

*OCC EXHIBIT NO.*_____

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Implementation of) Case No. 18-1830-GA-UNC
the Tax Cuts and Jobs Act of 2017.)

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval of Tariff) Case No. 18-1831-GA-ATA
Amendments.)

**DIRECT TESTIMONY
OF
KERRY J. ADKINS**

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

July 31, 2019

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ATTACHMENTS

Attachment KJA-01 List of Previous Testimony Filed at the PUCO by Kerry Adkins

I. INTRODUCTION

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

A1. My name is Kerry J. Adkins. My business address is 65 East State Street, 7th Floor, Columbus, Ohio 43215. I am employed by the Office of the Ohio Consumers' Counsel ("OCC") as a Senior Regulatory Analyst.

Q2. PLEASE SUMMARIZE YOUR EDUCATION AND PROFESSIONAL EXPERIENCE.

A2. I earned a Bachelor of Arts degree in History with a pre-law option from Ohio Northern University in 1983. In 1988, I earned a Master of Public Administration degree with specializations in Regulatory Policy and Fiscal Administration from The Ohio State University. In addition, I have attended various utility regulatory seminars and training programs sponsored by the Public Utilities Commission of Ohio ("PUCO") and OCC.

My professional experience in the utility regulation field began when I was hired by the PUCO in August 1989 as a Researcher II in the Nuclear Division of what was then the Consumer Services Department. In that capacity, I monitored the financial and operating performance of utility-owned and operated nuclear power plants and made policy recommendations regarding nuclear power issues in rate proceedings. In addition, I served as staff to the Utility Radiological Safety Board of Ohio ("URSB") and liaison to the URSB's Citizens Advisory Council. Around

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1 1995, my career transitioned towards deregulation and the development of
2 competitive options for services formerly supplied by regulated utilities. I was a
3 PUCO Staff representative to various committees and working groups that
4 oversaw the development of customer choice pilot programs, and I analyzed and
5 made recommendations concerning the pilot programs as they progressed. Later,
6 as the pilot programs matured into legislatively-sponsored restructuring programs,
7 I worked with the General Assembly's Legislative Service Commission on draft
8 bill language concerning the consumer protection provisions in Senate Bill 3
9 (restructuring the electric industry) and Amended House Bill 9 (restructuring the
10 natural gas industry). After the restructuring laws were enacted, I managed
11 PUCO Staff teams that were responsible for drafting and enforcing the PUCO's
12 rules governing certification of competitive energy suppliers and the competitive
13 suppliers' interactions with Ohio consumers. In 2008, I transferred to what was
14 then the PUCO's Utilities Department (now the Rates and Analysis Department)
15 where I supervised Staff teams responsible for analyzing and making
16 recommendations regarding utility rate filings, primarily related to the natural gas
17 industry. I retired from the PUCO in September 2018. I began my current
18 employment at OCC in November 2018. At OCC, I review and analyze utility
19 filings at the PUCO and other regulatory agencies and make recommendations to
20 protect the interests of residential customers.

1 ***Q3. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY OR TESTIFIED***
2 ***BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO?***

3 ***A3.*** Yes. The cases in which I have submitted testimony or have testified before the
4 PUCO can be found in Attachment KJA-1.

5
6 ***II. PURPOSE/BACKGROUND***

7
8 ***Q4. WHAT IS THE PURPOSE OF YOUR TESTIMONY?***

9 ***A4.*** The purpose of my testimony is to present OCC's recommendations on the proper
10 regulatory treatment that will enable customers to obtain the full tax savings
11 associated with federal tax cuts to public utilities, as a result of the Tax Cuts and
12 Jobs Act of 2017 ("TCJA" or "2017 Federal Tax Cuts").

13
14 ***Q5. PLEASE PROVIDE SOME BACKGROUND ON DUKE'S PROPOSAL TO***
15 ***PASS THE SAVINGS BACK TO CONSUMERS.***

16 ***A5.*** On October 24, 2018, the PUCO directed all rate-regulated utilities in the state to
17 "file applications 'not for an increase in rates,' pursuant to R.C. 4909.18, in a
18 newly initiated proceeding, to pass along to customers the tax savings from the
19 Tax Cuts and Jobs Act of 2017 (TCJA)."¹

¹ *In the Matter of the Commission's Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI, Finding and Order (October 24, 2018) ("TCJA Order") at 18.

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1 On December 21, 2018, Duke Energy Ohio, Inc. (“Duke”) filed an application in
2 these cases (“Application”) to comply with the PUCO’s TCJA Order.

3 On April 17, 2019, the PUCO Staff filed its “Review and Recommendations”
4 (“Staff Report”) regarding Duke’s Application. Both Duke and OCC filed
5 comments in response to the Staff Report. Duke identified four areas in which it
6 disagreed with the Staff.² OCC concurred with and supported all of the PUCO
7 Staff’s recommendations made in the Staff Report.

8

9 ***Q6. CAN YOU SUMMARIZE THE AREAS OF DISAGREEMENT BETWEEN***
10 ***DUKE AND THE PUCO STAFF?***

11 ***A6.*** Yes. The first area of disagreement is that Duke in the Application proposed to
12 reflect the reduction in the federal income tax rate (“FIT”) stemming from the
13 TCJA as a 5.3558% reduction to the base rates charged consumers. Duke
14 proposes to accomplish this reduction by amending its base rate tariffs.³ In the
15 Staff Report, however, the PUCO Staff recommended that Duke pass the FIT
16 reduction to consumers via a credit rider (which Duke has termed “Rider
17 GTCJA”) included on consumer bills rather than an adjustment to base rates.⁴

² Duke Comments at 17. Other than the four areas of disagreement, Duke agreed to the Staff Report. See Duke Comments at 1-4 and 16-18.

³ Duke Application at 5-6.

⁴ Staff Report at 4.

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1 In its Comments, Duke acknowledges that there is no substantive difference
2 between the two approaches for reflecting the tax savings. But it maintains that
3 PUCO Staff's recommended method will cause it to incur expenses to create two
4 separate riders.⁵ Duke claims that it cannot just add the FIT savings to its existing
5 rider (Rider GTCJA). That Rider is being created to pass back to customers the
6 other tax savings (FIT deferral to reflect the lower tax rate that began January 1,
7 2018) and will be adjusted to reflect the lower tax rate and excess accumulated
8 deferred income taxes ("EDIT"). Duke asserts that the rate design of Rider
9 GTCJA, as currently constituted, differs from the rate design that would be
10 necessary to pass FIT savings back to consumers. Therefore, to implement PUCO
11 Staff's recommendation, Duke claims that it will be necessary to create two
12 separate riders.

13
14 The second area of disagreement involves PUCO Staff's recommendation that
15 balances for EDIT (not related to Duke Riders AMRP and AU) that will be passed
16 back to consumers should be based on Duke's EDIT balance recorded on its
17 balance sheet as of December 31, 2017.⁶

18
19 In its Comments, Duke argues that the amount of EDIT to be passed back to
20 customers should be based on balances that existed on the date certain of its most

⁵ Duke Comments at 7-8.

⁶ Staff Report at 4. Duke's second, third, and fourth areas of disagreement with the Staff Report have been collapsed into one summary since they involve the same Staff recommendation.

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1 recent base rate case.⁷ Duke maintains that a significant portion of non-
2 normalized EDITs are related to regulatory assets that were recorded after the
3 March 31, 2012 date certain in its last rate case and those assets have not been
4 included in customers' rates. Duke argues that using an EDIT balance that does
5 not match up with the regulatory assets included in base rates will result in
6 customers receiving back too much in credits.⁸

7
8 Duke claims that PUCO Staff recognizes EDITs associated with Rider AMRP and
9 Rider AU should be tracked separately from EDITs associated with base rates.
10 But it maintains that, if the EDIT balance from December 31, 2017 is used as
11 opposed to the date certain balance from its last rate case, then PUCO Staff's
12 position is inconsistent. According to Duke, there would be no reason to
13 separately track the refund of EDITs for Riders AMRP and AU because all EDITs
14 associated with those Riders would already be captured in Rider GTCJA.⁹

15
16 Last, Duke argues that PUCO Staff's recommendation to base EDIT refund
17 amounts on balances at December 31, 2017 is inconsistent with a settlement
18 agreement approved in Case No. 17-2202-GA-ALT. In that settlement, PUCO
19 Staff and OCC agreed that computation of EDITs to be refunded by Columbia

⁷ Duke Comments at 13. Duke's most recent base rate case was Case No. 12-1685-GA-AIR.

⁸ *Id.*

⁹ Duke Comments at 15-16.

Gas of Ohio (“Columbia”) would use the date certain balance from Columbia’s most recent rate case.¹⁰

Q7. DO YOU AGREE WITH THE PUCO STAFF THAT DUKE SHOULD REFLECT THE FIT REDUCTION IN RIDER GTCJA RATHER THAN A REDUCTION TO CUSTOMERS’ BASE RATES?

A7. Yes. Having Duke reflect the reduction in the federal income tax rate stemming from the TCJA as a credit to customers via Rider GTCJA is a more transparent way of demonstrating to customers that they are indeed receiving the benefits of the lower federal income tax rates resulting from the TCJA. And Duke’s concerns that it will be necessary to create two riders and incur the expense of developing two riders is a reach. Duke will be creating Rider GTCJA in either case. And it should be a relatively straightforward process for Duke to add the FIT reduction to Rider GTCJA. It collects rates from customers via direct customer charges and/or volumetrically. In fact, it currently has 14 riders in its gas tariffs that are collected from customers either through direct charges or volumetrically. Duke is very familiar with riders and collecting rates from customers via direct customer charges and/or volumetrically. Modifying Rider GTCJA as OCC and PUCO Staff recommends should not cause Duke to incur additional costs. There is no need to create two riders, especially given that doing so would eliminate the transparency of reflecting the FIT reduction through Rider GTCJA.

¹⁰ *Id.* at 11.

1 **Q8. DO YOU AGREE WITH THE PUCO STAFF THAT BALANCES FOR EDIT**
2 **NOT RELATED TO RIDER AMRP AND RIDER AU THAT WILL BE**
3 **PASSED BACK TO CUSTOMERS SHOULD BE BASED ON DUKE'S EDIT**
4 **BALANCE ON DECEMBER 31, 2017 RATHER THAN THE DATE**
5 **CERTAIN BALANCE IN DUKE'S LAST RATE CASE?**

6 **A8.** Yes. Duke's accumulated deferred income taxes became excess with the effective
7 date of the TCJA, January 1, 2018. It is logical that the balance for determining
8 the EDIT that will be passed back to customers would be the latest balance
9 immediately before the law became effective. Duke took advantage and gained
10 the benefit of accelerated depreciation for income tax purposes after the date
11 certain of last rate case. Therefore, OCC's and PUCO Staff's recommendation
12 that the EDIT balance at December 31, 2017 is the proper balance to use to
13 determine the total EDITs that should be passed back to customers should be
14 adopted.

15

16 In addition, Duke's reliance on the settlement approved in Case No. 17-2202-GA-
17 ALT is misplaced. That settlement, like most if not all others, provides:

18

19 This Stipulation is entered into as an overall compromise and resolution of
20 all of the issues *in this proceeding*. This Stipulation does not necessarily
21 represent the position any Signatory Party would have taken absent the
22 execution of the Stipulation. *This Stipulation shall not be cited as*

1 *precedent in any future proceeding for or against any Signatory Party, if*
2 *the Commission approves the Stipulation without material modification.*¹¹
3

4 In short, the settlement in Case No. 17-2202-GA-ALT was based on the facts and
5 circumstances of that case alone, based on the settlement's terms as a package,
6 and is not to serve as precedent in other cases.
7

8 **III. RECOMMENDATIONS**
9

10 ***Q9. WHAT DO YOU RECOMMEND?***

11 ***A9.*** I recommend that the PUCO adopt OCC's and PUCO Staff's recommendations
12 that Duke should reflect the FIT reduction stemming from the TCJA as a credit to
13 consumers through Rider GTCJA rather through a reduction in base rates. I also
14 recommend that the PUCO adopt OCC and PUCO Staff's recommendation that
15 the EDIT that will be credited to customers should be based on Duke's EDIT
16 balance on December 31, 2017 rather than the balance at the date certain for
17 Duke's most recent base rate case.

¹¹ Case No. 17-2202-GA-ALT, Settlement (filed October 25, 2018) at ¶27 (italics added).

1 **IV. CONCLUSION**

2

3 ***Q10. DOES THIS CONCLUDE YOUR TESTIMONY?***

4 ***A10.*** Yes. However, I reserve the right to incorporate new information that may
5 subsequently become available through outstanding discovery or otherwise, or to
6 supplement my testimony if the PUCO Staff modifies any of the positions taken
7 in the Staff Report.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Direct Testimony of Kerry J. Adkins on Behalf of the Office of the Ohio Consumers' Counsel* was served via electronic transmission to the persons listed below on this 31st day of July 2019.

/s/ William J. Michael
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Testimony of Kerry J. Adkins
Filed at the Public Utilities Commission of Ohio

1. *In the Matter of the Complaint and Appeal of the Cleveland Electric Illuminating Company from Ordinance 21-1994 of the Council of the City of Garfield Heights, Ohio Passed March 10, 1994, entitled "An Emergency Ordinance to Establish and Fix a Schedule of Rates, Terms and Conditions for Electric Service Being Provided by the Cleveland Electric Illuminating Company to its Electric Customers in the City of Garfield Heights, Ohio, Case No. 94-578-EL-CMR (March 20, 1995).*
2. *In the Matter of the Application of The Toledo Edison Company for Authority to Amend and Increase Certain of Its Rates and Charges for Electric Service, Case No. 95-299-EL-AIR (January 22, 1996).*
3. *In the Matter of the Application of The Cleveland Electric Illuminating Company for Authority to Amend and Increase Certain of Its Rates and Charges for Electric Service, Case No. 95-300-EL-AIR (January 22, 1996)*
4. *In the Matter of the Conjunctive Electric Guidelines Proposed by Participants of the Commission Roundtable on Competition in the Electric Industry, Case No. 96-406-EL-COI (February 10, 1998).*
5. *In the Matter of the Application Not for an Increase in Rates of The Dayton Power and Light Company for Approval to Modify Its Existing Alternative Generation Supplier (AGS) Tariff Sheet No. G8., Case No. 03-2341-EL-ATA (September 22, 2004)*
6. *In the Matter of the Commission Staff's Investigation into the Alleged MTSS Violations of Buzz Telecom., Case No. 06-1443-TP-UNC (February 7, 2007).*
7. *In the Matter of the Application of The East Ohio Gas Company dba Dominion East Ohio to Adjust Its Pipeline Infrastructure Replacement (PIR) Cost Recovery Charge and Related Matters, Case No. 09-458-GA-UNC (October 14, 2009)*
8. *In the Matter of the Application of Vectren Energy Delivery of, Inc. for Authority to Adjust its Distribution Replacement Rider Charges, Case No. 11-2776-GA-RDR (August 10, 2011).*
9. *In the Matter of Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Adjust its Automated Meter Reading Cost Recovery Charge and Related Matters., Case No. 5843-GA-RDR (April 27, 2012)*
10. *In the Matter of the Application of Vectren Energy Delivery of, Inc. for Authority to Adjust its Distribution Replacement Rider Charges, Case No. 12-1423-GA-RDR (August 28, 2012).*

11. In the Matter of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates, Case No. 12-1682-EL-AIR (March 20, 2013).
12. *In the Matter of Duke Energy Ohio, Inc., for an Increase in Gas Rates.*, Case No. 12-1685-GA-AIR (April 22, 2013).
13. *In the Matter of the Application of Duke Energy Ohio Inc., for Approval of an Alternate Rate Plan Pursuant to Section 4929.05, Revised Code, for an Accelerated Service Line Replacement Program*, Case No. 14-1622-GA-ALT (November 6, 2015).
14. *In the Matter of the Application of Northeast Natural Gas Corp. for an Increase in Gas Distribution Rates*, Case No. 18-1720-GA-AIR (July 25, 2019).

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Summary: Testimony Direct Testimony of Kerry J. Adkins on Behalf of the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Michael, William J. Mr.