10 testimony you caused to be filed in this proceeding?

11 A. Yes.

12 Q. And if I were to ask you the questions
13 contained therein again today, would your responses
14 be the same?

15 A. Yes.

16 Q. Do you have any additions or corrections?

17 A. No.

18 MS. WATTS: Mr. Ziolkowski is available
19 for cross-examination.

20 DEPUTY DIRECTOR PIRIK: Mr. Etter.

21 MR. ETTER: Okay. Thank you, your Honor.

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Etter:

25 Q. Good morning, Mr. Ziolkowski. Just a few

1 questions for you this morning. If you would turn to
2 page 4 of your testimony. There you give a brief
3 description of the shared savings mechanism, correct?

4 A. That's correct.

5 Q. And you calculated the shared savings
6 mechanism in Attachment JEZ-1; isn't that correct?

7 A. Yes.

8 Q. Did you include the M&V costs as part of
9 the program costs in your calculation?

10 A. The M&V costs are kept separate from
11 the -- from the program costs in the calculation.

12 Q. So you did not include the costs?

13 A. Well, if you look at Attachment JEZ-1,
14 you will see separate columns for costs. There is a
15 column that's called non-M&V costs and then there is
16 a separate column called M&V costs.

17 Q. And which page of JEZ-1 is that on?

18 A. On the copy I am looking at I think
19 that's page 3 of Attachment JEZ-1. If I could see a
20 copy -- the copy that you are looking at, I could
21 probably clarify it.

22 Q. Is it this page?

23 A. Yes.

24 Q. Okay. Good.

25 DEPUTY DIRECTOR PIRIK: Okay. We can't

1 just say.

2 MR. ETTER: I will show it to everyone.

3 DEPUTY DIRECTOR PIRIK: That's good but
4 the record doesn't reflect. The record needs to
5 reflect exactly what the pages are. I think pages 1
6 and 2 are numbered. Are there 10 pages to this
7 attachment, I think?

8 THE WITNESS: Yes. There are 10 pages
9 and so it should be page 3 of 10.

10 Q. It's the page that has -- they all
11 have -- it has columns "Impacts," "Shared Savings
12 Calculation (Avoided Cost minus Program Costs) times
13 Sharing Rate," "Cost Recovery," and "Revenue
14 Requirement" as major headings in the columns; is
15 that correct?

16 A. Yes.

17 Q. And why didn't you include the M&V costs
18 as part of your calculation for the shared savings
19 mechanism?

20 A. In this filing we followed the process
21 that we had used in our -- in the 11-4393 case where
22 the M&V costs were not included in the shared savings
23 calculations. And so that's why we did it in this
24 case. We followed our precedent from the 11-4393
25 case.

1 Q. And by precedent you mean the stipulation
2 in the 4393 case?

3 A. No. By precedent I mean the workpapers
4 and the ultimate calculations that were filed in the
5 11-4393 case.

6 Q. But those calculations were based on what
7 was -- what the company deemed to be -- or determined
8 to be consistent with the stipulation in that case;
9 is that correct?

10 A. Are you referring to the 43 -- the 4393
11 case?

12 Q. Yes.

13 A. The calculations and workpapers that we
14 filed in the 4393 case were in my opinion -- we
15 followed the stipulation as we understood it.

16 Q. So if the -- if the stipulation requires
17 that the EM&V costs are to be included as part of
18 program costs when calculating shared savings, how
19 would that affect your calculations?

20 A. Would you repeat that question.

21 Q. Sure, sure. You excluded EM&V costs from
22 program costs when you made your calculations,
23 correct?

24 A. In both the 11-4393 case and in this
25 case, 13-753 case, we did not include in that M&V

1 costs in the calculation of our shared savings.

2 Q. Okay. But if you were to include EM&V
3 costs in your calculations of shared savings, how
4 would that affect your calculations?

5 A. Well, that would cause the shared savings
6 amount to go down, and then the percentage of shared
7 savings allowed as incentive would also decrease.

8 Q. And how much of that would that decrease
9 be?

10 A. Some of the parties filed numbers and it
11 would be in the range -- in the ballpark of \$400,000
12 would be decreased in the incentive. And Duke Energy
13 Ohio agrees to the numbers that were presented.

14 MR. ETTER: Okay. That's all the
15 questions I have. Thank you.

16 DEPUTY DIRECTOR PIRIK: Thank you.

17 Ms. Mooney.

18 MS. MOONEY: Nothing further.

19 DEPUTY DIRECTOR PIRIK: Mr. Parram.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Parram:

23 Q. Good morning, Mr. Ziolkowski.

24 A. Good morning.

25 Q. We have been mentioning the 11-4393 case.

1 You were -- you filed testimony in that case; is that
2 correct?

3 A. That's correct.

4 Q. And you actually testified -- not only
5 did you file testimony but you testified in the
6 hearing; is that correct?

7 A. That is correct.

8 DEPUTY DIRECTOR PIRIK: Mr. Parram, can
9 you pull the microphone a little closer.

10 MR. PARRAM: Oh, sure, your Honor. I
11 apologize.

12 Your Honor, I would like to have marked
13 as Staff Exhibit 1 the Direct Testimony of James E.
14 Ziolkowski on behalf of Duke Energy Ohio that was
15 filed in case 11-4393.

16 DEPUTY DIRECTOR PIRIK: The document is
17 so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MR. PARRAM: Your Honor, I apologize.
20 May I approach the witness?

21 DEPUTY DIRECTOR PIRIK: Yes.

22 Q. (By Mr. Parram) Mr. Ziolkowski, do you
23 have Staff Exhibit 1 in front of you?

24 A. Yes, I do.

25 Q. And you can take a moment to look at it,

1 but is this a copy of the testimony that you filed in
2 4393?

3 A. This looks correct.

4 Q. And there were a number of attachments
5 that you attached to this testimony. I believe there
6 was JEZ-1 through JEZ-6. Does that look correct?

7 A. Yes.

8 Q. And before each one of the attachments
9 that was attached to your testimony, all of these
10 were either prepared by you or under your direction;
11 is that correct?

12 A. That's correct.

13 Q. And I would like to draw your attention
14 to JEZ Attachment 1 first. Do you recognize this?

15 A. Yes, I do.

16 Q. What exactly is it?

17 A. JEZ Attachment 1 is a workpaper that
18 shows the calculation of Duke Energy Ohio's proposed
19 EE-PDR recovery rate and there were two general sets
20 of attachments in this testimony. JEZ-1, 2, and, 3
21 were workpapers that address the situation where --
22 whereby Duke was not authorized to recover lost
23 distribution revenues. And JEZ-4, 5, and 6 included
24 lost distribution revenues. And this was related to
25 the anticipated filing and approval of a decoupling

1 rider which was in some form or another in progress
2 at that time or being contemplated.

3 Q. And did you prepare JEZ Attachment 1?

4 A. Yes. Well, and let me clarify that
5 statement. JEZ Attachment 1 has multiple pages on it
6 and the first page from JEZ Attachment 1 was actually
7 prepared by another group within Duke and I took the
8 results and incorporated them into my rate
9 calculation.

10 Q. Okay. Thank you for pointing something
11 out for me. I specifically would like to focus on
12 JEZ Attachment 1, page 1 of 5. And so I believe you
13 just said JEZ Attachment 1, page 1 of 5, was prepared
14 by others?

15 A. That's correct. It was prepared by an
16 analytical group within Duke Energy Business
17 Services.

18 Q. Okay. And were they under your
19 supervision?

20 A. No.

21 Q. Is JEZ Attachment 1, page 1 of 5, is it
22 accurate?

23 A. To the best of my knowledge, it's
24 accurate.

25 Q. Okay. And the calculation -- I'm

1 specifically interested in there is a section on JEZ
2 Attachment 1, page 1, as it relates to the total
3 portfolio costs and total revenue requirement. Do
4 you see where I'm at on this document?

5 A. I believe so, yes.

6 Q. In that specific section there is a
7 breakdown of it indicates "Total Avoided Costs,"
8 "Program Costs & Overhead," "Shared Savings." They
9 are in the same place. Do you see where I'm at?

10 A. Yes.

11 Q. And on JEZ Attachment 1 it indicates that
12 shared savings program costs and M&V -- or M&V was
13 separate from program costs. Do you see where I am
14 at there?

15 A. Yes.

16 Q. And have you reviewed the reply comments
17 that were filed by Duke in this case, being 13-753,
18 and the testimony of Mr. Duff in this case?

19 A. I have read it.

20 Q. Okay. Do you understand that it's
21 Mr. Duff's position that according to this attachment
22 this indicates that M&V should be excluded from the
23 shared savings calculation?

24 A. Yes.

25 Q. And when you -- when you adopted this JEZ

1 Attachment 1 and attached it to your testimony, was
2 it your understanding that EM&V costs should be
3 excluded from shared savings?

4 A. Yes.

5 Q. And what was your understanding as to why
6 it was excluded?

7 A. Well, the -- various discussions that we
8 had did not include M&V costs as part of our shared
9 savings calculation and this is the -- this is the
10 application that was -- that was filed. And this is
11 the path that the company chose to go down in our
12 filing.

13 And subsequently -- subsequent to our
14 filing during the litigation of the 11-4393 case, we
15 also did not receive any comments about this issue in
16 that case. But this is simply the path that we chose
17 to go down in that filing.

18 Q. You indicated that based upon discussions
19 we had, you decided not to include EM&V costs -- EM&V
20 costs into the shared savings calculation. When you
21 say "we," who are you talking about?

22 A. Well, I am just talking in general terms.
23 This was the analysis that was provided by our
24 analytical group to us. Program costs are -- were
25 direct costs and the M&V recovery was filed -- was

1 kept separate in this analysis and this is simply the
2 path that the company chose to go down when we filed
3 it in this -- we presented this as part of my
4 testimony, and it clearly shows that the M&V costs
5 are kept separate but this is simply really the path
6 that we chose, to exclude the M&V costs in the shared
7 savings calculation.

8 Q. When you say "discussions," you were
9 included in these discussions?

10 A. Well, just general. We do have -- there
11 were, I recall, periodic meetings, telephone
12 conferences regarding the filing. I don't recall
13 that this topic had any significant discussion. This
14 was the methodology that -- that we decided to go
15 down.

16 Q. And when you say "we decided," this is a
17 decision made prior to you attaching this to your
18 testimony and filing it?

19 A. Well, there -- I -- I sponsored this
20 testimony, but as I mentioned, there is an analytical
21 group in the company that prepared this -- the
22 document and calculated the avoided costs and lost
23 revenues and prepared this document and -- and, once
24 again, this was simply the methodology that we
25 proposed in 11-4393. In our opinion this complies

1 with the stipulation, although the stipulation was
2 certainly entered into subsequent to this filing.
3 This was our proposed methodology.

4 Q. And when the decision was made to exclude
5 EM&V costs from shared savings, what -- what was the
6 rationale for that?

7 A. I don't recall a concrete decision that
8 someone made regarding we have to exclude M&V costs,
9 we have to do this, or we have to do that. This is
10 the ultimate decision. M&V costs are -- are sort of
11 overhead costs. Program costs are more the direct
12 costs associated with the programs. And, once again,
13 this is simply the methodology that we decided to go
14 down. We kept the M&V costs separate, and the
15 program costs that are reflected here could be
16 classified more as on direct program costs.

17 Q. Can you summarize for me what you just
18 said? Overhead costs are separate from program
19 costs; is that what you just indicated?

20 A. Well, as we define it in this filing, the
21 program costs are -- could be classified more as
22 direct program costs; whereas, the measurement and
23 verification costs are -- are -- are separate. They
24 could be classified more as after-the-fact overhead
25 in the costs and so we kept those costs as M&V costs

1 separate and we chose to define program costs for the
2 calculation of the shared savings calculation as
3 excluding the M&V costs. It is the path we simply
4 chose to go and filed.

5 Q. When you testified in 11-4393, did you
6 know that was the rationale for excluding the M&V
7 costs from shared savings?

8 A. I don't recall that this issue really
9 came up when I was testifying in the 4393 case in
10 light of I don't recall that this was even an issue
11 that was addressed in the 4393 case. This was our
12 filing and I don't recall getting cross-examination.
13 It might have happened, but I don't recall this being
14 an issue.

15 Q. But you do recall testifying on
16 November 29, 2011, in the 11-4393 case?

17 A. I do recall that, yes.

18 MR. PARRAM: Your Honor, may I approach
19 the witness?

20 DEPUTY DIRECTOR PIRIK: Yes.

21 Q. Mr. Ziolkowski, I have handed you a copy
22 of a transcript of -- a portion of the transcript
23 from the 11-4393 case where you testified, and I have
24 given you specifically the portions where you were
25 under cross-examination. I would like to direct your

1 attention to page 80 -- first, I would like to draw
2 your attention to page 79. This is a portion of the
3 transcript at lines -- line 16 it indicates -- I
4 apologize, line 14, "Would you tell me again what JEZ
5 Attachment No. 1 shows?

6 "Attachment JEZ-1 shows our proposed
7 Rider EE-PDRR cost recovery rate from June 20th
8 filing, and it assumes that we achieve that 7.5
9 percent incentive rate." Now, you were talking
10 specifically there about Attachment JEZ-1 which we
11 were just discussing, correct?

12 A. I believe that's correct.

13 Q. I would like to have you jump ahead a
14 couple of pages and go to page 81. And this is
15 discussion -- a discussion regarding Attachment
16 JEZ-1, page 81, starting at line 11, "Question:
17 Looking down the sheet I see that M&V" -- "M&V
18 recovery. What is M&V recovery?

19 "Measurement and verification.

20 "And that" -- I apologize. "Question:
21 Looking down the sheet, I see M&V recovery. What is
22 M&V recovery?

23 "Answer: Measurement and verification.

24 "Question: And that number represents
25 the cost of measuring and verifying compliance?

1 "Answer: That's my understanding, yes.

2 "Okay. Can you tell me why that wasn't
3 subtracted from the total avoided costs the same as
4 program costs overhead were?

5 "I don't have an answer for that. I
6 don't know. This particular schedule was prepared by
7 a number of people that work with the programs and do
8 the avoided costs calculations.

9 "Well, let me" -- and next question on
10 line 24, "Well, let me ask you the question then,
11 Mr. Ziolkowski. Wouldn't you regard measurement and
12 verification costs to be program costs and overhead?

13 "On the surface I would, but I don't know
14 what the" difference -- "different distinction" in
15 this is -- "is on this." I apologize. Do you recall
16 testifying to that?

17 A. I generally recall this line of
18 questioning --

19 Q. Okay.

20 A. -- from two years.

21 Q. When you initially testified in 11-4393,
22 you didn't know why M&V was being excluded from the
23 savings shared calculation; is that correct?

24 A. That's what I testified to.

25 Q. Okay. And so subsequent to your

1 testimony in that hearing you learned of another
2 rationale for why it was potentially excluded?

3 A. Well, in your line of questioning
4 earlier, you were asking me about my thought
5 processes from two years ago. And really my overall
6 reply is that this was a path that the company chose
7 to go down, and we filed it that way so.

8 Q. If you can go back to Staff Exhibit 1.
9 You have an Attachment JEZ-5 which is a proposed
10 rider EE-PDR, energy efficiency and peak demand
11 response recovery rider. I think the rider sheet is
12 107.1. Do you see where I'm at?

13 A. Yes.

14 Q. And let me ask you a question. Is
15 overhead costs part of administrative costs, or are
16 they synonymous in general? This isn't a question as
17 it relates to the tariff.

18 A. Well, overhead costs -- the term overhead
19 costs and administrative costs are both pretty
20 general terms. And I think you could have
21 administrative costs that could be direct costs
22 classified also as direct program costs and
23 administrative costs as that potentially could be
24 generally classified as overhead costs. In my
25 opinion neither term is very precise.

1 Q. I agree. Turning to JEZ Attachment 5,
2 just generally looking at JEZ Attachment 5, this is a
3 tariff sheet which is three pages, correct?

4 A. Correct.

5 Q. And it's broken down into I think four
6 different sections, "Applicability," "Charges,"
7 "Filings," and "Service Regulations"; is that
8 correct?

9 A. That's correct.

10 Q. I would like to focus on the portion
11 charges which is the second subject area and that's
12 back on page 1 of JEZ Attachment 5. If you go to the
13 second full paragraph in "Charges," starts with "For
14 each twelve month period." Do you see where I'm at?

15 A. Yes.

16 Q. The second sentence indicates "Such
17 program costs shall include the cost of planning,
18 developing, implementing, monitoring, and evaluating
19 EE-PDR programs." So program costs in this
20 particular section means monitoring and evaluating
21 the EE-PDR programs, correct?

22 A. Yes.

23 Q. And so in this particular section of the
24 charges section of the tariff, program costs is
25 defined in a way that means monitoring and

1 evaluating.

2 A. Would you repeat that?

3 Q. Sure. Based upon the sentence I just
4 read in this particular paragraph in the charges
5 section, program costs means monitoring and
6 evaluating.

7 A. Well, we are using some different
8 terminology too and that is I believe that Mr. Duff
9 referred to monitoring, is not the same thing as
10 measurement and evaluating, may not be the same thing
11 as verification either because even as a program is
12 being implemented, it's important to monitor it to
13 make sure that things are being done properly,
14 administered -- the program is administered properly;
15 whereas, a measurement and verification is a -- is an
16 after-the-fact activity. So M&V is not necessarily
17 the same as monitoring and evaluation.

18 Q. Okay. So does Duke under the EE-PDR
19 rider recover its costs of evaluating and measuring
20 and verifying their programs?

21 A. Through our EE-PDR recovery rate we do
22 include in our revenue requirement the M&V cost which
23 is a measuring and verification cost. So we do
24 recover those costs, just simply not included as part
25 of the shared savings calculation.

1 Q. Okay. I want to break it apart right
2 now. Right now, I'm just talking about the recovery
3 mechanism, not the shared savings mechanism so for
4 the shared -- for recovery Duke recovers its costs
5 for M&V.

6 A. Duke recovers our M&V costs through the
7 EE-PDR.

8 Q. Okay. And is that considered a program
9 cost?

10 A. For the calculation of our shared
11 savings, it's not considered a program cost.

12 Q. I am not talking about the shared savings
13 here. I am just talking about for the recovery
14 mechanism.

15 A. For our cost recovery mechanism we
16 recover the program costs, and we recover the
17 measuring and verification costs.

18 Q. So --

19 A. So --

20 Q. -- is it your testimony the M&V cost is
21 separate and apart from program costs as -- and I am
22 not talking about the shared -- the incentive
23 mechanism right now.

24 A. In our -- in our 11-4393 filing and in
25 our current 13-753 filing we include the M&V costs as

1 part of the program costs for the calculation of
2 those -- of those costs. But, once again, to be
3 clear we exclude M&V in the calculation of shared
4 savings so, and I understand we're not focusing on
5 shared savings, but I feel that I -- we need to be
6 clear about that.

7 Q. Right.

8 A. And that was the path we chose to go
9 down.

10 Q. I think you were very clear. Thank you.
11 So let me just make sure.

12 MS. WATTS: Mr. Parram, could you speak
13 into the microphone a little bit more.

14 MR. PARRAM: Sure.

15 Q. As it relates to the rider recovery --
16 and I believe you just indicated the program costs do
17 include M&V costs.

18 A. Our rider recovery mechanism allows us to
19 recover the program costs, lost revenues -- lost
20 distribution revenues in some cases, and shared
21 incentive. Using that terminology the program costs
22 include direct program costs, administrative, and
23 M&V. However, the program costs is not -- does not
24 include M&V for the purpose of the shared savings
25 calculation.

1 And it's really that simple and that was
2 the path we followed in 11-4393 and continued into
3 this case.

4 Q. You can go back to JEZ Attachment 5
5 again. And I would like you to turn to page 2, the
6 second full paragraph. It starts with "The EE-PDR
7 Program Incentive." Do you see where I'm at there?

8 A. Yes.

9 Q. And just generally this, first of all --
10 I apologize. I have to jump way back. JEZ
11 Attachment 5 as an attachment to your testimony in
12 11-4393 case, this also was a document that was
13 prepared by you or on your direction; is that
14 correct?

15 A. Yes.

16 Q. And was this document actually prepared
17 by you?

18 A. Yes, it was. I -- you know, we used
19 other documents as a template but, yes, this was
20 prepared by me.

21 Q. Okay.

22 A. I prepared tariffs as a member of the
23 rate department, and I do recall working on this,
24 yes.

25 Q. And, now, on page 2 of JEZ Attachment 5

1 that second full paragraph, that paragraph is
2 generally talking about program incentive will be
3 calculated; is that correct?

4 A. Yes.

5 Q. And this paragraph is still within the
6 same larger subject area of "Charges"; is that
7 correct?

8 A. Yes.

9 Q. And if you can go down six lines, it is a
10 sentence that starts with "Net resource savings are."
11 Do you see where I'm at?

12 A. Yes.

13 Q. It says "Net resource savings are defined
14 as program benefits less the costs of the program."
15 Now, when you say "costs of the program," is that a
16 different type of program cost than the program costs
17 that you mentioned on page 1 of JEZ Attachment 5?

18 A. Well, as we interpret it, it is. It
19 looks like on page 1 of JEZ Attachment 5 we refer to
20 the term of PC for program costs but we don't -- but
21 I don't see that the term PC is used in this -- on
22 page 2.

23 Q. Well, is PC program costs or program cost
24 recovery?

25 A. Well, on page 1 PC is defined as program

1 cost recovery.

2 Q. Okay. So when you talk about the general
3 program costs on page 2, is that a different type of
4 program costs than you indicate on page 1 of the
5 tariff?

6 MS. WATTS: Objection, your Honor. Asked
7 and answered.

8 DEPUTY DIRECTOR PIRIK: Overruled.

9 A. Well, on page 1 of the tariff we are
10 using the term program costs to recover all of our
11 costs, both our direct program costs, general
12 administration of, and measurement and verification.
13 And but on page 2 for a program incentive, once
14 again, the company filed in our 11-4393 case a
15 methodology that's shown, appears in our workpapers
16 that -- excluding measurement and verification. It's
17 a different -- so we are -- if you want to assign a
18 meaning to the term program costs, we -- it is
19 slightly used differently in our filing on page 1 of
20 JEZ-5 versus page 2 of JEZ-5.

21 Q. But just by reading the section of the
22 tariff charges, it would appear that program costs on
23 page 1 has the same meaning as program costs and
24 program on page 2, correct?

25 A. Could you repeat that question?

1 Q. Sure. Understanding that you have
2 indicated that JEZ Attachment 1 indicates the
3 company's understanding of how EM&V costs would be
4 calculated in shared savings incentive, excluding
5 that understanding, your position on that, just
6 reading the "Charges" section of JEZ Attachment 5,
7 program costs on page 1 has a definition that
8 includes monitoring and evaluating -- monitoring and
9 evaluating on page 2, there is costs of program which
10 appears to be the same exact definition.

11 MS. WATTS: Objection. Mr. Parram, I
12 think you are misstating Mr. Ziolkowski's testimony
13 as to the definition.

14 DEPUTY DIRECTOR PIRIK: Mr. Ziolkowski
15 can clarify.

16 A. The language in this tariff in my opinion
17 could have been written a little bit tighter. We --
18 on page 2, in the second paragraph on page 2, we --
19 you know, we wrote into the tariff just a general
20 term of costs of the program. When we made our
21 filing, we -- we made the decision to interpret costs
22 of the program as excluding M&V costs for the shared
23 savings calculation. On page 1 on -- we talk about
24 PC, program costs recovery, and on -- for that
25 purpose we are including measurement and verification

1 costs because we want to recover those measurement
2 and verification costs as well as the direct costs of
3 the program, so it is simply a methodology that the
4 company chose to file, and in our opinion it was
5 explicit on the workpapers.

6 Q. Thank you. And just to be clear when JEZ
7 Attachment 1 was attached to your testimony sponsored
8 by you in 11-4393 and at the time that you filed
9 that, you didn't know the rationale of why that EM&V
10 cost was being excluded from the shared savings
11 incentive calculation?

12 A. Well, can you refresh my memory as far as
13 my cross -- cross two years ago in which case I
14 referred that question to Company Witness Duff so,
15 again, I will reiterate that that was the -- from my
16 standpoint that was the path that we chose to go
17 down. That's the path that we filed.

18 MR. PARRAM: That's all I have, your
19 Honor. Thank you.

20 DEPUTY DIRECTOR PIRIK: Ms. Watts,
21 redirect?

22 MS. WATTS: Yes, thank you, your Honor.
23 If I may have just a moment.

24 DEPUTY DIRECTOR PIRIK: Yes.

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REDIRECT EXAMINATION

By Ms. Watts:

Q. Mr. Ziolkowski, turning your attention to Attachment JEZ-1 that was attached to your testimony in the 4393 case.

A. Yes, I'm there.

Q. In tandem with that I'm going to direct your attention generally to the narrative testimony that supports -- that comes before that. Is it not your purpose in filing testimony in that case to describe explicitly how the rider will be calculated?

A. That was the purpose of my testimony in that case was --

Q. And, Mr. Ziolkowski, you work in the rates department of the Duke Energy Ohio, correct?

A. Correct.

Q. And so the way in which the JEZ-1 was set forth was done in cooperation with people from -- people who work in the energy efficiency part of Duke Energy Ohio, correct?

A. That's correct.

Q. And so your purpose with JEZ-1 is to lay out the numbers and the methodology but not necessarily to make evaluations about how that should

1 be done?

2 A. That's correct.

3 Q. And in your -- in your view is that
4 methodology consistent with the stipulation that was
5 reached in 4393?

6 A. In my -- in my view it is.

7 Q. And when you filed the supporting
8 documentation in this case, did you again show the
9 calculation of the rider consistent with the
10 stipulation and the documents that were filed in
11 4393?

12 A. Yes.

13 Q. And are you aware of any party that took
14 exception with any of those calculations in 4393?

15 MR. ETTER: I object, your Honor. She is
16 going far afield from what was delved into on cross
17 in her redirect.

18 DEPUTY DIRECTOR PIRIK: Yes. You need to
19 sum it up. I think you are going down a different
20 road, but I'll allow this question.

21 A. Would you repeat the last question?

22 Q. Are you aware of any parties that took
23 exception to your calculations in the 4393
24 proceeding?

25 A. I'm not aware.

1 Q. And Mr. Parram asked you questions with
2 respect to Staff Exhibit 1 which is -- where did it
3 go -- which was again your testimony in the 4393
4 proceeding and asked you particular questions about
5 the tariff attachment to that --

6 A. Yes.

7 Q. -- and the narrative explanation in the
8 tariff about how it's calculated?

9 A. Yes.

10 Q. And in your opinion is that
11 calculation -- is that description consistent with
12 what was approved in 4393?

13 A. I do think it's consistent.

14 MS. WATTS: Thank you. I have nothing
15 further.

16 DEPUTY DIRECTOR PIRIK: Mr. Etter?

17 MR. ETTER: Yes, yes, thank you, your
18 Honor.

19 - - -

20 RECROSS-EXAMINATION

21 By Mr. Etter:

22 Q. Ms. Watts just referred to the narrative
23 description regarding the program costs. Was that --
24 I believe it was in JEZ-5; is that correct? Or,
25 excuse me, JEZ-2? Excuse me.

1 A. I believe that earlier we were talking
2 about JEZ-5 but JEZ-2 sort of mirrors JEZ-5.

3 Q. Okay. And when you discuss program costs
4 in that attachment, it seems like there are two
5 different definitions of -- two different sets of
6 program costs, one for recovery and one for the
7 incentive mechanism and the shared savings mechanism;
8 is that correct or is that what you believe?

9 A. That is the methodology we used in the
10 workpapers.

11 Q. So the program costs for recovery include
12 M&V, but the program costs for the shared savings
13 mechanism do not include M&V?

14 A. That's the way we interpreted it and,
15 once again, the language in the tariff could have
16 been tightened up, I agree.

17 Q. And by including M&V in the program costs
18 for recovery, that benefits the company, does it not?

19 A. Well, program costs are costs that the
20 company expends and so we do want to recover those
21 costs and by recovering the costs the company
22 benefits as opposed to not recovering the costs so,
23 yes.

24 Q. Excuse me. I'm sorry, were you finished?

25 A. So, yes.

1 Q. So Duke recovers -- collects more from
2 customers if they include the M&V in the program
3 costs recovery, right?

4 A. Duke -- Duke collects more from customers
5 if we -- if we are allowed to recover our measurement
6 and verification costs.

7 Q. And by excluding M&V from program costs
8 on the shared saving incentive, Duke also collects
9 more from customers; is that correct?

10 A. The rate that causes the recovery rate to
11 go higher, yes.

12 Q. So it's sort of a win-win just the way
13 you have interpreted the stipulation for Duke; is
14 that correct?

15 MS. WATTS: Objection as to the win-win
16 situation.

17 DEPUTY DIRECTOR PIRIK: Mr. Ziolkowski
18 can answer the question as he sees fit.

19 A. This is the methodology that we filed
20 that's shown explicitly in 4393 case that was
21 approved and in our current 13-753 workpaper filing.

22 MR. ETTER: I have nothing further, your
23 Honor.

24 DEPUTY DIRECTOR PIRIK: Ms. Mooney.

25 MS. MOONEY: I have one question.

DEPUTY DIRECTOR PIRIK: Can you use your
microphone, please.

- - -

CROSS-EXAMINATION

By Ms. Mooney:

Q. Can you tell me, does it state anywhere
in any testimony --

DEPUTY DIRECTOR PIRIK: Just push it
again. There you go.

Q. Does it state anywhere in any testimony
you've filed in this case or in the 4393 case that
the M&V costs would be treated differently in the
rider for recovery versus the shared savings
calculation?

A. I don't recall addressing that issue in
either sets of my testimony.

MS. MOONEY: Thank you.

DEPUTY DIRECTOR PIRIK: Mr. Parram.

MR. PARRAM: Nothing, your Honor.

- - -

EXAMINATION

By Deputy Director Pirik:

Q. I have one question, maybe a couple of
questions. Maybe you can answer it in one answer. I
know you mentioned several times in your responses to

1 Mr. Parram that -- that the information with regard
2 to the M&V were contained in workpapers in the 4393
3 case. And my question has to do -- and you've
4 mentioned a couple of times that the calculation in
5 this case is consistent with what was approved in
6 that case. Were there any exhibits or within the
7 record in that case where those workpapers were
8 submitted for the Commission's review and
9 understanding?

10 A. The workpapers, first off, we had the
11 workpapers that were attachments to my direct
12 testimony in the 4393 case and also during -- we
13 received approval of the EE-PDR in the summer, 2012.
14 I submitted workpapers in the summer of 2012. Greg
15 Scheck reviewed them. We found an error. I think it
16 was regarding the lost revenue recovery and then we
17 fixed it and then also filed a final set of
18 workpapers and final set of tariffs and they are all
19 out there on the 11-4393 docket in the Docketing
20 Information System.

21 Q. So when you are referring to workpapers,
22 you are referring to the attachments to your
23 testimony --

24 A. Yes. They were --

25 Q. -- in 4393 which is Staff Exhibit 1.

1 A. Yes. The workpapers I am referring to
2 are revised versions of the Attachment 1, for
3 example, to my testimony.

4 Q. And those were submitted as exhibits in
5 4393?

6 A. They were submitted to the Docketing
7 Information System. I don't know -- this is a legal
8 issue that I think the attorneys would have to
9 address. I don't know if that constitutes being on
10 the record or not. To me that's a legal issue so I
11 don't know, but they are out there and they can be
12 viewed on the Docket Information System right now.

13 Q. So what you're saying is the information
14 that -- that we were trying to understand here as far
15 as what is and what isn't in or out of the
16 calculation is clear by reviewing the attachments to
17 your testimony in 4393 and anything that was filed in
18 that case?

19 A. Yes.

20 DEPUTY DIRECTOR PIRIK: That's all I
21 have. Thank you, Mr. Ziolkowski.

22 MS. WATTS: We would move into evidence
23 Duke Energy Ohio Exhibits 2, 3, and 3A, please.

24 DEPUTY DIRECTOR PIRIK: I believe we've
25 already admitted 3 and 3A so with regard to Duke

1 Energy Exhibit 2, are there any objections?

2 Hearing none it will be admitted.

3 (EXHIBIT ADMITTED INTO EVIDENCE.)

4 DEPUTY DIRECTOR PIRIK: With regard to
5 staff exhibit.

6 MR. PARRAM: Yes, your Honor. The staff
7 would move for admission into the record of Staff
8 Exhibit 1.

9 DEPUTY DIRECTOR PIRIK: Are there any
10 objections?

11 Hearing none Staff Exhibit 1 will be
12 admitted into the record.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 DEPUTY DIRECTOR PIRIK: I think we'll
15 begin our next witness.

16 MS. WATTS: Thank you, your Honor. I
17 have no further witnesses and I would note that Duke
18 Energy Ohio has asked to have marked the testimony of
19 Ashlie Ossege and Richard G. Stevie and the testimony
20 of Dr. Stevie was waived by the parties. And if I am
21 incorrect in that regard, I am sure they will let me
22 know, but I believe we would like to ask that be
23 admitted as well.

24 DEPUTY DIRECTOR PIRIK: I believe at
25 least informally what I had heard is that the

1 intervenors and the staff were waiving cross on
2 Mr. Stevie. Are there any objections to admitting
3 Duke Exhibit 4 and Duke Exhibit 6 to the record
4 without cross?

5 MR. PARRAM: No, your Honor.

6 DEPUTY DIRECTOR PIRIK: Hearing no
7 objections Duke Exhibit 4 and Duke Exhibit 6 will be
8 admitted into the record.

9 (EXHIBITS ADMITTED INTO EVIDENCE.)

10 DEPUTY DIRECTOR PIRIK: I believe there
11 are two other exhibits that have not been admitted
12 which is the application which is Duke Exhibit 1 and
13 the reply comments, Duke Exhibit 5.

14 MS. WATTS: Yes. And may we have those
15 admitted, your Honor?

16 DEPUTY DIRECTOR PIRIK: Are there any
17 objections to admitting those to the record?

18 Hearing none they will be admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 DEPUTY DIRECTOR PIRIK: We will go off
21 the record.

22 (Recess taken.)

23 DEPUTY DIRECTOR PIRIK: We'll go back on
24 record. OCC, would you like to call your witness.

25 MR. ETTER: Thank you, your Honor. OCC

1 calls Wilson Gonzalez.

2 WILSON GONZALEZ

3 being first duly sworn, as prescribed by law, was
4 examined and testified as follows:

5 DIRECT EXAMINATION

6 By Mr. Etter:

7 Q. Would you state your name and address,
8 please.

9 A. Wilson Gonzalez, 10 West Broad Street,
10 Columbus, Ohio 43 --

11 Q. 215.

12 A. -- 215.

13 Q. I have the same problem sometimes. And
14 you are an employee of the Office of the Ohio
15 Consumers' Counsel; is that correct?

16 A. Yes, I am.

17 Q. And what is your position at OCC?

18 A. I'm a senior energy policy advisor.

19 Q. And are you the same Wilson Gonzalez who
20 submitted direct testimony on behalf of OCC on
21 September 9, 2013, in this case?

22 A. Yes, I am.

23 MR. ETTER: May I approach, your Honor?

24 DEPUTY DIRECTOR PIRIK: Yes.

25 MR. ETTER: I would like to have marked

1 as OCC Exhibit No. 3 the Direct Testimony of Wilson
2 Gonzalez failed on September 9, 2013, in this case.

3 DEPUTY DIRECTOR PIRIK: The document is
4 so marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MR. ETTER: Does anybody else need a
7 copy?

8 Q. (By Mr. Etter) And, Mr. Gonzalez, was
9 this the testimony that was prepared by you or on
10 your behalf at your direction?

11 A. Yes, it was.

12 Q. And if I were to ask you the same
13 questions today as you have in your testimony, would
14 you answer them the same way?

15 A. Yes, I would.

16 Q. And do you have any changes or additions
17 to your testimony?

18 A. No, I do not.

19 MR. ETTER: Thank you, your Honor. We
20 now tender Mr. Gonzalez for cross-examination.

21 DEPUTY DIRECTOR PIRIK: Do the
22 intervenors or staff have any questions?

23 MR. PARRAM: No, your Honor.

24 MS. MOONEY: No questions.

25 DEPUTY DIRECTOR PIRIK: Ms. Watts.

1 MS. WATTS: I do, your Honor, thank you.

2 CROSS-EXAMINATION

3 By Ms. Watts:

4 Q. Mr. Gonzalez, were you employed at OCC
5 during the pendency of Duke Energy Ohio Case 11-4393,
6 the portfolio case?

7 A. I thought it was a rider case.

8 Q. I think 11-4393 was --

9 DEPUTY DIRECTOR PIRIK: EL-RDR.

10 Q. I'm sorry, I stand corrected. It was a
11 rider proceeding. You evidently knew that so you
12 must have been around then.

13 A. Yeah, I think I was or whatever the word
14 you used.

15 Q. And were you working with legal counsel
16 during that case in providing input to OCC's position
17 and so forth?

18 A. We had a case team with legal counsel.

19 Q. Okay. And when OCEA filed comments in
20 that proceeding, would you have reviewed them?

21 A. Yes.

22 Q. Do you happen to have a copy of those
23 with you?

24 A. I don't.

25 MS. WATTS: May I approach, your Honor?

1 DEPUTY DIRECTOR PIRIK: Yes. And for the
2 record when you come back, could you please just
3 spell out what OCEA is.

4 MS. WATTS: I sure will. I'll provide a
5 set for the court reporter.

6 May we have that document marked as Duke
7 Energy Ohio Exhibit 7?

8 DEPUTY DIRECTOR PIRIK: The document is
9 marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 Q. Mr. Gonzalez, would you take a moment to
12 familiarize yourself with that -- those comments.

13 MS. WATTS: Which of us is causing that?

14 DEPUTY DIRECTOR PIRIK: Try again and
15 we'll see if it works.

16 MS. WATTS: Okay. It is not doing it
17 now.

18 DEPUTY DIRECTOR PIRIK: Sometimes if you
19 turn it sideways, speak into it more sideways.

20 MS. WATTS: Okay.

21 DEPUTY DIRECTOR PIRIK: So the OCEA you
22 are referring to is Ohio Consumer and Environmental
23 Advocates as noted on the exhibit?

24 MS. WATTS: Yes, your Honor, that's
25 correct. And on page 1 of those comments there is a

1 footnote that indicates the members of that group.

2 DEPUTY DIRECTOR PIRIK: Thank you.

3 A. Yeah, I'm ready.

4 Q. Are you ready? I just want to make sure
5 you had a chance to familiarize yourself with it.

6 Again, if you would look at pages 8 through 11 there
7 is a discussion related to OCEA's recommendations on
8 shared savings incentive; isn't that correct?

9 A. Yes.

10 Q. And would you look at those pages
11 carefully, please, and tell me if you see any
12 specific reference to measurement and verification
13 costs.

14 A. While there doesn't appear to be an
15 explicit reference to M&V I would argue when we talk
16 about program costs, we would include like one of the
17 company's -- one of the two definitions the company
18 proffered includes measurement and verification.

19 Q. So --

20 A. So in -- if you look at where we describe
21 the shared savings mechanism starting on the bottom
22 of page 8 where we say "A 'shared savings' incentive
23 allows a utility to retain a portion of the net bill
24 savings its programs create for customers." We
25 included program costs.

1 Q. Okay. And, again, you reference program
2 costs but there's no specific reference to
3 measurement and verification, correct?

4 A. There's no specific reference but as I
5 stated to you, I looked at Exhibit 5 from Mr. --
6 Witness Ziolkowski and I read that tariff to mean
7 program costs include measurement and verification
8 and it includes administrative costs which under the
9 Commission finding and order in the 09-512 case
10 designating M&V protocols, it's clear that
11 administrative costs should be part of program costs.

12 Q. Mr. Gonzalez, does 09-512 in any respect
13 address Duke Energy Ohio's shared savings mechanism?

14 A. I would say to the extent that it gives
15 the Commission guidance on elements that are
16 incorporated into the shared savings mechanism such
17 as program costs --

18 Q. Okay.

19 A. -- and administrative costs.

20 Q. And turning your attention again to the
21 comments that were filed by OCEA, on page 9 there
22 were four recommended changes to what the company had
23 filed; isn't that correct?

24 A. That is correct.

25 Q. And none of those four changes spoke to

1 the M&V -- the calculation of measurement and
2 verification, correct?

3 A. No. There was a concentration on
4 elements that would have a big impact on a shared
5 savings mechanism.

6 Q. And, Mr. Gonzalez, at the conclusion of
7 4393 when the company filed its compliance tariffs at
8 the direction of the Commission, did you review those
9 compliance tariffs?

10 A. I believe I reviewed the language of the
11 compliance tariffs, and we had a concern, the same
12 concern I think expressed by staff, and -- and I
13 guess the company refiled. It was on the lost
14 revenue issue.

15 Q. Right. And when the company refiled,
16 they addressed that concern, correct?

17 A. Yes.

18 Q. But there was no mention of any concern
19 with respect to the calculation of measurement and
20 verification costs.

21 A. We read the tariff, and the tariff says
22 measurement -- administrative costs is part of
23 program costs so why would we challenge it?

24 MS. WATTS: Your Honor, may I approach?

25 DEPUTY DIRECTOR PIRIK: Yes.

1 MS. WATTS: I would like to have marked
2 as Duke Energy Exhibits 8 and 9 the tariff filing
3 submitted by the company on August 22, 2012, and
4 September 4, 2012, in Case No. 11-4393.

5 DEPUTY DIRECTOR PIRIK: Duke Exhibit No.
6 8 will be the one on August 22, 2012, and Duke No. 9
7 will be the one submitted on September 4, 2012.

8 (EXHIBITS MARKED FOR IDENTIFICATION.)

9 Q. Mr. Gonzalez, are these the documents you
10 reviewed when they were filed?

11 A. I believe I've -- did review these
12 documents. But my focus was on the rider
13 definitions, and I'll say my focus was there because
14 as Mr. Ziolkowski mentioned, there was a parallel
15 case dealing with a decoupling mechanism whereby we
16 didn't want to be charged for lost revenues, our
17 class, and I saw the modification that was made in
18 the rate so that was my focus.

19 Q. So turning your attention to the document
20 that was filed with the Commission on August 22,
21 looking at the first page is a letter, correct? The
22 first page of that document is a letter?

23 A. Hold on. I see page 1 of 6; is that what
24 you are referring to?

25 Q. No, of the group of documents that I just

1 handed you, the first page is a letter.

2 A. Oh, yes. I thought you meant like the
3 letter A, letter B.

4 Q. I'm sorry. And these were documents that
5 you reviewed, and the second page of that group is a
6 calculation of the revenue requirement, correct?

7 A. Yes.

8 Q. And do you see that M&V is set out
9 separately in that calculation?

10 A. Yes.

11 Q. But you didn't review that when you
12 looked at the overall filing?

13 A. This filing you're talking about?

14 Q. Right. When you reviewed the tariff when
15 it was filed, you didn't notice that particular
16 calculation.

17 A. Like I said, I focused in on -- I looked
18 at the -- at the calculation, but I focused on the
19 language in the tariff sheet.

20 Q. Okay. And then when the company filed an
21 amended tariff on September 4, again, your focus was
22 the same, you were focused on the one particular
23 issue that you were concerned with; is that correct?

24 A. Yes. I would say that based on my
25 understanding of the stipulation, I felt that this

1 was the part that we needed to review carefully given
2 the changes going on.

3 Q. Okay. And you heard Mr. Parram
4 cross-examining Mr. Ziolkowski when he was on the
5 stand; isn't that correct?

6 A. Yes, I was present.

7 Q. And did you -- were you present when
8 Mr. Parram asked Mr. Ziolkowski to look at Staff
9 Exhibit 1?

10 A. I was here. I don't recall what Exhibit
11 1 was.

12 Q. Staff Exhibit 1 is Mr. Ziolkowski's
13 testimony, the transcript of his testimony in the
14 4393 case. Do you recall those questions?

15 A. Yes.

16 Q. Does your counsel have a copy of that to
17 provide to the witness?

18 MR. ETTER: The transcript?

19 MS. WATTS: No.

20 MR. ETTER: No, I don't.

21 DEPUTY DIRECTOR PIRIK: Are you talking
22 the transcript or his direct testimony? The
23 transcript was not marked.

24 MS. WATTS: Oh, I apologize. Well, then
25 can -- we don't really need to mark it, but I just

1 want to have the witness have access to it so he can
2 look at it again.

3 DEPUTY DIRECTOR PIRIK: The direct
4 testimony?

5 MS. WATTS: The transcript.

6 DEPUTY DIRECTOR PIRIK: The transcript.
7 You can but if you go much more into what --
8 Mr. Parram was really doing it to refresh
9 recollection is my understanding of it so if you go
10 and are asking direct questions, then we are going to
11 have to mark it so that the record in this case is
12 clear.

13 MS. WATTS: Okay.

14 DEPUTY DIRECTOR PIRIK: Are you intending
15 to ask more direct questions?

16 MS. WATTS: I would like to ask the
17 witness two or three questions about the testimony in
18 the 4393 proceeding. I might be able to do it -- let
19 me ask him without the document, and if he feels
20 uncomfortable with that, we can do it otherwise.

21 DEPUTY DIRECTOR PIRIK: Okay.

22 Q. (By Ms. Watts) Mr. Gonzalez, you recall
23 that Mr. Parram asked Mr. Ziolkowski about his
24 testimony in that proceeding. And do you recall that
25 Mr. Boehm in that proceeding questioned

1 Mr. Ziolkowski about the way in which the shared
2 savings was calculated?

3 MR. PARRAM: Your Honor, just I am going
4 to object to the foundation of Mr. Wilson hasn't
5 necessarily testified that he was in that proceeding.
6 It's just a foundation question.

7 DEPUTY DIRECTOR PIRIK: Yeah, I agree.
8 Could you turn your microphone on.

9 I think you need to lay some stronger
10 foundation if you are going to be asking questions
11 about cross-examination in another proceeding.

12 MS. WATTS: Okay. I will be happy to do
13 that.

14 Q. (By Ms. Watts) Mr. Gonzalez, you
15 indicated you were at OCC and had some responsibility
16 in working with the team on the 11-4393 case,
17 correct?

18 A. That's correct.

19 Q. And did you sit through the hearing in
20 that proceeding?

21 A. I would say maybe 50 percent of it. I
22 was in and out.

23 Q. Were you present for Mr. Ziolkowski's
24 testimony in that proceeding?

25 A. I don't recall. I recall Tim Duff and I

1 recall staff and I recall Dylan Sullivan with NRDC,
2 but I was in and out that day.

3 Q. So are you aware of -- did you have any
4 participation in assisting counsel to write their
5 briefs in that proceeding?

6 A. I usually read a draft of the brief.

7 Q. And do you recall any -- at any time the
8 issue of M&V being raised in that brief?

9 A. I don't recall at this time.

10 MS. WATTS: I have nothing further, your
11 Honor.

12 DEPUTY DIRECTOR PIRIK: Thank you. Do
13 you have any redirect?

14 MR. ETTER: No redirect, your Honor.

15 DEPUTY DIRECTOR PIRIK: Thank you.

16 THE WITNESS: Thank you.

17 DEPUTY DIRECTOR PIRIK: At this time I
18 would also ask that OCC mark the comments and their
19 objections.

20 MR. ETTER: Thank you, your Honor.
21 That's exactly what I was planning to do but I will
22 do it at your direction. OCC would like to move into
23 evidence the Direct Testimony of Wilson Gonzalez
24 Exhibit No. 3 as well as the objections filed by OCC
25 on April 29, 2013, as OCC Exhibit No. 1 and OCC's

1 comments filed on July 1, 2013, as OCC Exhibit No. 2.

2 DEPUTY DIRECTOR PIRIK: Those documents
3 are so marked.

4 (EXHIBITS MARKED FOR IDENTIFICATION.)

5 DEPUTY DIRECTOR PIRIK: Are there any
6 objections to OCC Exhibits 1, 2, and 3?

7 MS. WATTS: No objections.

8 DEPUTY DIRECTOR PIRIK: The documents
9 will be admitted into evidence.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 DEPUTY DIRECTOR PIRIK: OPAE.

12 MS. MOONEY: Yes. OPAE would call its
13 witness David C. Rinebolt.

14 (Witness sworn.)

15 MS. MOONEY: Your Honor, I would like to
16 have marked as OPAE Exhibit 1 the late-filed Direct
17 Testimony of David C. Rinebolt that was filed on
18 October 1, 2013, and in that testimony Mr. Rinebolt
19 is adopting the testimony of Stacia Harper that was
20 filed on September 9, 2013. And I would like to have
21 the Direct Testimony of Stacia Harper marked as OPAE
22 Exhibit 2.

23 I also have made new copies of her
24 testimony with line numbers on the pages because in
25 the original testimony that was filed it didn't have

1 any line numbers, and I have distributed the
2 testimony to -- the only change is that it has line
3 numbers on the pages so I'll give a copy -- but I
4 would just like it to be marked as OPAC Exhibit 2.

5 DEPUTY DIRECTOR PIRIK: Yes. We'll mark
6 the lined copy as the exhibit.

7 (EXHIBITS MARKED FOR IDENTIFICATION.)

8 - - -

9 DAVID C. RINEBOLT

10 being first duly sworn, as prescribed by law, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 By Ms. Mooney:

14 Q. And, Mr. Rinebolt, do you have before you
15 what has been marked as OPAC Exhibit 1 which is your
16 late-filed direct testimony and OPAC Exhibit 2 which
17 is the Direct Testimony of Stacia Harper?

18 A. I do have OPAC Exhibit 2. I do not have
19 a copy of OPAC 1 in front of me. Got to be truthful.

20 Q. Okay. Now, you have a copy of both OPAC
21 1 and 2? Okay.

22 A. Yes, I do.

23 Q. And as far as OPAC Exhibit 1, this is
24 your late-filed testimony?

25 A. Yes, it is.

1 Q. And do you have any additions or
2 corrections to your late-filed testimony?

3 A. I do not.

4 Q. And with regard to the Direct Testimony
5 of Stacia Harper that you are adopting which is OPAE
6 Exhibit 2, have you reviewed this document, or this
7 OPAE Exhibit 2, the Direct Testimony of Stacia
8 Harper?

9 A. Yes, I have. I was part of the case
10 team, and I've reviewed it extensively.

11 Q. And you assisted Miss Harper in
12 preparation of the testimony --

13 A. I did.

14 Q. -- before it was filed? Okay. And do
15 you have any additions or corrections to what is now
16 your testimony which was the Direct Testimony of
17 Stacia Harper?

18 A. Other than the inclusion of the lines in
19 the testimony, no, I do not.

20 MS. MOONEY: Okay. Your Honor,
21 Mr. Rinebolt is available for cross-examination.

22 DEPUTY DIRECTOR PIRIK: Thank you.

23 Mr. Etter.

24 MR. ETTER: No questions, your Honor.

25 DEPUTY DIRECTOR PIRIK: Mr. Parram.

1 MR. PARRAM: No questions, your Honor.

2 DEPUTY DIRECTOR PIRIK: Ms. Watts.

3 MS. WATTS: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Ms. Watts:

7 Q. Mr. Rinebolt, OPAE was not a participant
8 with OCEA in Duke Energy Ohio Case 11-4393-EL-RDR,
9 correct?

10 A. That is correct.

11 Q. But OPAE was, in fact, an intervenor in
12 that proceeding; is that correct?

13 A. Yes, it was.

14 Q. And you were serving in your present
15 position with OPAE during the time of that
16 proceeding, correct?

17 A. I was executive director and counsel of
18 OPAE at that time.

19 Q. And so are you generally aware of the
20 position that was advocated on behalf of OPAE in that
21 proceeding?

22 A. I was not counsel of record in that
23 proceeding, but I was part of the very small case
24 team that we have at OPAE and did -- was involved in
25 the preparation of the documents in those cases.

1 Q. And so what is that very small case team
2 that you referred to?

3 A. At that time the employees were myself
4 and Colleen Mooney.

5 Q. Thank you. At the conclusion of the
6 11-4393-EL-RDR proceeding Duke Energy Ohio filed
7 tariffs to comply with the Commission's directive to
8 do so. Are you aware of that?

9 A. I'm not specifically aware -- well, I
10 have since become aware that you filed tariffs.

11 Q. But is it your testimony that you were
12 not aware of that at the time they were filed?

13 A. No. Traditionally utilities file
14 tariffs. Traditionally we do not review them.

15 Q. And so is it your testimony you actually
16 did not review the tariffs that were filed at the
17 conclusion of that proceeding, 11-4393-EL-RDR?

18 A. Not at the time they were filed.

19 MS. WATTS: Thank you. I have nothing
20 further, your Honor.

21 And thank you, Mr. Rinebolt, for coming
22 today.

23 DEPUTY DIRECTOR PIRIK: Any redirect?

24 MS. MOONEY: Oh, no, your Honor.

25 DEPUTY DIRECTOR PIRIK: No? Thank you,

1 Mr. Rinebolt.

2 THE WITNESS: Thank you.

3 DEPUTY DIRECTOR PIRIK: Would OPAC also
4 like to mark OPAC objections?

5 MS. MOONEY: Yes, your Honor. OPAC filed
6 objections on July 1, 2013, and we would like our
7 objections to be marked as OPAC Exhibit 3.

8 DEPUTY DIRECTOR PIRIK: The document is
9 so marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MS. MOONEY: And then I would move for
12 the admission of OPAC Exhibits 1, 2, and 3.

13 DEPUTY DIRECTOR PIRIK: Are there any
14 objections?

15 MS. WATTS: No objections, your Honor.

16 DEPUTY DIRECTOR PIRIK: Hearing none they
17 will be admitted into the record.

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 DEPUTY DIRECTOR PIRIK: Mr. Parram.

20 MR. PARRAM: Yes, your Honor. I would
21 like to call Staff Witness Gregory Scheck to the
22 stand.

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GREGORY C. SCHECK

being first duly sworn, as prescribed by law, was
examined and testified as follows:

DIRECT EXAMINATION

By Mr. Parram:

Q. Would you please state your name for the
record.

A. My name is Gregory C. Scheck.

Q. And by whom are you employed?

A. I'm employed by the Public Utilities
Commission of Ohio.

Q. And what is your position at the PUCO?

A. I am a utilities specialist in the energy
efficiency and renewables division of the energy and
environment department.

Q. Do you have a document in front of you
marked -- I apologize.

MR. PARRAM: Your Honor, I would like to
have marked for purposes of identification Staff
Exhibit 2 which is the prepared testimony of Gregory
C. Scheck.

DEPUTY DIRECTOR PIRIK: The document is
so marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

1 DEPUTY DIRECTOR PIRIK: Could you turn
2 your microphone on, please.

3 Q. Mr. Scheck, do you have Staff Exhibit 2
4 in front of you?

5 A. Yes, I do.

6 Q. And did you prepare Staff Exhibit 2?

7 A. Yes, I did.

8 Q. And you filed it in this case?

9 A. Yes, I did.

10 Q. And did you answer the questions within
11 Staff Exhibit 2 honestly and to the best of your
12 ability?

13 A. Yes.

14 Q. And do you have any changes to Staff
15 Exhibit 2 today?

16 A. No.

17 MR. PARRAM: Your Honor, I move for the
18 admission of Staff Exhibit 2 and tender Mr. Scheck
19 for cross.

20 DEPUTY DIRECTOR PIRIK: Thank you. Do
21 the intervenors have any questions?

22 MR. ETTER: No questions, your Honor.

23 MS. MOONEY: No questions, your Honor.

24 DEPUTY DIRECTOR PIRIK: Ms. Watts.

25 MS. WATTS: Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Watts:

Q. Good morning, Mr. Scheck.

A. Good morning.

MS. WATTS: May I approach, your Honor?

A. Yes. Actually it's afternoon now.

Q. Is it really?

MS. WATTS: Your Honor, may we have this marked as Duke Energy Ohio Exhibit 9?

DEPUTY DIRECTOR PIRIK: I think it's 10.

MS. WATTS: 10? Somewhere I lost track.

DEPUTY DIRECTOR PIRIK: It will be marked as Duke Exhibit 10.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MS. WATTS: Thank you.

Q. (By Ms. Watts) Mr. Scheck, let me know when you're ready.

A. I'm ready.

Q. Okay. Thank you. Mr. Scheck, were you employed at the Commission during the pendency of Duke Energy Ohio's 11-4393-EL-RDR?

A. Yes.

Q. And did you have some staff responsibilities in respect to that case?

1 A. Yes.

2 Q. And at the conclusion of that case, are
3 you aware that the company filed tariffs in
4 compliance with the Commission's directive?

5 A. Yes.

6 Q. And did you review those tariffs?

7 A. Yes, I did.

8 Q. And do you have before you what's been
9 marked as Duke Energy Ohio Exhibit 10?

10 A. Are you referring to the letter --

11 Q. Yes.

12 A. -- that you just passed around?

13 Q. Yes.

14 A. Yes, I do.

15 Q. And in that letter is -- first of all,
16 did you have some responsibility for participating in
17 this letter?

18 A. Yes. I had conversations with Company
19 Witness Jim Ziolkowski about the tariff.

20 Q. Okay. And you reviewed both tariff
21 filings, the one that was filed in August and the one
22 that was filed in September?

23 A. I think my recollection is that is
24 correct.

25 Q. When you drafted this letter -- I'm going

1 to characterize this letter, and you tell me if I am
2 characterizing incorrectly. Essentially the letter
3 states that you have reviewed the tariffs, and they
4 are in compliance with what your understanding was
5 resulting from the case.

6 A. Yes.

7 Q. Okay. And there's no mention in there
8 with respect to a miscalculation of measurement and
9 verification, correct?

10 A. No, not that I directly see.

11 Q. And, Mr. Scheck, when you reviewed those
12 tariffs and filed this letter, did you have any
13 concerns about the way in which the company was
14 calculating shared savings at the time?

15 A. Yes, to an extent even though I thought
16 the tariff had cleared up the issue but apparently
17 not. Going back to -- I have a copy of the tariff in
18 front of me, and it gets back to the definition of
19 what a monitoring evaluation means. And when I saw
20 that in program costs, I thought that referred to
21 EM&V, especially the word evaluation or evaluating.
22 Evaluation is something usually after the fact, and
23 you have typically two kinds of evaluation. One is a
24 process which probably would be done in the context
25 of monitoring or maybe in realtime with corrections

1 made later. And then evaluation is typically impact
2 evaluation done after the fact. Evaluation by
3 measurement and verification is generally how it's
4 referred to.

5 Q. So you agree then that there are two
6 kinds of evaluations that can occur with respect to
7 energy efficiency programs.

8 A. Yes. But in the context of what's
9 written here you have monitoring already in the
10 wording so I inferred, didn't really follow up,
11 inferred monitoring to mean process evaluation and
12 evaluating meaning the after-the-fact impact
13 evaluation. But it doesn't appear based on the
14 company witnesses that's what they meant, but
15 typically when I've seen definitions, for instance,
16 for shared savings mechanisms, the -- the EM&V is
17 included as part of the total cost and not considered
18 something separate or indirect because in the absence
19 of doing an energy efficiency program you would not
20 have impact -- measurement and verification of those
21 programs because it wouldn't be necessary.

22 So it's a necessary condition in order to
23 do energy efficiency programs and receive recovery
24 that you have those particular programs evaluated;
25 and, therefore, I've always considered them to be

1 inclusive of all the program costs and not exclusive
2 of them. And in that vein they should be included in
3 terms of calculating the shared savings mechanism.

4 Q. I appreciate, Mr. Scheck, your testimony
5 with respect to what typically occurs. Your letter
6 indicates that you reviewed the tariffs that were
7 filed, correct?

8 A. Yes.

9 Q. And would you agree with me that in the
10 application submitted by -- or the tariff filings
11 that the company submitted, Mr. Ziolkowski clearly
12 sets forth calculations that show M&V calculated
13 separately with respect to shared savings.

14 A. Yes, he does show that in an attachment.

15 Q. And is it fair to say you just overlooked
16 that?

17 A. I would say that's a fair statement. I
18 think at the time I was more concerned about other
19 issues that arose out of the SAW rider case,
20 especially dealing with the terminology lost margin
21 and having that corrected in which some language was
22 still missing referring to the recovery of lost
23 revenue that only referred to lost distribution
24 revenue.

25 And then on top of that we had a

1 decoupling mechanism being applied to residential
2 customers and I believe one of the commercial class
3 and that had to be straightened out as well so those
4 were larger overriding concerns. I did see that
5 particular calculation in his attachment, but then I
6 saw this other language in the tariff, and to me I
7 thought, well, are they correcting the tariff to mean
8 something that I thought it should mean or -- or is
9 it some other thing? And I didn't really follow up
10 on that, to say the least.

11 Q. I appreciate that. Would you agree with
12 me then as a matter of pure mathematics the
13 application in this proceeding is entirely consistent
14 with the way in which the calculations were shown by
15 Mr. Ziolkowski in the tariffs that were filed
16 subsequent to that case?

17 A. Yeah. The particular attachment
18 reflects -- the rider in this case reflects the same
19 with the numbers included as the same attachment I
20 believe is JEZ-1 or 2 of the original 4393 case.
21 It's just a matter of filling in the numbers.

22 MS. WATTS: I have nothing further, your
23 Honor. Thank you.

24 DEPUTY DIRECTOR PIRIK: Thank you.

25 Redirect?

1 MR. PARRAM: A couple of questions, your
2 Honor.

3 - - -

4 REDIRECT EXAMINATION

5 By Mr. Parram:

6 Q. Ms. Watts asked you about Duke Energy
7 Exhibit 10 which is a letter. It indicates you
8 have -- I believe summarized that you have reviewed
9 the tariffs from the 11-4393 case; is that?

10 A. Yes.

11 Q. Do you have a copy of Staff Exhibit 1 up
12 there which would be the testimony of Jim Ziolkowski?

13 A. No, I don't have his testimony in front
14 of me.

15 Q. Well, actually look at your testimony.

16 A. Okay.

17 Q. It should be an attachment to your
18 testimony. It's Attachment GCS-1.

19 A. Yes.

20 Q. And Attachment GCS-1 is a version of the
21 tariffs that you reviewed in 11-4393 which was the
22 issue -- at issue in the letter on Duke Exhibit 10,
23 and Attachment GCS-1 in this tariff you -- you have
24 reviewed this tariff before, correct, Attachment
25 GCS-1?

1 A. Yes, yes, I have.

2 Q. Okay. And in this tariff does it
3 specifically state that for calculating the program
4 incentive that program costs exclude EM&V?

5 A. No, it doesn't explicitly say that.

6 Q. Okay. And is there anything in
7 Attachment GCS-1 that indicates the program costs
8 would include evaluating and monitoring the programs?

9 A. Yes. As I testified earlier, there are
10 four sections in the tariff. This basically is the
11 "Charges" section or part 2. There is a definition
12 of program costs recovery or PC that is in the -- I
13 guess the second paragraph under "Charges" after the
14 mathematical calculation. And then it says basically
15 "Such program costs shall include the cost of
16 planning, developing, implementing, and" then the key
17 words to me "monitoring and evaluating the EE-PDR
18 programs."

19 And then subsequent to that you go on the
20 next page, I don't know what page they are in the
21 particular tariffs, but the next page on the tariff
22 under "Charges" continued second paragraph, the
23 definition of the cost of the program, I took that to
24 mean the same as program costs recovery, PC, on the
25 first page, to mean the same as the cost of the

1 program under the sentence "Net resource savings are
2 defined as program benefits less the costs of the
3 program, where program benefits will be calculated on
4 the basis of the present value of the Company's
5 avoided costs over the expected life of the program,
6 and will include both capacity and energy savings."

7 So the term or the phrase the cost of the
8 program I attribute to mean the same thing on the
9 first page program costs recovery defined as those
10 five elements including monitoring, evaluating the
11 EE-PDR programs.

12 Q. Thank you, Mr. Scheck. Just one more
13 question. Ms. Watts actually questioned about I
14 believe the term was mathematically, if JEZ-1 that
15 was filed in case 11-4393 is mathematically
16 consistent or the same as the attachment that
17 Mr. Ziolkowski has attached to his testimony in this
18 case, 13-753, which shows how the program costs and
19 the shared savings would be calculated. And you
20 indicated you believe that it's consistent, that Duke
21 believes that they should be excluding M&V costs from
22 the shared savings.

23 Do you agree that it is the correct way
24 to calculate shared savings to exclude M&V costs?

25 A. No, I don't.

1 MR. PARRAM: That's all I have, your
2 Honor.

3 DEPUTY DIRECTOR PIRIK: Thank you. Is
4 there any recross?

5 MR. ETTER: No, none, your Honor.

6 MS. MOONEY: No.

7 MS. WATTS: Yes, your Honor, thank you.

8 - - -

9 RECROSS-EXAMINATION

10 By Ms. Watts:

11 Q. Just one quick question. Mr. Parram
12 asked you if you believe that M&V costs should be
13 included with program costs as a matter of policy, I
14 believe.

15 A. Yes. In general I believe M&V, I think
16 this is something I learned today in Tim Duff's
17 cross-examination, that the company treats those as
18 indirect costs or exclusive evaluating programs,
19 whereas, I believe M&V should be inclusive of program
20 costs when you evaluate them ex anti to see if they
21 actually pass a total resource cost or utility cost
22 test simply because if you have programs that are on
23 the margin, say they clear by a very small
24 percentage, and then if you include the EM&V costs as
25 part of the program costs, they may not be cost

1 effective.

2 Therefore, I think it's more important to
3 include those costs going forward in terms of
4 evaluating the programs to see if all of the
5 programs, especially those that are marginal, would
6 be cost effective when you include the EM&V because
7 in the absence of not doing energy efficiency, you
8 would not have EM&V costs associated with energy
9 efficiency so there are -- this should be part of the
10 total program costs.

11 Q. Thank you, Mr. Scheck. I appreciate
12 that. That position or those views were not in any
13 respect raised in the 11-4393 case, correct?

14 A. No, not that I'm aware of.

15 MS. WATTS: Thank you. Nothing further.

16 DEPUTY DIRECTOR PIRIK: Thank you,
17 Mr. Scheck.

18 With regard to would staff like to mark
19 their comments that were filed on July 1?

20 MR. PARRAM: Yes, your Honor. I'll have
21 those comments that were filed on July 1 on behalf of
22 staff marked as Staff Exhibit 3.

23 DEPUTY DIRECTOR PIRIK: The document is
24 marked.

25 (EXHIBIT MARKED FOR IDENTIFICATION.)

1 MR. PARRAM: Then I would like to move
2 for the admission of Staff Exhibit 2, the testimony
3 of Mr. Scheck.

4 DEPUTY DIRECTOR PIRIK: And 3? Both of
5 them? You are moving admission of those exhibits?

6 MR. PARRAM: I apologize. I thought 3
7 was the comments. Yeah, move for the admission of 3.

8 DEPUTY DIRECTOR PIRIK: Are there any
9 objections to Staff Exhibits 2 and 3?

10 MS. WATTS: No objections, your Honor.

11 DEPUTY DIRECTOR PIRIK: The documents are
12 admitted into the record.

13 (EXHIBITS ADMITTED INTO EVIDENCE.)

14 DEPUTY DIRECTOR PIRIK: With regard to
15 company -- I don't know that we admitted Company
16 Exhibits 7, 8, and 9.

17 MS. WATTS: I would ask that they be
18 admitted.

19 DEPUTY DIRECTOR PIRIK: And Company
20 Exhibit 10?

21 MS. WATTS: And 10.

22 DEPUTY DIRECTOR PIRIK: Are there any
23 objections to those four documents being admitted?

24 Hearing none they will be admitted into
25 the record.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 DEPUTY DIRECTOR PIRIK: I believe that
3 concludes all the witnesses. I believe we've marked
4 all of the exhibits and admitted them.

5 Is there anything else for the record
6 before we close the record?

7 Hearing none the record will be submitted
8 to the Commission for their consideration. Thank
9 you.

10 (Discussion off the record.)

11 DEPUTY DIRECTOR PIRIK: After discussions
12 off the record, there was voiced a request to have a
13 briefing schedule. We will have initial briefs due
14 on November 7, 2013, and if those could be e-mailed
15 to all of the parties for service, that would be
16 appropriate.

17 And then reply briefs will be due on
18 November 14, 2013. Now the record will be closed
19 unless there is anything further.

20 MR. PARRAM: Page limitation or time
21 limitation?

22 DEPUTY DIRECTOR PIRIK: I did not put a
23 specific page limitation. I mean, I would hope that
24 they wouldn't be any longer than 10 pages to be
25 honest with you. I think that would be -- and that

1 would be double spaced. I say that because there is
2 one utility in the gas sector that does everything
3 single spaced.

4 MR. ETTER: And what type? Size?

5 DEPUTY DIRECTOR PIRIK: Okay. We will
6 close the record for today and submit it to the
7 Commission.

8 (Thereupon, the hearing was concluded at
9 12:28 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Thursday, October 3,
2013, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-5765)

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Summary: Transcript in the matter of Duke Energy Ohio, Inc. hearing held on 10/03/13 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.