

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for an : Case No. 17-32-EL-AIR
 Increase in Electric :
 Distribution Rates. :
 In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Tariff : Case No. 17-33-EL-ATA
 Approval. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-34-EL-AAM
 to Change Accounting :
 Methods. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-872-EL-RDR
 to Modify Rider PSR. :
 In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-873-EL-ATA
 to Amend Rider PSR. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Approval : Case No. 17-874-EL-AAM
 to Change Accounting :
 Methods. :

In the Matter of the :
 Application of Duke Energy:
 Ohio, Inc., for Authority :
 to Establish a Standard :
 Service Offer Pursuant to :
 Section 4928.143, Revised : Case No. 17-1263-EL-SSO
 Code, in the Form of an :
 Electric Security Plan, :
 Accounting Modifications, :
 and Tariffs for Generation:
 Services. :

1 In the Matter of the :
Application of Duke Energy:
2 Ohio, Inc., for Authority :
to Amend its Certified : Case No. 17-1264-EL-ATA
3 Supplier Tariff, P.U.C.O. :
No. 20. :

4 In the Matter of the :
Application of Duke Energy:
5 Ohio, Inc., for Authority : Case No. 17-1265-EL-AAM
6 to Defer Vegetation :
Management Costs. :

7 In the Matter of the :
Application of Duke Energy:
8 Ohio, Inc., to Establish :
Minimum Reliability : Case No. 16-1602-EL-ESS
9 Performance Standards :
10 Pursuant to Chapter :
4901:1-10, Ohio :
11 Administrative Code. :

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13 PROCEEDINGS

14 before Mr. Nicholas Walstra and Ms. Stacie Cathcart,
15 Attorney Examiners, at the Public Utilities
16 Commission of Ohio, 180 East Broad Street, Room 11-A,
17 Columbus, Ohio, called at 9:00 a.m. on Tuesday, July
18 17, 2018.

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20 VOLUME VII

21 - - -

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1282

1 Tuesday Morning Session,
2 July 17, 2018.

3 - - -

4 EXAMINER WALSTRA: We'll go back on the
5 record with Day 7, In Re: Duke Energy Ohio, regarding
6 the global stipulation.

7 Is there anything else to come before the
8 Bench?

9 Mr. Michael, call your witness.

10 MR. MICHAEL: Your Honor, OCC would call
11 Dave Effron. And if we could have previously -- or
12 OCC Exhibit No. 10 marked, your Honor. 9.

13 EXAMINER WALSTRA: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 (Witness sworn.)

16 EXAMINER WALSTRA: Thank you.

17 Please take a seat.

18 - - -

19 DAVID J. EFFRON

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

22 DIRECT EXAMINATION

23 By Mr. Michael:

24 Q. Would you state your name, please.

25 A. Yes. My name is David Jay Effron.

1 E-f-f-r-o-n.

2 Q. And where are you employed, Mr. Effron?

3 A. I'm self-employed, doing business as
4 Berkshire Consulting Services. My office is in New
5 Hampshire.

6 Q. And do you have in front of you,
7 Mr. Effron, what was previously marked as OCC Exhibit
8 No. 9?

9 A. Yes, I do.

10 Q. And can you identify that document,
11 please?

12 A. Yes. That's my direct testimony in this
13 case.

14 Q. And do you have any modifications to that
15 testimony, Mr. Effron?

16 A. I do not.

17 Q. And was this testimony prepared by you or
18 at your direction?

19 A. Yes, it was.

20 Q. And if I were to you ask the questions in
21 that testimony, would your answers be the same?

22 A. Yes, they would.

23 MR. MICHAEL: Your Honor, I move for
24 admission of OCC Exhibit No. 9, subject to
25 cross-examination.

1 EXAMINER WALSTRA: Thank you.

2 Any cross?

3 Go to Duke.

4 MS. PASHOS: Yes, thank you.

5 - - -

6 CROSS-EXAMINATION

7 By Ms. Pashos:

8 Q. Good morning.

9 A. Good morning.

10 Q. You've testified in rate cases before
11 across the country, right?

12 A. Yes.

13 Q. And you've testified in Ohio rate cases
14 before?

15 A. Yes, I have.

16 Q. Have you reviewed the company's
17 application and supporting schedules filed in the
18 rate case portion of this case which I think is Case
19 No. 17-0032-EL-AIR?

20 A. I believe I looked at them and it would
21 have been a while ago though.

22 Q. Would you agree with me that the
23 application in this rate -- for the rate case, that
24 Duke Energy Indiana -- Ohio filed its application in
25 March 2017?

1 A. That sounds right.

2 Q. And would you agree that the test year
3 used in this case is the 12 months beginning April 1,
4 2016, and ending March 31, 2017?

5 A. Yes.

6 Q. And would you agree that the applicable
7 federal corporate income tax rate during that test
8 year was 35 percent?

9 A. During that 12-month period it was, yes.

10 Q. And would you agree that the Staff Report
11 in this case was filed in approximately September
12 2017?

13 A. I don't have that in front of me. I'll
14 accept that representation.

15 Q. And would you agree that the Tax Cut and
16 Jobs Act was enacted in December 2017?

17 A. That's correct.

18 Q. And would you agree that the change in
19 federal corporate income tax rate from 35 percent to
20 21 percent consistent with the Tax Cut and Jobs Act
21 was for tax years beginning after 2017?

22 A. Beginning January 2018, yes.

23 Q. And would you agree that the beginning of
24 Duke Energy Ohio's tax year, 2018, is nine months
25 after the end of the test year used in this rate

1 case?

2 A. That sounds right, yes.

3 Q. Well, you should always check me on math,
4 so. Do you have an understanding of -- let me back
5 up.

6 Are you familiar with the Ohio Revised
7 Code sections that address the test year and things
8 like that?

9 A. It's been a long time since -- since I've
10 seen that. I was one time somewhat conversant with
11 it, but I'm generally familiar with it, but I
12 wouldn't like to speak at any great detail at this
13 point about it.

14 Q. You don't read that stuff every day?

15 A. No.

16 Q. If you know, does the Ohio Revised Code
17 talk about the cost of the utility -- does the Ohio
18 Revised Code, if you know, talk about that the
19 Commission shall fix rates based on the cost to the
20 utility of rendering the public utility service for
21 the test period?

22 MR. MICHAEL: I am going to object, your
23 Honor. Asking an accountant questions about what the
24 Ohio Revised Code says, I think, is a little bit
25 beyond the pale. I realize that Counsel prefaced her

1 question "If you know," but I think the question is
2 really a useless question given that she is asking a
3 accountant what the Ohio Revised Code says.

4 EXAMINER WALSTRA: I will allow the
5 question.

6 MR. MICHAEL: Thank you.

7 A. It says what it says. I didn't review
8 that in preparation for my testimony here today.

9 Q. To your knowledge, in this case, has
10 Staff or any intervenor recommended that Duke Energy
11 Ohio's revenue requirement be adjusted for changes in
12 expenses that became known after the end of the test
13 year other than the tax rate issue?

14 A. I can't speak to that as I sit here. I
15 did review, as I said, some of the -- I reviewed the
16 Staff Report and the company's filing. I don't
17 recall, as I sit here, whether there were any
18 adjustments for expenses after the end of the test
19 year.

20 Q. And in your testimony you're not
21 proposing any adjustments post test year other than
22 the change in the tax rate, right?

23 A. I am just adjusting -- I'm just
24 addressing the tax issue, yes.

25 Q. Are you aware or familiar at all with the

1 Rider DCI proposed by the company in this case?

2 A. I'm somewhat familiar with it.

3 Q. Are you aware that a pretty significant
4 amount of the company's rate base will be recovered
5 through that rider rather than through base rates?

6 A. I address that in my testimony, yes, I am
7 aware of that.

8 Q. And you are aware that the company is
9 calculating that rider using the 21 percent corporate
10 income tax rate rather than the 35 percent, right?

11 A. That's correct, yes.

12 Q. Are you aware the Commission has opened a
13 generic investigation into the impact of the Tax Cut
14 and Jobs Act here in Ohio?

15 A. I address that in my testimony so, yes, I
16 am aware.

17 Q. And would you agree that through that
18 generic investigation, the Commission can decide how
19 to implement new corporate income tax rates for all
20 utilities under their jurisdiction, no matter if they
21 have rate cases pending, where in the rate case
22 process they are, et cetera?

23 A. They -- they can determine what they say
24 they can determine and what the statutes permit.

25 MS. PASHOS: Thank you. That's all I

1 have.

2 EXAMINER WALSTRA: Thank you.

3 Staff?

4 MR. BEELEER: No questions, your Honor.

5 MR. MICHAEL: No redirect, your Honor.

6 EXAMINER WALSTRA: Thank you, Mr. Effron.

7 THE WITNESS: Thank you.

8 EXAMINER WALSTRA: Would you like to move
9 your exhibit?

10 MR. MICHAEL: Yes, your Honor. OCC moves
11 Exhibit No. 9.

12 EXAMINER WALSTRA: Any objections?

13 MS. PASHOS: No objection.

14 EXAMINER WALSTRA: It will be admitted.

15 (EXHIBIT ADMITTED INTO EVIDENCE.)

16 EXAMINER WALSTRA: Mr. Olikier, are you
17 calling your next witness?

18 MR. OLIKER: Yeah, sure. Your Honor,
19 RESA and IGS would call Joseph Haugen to the stand.

20 (Witness sworn.)

21 EXAMINER CATHCART: You may be seated.

22 MR. OLIKER: Your Honor, would you like a
23 copy of the testimony?

24 EXAMINER WALSTRA: Please.

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JOSEPH HAUGEN

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

DIRECT EXAMINATION

By Mr. Oliker:

Q. Good morning, Mr. Haugen.

A. Good morning.

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

A. Joseph C. Haugen, H-a-u-g-e-n.

Q. And who is your employer?

A. IGS Energy.

Q. And what is your business address?

A. 6100 Emerald Parkway, Dublin, Ohio.

Q. And for -- did you -- did you prepare
testimony to be filed in this proceeding?

A. I did.

Q. And is that testimony marked as RESA-IGS
Exhibit 4?

A. Yes.

EXAMINER WALSTRA: It will. It can be.

MR. OLIKER: We didn't mark this? Your
Honor, I would like to mark RESA-IGS Exhibit 4 as the
prefiled testimony of Joseph Haugen.

EXAMINER CATHCART: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 Q. (By Mr. Olikar) And there -- first, do
3 you have any changes to your direct testimony,
4 Mr. Haugen?

5 MR. OLIKER: First, your Honors, we
6 would -- if we could turn to page 4. This isn't so
7 much a change, but a provision that we would
8 voluntarily strike. Given that Mr. Wathen did not
9 submit the piece of testimony that is relied upon on
10 page 4 and it is the quoted language leading up to
11 footnote 8 and it is on lines 11 through 15 which
12 states "Further, Duke Witness Wathen alleges battery
13 storage resources qualify under FERC Account 393, but
14 then he also states in a separate piece of testimony
15 that 'the Commission should provide explicit
16 authority to include battery storage in Rider DCI,
17 even if the investment in this equipment is
18 ultimately recorded in FERC Accounts other than
19 Accounts 360-374.'"

20 My understanding is that testimony was
21 not submitted by Mr. Wathen or marked as an exhibit;
22 therefore, it is not included in the record, so we
23 would voluntarily strike that. But we would leave
24 the additional statements, including the discovery
25 response, which is attached.

1 Q. Mr. Haugen, am I correct we're striking
2 that line from your testimony or those lines?

3 A. That's correct.

4 Q. Okay. And switching to page 6, do you
5 have a correction on page 6?

6 A. Yes. The quote that begins on line 7
7 through line 9, I would like to add a footnote that
8 references Wathen's second supplemental testimony,
9 page 11, for reference.

10 Q. Okay. And with those corrections, if I
11 asked all the same questions in this testimony today,
12 would your answers be the same?

13 A. Yes.

14 MR. OLIKER: Okay. With that, your
15 Honor, I would tender the witness for
16 cross-examination.

17 EXAMINER CATHCART: Thank you.

18 Duke?

19 MS. WATTS: Your Honor, we have no
20 cross-examination.

21 EXAMINER CATHCART: OCC?

22 MR. WOLTZ: I have no cross-examination
23 either.

24 EXAMINER CATHCART: Anyone else, any
25 cross?

1 MR. EUBANKS: We have no cross.

2 EXAMINER CATHCART: Okay. Thank you.

3 MR. OLIKER: With that, we would move for
4 the admission of Mr. Haugen's testimony which is
5 RESA-IGS Exhibit 4.

6 EXAMINER CATHCART: Any objection?

7 MS. WATTS: No objection.

8 EXAMINER CATHCART: It will be admitted.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 EXAMINER WALSTRA: Mr. Beeler, would you
11 like to call a witness?

12 MR. BEEELER: Before we call --

13 MR. MICHAEL: Would it be okay if we
14 started, Mr. Oliker?

15 MR. BEEELER: Before I would call Staff
16 witnesses, Staff would just like, for convenience, to
17 have marked as Staff Exhibit 1, it comes in by rule,
18 but Staff Exhibit 1, the Staff Report of
19 Investigation. And this also includes the supplement
20 that was filed on October 12, 2017.

21 EXAMINER WALSTRA: So marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 MR. BEEELER: Your Honor, I think the
24 Staff Report is generally admitted by rule, so just
25 for convenience we marked it as Staff Exhibit 1 just

1 for, you know, folks to reference in briefs. I think
2 it's easier.

3 EXAMINER WALSTRA: I agree. That works.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 MR. EUBANKS: We would like to call --
6 Staff would like to call witness John Berringer to
7 the stand. We would also like to be marked as Staff
8 Exhibit 2, the testimony of John Berringer.

9 EXAMINER WALSTRA: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MR. EUBANKS: Hello.

12 MR. BERRINGER: Hi.

13 MR. EUBANKS: Could you state your name,
14 please.

15 MR. BERRINGER: John L. Berringer.

16 MR. EUBANKS: I'm sorry, is he going to
17 be sworn in?

18 EXAMINER WALSTRA: He is, yeah.

19 (Witness sworn.)

20 EXAMINER WALSTRA: Thank you.

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JOHN L. BERRINGER

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

DIRECT EXAMINATION

By Mr. Eubanks:

Q. Please state your name.

A. John L. Berringer.

Q. Would you spell it.

A. B-e-r-r-i-n-g-e-r.

Q. By whom are you employed?

A. Public Utilities Commission of Ohio.

Q. And in what capacity?

A. I work in the Rates and Analysis
Department as a Utility Specialist 2.

Q. Do you have before you what has been
previously marked Staff's Exhibit 2?

A. Yes, I do.

Q. Could you identify that document?

A. It is a copy of my testimony.

Q. Was that document prepared by you?

A. Yes.

Q. And under your direction?

A. Yes, it was.

Q. Do you have any changes, corrections, or
additions that you would like to make to Staff's

1 Exhibit 2?

2 A. I have no changes.

3 Q. If you were to be asked the same
4 questions that were answered in your testimony, would
5 you provide the same answers here today?

6 A. I would.

7 MR. EUBANKS: We have no further
8 questions and we tender the witness for
9 cross-examination.

10 EXAMINER WALSTRA: Thank you.

11 Any cross?

12 MR. MICHAEL: None.

13 MR. OLIKER: Actually, hold on.

14 EXAMINER WALSTRA: We already passed you.

15 MR. OLIKER: Just briefly, your Honor.

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Oliker:

19 Q. Mr. Berringer, you indicate that you are
20 testifying in support of the Staff Report, correct?

21 A. For this particular objection as it
22 relates to the Staff Report, yes.

23 Q. And that leads to my next question. Are
24 there any specific portions of the Staff Report for
25 which you had responsibility?

1 A. This adjustment was my responsibility.

2 Q. Are there any other portions of the Staff
3 Report, besides the one in your testimony, that you
4 had responsibility?

5 A. I would have to review the Staff Report.
6 I believe there are others.

7 Q. Could you -- I believe the document
8 has -- the Staff Report has been marked. Do you have
9 a copy of it? And could you just take a moment,
10 please, to let me know what additional sections may
11 have been within your responsibility.

12 MR. EUBANKS: Your Honor, I would like to
13 object. The witness's testimony is limited to the
14 response to the objection as stated. He has no -- he
15 is not being tendered to testify on behalf of Staff
16 in any other capacity.

17 MR. OLIKER: Your Honor, if his testimony
18 and his responsibility was only limited to what is
19 contained in his testimony, I would be happy to move
20 on, but what I am trying to avoid is the shell game
21 in which I failed to ask him which portions of the
22 Staff Report he was responsible for, and then I get
23 to a witness about a question and then they refer
24 back to Mr. Berringer and say you missed your chance.
25 And because of the fact that the Staff Report does

1 come into the record, that we have a requirement to
2 effectively cross-examine every Staff member to
3 determine which portions of the Staff Report they may
4 or may not have been responsible for. I am just
5 trying to make sure I don't lose that opportunity.

6 MR. EUBANKS: Your Honor, the question is
7 not what part of the Staff Report any particular
8 person was responsible for. The Staff, as a
9 collection, is responsible for the Staff Report and
10 all of its sections. That's why it's called the
11 Staff Report. What we do is we offer witnesses to
12 testify to certain sections of the Staff Report. And
13 I am repeating again that the only section of the
14 Staff Report that we're tendering this witness for is
15 to respond to the objection as stated.

16 MR. OLIKER: And if the Staff is willing
17 to stipulate that it will not rely upon any witness
18 for any section of the Staff Report that is not
19 described in their testimony, I'm happy to move on.
20 But I'm trying to simply avoid the shell game where
21 I'm told I missed my opportunity to cross-examine on
22 a certain section of the Staff Report.

23 MR. EUBANKS: Your Honor, if we could
24 stick to this particular witness, we're not talking
25 about all Staff witnesses right now. We are talking

1 about this particular witness. This particular
2 witness's testimony is limited to responding to the
3 objection as stated. And I will -- I will, I guess,
4 stipulate to that.

5 MR. OLIKER: Okay. With that
6 clarification, your Honor, for this witness I am
7 willing to move on.

8 EXAMINER WALSTRA: Thank you.

9 MR. OLIKER: Thank you.

10 MR. EUBANKS: With that, your Honor, we
11 would like to move Staff's Exhibit No. 2 into
12 evidence if there are no other questions.

13 EXAMINER WALSTRA: No other questions?

14 MS. WATTS: No other questions.

15 EXAMINER WALSTRA: Thank you,
16 Mr. Berringer.

17 No objections to admission of Staff
18 Exhibit 2?

19 Hearing none, it will be admitted
20 (EXHIBIT ADMITTED INTO EVIDENCE.)

21 MR. BEELER: We might need a short
22 recess. We are waiting for an attorney, who is
23 running over, who has the next witness.

24 EXAMINER WALSTRA: Okay. We can go off
25 the record.

1 (Discussion off the record.)

2 EXAMINER WALSTRA: We will go back on the
3 record.

4 Staff, you can call your next witness.

5 MR. LINDGREN: Thank you, your Honor.

6 The Staff calls Jacob Nicodemus to the stand.

7 (Witness sworn.)

8 EXAMINER WALSTRA: Thank you. Please
9 take a seat.

10 - - -

11 JACOB J. NICODEMUS

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

14 DIRECT EXAMINATION

15 By Mr. Lindgren:

16 Q. Good morning, Mr. Nicodemus.

17 A. Good morning.

18 Q. Do you have before you a copy of your
19 prefiled testimony that has been marked as Staff
20 Exhibit 3?

21 A. Yes.

22 Q. Thank you.

23 MR. LINDGREN: And, your Honors, for the
24 record, I would note that the version that was filed
25 with docketing, the page numbers were inadvertently

1 left off, but we have handwritten-in the page
2 numbers. If anybody would prefer a copy of that, we
3 can give them a copy.

4 EXAMINER WALSTRA: Thank you.

5 Anyone need a copy speak now?

6 Go ahead.

7 Q. (By Mr. Lindgren) Mr. Nicodemus, was this
8 testimony prepared by you or at your direction?

9 A. Yes.

10 Q. And do you have any changes or
11 corrections to this testimony?

12 A. No.

13 Q. So if I were to ask you all the questions
14 contained in this exhibit, would your answers be the
15 same?

16 A. Yes.

17 MR. LINDGREN: Thank you.

18 Subject to cross-examination, I would
19 move for the admission of this exhibit as Staff
20 Exhibit 3.

21 EXAMINER WALSTRA: Thank you. It will be
22 so marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 EXAMINER WALSTRA: It looks like we do
25 have some cross-examination.

1 MR. WOLTZ: Yes, your Honor.

2 MR. OLIKER: I have just a few
3 introductory questions, your Honor.

4 EXAMINER WALSTRA: Sure.

5 - - -

6 CROSS-EXAMINATION

7 By Mr. Oliker:

8 Q. Good morning, Mr. Nicodemus.

9 A. Good morning.

10 Q. My name is Joe Oliker. I'm with IGS
11 Energy. Hopefully, just a few questions for you this
12 morning.

13 Am I correct that your responsibility
14 with respect to the Staff Report was limited to the
15 survey reports, I believe, that are sponsored in your
16 testimony?

17 A. I wasn't involved with the Staff Report.

18 MR. OLIKER: Okay. Thank you. That's
19 even more helpful. No more questions. Have a good
20 day.

21 - - -

22 CROSS-EXAMINATION

23 By Mr. Woltz:

24 Q. Good morning, Mr. Nicodemus. How are
25 you?

1 A. Good.

2 Q. Excellent. I do have a few questions for
3 you, unfortunately. If we could start by looking in
4 your testimony, I believe it's page 2, but it will be
5 Question 6.

6 A. Yes.

7 Q. And here you describe your working
8 knowledge of the Revised Code statute; is that
9 correct?

10 A. That's right.

11 Q. And is it your knowledge that under
12 Revised Code 4928.143(B)(2)(h), that Staff is
13 responsible to examine both the reliability of the
14 distribution system to ensure that the customers'
15 reliability expectations are aligned with the EDUs'
16 and that the EDUs are placing sufficient emphasis on
17 dedicating sufficient resources to the reliability of
18 the system?

19 A. Staff examines those things. It's
20 ultimately the Commission's responsibility to ensure
21 them.

22 Q. But you would agree that as part of
23 Staff, it is also your duty to examine both of those
24 items, correct?

25 A. Yes.

1 Q. In reviewing this, you have attached a
2 residential survey and business survey, I believe
3 that's conducted by Duke Energy Ohio, correct?

4 A. Yes.

5 Q. Outside of that survey, did you look at
6 any other analysis to determine either of those two
7 factors that you were examining?

8 A. No. Well, for the customer perception
9 piece, that piece that I looked at only included the
10 surveys.

11 Q. And then what did the other piece
12 include?

13 A. Examining Duke's reliability performance.

14 Q. In examining Duke's reliability
15 performance, is it your understanding that Duke
16 Energy Ohio had standards in 2016 and 2017?

17 A. That's my understanding.

18 Q. And would you know what those standards
19 were off the top of your head?

20 A. The standard for CAIDI was 122.81. The
21 standard for SAIFI was 1.05.

22 Q. Thank you.

23 And is it your understanding that Duke
24 Energy Ohio missed both of those standards in 2017?

25 A. Yes, that's my understanding.

1 Q. And is it also your understanding that
2 Duke Energy Ohio missed their CAIDI standard in 2016?

3 A. Yes.

4 Q. Do you review any -- are you familiar
5 with Ohio Administrative Code 4901:1-10-26?

6 A. Yes.

7 Q. So do you review what are known as Rule
8 26 filings?

9 A. In parts, yes.

10 Q. And are you aware of Ohio Administrative
11 Code 4901:1-10-11?

12 A. Yes.

13 Q. And do you review Rule 11 filings?

14 A. Yes.

15 Q. So are you aware of Duke Energy Ohio's
16 8 -- 8-percent worst-performing distribution
17 circuits?

18 A. I couldn't tell you what they are right
19 now, but, yes.

20 Q. But generally you have knowledge of them?

21 A. Yes.

22 Q. Have you reviewed Rider DCI as proposed
23 in the settlement?

24 A. No.

25 Q. So you have done no calculations to

1 determine if it will affect reliability?

2 A. Rider DCI is outside the scope of my
3 testimony.

4 Q. Have you reviewed any portion of the
5 proposed settlement to determine its effect on
6 reliability and "by any portion" -- let me rephrase.
7 I'm sorry. Let me clarify a little bit.

8 Have you reviewed any of the proposed
9 riders in the settlement to determine if they will
10 affect reliability?

11 A. Could you repeat that, please?

12 Q. Yes.

13 Are you aware of the proposed riders in
14 the settlement?

15 A. I'm aware that Rider DCI continues.
16 Beyond that, not really.

17 Q. So you're aware of no other proposed
18 rider within the settlement?

19 MR. LINDGREN: Objection, asked and
20 answered.

21 EXAMINER WALSTRA: Overruled.

22 A. I believe there's also a vegetation
23 rider, but, again, I wasn't involved with riders.

24 Q. And of the riders that you are aware of,
25 you have not analyzed them to review their effect on

1 reliability.

2 A. I'm a little confused by the question.
3 Their future impact on reliability?

4 Q. Correct.

5 A. We can't possibly know the impact on
6 reliability for the future. Too many other factors
7 enter into reliability performance.

8 Q. Is it your -- is it your opinion that
9 they will have some effect on reliability?

10 A. I don't know.

11 Q. Would it be fair to say you've done no
12 cost-effectiveness on any of the riders?

13 A. I don't work with rates at all.

14 Q. Did you participate in helping determine
15 the proposed CAIDI and SAIFI standards in the
16 settlement?

17 A. Could you repeat that, please? Or could
18 I have it reread?

19 MR. WOLTZ: Karen, thank you.

20 (Record read.)

21 A. The standards were proposed as part of a
22 package stipulation.

23 Q. And it's your understanding, under Ohio
24 Administrative Code 4901:1-10-10(B), that utilities
25 are required to have reliability standards; correct?

1 A. Yes, that's my understanding.

2 Q. And is it your understanding that those
3 standards are established using CAIDI and SAIFI?

4 A. Those standards are CAIDI and SAIFI.

5 Q. And in your understanding of CAIDI, are
6 major storms included or excluded?

7 A. They are excluded.

8 Q. And in your understanding, are the
9 outages due to transmission -- are transmissions
10 included or excluded?

11 A. Excluded.

12 Q. And is it true that momentary outages are
13 excluded?

14 A. Momentary outages, those that are less
15 than 5 minutes, are not definitional outages; so yes,
16 they are excluded.

17 Q. And they are measured by MAIFI, correct?

18 A. That's not a measure Ohio uses currently,
19 but, yes, that would be MAIFI.

20 Q. So can you explain for me what is
21 included in CAIDI?

22 A. All outage data that is not either
23 outages that occur on what's classified as a major
24 event day and are not transmission outages and are
25 not momentary outages. There are a lot of outages

1 that do count; the majority.

2 Q. Thank you.

3 Are you familiar with the term "Blue Sky"
4 as it applies to CAIDI --

5 A. I am.

6 Q. -- and SAIFI?

7 And can you describe to me what your
8 understanding of Blue Sky is?

9 A. I think the term speaks for itself; in
10 which outages aren't weather-related.

11 Q. So would you be of the opinion that the
12 EDU exercises great control over its CAIDI standards?
13 Let me rephrase that. That's not very clear.

14 Would you agree that outages that occur
15 under the Blue Sky, the utility has more control over
16 than others that are excluded from CAIDI standards.

17 A. The reason major event days are excluded
18 from the standards is because it's understood that
19 those are quote-unquote act-of-God storms that the
20 utility can't control.

21 So outages that are not -- do not occur
22 on major event days, depending on the outage cause,
23 the utility has more control over. I wouldn't say
24 the utility has complete control over them because
25 things are unavoidable, but the utility would have

1 more control.

2 Q. Have you reviewed Duke Witness
3 Mr. Brown's testimony in this case?

4 A. Yes, I have.

5 Q. Is it your understanding that Mr. Brown's
6 testimony that in his calculations he proposed to
7 exclude planned outages?

8 A. I am aware that's what he proposed, yes.

9 Q. Do you agree that planned outages are in
10 the control of the company?

11 A. I think that speaks for itself. A
12 planned outage is a controlled outage.

13 Q. So would you agree with Mr. Brown's
14 proposal?

15 MS. WATTS: Your Honor, I am going to
16 object because I think it mischaracterizes the
17 testimony of Dr. Brown.

18 MR. WOLTZ: I'm willing to rephrase to
19 say are you -- "Do you agree with Mr. Brown's
20 proposal as you understand it?" And the witness just
21 stated that that was his understanding of Mr. Brown's
22 proposal.

23 MS. WATTS: Well, I object again because
24 I believe it mischaracterizes his testimony.

25 MR. WOLTZ: And I think we are just

1 speaking to what the witness understands the
2 testimony to be. Whether it mischaracterizes or not,
3 it's the understanding of the witness here that
4 that's what the testimony said.

5 EXAMINER WALSTRA: The witness can speak
6 to his understanding and I think Dr. Brown's
7 testimony will speak for itself.

8 A. The Ohio Administrative Code does not
9 currently allow for the exclusion of planned outages.

10 Q. And if we can, give me one second. I
11 don't have the page numbers marked on my thing here,
12 so let me find the question. If we can turn in your
13 testimony on page 4, Question 12. And here you
14 discuss SAIDI and how it's calculated, correct?

15 A. Correct.

16 Q. And Ohio does not use SAIDI to measure
17 reliability for its standards under 4901:1-10-10,
18 correct?

19 A. SAIDI is not a standard that's required
20 to be reported, but it is also the product of SAIFI
21 and CAIDI which are required.

22 Q. And in your opinion, because CAIDI and
23 SAIFI are required, an EDU should work towards
24 meeting both their CAIDI and SAIFI standards,
25 correct?

1 A. That's Staff's expectation.

2 Q. And would it be your understanding also
3 under 49 -- are you familiar with Administrative Code
4 4901:1-10-30?

5 A. Not off the top of my head, no. If you
6 could refresh my memory.

7 MR. WOLTZ: May I approach, your Honor?

8 EXAMINER WALSTRA: You may.

9 Q. If you would like to just take a moment
10 to look over that and let me know when you're ready.

11 A. I'm ready.

12 Q. And would it be your understanding, under
13 this rule, if an EDU missed their reliability
14 standards for two years or more, they could be
15 subject to forfeiture?

16 A. That's my understanding of this rule.

17 Q. And do you have a general
18 understanding -- understanding of how the forfeiture
19 works?

20 A. No, I don't.

21 Q. Would you know if the forfeiture is paid
22 by its shareholders of the EDU or the customers?

23 A. I don't know.

24 Q. But even not knowing, you would agree
25 that they're subject to forfeiture for missing

1 standards, correct?

2 A. That's what this rule states.

3 Q. You recall earlier we had talked about
4 your review of the surveys to see if customer
5 expectations aligned with the utility, correct?

6 A. Yes.

7 Q. And if I can walk you through a
8 hypothetical. I apologize, it's going to be a little
9 long, but I think the issue is a little complex, so
10 it calls for it. Let me know if, at any point, I
11 need to clarify anything.

12 But picture, if you would for me, that
13 out in the middle of nowhere, in Ohio, there's this
14 fort, and in the fort lives someone who is near and
15 dear to you, and the only way to access and visit
16 this person of the fort is this railroad track and a
17 train that runs on the track.

18 And you are a very busy man, working for
19 Staff, so your time is very valuable to you, and you
20 have limited time to see this person, so you visit
21 them once a week. You pay the fee for the train and
22 you drive out there and you get to spend time with
23 them and you drive back and you are completely happy.

24 Well, one week the train shows up late.
25 Not a big deal, you understand, things happen. It

1 still gets you there. You still get to spend time.

2 The second week, the train shows up late
3 again. And, in fact, it happens for a month. Now
4 you are in the second month and you are a little bit
5 annoyed because your time is valuable to you. The
6 train continues to show up late, but not only does it
7 show up late, but now it takes longer for it to get
8 you there for some reason. And still the first week
9 you understand, you know, stuff happens. But it
10 continues on for the rest of the month. So now, for
11 two months, the train has been consistently showing
12 up later and getting you there later, meaning you
13 have less time to spend with this person.

14 The third month you hear that now they
15 want to charge you more for your ticket on the train.
16 And that irks you a little bit because your time is
17 valuable to you. So you call and you want to discuss
18 with the manager or whoever it is.

19 Are you with me so far?

20 A. I'm with you.

21 Q. Excellent.

22 MS. WATTS: I'm not sure I am.

23 Q. It's all about railroads.

24 So you talk to someone, and they say,
25 "Well, unfortunately, we can't lower the price of the

1 ticket of the train. It is what it is. But, in
2 fact, we're not only not going to lower the price,
3 but we will offer you this deal: If we can get
4 you -- we are not going to get you -- we are not
5 going to show up on time and we are not going to get
6 you there any quicker, but we can do a little better.
7 We will require you to pay \$20 more when you get off
8 the train when you get to the fort."

9 Do you think you, as a customer, your
10 expectations would be aligned with that railroad
11 company?

12 A. The price of railroad tickets is outside
13 the scope of my testimony.

14 (Laughter all around.)

15 MS. WATTS: I'm sorry. I know you worked
16 hard for that one.

17 MR. WOLTZ: I spent a lot of time
18 thinking up that hypo.

19 Q. Given that it's outside the scope of your
20 testimony, you, as a customer, what would your
21 opinion be there?

22 MR. LINDGREN: Objection. He already
23 said he doesn't know what the answer is.

24 MR. WOLTZ: Your Honor, I would argue,
25 one, it's not outside the scope of his testimony. He

1 testified that part of his duties and what he does is
2 recommend whether or not customers' expectations are
3 aligned with the EDUs'. Here, I am asking a similar
4 situation to what's being proposed in the settlement.
5 And I'm -- it's simply a hypothetical. And outside
6 the scope or not, I don't think that's for the
7 witness to determine, but maybe his attorney to
8 object to.

9 Further, I'm just simply asking his
10 opinion. So to say he has no opinion on the issue
11 really diminishes his opinion in the testimony.

12 MS. WATTS: And, your Honor, I object
13 also. Mr. Woltz characterizes that as similar, but
14 I'm not sure it is actually analogous.

15 MR. WOLTZ: And I believe the Commission
16 is able to give it the weight it determines
17 appropriate.

18 EXAMINER WALSTRA: I am going to see how
19 much his opinion, about visiting forts by railroad,
20 hurts his credibility. I will allow the witness to
21 answer the best he can.

22 A. My testimony addresses as far as
23 customers' perceptions -- excuse me. My testimony
24 addresses, as far as the customer perception surveys,
25 only reliability expectations, not cost expectations.

1 Q. And if we could turn then, staying on
2 that, to your Attachment 2. I believe is the
3 residential survey. And if we would look at page 6
4 of Attachment 2, I believe it is, and it's marked,
5 down in the corner, "Q2-2016." Let me know when
6 you're there.

7 A. I'm there.

8 Q. And can you just briefly, I know I only
9 picked one of them out of the many surveys that are
10 in here, explain to me your understanding of this
11 survey on page 6 or how you interpret it, I guess?

12 A. Duke surveys a set of customers per
13 quarter to avoid seasonal bias which is why there are
14 multiple quarters of data on this chart. So to look
15 at second quarter 2015 and the question is how many
16 lengthy interruptions more than 5 minutes, it would
17 be those that aren't momentary, would you consider
18 acceptable.

19 Looking at that first bar, I would
20 interpret that to be -- it's not in color, but
21 40 percent -- look at a color copy. I believe it's
22 40 percent say they would consider zero interruptions
23 to be acceptable, but let me look at my color copy
24 before I speak about that.

25 Again, looking at that first bar,

1 40 percent of respondents stated that zero
2 interruptions would be acceptable; 29 percent stated
3 1 would be acceptable; 18 percent said 2; and so on
4 and so forth. That's how I interpret that chart.

5 Q. And you're on page 6 with me as well,
6 correct?

7 A. Yes.

8 Q. And there it's discussing the length, not
9 the number, correct?

10 A. "How many lengthy interruptions of more
11 than 5 minutes...?" Are we on the same page?

12 Q. Sorry. I just misread it. You're right.

13 A. That's the number of interruptions.

14 Q. So when you interpret this survey, do you
15 only look at the blocks at 40 percent or would you
16 look at staying in the first column, 2Q2015? Would
17 you interpret it as only 40 percent or would you look
18 at the almost 70 percent?

19 A. The analysis I conducted of these surveys
20 used a weighted average to determine an average
21 answer, so I look at the entire block.

22 MR. WOLTZ: And if I can have just one
23 moment, your Honor.

24 EXAMINER WALSTRA: Sure.

25 Q. (By Mr. Woltz) I think I might have just

1 one or two more questions for you.

2 Earlier you had mentioned that you don't
3 review any costs of the riders; is that correct?

4 A. That's correct.

5 Q. Would you know who on Staff would be
6 better suited for that question?

7 A. I think it depends on the rider.

8 Q. If we were discussing Rider DCI?

9 A. Those questions should be directed to
10 Staff Witness McCarter.

11 Q. And if we were talking about ESSR which
12 is the vegetation management rider?

13 A. Another Staff is testifying to that, but
14 I don't remember which one. I believe.

15 MR. WOLTZ: Thank you. No further
16 questions, your Honor.

17 MS. WATTS: Yes, thank you, your Honor.
18 I just have one real quick question.

19 EXAMINER WALSTRA: Sure.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Watts:

23 Q. Mr. Nicodemus, do you recall being asked
24 about the calculation of CAIDI and SAIFI with respect
25 to the removal of major event day statistics?

1 A. Yes.

2 Q. And with respect to that calculation,
3 after you removed the major event day events from the
4 calculation, the remaining events can still be
5 weather-impacted, correct?

6 A. Yes, absolutely. The major event day
7 classification is a definition per IEEE; is an
8 industry-accepted calculation. There are a number of
9 storms that are not major event storms. As a matter
10 of fact, I would say the majority of storms are not
11 major event storms.

12 MS. WATTS: Okay. Thank you. That's all
13 I have.

14 EXAMINER WALSTRA: Any redirect?

15 MR. LINDGREN: Could we have a minute to
16 confer, your Honor?

17 EXAMINER WALSTRA: Sure. We'll go off
18 the record.

19 (Discussion off the record.)

20 EXAMINER WALSTRA: We'll go back on the
21 record.

22 MR. LINDGREN: Thank you.

23 - - -

24

25

REDIRECT EXAMINATION

By Mr. Lindgren:

Q. Mr. Nicodemus, do you know what the ESSR is?

A. It's the vegetation rider proposed in this case.

Q. Thank you.

And is it your opinion that vegetation management plan can improve overall reliability?

MR. WOLTZ: Objection, your Honor. He testified earlier that he did not review the vegetation management rider, that he did not review any riders and their effect on reliability, and now he's changing his testimony while on the stand after I've not had an opportunity to cross him on that. I think it's outside the scope of what he has previously testified to.

MR. LINDGREN: I believe he only testified he didn't review any of the cost aspects contained in the riders.

MR. WOLTZ: I originally started my questioning if he reviewed them as they relied -- as they affected reliability and he had stated that he did no analysis of such.

EXAMINER WALSTRA: Address this on

1 recross.

2 MR. WOLTZ: Thank you, your Honor.

3 MR. LINDGREN: What was your ruling?

4 EXAMINER WALSTRA: He will have the
5 opportunity to address on recross.

6 MR. LINDGREN: Thank you.

7 Q. (By Mr. Lindgren) So, Mr. Nicodemus, do
8 you believe that a vegetation management plan can
9 improve overall reliability?

10 A. A vegetation management plan, in action,
11 will have the effect of reducing vegetation-related
12 outages which will improve overall reliability.

13 Q. Thank you.

14 And are you familiar with Rider DCI?

15 A. Somewhat, yes.

16 Q. And do you know what it's basically for?

17 A. It's a distribution capital investment
18 rider.

19 Q. And is it your understanding that
20 investments in a distribution system can improve
21 overall system reliability?

22 A. Yes. Not investing in a distribution
23 system basically guarantees that reliability will get
24 worse.

25 MR. LINDGREN: Thank you. I have no

1 further questions.

2 EXAMINER WALSTRA: Thank you.

3 MR. WOLTZ: Thank you, your Honor.

4 - - -

5 RECROSS-EXAMINATION

6 By Mr. Woltz:

7 Q. Do you recall just now when you were
8 asked about the ESSR Rider?

9 A. Yes.

10 Q. Do you know if there is a requirement in
11 this proposed settlement that the ESSR Rider have any
12 effect on reliability?

13 A. Not that I'm aware of. If there is, you
14 can point me to it, but --

15 Q. Have you -- I'm sorry. Go ahead.

16 A. Per the stipulation, there are
17 reliability standards going forward in place and
18 those improve from going forward.

19 Q. But you have not done any independent
20 analysis on whether the ESSR will help improve the
21 reliability standards?

22 A. As I stated, a vegetation management
23 program in action will improve reliability by
24 reducing vegetation-related outages.

25 Q. You are familiar with Duke Energy Ohio's

1 vegetation management program?

2 A. Very vaguely.

3 Q. In your vague understanding of Duke
4 Energy Ohio's vegetation management program, are you
5 aware that they've missed their tree-trimming cycle
6 goal in 2017?

7 A. That's my understanding.

8 Q. Are you also aware they missed their
9 tree-trimming goal in 2016?

10 A. I didn't know that subject to check.

11 Q. And then would it be your opinion that
12 missing tree-trimming goals would have a negative
13 impact on reliability?

14 A. Just as meeting vegetation goals,
15 tree-trimming goals will reduce vegetation-related
16 outages. Not meeting those goals has the potential
17 to increase vegetation-related outages.

18 Q. And are you aware that under the proposed
19 settlement, the parties are proposing changing from a
20 four-year cycle to a five-year cycle?

21 A. Yes, I believe I've heard.

22 Q. Have you done any analysis what that
23 will -- the effect that that will have on
24 reliability?

25 A. I've not.

1 Q. And it's my understanding that your prior
2 testimony is still consistent; you have not examined
3 any cost related to the ESSR, correct?

4 A. I've not done a cost/benefit analysis for
5 any of the riders. I only look at reliability. And
6 reliability, per the stipulation, improves.

7 Q. And then do you know when you were asked
8 about Rider DCI?

9 A. Which question about Rider DCI?

10 Q. From your counsel just previously, just
11 in general.

12 A. Yes.

13 Q. So are you aware of the Rider DCI as it
14 was prior to this new proposed settlement?

15 A. I'm aware that it exists. I believe it
16 came out of a 2014 case.

17 Q. Are you aware of the 19 programs that
18 were approved under Rider DCI?

19 A. In general.

20 Q. And have you done any analysis to
21 determine if those 19 programs had any effect on Duke
22 Energy's reliability?

23 A. It's difficult to say. So many factors
24 impact reliability. It could very well be that
25 reliability -- Duke's reliability would have been

1 worse absent the DCI. It's impossible to make a
2 one-to-one correlation between dollars spent and
3 CAIDI improvement, for example.

4 Q. And when you say "Duke's reliability
5 could have been worse," it also could have been the
6 same, correct?

7 A. It could have been. I don't know. For
8 the last two years, Staff has conducted analysis of
9 Duke's CAIDI and SAIFI, but CAIDI, and was not able
10 to definitively say or conclude why Duke's CAIDI has
11 done what it has or why its SAIFI has done what it
12 has; but to say that it's the fault of or because of
13 the DCI, I don't know.

14 Q. And when you say Staff has done an
15 analysis, has Staff investigated rider DCI, or is it
16 just through the rider reviews, the audits, annual
17 audits?

18 A. I've not been involved with the audits of
19 Rider DCI.

20 Q. And are you aware of, I believe it's 21
21 programs now proposed under Rider DCI in the
22 settlement?

23 A. No, I was not aware there were additional
24 programs.

25 Q. But you are aware that the 19 programs

1 will continue.

2 A. I believe I've heard that in testimony on
3 another day.

4 Q. And is it fair to say that you have not
5 done any analysis on how those 19 programs in the
6 future will affect reliability?

7 A. Again, I think you are trying to make a
8 one-to-one analysis or correlation between dollars
9 spent and reliability improvement. We don't know
10 what reliability is going to look like in the future,
11 what other factors will affect Duke's reliability.
12 There is a, per the stipulation, an agreement to
13 submit a work plan, for Duke to submit a work plan to
14 Staff which will allow Staff to look at where Duke is
15 spending the money.

16 Q. And you discuss work plans, have you
17 reviewed Duke's previously-filed work plans?

18 A. I believe --

19 MS. WATTS: Objection. Objection, your
20 Honor, as it's unclear what "previously-filed work
21 plans" Counsel is referring to. I don't believe
22 there are any.

23 EXAMINER WALSTRA: Could you be more
24 specific?

25 MR. WOLTZ: Yeah.

1 Q. When you discuss "work plans," do you
2 include in your definition of "work plans," filings
3 under Rule 20 -- Rule 26 filings that are filed under
4 4901:1-10-26?

5 A. No. Per the stipulation, starting in I
6 believe the end of this year, Duke is going to be
7 submitting to Staff, or perhaps filing, I'm not sure,
8 a work plan which lays out where they expect to do
9 improvements per Rider DCI.

10 Q. And just to clarify something you just
11 said, you said you're not sure if they will be filing
12 or just submitting it to Staff; is that correct?

13 A. Give me a moment and I can check.

14 Beginning December 2018, Duke Energy Ohio
15 will file an annual report, the work plan, that lays
16 out the programs under Rider DCI.

17 Q. And in our discussion just now, you had
18 pointed to the proposed settlement and said there are
19 proposed CAIDI and SAIFI standards moving forward and
20 that the expectation is that they will improve,
21 correct?

22 A. Overall reliability will improve. CAIDI
23 is increasing -- excuse me -- Duke's CAIDI standard
24 is increasing, but at the same time SAIFI is
25 decreasing. The overall impact will be improved

1 reliability for all Duke customers.

2 Q. And just so the record is clear, under
3 the PUCO rules, Duke is required to meet CAIDI and
4 SAIFI, correct?

5 A. That's what the rule is, yes.

6 Q. And we had discussed earlier, along these
7 lines, about the -- as it relates to this, you
8 reviewed Mr. Brown's testimony, correct?

9 A. Yes.

10 Q. And you are aware that he says there is a
11 likelihood Duke will not be able to meet these CAIDI
12 standards, correct?

13 MR. LINDGREN: Objection. That's outside
14 the scope of my redirect.

15 MR. WOLTZ: And, your Honor, this is just
16 flowing from our conversation we've had here on
17 recross about the proposed CAIDI standards and the
18 fact that if -- they have done no analysis on whether
19 the vegetation management program will have actual
20 impact on it, they will have done no analysis on
21 whether DCI, the witness has testified that it's hard
22 to determine what the future will have, and then he
23 spoke of these new proposed standards, and I am
24 simply asking if he is aware that the standard,
25 themselves, may be flawed in the fact that Duke's own

1 witness said they will have a rough -- unlikely
2 success in meeting the CAIDI standard.

3 MS. WATTS: And, your Honor, I object as
4 well, because I believe we have gone way beyond the
5 scope of redirect questions.

6 EXAMINER WALSTRA: I'll overrule, but
7 we're getting to that.

8 MR. WOLTZ: Thank you, your Honor.

9 THE WITNESS: What was the question
10 again, please?

11 MR. WOLTZ: Can you read it back for me,
12 Karen, please?

13 (Record read.)

14 A. I'm aware that's Dr. Brown's opinion.
15 Duke agreed to these standards as part of a
16 stipulated agreement, so it's Staff's expectation
17 that Duke will meet them.

18 Q. Thank you.

19 And just one final question, so just so
20 we're consistent and clear on the record. I believe
21 we had discussed this earlier with the ESSR and your
22 previous cross, but you have done no cost analysis of
23 Rider DCI, correct?

24 A. I don't work with rates, cost riders at
25 all.

1 MR. WOLTZ: Thank you, Mr. Nicodemus. No
2 further questions.

3 EXAMINER WALSTRA: Thank you. Thank you.

4 MR. LINDGREN: Your Honor, I move for the
5 admission of Staff Exhibit 3.

6 EXAMINER WALSTRA: Any objections?

7 MS. WATTS: No objection.

8 EXAMINER WALSTRA: Hearing none, it will
9 be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 MR. BEELER: One second, your Honor. If
12 you don't mind.

13 EXAMINER CATHCART: Okay.

14 EXAMINER WALSTRA: We'll be off the
15 record.

16 (Discussion off the record.)

17 EXAMINER WALSTRA: We'll go back on the
18 record.

19 EXAMINER CATHCART: Staff, would you like
20 to call your next witness.

21 MR. BEELER: Thank you, your Honor. The
22 Staff would call Joseph Buckley to the stand.

23 (Witness sworn.)

24 EXAMINER CATHCART: You may be seated.

25 MR. BEELER: May I have marked, as Staff

1 Exhibit 4, the direct testimony of Joseph P. Buckley
2 in response to objections to the Staff Report.

3 EXAMINER CATHCART: So marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 - - -

6 JOSEPH P. BUCKLEY

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

9 DIRECT EXAMINATION

10 By Mr. Beeler:

11 Q. Good morning, Mr. Buckley.

12 A. Hello.

13 Q. Please state your name for the record.

14 A. My name is Joseph Buckley.

15 Q. What is your position at the Commission?

16 A. I'm a Utility Specialist 3.

17 Q. Do you have -- do you have in front of
18 you what has been marked as Staff Exhibit 4?

19 A. I do.

20 Q. What is it?

21 A. It's my prefiled testimony.

22 Q. And was it prepared by you or under your
23 direction?

24 A. It was.

25 Q. Is it true and accurate to the best of

1 your knowledge?

2 A. Yes.

3 Q. Do you have any corrections or changes?

4 A. Not at this time.

5 Q. If I asked you the same questions today,
6 would your answers be the same?

7 A. They would.

8 MR. BEELEER: No further questions. The
9 witness is available for cross. Thank you.

10 EXAMINER CATHCART: Thank you.

11 Mr. Oliker.

12 MR. OLIKER: Thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Mr. Oliker:

16 Q. Mr. Buckley, just a few questions for you
17 this morning. Am I correct that your testimony
18 addresses the return on equity calculation
19 recommended by the stipulation and Staff?

20 A. It's part of it, yes.

21 Q. Are there any other portions of the Staff
22 Report for which you had responsibility preparing?

23 A. No.

24 Q. And, therefore, you are not offering any
25 testimony in support of any other portion of the

1 Staff Report, correct?

2 A. No.

3 MR. OLIKER: Okay. Thank you, your
4 Honor. No more questions.

5 EXAMINER CATHCART: Thank you.

6 - - -

7 CROSS-EXAMINATION

8 By Mr. Michael:

9 Q. Mr. Buckley, if I could draw your
10 attention to page 4, lines 5 through 8 of your
11 testimony. Let me know when you are there, please.

12 A. I'm there.

13 Q. And you state in there about how the
14 return on equity keeps the company more competitive
15 for attracting investment. Do you see that?

16 A. Yes, I do.

17 Q. And does the return on equity also assist
18 the company in accessing capital?

19 A. Theoretically, yes.

20 Q. Okay. And when you do your analysis, do
21 you take that potential consideration regarding
22 return on equity into account?

23 A. Yes.

24 Q. And on line 10, Mr. Buckley, you
25 reference an individual component. Do you see that?

1 A. Yes.

2 Q. What is the individual component to which
3 you are referring there?

4 A. It could be any individual component
5 made -- that makes up, for example, the CAPM
6 calculation. There's multiple components in the
7 calculation or the formula, I guess, there's multiple
8 components. So that's what I'm referring to when I
9 say "components."

10 Q. Okay. So you didn't have any individual
11 component in particular in mind when you made that
12 reference there; just any number of individual
13 components?

14 A. It could be any of them, yes.

15 Q. Okay. So did you alter any component,
16 Mr. Buckley, and run an analysis to see if it created
17 a return outside a reasonable range?

18 A. When I am doing these calculations, I'm
19 looking at a variety of factors and I do a variety of
20 calculations. Almost ad nauseam. I will do
21 different things different ways. I don't have those
22 up here with me, but I do make calculations using a
23 variety of factors to try to come up with what I
24 think is a reasonable conclusion.

25 I always try to go back to precedent and

1 look to see what was done in the past. And I would
2 prefer to use those precedents, but if it is
3 producing a number that is what I would say reckless,
4 then I don't want to just use what we've done in the
5 past, just because we've done it in the past, when it
6 produces something that's not appropriate.

7 Q. Did you read Dr. Duann's testimony filed
8 in this case, Mr. Buckley?

9 A. Yes. It's been a while, so I can't
10 really quote specific things in it, but I did read it
11 at one point.

12 Q. Okay. Did you -- did you incorporate any
13 of Dr. Duann's suggestions into an analysis of a
14 proposed return on equity?

15 A. There are not a lot of people in this
16 field that do rate of return. On occasion, I will
17 talk to Dan and we will talk about different things.
18 I'm struggling to remember whether we talked about
19 anything specifically in regard to this case, but we
20 talk occasionally. I talk with other people
21 occasionally about what we're doing, what problems
22 we're having, so I can't recall specifically if we
23 talked about Duke at this time, but we do talk.

24 Q. And around the office he is known as
25 "Dr. Duann." So just to be sure, when you said

1 "Dan," you meant Dr. Daniel Duann, correct?

2 A. I'm sorry, yes.

3 Q. No need to apologize. I wanted to make
4 sure.

5 A. It takes a lot of hard work to earn that
6 distinction and he deserves it.

7 Q. If you would please turn to page 5 of
8 your testimony, Mr. Buckley. And I want to draw your
9 attention to line 9 and your reference there to cost
10 of issuance.

11 A. Yes.

12 Q. Is the cost of issuance known at the time
13 of issuance?

14 A. The -- the -- it may be able to be
15 calculated. I don't know whether it's -- it is
16 calculated that way, but it may be able to be
17 calculated. Those are costs that are, at some point,
18 billed to the company, I would assume.

19 Q. Does the cost of issuance of a stock
20 change over time or is it known as of a date certain?

21 A. The cost -- there is not a specific cost
22 for every aspect of an issuance. So, over time, they
23 would change. So when you issue equity in 1965 and
24 when you issue equity now, those costs would not be
25 the same. I don't know if that's the question. But

1 if you issue it in 1964, those were the costs.

2 Q. Okay. When was the stock issued that
3 you're analyzing the cost of issuance on page 5 in
4 paragraph 9?

5 A. I don't know.

6 Q. How is the price of a stock set at
7 issuance?

8 A. I can't -- I can't answer that.

9 Q. If you would please turn, Mr. Buckley, to
10 page 6, line 2 of your testimony. And I want to
11 direct your attention to the reference, 9.79 percent,
12 on that line, Mr. Buckley. Do you see that?

13 A. I do.

14 Q. That includes vertically-integrated
15 utilities, right, which is to say generation and
16 distribution?

17 A. Yes. Some of the companies that make up
18 that average are vertically-integrated.

19 Q. And the ROE in the proposed settlement
20 is, I believe, 9.84 percent; is that true?

21 A. Subject to check, yeah.

22 Q. Why didn't Staff use the average that you
23 discuss in lines 1 through 4?

24 A. I don't know.

25 Q. If I could draw your attention,

1 Mr. Buckley, to page 6, lines 7 and 8, please.

2 A. Yes.

3 Q. You reference in there "When a range of
4 reasonableness is applied to that average," do you
5 see that?

6 A. I do.

7 Q. Is that "range of reasonableness" a term
8 of art, or what is the source of setting what is the
9 range of reasonableness?

10 THE WITNESS: Can I have that reread?

11 (Record read.)

12 A. Could you rephrase the question?

13 Q. Certainly.

14 You state in that part of your testimony,
15 Mr. Buckley, applying -- my words -- applying a range
16 of reasonableness to that average, correct?

17 A. Correct.

18 Q. And I'm trying to figure out where that
19 range of reasonableness comes from.

20 A. That's based on precedent that the Staff
21 has always offered a range around a midpoint that we
22 have we feel like is reasonable.

23 Q. Okay. And how is that range determined?

24 A. It's 50 basis points in either direction.

25 Q. Okay. And regarding the discussion on

1 pages 5 through -- excuse me -- lines 5 through 10,
2 on page 6 of your testimony, Mr. Buckley, why didn't
3 Staff use the average?

4 A. In the stipulation?

5 Q. Yes, sir.

6 A. I don't know.

7 Q. I'll let you guess if Dan was involved in
8 any of these questions, I am about to ask you,
9 Mr. Buckley.

10 When you prepare a rate of return
11 analysis, you generally follow some well-defined
12 methodologies, such as DCF or CAPM, in estimating the
13 ROE and ROR, correct?

14 A. Correct. We usually refer to it as "CAP"
15 "M."

16 Q. You were doing the same thing in
17 estimating the reasonable rate of return for Duke
18 Ohio in this case, correct?

19 A. Correct.

20 Q. Did you, Mr. Buckley, draft any portion
21 of the rate of return analysis in the Staff Report
22 that was submitted in the AIR case?

23 A. I did.

24 Q. In preparing the Staff Report, you did
25 not compare the Staff's recommended ranges in ROE and

1 ROR with the national average ROE and ROR for
2 electric utilities, right?

3 A. As part of the general knowledge base or
4 whatever, I run reports occasionally, usually not
5 every quarter, but occasionally, maybe every so
6 often, to see what the averages are, and what's being
7 granted, and kind of the trends that are happening.
8 So I am aware of those when I am drafting the Staff
9 Report, but I don't use those as part of my analysis.

10 Q. Okay. So you didn't make the comparison,
11 correct?

12 A. I know what they are. So do I sit down
13 and compare them? Yeah, I mean, I know what the
14 averages are nationwide. I don't use those in
15 setting the rate though.

16 Q. Okay.

17 A. Or producing the rate.

18 Q. And neither you, nor the Staff Report,
19 mentions the comparison with the national average,
20 correct?

21 A. Correct.

22 Q. You're familiar with OCC's five
23 objections to the Staff Report, correct, Mr. Buckley?

24 A. Not intimately, but, yeah, I can find
25 them out. I've got -- I think I mentioned them in my

1 prefiled testimony.

2 Q. But in your testimony that was filed by
3 Staff as an exhibit, you do not respond to all of
4 those objections specifically, correct?

5 A. I don't know if I respond to them
6 specifically, but I think in general I try to touch
7 upon all of them.

8 Q. Okay. You don't respond specifically to
9 the objection regarding the risk-free rate, correct?

10 A. I think I do respond to it.

11 Q. Okay. Could you point me to where,
12 Mr. Buckley?

13 A. Staff made adjustments.

14 Q. I'm sorry, Mr. Buckley, could you please
15 give me a page number so I can follow along with you?

16 A. I'm sorry. Page 4 starting on line 5.
17 Okay.

18 Q. And is your response limited to what you
19 say in lines -- to the extent it is a response --
20 lines 5 through 8?

21 A. I believe it is a response.

22 Q. Okay. And Mr. Beeler and I will deal
23 with that in our briefing, but what you believe is
24 the response, is that lines 5 through 8?

25 A. I would say that it would continue down

1 through 11.

2 Q. Okay. Do you respond, Mr. Buckley, to
3 OCC's objection regarding the risk premium in your
4 testimony?

5 A. Could you be more specific about the risk
6 premium?

7 Q. Yes. So in your ROE analysis, you take
8 account for a risk premium, which is to say the
9 riskiness of the investment you're analyzing?

10 MR. BEELER: Do you know what page number
11 or line number you're on?

12 MR. MICHAEL: Well, I don't, Mr. Beeler,
13 and the reason why is I am just trying to go through
14 what exactly Mr. Buckley did address and what
15 Mr. Buckley did not address, and it's my impression
16 that Mr. Buckley did not address an objection
17 regarding risk premium. So, unfortunately, I am not
18 going to be able to point you to any part in his
19 testimony to that effect, but if the witness feels he
20 did address it, I am giving him that opportunity to
21 point it out to me.

22 MR. BEELER: Could you clarify the
23 question maybe? Would that help? Maybe if the
24 witness -- maybe if the witness can clarify somehow.

25 MR. MICHAEL: Sure.

1 Q. (By Mr. Michael) Mr. Buckley, you're
2 aware that OCC asserted an objection to the Staff
3 Report regarding risk premium it -- risk premium,
4 correct?

5 A. What I'm struggling with is the
6 definition of "risk premium." There's a -- in the
7 CAPM formula, within the parentheses, sometimes
8 that's called risk premium. I don't know if you are
9 speaking of that or some other risk premium.

10 Q. No. That's a fair point. I'm referring
11 to the risk premium in the parentheses for the
12 CAPM.

13 A. And the question is what again?

14 Q. I'll lay a foundation by asking first,
15 Mr. Buckley, you're aware that OCC asserted an
16 objection to the Staff Report regarding that risk
17 premium.

18 A. Correct.

19 Q. Okay. And in your testimony you do not
20 respond to that objection, correct?

21 A. I believe I do respond to it.

22 Q. Okay. And could you please point that
23 out to me, Mr. Buckley.

24 A. I would say it's lines 5 through 11.

25 Q. On what pages, Mr. Buckley?

1 A. I'm sorry. Page 4.

2 Q. 5 through 11?

3 A. Yes.

4 Q. And, Mr. Buckley, you're aware that OCC
5 asserted an objection to the Staff Report regarding
6 the weighting of DCF and CAPM results, correct?

7 A. Correct.

8 Q. And did you respond in your testimony to
9 that objection?

10 A. I believe I did respond to it.

11 Q. Okay. And can you point me to that part
12 of your testimony, please, Mr. Buckley?

13 A. On page 5, when I talk about the overall
14 rate of return and how it's calculated, I point to
15 national averages, so it would continue on page 6,
16 lines 1 through 14.

17 Q. Okay. And explain to me how that
18 responds to OCC's objection regarding the weighting
19 of DCF and CAPM.

20 A. As I stated before, you can get into a
21 quagmire when you start talking about individual
22 factors that go into calculating a rate of -- a
23 return on equity range. So arguing piece parts
24 doesn't advance the process. It's the overall return
25 that we're concerned with. So if someone were to

1 argue one component and say that that component is
2 wrong and you need to change that component, there's
3 other factors that have to go into changing each
4 component. It's not just one component that you can
5 change and come up with the correct answer. There's
6 a variety of different factors that go into producing
7 a sound number.

8 Q. Mr. Buckley, if I could draw your
9 attention to page 4 of your testimony and in
10 particular lines 11 through 13. And including the
11 citation to the footnote there. Let me know when you
12 are there, please.

13 A. I am there, yeah.

14 Q. Is it your position, Mr. Buckley, that so
15 long as Staff's recommended results are reasonable,
16 then the objections raised by OCC are immaterial as
17 you state there in your testimony?

18 A. Correct.

19 Q. What do you mean by "immaterial" when you
20 use that word there?

21 A. That I -- the word "immaterial" means
22 that it's -- we didn't take those into consideration.

23 Q. Okay. So because you thought OCC's
24 objections were immaterial, you mean to say that you
25 didn't take those objections into consideration?

1 A. We didn't take the individual -- the
2 individual objections would go to, again, the piece
3 parts that go into the calculation. Overall, we read
4 the objections, we studied them, and tried to
5 understand what -- what the objections were. We
6 found that OCC was arguing a lot about different
7 piece parts of calculations. And if you change one
8 piece part, the entire calculation needs to be
9 rereviewed. So the immaterial aspect is the
10 piece-part argument where you're talking about
11 individual components of a calculation such as the
12 CAPM calculation.

13 Q. Well, you would agree, Mr. Buckley, that
14 a calculation is only as good as its individual
15 components, correct?

16 A. The individual components of a
17 calculation are important.

18 Q. You've heard the phrase "garbage in,
19 garbage out," right?

20 A. I've heard a lot of different phrases
21 talking about different calculations.

22 Q. Well, I mean, a calculation is a
23 function --

24 A. I was not finished with my response.

25 Q. I apologize. Go ahead.

1 A. I've heard a lot of different call --
2 comments about different calculations that go into
3 mathematical and economic equations. This -- this is
4 not a pure mathematical exercise. There is some art
5 in the numbers that are being produced and, like I
6 said before, we can't go back to what's been done in
7 the past and continue to use that if it produces
8 reckless results. So we have to, at some point, look
9 at the results to make sure that they are not
10 reckless. If we simply go back to what we did 10
11 years ago and say this is the way we are going to do
12 it all the time, it would produce reckless results
13 currently.

14 Q. Okay. I appreciate that, Mr. Buckley,
15 and at least for purpose of this questioning I am not
16 asking about going back 10 years. I'm talking about
17 the objections Ohio Consumers' Counsel made within
18 the last six months. And focusing on that, my
19 question is: Given that you've pointed, on numerous
20 occasions, to altering individual components of a
21 calculation and how that could get people into a
22 quagmire, you would concede that a calculation is
23 only as good as its individual components, right?

24 MR. BEELEER: I believe he answered that
25 question, your Honor. Objection.

1 MR. MICHAEL: And, your Honor, if I could
2 just respond real quickly.

3 First off, I don't believe Mr. Buckley
4 answered the question.

5 And then second off, in response to my
6 question, he was talking about going back 10 years
7 and breaking from precedent and reckless results, and
8 I wanted to redirect and refocus the witness, for his
9 benefit, to the question and answer session on what I
10 am actually asking about which is OCC's objections
11 proposed, you know, no more than six months ago.

12 EXAMINER CATHCART: I'm going to overrule
13 the objection. He can answer to the best of his
14 ability.

15 MR. MICHAEL: Thank you, your Honor.

16 THE WITNESS: Could you restate the
17 question, please, or reread the question, please.

18 (Record read.)

19 A. In this case, the result of the
20 calculation is more important than the individual
21 components of that formula are.

22 Q. But the results are a function of the
23 individual components, right, Mr. Buckley?

24 A. Correct.

25 Q. Do you -- you use the word to describe

1 OCC's objections, Mr. Buckley, as "immaterial." And
2 my question is: Would you agree that "immaterial," a
3 synonym, as you are using it there, might be
4 "insignificant"?

5 A. I don't think I would characterize it as
6 insignificant. It's more of the overall. The
7 overall objections of OCC were studied, contemplated,
8 so I wouldn't characterize them as insignificant.
9 It's just, in total, we looked at the overall result
10 and not the individual components. I think trying to
11 expand on the word "immaterial" is -- it is not
12 appropriate.

13 Q. Okay. And you certainly won't say that
14 OCC's objections were irrelevant, correct?

15 A. Not in total, no.

16 Q. In part?

17 A. I'm trying to address that by saying that
18 we -- we looked at them, we studied them, we
19 understood them and took them into account when we
20 were making our -- when we were discussing this case.

21 It's the -- the "immaterial" word, that I
22 think we are kind of hung up on, relates to the piece
23 parts of the calculation.

24 Q. Okay. Do you agree that no single rate
25 of return can be considered as fair and reasonable at

1 all times?

2 A. I would agree with that.

3 Q. And so, the reasonable rate of return
4 does change over time, given the changes in the
5 financial markets and economic conditions, correct?

6 A. Correct.

7 Q. So a reasonable rate of return, two years
8 ago, might not be a reasonable rate of return today,
9 correct?

10 A. Correct.

11 Q. And a reasonable rate of return, five
12 years ago or ten years ago, wouldn't necessarily be
13 reasonable today, correct?

14 A. It wouldn't necessarily be reasonable.
15 One of the reasons I think you need to look at a
16 longer horizon than just one year, though, is because
17 rate cases typically aren't filed on a yearly basis.
18 They are typically filed on a more staggered basis.
19 That's one of the reasons why, when you are looking
20 at averages and things like that, you should look to
21 a longer term than just one year. But I would agree
22 with you that, yes, the calculations change and the
23 averages change every year.

24 Q. And you would agree that no single rate
25 of return can be considered as fair and reasonable

1 for each individual electric utility, correct?

2 A. That's -- that's correct. That's one of
3 the reasons we try to use comparables.

4 Q. So a fair rate of return for AEP may not
5 necessarily be a fair rate of return for Duke Ohio,
6 correct?

7 A. I think you would study each company on a
8 case-by-case basis to determine what is fair and
9 reasonable and what is not fair and reasonable.

10 Q. Okay. So a fair rate of return for AEP
11 may not be necessarily a fair rate of return for Duke
12 Ohio, correct?

13 A. They could have the same return, but you
14 would want to look at them individually to see what
15 the appropriate return is for that company's level of
16 risk and financial health. And I don't want to just
17 stop at those factors. There's a variety of factors
18 we would look at.

19 Q. And that's the reason why we have
20 separate analyses for each rate case regarding the
21 proper rate of return for a regulated utility,
22 correct?

23 A. Correct.

24 Q. I want to take you back, if I could,
25 Mr. Buckley, to page 6 of your testimony, line 2, and

1 your discussion about average ROE. Do you see that?

2 A. I do.

3 Q. What is the source for the average ROE
4 that you are discussing there?

5 A. SNL Financial.

6 Q. On page 6, line 13 of your testimony,
7 Mr. Buckley, I would like to draw your attention
8 there. Let me know when you are there, please.

9 A. I'm there, yeah.

10 Q. You use the term "long-term rate of
11 return." Do you see that?

12 A. I do.

13 Q. What do you mean by that?

14 A. Again, I was trying to convey the fact
15 that rate cases aren't filed every year, so you need
16 to look at a longer horizon than just one or two
17 years. So it would be a more long-term rate of
18 return.

19 Q. And is there such a thing as short-term
20 rate of return in the utility context for ratemaking
21 purposes?

22 A. I don't know whether I have ever heard
23 that term used.

24 Q. Is the phrase "long-term rate of return"
25 commonly used in literature of rate of return

1 analysis?

2 THE WITNESS: Can -- can I have that
3 question reread, please?

4 (Record read.)

5 A. Based on the fact I took an oath to
6 answer only with the truth, I don't know.

7 Q. Okay. It wasn't used in the Staff
8 Report, correct?

9 A. I don't think so.

10 Q. It wasn't used in Dr. Morin's testimony,
11 correct?

12 A. I don't know that.

13 Q. And Dr. Duann's testimony, it was not in
14 that testimony, correct?

15 A. I don't know that either.

16 Q. Is your -- your testimony is not related
17 to the proposed settlement, correct, Mr. Buckley?

18 A. It is not.

19 Q. And you take no position on either
20 opposing or supporting the overall settlement,
21 correct?

22 A. Not -- not with his testimony, no.

23 Q. You agree that the cost of debt paid by
24 Duke's customers will not be reduced before the next
25 rate case, even if the cost of debt for Duke were

1 reduced as a result of the improvement of Duke's
2 credit rating, correct?

3 THE WITNESS: Can you reread the
4 question?

5 MR. MICHAEL: I'll restate, your Honor,
6 if that would be helpful.

7 THE WITNESS: Okay. Thank you.

8 Q. Are you aware, Mr. Buckley, that Duke's
9 credit rating is at issue as part of the settlement
10 that brings us all here today?

11 A. There are a slew of factors that go into
12 credit ratings. Whether this is being part of that,
13 I don't know. I would imagine a -- a positive out --
14 outcome, the credit rating agencies would look
15 favorably upon, but I don't know if that's a deciding
16 factor on how they are rated in this case.

17 Q. Okay. Cost of debt is part of the -- one
18 of the considerations that somebody like you would
19 make in rate setting, correct?

20 A. Correct.

21 Q. Okay. And if Duke's cost of debt
22 improves as a result of this case, Duke's customers
23 will not realize any benefit from that reduced cost
24 of debt until Duke's next rate case, correct?

25 A. If Duke's cost of debt were to -- to

1 decrease, it would not have an effect on the -- the
2 rates that are set here.

3 Q. Right. And what I am trying to figure
4 out is when consumers would benefit, if ever, as a
5 result of a lower cost of debt for Duke, and my
6 question is: Is the answer "Not until Duke's next
7 rate case"?

8 A. I believe that's true. I don't know how
9 the riders are -- are set, to be honest you with.
10 But I believe that's true.

11 Q. Okay. Are you familiar with any other
12 U.S. Supreme Court decisions, other than the Hope
13 decision, as they relate to rate cases?

14 A. I am aware of other cases where rate of
15 return is discussed, but I can't cite them off the
16 top of my head.

17 Q. Mr. Buckley, you would agree that
18 consumer interests cannot be disregarded in
19 determining what is a just and reasonable rate,
20 correct?

21 A. I don't understand that question. I'm
22 sorry.

23 Q. Okay. That's fine. We'll walk through
24 it.

25 So when you are doing your ROE and ROR

1 calculation, consumer interests cannot be disregarded
2 when making that calculation and analyzing the
3 results of that calculation, correct?

4 A. I mean, I would assume that the company
5 would want a number that is higher, and we're trying
6 to come up with a number that is fair both to the
7 company and the people that are paying that rate. So
8 those considerations are taken into account to try to
9 come up with a fair rate.

10 Q. Okay. And it's conceivable that a return
11 to the company of the cost of service not -- might
12 not be just and reasonable to consumers, correct?

13 MS. PASHOS: I'd like to object at this
14 point. It seems like we're way beyond Mr. Buckley's
15 testimony which addresses return on equity.

16 MR. MICHAEL: And I think, your Honor,
17 that Witness Buckley, not surprisingly, just
18 suggested that when they are analyzing a proposed
19 rate, they're balancing the interests of the company
20 and what is fair for the people that are going to be
21 paying the rates. And that's not surprising.

22 And the follow-up question is given those
23 balancing of considerations; hence, the question that
24 I asked. So it's directly related to how rates are
25 set for public utilities, not only in the State of

1 Ohio but in every state in the Union.

2 MS. PASHOS: But it's not related to his
3 testimony.

4 MR. MICHAEL: He testifies on ROE and ROR
5 and how it's set.

6 EXAMINER CATHCART: I'm going to overrule
7 the objection. The witness can answer to his
8 understanding.

9 MR. MICHAEL: Thank you, your Honor.

10 THE WITNESS: Could you reread the
11 question, please.

12 (Record read.)

13 A. I think you could -- that you could --
14 that a rate -- return on equity or rate of return
15 could be considered too high, so it could be granted
16 that it was too high. I don't think the Ohio Staff
17 would do that. But I think there is a number that
18 would be too -- that we would deem too high.

19 Q. And by "too high," just to clarify what
20 you mean, Mr. Buckley, you are saying too high
21 relative to it being not just and reasonable to
22 consumers, correct?

23 A. Yeah. At some point we would -- a number
24 could be created that was -- we would think would be
25 unfair to the customers. That's why, you know, we

1 wouldn't grant a 20-percent ROE for any of our
2 healthy utilities at this point because we think that
3 would be too high. So we would try to balance the
4 aspects of the customers, the company, and other
5 interested parties.

6 MR. MICHAEL: And, your Honor, I would
7 move to strike everything after it was either "Yeah"
8 or "Yes." The first part of his response.

9 MR. BEELER: And, your Honor, he was
10 perfectly answering the question. It was posed to
11 him and that was his direct response.

12 EXAMINER CATHCART: I am going to deny
13 the motion to strike. The witness was clarifying his
14 answer.

15 MR. MICHAEL: Thank you, your Honor.

16 No further questions.

17 Thank you, Mr. Buckley.

18 MS. PASHOS: I have a few questions.

19 - - -

20 CROSS-EXAMINATION

21 By Ms. Pashos:

22 Q. Do you recall answering questions to some
23 extent about credit quality and if a utility's
24 financing costs are reduced between rate cases, who
25 benefits from that? Do you recall that line of

1 questions?

2 A. I do.

3 MR. MICHAEL: I object, your Honor. I
4 was asking about when the benefits would be realized,
5 not if.

6 EXAMINER CATHCART: Overruled. I'll
7 allow the question.

8 Q. (By Ms. Pashos) Would you agree -- over
9 the long term, who benefits from a utility's lower
10 financing costs?

11 A. I believe the utility would benefit.
12 Again, if rates were reset, the customers would
13 benefit. Having a healthy utility is not -- is not a
14 bad thing. Having a utility that's -- that's --
15 setting rates so a utility can achieve the highest
16 bond rating might not be the best thing either. We
17 try to balance all parties and all customers and come
18 up with returns that we think are reasonable.

19 Q. And does a utility and its customers
20 benefit -- let me back up.

21 If a utility has good credit quality,
22 do -- does the utility and its customers benefit not
23 only from presumably reasonable financing terms, but
24 also from access to capital?

25 A. To a point. You don't want -- I mean,

1 you could -- you could create rates that would
2 improve the credit quality, but, again, at what cost
3 to customers? And there's other things that can
4 improve that credit quality besides just setting
5 rates. There's things that the utility can -- can do
6 to help its own credit rating outside of rates also.
7 But, in general, a healthy utility, financially,
8 should benefit everyone.

9 Q. Do you recall discussing, a few minutes
10 ago, overall rates of return as well as returns on
11 equity?

12 A. Yes, we have been discussing that.

13 Q. And am I -- is it fair to say that an
14 overall rate of return, in addition to one piece of
15 that calculation being return on equity, another
16 piece is cost of debt, and another -- and yet another
17 piece is capital structure; would you agree?

18 A. Yes.

19 Q. And are you aware of whether the OCC, in
20 this case, has objected either to Duke Energy Ohio's
21 cost of debt or their capital structure?

22 A. I don't recall that.

23 Q. Do you also recall discussing basically
24 that not all utilities have or should have the same
25 return on equity? There are differences between

1 utilities. Do you recall that kind of discussion?

2 A. There was a discussion regarding that,
3 yes.

4 Q. Would you agree there are some generic or
5 similar parts of a return on equity analysis? And by
6 that I mean something like the risk-free rate of
7 return? Is that something that is more common to
8 utilities than unique to utilities?

9 A. There are a lot of factors that go into
10 setting a rate of return. A reasonable -- what we
11 would consider a reasonable rate of return. The fact
12 that they're in the same industry, that is one
13 factor. So to say that, you know, utilities have
14 more in common than don't, I'm not sure that that's
15 appropriate because there are companies at different
16 levels of financial health. But they are in the same
17 industry and that is a factor.

18 Q. So there -- would it be fair to say there
19 are some similarities on return on equity analyses
20 and some differences on a utility-by-utility basis?

21 MR. MICHAEL: Objection, asked and
22 answered.

23 MR. OLIKER: Your Honor, I have let some
24 of this cross go a little bit, but a lot of these
25 questions sound like something that would be subject

1 to a redirect rather than a cross-examination. And
2 if they are questions that the Staff counsel wants to
3 ask Mr. Buckley, I think it would be appropriate, but
4 I don't think it's appropriate for Duke to be asking
5 these questions now.

6 MS. PASHOS: Well, I think I have an
7 opportunity to cross-examine the witness.

8 MR. OLIKER: Only if it's adverse. You
9 can't do redirect in cross-examination.

10 EXAMINER CATHCART: I'll allow a little
11 bit of latitude, but it is getting close.

12 MS. PASHOS: Okay. I will try to finish
13 this up quickly.

14 Q. (By Ms. Pashos) Are you aware of any
15 other electric distribution companies in Ohio that
16 currently have an authorized return on equity below
17 10 percent?

18 A. I don't have those calculations up here
19 with me, and I don't commit them to memory, so I
20 can't comment on those.

21 Q. They are what they are, right?

22 A. They are what they are, yeah. So if --
23 if they want to be used, they can be found.

24 Q. Being from Indiana and not practicing
25 here all the time, am I right that in this -- in this

1 case and in other cases where Staff offers testimony
2 and a report, the Staff is making a recommendation,
3 kind of like another party does, and it's the
4 Commission that ultimately makes the decision?

5 A. Yes.

6 Q. Then I have one final very minor
7 question.

8 You talk -- talk about issuance costs in
9 your testimony. When you say -- use that phrase
10 "issuance cost," is that the same as flotation costs?

11 A. I don't believe it is, no.

12 MS. PASHOS: Okay. Thank you,
13 Mr. Buckley.

14 EXAMINER CATHCART: Thank you.

15 Let's take a recess until 11:30 before
16 redirect and let's go off the record.

17 (Discussion off the record.)

18 EXAMINER CATHCART: So let's go back on
19 the record.

20 MR. BEELER: No redirect, your Honor.

21 EXAMINER CATHCART: Thank you.

22 MR. BEELER: At this point, Staff would
23 move for the admission of Staff Exhibit 4 into the
24 record.

25 EXAMINER CATHCART: Any objections?

1 MS. WATTS: No objections.

2 EXAMINER CATHCART: Hearing none, it will
3 be admitted.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 EXAMINER WALSTRA: Staff, call your next
6 witness.

7 MR. LINDGREN: Thank you, your Honor.
8 The Staff next calls Matthew Snider to the stand.

9 (Witness sworn.)

10 EXAMINER WALSTRA: Have a seat.

11 MR. LINDGREN: May I approach?

12 EXAMINER WALSTRA: You may.

13 MR. LINDGREN: Staff Exhibit 5.

14 EXAMINER WALSTRA: So marked.

15 (EXHIBIT MARKED FOR IDENTIFICATION.)

16 - - -

17 MATTHEW SNIDER

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

20 DIRECT EXAMINATION

21 By Mr. Lindgren:

22 Q. Mr. Snider, do you have before you the
23 document I have marked as Staff Exhibit 5?

24 A. I do.

25 Q. And is that your prefiled testimony?

1 A. Yes, it is.

2 Q. Was that testimony prepared by you or at
3 your direction?

4 A. It was.

5 Q. And do you have any changes or
6 corrections to this testimony?

7 A. I do not.

8 Q. So if I were to ask you all the questions
9 contained in this exhibit, this morning, would your
10 answers be the same?

11 A. They would.

12 MR. LINDGREN: Thank you.

13 And subject to cross-examination, I would
14 move for the admission of Staff Exhibit 5.

15 EXAMINER WALSTRA: Thank you.

16 MS. WHITFIELD: Can the witness turn on
17 the microphone? Thank you.

18 EXAMINER WALSTRA: Mr. Olikier.

19 MR. OLIER: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Olikier:

23 Q. Good morning, Mr. Snider.

24 A. How's it going?

25 Q. Just a few questions about your testimony

1 today. Am I correct you speak about the residential
2 customer charge?

3 A. I do not believe I speak about the
4 residential customer charge. I speak more about the
5 billing determinants across all tariffs.

6 Q. Okay. And with respect to your
7 testimony, am I correct that it relates to the Staff
8 Report?

9 A. Yes, it does.

10 Q. And are there any other portions of the
11 Staff Report that you're responsible for preparing?

12 A. It's mainly revenue. I did work with a
13 team on some of the income taxes as well.

14 Q. When you say "mainly revenue," what do
15 you mean by that?

16 A. Really just verifying the billing
17 determinants that are contained on the Schedule E-4s
18 across all the tariffs.

19 Q. And when you refer to the revenue on E-4,
20 you are referring to the billing determinants in
21 order to ensure the company collects its revenue
22 requirements?

23 A. More verifying that in the -- in the test
24 year, that the billing determinants that the company
25 proposed are a fair representation of the sales and

1 customers during that test year period.

2 Q. In the income tax portion of the Staff
3 Report that you are referring to, are you discussing
4 the impact of the change in corporate tax rate from
5 35 percent to 21 percent?

6 A. No. I would not.

7 Q. Which portion in income tax are you
8 speaking?

9 MR. LINDGREN: Objection. This sounds
10 outside the scope of his direct testimony.

11 MR. OLIKER: Your Honor, as we've
12 discussed, there are certain evidentiary requirements
13 applicable to parties in a distribution rate case.
14 With respect to the Staff Report, although it's
15 admitted into evidence, it also must be sponsored by
16 evidence; otherwise, it's subject to being stricken.
17 And I am simply exploring the portions of the Staff
18 Report that he had responsibility for preparing.

19 EXAMINER WALSTRA: I don't know if you
20 have established he is actually responsible for it.
21 I think he said he worked on a team.

22 MR. OLIKER: Well, happy to do that, your
23 Honor.

24 Q. (By Mr. Oliker) Mr. Snider.

25 A. Yes.

1 Q. Were you responsible for any of the
2 sections in the Staff Report regarding income taxes?

3 A. I don't know if I was. I mean, we had a
4 team that worked on it. There was responsibility.
5 Yes and no, I guess.

6 Q. Who else was on the team?

7 A. Jonathan Borer, I believe.

8 Q. Anyone else?

9 A. There was management that was leading the
10 audit as well; we would have discussed it with them.

11 Q. Who was on that team?

12 A. David Lipthratt.

13 Q. Anyone else?

14 A. Upper management; Tammy Turkenton.

15 MR. OLIKER: Okay. Those are all the
16 questions I have, your Honor. Thank you.

17 EXAMINER WALSTRA: Thank you.

18 Mr. Michael.

19 MR. MICHAEL: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Michael:

23 Q. Mr. Snider, I would like to draw you to
24 page 3 of your testimony, starting on line 4. Let me
25 know when you are there.

1 A. I'm there.

2 Q. And you included, in Staff's adjustment,
3 an increase of 19,853 to the RS bill count, correct?

4 A. I did.

5 Q. And that increase to the bill count is
6 because you used the actual bill count for the test
7 year, correct?

8 A. Correct.

9 Q. And the company, in its application, used
10 eight months of actual bill count and four months of
11 budget, correct?

12 A. Yes.

13 Q. Your testimony is consistent with the
14 adjustment in the Staff Report, correct?

15 A. Yes, it is.

16 Q. You're familiar with the term
17 "annualizations," correct, Mr. Snider?

18 A. I am.

19 Q. If Duke's employees experience wage
20 increases during a test year, Staff would analyze
21 those increases for the entire test year, correct?

22 A. Yes, but that is an expense adjustment, I
23 would like to point out.

24 Q. That means if Duke's employees
25 experienced a wage increase during the last month of

1 the test year, Staff would reflect that increase as
2 if the employees were making that increased amount
3 for the entire year, correct?

4 A. If it was known and measurable, we would
5 typically make that expense adjustment.

6 MR. MICHAEL: Your Honor, may I have
7 permission to approach the witness, please?

8 EXAMINER WALSTRA: You may.

9 MR. MICHAEL: And I would like to have
10 this marked as OCC Exhibit 10.

11 EXAMINER WALSTRA: It will be so marked
12 as Exhibit 10.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 Q. (By Mr. Michael) Mr. Snider, we have
15 before you what was previously marked as OCC Exhibit
16 10. And that is Staff-DR, which stands for Data
17 Request, correct, 35-001, correct?

18 A. Yes, correct.

19 Q. And were you involved in propounding this
20 Data Request to Duke Energy Ohio?

21 A. Yes, I believe so.

22 Q. Okay. And did you review the responses
23 to Staff Data Request 35?

24 A. I would have.

25 Q. And have you taken the opportunity,

1 Mr. Snider, to look through this document a little
2 bit, so I may question you about it?

3 A. No, I have not.

4 Q. Would you please do so, including the
5 responses.

6 EXAMINER WALSTRA: I believe his name is
7 "Snider."

8 MR. MICHAEL: What I did I say?

9 EXAMINER WALSTRA: "Schneider."

10 MR. MICHAEL: Oh, I apologize.

11 Q. Okay. Thank you, Mr. Snider.

12 I would draw your attention, if I could,
13 Mr. Snider, to the third page of Exhibit 10 and that
14 would be customer bills for 2014. It's the third
15 page of the exhibit.

16 MS. WATTS: Oh, okay.

17 A. I am on page 4, but yes.

18 Q. Fourth page of the exhibit, I'm sorry.

19 And I want to -- my questioning will be
20 directing your attention, Mr. Snider, to lines 1
21 through 7 and the -- where it says "Total
22 Residential," that's the -- that's reflective of the
23 total residential bills for each month of 2014,
24 correct?

25 MR. LINDGREN: Objection. The OCC

1 counsel is attempting to question the Staff witness
2 about the company's response, and these questions
3 should have been directed to the company witness who
4 prepared this response, Mr. Riddle.

5 MR. MICHAEL: Your Honor, I think I
6 established the fact that it was Mr. Snider who was
7 involved in propounding the request to the company.
8 It was a Staff Data Request. Mr. Snider admitted
9 that he reviewed the information in the Data Request.
10 The objection to which Mr. Snider is responding from
11 OCC has to do with annualizing the RS number. And
12 what I am doing is laying a foundation to explore why
13 Mr. Snider responds as he does, if he is the one
14 involved in propounding the request, he reviewed the
15 request, and he's responding to the objection related
16 to the request, I think it's perfectly fair for us to
17 explore his testimony and ask him questions about the
18 document he was involved in asking for and analyzing.

19 MS. WATTS: Your Honor, I would join the
20 objection to the extent OCC is attempting to get a
21 Duke Energy Ohio exhibit into the record without
22 properly questioning the appropriate Duke Energy Ohio
23 witness with respect to his own work in this
24 discovery response.

25 MR. LINDGREN: Mr. Snider was involved in

1 preparing the question, but not involved in preparing
2 the response.

3 MR. MICHAEL: No, but he was involved in
4 analyzing the response.

5 And I should add just very briefly, your
6 Honor, I also questioned the witness about his
7 annualization, and ultimately that's where I'm going
8 to get, but I believe it's necessary, in the interest
9 of the record and for the Commission to have a full
10 and robust record before it, to lay some foundational
11 questions about this subject matter.

12 MR. LINDGREN: Your Honor, Counsel hasn't
13 established the witness even used this response in
14 formulating his testimony.

15 MR. MICHAEL: But I am permitted to
16 cross-examine the witness about what he did do and
17 I'm five questions into laying the foundation in
18 order to do that. I have every opportunity to fully
19 cross-examine the witness about what the witness
20 said, and what the witness said is that we shouldn't
21 annualize RS.

22 EXAMINER WALSTRA: I'll allow him to
23 continue to lay the foundation.

24 MR. MICHAEL: Thank you, your Honor.

25 Q. (By Mr. Michael) And, Mr. Snider, you do

1 not have a calculator with you, correct?

2 A. I do not.

3 MR. MICHAEL: Okay. May I approach the
4 witness, your Honor, to avoid another calculator
5 incident?

6 EXAMINER WALSTRA: You may.

7 Q. There you are, Mr. Snider.

8 A. Thank you.

9 Q. Mr. Snider, I've given you an adding
10 machine, and I would like you to confirm for me that
11 the total RS bill count for 2014 is 7,672,294.

12 A. You really want me to add up 12 months of
13 639 -- I can take your word for it, subject to check.

14 Q. Okay. That would be fine.

15 And would you be willing to do the same
16 thing, Mr. Snider, if we were to turn to 2015, that
17 the, subject to check, the total RS bill count is
18 7,725,507?

19 A. I'll take your word for it.

20 Q. Okay. And would you take my word for it,
21 subject to check, that the delta between '14 and '15
22 in customer bill count represents an increase of
23 53,113 bills?

24 A. Yes.

25 Q. And would you agree with me, subject to

1 check, Mr. Snider, that the bill count for 2016 is
2 7,790,549?

3 MS. WATTS: Say that again, please.

4 MR. MICHAEL: Certainly.

5 Q. Would you agree with me, subject to
6 check, that the total RS bill count for 2016 is
7 7,790,549?

8 A. Yes.

9 Q. And would you agree with me, Mr. Snider,
10 subject to check, that that would represent an
11 increase of 65,142 bills over the year 2015?

12 A. I did not write down your 2015 annual
13 number, but I will --

14 Q. Subject to check.

15 A. Subject to check.

16 Q. And you're aware, Mr. Snider, that the
17 test year for this case, actual, were for the years
18 April 2016 through March 2017, correct?

19 A. Yes, that's correct.

20 Q. And, subject to check, you would agree
21 that the total RS bill count for that portion was
22 7,805,816?

23 A. And I assume you are taking that from
24 April to November of actual and then the updated
25 actuals?

1 MS. WATTS: And, your Honor, as a point
2 of clarification, can I ask what Counsel means by
3 "that portion"?

4 Q. Yeah. And to Counsel's question, as I
5 said, it would be April 2016 through March 2017, the
6 actual test year months. I can reask the question,
7 Mr. Snider, if you got lost.

8 A. If you would.

9 Q. Certainly.

10 Would you agree with me, subject to
11 check, that the total RS bill count for the actual
12 test year, April 2016 through March 2017, is
13 7,805,816?

14 A. Subject to check, yes.

15 Q. Okay. So we went through the deltas and
16 the increase in the bill count for those separate
17 years. Would you agree with me that if you
18 annualized the RS bill count using the last month of
19 the test year, that would be consistent with Staff's
20 treatment in annualizing wage increases that occurred
21 during the test year?

22 MS. WATTS: Your Honor, could I have the
23 question reread, please?

24 EXAMINER WALSTRA: You may.

25 (Record read.)

1 MS. WATTS: And, your Honor --

2 MR. LINDGREN: I am going to object to
3 that question. That's outside the scope of his
4 testimony and his involvement in this case.

5 MS. WATTS: And I join that objection.

6 MR. MICHAEL: What we're talking about
7 here, your Honor, is the concept of annualizing. One
8 of the objections that OCC raised and suggestions
9 that OCC made was annualizing the RS bill count based
10 on the last month of the test year to reflect
11 residential growth. I asked the witness, earlier in
12 his testimony, if he was familiar with the concept of
13 annualizing and specifically gave the witness an
14 example about annualizing wage increases. And I'm
15 simply asking the witness now whether or not
16 annualizing bill count would be consistent
17 conceptually with annualizing wage increases. So I
18 think it's consistent with his testimony and
19 consistent with the objection and the witness's
20 response to that objection.

21 MS. WATTS: And, your Honor, the
22 witness's familiarity with annualizing wage increases
23 does not relate to whether or not the Staff, in fact,
24 annualized wage increases in the Staff Report.

25 MR. MICHAEL: Again, it's the concept of

1 annualizing I am getting to, your Honor.

2 MS. WATTS: So, otherwise, there is
3 apples and oranges in the comparison.

4 EXAMINER WALSTRA: I agree with
5 Ms. Watts.

6 Q. (By Mr. Michael) Would you agree with me,
7 Mr. Snider, subject to check, that annualizing the RS
8 bill count using the month of March 2017, the last
9 actual month in the test year, would result in a bill
10 count of 7,843,056?

11 A. Can you repeat that number?

12 Q. Certainly. 7,843,056.

13 A. Subject to check, I believe so.

14 Q. Okay. Would you agree with me,
15 Mr. Snider, subject to check, that would represent an
16 increase of 52,507 bills over the year 2016?

17 A. This is over the year 2016 and not the
18 test year, correct?

19 Q. That's correct.

20 A. Subject to check, yes.

21 Q. Okay. And would you agree with me that
22 that increase in bills is consistent with the
23 historical increases that we've gone through
24 throughout the course of my questioning of you here
25 today, subject to check?

1 A. I'm not sure.

2 Q. Why not?

3 A. I think it's a little speculative to
4 assume that one month is indicative of future growth
5 by the company.

6 Q. Okay. And I want to take you back to the
7 question I actually asked you which is if we were to
8 compare the increase in bills, year over year, based
9 on a March -- using the March 2017 annualized bill
10 count with -- and comparing that to the 2016 bill
11 count, if that increase would be more consistent with
12 what -- historically what I walked through with you
13 earlier from '14 through '17?

14 A. While I feel -- while I do agree it may
15 fall more in line with the 2014, 2015, I still
16 believe that it would be unreasonable for Staff to
17 apply historical growth to the RS bill count.

18 MR. MICHAEL: Your Honor, I would move to
19 strike everything in that response after -- when he
20 started talking about what he thought was reasonable.
21 If his counsel wants to ask him about that on
22 redirect, that's fine, but he responded to my
23 question prior to hypothesizing about what he thought
24 was reasonable or not.

25 MR. LINDGREN: I believe the witness

1 should be permitted to explain his answer.

2 EXAMINER WALSTRA: I'll deny the motion
3 to strike.

4 MR. MICHAEL: Thank you, your Honor.
5 I have no further questions, your Honor.
6 Thank you, Mr. Snider.

7 MS. WATTS: No questions, your Honor.

8 EXAMINER WALSTRA: Thank you.

9 MR. LINDGREN: May we have a moment to
10 confer?

11 EXAMINER WALSTRA: Sure. We'll go off
12 the record.

13 (Discussion off the record.)

14 EXAMINER WALSTRA: We will go back on the
15 record.

16 Any redirect?

17 MR. LINDGREN: No redirect, your Honor,
18 and I would move for the admission of Staff Exhibit
19 5.

20 EXAMINER WALSTRA: Thank you.

21 Any objections?

22 MS. WATTS: No objection.

23 EXAMINER WALSTRA: It will be admitted.

24 (EXHIBIT ADMITTED INTO EVIDENCE.)

25 MR. MICHAEL: Your Honor, we move -- OCC

1 moves for the admission of OCC Exhibit 10.

2 EXAMINER WALSTRA: Any objections?

3 MR. LINDGREN: Yes. Staff objects.

4 MS. WATTS: And the company objects, your
5 Honor. This is obviously an exhibit that should have
6 been used with Duke Energy Ohio's Witness Mr. Riddle,
7 and was not used then, so it should not be in the
8 record now.

9 MR. MICHAEL: We went through these
10 objections earlier, your Honor, and my response would
11 be the same. This witness was involved in
12 propounding the discovery request. He was involved
13 in analyzing the discovery request. And it's
14 perfectly permissible to ask questions about
15 documents not only of the person that wrote it but
16 also the person that asked for it and received it.
17 This is a Data Request from Staff. I was asking the
18 witness from Staff who was involved in propounding a
19 request and the one responsible for analyzing it.

20 MS. WATTS: The fact, your Honor, that he
21 was responsible for analyzing it does not relate to
22 the fact -- does not speak to the fact as to whether
23 it relates to his testimony.

24 MR. LINDGREN: Also the Staff witness
25 can't vouch for the numbers contained in the company

1 response. He didn't prepare it.

2 MR. MICHAEL: I mean, yeah, the whole
3 discussion was -- again, your Honor, what brought us
4 here was OCC's objection regarding annualizing the
5 March 2017 RS bill count number. And I think based
6 on cross-examination of the witness, it's certainly
7 helpful for the Commission to analyze the impact of
8 annualizing the RS bill count whether it should or
9 shouldn't be done. And, I don't know, is Duke going
10 to walk away from the accuracy of its responses that
11 it gives under oath to an interrogatory?

12 MS. WATTS: Mr. Michael, if OCC had an
13 issue with respect to annualizing bill count, then
14 OCC should have a witness that testifies to that
15 regard. It's not the company's responsibility to
16 make OCC's case for it.

17 MR. MICHAEL: I think we did, and I just
18 cross-examined a witness. We can make our case
19 through cross-examination as well.

20 And, your Honor, I would also point out,
21 I apologize for interrupting your deliberations, I
22 would note there are no objections in the actual
23 written discovery response; simply additional
24 confirmation regarding the veracity.

25 MS. WATTS: And, your Honor, that's

1 absolutely not relevant to the question that is
2 before the Bench.

3 EXAMINER WALSTRA: I'm going to deny
4 admission. I believe Mr. Riddle has already
5 testified. It was not brought up then. This didn't
6 really speak to the numbers. He just confirmed
7 additions of numbers. I think his testimony is more
8 towards the concept and didn't go this far into it,
9 so I will deny admission of OCC Exhibit 10.

10 MR. MICHAEL: Can we proffer OCC Exhibit
11 10, please, your Honor, to the extent we want to
12 address that issue in our brief, please?

13 EXAMINER WALSTRA: You may.

14 MR. MICHAEL: Thank you. So proffered.

15 EXAMINER WALSTRA: We'll go off the
16 record.

17 (Discussion off the record.)

18 (Thereupon, at 12:02 p.m., the hearing
19 was adjourned.)

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1 CERTIFICATE

2 We do hereby certify that the foregoing is a
3 true and correct transcript of the proceedings taken
4 by us in this matter on Tuesday, July 17, 2018, and
5 carefully compared with our original stenographic
6 notes.

7
8

Karen Sue Gibson, Registered
9 Merit Reporter.

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11

Carolyn M. Burke, Registered
12 Professional Reporter.

13 (KSG-6582)

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Summary: Transcript in the matter of the Duke Energy Ohio, Inc. hearing held on 07/17/18 - Volume VII electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.