BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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. 14-457-EL-RDR
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 for 2014.	Case No. 15-534-EL-RDR

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TELEPHONIC DEPOSITION

OF

TIMOTHY J. DUFF

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Taken by Ohio Consumers' Counsel

Charlotte, North Carolina

March 1, 2016

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Reported by:

CHRISTINE A. TAYLOR, RPR

Registered Professional Reporter

A P P E A R A N C E S

COUNSEL FOR OHIO CONSUMERS' COUNSEL:

TERRY L. ETTER, ESQUIRE (via telephone)
KYLE L. KERN, ESQUIRE (via telephone)
OFFICE OF THE OHIO CONSUMERS' COUNSEL
10 West Broad Street, Suite 1800
Columbus, Ohio 43215
614.466.7964
terry.etter@occ.ohio.gov
kyle.kern@occ.ohio.gov

COUNSEL FOR DUKE ENERGY:

ELIZABETH WATTS, ESQUIRE
DUKE ENERGY
155 East Broad Street, 21st Floor
Columbus, Ohio 43215
614-222-1331
Elizabeth.Watts@duke-energy.com

COUNSEL FOR OHIO MANUFACTURERS ASSOCIATION:

KIMBERLY W. BOJKO, ESQUIRE (via telephone)
CARPENTER LIPPS & LELAND, LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
bojko@carpenterlipps.com

COUNSEL FOR STAFF OF THE PUBLIC UTILITIES COMMISSION:

JOHN H. JONES, ESQUIRE (via telephone)
NATALIA MESSENGER, ESQUIRE (via telephone)
ASSISTANT ATTORNEYS GENERAL
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
john.jones@puc.state.oh.us
natalia.messenger@puc.state.oh.us

COUNSEL FOR OHIO PARTNERS FOR AFFORDABLE ENERGY:

COLLEEN L. MOONEY, ESQUIRE (via telephone)
DAVID C. RINEBOLT, ESQUIRE (via telephone)
OHIO PARTNERS FOR AFFORDABLE ENERGY
231 West Lima Street
Findlay, Ohio 45839
cmooney@ohiopartners.org
drinebolt@ohiopartners.org

COUNSEL FOR OHIO ENERGY GROUP:

DAVID F. BOEHM, ESQUIRE (via telephone)
JODY KYLER COHN, ESQUIRE (via telephone)
BOEHM, KURTZ & LOWRY
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@BKLlawfirm.com
jkylercohn@BKLlawfirm.com

ALSO PRESENT:

Dane Stinson (via telephone)
Wilson Gonzalez (via telephone)

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(No exhibits were identified.)

On March 1, 2016, commencing at 1:03 p.m., the telephonic deposition of TIMOTHY J. DUFF was taken pursuant to notice and pursuant to the Ohio Adm. Code Section 4901-1-21(B), on behalf of the Ohio Consumers' Counsel, at Duke Energy, 550 South Tryon Street, 45th Floor, Charlotte, North Carolina.

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P R O C E E D I N G S

Whereupon, TIMOTHY J. DUFF, having been first being duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. ETTER:

Q. Good afternoon, Mr. Duff. My name is Terry Etter and I am counsel -- assistant consumers' counsel for the Office of Ohio Consumers' Counsel. And I'll be deposing you today regarding your testimony in Public Utilities Commission of Ohio Case Numbers 14-457-EL-RDR and 15-534-EL-RDR.

I guess we can go ahead and take appearances. On behalf of OCC today is myself, Terry Etter, and Kyle Kern. We also have Dane Stinson from the law firm of Bricker & Eckler. Dane filed a notice of appearance in the case this morning. And Wilson Gonzalez who is a consultant on this case for OCC.

Let's go ahead and take other appearances. I guess we can start with Duke.

MS. WATTS: On behalf of Duke Energy Ohio, this is Elizabeth Watts.

MS. MOONEY: On behalf of Ohio Partners for Affordable Energy, I'm Colleen Mooney.

MS. KYLER COHN: On behalf of the Ohio Energy Group, this is Jody Kyler Cohn. And I may be joined by David Boehm.

MR. JONES: On behalf of Staff, John Jones and Natalia Messenger in the Ohio Attorney Generals office.

MS. BOJKO: On behalf of OMA, Kim Bojko with Carpenter Lipps & Leland.

MR. ETTER: Is anyone else on the phone who needs to make an appearance?

BY MR. ETTER:

Q. Okay. Well, Mr. Duff, if I use the term -- just a few housekeeping things here. If I use the term PUCO, that means Public Utilities Commission of Ohio. I sometimes may reference just Duke, and that means Duke Energy Ohio.

If I ask you a question that you do not understand, please let me know, and I'll repeat or restate it for you. If you need a break during the

deposition, please feel free to say so. And this is a telephonic deposition, so please do not confer with anyone before answering. I'll ask the court reporter to let us know whether Mr. Duff confers with anyone before answering and make a notation in the transcript if he does.

Mr. Duff, please turn off all computers, cell phones, tablets, or any other electronic equipment that you may have with you so you do not receive e-mails or text messages during the deposition. Do you have any questions about anything I just said?

A. No. You've been quite clear.

Q. Good. That's a first, I think. So then let's go ahead and proceed.

What is your name, please?

A. Timothy J. Duff.

Q. And what is your business address?

A. It is -- well, in the testimony it was listed as 526 South Church Street. Now it's 400 South Tryon Street, Charlotte, North Carolina 28202.

Q. And are you the same Timothy J. Duff on whose behalf Duke Energy Ohio filed written testimony in PUCO case numbers 14-457 and 15-534 on February 19, 2016?

A. Yes.

Q. And did you prepare the testimony?

A. Yes.

Q. Did you have any help preparing the testimony?

A. It was reviewed by counsel.

Q. And anyone besides your counsel?

A. No.

Q. And what documents did you review in preparing your testimony?

A. Nothing in particular other than the dockets that it related to as well as some previous dockets, docket 13-753-EL-RDR and docket or case number 12-1857-EL-RDR.

Q. And what are the general subjects of those dockets?

A. They're energy efficiency rider hearings -- or cases.

Q. Any other documents that you reviewed?

A. No.

Q. The notice of deposition asks for all documents or work papers you used in preparing your testimony. Do you have those such documents with you?

A. Yes.

Q. And do you have any other documents with you today?

A. I have the order on rehearing, a copy of the stipulation, the documents that you forwarded onto Elizabeth Watts.

Q. And just those documents, no others?

A. That's correct.

Q. Okay. Do you have a copy of your supplemental testimony with you today?

A. I do.

Q. Oh, great. I was in a deposition a few weeks ago and the witness did not even -- did not have their testimony or a copy of the testimony that they were looking at. So I'm glad you brought it.

Is anyone other than the court reporter in the room with you today?

A. Yes, counsel, Ms. Watts.

Q. Anyone else?

A. No.

Q. Have you turned off all computer, cell phones, and other electronic communication devices that you have with you today?

A. They've been put on mute and set aside from me. So I don't have them with me, no.

Q. Okay. Good. By whom are you employed?

A. Duke Energy Business Services.

Q. And that is an affiliate of Duke Energy Ohio;

is that correct?

A. That's correct.

Q. What's the affiliate relationship between Duke Energy Business Services and Duke Energy Ohio?

A. Duke Energy Business Services is a service company that does work on behalf of the different utility operating companies in Duke Energy Holding Company.

Q. What kind of services does Duke Energy Business Services do for Duke Energy Ohio?

A. Well, the work I do related to energy efficiency policies is what I can speak to.

Q. But it does other things for Duke Energy Ohio; is that correct?

A. I can't speak -- I can't speak to what else it does. I can speak to what I do.

Q. Okay. And what is your current position with Duke Energy Business Services?

A. I am the general manager of retail customer regulatory strategy for the customer strategy group.

MR. BOEHM: Hello, this is Dave Boehm.

MR. ETTER: And who are you representing?

MR. BOEHM: OEG.

MR. ETTER: Okay. Just wanted to make that clear, Dave.

1 MR. BOEHM: Sure.
2 BY MR. ETTER:
3 Q. Mr. Duff, what are your duties in your
4 position with Duke Energy Business Services?
5 A. I provide subject matter expert and policy
6 work with respect to customer products and services,
7 particularly energy efficiency and demand side
8 management.
9 Q. Now, let's turn to your supplemental direct
10 testimony, and on page 1, line 10 you state that
11 you've previously filed direct testimony in this
12 proceeding. Do you say that -- see that?
13 A. Yes.
14 Q. I just want to clarify something. The
15 stipulation was filed in two separate cases, correct,
16 14-457 and 15-534?
17 A. Correct.
18 Q. So when you say "this proceeding," which
19 proceeding are you referring to?
20 A. You know, that may be incorrect. I think I
21 was -- it was my testimony with respect to the order
22 on rehearing. The direct testimony in the proceeding
23 was filed by Trisha Haemmerle.
24 Q. Okay. And in which case was that?
25 A. In both 14-457 and 15-534.

Q. So did you file any direct testimony in either 14-457 or 15-534?

A. No, I did not.

Q. Now, the stipulation and your testimony both contain a caption that has both case numbers, 14-457 and 15-534. To your knowledge, have the PUCO consolidated the two cases? Are they considering them as one case?

A. I can't speak to what the Commission has done.

Q. So you don't know if PUCO is treating them as separate cases; correct?

A. Again, I can't speak for the PUCO, no.

Q. Okay. Now, on page 1, line 13 of your supplemental testimony, you state that the purpose of your testimony is to support the stipulation and recommendation in this case. Do you see that?

A. Yes.

Q. So will you be the witness who will be sponsoring the stipulation at the hearing?

A. Yes.

Q. So you're familiar with the stipulation; is that correct?

A. Yes.

Q. And by "stipulation" we're talking about the

stipulation and recommendation that was filed on January 6, 2016, in this case?

A. That's correct.

Q. Okay. Do you have the -- you have the stipulation there in front of you; is that right?

A. Yes, I do.

Q. See if I can find my copy of it. Now, the only two parties to the stipulation are Duke and PUCO staff; is that correct?

A. That's correct, at this time.

Q. And throughout the document there's a reference to parties and signatory parties. And so whenever the stipulation refers to parties or signatory parties, it's just referring to the PUCO Staff and Duke; correct?

A. I don't see that term defined. So I can't speak to the definition of party and parties as it's used throughout the document. I'd have -- I would have to ask the drafter of the document, which I was not.

Q. Well, on page 1 of the stipulation, it says the purpose of the document -- looking at the third line of the first paragraph, "The purpose of this document is to set forth the understanding and agreement of the parties that are signed below." And

then it says "signatory party or parties;" right?

A. Right. I think that would be correct. In case anybody --

Q. Are you finished with your answer? I'm sorry.

A. Yes.

Q. Okay. And if you turn to page 9 of the stipulation, the only two signatory parties listed there are Duke Energy Ohio and the PUCO Staff; is that correct?

A. That's correct.

Q. Now, if you turn to page 3 of the stipulation --

A. Yes.

Q. -- and go to the second paragraph.

A. Yes.

Q. The first sentence there says, "The signatory parties agree that the settlement and resolving stipulation are products of serious bargaining among capable, knowledgeable parties." Do you see that?

A. Yes.

Q. So which parties were involved in the bargaining that led to the stipulation?

A. Again, I think if you -- based off of your definition that is set forth in the stipulation, that

would be the company and the Commission's Staff.

Q. Were you involved in the negotiations that led up to the stipulation?

A. I was involved in some of the meetings associated with the development of the stipulation, yes.

Q. And so in those meetings that you were involved in, there was only staff and Duke present; correct?

A. That is correct.

Q. Okay. And none of the intervenors in either 14-457 or the 15-534 cases were involved in the negotiations; is that correct?

A. In the meetings that I was a party to, no. There were no other parties.

Q. Do you know who was invited to those meetings?

A. No, I didn't organize the meetings.

Q. So you don't know whether any of the intervenors were invited to the negotiation meeting, the settlement meetings?

A. Other than making assumptions, which I know I'm not supposed to do in depositions, no, I don't know because I didn't organize the meetings.

Q. Now, the second sentence of that second

paragraph on page 3 of the stipulation says that "This stipulation is the product of an open process in which all parties were represented by able counsel and technical experts." Do you see that?

A. Yes.

Q. So in that second sentence, what does the term "open process" mean?

A. Again, I didn't write the term. So I would assume it's talking about the meeting, the meetings and discussions that led to the development of the stipulation, but that's assuming. I didn't develop the language.

Q. I'm just looking at something here for a moment. Okay. Do you know the dates of the meetings?

A. I know --

Q. That were --

A. I know the dates of the meetings I was involved in.

Q. What dates were those meetings?

A. The 28th and the 29th of December. I'm sorry, no, it would have been the 29th and the 30th of December. I was involved with an internal meeting on the 28th.

Q. And what was that meeting in person with the PUCO staff or was that by telephone?

A. Which meeting, Mr. Etter?

Q. Let's start with the first meeting you mentioned, the 29th?

A. I was on the phone.

Q. And the meeting on the 30th, was that by phone or in person?

A. I was also on the phone for that meeting as well.

Q. Do you know whether all parties to that -- to those meetings -- let's start with the meeting on the 29th, were all participants in the meeting on the 29th on the phone or were some Duke representatives in the same room with PUCO Staff members?

A. I honestly can't remember. And since I wasn't there, I don't know.

Q. And do you remember about the meeting on the 30th, same question?

A. Again, same answer, I'm not positive. I believe people were on the phone, but as you know with this, when you're on the phone, you don't know where the other side is. I don't know who's with you unless you announce it.

Q. Okay. In that sentence you also state -- or at least the stipulation states that "All parties were represented by able counsel and technical experts."

So the stipulation there is referring only to the PUCO Staff and Duke; correct?

A. Again, I think we established that was what the parties was defined in the very first paragraph that you pointed out.

Q. Okay. And the next sentence on page 3 of the stipulation states that "The stipulation represents a comprehensive compromise of issues raised by parties with diverse interests." Do you see that?

A. Yes.

Q. What does that sentence mean?

A. It means it was a large compromise of issues, that based off of the definition of parties that the Commission Staff and the company were able to resolve with a comprehensive compromise. And, obviously, the company and the Commission's Staff's interest vary.

Q. So it's just the diverse interest between Duke Energy Ohio and the PUCO Staff and not necessarily the diverse interests involved with any of the intervenors in the case; correct?

A. I think we took into account things that were brought up in the dockets, but, yes, the direct resolution was between the Commission Staff and the company.

Q. Do you know if any intervenors were consulted

during this negotiation process?

A. I didn't consult any and I don't know. I do believe that -- based off of my recollection that they were consulted prior to filing the agreement, but that's the only knowledge I have of any consultation.

Q. So just to be clear, as far as you know, there was no consultation between Duke staff -- Duke Energy and the PUCO Staff and intervenors prior to -- or in any -- either of the two meetings you were involved in; correct?

A. I said I didn't consult. I don't know what the Commission Staff did and I don't know what other representatives from Duke did, but my direct knowledge, no.

Q. So the sentence that "The stipulation represents a comprehensive compromise," it isn't saying that the stipulation represents a compromise by any intervenor regarding the issues raised in the two cases; correct?

A. I don't -- I don't see that verbiage that you just said in there, so no.

Q. And the next sentence talks about the stipulation being adopted as a reasonable resolution of the issues. And, again, the resolution was reached only between Duke and the PUCO Staff; correct?

A. That's correct.

Q. Okay. Thank you. Now, Mr. Duff, if you'll turn to page 5 of the stipulation.

A. Yes, sir.

Q. And in the second whereas, the stipulation states that Duke and Ohio Partners for Affordable Energy have filed its applications for rehearing in case number 14-457 and that the PUCO has granted those applications; do you see that?

A. Yes.

Q. Is this portion of the stipulation making a representation that the PUCO has agreed with the positions that Duke and OPAE set forth in their applications for rehearing?

A. It's saying that the Commission -- it's stating fact. The Commission granted both Duke Energy Ohio and Ohio Partners for Affordable Energy's applications for rehearing.

Q. But do you know whether the PUCO granted those applications for rehearing only to give further consideration of the issues raised in those applications for rehearing?

A. Again, I didn't write the document. I do know that the applications for rehearing were granted.

Q. Do you have a copy of the entry on rehearing

in 14-457 available?

A. Yeah, you provided it to counsel.

Q. And now if you'll turn to page 4.

A. Page 4 of which?

Q. Of the entry on rehearing.

A. Let's see. Okay. Yeah, I'm there.

Q. Okay. On the paragraph numbered 11 there that says, "With regard to the applications for rehearing filed by Duke and OPAE," which is Ohio Partners for Affordable Energy, "the Commission believes that sufficient reason has been set forth by Duke and OPAE to warrant further consideration of the matters specified in their applications for rehearing;" is that right?

A. Yep.

Q. And, to your knowledge, the PUCO hasn't further acted on the applications for rehearing; correct?

A. That's correct.

Q. So at this point it looks like -- and I know you're not an attorney -- or are you an attorney?

A. No.

Q. Okay. So in your non-attorney viewpoint would that seem to indicate that PUCO just granted rehearing for further consider -- to further consider

the matters addressed in the applications for rehearing?

MS. WATTS: Objection. I think the document speaks for itself, Terry.

MR. ETTER: Okay. Well, I would like to note since he's the expert witness regarding the stipulation and the stipulation mentions this entry on rehearing, I was -- you know, I'd just like to get his expert view as to what the -- what that entry on rehearing says.

MS. WATTS: Okay. And he can give you that, but I'm going to interpose an objection because I think it calls for a legal conclusion, and then he can answer.

MR. ETTER: Well, I'm not asking for a legal conclusion.

THE WITNESS: To the extent that I'm not an attorney, I read the words the same way you do, Mr. Etter. I see that it granted -- it granted the order for rehearing for both Duke Energy Ohio and OPAE. And the justification on why, it sounds like they believed there were facts that were presented in the applications for rehearing that caused them to believe that the case should be reconsidered.

BY MR. ETTER:

Q. Do you know how often PUCO might do that --

A. No --

Q. -- grant a rehearing?

A. No idea, sir.

Q. So you don't know -- you don't actually know what reason the PUCO might have had to grant rehearing for further consideration; correct?

A. I definitely can't speak for the Commission, no.

Q. Okay. Thank you. And just to be clear, at the bottom of page 5 in the numbered paragraph, paragraph numbered 1 of the -- I'm referring to the stipulation.

A. Okay. I'm just trying to get back to the right document. Sorry.

Q. Okay. Yeah. I realized I was making a transition without actually explaining it.

A. Okay.

Q. So going back to the stipulation, the bottom of page 5 in the paragraph numbered 1 --

A. Yes.

Q. -- the third line down says that the program costs, lost distribution revenue, and shared savings mechanism in Duke Energy Ohio's pending application

for rehearing in case number 14-457; correct?

A. Yes, that's what it says.

Q. Now, going back up to the last whereas on page 5, it states that the PUCO expressly stated in its opinion and order in case number 14-457 that Duke was entitled to recover program costs, lost distribution revenues, and shared savings related to energy efficiency and demand response programs. Do you see that?

A. Yep. That's what it says.

Q. Are you familiar with the order that was -- that's referenced here?

A. Roughly. I mean, it was issued, I believe, last spring, so it's been a while since I've looked at it.

Q. Okay. And I think you have a copy of the finding and order --

A. Yeah.

Q. -- in this case?

A. Yeah.

Q. I think that's -- well, is that what this paragraph is referring to? There hasn't seemed to be an opinion and order in this case, but there has been a finding and order. Would that be the order that this paragraph is referencing?

A. Mr. Etter, I can't speak to it since I didn't draft the document, but that's a logical conclusion.

Q. And can you identify the place in the finding and order where the PUCO stated that Duke is entitled to recover program costs, lost distribution revenues, and shared savings incentives related to energy efficiency and demand response programs?

A. Can you give me a minute to look through it?

Q. Sure.

A. I believe it's in paragraph 12 on page 4 and it's also stated in paragraph 3 on page 1.

Q. Well, let's look at paragraph 12 first. The Commission there says that the application in the 14-457 case for recovery of program costs, lost distribution revenue and performance incentives related to the energy efficiency and peak demand response programs is reasonable and should be approved, as modified below; correct?

A. That's what it says, yes.

Q. Okay. So the stipulation is -- would seem to be equating approval as being entitled to; is that correct?

A. Again, I didn't write -- I didn't write the document, but I think that's correct.

Q. And would the same assumption that approval

means entitled to be the inference there in paragraph 3 that you pointed out?

A. Yes. Well, it says the word "entitled." When you go down and read the shared savings language, it says, "It is entitled to a percentage of the shared savings." So that's why I made the conclusion that your term of "entitled" is the same as "allowed." I think the finding and order seems to use those terms somewhat interchangeably.

Q. But is Duke entitled to any particular amount of shared savings?

A. What would be calculated under the mechanisms, I believe.

Q. As approved by the PUCO; correct?

A. Correct.

Q. How much is Duke authorized to collect for its energy efficiency peak demand reduction portfolio under the finding and order?

A. I don't have that number in front of me because -- because there was --

Q. Do you know how much of that --

A. There was never a final order resolving 14-457 because an audit was still open. So if you read the rest of the order, the finding and order, it says that upon conclusion then they would determine

what the rates were. So I don't know what the final revenue requirement associated with 14-457 would have been.

Q. Do you know how much of the amount of shared savings that was approved by the PUCO in the finding and order?

A. In the finding and order, that was rather unclear in terms of what the amount was. And that was part of the reason that we asked for rehearing is there was some concern they were not following -- they were changing the terms of the mechanism that had been agreed to three years earlier and even discussed in paragraph 3 of the finding and order. So I can't tell you because, again, the case wasn't final. So I don't know what the ultimate intention was, but there was concern that it was going to erode the company's ability to earn a shared savings incentive.

Q. In the finding and order, the PUCO said that Duke could not use banked savings in calculating its shared savings incentive; correct?

A. That was -- can you point to the verbiage, please?

Q. On page 5 of the finding and order.

A. Yes.

Q. That first full paragraph.

A. Right. So if you read that language, again, this was kind of one of the unclear things. It says that the company may use banked savings to reach its -- may only use banked savings to reach its mandated benchmarks. Well, if the company reached its mandated benchmarks, then it was eligible for incentive. So it was a lack of clarity.

Q. Thank you.

A. Yes. You're welcome.

Q. Now, on page 6 of the finding and order at the very first -- at the very top, the first paragraph there, the order and clause. It authorized Duke to file tariffs consistent with the finding and order. Has Duke filed such tariffs?

A. No. As I said, the Commission noted that the audit was open. So with the audit being open of those costs, there was no way for us to file the tariffs.

Q. So is Duke collecting money from customers as authorized by the finding and order?

A. Duke is collecting customers based off from the last Commission's authorization which was in 13-753.

Q. Thank you. We can put these aside for now, I think, the order and entry on rehearing. And either the stipulation -- let's go back to your supplemental

testimony.

A. Okay.

Q. On page 1 starting on line 15 --

A. Yeah.

Q. -- you state that you believe the stipulation in the case meets what's generally termed a three-prong test the PUCO uses in examining settlements; is that correct?

A. I'm sorry, what page were you -- what line were you on?

Q. Page 1 of your supplemental.

A. Yeah, okay. So the sentence begins "I will"?

Q. Yeah.

A. It says, "I will discuss the criteria employed by the PUCO and will confirm based off of my understanding -- well, it doesn't say -- I'm confirming based off of my understanding that the stipulation meets those three prongs, yes.

Q. And you're not an attorney, so you're not giving a legal opinion here; correct?

A. Nope. I am not an attorney, so it is not a legal opinion.

Q. Now, the first prong you discuss, is that the stipulation is the product of serious bargaining among knowledgeable and capable parties; is that correct?

A. That's correct.

Q. And, again, the parties you're talking about are the PUCO Staff and Duke; correct?

A. That's correct. To my knowledge. Like I said, I don't know if the Staff had consulted or the company consulted with other parties. I just can tell you that the two parties that signed the stipulation are Duke Energy Ohio and the Commission Staff.

Q. And, to your knowledge, did the bargaining that led to the stipulation, did that conclude on December 30, 2015?

A. I believe that's correct.

Q. And do you know when the stipulation was circulated to the other parties?

A. I don't know. I believe it was shortly after the new year, but I don't know for sure. I didn't circulate it.

Q. On page 2, lines 13 and 14, under supplemental testimony, and you alluded to this earlier, I think, in your discussion of the finding and order that the case was not final in that the Commission explicitly left the Staff's audit open; do you see that?

A. That's correct.

Q. Yeah. And that's the audit in case number

15-534; correct?

A. No. That would be the 14-457 audit.

Q. Okay.

A. And the other reason it wasn't final was because the Commission granted applications for rehearing filed by Duke and Ohio Partners for Affordable Energy. There were two reasons.

Q. So is the sole purpose of the audit to reconcile and true up rights?

A. I don't believe that's the purpose of the audit, no.

Q. Is that all that was left to do in the audit is to reconcile and true up rights?

A. No. The Commission hadn't issued its findings in the audit to my knowledge. And so they needed to issue their findings so that could be factored into the revenue requirement that would be used in calculating the rates.

Q. On page 2, line 17, you state that if the stipulation is approved, that would resolve the issues on rehearing and conclude the proceeding; do you see that?

A. Yes.

Q. And by this proceeding, which case do you mean, 14-457 or 15-534?

A. 14-457. It's referencing that May 20th order in 14-457 and the application on rehearing. As I said in the next sentence, case 15-534, there was comments filed, but that's really been about it when the stipulation was filed.

Q. And are you familiar with the 15-534 case?

A. Yes.

Q. Aren't there still issues open beyond the shared savings incentive in that case?

A. I don't know -- to my knowledge, again, there's no procedural schedule. I know there were comments filed, but I can't tell you all the comments.

Q. Well, that stipulation only addresses the shared savings incentive, 15-534; is that correct?

A. That -- I believe that's correct, yes.

Q. If you go to page 3 of your testimony and there you summarize the various terms of the stipulation.

A. Yes.

Q. And I'd like to go through some of those with you. The first term there on line 3 is that Duke would collect $19.75 million from customers for the shared savings incentive for calendar years 2013 and 2014; is that correct?

A. That's correct.

1 Q. Is that for each year or for the two years
2 combined?
3 A. That's the combined total.
4 Q. And that amount, I understand is not going to
5 be grossed up for taxes; is that correct?
6 A. That's correct.
7 Q. Where did the $19.75 million number come
8 from?
9 A. It was part of the overall compromise and
10 comprehensive bargaining. It wasn't a calculated
11 number.
12 Q. Was it derived from anything in the
13 application or other documents filed in the 14-457
14 case?
15 A. You know, again, I think it was part of an
16 overall negotiation. I don't think it had any
17 derivation from any particular documents.
18 Q. So it's generally what's called a black box
19 settlement; is that correct?
20 A. I don't know what that term means and so I
21 can't really answer the question.
22 Q. Well, it's a number that is just agreed upon;
23 correct?
24 A. It's an agreed upon number, as I said, to
25 begin with. I mean, when you look at the -- when you

1 look at what the company was entitled to in its
2 filings in 14-457 and 15-534, it was about $5 million
3 more than that, to give you some relative scale.
4 Q. And the second term you discussed is that
5 Duke will forego collection of a shared savings
6 incentive in 2015 and 2016?
7 A. Yes, I see that.
8 Q. That's on lines 5 and 5 through 7?
9 A. Yes, I see it.
10 Q. Okay. Has Duke filed its EEPDR cases, its
11 energy efficient peak demand reduction cases, for 2015
12 and 2016, the rider cases?
13 A. It's filed its projections for 2015, but has
14 not trued up 2015 and has not filed its projection for
15 2016.
16 Q. Okay. The next term you mention, and that's
17 starting on line 7, is that beginning in 2017 Duke
18 will not seek to establish its shared savings
19 mechanism that uses banked savings to meet the annual
20 benchmark requirements?
21 A. Yeah, I see that.
22 Q. How is Duke's shared savings mechanism first
23 established?
24 A. Well, Duke shared savings mechanism for 2017
25 hasn't been established yet because its current shared

savings mechanism was approved with its existing portfolio and is set to expire at the end of 2016 when its portfolio expires.

Q. And that was decided in a previous case; correct?

A. The term of Duke's shared savings and portfolio case, yes. You forgot the caveat, though, if something changes in the language in both the law, regulation, or order regarding shared savings, then the company would be entitled to. You did leave that caveat out, so I wanted to make sure we included that because that was part of the full term.

Q. I was going to get to that, but I'm glad you mentioned it. So is this provision forward looking only or can it be applied retroactively if the laws are changed?

A. Well, so if you -- this term only applies for 2017 and beyond. The term -- this term 3 that's on line 7 beginning in 2017, it only applies to us establishing a new mechanism. So I think it's only after 2017.

Q. Has Duke participated in any discussions with Ohio legislators concerning utility incentive mechanisms within the past year?

A. I don't know if our company has met. I know

they've met to discuss energy efficiency. I don't know if they've talked about shared savings mechanisms specifically.

Q. Now, the language of the term that -- this third term says that Duke will not seek to establish a shared savings mechanism that uses banked savings to meet the annual benchmark requirements. Does the term allow Duke to establish a shared savings mechanism that doesn't use banked savings starting in 2017?

A. I can't speak to what it -- what it allows. I can tell you what it prohibits. It prohibits us from establishing a shared savings mechanism that would entitle us to earn an incentive if the company used banked savings to meet its annual benchmark requirement. That's the prohibition that's created. I can't tell you what's allowed because the mechanism hasn't been established and put forth in front of the Commission.

Q. Is there any law or regulation that currently entitles Duke to establish a shared savings mechanism that uses banked savings to meet the annual benchmark requirements?

A. There's an order in case 11-4393 which OCC was a party to the stipulation that created that banked savings calculation methodology. They were a

member of OCA. But, no, I don't believe there's any law specifically related to shared savings, but there is a regulatory order.

Q. So in 2013 and 2014, did Duke use banked savings to achieve higher shared savings than it otherwise would have in a given year?

A. I'm not sure I follow your question.

Q. Well, in 2013 and 2014, did Duke increase -- use banked savings to either obtain, be able to get, shared savings or to increase the percentage of shared savings than it otherwise would have gotten?

A. Yes, consistent with the mechanism in 2013 and 2014, Duke versus the incentive targets that were established in the mechanism created in 11-4393, consistent with those terms, it elected to use banked savings for incentive to determine its achievement level for both 2013 and '14.

Q. So if it weren't for Duke's use of banked savings, Duke would not have been eligible for a shared savings award in 2013; correct?

A. Its portfolio -- Duke actually exceeded its portfolio projections for '13 and '14, but because the mechanism was approved in this manner, Duke had the ability to use banked savings to determine its achievement level, that's correct.

Q. And the same question for 2014?

A. And the same answer for 2014, yes.

Q. And for 2015?

A. Duke hasn't trued up 2015 yet.

Q. Now, the next term that you discussed in your supplemental testimony starting with line 12, is that the PUCO Staff accepts Duke's application to collect program costs and lost distribution revenues in the application filed in case number 14-457; correct?

A. That's correct.

Q. Did the PUCO's finding and order in 14-457 modify the application as it pertained to program costs or lost distribution revenues?

A. Not to my knowledge.

Q. Then the next term discussed on page 3 is that the audit in case number 15-534 or references the audit in 15-534 and says that the PUCO Staff will file its audit findings within six months of January 6, 2016. Do you know the status of the Staff's audit?

A. You'd have to ask the Staff about that. I know it's still open.

Q. And what happens if the audit isn't completed by the deadline?

A. Again, it's the commitment on behalf of Staff. I can't tell you what the nature of the -- of

not complying with the agreement would be. I'm not an attorney.

Q. There's nothing -- just to be clear, nothing in the stipulation addresses what would happen if the Staff doesn't file its audit report by six months after January 6th; correct?

A. Not to my reading of it, no.

Q. Now, the next term discusses starting on line 15 is that Duke's energy efficiency programs for 2013 through 2016 are still subject to the PUCO's evaluation, measurement, and verification progress -- or process; do you see that?

A. Yes.

Q. These energy efficiency programs would be subject to the PUCO's evaluation, measurement, and verification process with or without the stipulation; is that right?

A. That's correct.

Q. So the provision doesn't put any additional process on Duke's energy efficiency programs; correct?

A. I don't believe so, no.

Q. And despite any kind of findings regarding -- that might result from the PUCO's evaluation, measurement, and verification process, Duke would still get the $19.75 million shared savings incentive

under that provision; correct?

A. That's what it says, correct. But all of the '13 and '14 EMVs have long since been filed, Mr. Etter. So the Commission has already been reviewing them, I would imagine. And since the 19.75 is tied to '13 and '14, it's pretty logical that it wouldn't impact it.

Q. Thank you. Do you know how much Duke collected from customers for shared savings from 2013?

A. No, I do not.

Q. Do you know how much Duke collected from customers for shared savings for 2014?

A. No, I do not.

Q. And do you know how much Duke plans to collect from customers for shared savings for 2015?

A. Right now we're currently planning on collecting zero based off of term 2 of the stipulation.

Q. Absent term 2 of the stipulation, how much would -- do you think Duke would find to collect from customers for shared savings 2015?

A. I can't answer that.

Q. Now, line 19, page 3, it's mentioned that Duke will retire 150,000 megawatt hours of banked savings that have never been used for determining its

incentive. Can you explain what this means?

A. Well, so, essentially this means that Duke Energy will retire 150,000 megawatt hours of banked incentive energy savings. So we had an incentive bank per the terms. Again, I would think OCC would be familiar with this because they were a member of OCEA in 11-4393, but provided an impact had never been used for determining a utility's incentive, per the terms of that agreement Duke was able to use that to determine its achievement level during the course of its portfolio which ended in 2016. So what this is saying is that 150,000 megawatt hours of those banked energy savings, the incentive bank, will be retired or be recognized associated with the incentive of $19.75 million.

Q. So does this mean that the 150 megawatt hours will never be used or have they been used as part of this calculation for the $19.75 million?

A. They were not used for the calculation of the $19.75 million. Again, it was part of -- it was an agreed-upon number, but that means that the company will have used them for incentive and, therefore, they cannot be used -- if incentive banking is permitted in the future, they could not be used again.

Q. Do you know how far back in time this

150,000 megawatt hours was banked?

A. I can't tell you specifically when the 150,000 megawatt hours were banked, no. It was during the course -- it was during the course of the company's energy efficiency that's been offered since SB3 established the mandates.

Q. And what year was that?

A. I believe the mandates went into effect in 2010 -- 2009 or 2010, if I'm not mistaken. I think it's 2009 actually.

Q. Do you know how many megawatt hours of banked savings Duke currently has?

A. I provided that in a discovery request to show the accounting of the banked savings. Let me get to my discovery requests. I think it actually might have been a -- it might have been a production of documents. It was -- just a second. It was OCC interrogatory 2-008.

Q. So it's the attachment?

A. Yes, that's correct.

Q. Okay. Great. Thank you. So just to be clear, the 150,000 megawatt hours would not be used for the 2015 or 2016 cases for incentive purposes; is that correct?

A. The company is foregoing -- is foregoing any

shared savings incentive in 2015 and '16, yes, should the stipulation be approved.

Q. Now, if you'll turn to page 4 of your supplemental testimony, on lines 15 and 16 you state that the signatory parties were very knowledgeable about regulatory matters and represented by experienced competent counsel; do you see that?

A. Yes.

Q. And just to be clear, the only counsel present during negotiations were counsel for Duke and PUCO Staff; is that correct?

A. Again, in the meetings I was in, that's correct.

Q. On line 20 of page 4 you state that the terms of the stipulation confirmed that concessions were made by the signatory parties. Are those the -- are the concessions the things you discussed on page 3 of your testimony?

A. Those are the terms. Concessions I think would be what parties moved away from their original positions.

Q. So what concessions were there in the negotiations?

A. I can speak to the ones that I'm aware of.

Q. Okay.

A. Duke Energy felt that under the approved stipulation that it was operating under, that for 2013 and '14 it was entitled to approximately $24-1/2 million of shared savings as well as in '15 and '16 further shared savings. During the same period of time, AEP Ohio is going to earn over -- or earn $120 million, I believe. And so Duke Energy felt like it made a significant financial concession. That's the one that I can speak most strongly to.

Q. Do you know what other concessions there might have been made?

A. Again, I'd have to -- I can't speak for the Commission Staff or the rest of the party. I can tell you the ones that I'm aware of. And that was the big one, the financials that I was involved in.

Q. And beginning on line 21 you state that the parties recognize the risks attended to protracted litigation. What risks are you referring to there?

A. Well, whenever you litigate something, there's going to be costs. There's a whole phone full of lawyers today who are all getting paid. So every time you have a litigated proceeding, you're paying a lot of people, lawyers in particular, a lot of money for their legal counsel. So that adds additional costs as well as just the fact that when you have

litigation, there's always the chance that it could go 100 percent your way or 100 percent the other party's way or somewhere in-between.

Q. And that's true with the litigation associated with the stipulation; is that correct?

A. I think our hopes was to try and reduce the litigation.

Q. And beginning on line 22 and going over to page 5 on line 1, you state that the risks are possible given the issues for which the PUCO accepted rehearing. What issues are you discussing there?

A. The fact that OPAE, I believe, had some concerns about lost revenues, I believe was their concern. I would have to go back and check OPAE's concerns, but it obviously was opposing some of the revenue requirement that the company was entitled to. And, obviously, from the Commission Staff's perspective, the company felt its application for rehearing firmly established its -- the appropriateness of it earning shared savings using banked incentives -- or banked savings to determine its level of achievement. Those are the two that come to my mind most. But, again, I haven't reviewed OPAE's application for hearing for a long time. So I'd have to before I could give you a specific answer.

Q. And next on page 5, line 1, you mentioned the potential cumulative shared savings incentive that company could have recovered through the term of its current --

A. I'm sorry, where are you, Mr. Etter? I'm looking at page 5, line 1.

Q. Page 5, line 1.

A. Yeah.

Q. It says, and the potential cumulative shared savings incentive that the company couldn't recover through the term of its current EEPDR portfolio?

A. Yes.

Q. Okay.

A. I see it.

Q. That level of shared savings included using banked savings, correct, to determine the level of shared savings?

A. That's correct, as was consistent with how the portfolio was approved.

Q. Do you know how much the shared savings would have been or would be without banked savings for 2013?

A. For 2013, no, because I haven't done that analysis.

Q. And have you done the analysis for 2014?

A. In terms of what the exact shared savings

would be?

Q. Yeah, without banked savings.

A. If the company was not permitted to use banked savings, as it was originally approved when the portfolio was designed and put into place, then for 2013 and 2014 if it had to use -- if it could not use banked savings, it would have fell short of any achievement level and its incentive would have been zero. But, again, the Commission order approving in the stipulation, which OCC and OPAE and others were a party to, it allowed banked savings.

Q. Isn't there a risk of protracted litigation when a stipulation isn't signed by all the parties to a case?

A. Perhaps.

Q. And isn't there a risk of protracted litigation when none of the intervenors in a case are included in negotiations over a stipulation?

A. Perhaps.

Q. Now, on page 5 of your testimony, you discuss whether the stipulation violates any important regulatory principle. And that's what's called the second prong of the three-prong test; isn't that correct?

A. That's correct.

Q. And on line 10 you state that the stipulation resolves the issues on rehearing in this meeting; correct?

A. Correct.

Q. But doesn't the stipulation only address the issues raised on rehearing by Duke?

A. It does -- it does address the issues brought forth by Duke, that's correct. I don't see it saying it resolves all issues, it says the issues.

Q. So you mentioned earlier that you haven't read OPAE's application for rehearing in sometime; is that correct?

A. Yeah, over six months.

Q. Okay. So the issue regarding a cap on shared savings that OPAE raised in its application for rehearing, is that addressed in the stipulation?

A. Indirectly, yes.

Q. And how is that?

A. Because the firm dollar value was established for 2013 and '14, which is what a cap does is it creates a firm value.

Q. But OPAE was not included in the negotiations over the stipulation; correct?

A. Again, in the meetings I was involved in, I do not believe OPAE was represented.

Q. So you really don't know whether this satisfies the --

A. In my opinion, again, without going back and reading all of the details of OPAE, if their issue was request of a cap, then, yes, this does resolve their issues. It creates a firm maximum on the amount of shared savings that the company will earn.

Q. But that maximum was only negotiated between Duke and the PUCO Staff; is that correct?

A. The 19.75 was developed, as I said, to my knowledge, I can't speak for the Staff or if Duke had reached out, but I know that OPAE was forwarded the 19.75 with an opportunity to weigh in on what their thoughts of the stipulation before it was filed was.

Q. Do you know whether OPAE was given the opportunity or any of the other intervenors were given the opportunity to lower the amount that Duke would collect through the stipulation?

A. I don't know. Again, I wasn't -- all I know is the stipulation was shared with them for input.

Q. Now, on page 16 -- excuse me -- line 16 of page 5, you state that the stipulation resolves any disagreement regarding Duke's ability to collect shared savings from customers with a final two years of EEPDR portfolio. What do you base that opinion on?

A. Because the company is foregoing the ability to earn shared savings in 2015 and '16 which are the last two years of its EEPDR portfolio.

Q. Could some of the intervenors in the case disagree with Duke's ability to collect shared savings from customers?

A. In what proceeding and what matter? Can you be more specific, Mr. Etter?

Q. Well, for example, for 2013.

A. Yes. That was the original position in 14-457 was people disagreed. Obviously, those parties were not part to the original stipulation that established the mechanism that was approved by the Commission, but, yes, there were parties that objected to it.

Q. And could parties still object to Duke collecting shared savings for 2013 and 2014 under the stipulation?

A. Again, I would say that parties that haven't signed the stipulation can do what they choose. To the exception of the fact if you were party -- for example, OCC was a member of OCEA, so they couldn't really object to the '13, '14, or '15 shared savings because they supported banked savings in that stipulation.

Q. But OPAE --

MS. BOJKO: This is Kim Bojko from OMA. I'm going to object to the witness's testimony with regard to other parties and other people's positions, for the record.

THE WITNESS: Just stating my opinion, Ms. Bojko.

BY MR. ETTER:

Q. But parties including OCC could disagree as to the amount of shared savings that Duke will recover through the stipulation for 2013 and 2014?

A. Not if it was consistent with the methodology that was approved as part of the stipulation. I would believe they would be bound by that methodology that was included and has been used -- and has been used consistently throughout their company's right of proceedings.

Q. And which methodology -- or which stipulation are you referring to when you talk about methodologies?

A. It was a stipulation that was supported in case 11-4393 that established the shared savings mechanism.

Q. But that methodology, was it used to develop the $19.75 million in the stipulation; correct?

A. That's correct.

Q. In this case?

A. That's correct. The number's actually less than what would have been determined, as I said, about $5 million.

Q. That's a matter of opinion, I believe.

A. Is that a question, Mr. Etter?

Q. No. No.

A. Okay.

Q. Do you know whether the term "banked savings" is included in the 11-4393 stipulation?

A. I believe it's in -- I believe it is in OCEA's discussion of the final methodology that was agreed to in the stipulation, yes, and was again mentioned in 11 -- or in 13-431 that approved the portfolio again.

Q. But the interpretation of the stipulation in 11-4393 and its reference to OC Commons has been litigated in other cases; is that correct?

A. Not to my knowledge. It was -- I mean -- it was OC -- to my knowledge, OCC didn't actually object to the use of banked savings in the 14-457 case because they were a member of OCA. To my recollection, we had meetings with Ms. Kern and a Schneider or Schneiderman, and they -- in looking at

1 that stipulation.
2 Q. But there has been litigation in -- not in
3 this case but in other cases regarding the
4 interpretation of the stipulation in 11-4393; is that
5 correct?
6 A. Not to my knowledge. If you could give me a
7 docket to refresh my memory, that would be helpful,
8 but not to my knowledge.
9 Q. Now, beginning on line 20 of page 5, you
10 discuss your staff's audit in the 15-534 case?
11 A. Yes.
12 Q. And on line 22 you state that the audit does
13 not deprive any party of its due process rights; do
14 you see that?
15 A. Yes.
16 Q. What do you mean by "due process"?
17 A. Meaning that when the audit findings come
18 out, they will have -- parties will have the right to
19 be part of that proceeding when the audit results are
20 out.
21 Q. And you're not an attorney, so you're not
22 rendering a legal opinion of the due process; is that
23 correct?
24 A. That's correct. That's my personal opinion.
25 Q. Now, on page 6, line 4, you state that

resolving issues via a compromised settlement will enable an effective use of resources in this and other regulatory proceedings; do you see that?

A. Yes.

Q. And what do you mean by that?

A. I believe, as I said before, that there was significant agreement and disagreement in 14-457, the same disagreement as voiced by some of the comments, I believe, in the 15-534 case regarding shared savings. Those -- we'd have to resolve it in the litigation in 14-457 and then 15-534. This seemed to resolve the -- those matters that were so controversial in a consolidated manner and, hence, have less time to have to go through a lengthy litigation process.

Q. But they were resolved only as far as the PUCO staff and Duke are concerned; is that correct?

A. Well, unless the Commission approves the stipulation. And, again, I can't -- I don't know what the other opinion -- parties' opinions are of the stipulation. I haven't seen any testimony yet.

Q. And the PUCO had already issued its order in the 14-457 case; correct?

A. And then granted the application for a hearing, correct.

Q. Do you know whether the PUCO ordinarily

conducts a hearing in a case after it has already issued an order in the case?

A. I don't know. I'm not an attorney. I don't know if that's regular process or not. Again, I believe they would have had to issue another order in 14-457 anyway since the audit was open.

Q. And do you know whether the PUCO held a hearing on the application before it issued the finding and order?

A. No, it did not.

Q. And now PUCO is holding a hearing on the stipulation; correct?

A. I believe so.

Q. So would that hearing have been held absent the stipulation?

A. I don't know.

Q. On page 6, line 10, you discuss the stipulations, alleged benefits to consumers and the public interest. And you state there that if one were to assume that Duke prevailed on its legal challenges regarding the shared savings mechanism, then customers would pay significantly more than they would under the stipulation; is that correct?

A. That's correct.

Q. And what legal challenges are you referring

to there?

A. Again, the fact that there's a pending application for rehearing.

Q. It's not a certainty, though, that Duke would prevail on its application for rehearing at the PUCO; is that correct?

A. That's why I said if one were to assume.

Q. And if the PUCO denies Duke's application for rehearing, is it a certainty that Duke would file a court challenge?

A. I can't speak for the company or its legal position.

Q. Do you think that Duke would prevail -- is it a certainty that Duke would prevail in any court challenge to denial of the application for rehearing?

A. I think Duke has a very strong case, but I can't tell you for certain, I'm not the judge making the decision.

Q. I know you're not an attorney, but do you know what Duke would have to show regarding a PUCO decision in order to win a court challenge?

A. Again, it's a legal opinion. I'm sorry, I can't -- I shouldn't be the one answering that question.

Q. So let's make the opposite assumption that

you've made in your testimony. Assume that the PUCO denies Duke's application for rehearing and Duke loses the court challenge of the PUCO's decision, would customers pay more or less for the shared savings incentive than they would through the stipulation?

A. I can't tell you that for sure, Mr. Etter, because 2016 isn't done yet.

Q. But for 2013 and 2014?

A. I believe customers would likely pay less.

Q. And your stated public interest benefit or benefits to consumers and public interests in your testimony, that's solely based on the assumption that Duke would prevail in its legal challenges related to the shared savings; is that correct?

A. No. I think we would be taking up a whole lot of time from the Commission Staff and their legal team and judges and attorneys to litigate it. And so by not litigating it and having it be a large contentious proceeding, I think that there would be savings for the taxpayers of Ohio.

Q. Might not those benefits be offset by litigation that may result from approval of this stipulation?

A. It could. I'm not aware of any pending litigation on it. As I said, I don't know parties'

positions on the stipulation to date.

Q. Now, on page 6, line 21, you state that the stipulation represents a timely and efficient resolution of all the issues in this proceeding. And by this proceeding, you mean the 14-457 case; is that correct?

A. That's correct.

Q. And when you say all the issues, you mean just the issues raised or discussed by Duke and the PUCO staff; correct?

A. I believe it was -- it was a broader term, that it was the issues that were found on -- were found in the Commission's original findings and order.

Q. Now, on line 23 of page 6 you state that there was thoughtful deliberation and discussions by the parties. And just to be clear, the parties you're referring to there are Duke and the PUCO staff; correct?

A. Again, to my knowledge, those are the parties I know of, but there could have been discussions with the Staff and other parties as well as other people from Duke and other parties.

Q. But as far as you know, no other -- no intervenors were part of the discussions that led up to the stipulation that was filed -- or that was

agreed upon on December 30th of 2015; is that correct?

A. There were no other parties in the meetings that I was in, that's correct.

Q. That may be all I have. Can we take about a 10-minute break and I'll look our notes and see if we have any other questions.

A. Okay.

Q. Is that good?

MS. WATTS: Yeah, thanks. Is there anybody else that's going to have questions for Mr. Duff?

MS. BOJKO: Yes, OMA has questions.

MR. BOEHM: This is Dave Boehm. I have like one or two questions. That's all.

MS. WATTS: Okay. Kim, do you --

MS. MOONEY: This is Colleen Mooney. I have one or two follow-up questions too.

MS. WATTS: Kim, do you know how long you plan -- you know roughly how long.

MR. BOEHM: Kim?

MS. BOJKO: I'm looking. Sorry. I would say a half hour.

MS. WATTS: Okay. Thank you. Terry, do you want to go off the record now?

MR. ETTER: Yes, let's go off the record.

(Recess taken from 2:35 p.m. until 2:45 p.m.)

BY MR. ETTER:

Q. Let's go back on the record then. Mr. Duff, just to, you know, follow up on a couple of things here. You mentioned the December 29th and December 30th meetings. Do you have in front of you Duke's response to OCC interrogatory 02-010?

A. 02-010. Yes.

Q. Okay. And the response there -- I know you didn't write this response, it was written by the legal, but it mentions a meeting on December 28, 2015, between Duke Energy and Commission Staff and that was an in-person meeting. You were not a part of that meeting; is that correct?

A. I was not a part of that meeting.

Q. Do you know who organized the meetings?

A. No, I don't -- I don't know for sure.

Q. Was it someone from Duke or someone from Staff? Were you aware?

A. The meeting on the 28th in particular, I don't know.

Q. Now, if you'll turn back one page to OCC interrogatory 02-009.

A. Yes.

Q. And you were responsible for the response to this interrogatory; is that correct?

A. Yes.

Q. And you mentioned there that the company has not revised its energy efficiency portfolio savings amounts for any year including any banked savings from programs that preceded SB 221. In determining shared savings, has Duke included any programs that preceded SB 221?

A. The shared savings benefit has not been calculated off of any programs because -- that predated SB 221 because shared savings has only been in effect since 2012.

MS. BOJKO: Can I have the question and answer read back, please?

(The reporter read the last question and answer.)

MS. BOJKO: Thank you.

BY MR. ETTER:

Q. So despite that, Duke has not used any banked savings from the programs that preceded SB 221?

A. Duke Energy has not used banked incentive savings for the calculation of shared savings that predated SB 221.

Q. Has Duke ever used banked savings from programs that predated SB 221?

A. Banked savings for what purposes? I guess I'm struggling with your question.

Q. Yeah. For the shared savings incentive.

A. The shared savings has only been in effect since 2012 and Duke has not used banked savings prior to SB 221.

Q. Thank you. Now, if you turn to page 3, line 20 of your supplemental testimony. You state --

A. Just a second.

Q. Okay. Sorry.

A. Page 3, line 20.

Q. Yeah.

A. Yes.

Q. You used the term there "incentive bank"?

A. Right.

Q. Does Duke also have a compliance bank?

A. Yes.

Q. And what's the difference between the incentive bank and the compliance bank?

A. The incentive bank are things that have been used for incentive purposes. The compliance bank are things that have been used for compliance with the SB 221 mandates.

Q. And do they overlap? Are some megawatt hours used for both incentive and compliance?

A. Well, since the triggering event -- since the triggering event for the ability to earn shared

savings is to be in compliance with SB 221, I would say the answer to your question is yes.

Q. And I think one last question, let's go back to the issue of the meetings on December 28th, 29th, and 30th. Do you know why those meetings were only between Duke and the PUCO staff?

A. I cannot answer that question. I don't know why.

Q. I think that's all that OCC has. Thank you very much, Mr. Duff.

A. Thank you Mr. Etter.

MR. ETTER: Who's next?

MR. BOEHM: Colleen, I think. We talked, Terry, and Kim -- this is Dave Boehm. Kim and I and Colleen have spoken and I think we agreed that Colleen was going next and I was going after that, both of us with just a few questions, and then Kim would follow. Colleen?

EXAMINATION

BY MS. MOONEY:

Q. Yes, I do have just a few follow-up questions. Mr. Duff?

A. I'd ready when you are.

Q. Yes. This is Colleen Mooney. I'm the attorney for Ohio Partners for Affordable Energy.

A. Good to hear you again, Colleen.

Q. I have a question about the line of questioning that Mr. Etter had about the application for rehearing and OPAE also had filed an application for rehearing from the finding and order about the banked savings being used for the incentive. And my question is given that OPAE also filed an application for rehearing, was there any need for the Staff and Duke to also include OPAE in their discussions given the importance of the application for rehearing that Duke filed?

A. That sounds like a legal question regarding the importance. I don't think I can answer that question.

Q. Well, I don't mean it to be a legal question. You did emphasize the application for rehearing that Duke had filed --

A. Yes.

Q. -- as one of the reasons why you entered into negotiations with the Staff. And because OPAE also filed an application for rehearing, do you know if OPAE was invited to any of the settlement negotiations that led to this stipulation?

A. As I said, I don't -- I don't know whether the company or the Commission Staff talked to OPAE. I

was not in any meetings in which OPAE was present. I do know that OPAE was provided a copy of the agreement before it was -- before it was signed and filed with the Commission. So I would have assumed that that was an invitation for comment or question.

Q. Was OPAE treated any differently than any other party to this case including OMA, OEG --

A. I can't.

Q. -- as far as giving the stipulation?

A. I can't tell you -- I can only tell you about the meetings I was at, Ms. Mooney.

Q. Well, you said that OPAE saw the stipulation before it was filed. My question is: Do you know, was OPAE treated any differently from any other party that was not a signatory party to the stipulation?

A. I don't know how OPAE was treated in general. I do believe that the communication regarding a draft of the stipulation was provided to all the parties, not just OPAE, and I believe it was at the same time, but I can't say for sure.

Q. Okay. That was my question. Thank you.

A. Yes.

MS. WATTS: Were you finished, Colleen?

MS. MOONEY: Oh, yes, that's all. Thanks.

EXAMINATION

BY MR. BOEHM:

Q. Okay. Just a few, Mr. Duff. How are you?

A. Great. How are you doing today, Mr. Boehm?

Q. Fine. Thank you. This wasn't -- I want to make sure I understand this and something was asked by Mr. Etter recently that kind of put my previous understanding in doubt. You told Mr. Etter, I believe, and correct me if I'm misstating this, Mr. Duff, that there essentially were -- in Duke's accounts there are -- they keep two separate banks, if you will, of energy savings. And one bank is for incentives to meet -- I'm sorry -- one bank is to meet the mandate. We'll just call that the mandatory bank.

A. We call it the compliance bank, but, yeah, if you want to go with mandatory, we can go with mandatory.

Q. Compliance is fine.

A. Okay.

Q. That's the compliance bank. And then there's a second bank which is to hopefully obtain incentives; is that right?

A. That's correct.

Q. And we'll call that the incentive bank, all right?

A. That's correct.

Q. Now, in any given year when you -- I'm sorry. In any given year when you get these energy efficiency savings, do you -- how do you decide which bank to put it in?

A. So if the -- if the incentive -- if the impact is used for compliance, it is -- it is pretty much any impact you've gotten per the terms of SB 221 because under the shared savings incentive, A, the baseline was different and we couldn't count work in title impacts and, B, we had to overachieve. You potentially would have to retire more bank for incentive. That's why you essentially have two different books, if you will, to use your term.

Q. You would potentially have to retire --

A. More. So in order to earn incentive, say, at the 15 percent level, you would have to retire -- you would have to retire bank.

Q. Right?

A. Which is over compliance. For compliance, you only have to get to the mandated level. So there's a difference in the books. Additionally, Duke agreed that if it calculated shared savings off of an impact, it wouldn't be eligible for incentive bank, as was the case in 2012. So while the compliance bank

grew quite a bit in 2012, the incentive bank did not grow at all because the company recognized shared savings on those impacts.

Q. I'm afraid I still don't understand, Mr. Duff. Is the designation as between the compliance and incentive bank isn't solely retrospective then. It isn't solely, okay, we use this for this and we this for that. There has to be a decision in advance that you're going to put them in this bank for some reason; right?

A. Right. So every year after the year is done, we update our SB 221 compliance bank --

Q. Yeah.

A. -- as well as when we do our rider filings, we would update our incentive bank. The point is that there are times when your compliance bank may go up far more than your incentive bank or your compliance bank may go down and your incentive bank would go down even more.

Q. But that's all according to the decision that you folks make according to what you're going to put in each bank; right?

A. The banks are what the banks are. They're impacts.

Q. My understanding -- let's do it this way

Mr. Duff, if we can. Let's assume in any particular year that you get 200,000 credits or energy efficiency credits or whatever you want?

A. Yes.

Q. And in that particular year you need 100,000 of that bank to reach compliance; right?

A. Yes.

Q. You got that?

A. Yep.

Q. Okay. And so you use that 100,000 for compliance and the other 100,000 you use to get it in the center; right?

A. Well, so -- so for the compliance, to your example, 100,000 would be used for compliance, 100,000 would go into compliance bank because you only needed 100 and you got 200. For -- let's use the incentive structure. In order to earn our highest incentives level, we had to overachieve by 13 -- or 15 percent.

Q. Right.

A. So let's say that would mean that 115,000 of those 200 would be required for incentive. So --

Q. Right.

A. So you would only increase your incentive bank by 85. But if you recognize shared savings off of the full 200, then you wouldn't increase your

incentive bank at all.

Q. But now what you're calling a bank is actually hours that you are using on an ongoing basis to get -- to either meet your compliance or get incentives. Once you use these, those aren't in the bank anymore; right?

A. That's correct.

Q. Okay. In any particular year, could the sum of the compliance bank -- the sum of the compliance bank plus the incentive bank equal a number of larger than your energy savings in that year?

A. No. No. Because you're -- essentially your incentive bank or the amount of incentive bank you use would always be greater than or equal to the amount of compliance bank that you would use.

Q. Okay. I'm not sure -- let me try another example. Your banks are zero, both your banks are zero; okay?

A. Uh-huh.

Q. A particular year, let's go it again, you have 200,000 units of energy efficiency, okay?

A. Yep.

Q. And so in that particular year the mandate requires 100,000?

A. Yep.

Q. And, of course, to get the 13 percent, you need 15,000 more; right?

A. That's right.

Q. Okay. How much would be in each bank?

A. So if you're starting bank with zero in both, your compliance bank would have 100, your incentive bank could have either 85 or zero depending on whether or not you recognize the avoided cost benefit associated with that full 200,000.

Q. Uh-huh. Okay. Let me skip this for a minute and go to a more direct question. I'm looking at the stipulation.

A. Yes.

Q. And I think it's page 5.

A. Yes, I'm there.

Q. I'm sorry. It's on page 3 where you describe the terms of the stipulation.

A. On page -- are you talking about my testimony or the --

Q. Your testimony. I'm sorry.

A. Okay. Page 3 of my testimony.

Q. Sorry?

A. I'm on page 3 of my testimony.

Q. Your supplemental testimony, page 3 small I's, you say beginning in 2017 the company will not

seek to establish a shared savings mechanism that would entitle it to earn an incentive if the company used banked savings to meet the annual benchmark requirements. Okay?

A. Yes.

Q. All right. Now, my question is this -- and I want to understand this provision -- if beginning in 2017 you have enough actual current EE credits or hours or megawatts to meet your compliance --

A. Yes.

Q. -- but you don't have enough to get an incentive without going into a bank, can you go into the bank and get an incentive and still earn an incentive in that year under the terms of the proposal?

A. Dave, your question is -- I'm sorry, it doesn't make sense, because in order to -- because in order to earn incentive, you have to be in compliance.

Q. Right.

A. So if you didn't have to use bank to be in compliance, you would be eligible for incentive.

Q. No, not unless you overachieve?

A. Well, you just have to be slight -- unless you hit it dead-on, you're right. But if -- as long as you're at 100 percent compliance, you're eligible

for incentive. It's a lower percentage, but it's you're eligible for incentive.

Q. Well, let's assume you hit it dead-on, as improbable as you may think that is, let's just use that to test our understanding of this thing. You hit it dead-on, okay?

A. Yep.

Q. And as far as your current energy efficiency credits, that's it. Can you go into a bank in that year and earn an incentive by adding another 15 percent?

A. I can't answer your question, Dave, because --

Q. Why?

A. Because the mechanism for '17 hasn't been established. All we're saying --

Q. You issue it by year?

A. No. This is what it says is that we will not seek to establish a shared savings mechanism that would entitle us to earn an incentive if the company uses banked savings to meet its annual benchmark requirement. It doesn't give the specifics of the mechanism.

Q. We will not seek to establish a shared savings mechanism that will entitle, da-da-da-da-da.

1 Will you seek to establish a shared savings mechanism
2 that will allow you if in that year you hit the
3 mandate right on the nose that will allow you to use
4 your bank to go over it?
5 A. I can't tell you. All I can tell you is what
6 this prohibits. We haven't met with parties, we
7 haven't established a 2017 mechanism. What I can tell
8 you is any proposal that we would make regarding a
9 shared savings mechanism with the big caveat if
10 there's any changes in regulation, law, or order
11 regarding shared savings, then we will not seek to
12 establish a mechanism that would let us earn a shared
13 savings incentive if we have to use compliance bank to
14 meet the annual benchmarks.
15 Q. Okay. Am I correct then, given your answer,
16 that what the company is saying here is there isn't
17 any mechanism for 2017 --
18 A. That's --
19 Q. -- but the only thing we're stipulating here
20 is we won't do what you say in that sentence; right?
21 A. That's correct.
22 Q. But other than that, this thing doesn't
23 attempt to establish any mechanism or rule or
24 procedure for after 2017?
25 A. That's correct.

Q. Okay. I think that's all I've got. Thank you, Tim.

A. Yeah. Thanks, Dave.

EXAMINATION

BY MS. BOJKO:

Q. Hello, Mr. Duff.

A. Hello, Ms. Bojko.

Q. This is Kim Bojko representing OMA. I understand -- I'm going to follow up on some questions and try not to repeat things that have already been asked of you. As far as the meeting that Duke had with Staff -- I have a few more questions regarding those that you discussed earlier today -- you said for the December 29th and 30th meetings that you were on the phone; do you recall that?

A. Yes, I did.

Q. Okay. What was your understanding of where your attorneys -- where Duke attorneys were located at that time?

A. I believe that one was in Cincinnati and one was in Columbus, but I don't know for sure. Again, when you're on the phone, it's hard to tell. I couldn't tell you where you are.

Q. I understand. And you did not have any Duke attorneys with you; is that correct?

A. That's correct.

Q. And I know you stated that you did not have any other meetings, but, to your knowledge, did Duke have any settlement meetings with any other parties and Staff?

A. To my knowledge, no, but, again, I don't know. Particularly on the Staff, I have no idea.

Q. And, to your knowledge, how many meetings did Duke have with Staff?

A. Based off of my knowledge there was the meeting on the 28th, there was the meeting I was present in on the 29th, and the meeting I was present in on the 30th. But I believe there were meetings prior. I just don't know when they would have been.

Q. So you do believe that there were additional meetings other than the three that you just listed?

A. Yes.

Q. And for those meetings, we talked a lot today about the three that you just identified. The other meetings, prior to the December 28th meeting, do you know who was present at those meetings?

A. I do not.

Q. To your knowledge, it was only Duke and Staff; is that correct?

A. Again, I don't know.

Q. And you personally were not involved in any settlement meeting where there was a party other than Staff present; is that correct?

A. As I said, to my knowledge, on the 29th and 30th, which were the two meetings I was present in, I do not believe there was anybody from -- other than the company representatives and Staff representatives.

Q. You referenced the 14-457 finding and order in this case with Mr. Etter; do you recall that?

A. Yes.

Q. Okay. And you referenced paragraphs 3 and 12; is that correct?

A. Yeah, in response to his question.

Q. Okay. So could we look at paragraph 3?

A. Sure.

Q. If you look at paragraph 3 where you reference the word "entitled" --

A. Yes.

Q. -- it speaks that Duke is entitled to a percentage of shared savings if Duke exceeds mandatory annual benchmark; is that right? That's the entitlement that you're referencing?

A. Yes. Then it further says that Duke is permitted to banked energy savings that are not used towards the benchmark or shared savings in a given

year.

Q. Correct. I just want to make sure that --

A. Yes.

Q. -- the entitle that you're referencing is with regard to a percentage of shared savings depending on how far Duke surpasses the benchmark?

A. That's correct.

Q. And then while we're here, you had mentioned that you believe the shared savings incentive was set to expire at the end of 2006 at the end of the portfolio, but isn't it true that the incentive mechanism did expire at the end of 2015?

A. I said the portfolio expires at the end of '16. The associated mechanism again was up for review last year at the end of 2015, you're correct.

Q. Okay. And the order specifically says that also in paragraph 3 at the bottom after the sentence you just read?

A. Yeah. I believe -- yep. The review was in case 14-1580.

Q. Okay. And, to your understanding, that incentive mechanism did, in fact, expire at the end of 2015 because there's been no either agreement of the parties or ruling from the Commission regarding an incentive for 2016; is that right?

A. The case is still pending, correct. Yes.

Q. And just as background, you are the only witness representing Duke in this case; is that correct?

A. To my knowledge. Well, not -- the original application, I believe there were a number of witnesses. But with respect to supporting the stipulation, I am the company's witness, yes.

Q. Fair enough. Thank you for that clarification. And that's you are the Duke representative that -- the only Duke representative that is supporting the stipulation with regard to the three prongs of the test; is that fair?

A. Being the only witness, I believe that's a correct characterization.

Q. You mentioned previously concessions. Do you remember discussing concessions with Mr. Etter.

A. Yeah. I believe he was referencing -- it was in -- let's see, my supplemental testimony, I believe -- let's see. It's on line 20 of page 4, yes.

Q. And as you mentioned, one of the concessions you believe that Duke made was that they believed for 2013 and '14 that there -- they should have received or would receive $24.5 million; is that correct?

A. Approximately, yes.

Q. Okay. And that's for both years; is that correct?

A. Yes, that's the total.

Q. Okay. And I believe in response to a different question, but I want to make sure I understand your $24.5 million, you believe or it's your understanding that as it relates to 2013 and '14 that if with the Commission's finding and order and if the Commission denies any rehearing requests, Duke's shared savings incentive that it would receive would be zero dollars; is that correct?

A. As I said, the finding and order was less than 100 percent clear on that. But I believe that that is definitely a perceived risk.

Q. And that relates to -- I believe you stated that if Duke cannot receive or cannot use banked savings to meet its incentive in 2013 and '14, then the shared savings incentive number would be zero; is that right?

A. That's correct. Because that's how the stipulation as approved was structured and how the portfolio was designed.

Q. Okay. In response to some of Mr. -- or one of Mr. Etter's questions you mentioned AEP shared savings. My question for you is are you aware of how

Duke's program costs compare to AEP's program costs?

A. Not off of the top of my head, no.

Q. And did I understand your testimony correctly, did you respond to Mr. Etter that you don't believe that there has been a case that litigated the interpretation of the stipulation in case 11-4393?

A. Other than the kind of re-adoption of it in 13-431, no, I don't believe so.

Q. There was a lot of discussion about the Commission's order in this -- in 14-457. Do you know whether a Commission order is considered the law until the Commission issues a new order on the same issues or its decision is overturned by the Supreme Court?

A. I'm not an attorney, so I can't -- I don't want to venture a guess on that one, Ms. Bojko.

Q. Yes, and, please, I'm asking you from your regulatory experience, not as an attorney.

A. Like I said, I don't believe that the 14-457 was deemed as final because it was still open due to the audit.

Q. And you believe that even though the Commission authorized you to file tariffs in the case; is that correct?

A. That's correct. And particularly because they granted our order -- our request for rehearing, I

1 definitely don't believe it's final.
2 Q. Do you know whether the Commission regularly
3 grants rehearings to afford itself additional time?
4 A. I don't know what the -- what the standard
5 process is. I know that that means that they believe
6 that the application must have had something that made
7 them want to consider it again.
8 Q. Or it could just mean that they needed
9 additional time to review and consider the
10 application?
11 A. Exactly. Obviously, the application brought
12 up what they viewed to be legitimate concerns that
13 they needed to consider further before rendering a
14 final order.
15 Q. Well, sir, do you know whether the Commission
16 has time restrictions on how long it has in order to
17 respond to rehearing requests or otherwise those
18 rehearings are deemed denied by operation of law?
19 A. I do not know that.
20 Q. Do you know when the stipulation in 11-4393
21 that you referenced today was filed?
22 A. I want to say it was in late 2011, early
23 2012. The order was August 15, 2012.
24 Q. So subject to check, you would think it's
25 reasonable that the stipulation may have been filed

November 18, 2011?

A. That sounds about right. So subject to check, yes.

Q. And isn't it true that banked savings was not discussed in that stipulation?

A. That is correct. It was not explicitly discussed, but in the determination of the stipulation and the supporting testimony, OCEA explicitly talks about the company's ability to use banked savings which it put forth in its initial application that was modified by the stipulation.

Q. And didn't the stipulation and testimony also describe how another utility operates its programs?

A. I'd have to look at the stipulation again. I can't tell you for sure. I don't know why we would have another company in our -- I think it discussed the similarities in the structure of the shared savings, but I think that's about it.

Q. And it's your understanding that the amount of incentive level for 2012, '13, '14, and '15 is capped each year at 13 percent; is that correct?

A. The shared savings -- the maximum shared savings percentage that can be earned is 13 percent, that's correct, after tax.

Q. Each year; right?

A. Each year, that's correct.

Q. And so as I understand your explanation here this morning, Duke banks anything over the amount needed to achieve the maximum incentive level for the incentive level caps, so to speak, and then uses those banked savings to achieve incentive in future years; is that correct?

A. No, that's not correct. If Duke recognizes shared savings on the avoided costs associated with the impacts in a year, it does not add those to the incentive bank.

Q. No, but if Duke -- if Duke uses banked savings to achieve -- strike that. Let me try again.

If Duke uses its shared savings incentive to reach the 13 percent cap, any incentive -- or any shared savings obtained in that year over the 13 percent cap would then be put in the bank to be able to be used in future years?

A. No, that's incorrect. The shared savings is a percentage that's applied to the net benefit achieved in a year. So if the company far exceeded the 115 percent level of achievement but recognized the 13 percent shared savings on the entire net benefit, then anything even above the 115 would also not go into the incentive bank. The add to the

1 incentive bank would be zero.
2 Q. Then why don't you explain what would go into
3 the incentive bank? What is a scenario where you
4 would put something in the incentive bank?
5 A. The incentive bank was actually established
6 at the end of the 12-1857 case.
7 Q. Okay. How do you populate that incentive
8 bank?
9 A. That incentive bank was any impact that was
10 not used for the purposes of determining incentive
11 during the course of the Save-a-Watt program which ran
12 from 2009 to 2011.
13 Q. And you do not add to -- that incentive bank
14 has not been increased since the 12-1857 case?
15 A. No, it has not. It's been decreasing in
16 fact. The only year that it actually could have
17 increased would have been 2012, but, again, because we
18 recognized the full net benefit of those impacts that
19 were achieved, there was no addition to the incentive
20 bank. This has been the frustrating thing is that
21 we've actually done this on a very up and up
22 transparent manner. And people just have not -- I
23 know it's complex, but it's very transparent and
24 clear. There's no double counting. And that was
25 spelled out in the 11-4393 testimony and again in the

13-431 testimony.

Q. We appreciate your opinion. Thank you.

And just so -- I think you mentioned this, but just so we're clear, you had to use banked savings to meet the incentive levels that you are stating equal the $24.5 million in 2013 and '14; is that correct?

A. Yes. The company in its filings in both 14-457 and 15-534 showed reductions to the incentive bank.

Q. If you give me one minute. I'd like to turn to your testimony now, sir.

A. What page?

Q. If you look at page 2, I'm talking about your supplemental draft.

A. Yeah.

Q. And page 2, line 5, you reference Commission Staff having significant experience and understanding. Are you referencing anybody in particular or are you just saying Staff in general?

A. The Staff in general. Other than the company, they're the ones that are most familiar with our filings.

Q. And you're talking about the filings in 14-457?

A. Just general energy efficiency filings as well as it goes on to say that it also is the procedural history associated with the existing portfolio plan, recovery, and incentive mechanism.

Q. And on line 19 of the same page 2, you talk about the procedural schedule when the stipulation was signed in 15-534. And you are aware that there was a procedural schedule established and parties filed comment and replied comments per that procedural schedule; is that correct?

A. I knew there were comments and reply comments filed. I was not aware it was part of a procedural schedule.

Q. So your referencing is a hearing? Is that what you're referencing with regard to a procedural schedule?

A. A hearing testimony, again, to my knowledge, no testimony was filed by any parties, no hearing was scheduled. So I didn't believe a procedural schedule had been issued regarding 15-534. But subject to check, if you believe one has, I'll be glad to take your word for it.

Q. And, sir, is it your understanding that every commission proceeding has to have testimony filed in a hearing?

A. I don't think that's a requirement, no. But I'm not an attorney to say that that's a legal requirement or not.

Q. And in your regulatory experience with Duke, have you seen commission decisions issued after the filing of comments and reply comments?

A. Yeah. In 14-457, there was no procedural schedule or hearing or testimony other than the company's initial application.

Q. Okay. And in 14-457, comments and reply comments were filed and then the Commission made a decision; is that correct?

A. That's my recollection, yes.

Q. Turn to page 3 of your testimony.

A. I'm there.

Q. Line 11, this is the section we were talking about, beginning in 2017 the company will not seek to establish a shared savings mechanism that would entitle them to earn an incentive --

A. Yep.

Q. -- the company uses banked savings to meet the benchmark?

A. Yeah.

Q. And you say, however, Duke is permitted to seek a shared savings incentive consistent with any

change in law. Could the change in law occur prior to 2017?

A. It could -- I think it could occur anytime after this stipulation was signed.

Q. And would your answer be the same with regard to a regulation referenced in line 11?

A. Yes.

Q. And would your answer be the same with regard to an order referenced in line 11?

A. Yes.

Q. So if the Commission found in Duke's favor with regard to the rehearing in 14-457, if the Commission issued an order saying the company could use banked savings, then in 2017 the company would seek to establish a shared savings mechanism to earn an incentive on banked savings; is that correct?

A. Well, we -- I think it would say that we would be permitted to put forward a shared savings mechanism, not that it would be approved. We just -- we can't -- the commitment is that we will not establish a new mechanism. And so if there was an order that said this is how things are going to work, we would seek to follow that guidance. Again, the mechanism is kind of a hypothetical state right now since we haven't established anything for 2017 yet.

Q. And the stipulation that allows for $19.75 million as a shared savings incentive based on banked savings, that would be -- if the Commission approved this stipulation, that would be an order that granted Duke's establishment of a shared savings mechanism based on banked savings; is that correct?

A. I don't -- I don't agree with that interpretation.

Q. And on line 12, Roman Numeral IV, you state that Staff expects the company's application. And are you stating here that Staff is basically denying OPAE's app for rehearing?

A. Well, I don't think Staff is the one that accepts or denies application for rehearing, so that's not what I'm saying.

Q. So you're not saying that Staff agrees or disagrees with any of the positions put forth in this case except for company's application regarding recovery at program costs and lost distribution revenues?

A. That's exactly correct. And, again, I just want to spell out, that's my understanding of the stipulation. The Staff would be better to answer what that term means because they made the commitment.

Q. And just so the record is clear, I was

referring to your testimony, not the --

A. Exactly, and this was my summary of it. So that's what I'm saying is I gave you my interpretation, but I'm saying the Staff would be better served to interpret a commitment that was made on their behalf.

Q. It's also -- you referred to the Staff's audit being opened and I think you referred to paragraphs 13 in 14-457; is that correct?

A. Can you give me a line, please?

Q. This is in the order, the 14-457 finding and order?

A. Page? Again, I'm just trying to find out where you are, Ms. Bojko.

Q. I'm sorry. On page 2, line 14 of your testimony and throughout this morning you keep saying that the audit is still open?

A. That's correct.

Q. I just want to make sure I understand your reference. Are you referring to 14-457 paragraph 13 of an audit being open?

A. Yes. The Commission Staff's audit is currently performing an audit of the costs included. So, yes, it is consistent with paragraph 13 of the order and finding that referenced an audit.

Q. And so it's your understanding or belief that this Commission order in 14-457 is not a valid order until the Staff completes its audit?

A. I don't think it's final until the -- in terms of what the results are until the audit was concluded. That was my reading of it. That being said, obviously, given the application for a rehearing was granted, I don't think the order is considered final.

Q. But isn't the language in 13 talking about true up with regard to mathematical calculations, not substantive decisions regarding whether banked savings may or may not be used?

A. I don't -- again, I think the order of a rehearing opened that up that question. The audit is talking about -- and this is what they're saying is, therefore, our approval of the rider rate is subject to our ultimate consideration of the audit and any necessary true-ups. So that's why I don't feel it was final associated with the audit. And, again, with respect -- as I said before, when you read paragraph 3, it clearly states the Commission approved banked savings. And then if you read paragraph 12, it seems like they're wavering on their approval of banked savings which was, again, part of the reason why we

asked for rehearing because it was kind of contradictory. But, no, I don't believe, particularly given the application for rehearing being granted by the Commission, that anything has been formally resolved with banked savings.

Q. You reference paragraph 3. Doesn't paragraph 3 say banked savings towards the benchmark, not the incentive?

A. No. No. It's Duke is permitted to bank energy savings that are -- this whole thing is about the cost recovery mechanism. It's not about benchmarks.

Q. No. It says Duke is permitted to bank energy savings that are not used towards the benchmark.

A. Or the shared savings, exactly. You're exactly correct. And that's the difference between incentive bank and compliance bank is that it would be used for not only compliance, but, again, there's that "or," which is the additional that would be needed to earn the incentive. The whole paragraph is about the cost of recovery.

Q. Well, and just so we're clear, the preceding sentence says Duke is entitled to a percentage of shared savings depending on how far it surpasses the benchmark?

A. And then it says further Duke is permitted to bank --

Q. Now it's talking about the -- let me finish my question, please.

A. Okay.

Q. In that sentence it's talking about a benchmark; right?

A. No. It's talking about -- the whole paragraph talks about a shared savings incentive.

Q. So it's your position that the Commission in one paragraph said you could bank -- use banked savings for incentive calculations and then in another paragraph says that you -- specifically says the use of banked savings to calculate incentive is improper?

A. And that's where there's uncertainty. Because, again, if you're talking about determining incentive level or if you're talking about calculating incentive. The company has never proposed nor has it ever calculated an incentive on any impact associated with banking. It has used banking to determine its achievement levels, which is what was permitted to do and what is referenced in paragraph 3 of the finding and order.

Q. So you believe determining incentive level is different than calculating an incentive level?

A. Definitely.

Q. All right. If you give me one minute, I may be done.

You referenced 12-1857; do you recall that?

A. Yes.

Q. That case is not referenced in the stipulation; is that accurate?

A. It's not referenced in the stipulation that's brought up in my testimony, that's correct.

Q. Did you say "and is not brought up in your testimony"?

A. Correct.

Q. And I know you've discussed it here today too, but I don't believe that 11-4393 was referenced in your testimony either; is that correct?

A. Subject to check, it was not -- I don't believe it was.

Q. And is it fair to say that it wasn't referenced in the stipulation either?

A. I don't believe it was either, no.

Q. I don't have any further questions. Thank you, Mr. Duff, for your time.

A. Thank you, Ms. Bojko.

MR. ETTER: Does anybody else have any questions?

Elizabeth, I think I have two based on something that came up during Ms. Bojko's.

MS. WATTS: I don't think redirect happens in a deposition, Terry.

MR. ETTER: Well, if I could, this might save us a little discovery.

MS. WATTS: Go ahead and send discovery, if you like.

MR. ETTER: You won't let me ask these two questions?

MS. WATTS: No.

MR. ETTER: They are about a comment made about meetings before December 28th.

MS. WATTS: Terry, go ahead and send discovery, if you like.

MR. ETTER: All right. You'll get it this afternoon.

MS. WATTS: Okay.

MR. ETTER: Okay. I guess we can go off the record.

(Whereupon, the deposition was concluded at 3:46 p.m. Signature was reserved.)

A M E N D M E N T P A G E

PLEASE DO NOT WRITE WITHIN THE TRANSCRIPT ITSELF. LIST ANY CORRECTIONS BY PAGE AND LINE NUMBER ON THIS SHEET. IF ADDITIONAL PAGES ARE NECESSARY, PLEASE FURNISH SAME AND ATTACH THEM TO THIS AMENDMENT PAGE. YOU ARE ALLOWED 30 DAYS WITHIN WHICH TO COMPLETE THE SIGNATURE PAGE AND AMENDMENT PAGE. AFTER COMPLETING THESE PAGES, PLEASE RETURN THEM TO CAIN & CRANE COURT REPORTERS, POST OFFICE BOX 23833, CHARLOTTE, NC 28227.

IN THE MATTER OF THE APPLICATION OF DUKE ENERGY OHIO, INC., ETC.

DEPOSITION OF: TIMOTHY J. DUFF

I, Timothy J. Duff, certify that I have read my deposition, which was taken on March 1, 2016, and request that the following changes, if any, be made:

Page Line Change

Reason for change

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Timothy J. Duff / /

1 S I G N A T U R E P A G E

2 IN THE MATTER OF THE APPLICATION OF DUKE ENERGY OHIO,
3 INC., ETC.
4 DEPOSITION OF: TIMOTHY J. DUFF
5
6 I, Timothy J. Duff, do hereby certify that I
7 have read the foregoing deposition and that the
8 foregoing transcript is a true and correct record of
9 my testimony, subject to the attached changes, if any,
10 on the amendment page.
11
12
13 Timothy J. Duff
14
15 Subscribed and sworn to before me this day
16 of 2016.
17
18
19
20 Notary Public
21
22 My Commission expires:
23
24
25

STATE OF NORTH CAROLINA)
) CERTIFICATE OF TRANSCRIPT
COUNTY OF UNION)

I, Christine A. Taylor, RPR, and Notary Public in and for the aforesaid county and state, do hereby certify that the foregoing 99 pages are an accurate transcript of the deposition of Timothy J. Duff, which was reported by me, on behalf of Ohio Consumers' Counsel, in machine shorthand and transcribed by computer-aided transcription.

The deponent and parties did not waive the signing of the deposition by the deponent.

I further certify that I am not financially interested in the outcome of this action, a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel.

This 2nd day of March, 2016.

Christine A. Taylor
Registered Professional Reporter
Notary Public 19960530077

Corrections to March 1, 2016 Deposition of Timothy J Duff
PUCO Case Nos. 14-457-EL-RDR and 15-534-EL-RDR

Page 38	Line 1	Should read "OCEA" instead of "OCA"
Page 50	Line 14	Delete 2nd was in "was filed was."
Page 52	Line 16	Should read "the Company's proceedings." instead of "their company's right of proceedings."
Page 53	Line 18	Should read "OCEA comments" instead of "OC Commons"
Page 53	Line 23	Should read "OCEA" instead of "OCA"
Page 53	Line 25	Should read "Mr. Schneider or" instead of "Schneider or"
Page 64	Line 23	Should read "I'm ready" instead of "I'd ready"
Page 68	Line 10&11	Should read "count mercantile" instead of "count work in title"
Page 70	Line 21	Should read "those 200,000" instead of "those 200"
Page 74	Line 1	Should read "percentage, but" instead of "percentage, but it's"
Page 79	Line 10	Should read "2016" instead of "2006"

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

Summary: Transcript Deposition Transcript, With Errata Sheet, of Timothy J. Duff Filed on Behalf of the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Etter, Terry L.