

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Duke Energy Ohio, Inc. for an Adjustment	)	Case No. 17-2318-GA-RDR
to Rider AMRP Rates.	)	
	)	
In the Matter of the Application of Duke	)	Case No. 17-2319-GA-ATA
Energy Ohio, Inc. for Tariff Approval	)	

**SUPPLEMENTAL TESTIMONY  
OF  
JAMES D. WILLIAMS**

**On Behalf of**  
**The Office of the Ohio Consumers' Counsel**  
*65 East State Street, 7<sup>th</sup> Floor*  
*Columbus, Ohio 43215-4213*

**April 10, 2018**

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
I. INTRODUCTION .....	1
II. PURPOSE OF MY TESTIMONY .....	2
III. EVALUATION OF THE STIPULATION REGARDING THE THREE- PRONG TEST USED BY THE COMMISSION FOR EVALUATING SETTLEMENTS.....	4
IV. CONCLUSION.....	9

1    **I.       INTRODUCTION**

2

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

4    ***A1.***    My name is James D. Williams. My business address is 65 East State Street, 7<sup>th</sup>  
5       Floor, Columbus, Ohio 43215-4213. I am employed by the Office of the Ohio  
6       Consumers' Counsel ("OCC") as a Senior Utility Consumer Policy Analyst.

7

8    ***Q2.    IS YOUR EDUCATION AND PROFESSIONAL EXPERIENCE INCLUDED***  
9       ***IN THE DIRECT TESTIMONY THAT WAS FILED ON YOUR BEHALF IN***  
10      ***THIS PROCEEDING ON APRIL 5, 2018?***

11   ***A2.***    Yes.

12

13   ***Q3.    HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY OR TESTIFIED***  
14      ***BEFORE THE COMMISSION?***

15   ***A3.***    Yes. The cases in which I have submitted testimony and/or have testified before  
16       the PUCO are included as an attachment to my Direct Testimony filed on April 5,  
17       2018.

**II. PURPOSE OF MY TESTIMONY**

***Q4. WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY IN THIS PROCEEDING?***

**A4.** The purpose of my supplemental testimony is to address certain issues related to the Stipulation and Recommendation (“Settlement”) reached between the PUCO Staff and Duke Energy Ohio (“Duke”) that was filed in this proceeding on April 6, 2018. Specifically, I provide my opinion on whether the Settlement meets the three-prong test used by the PUCO in evaluating stipulations.

***Q5. PLEASE DESCRIBE THE SETTLEMENT THAT WAS REACHED BETWEEN THE PUCO STAFF AND DUKE.***

**A5.** This Settlement, if approved by the PUCO, would enable Duke to impose unjust and unreasonable charges on customer bills through its Accelerated Mains Replacement Program (“AMRP”) rider. This is an example of single issue ratemaking, which occurs outside a rate case, where the utility can cherry pick what costs it seeks to collect, while ignoring other offsetting revenues.

In this single issue ratemaking request, the utility has not sufficiently lowered its costs to reflect the full impact of the reduced corporate taxes that it has enjoyed since January 1, 2018 when the U.S. Congress passed

1 the Tax Cut and Job Act of 2017 (“TCJA”). In addition, the tariff language  
2 recommended for adoption via the Settlement leaves doubt and  
3 uncertainty if Duke’s customers will receive the full benefits of the TCJA  
4 or refunds associated with over collections through the rider.  
5 Furthermore, the revenue requirement for the AMRP includes a gross-up  
6 factor that allows Duke to collect costs from its customers that OCC  
7 contends should not be included in the rates. This means that the rates  
8 Duke would collect from customers under this Settlement are not just and  
9 reasonable and should be rejected by the PUCO.

10  
11 Additionally, the Settlement between the PUCO Staff and Duke includes  
12 no requirement for Duke to file a distribution rate case even though the  
13 replacement of bare steel and cast iron mains (which was the purpose of  
14 the AMRP rider) has been completed since 2015. Consequently, the  
15 PUCO should require a base rate case, which provides the opportunity for  
16 a more holistic review of all Duke’s revenues and expenses<sup>1</sup> to  
17 demonstrate that customers are being billed just and reasonable charges  
18 for natural gas distribution services.

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<sup>1</sup> Ohio Revised Code 4909.159(A).

1       The PUCO has held that periodic review of a regulated distribution  
2       company is good regulatory policy regarding similar capital intensive  
3       programs like the AMRP rider.<sup>2</sup>

4  
5   ***Q6. PLEASE SUMMARIZE YOUR RECOMMENDATIONS***

6   ***A6.*** I recommend that the PUCO reject the Settlement because it violates all  
7       three prongs of the test that the PUCO has used in evaluating stipulations.

8  
9   **III. EVALUATION OF THE STIPULATION REGARDING THE THREE-**  
10   **PRONG TEST USED BY THE COMMISSION FOR EVALUATING**  
11   **SETTLEMENTS**

12  
13   ***Q7. WHAT CRITERIA DOES THE COMMISSION USUALLY RELY UPON FOR***  
14   ***CONSIDERING WHETHER TO ADOPT A STIPULATION?***

15   ***A7.*** It is my understanding that the PUCO will adopt a stipulation only if it meets all  
16       of the three criteria delineated below. The PUCO must analyze the Stipulation  
17       and decide the following:

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<sup>2</sup> See *In re the Application of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company*, Case No. 14-1297-EL-SSO, Eighth Entry on Rehearing (Aug. 16, 2017) at 90-91. (The PUCO agreed with Staff's testimony stating, "it is a prudent regulatory practice to gain a holistic understanding of the regulated distribution company on a regular basis").

- 1           1.       Is the settlement a product of serious bargaining among capable,  
2                       knowledgeable parties representing diverse interests?<sup>3</sup>  
3           2.       Does the settlement, as a package, benefit customers and the public  
4                       interest?  
5           3.       Does the settlement package violate any important regulatory  
6                       principle or practice?<sup>4</sup>

7

8   ***Q8.   DOES THE STIPULATION FILED IN THIS PROCEEDING MEET ALL***  
9   ***THREE CRITERIA?***

10 ***A8.***   No. The proposed Stipulation does not meet the requirements of three-prong test,  
11       as I elaborate below.

12

13 ***Q9.   IS THE STIPULATION A PRODUCT OF SERIOUS BARGAINING***  
14 ***AMONG CAPABLE, KNOWLEDGEABLE PARTIES***  
15 ***REPRESENTING DIVERSE INTERESTS?***

16 ***A9.***   No. The settlement is not a product of serious bargaining between capable  
17       and knowledgeable parties. Although two of the three parties in the case

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<sup>3</sup> See *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company, Individually and, if Their Proposed Merger Is Approved, as a Merged Company (collectively, AEP Ohio) for an Increase in Electric Distribution Rates*, Case No. 11-351-EL-AIR, et al., Opinion and Order (December 14, 2011) at 9. The PUCO recently stated that the first prong does not incorporate a diversity requirement. *In the Matter of the Application Seeking Approval of Ohio Power Company's Proposal to Enter into an Affiliate Power Purchase Agreement for Inclusion in the Power Purchase Agreement Rider*, Case No. 14-1693-EL-RDR, et al., Opinion and Order (March 31, 2016) at 52. Nevertheless, the PUCO did consider the diversity of the signatory parties in that case. See *id.*

<sup>4</sup> *Consumers' Counsel v. Pub. Util. Comm'n.* (1992), 64 Ohio St.3d 123, 126.

1        were able to agree, those two parties (PUCO Staff and Duke) did not  
2        appear to seriously bargain? The PUCO Staff and Duke in this proceeding  
3        seemed to have similar interests, not diverse interests.

4  
5        When diverse interests are present there can be much greater weight  
6        accorded to the agreement that is reached, and the PUCO can be assured  
7        that there was serious bargaining occurring. Here however, there was no  
8        representative of any customer group, including residential customers.  
9        The PUCO should find the settlement fails the first prong of the test.

10  
11    ***Q10. DOES THE SETTLEMENT BENEFIT CUSTOMERS AND THE***  
12    ***PUBLIC INTEREST?***

13    ***A10.*** No. Under the Settlement, Duke will be able to charge customers rates  
14        through the AMRP rider do not reflect the full benefits of the TCJA,  
15        which customers should be receiving since January 1, 2018. And there is  
16        no certainty that customers will ever receive the full benefits of the TCJA.  
17        It is in the public interest for Duke and/ or the PUCO to enable consumers  
18        to receive the full benefits of Duke's reduced corporate income tax  
19        obligation promptly and fully that resulted from the TCJA.

20  
21        In addition, Duke spent hundreds of millions of dollars on the replacement  
22        of bare steel and cast iron mains that is being collected directly from  
23        customers through the AMRP rider. Since Duke has completed the



1 pipeline replacements, this investment should be included in rate base as  
2 part of a distribution rate case. Duke's customers, who pay for the AMRP  
3 (and other riders) on Duke's bills, should not be denied the opportunity for  
4 a full examination of Duke's financial records through a rate case review.  
5 Duke's total revenues and expenses should be fully examined in the  
6 context of a base rate case for Duke, with Duke being required to  
7 demonstrate that it is charging just and reasonable rates for natural gas  
8 service.

9  
10 ***Q11. DOES THE SETTLEMENT VIOLATE IMPORTANT REGULATORY***  
11 ***PRINCIPLES OR PRACTICES?***

12 ***A11.*** Yes. The Settlement contradicts important ratemaking principles in R. C.  
13 4905.22 because the charges have not been shown to be just and  
14 reasonable.<sup>5</sup>

15  
16 ***Q12. PLEASE EXPLAIN.***

17 ***A12.*** R.C. 4905.22 requires the PUCO to establish just and reasonable rates.  
18 The AMRP rider results in unjust and unreasonable rates that are not  
19 reflective of the reduced corporate taxes that Duke is benefiting from.  
20 Corporate tax reductions that are reflected in the TCJA that became  
21 effective January 1, 2018 are not being fully and promptly passed on to

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<sup>5</sup> I am not an attorney, but my opinion is based on years of experience with ratemaking in Ohio.

1 consumers through the AMRP rider. Nor does the Settlement provide any  
2 assurance that the tax savings customers should now be receiving will  
3 actually be passed on to them. The Settlement supports a revenue  
4 requirement calculation that includes an inappropriate gross-up factor. The  
5 gross up factor includes uncollectible account expenses that should not  
6 exist in a rider like the AMRP. In addition, other Ohio Gas utilities such as  
7 East Ohio Gas Company and Columbia Gas of Ohio do not include any  
8 factors other than federal income tax in their gross-up of the pre-tax rate of  
9 return.

10  
11 Finally, Duke spent hundreds of millions of dollars in mains replacements  
12 that is has, and is continuing to seek collection from customers through the  
13 AMRP rider as a single issue. Now that this major investment in  
14 infrastructure is completed, Duke should be required by the PUCO to file  
15 a distribution base rate case. Until a rate case is filed, there is not an  
16 opportunity for Duke to demonstrate through a full examination of its  
17 financial records (including all revenues and expenses) that customers are  
18 paying just and reasonable rates for natural gas service. The Settlement  
19 should include a provision establishing a date certain for the filing of a  
20 new distribution base rate case - - and the inclusion of the AMRP  
21 investment in rate base. But it does not. In rejecting the Settlement, the  
22 PUCO should require Duke to file a natural gas distribution base rate case  
23 by the end of 2018. Duke's last distribution base rate case was almost six

1        years ago.<sup>6</sup> Given the completion of the AMRP and other programs being  
2        paid for separately by customers through riders, the time is right for Duke  
3        to demonstrate that customers are being charged just and reasonable rates  
4        for service.

5

6        **IV.    CONCLUSION**

7

8        ***Q13.   DOES THIS CONCLUDE YOUR TESTIMONY?***

9        ***A13.***    Yes. However, I reserve the right to incorporate new information that may  
10       subsequently become available through outstanding discovery or otherwise.

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<sup>6</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Gas Rates.*, Case No. 12-1685-GA-AIR, Application (July 9, 2012).

**CERTIFICATE OF SERVICE**

It is hereby certified that a true copy of the foregoing Supplemental *Testimony of James D. Williams on Behalf of the Office of the Ohio Consumers' Counsel* has been served via electronic transmission this 10<sup>th</sup> day of April 2018.

/s/ Zachary E. Woltz  
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Summary: Testimony Supplemental Testimony of James D. Williams on Behalf of The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Woltz, Zachary E Mr.