

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of )  
Duke Energy Ohio, Inc., for Recovery of ) Case No. 14-457-EL-RDR  
Program Costs, Lost Distribution Revenue )  
and Performance Incentives Related to Its )  
Energy Efficiency and Demand Response )  
Programs. )

In the Matter of the Application of )  
Duke Energy Ohio, Inc. for Recovery of ) Case No. 15-534-EL-RDR  
Program Costs, Lost Distribution )  
Revenue, and Performance Incentives )  
Relate to its Energy Efficiency and )  
Demand Response Programs for 2014. )

**DIRECT TESTIMONY  
OF  
WILSON GONZALEZ**

**On Behalf of**  
**The Office of the Ohio Consumers' Counsel**  
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**March 4, 2016**

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### **SCHEDULES:**

Exhibit WG-1: List of Cases for Past Testimony

Exhibit WG-2: Duke's Response to OCC-INT-02-010

Exhibit WG-3: Duke's Response to OCC-INT-02-011

Exhibit WG-4: Duke's Response to OCC-INT-02-012

Exhibit WG-5: Duke's Response to OCC-INT-02-003

Exhibit WG-6: Duke's Response to OCC-INT-01-001 (Case No. 14-1580-EL-RDR)

Exhibit WG-7: Nowak, Baatz, Gilleo, Kushler, Molina, and York, "Beyond Carrots for Utilities: A National Review of Performance Incentives for Energy Efficiency," American Council for an Energy-Efficient Economy, May 2015, Appendix C

Exhibit WG-8: Duke's Response to OCC-INT-02-003

1   **I.       INTRODUCTION**

2

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

4   ***A1.***   My name is Wilson Gonzalez. My business address is 450 Whitney Avenue,  
5           Worthington, Ohio 43085. I am the President of Tree House Energy and  
6           Economic Consulting, LLC. I am testifying in this proceeding on behalf of the  
7           Office of the Ohio Consumers' Counsel ("OCC").

8

9   ***Q2.   PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND AND***  
10   ***PROFESSIONAL EXPERIENCE.***

11   ***A2.***   I have a Bachelor of Arts degree in Economics from Yale University, and a  
12           Master of Arts degree in Economics from the University of Massachusetts at  
13           Amherst. I have also completed coursework and passed my comprehensive  
14           exams towards a Ph.D. in Economics at the University of Massachusetts at  
15           Amherst.

16

17           I have been employed in the energy industry since 1986. I was first employed by  
18           the Connecticut Energy Office as a Senior Economist (1986-1992). Then I was  
19           employed by Columbia Gas Distribution Companies ("Columbia Gas") as an  
20           Integrated Resource Planning Coordinator (1992-1996). Finally, I was employed  
21           by American Electric Power ("AEP") as a Marketing Profitability Coordinator  
22           and Market Research Consultant (1996-2002). From 2004 to 2013, I managed the  
23           Resource Planning activities for OCC. To this end, I have participated in

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1 numerous electric industry cases before the Public Utilities Commission of Ohio  
2 (“PUCO” or “the Commission”).  
3

4 ***Q3. WHAT HAS BEEN YOUR EXPERIENCE IN PUCO PROCEEDINGS***  
5 ***REGARDING UTILITY PORTFOLIOS FOR ENERGY EFFICIENCY AND***  
6 ***PEAK DEMAND REDUCTION?***

7 ***A3.*** I have been directly involved in settlements reached and approved by the  
8 Commission in Ohio Power Company’s (“AEP-Ohio”) two Energy  
9 Efficiency/Peak Demand Reduction (“EE/PDR”) Portfolio Cases (09-1089-EL-  
10 POR, et al., and 11-5568-EL-POR et al.). In addition, I filed testimony in Duke  
11 Energy Ohio’s (“Duke” or “the Utility”) EE/PDR Portfolio Case, 09-1999-EL-  
12 POR, and participated in Duke’s 11-4393-EL-RDR case. I also filed testimony in  
13 Duke’s second EE/PDR Portfolio Case, 13-431-EL-POR. In addition, I was  
14 involved with the Cleveland Electric Illuminating Company, Ohio Edison  
15 Company, and The Toledo Edison Company’s (collectively, “FirstEnergy”) first  
16 EE/PDR Portfolio Case, 09-1947-EL-POR, and filed testimony in FirstEnergy’s  
17 second EE/PDR Portfolio Case, 12-2190-EL-POR. I was also involved in Dayton  
18 Power and Light’s EE/PDR Portfolio Case, 13-833-EL-POR, that was resolved  
19 through settlement.

1   ***Q4.   WHAT HAS BEEN YOUR EXPERIENCE IN OTHER REGULATORY***  
2       ***PROCEEDINGS?***

3   ***A4.***   I have been involved with many aspects of electric utility regulation since 1986  
4       including, but not limited to, rate design and integrated resource planning,  
5       including transmission and non-transmission alternative planning. While at the  
6       Connecticut Energy Office, I was involved in one of the first demand-side  
7       management (“DSM”) collaborative processes in the country — Connecticut  
8       Department of Public Utility Control (“CDPUC”) Docket No. 87-07-01. In that  
9       case, I analyzed the performance and cost-effectiveness of many efficiency  
10      programs for Connecticut’s electric and gas utilities that led to demonstration  
11      projects, policy recommendations, DSM programs (including rate design  
12      recommendations), and energy efficiency standards. I also performed all of the  
13      analytical modeling for United Illuminating’s first integrated resource plan filed  
14      before the CDPUC in 1990.

15

16      At Columbia Gas, I was responsible for coordinating its Integrated Resource Plan  
17      within the corporate planning department and DSM program development activities  
18      in the marketing department. I designed and managed residential DSM programs in  
19      Maryland and Virginia.

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1 While at AEP, I conducted numerous cost-benefit analyses of programs sponsored  
2 by AEP's corporate marketing department, including their residential load control  
3 water heater program.

4  
5 For the past 10 years, I have (among other matters):

- 6 • Been involved in DSM negotiations with Ohio's investor-owned  
7 utilities, resulting in millions of dollars in energy efficiency  
8 programs;
- 9 • Prepared DSM-related testimony in many PUCO cases;
- 10 • Testified before the Ohio House Alternative Energy Committee and  
11 Senate Energy and Public Utilities Committee in support of energy  
12 efficiency, demand response, and resource planning;
- 13 • Assisted in the preparation of energy efficiency and renewable  
14 energy testimony and amendments for S.B. 221, H.B. 357, S.B.  
15 315, S.B. 58, and S.B. 310;
- 16 • Testified before the PUCO on rate design issues; and
- 17 • Worked extensively on a range of topics regarding FirstEnergy's  
18 Standard Service Offer proposals, including energy efficiency,  
19 distribution lost revenue recovery, and industrial customer  
20 interruptible rider cost allocation.

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1   ***Q5. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THE***  
2   ***PUBLIC UTILITIES COMMISSION OF OHIO?***

3   ***A5.*** Yes. A list of my testimony before the PUCO is attached as Exhibit WG-1.  
4

5   ***Q6. WHAT DOCUMENTS HAVE YOU REVIEWED IN THE PREPARATION OF***  
6   ***YOUR TESTIMONY?***

7   ***A6.*** I have reviewed the Stipulation and Recommendation filed on January 6, 2016,  
8       and the supporting testimonies filed by Duke witness Timothy J. Duff and Patrick  
9       Donlon of the PUCO staff. I have also reviewed the Utility's Applications filed  
10      on June 13, 2014 in Case No. 14-457-EL-RDR and on March 30, 2015 in Case  
11      No. 15-534-EL-RDR. In addition, I reviewed the Initial Comments and Reply  
12      Comments filed by various stakeholders in these proceedings and the Commission  
13      Order (May 20, 2015) and Entry on Rehearing (July 8, 2015) in Case No. 14-457-  
14      EL-RDR. I also reviewed the Stipulation and Recommendation filed in Case No.  
15      11-4393-EL-RDR on September 6, 2013, and the Stipulation and  
16      Recommendation filed in Case No. 13-431-EL-POR on November 18, 2011. I  
17      also reviewed the PUCO's Orders approving these Stipulations and the transcript  
18      of the hearing in the 11-4393-EL-RDR case. Finally, I reviewed the Utility's  
19      responses to OCC's and the Ohio Energy Group's discovery served in these cases  
20      and in the 13-431-EL-POR case.

1    **II.    PURPOSE OF TESTIMONY AND RECOMMENDATIONS**

2

3    ***Q7.    WHAT IS THE PURPOSE OF YOUR TESTIMONY?***

4    **A7.**    The purpose of my testimony is to present evidence that the Stipulation is not  
5            reasonable and should not be adopted. It does not meet the three-prong test for  
6            PUCO approval of settlements.

7

8            Specifically, the settlement was not the result of serious bargaining among parties  
9            representing diverse interests in an open process. The Signatory Parties do not  
10           represent diverse interests. The first prong of the PUCO's three-prong test is not  
11           met. Furthermore, the settlement requires that Duke's customers pay \$19.75  
12           million in shared savings from Duke's energy efficiency programs for years 2013  
13           and 2014. This provision of the settlement is not in the public interest, and  
14           therefore does not meet the second prong of the PUCO's three-prong test for  
15           settlements. Finally, the settlement violates regulatory principles concerning the  
16           negotiation of settlements and the overturning of PUCO decisions. Thus, the  
17           settlement does not meet the third prong of the PUCO's three-prong settlement  
18           test.

19

20    ***Q8.    PLEASE SUMMARIZE YOUR RECOMMENDATIONS.***

21    **A8.**    I recommend that the Commission reject the Stipulation, especially the customer  
22           charge of \$19.75 million in shared savings contained in Section 3.a. of the  
23           Stipulation. The settlement is not the product of serious negotiation among



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1 parties with diverse interests. Additionally, the Stipulation does not benefit  
2 customers and the public interest because the benefits to consumers from the  
3 Stipulation are not commensurate with the costs to customers. And the settlement  
4 violates important regulatory principles and practices. But if the PUCO does  
5 decide to approve the settlement, it should protect consumers by making any  
6 amounts collected from customers under the settlement subject to refund, based  
7 on any further legal challenges to the Stipulation.

8

9 **III. EVALUATION OF THE STIPULATION**

10

11 ***Q9. WHAT IS THE THREE-PRONG TEST THE PUCO USES FOR***  
12 ***EVALUATING STIPULATIONS?***

13 ***A9.*** Before it can approve a stipulation, the PUCO must find that the stipulation (i) is  
14 the product of serious bargaining among capable, knowledgeable parties with  
15 diverse interests;<sup>1</sup> (ii) as a package, benefits customers and the public interest; and  
16 (iii) does not violate any important regulatory principle or practice.

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<sup>1</sup> See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger Is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates*, Case No. 11-351-EL-AIR, Opinion and Order (December 14, 2011) at 9.

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1   ***Q10. WAS THE STIPULATION THE RESULT OF SERIOUS BARGAINING***  
2   ***AMONG ALL PARTIES IN AN OPEN PROCESS?***

3   ***A10.*** No. My understanding is that the filed Stipulation was negotiated solely by  
4   PUCO Staff and the Company<sup>2</sup> and then presented to the parties as a *fait*  
5   *accompli*. Thus there was no serious bargaining with any parties who represented  
6   customers who would pay increased rates under the Stipulation. The only  
7   bargaining that occurred was between the Staff and the utility.

8  
9   In this regard, I understand from my review of Duke's responses to OCC's  
10   discovery that Duke and the PUCO Staff met on December 28, 2015 in person,  
11   and December 30, 2015 via teleconference to discuss settlement for Case Nos. 14-  
12   457-EL-RDR and 14-534-EL-RDR.<sup>3</sup> No intervenors were in attendance (nor were  
13   they invited to attend these meetings).<sup>4</sup> This was not "lengthy" negotiations as  
14   claimed in the Stipulation.<sup>5</sup>

15  
16   OCC first learned of the settlement agreement between Duke and the PUCO Staff  
17   via email sent on December 30, 2015 from the PUCO Staff. In that  
18   correspondence, the PUCO Staff informed OCC and the other intervenors in the  
19   cases that it had discussed settlement terms with Duke and had captured those

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<sup>2</sup> See Duke's responses to OCC INT-02-10 (Exhibit WG-2), OCC-INT-02-11 (Exhibit WG-3), and OCC-INT-02-12 (Exhibit WG-4).

<sup>3</sup> Duke's response to OCC INT-02-10 (Exhibit WG-2).

<sup>4</sup> Duke's response to OCC INT-02-11 (Exhibit WG-3).

<sup>5</sup> See Stipulation at 2.

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1 terms in a document attached to the email. The PUCO Staff's email went on to  
2 ask the intervenors to review the proposed settlement draft and let the PUCO Staff  
3 know by noon on Wednesday, January 6, 2016 whether their respective client(s)  
4 would sign on to the settlement. The Stipulation was filed on January 6, 2016  
5 without there ever being settlement talks among Duke, the PUCO Staff and any  
6 intervenor.

7

8 There was one meeting held on the Stipulation on January 27, 2016 (three weeks  
9 after the Stipulation was docketed) where it was made clear that any  
10 modifications to the substantive portions of the Stipulation – including the \$19.75  
11 million shared savings term – were off the table and non-starters.

12

13 The first prong of the PUCO's standard of review for considering the  
14 reasonableness of a stipulation is whether the settlement is a product of serious  
15 bargaining among capable, knowledgeable parties representing diverse interests.  
16 To my knowledge, the only negotiating that occurred was between Duke and the  
17 PUCO Staff. And those negotiations occurred over a two-day period during the  
18 last week of 2015. When the other parties to the case were invited to discuss  
19 settlement, it was weeks after the Stipulation had already been filed, and the  
20 parties were advised that the central substantive term (\$19.75 million in shared  
21 savings) was not negotiable. The settlement is the product of bargaining by Duke  
22 and the PUCO Staff only. The other parties were not included, in any meaningful  
23 sense, in negotiations. Thus the settlement was not the product of serious

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1 negotiation, and therefore violates the first prong of the PUCO's settlement  
2 standard.

3

4 ***Q11. DOES THE STIPULATION REPRESENT DIVERSE INTERESTS UNDER***  
5 ***THE FIRST PRONG OF THE PUCO STANDARD?***

6 ***A11.*** No. The first prong of the PUCO standard requires that the Stipulation be the  
7 product of serious bargaining among capable, knowledgeable parties representing  
8 diverse interests. Although the Stipulation claims that it is a compromise of  
9 issues raised by parties with diverse interests,<sup>6</sup> the Stipulation certainly does not  
10 represent parties with diverse interests. No intervenors were invited to participate  
11 in the settlement negotiations, and in fact no intervenors participated in the  
12 settlement talks that resulted in the Stipulation. Also, no intervenors have signed  
13 the Stipulation. Thus, the Stipulation represents only the interests of Duke and  
14 the PUCO Staff. Neither Duke nor the PUCO Staff advocate on behalf of any  
15 intervenor, including residential customers. Residential customers are by far the  
16 largest group of customers to be impacted by the results of this case, and the  
17 customers who will absorb the lion's share of any associated revenue increase for  
18 Duke caused by the Stipulation. OCC, which by law represents residential  
19 customers,<sup>7</sup> opposes the Stipulation and is making recommendations in the  
20 interests of residential consumers for the PUCO's decision.

21

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<sup>6</sup> Stipulation at 3.

<sup>7</sup> R.C. 4911.15.

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1    ***Q12. IS THE STIPULATION IN THE PUBLIC INTEREST?***

2    ***A12.*** The PUCO has ruled that in reviewing a settlement agreement, its primary  
3           concern is that the stipulation is in the public interest.<sup>8</sup> But here, the Stipulation is  
4           not in the public interest.

5

6    ***Q13. WHY IS THE STIPULATION NOT IN THE PUBLIC INTEREST?***

7    ***A13.*** Generally speaking, the purported benefits to consumers in the settlement are  
8           illusory, meaning they are for the most part unreal as I will detail below. And the  
9           benefits are dwarfed by the costs to consumers.

10

11   ***Q14. WHAT ARE THE ELEMENTS OF THE STIPULATION?***

12   ***A14.*** The Stipulation between Duke and the PUCO Staff has eight elements<sup>9</sup>:

- 13           1. Duke can charge customers \$19.75 million in total shared savings  
14           for calendar years 2013 and 2014 combined.
- 15           2. Duke is not eligible for any shared savings for calendar years 2015  
16           and 2016.
- 17           3. Starting in 2017, Duke will not be eligible for shared savings in  
18           any year in which it has used its banked savings to comply with  
19           state energy efficiency and peak demand reduction requirements.

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<sup>8</sup> See *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in Electric Rates in its Service Area*, Case No. 91-410-EL-AIR, Order on Remand (April 14, 1994) at 3.

<sup>9</sup> Stipulation at 5-8.

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4. The PUCO Staff does not challenge Duke's application for recovery of program costs and lost distribution revenues as filed on March 28, 2014 in Case No. 14-457-EL-RDR.
5. Within six months of the filing of the Stipulation, the PUCO Staff will file its audit findings for Case No. 15-534-EL-RDR.
6. Duke's EE/PDR programs shall remain subject to the PUCO's evaluation, measurement, and verification process for calendar years 2013-2016, however, those findings shall not affect the shared savings values agreed to in the Stipulation.
7. Duke will retire 150,000 megawatt-hours ("MWH") of its banked energy savings for the purposes of determining its incentive.
8. Duke and the PUCO Staff will work towards developing a mutually agreeable time line for completion of the audits for the remaining two years of Duke's existing EE/PDR portfolio.

***Q15. WHAT ARE YOUR SPECIFIC OBSERVATIONS AND CONCERNS WITH THE ELEMENTS OF THE STIPULATION?***

***A15.*** My specific observations and concerns are as follows:

- i. The \$19.75 million in customer charges allowed in provision one of the Stipulation are unwarranted.*** Duke's claim to a shared savings incentive for years 2013-2014 in the two cases filed is predicated on its use of banked savings to reach the annual

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1 EE/PDR benchmarks. Duke achieved only 69 percent of the 2013  
2 benchmark and 74.9 percent of the 2014 benchmark.<sup>10</sup> It is clear  
3 then that for both 2013 and 2014, Duke would not have complied  
4 with the statutory EE/PDR requirements without the use of banked  
5 savings.<sup>11</sup> Stated differently, without the use of banked savings,  
6 the savings generated by Duke's EE/PDR program portfolio for the  
7 two years would have been deficient in complying with Ohio's  
8 requirements. While Duke is permitted to use banked savings for  
9 purposes of compliance, according to the PUCO the same does not  
10 hold true in the case of shared savings.<sup>12</sup> The Commission's  
11 Finding and Order in Case No 14-457-EL-RDR rejected Duke's  
12 banked savings position related to their shared savings incentive:<sup>13</sup>  
13 "[a]s to Duke's use of banked savings, the Commission  
14 agrees with OMA and finds the Company may only use the  
15 savings to reach its mandated benchmark. Therefore, the

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<sup>10</sup> Case No. 14-1580-EL-RDR, Hearing Transcript (docketed July 20, 2015) at 21 (Cross-examination of Duke Witness Timothy Duff).

<sup>11</sup> Id.

<sup>12</sup> Case No. 14-457-EL-RDR, Comments of the Ohio Manufacturers Association ("OMA") (June 17, 2014) at 4-5; id., Application for Rehearing for Rehearing by Ohio Partners for Affordable Energy ("OPAE") (June 19, 2015) at 5.

<sup>13</sup> Finding and Order at 5. "As the mandated benchmark rises every year, Duke must continue to find ways to encourage energy efficiency. If it has a large bank of accrued savings to rely on, the motivation to push energy efficiency programs in following years diminishes. Thus, in order for the structure to continue to serve as a true incentive for Duke to exceed the benchmarks, the Commission finds the banked saving cannot be used to determine the annual shared savings achievement level. Duke's use of the banked savings to reach the mandated benchmark, however, is permissible." The Commission has granted rehearing on this case to Duke and OPAE for further consideration of the issues raised on rehearing.

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1 Commission finds Duke's use of banked savings to claim  
2 an incentive is improper."

3  
4 The Commission further opined that using banked savings for incentives create a  
5 perverse incentive for the utility.<sup>14</sup> It is clear from the Commission's Order that it  
6 did not accept Duke's banked savings argument.

7  
8 The entire Stipulation is premised on the argument that Duke *could be* successful  
9 on rehearing. Duke witness Duff also premises the entire benefit to customers on  
10 the assumption that Duke would prevail on rehearing.<sup>15</sup> In this regard, the  
11 Stipulation asserts that if Duke is successful on rehearing, customers are at risk  
12 for \$55 million in pre-tax dollars for years 2013-2016. However, this amount  
13 appears somewhat exaggerated and has a contentious foundation. First of all, the  
14 risk to customers is closer to \$40 million, not \$55 million.

15  
16 My reasoning is that it is unlikely that Duke will prevail on the banking incentive  
17 issue in the 2016 incentive filing in Case No. 14-1580-EL-RDR, based on the  
18 testimony and briefs presented in that case and the Commission Order cited  
19 above.<sup>16</sup> That case is concerned with establishing a new EE/PDR incentive

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<sup>14</sup> Id.

<sup>15</sup> Supplemental Testimony of Timothy J. Duff (February 19, 2016) at 6.

<sup>16</sup> Of note, the PUCO Staff, in Reply Comments filed on January 9, 2015 in Case No. 14-1580-EL-RDR, at 6, stated: "Staff believes that the Company should be able to use banked savings to satisfy its energy efficiency requirements, but not to earn shared savings incentive revenues. As explained in Staff's initial brief, this position is grounded in Commission precedent and Ohio law."



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1 mechanism for Duke in 2016 and starts with a “clean page.”<sup>17</sup> Any incentive  
2 award in that case should await a Commission Order. Duke’s 2016 estimate for  
3 shared savings of over \$15 million is a long shot and therefore should be  
4 subtracted from the \$55 million purported benefit, lowering the customer risk to  
5 \$40 million.<sup>18</sup> The balance of the \$40 million in customer benefits in the  
6 Stipulation (representing the risk avoided by customers if the Stipulation is  
7 approved) requires the PUCO to reverse its decision on banked savings in Duke’s  
8 favor on rehearing in Case No. 14-457-EL-RDR.

9  
10 Even if the Stipulation sought to reduce the litigation cost risk,<sup>19</sup> the \$19.75  
11 million being traded off for this and other provisions is not commensurate and  
12 provides Duke with an exorbitant incentive payment for less than stellar effort.<sup>20</sup>  
13 The roughly \$9.9 million in annual shared savings customer charges over two  
14 years (2013-2014) represents an average of 38 percent of program spending.<sup>21</sup>  
15 This is exorbitant relative to electric distribution utilities nationwide who do not

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<sup>17</sup> See Case No. 14-1580-EL-RDR, OCC Post-Hearing Brief (August 21, 2015) at 7, n. 30, citing Hearing Transcript at 119, 122; id., Reply Brief (September 8, 2015) at 3, 12.

<sup>18</sup> Response to OCC-INT-02-003 (Exhibit WG-5).

<sup>19</sup> The assumed reduction of litigation claim in the Stipulation is suspect further litigation regarding any Commission Order approving the settlement in this case is likely, since none of the intervenors in the case were included in the negotiations over the Stipulation.

<sup>20</sup> Case No. 14-1580-EL-RDR, Direct Testimony of OMA witness John Seryak (June 30, 2015) at 2-3. “Duke’s energy efficiency program costs far exceed those of their in-state peers, relative to savings achieved. In 2014, for example, Duke spent \$0.1724 /kWh saved annually, while AEP-Ohio spent only \$0.12 /kWh, and DP&L spent \$0.099 /kWh. In 2013, Duke spent over twice as much on energy efficiency saved as DP&L, even though they have comparable electric loads.”

<sup>21</sup> (\$19,750,000/([EE/PDR Program spending in 2013 and 2014] \$22,130,677+\$30,608,344). See Program Spending information from Duke’s Response to OCC-INT-01-001 in Case No. 14-1580-EL-RDR (Exhibit WG-6).

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1 own generation assets, who generally receive from one to seven percent of  
2 program spending.<sup>22</sup> There is no apparent basis for the negotiated (by Duke and  
3 the PUCO Staff only) \$19.75 “black box” charges that customers will have to  
4 bear.<sup>23</sup>

5  
6 Finally, if the PUCO approves the Stipulation without reducing the amount of  
7 money Duke’s customers would pay (which I do not recommend), the  
8 Commission should make any amounts collected from customers subject to  
9 refund upon further appeal.

10

11 **ii. Concerning provision two of the Stipulation, the chances of**  
12 **Duke earning a shared savings incentive in calendar years 2015**  
13 **and 2016 are slim at best.** This observation stems from the  
14 arguments in section i., above, concerning the use of banked  
15 services for incentive purposes. Namely, Duke did not meet its  
16 annual compliance in 2015 without banked savings. Further,  
17 Duke’s witness Duff testified in another case that Duke will not be  
18 eligible for shared savings in 2016 without banked savings.<sup>24</sup>

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<sup>22</sup> Nowak, Baatz, Gilleo, Kushler, Molina, and York, “Beyond Carrots for Utilities: A National Review of Performance Incentives for Energy Efficiency,” American Council for an Energy-Efficient Economy, May 2015, Appendix C (Exhibit WG-7) (available at <http://aceee.org/node/3078?id=5223>).

<sup>23</sup> Response to OCC-INT-02-006 (Exhibit WG-8).

<sup>24</sup> See Case No. 14-1580-EL-RDR, Hearing Transcript at 40-41 (Cross-examination of Duke witness Timothy Duff).

- 1           **iii.     The third provision – that starting in 2017, Duke will not be**  
2                   **eligible for any shared savings in any year it has used banked**  
3                   **savings to meet compliance – is problematic.** First, this  
4                   provision may be included in a Commission Order in the 14-1580-  
5                   EL-RDR case where the banked savings issue going forward is at  
6                   play, so its value in this Stipulation is mitigated. Second, the  
7                   provision does not go far enough and contains a loop-hole, in that  
8                   it appears to allow Duke to use banked savings for incentive  
9                   purposes if Duke complies without the banked savings. This is a  
10                  step backward from the AEP-Ohio and DP&L banked savings  
11                  language.<sup>25</sup> And it allows Duke to maintain multiple banked  
12                  accounts (one for compliance and one for incentive purposes),  
13                  leading to confusion and potential gaming behavior to the  
14                  detriment of customers. Duke should not be allowed to use banked  
15                  savings for incentive purposes, period.  
16  
17           **iv.     The PUCO Staff's acceptance of Duke's application for**  
18                   **charging customers for program costs and lost distribution**  
19                   **revenues for 2013 in Case No. 14-457-EL-RDR in the fourth**

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<sup>25</sup> For example, the stipulation in Dayton Power and Light's EE/PDR portfolio contains the following language regarding banked savings: "DP&L understands that it may only count savings for shared savings one-time (meaning there is no double counting of shared savings) and only in the year in which the savings were generated. In a year in which previous years' over-compliance is used to comply with the benchmarks, shared savings shall be based only on impacts generated in the current year." Case No. 13-833-EL-POR, Stipulation and Recommendation (October 2, 2013) at 12. The PUCO approved that stipulation by Opinion and Order dated December 4, 2013.

1 **provision is a step back from the PUCO Finding and Order on**  
2 **this issue in this case.** The PUCO Finding and Order in Case No.  
3 14-457-EL-RDR had likewise approved Duke's charges for its  
4 program costs and lost distribution revenues. That Commission  
5 Order also appears to afford Duke's customers additional  
6 protection not stated in the Stipulation. The PUCO recognized that  
7 "Staff is currently performing an audit of the costs included in the  
8 rider rate proposed in this case" and stated that its approval of the  
9 rider rate was "subject to our ultimate consideration of the audit  
10 and any necessary true-ups."<sup>26</sup> This could obviate the need for the  
11 audit, and thus provide less protection for consumers.

12  
13 **v. Stipulation provisions five, six, and eight are mainly**  
14 **administrative items already under the legal authority of the**  
15 **Commission that the PUCO Staff and Duke have agreed upon.**  
16 **At this time, these Stipulation provisions do not carry a**  
17 **monetary value, or provide Duke's customers with any other**  
18 **benefit.** My understanding is that the PUCO already has authority  
19 over a utility's Evaluation, Measurement & Verification  
20 ("EM&V") process<sup>27</sup> and the auditing of electric utility costs being  
21 charged to customers. Thus, it is not clear what incremental value

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<sup>26</sup> Finding and Order at 5.

<sup>27</sup> OAC 4901:1-39-05.

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1 Duke's customers gain from this provision. However, provision  
2 six does grant Duke a waiver from modifications to their \$19.75  
3 million charges to customers should the Commission find  
4 problems with the Utility's EM&V evaluation. I am aware that the  
5 Commission's independent evaluator raised many concerns on the  
6 veracity of Duke's savings estimates in its first EM&V report.<sup>28</sup>  
7

8 **vi. Provision seven, the retirement of 150,000 MWH of banked**  
9 **savings for incentive purposes, is underwhelming.** Based on the  
10 banked savings and Duke's shared savings discussion posited  
11 earlier (in i., above), this provision is of dubious value to  
12 consumers. As I argued earlier, the use of shared savings for  
13 incentive purposes post calendar year 2015 (which is an issue in  
14 the 14-1580-EL-RDR case) is highly unlikely because the PUCO  
15 is expected to rule on a new incentive mechanism for 2016. The  
16 position of the PUCO Staff and other non-utility parties in the 14-  
17 1580-EL-RDR case is against allowing Duke to use banked  
18 savings to trigger and increase its incentive. When added to the  
19 PUCO Order in the 14-457-EL-RDR case rejecting Duke's use of  
20 banked savings for incentive purposes, it is more probable that

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<sup>28</sup> Case No. 12-665-EL-UNC, Evergreen Economics "Report of the Ohio Independent Evaluator," Volume I (August 29, 2012). Pages 32-48 address Duke's Energy Efficiency programs.

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1 Duke's stated 150,000 MWH of banked savings will never be used  
2 for incentive purposes.

3  
4 All in all, the Stipulation's benefits are weighted heavily towards Duke, while  
5 customers end up bearing the brunt of Duke's \$19.75 million in charges, without  
6 receiving any benefit.

7  
8 ***Q16. HAS DUKE DEMONSTRATED A PENCHANT IN THE PAST FOR TRYING***  
9 ***TO MAXIMIZE ITS EE/PDR INCENTIVES TO THE DETRIMENT OF ITS***  
10 ***CUSTOMERS?***

11 ***A16.*** Yes, and the Commission has ruled against Duke in the past when it has tried to  
12 maximize its energy efficiency incentives at the expense of its customers. This is  
13 evidenced in the following energy efficiency cost-recovery related cases:

- 14 1. Duke Case No. 09-1999-EL-POR: "Therefore, the Commission  
15 directs Duke to comply with its own stipulation, as well as Rule  
16 4901:1-39-07(A), O.A.C., and remove the recovery of lost  
17 generation revenues collected as part of Duke's lost margin  
18 revenues, from its Rider DR-SAW beginning on December 10,  
19 2009, the effective date of Chapter 4901:1-39, O.A.C."<sup>29</sup> The  
20 Commission ordered Duke to credit back to customers the over-  
21 recovery.<sup>30</sup>

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<sup>29</sup> Case No. 09-1999-EL-POR, Opinion and Order (December 15, 2010) at 15.

<sup>30</sup> Id. at 16.

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On Behalf of the Office of the Ohio Consumers' Counsel  
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1           2.     Duke Case No. 13-753-EL-RDR: “Therefore, the Commission  
2                   concludes that Duke must recalculate the shared savings to include  
3                   the relevant EM&V costs in the total costs of administering the  
4                   energy efficiency and peak demand response programs and adjust  
5                   Rider EE-PDR accordingly. To reflect this adjustment, we find  
6                   that the record supports a reduction of \$238,027 in the actual 2012  
7                   Rider EE-PDRR costs and a reduction of \$200,013 in Duke's 2013  
8                   estimated 2013 Rider EE-PDRR costs.”<sup>31</sup>

9           3.     Duke Case No. 14-457-EL-RDR: “As to Duke’s use of banked  
10                  savings, the Commission agrees with OMA and finds the Company  
11                  may only use the banked savings to reach its mandated benchmark.  
12                  Therefore, the Commission finds Duke's use of banked savings to  
13                  claim an incentive is improper.”<sup>32</sup>

14  
15           Furthermore, the Stipulation as filed fails to meet the three-prong test for  
16           settlements. A Commission rejection of this Stipulation could lead to a more  
17           balanced decision by the PUCO or usher in a period of serious negotiation by all  
18           parties in the cases, rather than just the exclusionary settlement discussions that  
19           occurred between the PUCO Staff and Duke over two days during the last week  
20           of 2015.

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<sup>31</sup> Case No. 13-753-EL-RDR, Opinion and Order (April 2, 2014) at 8.

<sup>32</sup> Finding and Order at 5.

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On Behalf of the Office of the Ohio Consumers' Counsel  
PUCO Case Nos. 14-457-EL-RDR and 15-534-EL-RDR*

1   ***Q17. DOES THE STIPULATION VIOLATE ANY IMPORTANT REGULATORY***  
2   ***PRINCIPLE OR PRACTICE?***

3   ***A17.***   Yes. The Supreme Court of Ohio has determined that excluding an entire  
4       settlement class from negotiations is contrary to the PUCO's negotiation standard  
5       and the partial settlement standard endorsed by the Court.<sup>33</sup> Although I am not an  
6       attorney, I believe that by excluding *all* intervenors in the two cases from  
7       settlement talks violates the regulatory principles established by the PUCO and  
8       the Ohio Supreme Court regarding negotiations.

9  
10      Further, the settlement overturns the PUCO's decision in Case No. 14-457-EL-  
11      RDR while the PUCO is still considering the case on rehearing. Although the  
12      Stipulation claims that the PUCO "has granted" the rehearing applications,<sup>34</sup> the  
13      Commission had done so only for the purpose of giving the applications further  
14      consideration.<sup>35</sup> The PUCO had not ruled on the merits of the applications. Thus,  
15      the settlement, in my opinion as a non-attorney, interferes with the rehearing  
16      process set out in Ohio law.<sup>36</sup>

17  
18      Because the Stipulation violates important regulatory principles regarding  
19      settlement negotiations and PUCO processes, the Stipulation fails the second  
20      prong of the three-part test for evaluating stipulations.

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<sup>33</sup> *Time Warner AxS v. PUCO* (1996), 75 Ohio St. 3d 229, 234, n. 2.

<sup>34</sup> Stipulation at 5.

<sup>35</sup> Entry on Rehearing at 4.

<sup>36</sup> R.C. 4903.10.



1    **IV.    CONCLUSION**

2

3    ***Q18.   SHOULD THE COMMISSION REJECT THE STIPULATION?***

4    ***A18.***    Yes. The Commission should reject the Stipulation as it fails the three-prong test.

5            If the Commission approves the settlement as filed (which I do not recommend),

6            then it should make any amounts collected from customers through the

7            Stipulation subject to refund, based on any legal challenge of the PUCO's

8            approval of the settlement.

9

10   ***Q19.   DOES THIS CONCLUDE YOUR TESTIMONY?***

11   ***A19.***    Yes. However, I reserve the right to incorporate new information and/or

12            discovery responses that may subsequently become available. I also reserve the

13            right to supplement my testimony in response to positions taken by the Utility or

14            other parties.

## **CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing the *Direct Testimony of Wilson Gonzalez on Behalf of the Office of the Ohio Consumers' Counsel* has been served electronically this 4th day of March 2016.

/s/ Terry L. Etter  
Terry L. Etter  
Assistant Consumers' Counsel

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Mr. Gonzalez has submitted testimony in the following cases before the  
Public Utilities Commission of Ohio:

1. Vectren Energy Delivery of Ohio, Case No. 04-571-GA-AIR
2. Dominion East Ohio, Case No. 05-474-GA-ATA
3. Dominion East Ohio, Case No. 07-829-GA-AIR
4. Vectren Energy Delivery of Ohio, Case No. 05-1444-GA-UNC
5. Columbus Southern Company/Ohio Power Company, Case No. 06-222-EL-SLF
6. Duke Energy of Ohio, Case No. 07-589-GA-AIR
7. FirstEnergy Companies, Case Nos. 07-551-EL-AIR, et al
8. Vectren Energy Delivery of Ohio, Case No. 07-1080-GA-AIR
9. FirstEnergy Companies, Case No. 08-935-EL-SSO
10. FirstEnergy Companies, Case No. 08-936-EL-SSO
11. Duke Energy of Ohio, Case No. 08-920-EL-SSO
12. AEP, Case No. 08-917-EL-SSO
13. Dayton Power and Light, Case No. 08-1094-EL-SSO
14. FirstEnergy Companies, Case No. 09-906-EL-SSO
15. Duke Energy of Ohio, Case No. 10-1999-EL-POR
16. FirstEnergy Companies, Case No. 10-388-EL-SSO
17. FirstEnergy Companies, Case No. 10-1128-EL-CSS

18. AEP, Case No. 11-351-EL-AIR
19. FirstEnergy Companies, Case No. 11-5201-EL-RDR
20. FirstEnergy Companies, Case No. 12-1230-EL-SSO
21. FirstEnergy Companies, Case No. 12-2190-EL-POR
22. Duke Energy Ohio Case No. 13-431-EL-POR
23. Duke Energy Ohio Case No. 13-753-EL-RDR
24. Dayton Power and Light Case No. 13-833-EL-POR, et al
25. Duke Energy Ohio Case No. 14-1580-EL-RDR

**Duke Energy Ohio  
Case No. 14-457-EL-RDR  
OCC Second Set of Interrogatories  
Date Received: February 19, 2016**

**OCC-INT-02-010**

**REQUEST:**

Identify the date(s) of any meetings between employees and/or representatives of Duke and PUCO staff to discuss settlement for Case Nos. 14-457-EL-RDR and 14-534-EL-RDR.

**RESPONSE:**

Duke Energy Ohio met with Commission Staff on December 28, 2015, in person, and December 30, 2015, via teleconference.

**PERSON RESPONSIBLE:** Legal

**Duke Energy Ohio  
Case No. 14-457-EL-RDR  
OCC Second Set of Interrogatories  
Date Received: February 19, 2016**

**OCC-INT-02-011**

**REQUEST:**

For each meeting identified in response to INT-2-010, please identify any and all participants.

**RESPONSE:**

At the meeting on December 28, 2015, no attendance sheet was created. Attendees on behalf of Duke Energy Ohio were Amy Spiller, Elizabeth Watts and Lee Barrett. Attendees for Staff include but may not be limited to: John Jones, Jason Rafeld, Patrick Donlon, Ray Strom, Robert Wolfe and Kristen Braun.

Attendees participating in the teleconference for Duke Energy Ohio were Amy Spiller, Elizabeth Watts and Lee Barrett. It is unknown at this time who participated for Staff. However, among those participating were Patrick Donlon and John Jones.

**PERSON RESPONSIBLE:** Legal

**Duke Energy Ohio  
Case No. 14-457-EL-RDR  
OCC Second Set of Interrogatories  
Date Received: February 19, 2016**

**OCC-INT-02-012**

**REQUEST:**

Identify the date(s) of any meetings between employees and/or representatives of Duke and any intervening party in Case Nos. 14-457-EL-RDR or 14-534-EL-RDR to discuss settlement of the cases.

**RESPONSE:**

N/A

**PERSON RESPONSIBLE:** Legal

**Duke Energy Ohio**  
**Case No. 14-457-EL-RDR**  
**OCC Second Set of Interrogatories**  
**Date Received: February 19, 2016**

**OCC-INT-02-003**

**REQUEST:**

In regard to paragraph 2 of the Stipulation, please identify how the \$55 million dollars referenced therein was calculated.

**RESPONSE:**

Year	Shared Savings Incentive	Explanation
2013	\$ 11,635,152	2013 True-up Filing Case No. 14-457-EL-RDR-As Filed
2014	12,975,188	2014 True-up Filing Case No.15-534-EL-RDR-As Filed
2015	15,114,485	Apply 13% after Tax shared savings percentage to the Shared Savings Pool Projected for 2015 in Case No. 15-534-EL-RDR
2016	15,114,485	Assume same Shared Saving projected for 2015 - A projection for 2016 has not been completed yet for 2016
	\$ 54,839,310	

**PERSON RESPONSIBLE: Tim Duff**



**Duke Energy Ohio  
Case No. 14-1580-EL-RDR  
OCC First Set of Interrogatories  
Date Received: May 12, 2015**

**OCC-INT-01-001**

**REQUEST:**

What was the total dollar amount of energy efficiency/peak demand reduction ("EE/PDR") program spending by the Company for each of the years 2009, 2010, 2011, 2012, 2013, and 2014?

**RESPONSE:**

Program costs associated with years 2009 – 2011 were trued-up under Rider DR-SAW in Case No. 12-1857-EL-RDR and are not applicable to the Company's application in this proceeding.

2012: Program spending = \$25,147,118 (Case No. 13-753-EL-RDR)

2013: Program spending = \$22,130,677 (Case No. 14-457-EL-RDR)

2014: Program spending = \$30,608,344 (Case No. 15-534-EL-RDR)

**PERSON RESPONSIBLE: Trisha Haemmerle**

## Appendix C. Incentive Amounts as Percentage of Energy Efficiency Costs

Table C1. Incentive amounts relative to total costs by mechanism type by utility/administrator, state, and year

Net benefits		Multifactor		Savings-based	
Xcel electric (MN) 2011	68%	NSTAR (MA) 2013	6%	Consumers 2012 (MI)	15%
Xcel electric (MN) 2012	62%	NGRID (MA) 2013	6%	Consumers 2013 (MI)	15%
Otter Tail Power (MN) 2011	60%	NGRID (MA) 2012	6%	DTE Energy 2012 (MI)	15%
Georgia Power 2013	58%	Efficiency VT 2008	4%	DTE Energy 2013 (MI)	15%
Otter Tail Power (MN) 2012	56%	Efficiency VT 2011	3%	IPL (IN) 2013	8%
Georgia Power 2012	42%	PBFA (HI) 2014	2%	PSNH 2013	8%
AEP Texas Central 2013	36%	PBFA (HI) 2013	2%	PSNH 2012	9%
Xcel Energy (CO) 2012	29%	DC SEU 2012	1%	CT UI 2013	6%
SWEPSCO (TX) 2012	26%	DC SEU 2013	1%	CT CL&P 2013	7%
PSO (OK) 2012	25%	WI FOE 2010-14	0.2%	CT UI 2012	6%
Xcel Energy (CO) 2013	22%			CT CL&P 2012	7%
PSO (OK) 2013	21%			RI NGRID 2013	5%
DEC (SC) 2014	18%			RI NGRID 2012	5%
OGE (OK) 2012	18%			NY all IOUs	4%
DEC (SC) 2013	18%				
OGE (OK) 2011	17%				
APS (AZ) 2012	14%				
SCE&G 2013	14%				
APS (AZ) 2013	9%				
SWEPSCO AR	8%				
SWEPSCO AR	8%				
Entergy Arkansas 2013	7%				
Entergy Arkansas 2012	6%				
SCE&G 2014	6%				

Source: Questionnaires completed by state commission staff

**Duke Energy Ohio  
Case No. 14-457-EL-RDR  
OCC Second Set of Interrogatories  
Date Received: February 19, 2016**

**OCC-INT-02-006**

**REQUEST:**

Was the \$19.75 million figure (in paragraph 3(a) of the Stipulation) calculated on a pre-tax, or after-tax basis?

**RESPONSE:**

Objection. This Interrogatory is overly broad, and unduly burdensome, given that it seeks information that is not likely to lead to the discovery of admissible evidence in this proceeding. Moreover, this Interrogatory seeks to elicit confidential attorney client protected information and/or attorney work product to the extent it is intended to seek confidential settlement information discussion or information.

Without waiving said objections, to the extent discoverable, and in the spirit of discovery, there was no specific calculation performed to determine the \$19.75 million included in paragraph 3(a). The \$19.75 million was an agreed upon number that was part of the comprehensive bargaining and the overall terms of the Stipulation. This number will not be grossed up for taxes.

**PERSON RESPONSIBLE: Tim Duff**

**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 14-0457-EL-RDR, 15-0534-EL-RDR**

Summary: Testimony Direct Testimony of Wilson Gonzalez on Behalf of the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.