

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :  
Commission's Investigation:  
of the Financial Impact of: Case No. 18-0047-AU-COI  
the Tax Cuts and Jobs Act :  
of 2017 on Regulated Ohio :  
Utility Companies. :

- - -

PROCEEDINGS

before Megan Addison and Gregory Price, Hearing  
Examiners, at the Public Utilities Commission of  
Ohio, 180 East Broad Street, Room 11-C, Columbus,  
Ohio, called at 10:00 a.m. on Tuesday, July 10, 2018.

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ARMSTRONG & OKEY, INC.  
222 East Town Street, Second Floor  
Columbus, Ohio 43215-5201  
(614) 224-9481 - (800) 223-9481

- - -

APPEARANCES:

Bruce E. Weston, Ohio Consumers' Counsel  
By Mr. Bryce McKenney  
Ms. Amy Botschner-O'Brien  
Mr. Christopher Healey  
Mr. Zachary Woltz  
Assistant Consumers' Counsel  
65 East State Street, 7th Floor  
Columbus, Ohio 43215-3485

On behalf of the Residential Consumers.

Ohio Partners for Affordable Energy  
By Ms. Colleen L. Mooney  
231 West Lima Street  
Findlay, Ohio 45840

On behalf of the Ohio Partners for  
Affordable Energy.

Bricker & Eckler, LLP  
By Mr. Dane Stinson  
100 South Third Street  
Columbus, Ohio 43215-4291

On behalf of the Northeast Ohio Public  
Energy Council.

McNees, Wallace & Nurick LLC  
By Mr. Frank P. Darr  
21 East State Street, 17th Floor  
Columbus, Ohio 43215

On behalf of the Industrial Energy Users  
of Ohio.

Vorys, Sater, Seymour & Pease, LLP  
Ms. Gretchen Petrucci  
52 East Gay Street  
Columbus, Ohio 43215

On behalf of Ohio Cable  
Telecommunications Association.

APPEARANCES CONT.

Mike DeWine, Ohio Attorney General  
By Mr. William L. Wright, Section Chief  
By Ms. Jodi J. Bair  
Senior Assistant Attorney General  
Public Utilities Section  
30 East Broad Street, 16th Floor  
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

Carpenter Lipps & Leland LLP  
By Ms. Kimberly W. Bojko  
Mr. Brian W. Dressel  
280 North High Street, Suite 1300  
Columbus, Ohio 43215

On behalf of the Ohio Manufacturers'  
Association Energy Group.

Carpenter Lipps & Leland LLP  
By Ms. Angela Whitfield  
280 North High Street, Suite 1300  
Columbus, Ohio 43215

On behalf of The Kroger Company.

Mr. Thomas R. Hays  
8355 Island Lane  
Maineville, Ohio 45039

On behalf of the Northwest Ohio  
Aggregation Coalition and the Individual  
Communities.

American Electric Power Service Corporation  
By Mr. Steven T. Nourse  
Ms. Christen M. Blend  
One Riverside Plaza  
Columbus, Ohio 43215

On behalf of the Ohio Power Company.

APPEARANCES CONT.

Boehm, Kurtz & Lowry  
By Mr. Michael L. Kurtz  
36 East Seventh Street, Suite 1510  
Cincinnati, Ohio 45202

On behalf of the Ohio Energy Group.

Duke Energy  
By Ms. Jeanne Kingery  
Mr. Rocco D'Ascenzo  
155 East Broad Street, 20th Floor  
Columbus, Ohio 43215

On behalf of Duke Energy Ohio.

Dayton Power and Light Company  
By Mr. Michael Schuler  
1065 Woodman Drive  
Dayton, Ohio 45432

On behalf of Dayton Power and Light  
Company.

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INDEX

- - -

Witness	Page
William A. Allen	
Direct Examination by Mr. Nourse	12
Cross-Examination by Mr. Kurtz	13
Cross-Examination by Ms. Bojko	21
Cross-Examination by Mr. McKenney	24
Cross-Examination by Mr. Darr	30
Cross-Examination by Ms. Petrucci	34
Cross-Examination by Ms. Bair	38
William Don Wathen, Jr.	
Direct Examination by Ms. Kingery	43
Cross-Examination by Mr. Kurtz	48
Cross-Examination by Ms. Bojko	55
Cross-Examination by Mr. McKenney	63
Cross-Examination by Mr. Darr	69
Cross-Examination by Mr. Hays	72
Cross-Examination by Ms. Petrucci	73
Cross-Examination by Ms. Bair	75
Cross-Examination by Examiner Addison	79
Patricia D. Kravtin	
Direct Examination by Ms. Petrucci	81
Cross-Examination by Ms. Bair	83
Lane Kollen	
Direct Examination by Mr. Kurtz	92
Cross-Examination by Ms. Petrucci	93
Joseph G. Bowser	
Direct Examination by Mr. Darr	95
Cross-Examination by Ms. Petrucci	98
Cross-Examination by Ms. Blend	99
Cross-Examination by Ms. Kingery	101
William Ross Willis	
Direct Examination by Ms. O'Brien	103
Cross-Examination by Ms. Petrucci	112
Cross-Examination by Ms. Blend	114
Cross-Examination by Ms. Kingery	123
Cross-Examination by Ms. Bair	130

1	Witness	Page	
2	Jonathan J. Borer		
	Direct Examination by Ms. Bair	133	
3	Cross-Examination by Ms. Petrucci	134	
	Cross-Examination by Mr. McKenney	136	
4	Cross-Examination by Mr. Nourse	138	
	Cross-Examination by Ms. Kingery	148	
5			
6	- - -		
7	AEP Ohio Exhibit	Identified	Admitted
8	1 Direct Testimony of	12	42
	William A. Allen		
9			
10	Duke Energy Ohio Exhibit	Identified	Admitted
	1 Direct Testimony of	42	80
11	William Don Wathen, Jr.		
12	OCTA Exhibit	Identified	Admitted
13	1 Direct Testimony of	81	91
	Patricia D. Kravtin		
14			
15	OEG Exhibit	Identified	Admitted
	1 Direct Testimony of	93	94
16	Lane Kollen		
17	IEU Exhibit	Identified	Admitted
18	1 Direct Testimony of	95	102
	Joseph G. Bowser		
19			
20	OCC Exhibit	Identified	Admitted
	1 Direct Testimony of	103	132
21	William Ross Willis		
22	Staff Exhibit	Identified	Admitted
23	1 Direct Testimony of	133	152
	Jonathan J. Borer		
24			
25	- - -		

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
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Tuesday Morning Session,  
July 10, 2018.

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EXAMINER ADDISON: Let's go ahead and go on the record. The Public Utilities Commission of Ohio calls for hearing at this time and place Case No. 18-47-AU-COI, In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies.

My name is Megan Addison, and later during the hearing this morning, Gregory Price will be joining me. We are the Attorney Examiners assigned to preside over this hearing. We will go ahead and begin by taking appearances.

MR. NOURSE: Thank you, your Honor. On behalf of Ohio Power Company, Steven T. Nourse, Christen M. Blend, One Riverside Plaza, Columbus, Ohio, 43215.

MR. KURTZ: Your Honor, Mike Kurtz for the Ohio Energy Group.

MS. WHITFIELD: Your Honor, on behalf of The Kroger Company, Angela Paul Whitfield with the law firm Carpenter, Lipps and Leland, 280 North High Street, Suite 1300, Columbus, Ohio.

1 MS. BOJKO: Thank you, your Honor, on  
2 behalf of Ohio Manufacturers Association Energy  
3 Group, Kimberly W. Bojko, Brian W. Dressel,  
4 Carpenter, Lipps and Leland, 280 North High Street,  
5 Suite 1300, Columbus, Ohio, 43215.

6 MS. KINGERY: Thank you, your Honor. On  
7 behalf of Duke Energy Ohio, Rocco D'Ascenzo, and I am  
8 Jeanne Kingery, 139 East Fourth Street, Cincinnati,  
9 Ohio.

10 MS. BAIR: Thank you, your Honor, on  
11 behalf of the Staff of the Public Utilities  
12 Commission, Mike DeWine, Attorney General, Jodi Bair,  
13 Assistant Attorney General, 30 East Broad Street,  
14 Columbus, Ohio, 43215.

15 MR. MCKENNEY: Your Honor, on behalf of  
16 the Ohio Consumers' Counsel, Bryce McKenney, Amy  
17 Botschner-O'Brien, Christopher Healey and Zack Woltz,  
18 65 East State Street, Columbus, Ohio, 43215. Thank  
19 you.

20 MR. DARR: On behalf of the Industrial  
21 Energy Users of Ohio, the law firm of McNees, Wallace  
22 and Nurick, 21 East State Street, appearing today  
23 Frank Darr.

24 MR. HAYS: Good morning, your Honor,  
25 Thomas R. Hays, 8355 Island Lane, Maineville, Ohio

1 appearing on behalf of the Northwest Aggregation  
2 Coalition and its 15 member communities. Would you  
3 like me to list them, your Honor?

4 EXAMINER ADDISON: That won't be  
5 necessary but thank you, though.

6 MS. PETRUCCI: Good morning, your Honor,  
7 on behalf of the Ohio Cable Telecommunications  
8 Association, Gretchen L. Petrucci with the law firm  
9 of Vorys, Sater, Seymour and Pease, 52 East Gay  
10 Street, Columbus, Ohio.

11 EXAMINER ADDISON: Anyone else?

12 MR. SCHULER: Mike Schuler on behalf of  
13 Dayton Power and Light Company.

14 MS. MOONEY: Colleen Mooney on behalf of  
15 the Ohio Partners for Affordable Energy.

16 MR. STINSON: On behalf of the Northeast  
17 Ohio Public Energy Council, Dane Stinson with Bricker  
18 and Eckler, 100 South Third Street, Columbus, Ohio,  
19 43215.

20 EXAMINER ADDISON: Is that everyone?  
21 Thank you very much.

22 On May 24th, 2018, the Attorney-Examiner  
23 issued an entry directing the parties interested in  
24 participating in today's hearing to file a motion to  
25 intervene in this Commission Ordered investigation if

1 they haven't already done so.

2 We have several pending Motions to  
 3 Intervene that were filed in this docket between  
 4 February 8th, 2018 through June 15th, 2018 by the  
 5 following parties: Duke Energy Ohio, Incorporated,  
 6 Ohio Cable Telecommunications Association, The Kroger  
 7 Company, the Ohio Manufacturers Association Energy  
 8 Group, Ohio Energy Group, the Northwest Ohio  
 9 Aggregation Coalition and its 15 member communities,  
 10 Industrial Energy Users of Ohio, Interstate Gas  
 11 Supply, Incorporated, Northeast Ohio Public Energy  
 12 Council, Ohio Partners for Affordable Energy and the  
 13 Ohio Consumers' Counsel.

14 No Memoranda Contra Motions to Intervene  
 15 have been filed. The Attorney Examiners have  
 16 reviewed the Motion of Memoranda in Support and find  
 17 that these motions should be granted.

18 Mr. Nourse?

19 MR. NOURSE: Thank you, your Honor. Are  
 20 you ready for our witness?

21 EXAMINER ADDISON: No, if you'd....

22 MR. NOURSE: Oh, you want me to renew my  
 23 motion again, okay. On behalf of Ohio Power Company,  
 24 I'll Move to Intervene, although I would note I think  
 25 we're already a party by the Commission's entries

1 entered in this case.

2 EXAMINER ADDISON: Thank you very much,  
3 Mr. Nourse. To the extent that intervention is  
4 required, are there any objections to Mr. Nourse's  
5 motion?

6 Thank you, the motion will be granted.

7 MR. SCHULER: Your Honor, if I may, on  
8 behalf of Dayton Power and Light, we are under the  
9 same impression, that we are already a party to this  
10 action. We do not intend to do any cross-examination  
11 today, but would Move to Intervene.

12 EXAMINER ADDISON: I apologize for that.  
13 Any objections?

14 Hearing none, your motion will be  
15 granted. Thank you very much.

16 MR. SCHULER: Thank you.

17 EXAMINER ADDISON: Do we have anything  
18 else to discuss before we begin with the examination  
19 of witnesses this morning?

20 Okay, Mr. Nourse, you may call your first  
21 witness.

22 MR. NOURSE: Thank you, your Honor. Ohio  
23 Power calls William A. Allen to the stand.

24 (Witness placed under oath.)

25 EXAMINER ADDISON: Mr. Allen, if you

1 wouldn't mind turning on your microphone. Thank you.

2 - - -

3 WILLIAM A. ALLEN

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

6 DIRECT EXAMINATION

7 By Mr. Nourse:

8 Q. Good morning, Mr. Allen. Could you state  
9 and spell your name for the record.

10 A. It's William A. Allen, A-L-L-E-N.

11 Q. By whom are you employed and in what  
12 capacity?

13 A. I'm employed by American Electric Power  
14 Service Corporation as Managing Director of  
15 Regulatory Case Management.

16 Q. Did you prepare and cause to be filed  
17 written Direct Testimony in this proceeding?

18 A. I did.

19 MR. NOURSE: And your Honor, I believe I  
20 already distributed copies of the testimony that was  
21 filed on June 15th, 2018. I'd like to mark that  
22 testimony as AEP Ohio Exhibit No. 1.

23 EXAMINER ADDISON: It will be so marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MR. NOURSE: Thank you.

1           Q.     (By Mr. Nourse) Mr. Allen, do you have  
2 AEP Ohio Exhibit No. 1?

3           A.     I do.

4           Q.     Is this your testimony you prepared or  
5 was under your direction?

6           A.     Yes.

7           Q.     Do you have any changes, additions or  
8 corrections you'd like to make to the written  
9 testimony?

10          A.     I do not.

11          Q.     If I were to ask you the same questions  
12 today under oath, would your answers be the same?

13          A.     Yes, they would.

14                 MR. NOURSE: Thank you, your Honor. I  
15 move for the admission of AEP Ohio Exhibit No. 1  
16 subject to cross-examination, your Honor.

17                 EXAMINER ADDISON: Thank you. We will  
18 reserve ruling on that motion following  
19 cross-examination.

20                 Mr. Kurtz, any questions?

21                 MR. KURTZ: I do, your Honor. Thank you.

22                         - - -

23                         CROSS-EXAMINATION

24                 By Mr. Kurtz:

25                 Q.     Good morning, Mr. Allen.

1           A.     Good morning.

2           Q.     Is it correct that AEP has booked as a  
3 regulatory liability 457 million of distribution  
4 related excess ADIT as of 12-31-2017?

5           A.     The value that I have prior to my  
6 testimony is as of May 31st, 2018 and the value  
7 would -- it rounds to 456 million.

8           Q.     Okay. Of that, 171 is unprotected?

9           A.     If you look to Page 5 of my testimony on  
10 line 15, as of May, that value is 178 million. The  
11 estimate was updated during the first quarter of  
12 2018.

13          Q.     Okay. Now, it is correct that you are  
14 booking as a regulatory liability the federal tax  
15 expense savings pursuant to the Commission's Order;  
16 is that correct?

17          A.     The company is booking a deferral  
18 consistent with the Commission's Order.

19          Q.     Would you agree that there's more than  
20 one reasonable way to calculate federal income tax  
21 savings that you are calculating and booking as a  
22 regulatory liability?

23          A.     Yes, I think there are multiple ways to  
24 do it. And as I describe in my testimony, the  
25 necessity of a deferral and any refund should be

1 based upon the actual earnings of the company.

2 Q. Okay. How much is the regulatory  
3 liability for the FIT tax savings right now?

4 A. I don't have the value in front of me. I  
5 think it's somewhere in the \$20 million range.

6 Q. As of end of June?

7 A. It would be through the end of May. We  
8 haven't closed out our June books yet.

9 Q. So about 3 million a month, a little bit  
10 more, about almost 4 million a month?

11 A. That would be the math.

12 Q. Okay. Now, the excess ADIT that we  
13 talked about earlier, the protected is being  
14 amortized pursuant to the ARAM methodology dictated  
15 by federal law; is that correct?

16 A. That's correct. And the company is  
17 deferring that amortization currently consistent with  
18 the Commission's Order.

19 Q. So you're amortizing it and then  
20 deferring it back for subsequent Commission decision?

21 A. Yes.

22 Q. Okay. Do you know the balance of the  
23 ARAM or the amortization of the protected excess ADIT  
24 balance as of May?

25 A. I do not recall that value.

1           Q.    Okay.  But it would be the combination of  
2 all three, the beginning balance of the excess ADIT  
3 protected and unprotected, the FIT deferral and then  
4 the amortization of the protected as being deferred,  
5 those would be the three sort of buckets of deferrals  
6 for this case?

7           A.    One clarification.  The deferrals that  
8 were booked at the end of December, those for the  
9 excess ADIT, both protected and unprotected, those  
10 were booked consistent with GAAP accounting.  It  
11 didn't require a Commission Order.

12                   The subsequent deferrals that did occur  
13 during the 2018 are a result of the company's  
14 complying with the Commission's Order subject to the  
15 final adjudication of this proceeding as well as the  
16 proceeding that's been open for AEP Ohio which is  
17 18-1007.

18           Q.    Would you agree that there's more than  
19 one reasonable way to break apart the excess ADIT and  
20 to protected and unprotected or at least there may be  
21 a difference of opinion of how that should be done?

22           A.    No, that's not my understanding.  My  
23 understanding is that there are specific tax code  
24 requirements of which elements of the excess ADIT are  
25 protected and unprotected.  And if we were to deviate

1 from those IRS regulations, we could have a  
2 normalization violation.

3 Q. How are you treating repair allowances as  
4 protected or unprotected on the distribution plans?

5 A. I can't answer that question as we sit  
6 here.

7 Q. Do you understand that in some  
8 proceedings or some jurisdictions there could be a  
9 dispute about whether repair allowances should be  
10 treated as protected or unprotected?

11 A. I'm not aware of that debate.

12 Q. Do you agree that the Commission has the  
13 discretion to determine the amortization period of  
14 the unprotected excess ADIT?

15 A. My understanding is the Commission has  
16 the discretion to determine the amortization period  
17 as well as the treatment if it were to be used as a  
18 one-time offset to a regular asset that exists, for  
19 example, so both of those elements.

20 Q. Would you agree the same discretion  
21 would -- the Commission has the same discretion in  
22 its treatment of the federal income tax deferral as  
23 well as the ARAM protected amortization deferral, the  
24 same discretion as to determine the amortization  
25 period or whether to use the offsetting regulatory

1 assets?

2 A. Subject to the initial determination as  
3 to whether or not the Commission has the ability to  
4 require the companies to defer the amortization of  
5 the protected ADIT amortization as well as the change  
6 in the tax rates, any deferral that exists for the  
7 tax rate change, that the Commission would have  
8 discretion over the amortization period.

9 The amortization period of the protected  
10 component would still be subject to the same ARAM  
11 verification to make sure we weren't passing back any  
12 of the savings more rapidly than the life of the  
13 original assets.

14 Q. I agree. I mean, for the protected, ARAM  
15 dictates, but for the unprotected as well as the  
16 deferral that you're building up from January 1  
17 forward, the Commission would have discretion as to  
18 that regulatory liability?

19 A. Subject to the limitations I described  
20 previously, yes.

21 Q. Would you agree that depending on the  
22 answers to the questions we've talked about, the  
23 amortization period, whether or not it should be used  
24 to write off or offset a regulatory asset, et cetera,  
25 however the Commission decides those issues could

1 have an impact on the cost to AEP Ohio of  
2 implementing the TCJA?

3 For example, they could give all the  
4 money back in one month and it would have a different  
5 impact versus multiple years in terms of your  
6 financing costs, et cetera?

7 A. Yes, most definitely. If the Commission  
8 were to require the companies to as they pass it back  
9 in a lump sum or a very short period of time, it  
10 would require the company to obtain financing rapidly  
11 without a -- without being able to evaluate the most  
12 optimal time to issue that debt in the market  
13 scenario to fund such a refund, that that could have  
14 a long lasting impact on the company and its  
15 customers.

16 Q. Is all of the above a reason why you  
17 believe that this matter is best decided in a  
18 separate proceeding for AEP Ohio versus this generic  
19 case?

20 A. Yes, I think it's appropriate to look at  
21 it in a company by company type case so that we can  
22 look at all the financial issues that are before a  
23 specific company as well as how any of the ADITs have  
24 been created over time and looking at the totality of  
25 the rates that exist for the customers of those

1 specific companies.

2 Q. One last question you reminded me. Would  
3 you agree that the preponderance of the unprotected  
4 excess ADIT was created through the various deferrals  
5 that the Commission has implemented in the ESPs over  
6 time?

7 A. That's my understanding, yes.

8 Q. Okay. And that would be a different sort  
9 of bucket of money versus the straight distribution  
10 related protected excess ADIT and the FIT savings  
11 associated with a distribution plan?

12 A. Yes, that's correct.

13 MR. KURTZ: Thank you, your Honor.

14 EXAMINER ADDISON: Thank you.

15 I will go a little out of order from our  
16 seating arrangements here. Does Duke have any  
17 questions for this witness?

18 MS. KINGERY: No, thank you, your Honor.

19 EXAMINER ADDISON: DP&L?

20 MR. SCHULER: No, your Honor.

21 EXAMINER ADDISON: Thank you very much.

22 Miss Whitfield?

23 MS. WHITFIELD: Kroger does not have any  
24 questions for this witness.

25 EXAMINER ADDISON: Ms. Bojko?

1 MS. BOJKO: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Bojko:

5 Q. Mr. Allen, in response to Mr. Kurtz's  
6 question about the specific company case that you  
7 proposed, you mentioned that the Commission needs to  
8 look at financial issues. What financial issues are  
9 you referring to?

10 A. So with regard to flowing back any  
11 unprotected excess ADIT, looking at the cash flows of  
12 the company to ensure that the period of time that  
13 those ADIT balances are passed back to customers  
14 doesn't cause cash flow issues that could lower the  
15 credit ratings of the company which could ultimately  
16 result in increased debt cost that would be born by  
17 customers in future rates.

18 Q. So you were referring to basically a  
19 consideration of the amortization period and the  
20 effect that that might have on the company; is that  
21 correct?

22 A. That's one element of it.

23 Q. And also in that answer or response to  
24 me, you were talking solely about the unprotected  
25 component; is that correct?

1           A.     Yes.

2           Q.     The current amounts that you stated  
3 earlier with regard to the deferral amount as of  
4 May 31st, 2018, those amounts do not include carrying  
5 costs; is that correct?

6           A.     They don't include carrying costs because  
7 it wouldn't be appropriate to include carrying costs  
8 on those balances, as those balances historically  
9 were an offset to rate base or an offset to the DIR  
10 calculation. So they're the same credits that were  
11 historically included in rates, and they're still  
12 currently being used as an offset in the company's  
13 DIR calculations.

14                     So to apply a carrying charge to either  
15 one of those balances would be a -- would result in  
16 customers receiving two benefits from those: One  
17 through the DIR mechanism and the separate through a  
18 carrying charge on that balance that they're already  
19 receiving a benefit from.

20                     So it may be, to help clarify, when the  
21 excess ADIT balances were recharacterized at the end  
22 of December of 2017, the method that the companies  
23 used ensured that the same ADIT balances that would  
24 have existed prior to the TCJA in the companies' ADIT  
25 balances included in the DIR, those same balances

1       existed after we recharacterized those and there was  
2       no increase in the -- no increase in the DIR revenue  
3       requirement.

4               Q.     With respect to the deferred liability  
5       that was created with the lowering of the federal  
6       corporate income tax rate from 35 to 21 percent, that  
7       deferred liability, that does not include carrying  
8       costs; is that correct?

9               A.     No, it does not for the reasons that I  
10       described previously.

11              Q.     And what is the amount that has been  
12       deferred to date with regard to the federal corporate  
13       income tax rate component?

14              A.     I think I answered that in regards to  
15       Mr. Kurtz's questions. My understanding to date, it  
16       was in the \$20 million range.

17              Q.     That was the 20 million and 4 million a  
18       month that you were discussing?

19              A.     Yes.

20                    MS. BOJKO: I have no further questions,  
21       your Honor.

22                    EXAMINER ADDISON: Thank you, Miss Bojko.  
23       Mr. McKenney.

24                               - - -

25

CROSS-EXAMINATION

By Mr. McKenney:

Q. Mr. Allen, you talk about how the tax costs is one of the many costs that comprise the utility's cost structure; is that correct?

A. Yes.

Q. Similarly, any number of costs could increase and decrease such as assets be placed in service or retired, right?

A. And they do change, yes.

Q. And those costs, such as an O&M cost, are captured in a rate case as test year, right?

A. Just like taxes would be captured as an expense in a test year, those other expenses would be as well.

Q. But taxes are captured through the gross revenue conversion factor?

A. No, not solely.

Q. The Commission does conduct a gross revenue conversion factor when it does a rate case?

A. It's one element of a calculation of the cost to service. So when the Commission doesn't -- when a company or the Commission Staff performs a cost to service study, they do that cost to service study based on test year level of revenues and

1 expenses.

2 Included in that is a component of tax  
3 expense and then there's a revenue sufficiency or  
4 deficiency that results. And a gross revenue  
5 conversion factor is applied to that sufficiency or  
6 deficiency to reflect the change in taxes that  
7 results from the change in revenues.

8 Q. In the company's last rate case, the  
9 gross revenue conversion factor would have been  
10 applied to 35 percent tax rate, right?

11 A. The company's last rate case was a  
12 settled rate case.

13 Q. Black box stipulations, is that what it  
14 was?

15 A. It was a stipulation that resulted in  
16 base rate remaining at the levels that were  
17 previously in place that originally were based upon  
18 base cases from 1991 and 1994 for Ohio Power and  
19 Columbus Southern Power prior to their merger.

20 Q. Is it your testimony that that settlement  
21 would not have used a 35 percent corporate tax rate?

22 A. Elements of the settlement like the DIR  
23 mechanism would have included a 35 percent tax rate  
24 and the -- for instance, with the DIR, the company  
25 has adjusted that 35 percent tax rate down to a

1 21 percent tax rate because the DIR mechanism  
2 provides for full recovery of the company's expenses  
3 related to the DIR including tax expense and the  
4 return component.

5 Q. Those aren't base rates; those are  
6 riders, right?

7 A. That's right.

8 Q. You concede the federal income tax now is  
9 21 percent?

10 A. The federal tax rate, one of the elements  
11 as a result of the TCJA, one of the changes was a  
12 reduction in the federal tax rate from 35 percent to  
13 21 percent. It also included changes to the  
14 deductibility of certain items. So it eliminated  
15 some items that historically had been deducted for  
16 utilities.

17 It also changed the bonus depreciation  
18 that was available to utilities which had the result  
19 of increase in costs to the utility as compared to  
20 the tax laws that were in existence prior to the  
21 TCJA.

22 Q. And it's your opinion that the Commission  
23 should use a just and reasonable standard before  
24 making any determination regarding the regulatory  
25 liability?

1           A.    My position is as I've outlined in my  
2 testimony is that the Commission should consider the  
3 actual earnings of the utility prior to requiring a  
4 regulatory liability to be established in this case.

5           Q.    Would it be just and reasonable for the  
6 company to keep its unprotected excess accumulated  
7 deferred income taxes?

8           A.    The companies aren't proposing in this  
9 proceeding to keep the excess unprotected balances,  
10 and that's the reason that as of December 31st, 2017  
11 that the companies booked those as a regulatory  
12 liability on our balance sheet.

13          Q.    But isn't it your position that the  
14 company should not record a regulatory liability?

15          A.    For the excess unprotected ADIT? Let me  
16 just answer the question. For the excess unprotected  
17 ADIT, the company's position is that we should have  
18 created a reg liability just as we did.

19          Q.    I think it's more simple. Would it be  
20 just and reasonable to charge customers a 35 percent  
21 tax when the actual federal income tax is now only  
22 21 percent?

23          A.    For the riders the company has that  
24 includes a tax rate, the companies have reduced those  
25 in the calculation of the over/under recovery to

1 reflect the 21 percent tax rate.

2 Q. What about base rates?

3 A. Base rates are rates that are set at a  
4 point in time based on a set of costs and revenues  
5 that exist at that point in time. And as costs and  
6 revenue change over time, rates do not change to  
7 reflect those changes in costs. That's traditional  
8 utility ratemaking.

9 Q. So it's your testimony that the  
10 Commission should not use isolated and selective cost  
11 items to change rates?

12 A. No, my testimony is that the Commission  
13 needs to look more holistically when it's looking to  
14 adjust rates.

15 Q. I think I quoted your testimony actually,  
16 but we'll let that slide. Doesn't the Commission  
17 often grant deferrals for costs that are atypical or  
18 infrequent?

19 A. I don't know if I would agree that the  
20 Commission typically approves those, but the  
21 Commission does approve deferrals.

22 Q. And those are approved when an expense is  
23 atypical or infrequent?

24 A. That's one of the measures, yes.

25 Q. In fact, sometimes it's the only measure?

1           A.    You'd have to provide me a specific  
2           example.

3           Q.    You're thinking of a five-part test  
4           regarding the Riverside deferral case, is that one of  
5           the measures?

6           A.    I'm not specifically thinking about a  
7           five-part test. I don't know that a specific  
8           five-part test exists. It's been represented in the  
9           testimony of the Staff that there are five  
10          considerations that the Commission has looked at in  
11          certain cases.

12          Q.    The Commission's never applied any  
13          consideration as an exclusive requirement, has it,  
14          other than the atypical and infrequent?

15          A.    I've been dealing with Ohio cases for a  
16          number of years. The Commission has approved any  
17          number of deferrals for various reasons. I don't  
18          think there's one specific set of reasons that the  
19          Commission has considered.

20               MR. McKENNEY: Nothing further, your  
21          Honor.

22               EXAMINER ADDISON: Thank you,  
23          Mr. McKenney.

24               Mr. Darr?

25

1 MR. DARR: Thank you.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Darr:

5 Q. You stated in your testimony that you  
6 plan to use the proceeding that was initiated in Case  
7 No. 18-1007 to demonstrate that a deferral is not  
8 justified and the deferral you're referring to is  
9 what?

10 A. The deferral is related to the tax  
11 savings occurring during 2018. It's not related to  
12 the protected or unprotected excess ADIT booked as of  
13 December 31st, 2017.

14 Q. And in response to questions earlier from  
15 Mr. Kurtz, you identified the amounts that have been  
16 currently booked under the Commission's Order in the  
17 range of about \$20 million through the end of May?

18 A. That's my understanding, yes.

19 Q. Does that include the amortization for  
20 the protected assets?

21 A. It would include -- we are deferring that  
22 amount. And since I don't know the number with  
23 specificity, it's in that \$20 million range.

24 Q. It's part of the 20 million?

25 A. That's my recollection.

1           Q.    And what about has there been any  
2   recognition or -- let's use the word recognition of  
3   the amortization of the unprotected in that  
4   \$20 million?

5           A.    There has been no amortization of the  
6   unprotected. It has remained at the balance that  
7   existed as of December 31st subject to the small  
8   change that I described in my testimony where the  
9   balances were recharacterized during the first  
10   quarter.

11          Q.    So as we sit here today, if I understand  
12   what is your response right now, it would be  
13   difficult if not impossible to identify how much as  
14   being recognized as accountable to the amounts  
15   contained in base rates versus the amounts contained  
16   in the amortization of the unprotected assets; is  
17   that correct?

18          A.    No, no, sorry. The amortization of the  
19   unprotected is a specific value that we can see on  
20   our books and we can -- I think we have provided in  
21   discovery maybe in the 18-1007 case the specific  
22   amortization of that balance. So that's a very  
23   discreet and doable number.

24               MR. KURTZ: Excuse me, your Honor, I  
25   think you misspoke, Mr. Allen. You said the

1 amortization of the unprotected is a known number. I  
2 think you mean the ARAM protected.

3 THE WITNESS: That's correct, the  
4 protected amortization. Thank you.

5 EXAMINER ADDISON: Thank you.

6 Q. (By Mr. Darr) Going back to the booking  
7 entry that occurred on December 31st, 2017, earlier  
8 in testimony and in response to a question from  
9 Mr. Kurtz, I believe you said that that was done in  
10 response to GAAP requirements; is that correct?

11 A. Yes, that's my understanding.

12 Q. And when you're referring to GAAP, you're  
13 referring to Generally Accepted Accounting  
14 Principles, correct?

15 A. That's correct.

16 Q. And under that requirement, the company  
17 was required to adjust the deferred tax liability for  
18 any enacted change in tax laws or changes in rates,  
19 correct?

20 A. I'm not an accountant, but generally  
21 that's my understanding.

22 Q. And it would also be a requirement for  
23 the company if as a result of an action by a  
24 regulator to book or recognize a deferred liability  
25 if there was a possibility that that amount would be

1 returned to customers, correct?

2 A. Yes. And that's one of the reasons that  
3 the company has created the liability that we have on  
4 our books today, is to be consistent with the  
5 Commission's Order.

6 Q. Okay. So recognizing that the Commission  
7 has made statements to the effect that it is going to  
8 return tax savings back to customers, it's incumbent  
9 on AEP Ohio then to create a deferred liability to  
10 recognize that there may be some amount that may be  
11 returned, correct?

12 A. That's right. And to be clear, it's to  
13 reflect that there's a possibility of a refund, not  
14 a -- not that ultimately the company will be required  
15 to provide such a refund.

16 Q. You are recognizing that there's a  
17 probable future revenue reduction, correct?

18 A. Without getting into the specific nuances  
19 of the accounting rules that are the specific words  
20 used in those accounting rules, it's based upon  
21 the -- a conservative assumption that there's a  
22 possibility that those would be refunded. It's not  
23 a -- the possibility is not zero and the possibility  
24 is not 100 percent. It's the companies have booked a  
25 regulatory liability.

1 MR. DARR: Nothing further. Thank you.

2 EXAMINER ADDISON: Thank you, Mr. Darr.

3 Mr. Hays?

4 MR. HAYS: No questions, thank you.

5 EXAMINER ADDISON: Miss Petrucci.

6 - - -

7 CROSS-EXAMINATION

8 By Ms. Petrucci:

9 Q. Your testimony refers to specific riders  
10 in which AEP believes it's made adjustments that are  
11 required by the TCJA, correct?

12 A. Yes, it does.

13 Q. None of those riders involve pole  
14 attachment rates, correct?

15 A. That's correct.

16 Q. And your testimony doesn't specifically  
17 address how AEP's pole rates would be affected or --  
18 affected by the TCJA, correct?

19 A. That's correct.

20 Q. Are AEP's pole rates established by a  
21 PUCO approved formula that includes a number of  
22 inputs including income taxes, correct?

23 A. Yes, it does.

24 Q. And that's done outside the context of a  
25 traditional base rate proceeding, correct?

1           A.     That's my understanding.

2           Q.     And when those pole attachment rates are  
3 reviewed, they are reviewed in the context of a  
4 number of different inputs and factors; isn't that  
5 correct?

6           A.     Yes, that's correct.

7           Q.     By your testimony in which you indicated  
8 earlier and in the written testimony that the  
9 deferrals should be based on the earnings of the  
10 company, you were not attempting to modify the way in  
11 which AEP's pole rates are established, are you?

12          A.     No, the pole rates, my understanding, are  
13 established by a formula based rate.

14          Q.     And AEP hasn't adjusted its pole  
15 attachment rates since the TCJA took effect, has it?

16          A.     That's correct. And it would change any  
17 number of items in that calculation.

18          Q.     It meaning what when you said that? I  
19 don't know what you were referring to.

20          A.     The TCJA would result -- if we just look  
21 at the tax items, it would result in a reduction of  
22 the deferred FIT balances which would have the effect  
23 of increasing the pole attachment rate. And some of  
24 the reason for that is just it's a formula that  
25 currently includes ADIT offsets for deferrals as I

1 discussed with Mr. Kurtz earlier that aren't related  
2 to any costs that are -- or revenues provided by  
3 cable TV companies. So it's kind of a gross formula.  
4 So they're getting some benefits currently from  
5 deferrals created by other customers.

6 And so that will be one item that will go  
7 up when we -- when it's updated in the future. And  
8 then the current tax rate would be reduced starting  
9 in with any formula that was calculated after 2018  
10 when that tax expense is reflected on the company's  
11 books.

12 Q. And again, that formula is separate and  
13 apart from your discussion in your prefiled testimony  
14 about base rates and how the AEP's position is that  
15 the earnings of the companies need to be taken into  
16 consideration for purposes of the TCJA, correct?

17 A. Yeah, I think one of the differences is  
18 that the pole attachment formula includes a complete  
19 set of current -- or I don't know if I'd say complete  
20 but a set of current costs and offsets. So it's a --  
21 it's looking at the tax rate in combination with all  
22 other such costs for the same time period.

23 Q. Are you referring to fully allocated  
24 costs?

25 A. Yes. So that's the one distinction. I

1 don't know that the pole attachment rate results in  
2 the company receiving a revenue that reflects our  
3 fully allocated costs, the costs of that pole  
4 attachment, but the formula itself does look at costs  
5 for a specific time period. And so the time period  
6 for the tax reduction in place is the same as the  
7 other costs included in that formula.

8 So, for instance, it would be  
9 inappropriate to take 2017 costs and include 2018 tax  
10 rates. So if they take the 2017 costs of AEP Ohio  
11 with the 21 percent tax rate, it would be  
12 inappropriate in the formula.

13 The formula is intended to look at a  
14 historic period with all costs aligned for that  
15 period. So when the tax rate would go up in the  
16 future, there would also be a lag associated with  
17 seeing the costs increase that would go with that.

18 Q. If the company seeks to adjust its pole  
19 rates two years from now and the tax rate remains as  
20 it is today under the TCJA, what you just indicated  
21 is that the federal income tax rate would be put  
22 through the formula, correct?

23 A. The 21 percent tax rate would apply, yes.

24 Q. Okay. And then the other components of  
25 the formula would be as existed for the period right

1 before the filing of that application to adjust the  
2 rates, the pole rates?

3 A. So if we filed a pole attachment rate  
4 calculation in 2020, it would reflect the taxes for  
5 2019 as well as all other costs for 2019.

6 MS. PETRUCCI: I have no further  
7 questions.

8 EXAMINER ADDISON: Thank you very much.  
9 Miss Mooney, do you have any questions?

10 MS. MOONEY: No questions.

11 EXAMINER ADDISON: Mr. Stinson?

12 MR. STINSON: No questions.

13 EXAMINER ADDISON: I believe I covered  
14 all the interveners; is that correct?

15 Miss Bair?

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Bair:

19 Q. I just have a question. If you could  
20 please refer to Page 6 of your testimony. Down at  
21 the bottom there on line 21, you're talking about the  
22 other case that AEP has opened up; do you see that?

23 A. Yes.

24 Q. Specifically I'm looking at your last  
25 sentence on that page that follows over to the next,

1 and it's your expectations of this other AEP specific  
2 case. And you said there that the Commission should  
3 first determine the earned return on equity for its  
4 distribution service to determine whether a deferral  
5 or rate adjustment should be made for a tax savings  
6 and the company plans to utilize the 18-1007 docket  
7 to pursue its demonstration that such a deferral is  
8 not justified.

9 A. Yes, that's what I state.

10 Q. So you would expect the outcome of  
11 18-1007 to be no deferral? I don't understand that  
12 statement.

13 A. What the statement is, is that the  
14 company plans to provide evidence in that case that  
15 such a deferral is not necessary based upon the  
16 company's earnings. The Commission would have the  
17 ability in that proceeding to make the ultimate  
18 determination.

19 Q. Okay. So in that statement you've  
20 referred to, I think we're talking about AEP Ohio's  
21 earnings; is that correct?

22 A. Yes.

23 Q. So AEP Ohio's earnings would not be  
24 enough to justify a deferral?

25 A. What we -- what I'm describing in this

1 question and answer is that we have to look at the  
2 distribution function -- functional earnings in such  
3 a determination.

4 Q. Do you know what those earnings are today  
5 as you testify?

6 A. I do not. The earnings that the company  
7 has been looking at right now when we make the  
8 deferral is that the Commission issued the deferral  
9 order related to AEP Ohio in total, and any deferral  
10 needs to look at just the earnings of the  
11 distribution function as you would do in a  
12 distribution rate case.

13 So the base rates that we charge today  
14 are based on a base rate proceeding. We have  
15 earnings that AEP Ohio has that are unrelated to  
16 items that were included in the company's base rates.

17 Q. So would you foresee that other case as a  
18 base rate case?

19 A. No.

20 Q. But you want them to look at AEP Ohio's  
21 earnings?

22 A. That's the proposal that the company has,  
23 is that we would demonstrate that the per book  
24 jurisdictional return for the companies are not  
25 sufficient to require deferral.

1           Q.    Okay.  Just one more matter of  
2   clarification.  I feel like you're making some  
3   distinction between your pro book zoning for your  
4   distribution case and this 1007 case as opposed to  
5   like an ARI case.  Is there something different  
6   between those books?

7           A.    They're substantially different.  A base  
8   rate case includes any number of adjustments that may  
9   be post test year in order to reflect going levels of  
10  costs that the company expects to see in the future,  
11  and this would be a calculation of the company's  
12  actual earnings.

13          Q.    Versus a snapshot in time?

14          A.    Yes.

15               MS. BAIR:  I have nothing further.  Thank  
16  you.

17               EXAMINER ADDISON:  Thank you.

18               Mr. Nourse, redirect?

19               MR. NOURSE:  Can I have a brief  
20  conference with the witness?

21               EXAMINER ADDISON:  You may.  Let's go off  
22  the record.

23               (Off the record.)

24               EXAMINER ADDISON:  Let's go back on the  
25  record.

1 MR. NOURSE: Thank you, your Honor. We  
2 have no redirect questions at this time.

3 EXAMINER ADDISON: Thank you very much.

4 MR. NOURSE: I would renew my motion to  
5 admit AEP Ohio Exhibit No. 1.

6 EXAMINER ADDISON: Is there any objection  
7 to the admission of AEP Ohio Exhibit No. 1?

8 Hearing none, it will be admitted.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 MR. NOURSE: Thank you.

11 EXAMINER ADDISON: Ms. Kingery.

12 MS. KINGERY: Thank you, your  
13 Honor. Duke Energy Ohio calls to the stand William  
14 Don Wathen, Jr. I would like to have marked as Duke  
15 Energy Ohio Exhibit No. 1 the Direct Testimony of  
16 Mr. Wathen filed in the docket on June 15, 2018.

17 EXAMINER ADDISON: It will be so marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 EXAMINER ADDISON: Would you raise your  
20 right hand.

21 (Witness placed under oath.)

22 (Off the record.)

23 EXAMINER ADDISON: Miss Kingery.

24 - - -

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WILLIAM DON WATHEN, JR.

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

DIRECT EXAMINATION

By Ms. Kingery:

Q. Mr. Wathen, would you state your full  
name and business address for the record, please.

A. My name is William Don Wathen, Jr. My  
business address is 139 East Fourth Street,  
Cincinnati, Ohio.

Q. Thank you. And do you have in front of  
you what has just been marked as Duke Energy Ohio  
Exhibit 1?

A. I do.

Q. Would you identify that document, please?

A. It's testimony I filed in this case.

Q. Thank you very much. And do you have any  
changes or corrections to make to that testimony  
today?

A. I do not.

Q. And if I were to ask you all of those  
same questions today, would your answers be the same?

A. Yes.

MS. KINGERY: Thank you. Your Honor, the  
witness is available for cross-examination.

1 EXAMINER ADDISON: Thank you very much.

2 MR. McKENNEY: Your Honor, before you  
3 cross-examine, can we do motions to strike --

4 EXAMINER ADDISON: Certainly.

5 MR. McKENNEY: -- entertain that?

6 I just have real briefly on Page 10, a  
7 Footnote 8, the witness referenced prefiled testimony  
8 of William Ross Willis, Schedule C-1. You see the  
9 reference in the footnote there. I don't think the  
10 parties would be harmed by removing the reference to  
11 the testimony of William Ross Willis.

12 If you actually look at the reference to  
13 8, it goes back three pages to the Case Number listed  
14 on the footnote on Page 8, Case No. 17-2118-GA-AAM.  
15 If you look at Case No. 17-2118-GA-AAM, the Finding  
16 of Order there, it references back to Staff Report  
17 17-2118 which then references back to a previous case  
18 which then references back to the Attachment C-1 of  
19 Mr. Willis's testimony. This is a reference to a  
20 reference to a reference to a reference.

21 I just think the footnote is a bit  
22 misleading. The footnote is actually to support the  
23 total operating expense of the company, but I don't  
24 think it's necessary to do that. If anyone wants to  
25 find that, they're welcome to go down that road to

1 find it there, but Mr. Willis is here and he would  
2 like to say it is misleading and I think we agree.  
3 That would be our motion to strike to that.

4 EXAMINER ADDISON: Thank you,  
5 Mr. McKenney.

6 Mr. Nourse? I apologize, Miss Kingery?

7 MS. KINGERY: Yes, your Honor, I see no  
8 reason why we can't provide the readers with a  
9 direction as to where to go to find the information,  
10 and that's all this footnote does.

11 EXAMINER ADDISON: Thank you,  
12 Miss Kingery. I agree. I will be denying the motion  
13 to strike. If Mr. Willis believes that this is a  
14 misleading use of his testimony, he can certainly  
15 speak to that when he is on the stand.

16 MR. McKENNEY: Okay. One more. Page 11,  
17 lines 20 through 21 beginning with "However..."

18 EXAMINER ADDISON: Mr. McKenney, can you  
19 give the page reference again.

20 MR. McKENNEY: Page 11 of Mr. Willis's  
21 testimony, line 20 beginning with the word  
22 "However..."

23 EXAMINER ADDISON: Thank you.

24 MR. McKENNEY: "However, it is entirely  
25 possible that the next election could bring

1 additional changes in the FIT rates." On Page 12,  
2 line 2, the "Although...", and then lines 4 through  
3 5, "It must be noted that further changes in the  
4 federal income tax law are entirely possible as  
5 well."

6 This is pure speculation, your Honor.  
7 Any speculation about some future changes in future  
8 tax rates don't belong in the testimony of this case.  
9 Basically it's outside the scope of this proceeding.  
10 Any indication about what future tax rates might be  
11 quite simply don't have any bearing on what we're  
12 dealing with today in reporting regulatory liability.

13 Finally, it doesn't even stand for the  
14 proposition for which he used it. He used it in a  
15 response that says changes in the federal tax rates  
16 is atypical or infrequent, however there might be  
17 some future change. The last change in the federal  
18 tax rate cut like this was 30 years ago. Just  
19 because a future election might have some changes in  
20 the tax rate does not necessarily make it a typical  
21 occurrence. So for those reasons, we think those  
22 lines should be stricken.

23 EXAMINER ADDISON: Thank you,  
24 Mr. McKenney.

25 Miss Kingery.

1 MS. KINGERY: Your Honor, the witness  
2 here is merely stating his opinion about why the  
3 Commission should see this not as atypical and  
4 infrequent but a very possible repeating item, and  
5 that's his opinion, and he should be entitled to  
6 speak it.

7 EXAMINER ADDISON: Thank you,  
8 Miss Kingery. I'm going to deny the motion to strike  
9 again. This is something you can certainly bring up  
10 during cross, Mr. McKenney. I think it's more  
11 appropriate to address there.

12 MR. McKENNEY: Thank you, your Honor.

13 EXAMINER ADDISON: Does that conclude  
14 your motion to strike?

15 MR. McKENNEY: Yes.

16 EXAMINER ADDISON: Any additional motions  
17 to strike before we continue? I believe the witness  
18 was ready for cross-examination.

19 MS. KINGERY: Correct, your Honor.

20 EXAMINER ADDISON: Does AEP Ohio have any  
21 questions?

22 MR. NOURSE: No questions, your Honor.

23 EXAMINER ADDISON: DP&L?

24 MR. SCHULER: No, your Honor.

25 EXAMINER ADDISON: Mr. Kurtz?

1 MR. KURTZ: Thank you, your Honor.

2 - - -

3 CROSS-EXAMINATION

4 By Mr. Kurtz:

5 Q. Mr. Wathen, at 12-31-17, what was the  
6 total amount of excess ADIT distribution-related Duke  
7 Energy Ohio booked?

8 A. Just the distribution plan, I think we  
9 answered in discovery it was about \$202 million.

10 Q. 202?

11 A. Yes.

12 Q. Of that 202, how much was protected?

13 A. I think it was about \$133 million.

14 Q. 130?

15 A. 133.

16 Q. Okay. And that would leave the  
17 unprotected at?

18 A. Well, there's unprotected plant related  
19 which is about \$70 million and I think \$2 million of  
20 unprotected non-PPE.

21 Q. So the unprotected total is about  
22 72 million?

23 A. The unprotected total is about  
24 70 million, but the PPE portion is most of that.

25 Q. The PP&E?

1           A.    Property plant and equipment.

2           Q.    And the other portion is what?

3           A.    Mostly related to reg assets, deferral of  
4 one thing or another.

5           Q.    How much is that amount?

6           A.    About \$2 million.

7           Q.    Now, as of the most recent period, you  
8 are deferring the federal income tax savings that  
9 you've experienced since 1-1-18 per the Commission  
10 Order, correct?

11          A.    We are complying with the Order.

12          Q.    For the most recent period, what is the  
13 amount of that deferral -- deferred FIT savings?

14          A.    As I indicated in my testimony, about  
15 \$6 million for electric and 4.4 million for gas.

16          Q.    And you are also deferring the  
17 amortization of the protected excess ADIT which is  
18 done through ARAM; is that correct?

19          A.    That's correct. And it's similar to AEP.  
20 We are debiting the regulatory liability that's a  
21 protected and crediting the regulatory liability  
22 that's unprotected.

23          Q.    How much is the balance of that  
24 regulatory liability?

25          A.    I don't know.

1           Q.    It would be in addition to the 6 million  
2   for the actual tax expense savings?

3           A.    That's correct.

4           Q.    Mr. Wathen, would you agree that there is  
5   more than one reasonable way to calculate the tax  
6   expense savings?

7           A.    Are you talking about the change in the  
8   FIT and the impact on the rates?

9           Q.    Yes, the tax expense savings only.

10          A.    Assuming that it's the right thing to do,  
11   I don't believe there's any way to do it other than  
12   the way we did.

13          Q.    How are you doing it?

14          A.    There's a tax component of our base  
15   rates. What we are recovering from customers is that  
16   amount. So the only adjustment we should make is to  
17   go back and adjust base rates to see what the deficit  
18   is as to base rates, and I can't think of another way  
19   to do it that would be fair.

20          Q.    Would you agree that other parties might  
21   have a different way to calculate the expense  
22   savings, you may not agree with it, but there could  
23   be a different methodology?

24          A.    I find that people often disagree with  
25   me.

1           Q.    You're not a very disagreeable guy.  
2    Would you agree that there is more than one  
3    reasonable method to break apart the excess ADIT to  
4    protected or unprotected or at least people may have  
5    differences of opinion?

6           A.    I have no idea.  Similar to AEP, there is  
7    no other way either.  The protected ADITs are  
8    basically a function of the taxable depreciation and  
9    there is no other way to do it.

10          Q.    Well, repair allowances on distribution  
11   plans are expensed in the year they're incurred for  
12   tax purposes but they're capitalized for book  
13   purposes, correct?

14          A.    That's my understanding.

15          Q.    Would you agree that there may be a  
16   disagreement about whether repair allowance deferral  
17   is protected or unprotected?

18          A.    If you're saying there may be a  
19   disagreement, I can agree with that.  Who knows what  
20   people disagree on.  There may be a disagreement.

21          Q.    Would you agree that the Commission has  
22   discretion to determine the amortization of the  
23   unprotected, the amortization period of one year, one  
24   month, ten years?  The Commission has discretion on  
25   that issue?

1           A.    I mean, I think following what AEP says,  
2   in our multiple jurisdictions in the company, we  
3   generally agree that the Commissions have the right  
4   to tell us how long to amortize, but we have in other  
5   jurisdictions used the balance to offset reg assets  
6   rather than applying it back over time.

7           Q.    Would you agree the Commission has the  
8   same discretion of the time period and/or offsetting  
9   regulatory assets with respect to the federal income  
10  tax deferral currently at about 6 million as well as  
11  the deferral of the amortization of the protected?

12          A.    Only insofar as those are unprotected  
13  ADITs. I refer back to my prior response they have  
14  the right.

15          Q.    Okay. The amortization of the protected  
16  is being deferred, and so the Commission has the same  
17  discretion as to that?

18          A.    If it's being recorded to a deferral, the  
19  amortization of it is being recorded to an  
20  unprotected, so they have discretion.

21          Q.    I see what you're saying. Okay. So they  
22  do have the discretion as to that aspect of the  
23  buckets of tax money?

24          A.    That's my understanding.

25          Q.    Would you agree that depending on how the

1 Commission answers these questions, the amortization  
2 period of the unprotected and the amortization period  
3 of the FIT deferral, that those may have an impact on  
4 the cost to Duke in terms of implementing the TCJA?

5 A. How so?

6 Q. Well, for example, if the Commission said  
7 give back 72 million of unprotected in one month,  
8 that would have a financing cost to Duke; would it  
9 not?

10 A. It would have a cash impact on us for  
11 sure that would have a resulting financial impact.  
12 It would also ultimately increase rate base for  
13 future rate cases and so on, yes.

14 Q. Do you agree with AEP that Duke issues of  
15 TCJA should be decided in a separate, stand-alone  
16 case rather than this generic case?

17 MS. KINGERY: Your Honor, I would object.  
18 This questioning is going far afield of Mr. Wathen's  
19 Direct Testimony and far afield for the purpose for  
20 which this hearing was called.

21 MR. KURTZ: Well, I think the purpose of  
22 this hearing is to give the Commission a record of  
23 the full impact of the TCJA. And I think these  
24 balances are incredibly important for the Commission  
25 to understand that there was 200 million books --

1     that initially that there was 6 million additional  
2     books of money that is subject to refund to  
3     consumers. So I don't know why this would be  
4     anything other than terribly relevant.

5             In terms of my last question about  
6     whether Mr. Wathen has an opinion of should Duke's  
7     matter be decided in a separate case or in this  
8     generic case, I don't see anything improper about  
9     that either.

10            MS. KINGERY: Your Honor, the entries  
11     setting up this hearing says that in response to the  
12     Commission's direct Order, your Honors were setting  
13     up a hearing to discuss whether Ohio utilities should  
14     be required to establish a deferred tax liability  
15     effective January 1, 2018. All the rest of these  
16     issues are not related to that.

17            EXAMINER ADDISON: Thank you,  
18     Miss Kingery. I will allow the question; however, I  
19     would like to stay within the scope of the hearing as  
20     set forth in the entry, so please be wary of that,  
21     Mr. Kurtz.

22            MR. KURTZ: Thank you.

23            Q.     (By Mr. Kurtz) Do you recall the  
24     question?

25            A.     I do, and I don't have an opinion on

1 that, so....

2 MR. KURTZ: Thank you, your Honor.

3 EXAMINER ADDISON: Thank you very much.  
4 Miss Whitfield.

5 MS. WHITFIELD: Kroger does not have any  
6 questions.

7 EXAMINER ADDISON: Thank you.  
8 Miss Bojko.

9 MS. BOJKO: Yes, your Honor. Thank you.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Bojko:

13 Q. Mr. Wathen, can you turn to Page 8 of  
14 your testimony, please. On Page 8 of your testimony,  
15 you refer to an Order that was issued in Case No.  
16 17-2118; is that correct?

17 A. That's correct.

18 Q. And that was a Duke case filed in 2017,  
19 correct?

20 A. Duke Ohio, yes.

21 Q. And that case was about Duke Ohio's  
22 request to defer costs associated with construction  
23 costs, correct?

24 A. I wouldn't say -- call it construction  
25 costs. It was of a payment to the City of Cincinnati

1 to help offset some construction costs that protected  
2 some of our assets, so....

3 Q. And Duke also requested in that case to  
4 recover carrying costs on the deferred balance,  
5 correct?

6 A. I don't recall.

7 Q. And do I take it you don't recall what  
8 the requested carrying costs was based on, that it  
9 was based on the cost of long-term debt?

10 A. Typically if we request carrying costs,  
11 it's at the long-term debt rating.

12 Q. And Duke proposed to record the carrying  
13 costs as a reg asset on its balance sheet in that  
14 case, correct?

15 A. As I said, I don't remember carrying  
16 costs at all, so I can't tell you what else from  
17 that... It was based on that, so....

18 Q. Mr. Wathen, does Duke typically request  
19 carrying costs on a deferred asset?

20 A. I wouldn't say typically. Sometimes we  
21 do; sometimes we don't.

22 MS. BOJKO: Your Honor, may I approach  
23 the witness to refresh his recollection with the  
24 Order in that case?

25 EXAMINER ADDISON: You may.

1 MS. KINGERY: May I see it?

2 MS. BOJKO: Let the record reflect that I  
3 am handing the witness a Finding and Order issued in  
4 Case No. 17-2118-GA-AAM issued on April 18th, 2018.

5 EXAMINER ADDISON: Thank you.

6 Q. (By Ms. Bojko) Mr. Wathen, I'll give you  
7 a minute to look at the Order.

8 A. Do you have a page in mind?

9 Q. Sure. I can provide a page. If you look  
10 at Page 4, it explains Duke's request in paragraph 16  
11 and 17.

12 A. Okay.

13 Q. Do you see now that Duke requested  
14 carrying costs at the cost of long-term debt?

15 A. I do.

16 Q. And in this case, on Page 8 of your  
17 testimony, you reference criteria that has been  
18 considered by the Commission in deferral cases; is  
19 that correct?

20 A. I would say they sometimes consider these  
21 deferrals criteria; sometimes they don't.

22 Q. Isn't it true that the tests you  
23 reference in Case No. 17-2118 was criteria that Staff  
24 used in its review of your application in that case?

25 A. That's correct.

1           Q.    And in that case after considering the  
2 tests, Staff recommended that the criteria was not  
3 satisfied and that Duke's request should be denied,  
4 correct?

5           A.    That's correct.

6           Q.    In that case, the Commission agreed with  
7 Staff and denied the application, correct?

8           A.    That's the Order you just gave me, yes.

9           Q.    Isn't it true that the tests that you  
10 reference in your testimony in this case -- or I'm  
11 sorry, the tests that you reference in Case 17-2118  
12 was utilized in the context of deferred assets and a  
13 deferral of incurred expenses?

14          A.    The issue in 17-2118 was a deferral of  
15 costs, that's correct.

16          Q.    And it was not a deferral of regulatory  
17 liability, correct?

18          A.    As I said, it's a deferral of costs.

19          Q.    Also in that case, isn't it true that the  
20 Commission determined that Duke's deferral  
21 application did not constitute ratemaking and,  
22 therefore, a hearing was not necessary?

23          A.    I assume that's in the Order.

24          Q.    If you look at Page 9, paragraph 26, is  
25 that what the Commission determined?

1           A.     Yes.

2           Q.     And Mr. Wathen, you've reviewed Staff's  
3 testimony in this case; is that correct?

4           A.     I did.

5           Q.     And in this case, Staff used a modified  
6 version of the criteria you reference in your  
7 testimony, correct?

8           A.     They use a modified version, yes.

9           Q.     And Staff recognized that the test is  
10 typically used for review of deferred assets, so they  
11 believe that there was a need to modify that test; is  
12 that correct?

13          A.     I don't know that that's the reason they  
14 gave for the change but they changed it.

15          Q.     Well, in Staff's testimony in this  
16 proceeding, Staff recommended to modify the test in  
17 order to make it applicable to a review of deferred  
18 liabilities; is that correct?

19               MS. KINGERY: Your Honor, objection. The  
20 witness has already said he didn't remember why Staff  
21 said that they were modifying it and he doesn't have  
22 a copy of that testimony in front of him.

23               MS. BOJKO: Your Honor, he stated he  
24 reviewed the testimony and thus he's aware of the  
25 testimony. I'm not sure he stated exactly what he

1 said he said.

2 MS. KINGERY: He stated that he reviewed  
3 the testimony. That doesn't mean he memorized it.  
4 He doesn't have a copy in front of him.

5 EXAMINER ADDISON: If you're going to ask  
6 questions about Staff's testimony, please provide the  
7 witness with a copy.

8 MS. BOJKO: Sure.

9 Q. (By Ms. Bojko) You agreed with me earlier  
10 Staff modified the test in order to make it  
11 applicable to regulatory liability review; is that  
12 correct?

13 A. I did not say that. I said they modified  
14 it, but I didn't say it was because of regulatory  
15 liability.

16 Q. Mr. Wathen, would you like a copy of the  
17 testimony to refresh your recollection?

18 A. If you want to ask me questions, yes.

19 MS. BOJKO: Your Honor, may I approach?

20 EXAMINER ADDISON: You may.

21 MS. BOJKO: Let the record reflect I'm  
22 handing Mr. Wathen the testimony of the Staff witness  
23 Jonathan Borer in this case.

24 EXAMINER ADDISON: Thank you very much.

25 Q. (By Ms. Bojko) If you turn to Page 4 of

1 Mr. Borer's testimony, line 6 through 11, if you  
2 could read that, please.

3 A. You want me to read it out loud?

4 Q. No, to yourself.

5 A. I read it.

6 Q. Does this refresh your recollection that  
7 Staff stated its reason for modifying the test was  
8 because the test was used for regulatory assets and  
9 not regulatory liability?

10 A. I don't know if it refreshes my  
11 recollection, but that's what it says here.

12 Q. After modifying the test, Staff concluded  
13 that Duke and other utilities would satisfy the test  
14 of that criterion; is that correct?

15 A. Would you repeat that, please?

16 Q. After Staff modified the test that you  
17 reference in your testimony on Page 8, Staff  
18 concluded in its testimony that Duke and the other  
19 utilities would satisfy the test; is that correct?

20 A. What part of his testimony are you  
21 referring to now?

22 Q. Sure. If you look at Page 5, the  
23 question and answer No. 10, "Would the deferred  
24 liability associated with the TCJA meet the criteria  
25 used to review deferred assets?" "Yes, however,

1 certain criteria need to be reworded in order to  
2 properly be applied to deferred liabilities." Do you  
3 see that?

4 A. I see that.

5 Q. And then in his testimony, he goes  
6 through the five criteria that you reference; is that  
7 correct?

8 A. Well, it goes through his version of the  
9 criteria.

10 Q. Doesn't he conclude on line 6 on Page 7  
11 that all else being equal, this means the utilities  
12 are seeing an increase in net income, so in effect,  
13 the Commission is ordering the utilities to defer an  
14 amount such that net income at the current 21 percent  
15 would be the same as net income at the previous  
16 35 percent?

17 A. You read his testimony accurately.

18 Q. Okay.

19 MS. BOJKO: Thank you, your Honor. I  
20 have no further questions.

21 EXAMINER ADDISON: Thank you very much.  
22 OCC.

23 MR. MCKENNEY: Yes, your Honor.

24 - - -

25

CROSS-EXAMINATION

By Mr. McKenney:

Q. Mr. Wathen, we've already established that you rely a lot on the Riverside deferral case, correct?

A. Riverside was an example. I mean, many Commission Orders use the same kind of criteria, come up with the same answers, so....

Q. Can you name another Commission case where the Commission adopted that five-part test?

A. Not off the top of my head, but I assure you there are a number of cases that have adopted that criteria.

Q. Are you surprised if there weren't?

A. I would be very surprised if there weren't. In fact, I'm certain there are.

Q. It's not actually a test, though, is it? They're just factors, aren't they?

A. There's nothing statutory about these tests. There's nothing in the rules about the test. The Staff created these five factors that in many cases the Commission relies on to judge whether a deferral is appropriate or not.

Q. And not all those factors have to be passed for the Commission to grant a deferral, does

1 it?

2 A. In some cases, none have to be passed.  
3 In some deferral cases, they haven't addressed any of  
4 the factors.

5 Q. And still granted the deferral, right?

6 A. They still granted the deferral.

7 Q. Right. But in 2018, the Riverside case,  
8 they did apply the five-part test?

9 A. In the Riverside case, they addressed all  
10 five criteria.

11 Q. Right. The most important factor would  
12 be the atypical and infrequent?

13 A. I disagree with that completely.

14 Q. The most commonly used factor then?

15 A. I disagree with that.

16 Q. When granting a deferral, the Commission  
17 has not generally looked at whether a cost is  
18 atypical or infrequent before granting a deferral?

19 A. That is a factor they could consider. It  
20 is not the factor used the most. I've never seen a  
21 Staff report that says as much.

22 Q. Isn't there a sixth factor that the  
23 Commission occasionally uses when it applies the  
24 test?

25 A. Enlighten me.

1 Q. Does the Commission also sometimes  
2 determine to grant a deferral to encourage a utility  
3 to do some action that it otherwise would not do?

4 A. I wouldn't say it that way, no.

5 Q. Are you familiar with Case No. 14-1160  
6 which was Duke's application to defer costs for  
7 advanced meter opt-out?

8 A. I'm familiar with it a little bit, but I  
9 couldn't tell you what the case number was.

10 MR. McKENNEY: Can I approach, your  
11 Honor?

12 EXAMINER ADDISON: You may.

13 MR. McKENNEY: I'm going to hand the  
14 witness a copy of the Opinion and Order in Case No.  
15 14-1160 which was the Commission's Order granting  
16 Duke a deferral for advanced meter opt-out service.

17 MS. KINGERY: Mr. McKenney, do you have a  
18 copy that I can have?

19 MR. McKENNEY: I do. I'll hand this to  
20 the witness.

21 A. Is this the whole Order?

22 Q. That is the copy of the entire Order.  
23 Mr. Wathen, I'm going to ask you to go ahead and read  
24 that sentence for the record starting with the word  
25 "Further" and ending with the word "Authority."

1 Before I do that, I will give a copy to the  
2 Attorney-Examiner.

3 EXAMINER ADDISON: Thank you.

4 MR. McKENNEY: Page 7.

5 MR. NOURSE: Do you have additional  
6 copies available?

7 MR. McKENNEY: I can get you some. I do  
8 have one for you, though, Steve.

9 MR. NOURSE: I appreciate it.

10 Q. Can you read that, Mr. Wathen, for the  
11 record?

12 A. Starting with "Further"?

13 Q. Yes.

14 A. "Further we note that one of the Staff's  
15 criteria for analyzing a deferral is whether the  
16 Commission could encourage the utility to do  
17 something it would not otherwise do through granting  
18 of a deferral authority."

19 Q. Wouldn't that support the proposition  
20 that sometimes the Commission grants deferral in  
21 order to encourage the utility to do something it  
22 would not otherwise do?

23 A. According to this, yes.

24 Q. Thank you. Would it be fair to say that  
25 you can see that the change in federal income tax is

1 an atypical and infrequent event?

2 A. It is probably in most definitions an  
3 atypical and infrequent event. It's not unheard of.  
4 It's not atypical or infrequent.

5 Q. That is one of the factors that the  
6 Commission considers?

7 A. Well, it's now one of the six factors  
8 apparently they consider, yeah.

9 Q. You'd agree the last time there was a tax  
10 cut of this nature was around 30 years ago?

11 A. I believe there was a tax change in  
12 around '92, '93, somewhere like that, from 34 to 35,  
13 something like that. The big tax rate was '86.

14 Q. Any future tax change wouldn't  
15 necessarily make this a frequent or typical event,  
16 would it?

17 A. Well, I mean, we've had a state tax  
18 change in the last 10 or 15 years as well, so that  
19 was a rather significant change. I would say the  
20 idea that it only happens once in 30 years is  
21 probably not rational.

22 Q. It's also your testimony that the  
23 perspective on whether or not a deferral should be  
24 granted should be whether it affects the financial  
25 integrity of the utility; is that right?

1           A.    I think one of the five criteria the  
2 Commission mentions is materiality and whether the --  
3 what the financial condition of the utility is, so  
4 absolutely I think the financial condition matters.

5           Q.    Well, we're talking about whether  
6 reporting a regulatory asset, not a liability; isn't  
7 that right?

8           A.    Either way.

9           Q.    The purpose of that, for reporting a  
10 regulatory asset is to consider whether the expense  
11 is building a base rate sufficient to cover the  
12 expense; would you agree with that?

13          A.    The Commission has opined numerous times  
14 in our deferral requests that whether or not our base  
15 rates are sufficient to cover costs are one factor  
16 they use to establish a reg asset or not. That  
17 should be used to be applicable to affect liability.

18          Q.    We're talking about regulatory liability  
19 in this case, right?

20          A.    In this case, we're talking regulatory  
21 liability.

22          Q.    Changing the perspective from the  
23 regulatory asset to regulatory liability, shouldn't  
24 we also change the perspective to whether it affects  
25 the utility to whether customers will be

1 significantly and adversely affected if the deferral  
2 is not granted?

3 A. I don't think so.

4 Q. But tests could be adjusted that way,  
5 couldn't it?

6 A. It's not something I would recommend.  
7 The Commission can do whatever it wants.

8 MR. McKENNEY: Nothing further, your  
9 Honor.

10 EXAMINER ADDISON: Thank you.

11 Mr. Darr.

12 MR. DARR: Thank you.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Darr:

16 Q. You identified excess accumulated  
17 deferred income taxes of \$202 million. When did the  
18 company book that amount?

19 A. I don't know exactly if it was  
20 December 31, but one of the last days of December.

21 Q. And you were here for the testimony  
22 provided by Mr. Allen?

23 A. I was.

24 Q. Was the reason for the company  
25 recognizing the \$202 million adjustment based on the

1 same considerations that Mr. Allen described, that  
2 is, that it was required as a result of the  
3 application of Generally Accepted Accounting  
4 Principles?

5 A. Well, I am not the accountant in our  
6 company, but I believe that's the appropriate way to  
7 characterize it.

8 Q. The deferral that you are currently  
9 recognizing for amounts post 2000 -- post January 1,  
10 2018, that is based on the currently applicable  
11 rates; is that correct?

12 A. So for electric, we are using the base  
13 rates from 2012 as the basis for calculating the  
14 decrement once we hear from the DCI and some other  
15 riders for April 1, that change, because most of the  
16 costs are going through our riders.

17 For gas, we have two riders that are  
18 relatively small, but they were changed in April and  
19 May, but the application for the base rates was just  
20 the same. We use a 2012 rate case 12-1685. And the  
21 reason I mention it, Ross Willis is named in the  
22 hearing. He sponsored stipulation testimony in that  
23 case that had the schedule that showed the revenue  
24 that was mentioned.

25 Q. With regard to the company, it is

1 currently involved in the resolution of a base rate  
2 case and an electric security plan case, correct?

3 A. Among others.

4 Q. Among many others as we're all well  
5 aware.

6 A. This is a nice break from that case.

7 Q. I'm sorry?

8 A. This is a nice break from that case, by  
9 the way.

10 Q. I have no answer to that or question  
11 based on it.

12 Let's assume for a moment that the rates  
13 proposed in the case that's currently being reviewed  
14 are implemented. Would there remain a portion of  
15 rates that would still be subject to the 35 percent  
16 or the calculation of the 35 percent tax break?

17 A. Well, the way the rate case is going to  
18 be implemented, the total base rates will reflect the  
19 35 percent, but the mechanics of our DCI is such that  
20 about 86 percent of that tax benefit will flow  
21 through and about 14 percent of the rate base will  
22 not be seeing a change in the tax rate.

23 Q. And based on the way that the company is  
24 currently implementing the Commission's Order to  
25 defer, assuming there are no other changes and orders

1 from the Commission as to how to treat base rates,  
2 will the company continue to recognize a deferral  
3 amount for the fact that roughly 14 percent of base  
4 rates is not subject to the 21 percent tax rate?

5 A. Again, in complying with the Order, until  
6 there's a resolution in this case, I don't see how we  
7 have a choice. We continue to defer costs.

8 MR. DARR: Very good. That's all I have.

9 EXAMINER ADDISON: Thank you.

10 Mr. Hays?

11 - - -

12 CROSS-EXAMINATION

13 By Mr. Hays:

14 Q. I just want to make sure I understand  
15 something. Did you say that since the beginning of  
16 the year, you've deferred approximately 6 million?

17 A. For electric, yes.

18 Q. Pardon?

19 A. For electric.

20 Q. For electric. Let's just stick with  
21 electric. How much did you bill customers during  
22 that period for federal income taxes in their bills?

23 A. Well, I don't know the exact number. I  
24 mean, \$6 million is just the decrement to the revenue  
25 collected based on the change in tax rate. I don't

1 have -- that's something I would have to compute. I  
2 don't know the number.

3 Q. So you don't know what the number is?

4 A. I don't know the number.

5 MR. HAYS: Thank you.

6 EXAMINER ADDISON: Thank you.

7 Miss Petrucci.

8 MS. PETRUCCI: Yes, thank you.

9 - - -

10 CROSS-EXAMINATION

11 By Ms. Petrucci:

12 Q. Mr. Wathen, you referred to you updated  
13 four riders in your testimony on Page 6. Are any of  
14 those riders related to pole attachments?

15 A. No.

16 Q. And Duke's pole attachment rates are  
17 established per a unique PUCO approved formula; isn't  
18 that correct?

19 A. It is correct. I'm not prepared to talk  
20 about the pole attachment rates.

21 Q. Are you aware of whether or not the  
22 formula includes a tax component?

23 A. I do not do the formula, so I don't know  
24 the formula at all, so....

25 Q. It's fair, though, that your testimony

1 doesn't specifically address how Duke's rates would  
2 be affected by the TCJA, correct?

3 MS. KINGERY: Your Honor, I'd like to  
4 impose an objection here again because these  
5 questions have nothing to do whatsoever with whether  
6 utilities should be required to establish a deferral  
7 for the impacts on the TCJA as of January 1, 2018  
8 which is why we're here today.

9 EXAMINER ADDISON: Thank you,  
10 Miss Kingery.

11 Miss Petrucci?

12 MS. PETRUCCI: His testimony does  
13 actually address how the rates are being affected and  
14 the fact that there is a deferral and that ultimately  
15 there's the possibility of it affecting different  
16 rates, I was exploring as to the scope in which the  
17 rates he's addressing in his testimony.

18 EXAMINER ADDISON: Thank you. I will  
19 provide a little leeway; however, if he has not  
20 considered answers to provide for your questioning,  
21 then we can move on.

22 MS. PETRUCCI: Understood. Thank you.

23 EXAMINER ADDISON: Do you need that last  
24 question read back?

25 THE WITNESS: Absolutely do.

1 EXAMINER ADDISON: Can we have it read.

2 (Record read.)

3 A. No, that is not correct. I did address  
4 how the rates would be affected. I just didn't  
5 address the pole attachment rates.

6 Q. Thank you. Is it your understanding that  
7 both the reduced tax rate and the accumulated  
8 deferred income taxes have an input into pole  
9 attachment rates?

10 A. As I indicated earlier, I'm not familiar  
11 with the pole attachment formula.

12 MS. PETRUCCI: Then I have no further  
13 questions. Thank you.

14 EXAMINER ADDISON: Thank you very much.  
15 Miss Mooney, do you have any questions?

16 MS. MOONEY: No.

17 EXAMINER ADDISON: Mr. Stinson?

18 MR. STINSON: No questions, your Honor.

19 EXAMINER ADDISON: Thank you very much.  
20 Miss Bair.

21 MS. BAIR: I have a few, thank you.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Bair:

25 Q. Mr. Wathen, I'd like to please ask you to

1 go to Page 9 of your testimony.

2 A. Okay.

3 Q. And it's your answer on Lines 14 through  
4 16, you're stating there's no analysis or evidentiary  
5 record for this Commission to consider whether Duke  
6 Ohio's current base electric distribution rates are  
7 sufficient to cover the costs associated with this  
8 deferral. Are Duke's rates sufficient to cover this  
9 deferral?

10 A. I don't know. We haven't done an  
11 analysis of the rate impacts.

12 Q. But you've quantified that deferred  
13 liability, right?

14 A. I quantified the deferred liability in  
15 the best way I could.

16 Q. What was that amount? Did you state  
17 earlier 6 million?

18 A. For the electric it's \$6 million. For  
19 gas through March 31, it's \$12 million.

20 Q. Thank you.

21 A. I'm sorry, \$4.4 million.

22 Q. If we could just move on to the next  
23 page, Page 10. And I've read your testimony there on  
24 the top paragraph, 1 through 8. Are you suggesting  
25 that the Commission needs to go through a

1 distribution rate case in its entirety before the  
2 company would change its rates?

3 A. No, not necessarily. I believe that the  
4 Commission has very often held us -- denied deferral  
5 requests to utilities, including Duke Ohio, for costs  
6 because it couldn't prove or could not even try to  
7 that its revenues were sufficient to cover costs, and  
8 all I'm asking is the Commission to apply the same  
9 criteria.

10 Q. On those last lines 6 through 8 --

11 EXAMINER ADDISON: Were you finished with  
12 your answer?

13 THE WITNESS: Yes.

14 EXAMINER ADDISON: I apologize.

15 THE WITNESS: Thank you, though.

16 Q. Lines 6 through 8, the Commission should  
17 consider whether revenue from current rates exceeds  
18 the utilities' cost of service, including its  
19 authorized rate of return prior to ordering  
20 deferrals. That's not equivalent to a rate case.

21 A. Well, as Mr. Allen believed earlier, rate  
22 case is a very extensive process that looks at a test  
23 rate, there are things excluded, included, so on.  
24 It's a little bit more of a greater analysis than I'm  
25 thinking of.

1           Q.    So a somewhat abbreviated rate case  
2 analysis?

3           A.    Yes.  For example, our C Test would give  
4 you some indication of what our earnings are we face.  
5 That's an annual review.

6           Q.    What are your earnings from your C Test?

7           A.    For our C Tests for 2017, we're about  
8 8.2 percent, substantially below our RAE for  
9 electric.

10          Q.    Could you please move on to the next  
11 page, Page 11, we're talking about it being outside  
12 the control of -- you're kind of saying there I think  
13 that it's within the Commission's control that we're  
14 going through this deferral process; is that correct?

15          A.    I would accept that it's the Commission's  
16 action that created this thought, yes.

17          Q.    It wasn't an act of Congress?

18          A.    The Congress acted first and the  
19 President signed the bill and the Commission made  
20 a -- issued an order.

21                MS. BAIR:  I have nothing further.  Thank  
22 you.

23                EXAMINER ADDISON:  Thank you very much.  
24 Redirect, Miss Kingery?

25                MS. KINGERY:  May we have just a moment?

1 EXAMINER ADDISON: You may. Go off the  
2 record.

3 (Off the record.)

4 EXAMINER ADDISON: Let's go back on the  
5 record. Miss Kingery.

6 MS. KINGERY: We have no redirect, thank  
7 you.

8 EXAMINER ADDISON: Thank you very much.  
9 I do have just a couple questions.

10 - - -

11 EXAMINATION

12 By Examiner Addison:

13 Q. You noted on Page 11 I believe when you  
14 were addressing the factor as to whether the expenses  
15 are atypical or infrequent. Can you shed some light  
16 as to what you would define atypical or infrequent as  
17 being.

18 A. Well, I'm not suggesting that this isn't  
19 atypical or infrequent, but in the Riverside deferral  
20 case, the Staff observed that even though the wall  
21 hasn't been a problem for decades, it might happen  
22 again. So if the possibility of change undermines  
23 the idea of atypical and infrequent, then I would  
24 suggest that the possibility of a future tax change  
25 is not unheard of.

1           Q.    So the mere possibility of an event  
2   happening?

3           A.    That's essentially that's the standard  
4   that the Commission used in the application of the  
5   Riverside case.

6           EXAMINER ADDISON:  Thank you, Mr. Wathen.  
7   I think that covers all my questions actually.  You  
8   are excused.  Thank you very much.

9           MS. KINGERY:  Your Honor, I would move  
10  for the admission of Duke Energy Ohio Exhibit No. 1.

11          EXAMINER ADDISON:  Are there any  
12  objections to Duke Energy Ohio Exhibit No. 1?  Seeing  
13  none, it will be admitted.

14          (EXHIBIT ADMITTED INTO EVIDENCE.)

15          MS. KINGERY:  Thank you, your Honor.

16          EXAMINER ADDISON:  Thank you.  Let's go  
17  off the record for just a moment.

18          (Off the record.)

19          (At 11:50 a lunch recess was taken until  
20  12:50.)

21          EXAMINER ADDISON:  Let's go back on the  
22  record.  Miss Petrucci, you may call your witness.

23          MS. PETRUCCI:  The OCTA would call  
24  Patricia Kravtin.

25          (Witness placed under oath.)

1 MS. PETRUCCI: Your Honor, I'll note I  
2 previously circulated a copy of Miss Kravtin's  
3 prefiled testimony. Can we have that marked as OCTA  
4 Exhibit No. 1?

5 EXAMINER ADDISON: You may. It will be  
6 so marked. Thank you.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 - - -

9 PATRICIA D. KRAVTIN  
10 being first duly sworn, as prescribed by law, was  
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 By Ms. Petrucci:

14 Q. Can you please state your name and  
15 business address for the record.

16 A. Yes, my name is Patricia D. Kravtin,  
17 K-R-A-V-T-I-N. My address is 500 Atlantic Avenue,  
18 Boston, Massachusetts.

19 Q. Do you have in front of you a copy of the  
20 document titled Direct Testimony of Patricia D.  
21 Kravtin we just marked as the Exhibit No. 1?

22 A. Yes, I do.

23 Q. Was this prepared by you or under your  
24 direct supervision?

25 A. Yes, it was.

1           Q.    Do you have any corrections to the  
2 testimony?

3           A.    I have one correction on Page 14, line 8.  
4 In the middle of the sentence, the word "ratepayers"  
5 was intended to read "attachers."

6           Q.    If I were to ask you the same questions  
7 today under oath with that correction as well as  
8 what's contained within this testimony, would your  
9 answers be the same?

10          A.    Yes, they would.

11               MS. PETRUCCI: Your Honor, the witness is  
12 available for cross-examination.

13               EXAMINER ADDISON: Thank you very much.  
14 Mr. Kurtz?

15               MR. KURTZ: No questions.

16               EXAMINER ADDISON: OCC?

17               MR. MCKENNEY: No questions.

18               EXAMINER ADDISON: Mr. Darr?

19               MR. DARR: No thank you.

20               EXAMINER ADDISON: Mr. Hays?

21               MR. HAYS: No thank you.

22               EXAMINER ADDISON: I think we lost some  
23 of our interveners. Mr. Nourse?

24               MR. NOURSE: No questions.

25               EXAMINER ADDISON: Mr. Schuler?

1 MR. SCHULER: No questions, your Honor.

2 MS. BAIR: I have a question.

3 EXAMINER ADDISON: Please proceed,  
4 Miss Bair.

5 MS. KINGERY: Before you start, I have no  
6 questions either.

7 EXAMINER ADDISON: Thank you.

8 - - -

9 CROSS-EXAMINATION

10 By Ms. Bair:

11 Q. Would you agree that any reduction in  
12 accumulated deferred income taxes that occurred at  
13 the end of 2017 as a result of the TCJA was not  
14 ordered by the Commission but occurred as a result of  
15 the utilities simply following GAAP?

16 A. I would agree that it was pursuant to  
17 GAAP rules; however, the GAAP rules are designed to  
18 reflect an action where it's anticipated that  
19 regulatory Commissions would, in fact, be considering  
20 refunds.

21 So I don't view them as independent  
22 because that's an underlying basis of the GAAP  
23 accounting rule, is related to anticipated Commission  
24 action consistent with what the Commission  
25 subsequently did effective beginning January 1, 2018.

1           Q.     Since January 1, 2018, have other states  
2     asserted jurisdiction over the pole attachment issue  
3     you discuss in your testimony?

4           A.     Well, the way it works, states that have  
5     certified and are in -- they determine the  
6     application of pole attachment rights, so that it  
7     would naturally fall within any certified state such  
8     as Ohio.

9                     Ultimately we'll be dealing with the  
10    issue of how the treatment of excess ADIT is  
11    ultimately reflected in the pole attachment formula  
12    and hopefully in a manner that is consistent with the  
13    cost based nature of the formula and not letting an  
14    accounting transaction inadvertently determine an  
15    adverse rate outcome which is essentially what I'm  
16    testifying to here.

17          Q.     So as you sit here today, you cannot name  
18    another state that has done something like Ohio  
19    regarding the TCJA as relates to pole attachment  
20    tariffs?

21          A.     I'm not aware of the issue. This is new,  
22    so I'm not aware of the issue specifically of how the  
23    treatment of the possible return of excess ADIT  
24    ultimately will be reflected in a pole rate. In many  
25    states, the whole nature of the formula is to be

1 self-administering.

2           So unfortunately the formula which  
3 derives directly from the input of numbers from FERC  
4 doesn't understand the basis of changes in those  
5 numbers. The formula would not be aware of a  
6 reduction in ADIT. It's specifically related to an  
7 accounting transfer as opposed to an actual cost  
8 basis that should be reflected in the formula. So I  
9 think it's going to play out. I think, to my  
10 knowledge, this may be one of the first hearings on  
11 the matter.

12           But to the extent utilities have filed  
13 for a new pole rate and have reflected that GAAP or  
14 other Commissioned incurred liability transfer out of  
15 the account the formulas look to use, it will become  
16 an issue because it has and can have a very  
17 significant unintended rate impact again unrelated to  
18 costs on this formula just because of the nature of  
19 the way the formula -- how it picks up numbers of  
20 certain FERC accounts and wouldn't know to look  
21 for -- into another newly created or different  
22 liability account for that which is what's happening  
23 here. Costs are moving just in a holding tank, and  
24 the pole formula doesn't know or understand that.

25           Q. Has the FCC taken any actions in states

1 where it's asserting jurisdiction over pole  
2 attachment rates?

3 A. Well, the FCC doesn't assert  
4 jurisdiction. It falls naturally to the FCC where  
5 states have not been certified. I'm not aware of the  
6 FCC taking action. The way the FCC works, it only  
7 takes action if a complaint is brought before it.

8 Again, I anticipate that may happen in  
9 the years to come as this issue of an inadvertent  
10 significant rate impact unrelated to costs but just  
11 relating to an accounting transfer is going to play  
12 out in a very significant unintended increase in the  
13 pole rate.

14 So a complaint may be brought to the FCC,  
15 but the FCC does not take action under its regulatory  
16 regime. It is there as an adjudicator if a complaint  
17 is brought before it. It does not initiate.

18 Q. Is it your testimony that the Commission,  
19 the Ohio Commission, should use something other than  
20 the pole attachment rate formula or use some modified  
21 version of it in Ohio?

22 A. Well, I don't address that specifically  
23 in my formula. I address the unintended consequences  
24 of not being aware of it and sort of setting forth  
25 the principle.

1 I think if I'm asked what is my testimony  
2 today, I'm not suggesting the Ohio Commission or any  
3 Commission change the formula. What I am asking is  
4 that the formula should be applied -- well, here I'm  
5 asking in this proceeding that data be tracked and  
6 that the Commission be aware that there are  
7 unintended consequences with regard to the pole  
8 formula from what might be an innocent or accounting  
9 non-ratemaking action.

10 I'm asking here let's be aware of it,  
11 let's track it and let's make sure the utilities  
12 understand they need to implement the formula in such  
13 a way that accounts for the fact that ADIT still  
14 exists. It's still existing in accounts not  
15 identified in the pole formula awaiting how it will  
16 be returned.

17 Absent that, what may happen and what  
18 seems to be happening is that the pole formulas will  
19 be calculated automatically assuming that ADIT has  
20 disappeared or already been returned and also that it  
21 may be amortized in ways it won't reflect necessarily  
22 on the unprotected portion in a way that's not  
23 consistent with the pole formula.

24 In my experience, I can identify other  
25 states and even the FCC wherein complaint

1 proceedings --

2 Q. I was simply asking if you were  
3 recommending a different formula.

4 EXAMINER ADDISON: We'll let her finish.

5 A. If I could finish, I apologize, but you  
6 sort of need to understand the basis of how the pole  
7 formula works. Again, generally speaking, the pole  
8 formula is adjudicated when complaints are brought,  
9 but I've been in cases and I'm aware of cases both at  
10 the FCC and at the state level and usually they're  
11 initiated by the utility who says we have regulatory  
12 assets that have not been recorded in this specific  
13 formula account but they relate to those costs, so  
14 for this purpose, we need to also not just pick up,  
15 say, 593 maintenance, we have to go into other  
16 regulatory asset accounts.

17 So I'm asking for the same thing here,  
18 that the formula be applied in a smart way that  
19 understands that it's not the ADIT doesn't exist,  
20 it's just in a different holding tank waiting  
21 determination for amortization.

22 I'm further suggesting that because the  
23 pole formula is asset based, that it only makes sense  
24 to amortize the reduction of ADIT, not take it in a  
25 lump sum because that will cause a disconnection

1 between the investment basis of the formula which  
2 relates to pole plant installed over many years. You  
3 wouldn't want to adjust that as if the pole plant was  
4 going in at one point in time.

5 That's what I would ultimately be  
6 suggesting, but here it's just be aware of it. Don't  
7 let an inadvertent consequence of setting up a  
8 liability account make the formula work in ways that  
9 aren't cost basis and leads to very significant  
10 increases unrelated to actual increases in pole  
11 costs.

12 EXAMINER PRICE: Do you think that the  
13 adjustments you're talking about should be made in a  
14 case by case basis as each utility that owns poles  
15 comes in and seeks a change in the rate, or do you  
16 think it's something the Commission should deal with  
17 in a generic proceeding?

18 THE WITNESS: Yes, thank you, and I do  
19 address that in my testimony. For many reasons, it  
20 would be most efficient and also consistent with the  
21 whole basis of the formula approach. It's supposed  
22 to be a simple, low cost, unburdensome to both the  
23 attachers and importantly the regulator who wouldn't  
24 want to be dealing with the same issues.

25 This affects all utilities, all pole

1     attachers because the formula is a generic formula.  
 2     So I believe it is absolutely in the best public  
 3     interests and also from an efficiency standpoint to  
 4     make these declarations that we're not changing the  
 5     pole formula but we want to -- for this really what  
 6     is a very significant impact, we want to make sure  
 7     there are no unintended, inadvertent effects of what  
 8     should be just a neutral accounting tank.

9             Instead of holding it in the Q81, Q83  
 10     and 190 accounts, it's being held in other accounts.  
 11     And so the pole formula needs in implementing it, the  
 12     Commissioner or its Staff or the utilities will pull  
 13     it from the accounts it's been moved to because  
 14     that's the intent of the formula.

15             And otherwise, there will be a very  
 16     perverse impact of what I believe the Commission has  
 17     indicated should be a neutral holding pot for the  
 18     deferred excess upon ratemaking treatment and also to  
 19     make sure the benefits flow through to customers.

20             And certainly I don't think it should be  
 21     intended as a reason to increase pole rates by a  
 22     significant percent, again, due to an accounting  
 23     artifact, if you will, but absolutely I think it's  
 24     appropriate to deal with that generically for the  
 25     benefit of the Commission and the attachers and

1 consistent with the nature of the pole formula, the  
2 whole basis of it to be simple, administrative,  
3 efficient and at a low cost. Thank you.

4 MS. BAIR: Thank you. That's all I have.

5 EXAMINER ADDISON: Thank you.

6 Miss Petrucci, redirect?

7 MS. PETRUCCI: No thank you.

8 EXAMINER ADDISON: I have no additional  
9 questions. You are excused, Miss Kravtin. Thank  
10 you.

11 Miss Petrucci.

12 MS. PETRUCCI: I'd like to move for the  
13 admission of OCTA Exhibit No. 1.

14 EXAMINER ADDISON: Any objections to the  
15 admission of OCTA Exhibit No. 1? Seeing none, it  
16 will be admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 MS. PETRUCCI: Thank you.

19 EXAMINER PRICE: Do we have a volunteer  
20 to put on the next witness?

21 MR. KURTZ: Yes, Mr. Kollen.

22 EXAMINER ADDISON: Mr. Kurtz, would you  
23 like to call your next witness.

24 MR. KURTZ: Mr. Kollen. He's out of  
25 town, so we agreed.

1 (Witness placed under oath.)

2 EXAMINER PRICE: Please be seated and  
3 state your name and business address for the record.

4 THE WITNESS: My name is Lane Kollen. My  
5 business address is J. Kennedy and Associates,  
6 Incorporated, 570 Colonial Park Drive, Suite 305,  
7 Roswell, Georgia, 30075.

8 - - -

9 LANE KOLLEN

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

12 DIRECT EXAMINATION

13 By Mr. Kurtz:

14 Q. Mr. Kollen, do you have in front of you a  
15 document marked the Direct Testimony of Lane Kollen?

16 A. Yes.

17 Q. Was this prepared by you or under your  
18 direct supervision?

19 A. It was.

20 Q. Any corrections or changes?

21 A. No.

22 Q. If I were to ask you the same questions  
23 as those contained herein, would your answers be the  
24 same?

25 A. Yes, it would.

1 MR. KURTZ: Your Honor, I would ask to  
2 have this marked as OEG Exhibit 1.

3 EXAMINER PRICE: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MR. KURTZ: I tender the witness at this  
6 time.

7 EXAMINER PRICE: Miss Petrucci.

8 - - -

9 CROSS-EXAMINATION

10 By Ms. Petrucci:

11 Q. Mr. Kollen, do you agree that the  
12 accounting change ordered by the PUCO provides the  
13 ability to preserve the deferred liability for a  
14 future consideration and refund?

15 A. Well, the ratemaking Order does that, not  
16 the accounting change. Specifically it's the  
17 accounting that follows the ratemaking Order.

18 Q. Do you agree that the accounting change  
19 should not adversely affect rates?

20 A. In this case, it would not adversely  
21 affect rates.

22 Q. Do you agree that it should not?

23 A. I do.

24 MS. PETRUCCI: I have no further  
25 questions.

1 EXAMINER PRICE: Mr. Hays?  
2 MR. HAYS: No questions, thank you.  
3 EXAMINER PRICE: Mr. Darr?  
4 MR. DARR: No questions.  
5 EXAMINER PRICE: Consumers' Counsel?  
6 MR. McKENNEY: No questions, your Honor.  
7 EXAMINER PRICE: Miss Kingery?  
8 MS. KINGERY: No questions, thank you.  
9 EXAMINER PRICE: AEP?  
10 MR. NOURSE: No questions, your Honor.  
11 EXAMINER PRICE: Miss Bair?  
12 MS. BAIR: No questions.  
13 EXAMINER PRICE: Thank you. Sorry,  
14 Mr. Kurtz, redirect?  
15 MR. KURTZ: No redirect.  
16 EXAMINER PRICE: You're excused. Thank  
17 you.  
18 MR. KURTZ: Your Honor, I move the  
19 admission of OEG Exhibit 1.  
20 EXAMINER PRICE: Any objection to the  
21 admission of OEG Exhibit 1? Hearing none, it will be  
22 admitted.  
23 (EXHIBIT ADMITTED INTO EVIDENCE.)  
24 EXAMINER PRICE: Let's go off the record.  
25 (Off the record.)

1 EXAMINER PRICE: Back on the record.

2 EXAMINER ADDISON: Mr. Darr, you may call  
3 the next witness.

4 MR. DARR: IEU calls Mr. Bowser. For the  
5 record, could we have marked as IEU Exhibit 1 what's  
6 been identified or what will be identified as the  
7 Direct Testimony of Mr. Bowser.

8 EXAMINER ADDISON: It will be so marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 EXAMINER ADDISON: Mr. Bowser, please  
11 raise your right hand.

12 (Witness placed under oath.)

13 EXAMINER ADDISON: You may proceed,  
14 Mr. Darr.

15 - - -

16 JOSEPH G. BOWSER  
17 being first duly sworn, as prescribed by law, was  
18 examined and testified as follows:

19 DIRECT EXAMINATION

20 By Mr. Darr:

21 Q. Please identify yourself for the record.

22 A. Yes, my name is Joseph Bowser, and my  
23 business address is 21 East State Street, Columbus,  
24 Ohio, 43215.

25 Q. By whom are you employed?

1           A.    I'm employed by McNees, Wallace & Nurick,  
2    LLC.

3           Q.    In what capacity are you employed?

4           A.    I'm a Technical Specialist.

5           Q.    Do you have in front of you what's been  
6    marked as IEU Exhibit 1?

7           A.    Yes, I do.

8           Q.    Do you have any corrections to that?

9           A.    Yes, I have two corrections. The first  
10   is at Page 5, line No. 6, and the correction is after  
11   the words -- the letters in parenthesis "(ASC)"  
12   should go to number "980," 980-regulated operations  
13   comma. And then continuing with that correction,  
14   after the number "740" should be a dash and the words  
15   "income taxes."

16          Q.    So would you read that out as modified?

17          A.    Yes. "Under Generally Accepted  
18   Accounting Principles, Accounting Standards  
19   Codification (ASC) 980-regulated operations, 740  
20   income taxes (formerly FAS 109)."

21          Q.    Thank you. Any other changes?

22          A.    Yes, I have one other change on Page 6,  
23   line No. 12 and 13 should be deleted, and in place of  
24   that sentence should be this sentence, "Based on the  
25   response to Staff Data Request No. 2, the TCJA

1 regulatory liability for Duke Energy Ohio is  
2 \$446.9 million."

3 EXAMINER PRICE: Could I have the number  
4 back, please?

5 THE WITNESS: Yes, \$446.9 million.

6 MR. HAYS: Could I ask you to read it  
7 once more?

8 THE WITNESS: To read it back?

9 MR. HAYS: Yes.

10 THE WITNESS: The whole correction would  
11 be "Based on the response to Staff Data Request No.  
12 2, the TCJA regulatory liability for Duke Energy Ohio  
13 is \$446.9 million."

14 MR. HAYS: Thank you.

15 Q. (By Mr. Darr) With those two corrections,  
16 is it correct that IEU Exhibit 1 is the Direct  
17 Testimony of Joseph Bowser on behalf of IEU,  
18 Industrial Energy Users of Ohio?

19 A. Yes, it is.

20 Q. If asked the questions contained in this  
21 Exhibit 1 of IEU of Ohio, would your answers be the  
22 same?

23 A. Yes, they would.

24 MR. DARR: Witness is available for  
25 cross-examination.

1 EXAMINER ADDISON: Thank you very much.  
2 Miss Petrucci.

3 - - -

4 CROSS-EXAMINATION

5 By Ms. Petrucci:

6 Q. Yes, Mr. Bowser, do you agree that the  
7 accounting change provides the ability to preserve  
8 the deferred liability for PUCO future consideration?

9 A. Yes, I do.

10 Q. Do you agree that the accounting change  
11 should not adversely affect rates?

12 A. Yes.

13 Q. Do you agree that it has not adversely  
14 affected rates at this point?

15 A. Yes, it has not.

16 MS. PETRUCCI: I have nothing further.

17 EXAMINER ADDISON: Thank you very much.  
18 Mr. Hays?

19 MR. HAYS: No questions, thank you.

20 EXAMINER ADDISON: OCC?

21 MR. MCKENNEY: No questions, your Honor.

22 EXAMINER ADDISON: Thank you.

23 Mr. Kurtz?

24 MR. KURTZ: No questions.

25 EXAMINER ADDISON: Miss Blend?

- - -

CROSS-EXAMINATION

By Ms. Blend:

Q. Mr. Bowser, you indicate on Page 3 of your testimony in Items 8 through 10 that you reviewed Ohio Power Company's and Duke Energy Ohio's FERC Form 1s in preparing your testimony. Did you review the FirstEnergy Corporation FERC Form 1s in preparation of your testimony?

A. No, I did not.

Q. Did you review the Dayton Power and Light Company's FERC Form 1s in preparation of your testimony?

A. No, I did not.

Q. And on Pages 5 through 7 of your testimony, you discuss accounting standards that require public utilities to account for changes in tax law. And you were limited to questions about Ohio Power Company and Duke Energy Ohio. You indicate that both of those companies have reflected in their financial statements the recording of deferred regulatory liabilities?

A. Correct.

Q. Did the FirstEnergy Company also record a deferred regulatory liability for the estimated

1 impact of the TCJA?

2 A. Offhand, I don't know for sure.

3 Q. Do you know whether Dayton Power and  
4 Light did?

5 A. Same answer.

6 Q. Why didn't you discuss the FirstEnergy  
7 Company or Dayton Power and Light in your testimony  
8 filed in this proceeding?

9 A. I think mainly it was just Ohio Power and  
10 Duke Energy that filed testimony in this case.

11 Q. Is there any other reason?

12 A. Not really, no.

13 Q. On Page 9 of your testimony beginning at  
14 line 13, you stated that the Commission should direct  
15 regulated utilities that have not already recognized  
16 regulatory liabilities for amounts being collected  
17 through base rates to do so. Are you referring to a  
18 specific utility or utilities in that answer?

19 A. No. Basically it would be essentially  
20 all the utilities that are affected by federal income  
21 tax rates.

22 Q. And you agree that AEP Ohio has already  
23 recognized a regulatory liability as previously  
24 discussed for those amounts?

25 A. Yes, they have.

1 MS. BLEND: I have no further questions.

2 EXAMINER ADDISON: Thank you, Miss Blend.

3 Mr. Schuler, any questions?

4 MR. SCHULER: No, your Honor.

5 EXAMINER ADDISON: Miss Kingery?

6 MS. KINGERY: Yes, your Honor, just one.

7 - - -

8 CROSS-EXAMINATION

9 By Ms. Kingery:

10 Q. Mr. Kollen, I'd like you to refer back to  
11 one of the changes you made at the beginning when you  
12 first put your testimony on, and I'm talking about  
13 the change on Page 6.

14 A. Yes.

15 Q. And just to clarify your change, this is  
16 the number that you're quoting, the \$446.9 million,  
17 that was the regulatory liability for all of the  
18 impacts of the TCJA including both electric and gas  
19 operations, correct?

20 A. Correct, that is correct.

21 MS. KINGERY: Thank you. That's all I  
22 have.

23 EXAMINER ADDISON: Thank you.

24 Mr. Stinson, I know you just stepped in,  
25 but did you have any questions for this witness?

1 MR. STINSON: No, your Honor. Thank you.

2 EXAMINER ADDISON: Thank you very much.

3 Miss Bair?

4 MS. BAIR: I have nothing. Thank you.

5 EXAMINER ADDISON: Thank you. We don't

6 have any additional questions. You are excused.

7 Thank you so much for your time.

8 MR. DARR: No redirect.

9 EXAMINER ADDISON: Excuse me one minute.

10 Redirect, Mr. Darr?

11 MR. DARR: No redirect, your Honor.

12 EXAMINER ADDISON: Thank you very much.

13 Now you're excused. Mr. Darr?

14 MR. DARR: We move IEU Exhibit 1.

15 EXAMINER ADDISON: Any objections to the  
16 admission of IEU Exhibit 1? Hearing none, it will be  
17 admitted.

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 EXAMINER PRICE: That leaves us with  
20 Consumers' Counsel.

21 MS. O'BRIEN: Thank you, your Honor. OCC  
22 calls William Ross Willis to the stand.

23 (Witness placed under oath.)

24 EXAMINER PRICE: Please be seated and  
25 state your name and business address for the record.

1 THE WITNESS: My name is William Ross  
2 Willis. My business address is 65 East State Street,  
3 Columbus, Ohio, 43215.

4 EXAMINER PRICE: You may proceed.

5 MS. O'BRIEN: For the record, I'd like to  
6 mark as OCC Exhibit 1 the Direct Testimony of William  
7 Ross Willis filed June 29th, 2018 on behalf of the  
8 Office of the Ohio Consumers' Counsel.

9 EXAMINER PRICE: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 - - -

12 WILLIAM ROSS WILLIS

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

15 DIRECT EXAMINATION

16 By Ms. O'Brien:

17 Q. Mr. Willis, where are you employed and in  
18 what capacity?

19 A. I'm employed by the Ohio Consumers'  
20 Counsel. I'm a Senior Regulatory Analyst.

21 Q. And did you file testimony in this docket  
22 on June 29th, 2018 that has just been marked as OCC  
23 Exhibit 1?

24 A. Yes.

25 Q. And was that testimony prepared by you or

1 under your direction?

2 A. Yes.

3 Q. Do you have any changes, additions or  
4 corrections that you'd like to go over with us at  
5 this time?

6 A. I have one, and it's on Page 3, line 20.  
7 I'd like to cross out "expedient" and insert  
8 "expedited."

9 Q. Could you read that correction?

10 A. "This refund to customers should be  
11 accomplished in as expedited a manner as  
12 practicable."

13 Q. Thank you. With this correction, if I  
14 were to ask you the same questions today under oath,  
15 would your answers be the same?

16 A. Yes.

17 MS. O'BRIEN: That's all I have, your  
18 Honor. The witness is available for  
19 cross-examination. I move for admission of OCC  
20 Exhibit 1 subject to cross-examination.

21 EXAMINER PRICE: We'll defer ruling on  
22 the motion until after cross-examination.

23 Ms. Petrucci.

24 MS. KINGERY: Your Honor, would you  
25 entertain a motion to strike at this time?

1 EXAMINER PRICE: Sure.

2 MS. KINGERY: This hearing, your Honor,  
3 was called for the expressed purpose of addressing  
4 the -- and I'm quoting here from Mr. Willis'  
5 testimony, "the limited question of whether Ohio  
6 utilities should be required to establish a deferred  
7 tax liability effective January 1, 2018."

8 Unfortunately Mr. Willis's testimony goes  
9 far beyond that, and I would, therefore, for that  
10 reason strike Page 6, line 19 through Page 12, line  
11 7. And then --

12 EXAMINER PRICE: Hold on a second. I  
13 have to catch up now.

14 MS. KINGERY: Let me know when you're  
15 ready.

16 EXAMINER PRICE: Okay.

17 MS. KINGERY: Then Page 12 again, line  
18 15, there's a sentence that begins in the middle of  
19 that line with "This is...", from there through the  
20 end of that page.

21 MS. O'BRIEN: May I respond?

22 EXAMINER PRICE: As soon as I make sure  
23 my notes are correct. Miss Kingery, is there  
24 something else you want to add before we give it to  
25 Consumers' Counsel?

1 MS. KINGERY: Sure. So looking at that  
2 question, I'll start with Question 12 on Page 6.  
3 Here Mr. Willis is talking about a recommendation  
4 that carrying costs be imposed on a deferred tax  
5 liability. That certainly is not related to whether  
6 the deferral should be established.

7 Question 13 which starts on the next page  
8 for a period of time just goes through the background  
9 of what ADITs are. And then he's talking more about  
10 carrying costs. And then at the top of Page 8 talks  
11 about the period of time over which unprotected ADITs  
12 should be refunded to customers.

13 Then starting on 14, Question 14, the  
14 Commission is now talking -- or I'm sorry, Mr. Willis  
15 is now talking about how this refund should be  
16 accomplished by the PUCO which is a matter which is  
17 entirely within the discretion of the PUCO.

18 And then Question 15 on Page 10,  
19 Mr. Willis is now talking about rider rates, again  
20 not about the deferral being established.

21 Then Question 16 is talking about whether  
22 there should be an earnings threshold, again not  
23 talking about whether a deferred liability should be  
24 established as of January 1.

25 And then Question 17, he's talking about

1 the ability of a utility to file a base rate case.

2 And then Question 18, I would propose  
3 striking those parts of his summary that address the  
4 questions that previously I had talked about  
5 striking.

6 MS. BLEND: Your Honor, AEP Ohio joins  
7 the motion for the reasons stated by counsel for Duke  
8 Energy Ohio.

9 EXAMINER PRICE: Thank you.  
10 Consumers' Counsel?

11 MR. McKENNEY: This is an overbroad and  
12 excessive motion to strike.

13 EXAMINER PRICE: Mr. McKenney, I think  
14 your colleague should be defending.

15 MR. McKENNEY: Absolutely.

16 EXAMINER PRICE: No double teaming.

17 MS. O'BRIEN: Mr. Willis -- to piggyback  
18 on what Mr. McKenney just said, it's an overbroad and  
19 somewhat outrageous motion to strike. Mr. Willis'  
20 testimony goes into all what goes into a deferral.  
21 That's what he speaks to. It's his opinion.

22 Moreover, if Mr. Willis' testimony is  
23 stricken, then Mr. Allen's should be stricken and  
24 Mr. Wathen's should be stricken. He's responding to  
25 the prefiled testimony of these witnesses.

1           He's also directly responding to what the  
2 Commission actually is saying in its Order.  
3 Commission... report on their books a deferred  
4 liability... a reduction in federal income taxes.  
5 The Commission directed that we examine all of these  
6 various components.

7           I just find that most specifically he is  
8 responding directly to Mr. Allen and Mr. Wathen and  
9 he's responding to and supporting the Commission's  
10 directive in these entries. He's recommending the  
11 PUCO order to all Ohio regulating utilities to  
12 continue to carry these deferred liabilities until  
13 the full benefits of the TCJA are refunded to  
14 customers.

15           EXAMINER PRICE: Are you done?

16           MS. O'BRIEN: Let's see... There's a  
17 second entry on the hearing April 25th, the  
18 Commission affirmed that all tax impacts resulting  
19 from the Tax Cuts and Jobs Act of 2017 will return to  
20 customers.

21           Again, I find Mr. Willis's testimony is  
22 responsive to the testimony that has been filed,  
23 prefiled testimony. And in the sense that their  
24 testimony was admitted, Mr. Willis's testimony should  
25 be admitted as well.

1 EXAMINER PRICE: Counsel for any other  
2 interveners care to respond or go back to  
3 Miss Kingery?

4 Miss Kingery.

5 MS. KINGERY: Thank you. I would just  
6 make two further points. First of all, Mr. Wathen  
7 limited his testimony to the deferral that Duke  
8 Energy Ohio has actually recorded and the tests for  
9 deferrals that is often applied by the Commission  
10 which goes directly to whether or not a deferral  
11 should be required effective January 1, 2018.

12 I won't speak to Mr. Allen's testimony,  
13 but I don't see that Mr. Willis's testimony is  
14 responding in these parts that are subject to my  
15 motion to Mr. Wathen in the least.

16 Second of all, I would point to your  
17 Honor's own entry establishing this hearing today  
18 wherein you said that testimony filed by any party  
19 should be limited to the narrow question of whether  
20 the utilities should be required to establish a  
21 deferred tax liability effective January 1, 2018.

22 I do not disagree with counsel for OCC  
23 that the Commission has expressed its interest in  
24 having every bit of the impact of the TCJA passed  
25 back to customers, but that's not what this hearing

1 is about. This hearing is only about whether the  
2 deferred tax liability effective January 1, 2018  
3 should be mandated.

4 MS. O'BRIEN: In the Commission's  
5 January 10th, 2018 entry, the Commission specifically  
6 stated in Finding 5, Comments associated with process  
7 and mechanics may include a discussion of how the  
8 Commission should logistically execute any changes to  
9 base rates, riders and deferrals and the passing on  
10 of benefits to ratepayers. The Commission clearly --

11 EXAMINER PRICE: But that was regarding  
12 comments to be filed in this proceeding. That was  
13 not related to the scope of this hearing.

14 MS. O'BRIEN: True, but I still get back  
15 to the point that Mr. Willis's testimony goes to all  
16 that goes into a deferred liability. The Commission  
17 has always deferred to having an open record.

18 MS. BLEND: Your Honor, if I may just add  
19 quickly with regard to Mr. Allen's testimony which  
20 Mr. Willis's testimony purports to respond, the only  
21 reference in Mr. Allen's testimony was a passing  
22 reference to the 18-1007 docket that AEP Ohio is  
23 going to address in each these specific tax impacts.  
24 On Pages 6 and 7 of his testimony, he too did not get  
25 into any substantive discussion whatsoever of how tax

1 savings associated with the legislation should flow  
2 through to customers in his testimony, and therefore,  
3 Mr. Willis's purported responses are inappropriate.

4 EXAMINER PRICE: Well, he made some  
5 pretty direct reference to Mr. Allen's testimony on  
6 Page 9 and memorialized by note 5, the summary or his  
7 understanding of Mr. Allen's testimony in that  
8 sentence.

9 MS. BLEND: Yes. And there, your Honor,  
10 Mr. Allen testifies on Page 4 just as a general  
11 matter that tax savings for the distribution function  
12 should only be deferred if the company is earning  
13 above a just and reasonable level. He indicates  
14 later in his testimony on Pages 9 and 10 -- I'm  
15 sorry, on Pages 6 and 7, as I indicated previously,  
16 that those issues should be taken up in the 18-1007.

17 EXAMINER PRICE: I think it's fair for  
18 Mr. Willis to respond to Mr. Allen's testimony.  
19 That's all he's doing now. I think we've spent  
20 enough time on this.

21 We're going to grant in part and deny in  
22 part the motion to strike. We're going to grant the  
23 motion to strike with respect to Question 15, Page  
24 10, line 6 through line 11.

25 And we'll deny the motion to strike with

1 respect to the balance of the motion. The balance of  
2 the motion refers to a discussion of carrying charges  
3 which is certainly related to a regulatory liability  
4 or otherwise fairly in response to testimony filed by  
5 the utilities' witnesses.

6 MS. BLEND: Thank you, your Honor.

7 MS. KINGERY: Thank you, your Honor.

8 EXAMINER PRICE: Okay. Miss Petrucci.

9 MS. PETRUCCI: Yes, your Honor.

10 - - -

11 CROSS-EXAMINATION

12 By Ms. Petrucci:

13 Q. Mr. Willis, in your testimony, your  
14 opinion is that the utilities should not receive  
15 windfalls because of the TCJA, correct?

16 A. Yes.

17 Q. And the TCJA should result in benefits to  
18 customers, correct?

19 A. Yes.

20 Q. Do you agree that the accounting change  
21 should not adversely affect rates?

22 A. Yes.

23 Q. One moment while I make sure... And do  
24 you specifically recommend that the carrying charges  
25 for inclusion in the accounting change also not

1 adversely affect customers?

2 A. Yes.

3 Q. And at the heart of your recommendations,  
4 is it correct that the fundamental position is that  
5 customers should benefit from the TCJA?

6 A. Yes, that's the stated -- that's what the  
7 Commission has stated, but, yes, I'm supporting that  
8 position.

9 Q. And nothing in your testimony is intended  
10 to instruct the Commission on how to calculate  
11 particular rates, correct, for instance, pole  
12 attachment rates?

13 A. No.

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

16 EXAMINER PRICE: Mr. Hays?

17 MR. HAYS: No questions.

18 EXAMINER PRICE: Mr. Darr?

19 MR. DARR: No questions.

20 EXAMINER PRICE: Mr. Kurtz?

21 MR. KURTZ: No questions.

22 EXAMINER PRICE: Do you have any  
23 questions, Dane?

24 MR. STINSON: No questions, your Honor.

25 EXAMINER PRICE: Mr. Schuler?

1 MR. SCHULER: No questions, your Honor.

2 EXAMINER PRICE: Miss Blend?

3 MS. BLEND: Thank you, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Ms. Blend:

7 Q. If there was an increase in the corporate  
8 federal tax rate, would OCC support the utilities'  
9 establishment of a regulatory asset to reflect the  
10 increased costs associated with the rate increase?

11 A. Well, that's not our -- you would file an  
12 application with the Commission. That's a  
13 hypothetical question. I don't have a response.

14 Q. So --

15 EXAMINER PRICE: So your answer to the  
16 question would be no?

17 THE WITNESS: No.

18 Q. (By Ms. Blend) So your answer is no?

19 A. No, I'm not saying no, I don't know. I  
20 don't know what our position is. It's a hypothetical  
21 question.

22 MS. O'BRIEN: Objection. Calls for  
23 speculation on his part.

24 EXAMINER PRICE: We've had a lot of  
25 hypothetical questions before this Commission over

1 the last 30 years. I'll allow it.

2 MS. BLEND: Your Honor, it's a pretty  
3 simple corollary to the testimony and opinions that  
4 Mr. Willis is offering here.

5 EXAMINER PRICE: Your answer is I don't  
6 know?

7 THE WITNESS: I don't know.

8 Q. (By Ms. Blend) Why don't you know whether  
9 OCC would support a regulatory asset under those  
10 circumstances?

11 MS. O'BRIEN: Objection.

12 EXAMINER PRICE: Grounds?

13 MS. O'BRIEN: It calls for an opinion  
14 that he's not giving at this time. It calls for --

15 EXAMINER PRICE: It's a fair question.  
16 Overruled.

17 THE WITNESS: If it went in the reverse  
18 and there was a 40 percent increase to the federal  
19 income tax, I can't imagine that this Commission  
20 would prevent any utility for passing those along  
21 either through a deferral or through some sort of a  
22 rate increase.

23 Q. (By Ms. Blend) Thank you. My question  
24 was about whether OCC would support that deferral.

25 A. I don't have a position on whether OCC

1 would support it or not.

2 Q. Is there additional information that you  
3 need --

4 A. No.

5 Q. -- in order to answer the hypothetical?

6 A. No, no.

7 Q. In your opinion, would it be just and  
8 reasonable if utilities could not establish a  
9 regulatory asset under those circumstances?

10 EXAMINER PRICE: Can you rephrase the  
11 question? I was confused by it.

12 Q. Sure. Would it be appropriate if there  
13 were a 40 percent federal income tax increase for  
14 utilities not to be permitted to establish a  
15 regulatory asset to account for the change in the tax  
16 rate in taxes?

17 A. Would it be appropriate for them -- could  
18 you restate -- could I hear that again, please?

19 MS. BLEND: Would you mind reading the  
20 question.

21 (Record read.)

22 A. No, it wouldn't necessarily be not  
23 appropriate.

24 Q. No, it would not be not appropriate? So  
25 yes, it would be appropriate?

1 A. It could be appropriate.

2 Q. So is your testimony essentially that  
3 whether a deferral should be established to reflect  
4 federal income tax rate changes only goes one way?

5 A. No, that's not my testimony.

6 Q. If there were -- I'm going to present  
7 another hypothetical for you. If there were  
8 corporate federal income tax rate increase and  
9 utilities established a regulatory asset to reflect  
10 that rate increase, would OCC support the application  
11 of a carrying cost on the regulatory asset?

12 MS. O'BRIEN: I'll renew my objection.

13 EXAMINER PRICE: Grounds?

14 MS. O'BRIEN: Hypothetical, speculation.  
15 Calls for the witness to speculate.

16 EXAMINER PRICE: I think it calls for the  
17 witness to state what OCC's position on this is.  
18 Overruled.

19 THE WITNESS: I don't know what OCC's  
20 position would be with respect to carrying costs on  
21 on a regulatory asset.

22 Q. (By Ms. Blend) But OCC's position with  
23 respect to the regulatory liability created in this  
24 proceeding is that a carrying cost should apply,  
25 correct?

1           A.    Yes.

2           Q.    So is OCC's position that carrying costs  
3 should only apply one way?

4           A.    No, it's different -- In this instance,  
5 it's customers' money. It's customers' money that's  
6 being charged through rates, and so this regulatory  
7 liability is a customer source of funds that should  
8 be added to the -- to the liability.

9           Q.    Are you familiar with the five-factor  
10 test that the Commission sometimes has applied when  
11 addressing utility requests for deferrals?

12          A.    Yes.

13          Q.    Does OCC agree with the application of  
14 the five-factor deferral test here?

15          A.    Those -- that five factor -- actually six  
16 factors, don't necessarily have to be considered in  
17 each instance. The Commission is fully within its  
18 powers to issue this regulatory liability. I  
19 believe, though, that if the Commission was to  
20 establish some sort of a -- a standard, that they  
21 should also be looking at the impact on customers.

22                This is customers' money. And the  
23 Commission has to -- has a responsibility to the  
24 customers as well as the utility and they have to  
25 balance the interests of both.

1           So to say that the -- that this standard  
2           should be only applied to how a company is earning or  
3           whether they're earning is irrelevant. This is  
4           customers' money that the utilities are collecting,  
5           and so I believe the Commission should look out for  
6           the customer.

7           Q.    Did OCC analyze the application of the  
8           five-factor deferral test --

9           A.    No --

10          Q.    -- for purposes of this proceeding?

11          A.    -- we did not.

12          Q.    On Page 8 of your testimony, beginning at  
13          the middle of line 16, you recommend that the  
14          Commission pass the benefits of the TCJA back to  
15          customers by directing each utility to recalculate  
16          the revenue requirement from its most recent base  
17          rate reflecting the full impact of the TCJA as of  
18          January 1, 2018, correct?

19          A.    Yes.

20          Q.    Would you support a utility taking this  
21          approach, and by this approach, I mean going back to  
22          its most recent base rate and recalculating the  
23          revenue requirement to reflect the impact of an  
24          increase in an expense?

25          A.    Again, I think it's a hypothetical

1 question. I don't -- I don't know whether OCC would  
2 support that or not.

3 Q. I'm asking, sir, whether you would.

4 EXAMINER PRICE: He's here on behalf of  
5 the OCC. If he wanted to give his opinion as a  
6 residential customer, he would have to wait for a  
7 public hearing.

8 MS. BLEND: Understood, your Honor, thank  
9 you.

10 Q. (By Ms. Blend) So Mr. Willis, your  
11 testimony is that the Commission should direct each  
12 utility to recalculate the revenue requirement and  
13 the most recent base rate to reflect a reduction in  
14 federal income tax expense, and you do not have an  
15 opinion whether it would be appropriate for a utility  
16 to seek the same treatment if it had an expense  
17 increase?

18 A. I don't know what OCC would do if it went  
19 the other way. I'm not here to testify on -- I'm  
20 here to testify on this regulatory liability.

21 Q. Is it your opinion that the Commission is  
22 permitted to engage in single issue ratemaking?

23 A. Within the scope of the ESP, yes.

24 Q. Does the ESP encompass base rates?

25 A. No.

1 Q. Are you aware that the Commission decided  
2 AEP Ohio's last base rate case in 2011?

3 A. Yes.

4 Q. And are you aware that in that case, the  
5 test year was from June 1st, 2010 to May 31st, 2011?

6 A. Yes.

7 Q. Would you expect that AEP Ohio's costs  
8 included in that test year would have changed since  
9 2011?

10 A. They may have changed, but if they  
11 weren't just and reasonable, I would have expected  
12 AEP Ohio to have filed a base rate case.

13 Q. That leads me to my next question. Would  
14 you agree there are other ways of accomplishing the  
15 Commission passing back tax savings besides  
16 recalculating revenue requirements from base cases?

17 A. There may be, but that's not -- that's  
18 not my testimony.

19 Q. For example, are you aware that OCC, the  
20 Commission or any other stakeholder could commence a  
21 rate case under Revised Code 4905.26?

22 A. Perhaps.

23 Q. And you would agree that utilities have  
24 already begun proactively reflecting tax impacts and  
25 rider rates?

1           A.    Yes, some have; some have not.

2           Q.    You would agree that AEP Ohio has begun  
3 proactively reflecting tax impacts and rider rates?

4           A.    Yes.

5           Q.    And are you aware that AEP Ohio updated  
6 it's FERC Open Transmission Tariff rates to reflect  
7 that tax savings?

8           A.    They may have. I'm not aware of that.

9           Q.    And other utilities are addressing tax  
10 impacts and settlement in other cases, correct?

11          A.    Some are.

12          Q.    For example, Ohio Gas Company?

13          A.    Yes.

14          Q.    And Dayton Power and Light Company?

15          A.    Yes.

16          Q.    And you're aware that AEP Ohio  
17 proactively initiated a separate docket in the  
18 18-1007-EL-UNC docket to implement TCJA impact and  
19 rates?

20          A.    Yes.

21          Q.    And would you agree that how TCJA  
22 benefits flowback to customers could be in that  
23 proceeding?

24          A.    It could.

25               MS. BLEND: Thank you. I have no further

1 questions.

2 EXAMINER PRICE: Miss Kingery?

3 MS. KINGERY: Just a few, your Honor.

4 - - -

5 CROSS-EXAMINATION

6 By Ms. Kingery:

7 Q. Mr. Willis, you recommend that carrying  
8 costs be applied to the deferred tax liability,  
9 correct?

10 A. Yes, I do.

11 Q. And you remember just a moment ago  
12 speaking with counsel for AEP, you indicated, and  
13 correct me if I misstate your testimony here, that  
14 carrying costs are reasonable because it's the  
15 customers' money that the utility is using in the  
16 meantime, correct?

17 A. Yes.

18 Q. So in this situation, we have a tax  
19 liability -- I'm sorry, a deferred liability, and you  
20 would agree that there are also deferred assets,  
21 correct?

22 A. Yes.

23 Q. And there the situation is just the  
24 reverse, correct, so --

25 A. Are you referring to your carrying costs?

1           Q.    I'm talking about whose money it is.  So  
2   when there's a regulatory asset that's deferred,  
3   that's the utility's money --

4           A.    Yes.

5           Q.    -- that customers are using?

6           A.    Yes.

7           Q.    So would you agree then that it's  
8   reasonable for the same reason to always include  
9   carrying costs on deferrals?

10          A.    I wouldn't -- I don't know.  Again, it's  
11   a hypothetical.  I mean, typically the utilities do  
12   get carrying costs.  I know in AEP's storm -- '08  
13   storm damage, they asked for the weighted cost  
14   capital that included equity, and I believe the  
15   Commission gave them cost of debt.  I think Duke  
16   generally gets cost of debt, but I can't -- I don't  
17   know that it's always -- it's an always thing.  I  
18   don't know.

19          Q.    Can you explain any reason why a  
20   regulatory asset and a regulatory liability should be  
21   treated any differently with regard to carrying  
22   costs?

23          A.    No, that's exactly the reason why I'm  
24   proposing there should be carrying costs included, is  
25   because when it goes the other way, the utility

1 always gets the carrying costs.

2 Q. Does OCC often fight against carrying  
3 costs when it's a regulatory asset?

4 A. I can't speak to what OCC always does,  
5 but I'm here to testify on this case.

6 Q. Would you look at Page 8 of your  
7 testimony. In the sentence starting on line 1, you  
8 indicate that you believe that the unprotected excess  
9 ADITs should be refunded to customers over no more  
10 than five years; do you see that?

11 A. I do.

12 Q. And this is an impact of the TCJA about  
13 which the PUCO has discretion, correct?

14 A. Yes.

15 Q. Where did you get that five-year number?

16 A. I -- just generally it's a time period  
17 that is between rate cases. I know that... I'm  
18 trying to think where... We also made this  
19 recommendation in the Duke... I believe it was in the  
20 Duke case, either it was Duke or DP&L, I can't recall  
21 it. It might have been in the DP&L rate case we made  
22 the recommendation that the unprotected excess ADIT  
23 be amortized over five years.

24 Q. Did that have something to do with the  
25 facts that were in that particular case? Because you

1 referred to time between rate cases, and of course,  
2 that's not a consistent number.

3 A. No, I was just trying -- we were trying  
4 to come up with like rate case expenses, we try to  
5 amortize whatever it is that you -- that the  
6 Commission has discretion over, and we just thought  
7 that that was a reasonable time to amortize the  
8 unprotected excess ADIT.

9 Q. Do you think that as with considering  
10 deferrals, the impact on the company's finances  
11 should be considered in determining how long that  
12 time period should be?

13 A. Well, again, we're talking about  
14 customers' money, and I think the Commission should  
15 give consideration to the impact on the customer as  
16 well when they're continuing to pay for -- through  
17 rates, a tax rate that doesn't exist anymore. There  
18 should be consideration for the customers as well.

19 Q. But we're talking about the return of  
20 excess ADITs, not current rates that are being  
21 charged. We're not talking about base rates.

22 A. I'm sorry, they were rates that have been  
23 collected in anticipation of paying the Internal  
24 Revenue Service at 35 percent that doesn't exist  
25 anymore. So it is a pool of money that customers

1 provided that needs to be returned.

2 Q. Oh, I understand that. But it's not  
3 current rates that they're paying. We're talking now  
4 about the return of what had previously been paid and  
5 is now excess.

6 A. Not necessarily. There's -- well, the  
7 excess balance.

8 Q. Yes.

9 A. There's the balance, but rates include --  
10 the current rates if they're not adjusted are at  
11 35 percent. And through the rates that -- with  
12 respect to the protected portion were -- are  
13 collected through rates based on a straight line  
14 depreciation, but the utility through tax reporting  
15 purposes are reporting that at a much accelerated.  
16 So there's that portion that has been collected that  
17 does reflect customers' money.

18 Q. I don't disagree. And your  
19 recommendation on Page 8 in the lines we talked about  
20 relates only to the refund to customers of  
21 unprotected excess ADITs, correct?

22 A. Yes.

23 Q. As opposed to base rates or any other  
24 issue that may be relevant to this proceeding,  
25 correct?

1           A.    Yes, but within the unprotected portion,  
2           again, I could just think of like a pension's  
3           expense. It's reflected in -- your base rate is what  
4           the pension expense is at that time, but for, again,  
5           tax reporting purposes, you don't necessarily have to  
6           report all of the liability. So there's that -- so  
7           the customer has supplied this.

8           Q.    Oh, I don't disagree that the customer  
9           has supplied it. I'm just going to the question we  
10          were talking about originally which was why you chose  
11          five years as your period over which it should be  
12          returned, that difference. And you had indicated it  
13          was because that's the typical time between rate  
14          cases or at least it was the time between rate cases  
15          for perhaps DP&L.

16          A.    Not -- Well, we thought it was a  
17          reasonable period of time.

18                EXAMINER PRICE: Don't interrupt counsel.  
19          Had you finished your question, Ms. Kingery?

20                MS. KINGERY: Yes, I did.

21                THE WITNESS: I'm sorry.

22          Q.    So your five-year period was just  
23          something you thought was a reasonable period?

24          A.    Yes.

25          Q.    It wasn't based on any external --

1 MS. O'BRIEN: I think he's testified to  
2 that already.

3 EXAMINER PRICE: Are you making an  
4 objection?

5 MS. O'BRIEN: Yes.

6 EXAMINER PRICE: Make it to me, not to  
7 counsel. Overruled.

8 Q. (By Ms. Kingery) Just in summary,  
9 Mr. Willis, I just want to understand that the five  
10 years that you are recommending is not based on some  
11 concrete factor that you can point to?

12 A. There isn't a concrete factor. The  
13 Commission has full discretion over the amount of  
14 time it can require the utilities to amortize this  
15 back.

16 Q. So you're agreeing with me, that it was  
17 not a concrete factor, correct?

18 MS. BOJKO: Objection. Asked and  
19 answered.

20 EXAMINER PRICE: I'll sustain that one.

21 MS. KINGERY: With that, I have nothing  
22 more.

23 EXAMINER PRICE: Miss Bojko, you can go  
24 out of order but no rehabilitating the witness.

25 MS. BOJKO: My apologies, your Honor. As

1 you know, there's another hearing going on. I'm  
2 doing double duty.

3 EXAMINER PRICE: Just glad there is not  
4 three.

5 MS. BOJKO: I do not have any questions,  
6 thank you.

7 EXAMINER PRICE: Thank you.

8 Redirect?

9 MS. BAIR: Can I just ask a question?

10 EXAMINER PRICE: Oh, I'm sorry,  
11 Miss Bair.

12 MS. BAIR: It's okay.

13 EXAMINER PRICE: Miss Bair on behalf of  
14 the Staff.

15 - - -

16 CROSS-EXAMINATION

17 By Ms. Bair:

18 Q. I'd like to ask you a question. We're  
19 still on Page 8. It's lines 10 through 13. And what  
20 you're recommending specifically that the Commission  
21 do is you're telling the company to apply for a  
22 not-for-an-increase?

23 A. I think that's the best way that the  
24 customers can actually see a rate reduction and that  
25 that the utilities -- that I'm making a

1 recommendation to the Commission that the utilities  
2 be required to file for a rate reduction.

3 Q. So that's a rate application, correct?

4 A. It's an application for a  
5 not-for-an-increase in rates.

6 Q. Does that come under 4909.19 just like a  
7 rate increase would be, or it's the same genre of  
8 application?

9 A. I'm not an attorney. I don't know where  
10 in the statute that's the case.

11 Q. I'll ask you something a little bit more  
12 up your alley. Would you expect to see a Staff  
13 report?

14 A. I would expect that the utilities would  
15 use the most recent Staff report schedules that were  
16 used in the -- in developing the O&O, the PUCO O&O  
17 and to restate the rates reflecting the full benefits  
18 of the TCJA and to file that with the Commission with  
19 the proper tariffs.

20 Q. So for AEP, for example, it would be 2011  
21 and the only change to their application would be the  
22 tax reduction; is that correct?

23 A. There would be the tax reduction and then  
24 there would be the amortization of the accumulated --

25 Q. So we wouldn't look at any other expenses

1 or anything like that?

2 A. No.

3 MS. BAIR: I have nothing further.

4 EXAMINER PRICE: Thank you. Now we'll go  
5 off the record for five minutes.

6 (Off the record.)

7 EXAMINER PRICE: Let's go back on the  
8 record. Consumers' Counsel, redirect?

9 MS. O'BRIEN: We have no redirect, and  
10 I'd like to renew my motion to admit OCC Exhibit 1.

11 EXAMINER PRICE: Any objections to the  
12 admission of OCC Exhibit 1?

13 Subject to Duke's motion to strike,  
14 Miss Kingery, objection to OCC Exhibit 1?

15 MS. KINGERY: No.

16 EXAMINER PRICE: Subject to your motion  
17 to strike, okay, exhibit will be admitted. You're  
18 excused.

19 (EXHIBIT ADMITTED INTO EVIDENCE.)

20 EXAMINER PRICE: Miss Bair.

21 MS. BAIR: Thank you, your Honor. Staff  
22 calls Jonathan Borer as the Staff witness.

23 (Witness placed under oath.)

24 EXAMINER PRICE: Please be seated and  
25 state your name and business address for the record.

1                   THE WITNESS: My name is Jonathan Borer.  
2 Business address is 180 East Broad Street, Columbus,  
3 Ohio, 43215.

4                   EXAMINER PRICE: Please proceed,  
5 Miss Bair.

6                   - - -

7                   JONATHAN J. BORER  
8 being first duly sworn, as prescribed by law, was  
9 examined and testified as follows:

10                  DIRECT EXAMINATION

11 By Ms. Bair:

12                  Q. By whom are you employed and in what  
13 capacity?

14                  A. I'm employed by the Public Utilities  
15 Commission of Ohio as a Utility Auditor 2.

16                  MS. BAIR: Your Honor, I'd like to have  
17 marked as Staff Exhibit 1 which I passed up to the  
18 Bench earlier Jonathan Borer's testimony.

19                  EXAMINER PRICE: So marked.

20                  (EXHIBIT MARKED FOR IDENTIFICATION.)

21                  Q. (By Ms. Bair) Jonathan, what is the  
22 document in front of you?

23                  A. This is my prefiled testimony.

24                  Q. Was that prepared by you or under your  
25 direction?

1 A. Yes.

2 Q. Do you have any changes, corrections or  
3 additions that you would like to make to that  
4 Exhibit?

5 A. I do not.

6 Q. And if I were to ask you those questions,  
7 would your answers be the same today?

8 A. Yes, they would.

9 MS. BAIR: Thank you. Your Honor, I'd  
10 like to move Staff Exhibit No. 1 into evidence  
11 subject to cross-examination.

12 EXAMINER PRICE: I'll defer ruling on  
13 your motion to admit until after cross-examination.

14 Miss Petrucci.

15 MS. PETRUCCI: Yes.

16 - - -

17 CROSS-EXAMINATION

18 By Ms. Petrucci:

19 Q. If we can turn to Page 7 of your  
20 testimony, specifically lines 3 to 9. Is it Staff's  
21 position that the PUCO-ordered deferred liability is  
22 revenue neutral to the utilities?

23 A. The deferred liability wouldn't reflect  
24 rates. It's a balance sheet item. So it's deferring  
25 what the assumed tax savings would be.

1           Q.    And ultimately when the utilities pass  
2 through the change in the federal income tax rate at  
3 the lower amount, is it your testimony here that that  
4 is revenue neutral to the utilities?

5           A.    Revenue neutral, yes.

6           MR. NOURSE:  I'm sorry, can I have the  
7 question and answer?

8           EXAMINER PRICE:  Can I have the question  
9 and answer read again, please.

10           (Record read.)

11           EXAMINER PRICE:  Mr. Borer, if and when  
12 the regulatory liability is amortized, would that be  
13 revenue neutral to the utility?

14           THE WITNESS:  I guess I should perhaps  
15 clarify to say that the mechanics of what that would  
16 look like haven't been decided yet.  Just basically  
17 the scope of my testimony really addresses the fact  
18 that the liability should be deferred and not the  
19 actual mechanics on end effect on revenue.

20           EXAMINER PRICE:  Thank you.

21           Q.    (By Ms. Petrucci) Do you believe that the  
22 accounting change should not adversely affect rates?

23           A.    Yes.

24           Q.    In your position at the PUCO, are you  
25 familiar with how pole attachment rates are

1 established?

2 A. I am not familiar with that.

3 Q. And as a result, does that also mean you  
4 are not familiar with the pole formula that is used?

5 A. That's correct, I would not be familiar  
6 with that either.

7 Q. Do you agree that the PUCO-ordered  
8 deferred liability that's in place now provides the  
9 Commission with the ability to preserve the deferred  
10 liability for future consideration?

11 A. Yes.

12 MS. PETRUCCI: I have nothing further.

13 EXAMINER PRICE: Mr. Hays?

14 MR. HAYS: No questions, thank you.

15 EXAMINER PRICE: Mr. Darr?

16 MR. DARR: No questions, your Honor.

17 EXAMINER PRICE: Mr. McKenney?

18 MR. MCKENNEY: Very briefly, your Honor.

19 - - -

20 CROSS-EXAMINATION

21 By Mr. McKenney:

22 Q. Good afternoon, Mr. Borer. You applied  
23 the five-part test in the Riverside deferral case,  
24 correct?

25 A. Correct, in my testimony.

1           Q.   Those are really five factors that the  
2 Commission has used to evaluate deferrals; is that  
3 right?

4           A.   That's correct.

5           Q.   The Commission doesn't have to find that  
6 all five factors have passed to grant a deferral,  
7 does it?

8           A.   Correct.

9           Q.   So it's not really a test?

10          A.   We would call it a test, I guess, but  
11 it's establishing sort of a framework for evaluating  
12 deferrals so that there's some sort of standard that  
13 could be applied.

14          Q.   Right. An additional factor could be  
15 whether the Commission could encourage a utility to  
16 do something that it wouldn't otherwise do for the  
17 granting of a deferral authority; is that right?

18          A.   Correct.

19          Q.   The Commission has done that?

20          A.   I believe I may have referenced it  
21 earlier. I didn't actually work -- I wasn't even at  
22 the Commission when that case was filed, but I do  
23 believe they added a sixth factor to that test to  
24 incentivize the utility.

25               MR. McKENNEY: Nothing further. Thank

1 you.

2 EXAMINER PRICE: Mr. Stinson?

3 MR. STINSON: Nothing, your Honor.

4 EXAMINER PRICE: Miss Bojko?

5 MS. BOJKO: No thank you, your Honor.

6 EXAMINER PRICE: Mr. Kurtz?

7 MR. KURTZ: No questions.

8 EXAMINER PRICE: Mr. Schuler?

9 MR. SCHULER: No questions, your Honor.

10 EXAMINER PRICE: Mr. Nourse?

11 MR. NOURSE: Thank you.

12 - - -

13 CROSS-EXAMINATION

14 By Mr. Nourse:

15 Q. Good afternoon, Mr. Borer. So does the  
16 five-factor test or framework apply to this  
17 situation? Is that Staff's position?

18 A. It could be applied, yes, but as an  
19 approximation. I don't believe it has ever been  
20 applied to a deferred asset before or a deferred  
21 liability before, but it could be applied, yes.

22 Q. And is it Staff's recommendation that the  
23 Commission apply the five-factor test as you  
24 clarified or modified in your testimony in order to  
25 decide the deferral issue?

1           A.    Yes.

2           Q.    And by the way, let me clarify, when you  
3 were asked earlier by Miss Petrucci about revenue  
4 neutrality, I believe the context of that was for  
5 pole attachment rates, am I correct, or was it about  
6 retail rates generally?

7           A.    Actually I wasn't certain exactly what  
8 the context was, whether it was for full retail rates  
9 or pole attachment rates.

10          Q.    Okay. Would your same answer apply to  
11 both pole attachments and retail rates?

12          A.    I believe so. I guess my modified answer  
13 would be that the mechanics haven't been evaluated in  
14 my testimony on how the return of tax reduction or  
15 tax savings to customers would affect rates.

16          Q.    Yeah, and let me clarify that a little  
17 bit more. I mean, would you agree that the  
18 accounting decision by the Commission such as the  
19 January 10th entry in this case is separate from a  
20 ratemaking decision or rate order of the Commission?

21          A.    Correct. What's being deferred is the  
22 change in rates. It's measuring the tax savings and  
23 deferring that amount.

24          Q.    Well, okay, not only that, would you  
25 agree that it's without prejudice to the ratemaking

1 process?

2 A. I believe so.

3 Q. In other words, a deferral of X could  
4 be -- a deferral of X could be put on the company's  
5 books for regulatory liability and then in the  
6 ratemaking decision it might be X minus Y and that  
7 would be perfectly normal?

8 A. Could you clarify the question X minus Y?  
9 What would the variable Y represent?

10 Q. Let me just say it this way: If there  
11 were a deferral in the accounting case for  
12 \$100 million as a regulatory liability, when it comes  
13 time for the ratemaking case or the ratemaking  
14 process, it would be perfectly acceptable if the  
15 Commission implemented a rate change or in this case  
16 a rate reduction based on a regulatory liability of  
17 100 million minus X, a smaller amount?

18 A. It could be. It's entirely at the  
19 discretion of the Commission on how that money would  
20 be refunded, whether a reduction to rates, a credit  
21 or an offset. Their discretion would come in.

22 Q. And stated differently, the accounting  
23 decision does not determine the outcome of the  
24 ratemaking decision; do you agree?

25 A. Yes.

1           Q.    On Page 3 of your testimony, you made  
2 reference to GAAP, Generally Accepted Accounting  
3 Principles; do you see that?

4           A.    Yes.

5           Q.    And you seem to be saying that the  
6 accounting directive comported with GAAP and the  
7 Commission's accounting directive comported with  
8 GAAP, and you see that conclusion?

9           A.    Yes.

10          Q.    And would you agree that if the TCJA was  
11 not passed into federal law, the accounting deferrals  
12 would not have been established under GAAP?

13          A.    That's correct because refunds would not  
14 be probable.

15          Q.    Okay. Thank you. Now, in your testimony  
16 following Page 4 and Page 5, you're stating the  
17 five-factor test, and then you kind of modify it for  
18 liability. Is that a fair summary?

19          A.    Correct, more for rewording, but yeah.

20          Q.    We can clarify that shortly, but as to  
21 the original test, and you've got the factors listed  
22 on Page 4 there, so factor No. 1, whether the  
23 utilities' current rates or revenues are sufficient,  
24 do you see that?

25          A.    Yes.

1           Q.    All right.  So, first of all, the word  
2   current, does that suggest that the factor 1 should  
3   be applied at the time of the deferral request or  
4   order?

5           A.    So you're saying that the utilities'  
6   current rates based on all actual costs at the time  
7   of deferral should be evaluated or based on the  
8   previous base rate case?

9           Q.    Well, I'm asking your understanding  
10   basically for this first question about the word  
11   current.  What does that mean to you in the context  
12   of factor 1?

13          A.    I would say the current rates mean based  
14   on most recent base rate cases or any rider filings  
15   or rider rates that are in effect.

16          Q.    When it says rates or revenues, that's  
17   the utility's revenues as authorized in your rate  
18   case, right?

19          A.    Correct.

20          Q.    Your position is not that it wouldn't be  
21   a measure of current revenue even though it says  
22   current rates and revenues; you're saying it should  
23   be the test year revenues that were authorized in the  
24   prior rate case?

25          A.    Yes, it could be based on the test year

1 or current, but that really ultimately is at the  
2 discretion of the Commission on how to calculate or  
3 base that.

4 Q. But in this case, as you're applying the  
5 test, you're interpreting current revenues to mean  
6 the test year revenues from the last rate case; am I  
7 correct?

8 A. That might be what I would interpret.

9 Q. But that's the way you're applying it; am  
10 I correct?

11 A. Yes.

12 Q. Now, when we talk about the test, in  
13 fact, 1 talks about sufficiency to cover the costs  
14 associated with the deferral, how do you interpret  
15 the word sufficiency or how does that translate into  
16 the application of factor 1?

17 A. You would look at it from the previous  
18 rate case, just speaking for base rates where the tax  
19 is based on the 35 percent and you're seeing a  
20 reduction in 40 percent -- a 40 percent reduction in  
21 income tax expense based on the previous base rate  
22 case just for base rates. So that all else being  
23 equal, then yes, rates would be sufficient to cover  
24 the cost of the deferral.

25 Q. So your interpretation of current rates

1 or revenues are sufficient to cover costs. You would  
2 look to the last rate case to test your revenues and  
3 look at the test year expense, that's your baseline  
4 for determining whether the deferral should be  
5 granted?

6 A. So Staff hasn't evaluated what is the  
7 best -- the correct way because there could be  
8 multiple interpretations to truly correct, to  
9 calculate the savings whether it's based on the  
10 previous base rate case, based on current rates in  
11 year 2018. There are multiple ways to apply that.

12 Q. So you -- when I say you, I'm talking  
13 about Staff in your capacity here today -- so you're  
14 willing to entertain as a reasonable application in  
15 factor 1 that current revenues and the sufficiency to  
16 those should be measured, for example, current  
17 earnings or whether revenue -- the revenue  
18 requirement as authorized in the prior rate case is  
19 being collected, that that's a fair way to interpret  
20 factor 1?

21 A. That could be one way to interpret factor  
22 1, yes.

23 Q. And just because it came up earlier, I  
24 want to get your opinion on whether if this 2017 act  
25 had been a tax increase, whether you'd apply the same

1 criteria that you're applying here.

2 A. I think it should be considered, not to  
3 say yes or no, but it should be considered.

4 Q. The same factors should be considered?

5 A. Yes.

6 Q. Now, would you agree that application of  
7 the factors are factual in nature?

8 A. Yes, there is some subjectivity to it,  
9 but yes, they are based on the factual.

10 Q. And did Staff look at the facts for all  
11 the -- I'll still stick with just the electric  
12 utilities since that seems to be the focus here, did  
13 Staff review the facts as applicable to all four  
14 electric utilities in coming up with its position?

15 A. We did not do any in-depth analysis to  
16 actually calculate what we would assume the tax  
17 savings to be for each of the electric utilities.

18 Q. So when it comes to the buckets we talked  
19 about with protected ADIT/unprotected ADIT and FIT  
20 expense or savings, Staff hasn't applied  
21 utility-specific facts to each of the four electric  
22 utilities yet?

23 A. Sorry, could you repeat the question?

24 Q. You, Staff, haven't applied -- and I'm  
25 still on factor 1 really -- you haven't applied the

1 utility-specific facts as to the three buckets to the  
2 four electric utilities yet; that's something you  
3 expect to do in the future, is that correct?

4 A. That's correct, yeah. We'll do that when  
5 the Commission gets an order on on how to measure the  
6 tax savings so we can appropriately do our analysis.

7 Q. And with respect to the one bucket, the  
8 FIT tax rate or the expense savings, is it possible  
9 that even though that one expense has gone down, that  
10 other expenses have equally or in greater magnitude  
11 gone up for the utility as they're experiencing  
12 current costs and current revenues?

13 A. Yes, that's entirely possible.

14 Q. And should that be considered in  
15 application of the five-factor test?

16 A. If the Commission warrants it and  
17 believes it should be considered, then it's at the  
18 discretion of the Commission.

19 Q. Now, when it comes to the sufficiency  
20 question under factor 1, or as you've flipped it, the  
21 insufficient, whether utilities' current rates are  
22 insufficient to cover the costs, is it your  
23 understanding that that could be applied in a way  
24 that might cover part of a deferral or is it an all  
25 or nothing question on a given deferral?

1 MS. BAIR: Objection.

2 EXAMINER PRICE: Grounds?

3 MS. BAIR: Relevance to partial deferral.

4 MR. NOURSE: Well, I'm asking him how  
5 factor 1 would be applied and whether in a given  
6 situation it would be all or nothing or whether part  
7 could be insufficient and part could be sufficient.

8 MS. BAIR: Part of what?

9 MR. NOURSE: A deferral.

10 Q. (By Mr. Nourse) Do you understand my  
11 question?

12 A. I believe so. So you're saying part of  
13 the tax deferral as the deferred liability, only part  
14 would be refunded or required to be deferred?

15 Q. Right.

16 A. Well, if the Commission believes that.  
17 If the Commission believes that part should be  
18 deferred, it's entirely their discretion on what that  
19 is and how to measure the tax savings and what  
20 specifically should be deferred.

21 Q. On Page 7 of your testimony, you've got a  
22 statement -- this is under factor 5 about financial  
23 integrity -- the statement says, "All else being  
24 equal, this means utilities are seeing an increase in  
25 net income, so in effect, the Commission's ordered

1 the utilities to defer an amount such that net income  
2 at the current 21 percent FIT rate would be the same  
3 as net income for at the previous 35 percent FIT  
4 rate; do you see that?

5 A. Yes.

6 Q. So the all else being equal proviso  
7 there, that's just what we were talking about a  
8 minute ago, all else may not be equal when you look  
9 at current revenues and costs, correct?

10 A. That's correct.

11 MR. NOURSE: That's all the questions I  
12 have. Thank you, Mr. Borer.

13 EXAMINER PRICE: Thank you.

14 Miss Kingery.

15 MS. KINGERY: Just a few. Thank you,  
16 your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Ms. Kingery:

20 Q. Good afternoon, Mr. Borer. You were here  
21 this morning during the cross-examination of  
22 Mr. Wathen on behalf of Duke Energy Ohio, correct?

23 A. Yes.

24 Q. And do you recall the discussion  
25 concerning the meaning of atypical and infrequent

1 which is a part of the fourth factor in the test?

2 A. I believe there was a brief discussion,  
3 yes.

4 Q. And do you recall that the  
5 Attorney-Examiner asked a question about that  
6 particular test and how it was applied in the Duke  
7 Energy/Riverside deferral case?

8 A. I remember the Attorney-Examiner asking a  
9 question. I don't remember the specific context of  
10 the question.

11 Q. That's fair. Are you familiar with that  
12 Duke Energy request for a deferral with regard to the  
13 Riverside landslide?

14 A. I wouldn't say I'm extremely familiar  
15 with it, but I am generally familiar.

16 Q. And are you aware in that case of how the  
17 Staff applied factor 4 which talks about atypical and  
18 infrequent --

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

20 Q. -- expenses?

21 MS. KINGERY: If your Honor would allow  
22 me to approach, I would like to share with the  
23 witness a copy of the Finding and Order in Case  
24 17-2118-GA-AAM which I believe Miss Bojko used  
25 earlier today if I recall. Or was it not you?

1 MS. BOJKO: It was me, but I'm going to  
2 object.

3 MS. BAIR: What is the name of it?

4 EXAMINER PRICE: You may approach, then  
5 we'll get to the objection.

6 MS. KINGERY: This is the Commission's  
7 Finding and Order in that case.

8 Q. (By Ms. Kingery) Could you turn to Page  
9 6, Mr. Borer.

10 A. Yes.

11 MS. BAIR: Objection. Does the witness  
12 know anything about this or is this just being  
13 presented to him out of the blue?

14 MS. KINGERY: The witness said that he  
15 was generally aware of the case.

16 MS. BAIR: Is this the Riverside one?

17 MS. KINGERY: Yes.

18 MS. BAIR: He said he was generally  
19 aware.

20 Q. (By Ms. Kingery) Have you ever seen this  
21 document?

22 A. I believe one time, yes.

23 Q. At the top of Page 6, I would like you to  
24 read, if you would, the first sentence.

25 MS. BAIR: I renew my objection. He's

1     seen the document once. He didn't work on it. He  
2     doesn't know anything about it.

3             EXAMINER PRICE: First of all, it's a  
4     Commission order. There's really no need to lay a  
5     foundation, but the Order speaks for itself. So  
6     we'll test your reading skills and read the first  
7     sentence at the top of Page 6.

8             A. Beginning with "Staff agrees..."?

9             Q. Yes, please.

10            A. "Staff agrees that expenses from the  
11     landslide are atypical and likely infrequent, but  
12     points out that there is no guarantee that the  
13     retaining wall would be fully effective and that Duke  
14     will not come back seeking additional deferrals."

15            Q. As you read that sentence, is it your  
16     understanding that Staff opposed the deferral on the  
17     grounds that there was no guarantee that Duke  
18     wouldn't be back and ask for it a second time?

19            MR. DARR: Objection.

20            MR. McKENNEY: Objection.

21            MS. BOJKO: Objection.

22            MR. DARR: Document speaks for itself.

23     At this point, all we're doing is reading the  
24     document into the record.

25            EXAMINER PRICE: Sustained.

1           Q.     (By Ms. Kingery) Mr. Borer, is it your  
2 belief that Staff ever recommends against approval of  
3 a deferral because they think that it might happen  
4 again?

5           A.     Would you repeat the question?

6           MS. KINGERY:   Would you read it back.

7                   (Record read.)

8           THE WITNESS:   I'm not aware of a case  
9 where that's happened or not happened.

10          MS. KINGERY:   All right.   Thank you.   I  
11 have nothing more.

12          EXAMINER PRICE:   Thank you.

13          Miss Bair, redirect?

14          MS. BAIR:    Can I have a minute, please?

15          EXAMINER PRICE:   You may.   Go off the  
16 record.

17                 (Off the record.)

18          EXAMINER PRICE:   Back on the record.

19          Miss Bair, redirect?

20          MS. BAIR:    No redirect.   I'd like to move  
21 Staff Exhibit 1 into evidence.

22          EXAMINER PRICE:   Mr. Borer, you're  
23 excused.   Any objections to admission of Staff  
24 Exhibit 1?   Seeing none, it will be admitted.

25                 (EXHIBIT ADMITTED INTO EVIDENCE.)

1 EXAMINER PRICE: Let's go off the record  
2 for one minute.

3 (Off the record.)

4 EXAMINER PRICE: Let's go back on the  
5 record. We'll do one round of briefs in this  
6 proceeding. Briefs will be due 30 days from the  
7 filing of the transcript unless that 30-day period  
8 ends on a weekend or a federal holiday in which case  
9 it will be due the next business day. With that  
10 being said, the record is closed and we are  
11 adjourned. Off the record.

12 (The hearing was concluded at 2:45 p.m.)

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CERTIFICATE

I do hereby certify that the foregoing is  
a true and correct transcript of the proceedings  
taken by me in this matter on Tuesday, July 10, 2018,  
and carefully compared with my original stenographic  
notes.

*Cynthia L. Cunningham*  
Cynthia L. Cunningham

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Summary: Transcript In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies, hearing held on July 10th, 2018. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Cunningham, Cindy