BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the :
Review of Duke Energy :
Ohio, Inc.'s Distribution : Case No. 18-1036-EL-RDR
Capital Investment Rider. :

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PROCEEDINGS

before Mr. Nick Walstra and Ms. Lauren Augostini, Attorney Examiners, at the Public Utilities Commission of Ohio, 180 East Broad Street, Room 11-D, Columbus, Ohio, called at 10:00 a.m. on Wednesday, July 24, 2019.

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On behalf of the Applicant.

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On behalf of the Residential Consumers of
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On behalf of the Staff of the PUCO.

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1 Wednesday Morning Session,
2 July 24, 2019.
3 - - -
4 EXAMINER WALSTRA: We'll go on the
5 record.
6 The Public Utilities Commission of Ohio
7 has called for hearing at this time and place Case
8 No. 18-1036-EL-RDR, being in the Matter of the Review
9 of Duke Energy Ohio, Inc.'s Distribution Capital
10 Investment Rider.
11 My name is Nick Walstra, and with me is
12 Lauren Augostini. We are the Attorney Examiners
13 assigned by the Commission to hear this case. We
14 will begin by taking appearances of the parties.
15 We'll start with the Company.
16 MS. WATTS: Thank you, your Honors, and
17 good morning. On behalf of Duke Energy Ohio,
18 Elizabeth H. Watts. Also on pleadings you will see
19 Rocco D'Ascenzo and Jeanne Kingery, I believe. We
20 are at 139 East Fourth Street, Cincinnati, Ohio. I
21 never remember the ZIP code.
22 MR. MICHAEL: Good morning, your Honors.
23 On behalf of Duke's residential utility consumers,
24 the Office of the Ohio Consumers' Counsel by Bill
25 Michael.

MR. BEELER: Thank you. On behalf of the Staff of the Public Utilities Commission of Ohio, Ohio Attorney General Dave Yost, I am Steve Beeler, Assistant Attorney General, 30 East Broad Street, 16th Floor, Columbus, Ohio 43215.

EXAMINER WALSTRA: Thank you. I believe we have a Stipulation in this case?

MS. WATTS: Yes, your Honor.

Do you have that, Steve?

MR. BEELER: I do.

MS. WATTS: Your Honor, may we have that marked as Joint Exhibit 1?

EXAMINER WALSTRA: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER WALSTRA: And the signature parties may proceed whenever they are ready.

MS. WATTS: Thank you, your Honor.

MR. MICHAEL: I apologize, Ms. Watts, but before we begin, your Honor, by agreement the parties also agreed to stipulate in the audit report in this case. I don't know if we would like to mark that now before we got started or?

MR. BEELER: Mark it as Staff Exhibit 1.

MR. MICHAEL: Okay.

EXAMINER WALSTRA: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. MICHAEL: I apologize for interrupting.

MS. WATTS: Your Honor, Duke Energy Ohio would call to the witness stand Sarah Lawler, please. And may we approach?

EXAMINER WALSTRA: You may.

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SARAH E. LAWLER

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

DIRECT EXAMINATION

By Ms. Watts:

Q. Good morning.

A. Good morning.

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

A. Sarah Lawler.

Q. And, Ms. Lawler, do you have before you testimony that was prepared for this hearing?

A. I do.

Q. And did you prepare that testimony?

A. Yes.

MS. WATTS: And, your Honor, may we have that -- the testimony of Sarah E. Lawler marked as

Duke Energy Ohio Exhibit 1?

EXAMINER WALSTRA: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. (By Ms. Watts) And, Ms. Lawler, with respect to what has just now been marked as Duke Energy Ohio Exhibit 1, if I were to ask you the questions contained therein again today, would your answers be the same?

A. They would.

Q. And are they true and accurate to the best of your knowledge?

A. Yes.

Q. And do you have any additions or corrections?

A. I do not.

Q. Do you also have with you a copy of what has been marked as Joint Exhibit 1 which should be the Stipulation --

A. I do.

Q. -- in this proceeding?

A. Yes.

MS. WATTS: I just wanted to make sure you had that.

That being the case, Ms. Lawler is available for cross-examination.

EXAMINER WALSTRA: Thank you.

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CROSS-EXAMINATION

By Mr. Michael:

Q. Good morning, Ms. Lawler.

A. Good morning.

Q. I would like to direct your attention, Ms. Lawler, if I might, to what was previously marked as Joint Exhibit 1, the Stipulation that was filed in this case, and specifically paragraph 5. If you would please let me know when you get there.

A. Okay. I'm there.

Q. It's true that Duke incorrectly classified $20,431,971 of transmission plant as distribution plant in its general ledger as of September 30, 2016, correct?

A. Yes. It was incorrectly included in the general ledger as distribution plant as of September 30, 2016, correct, yes.

Q. And it's also true, Ms. Lawler, that Duke was solely responsible for that, correct?

A. Well, the accounting department of Duke Energy would have been the one making those journal entries so, yes. There was nobody else involved in making entries in the Company's general ledger.

Q. And the roughly $20 million, Ms. Lawler, that we discussed was manually removed from the Rider DCI as of December 31, 2017, and March 31, 2018, correct?

A. That's correct, yes.

Q. And it's true, Ms. Lawler, that Duke incorrectly recovered $2,763,853 of revenue on an annual basis as a return on and off of the transmission plant included in Rider DCI, correct?

A. That's the annualized revenue requirement associated with that incorrect plant, yes, the annualized number.

Q. And on a quarterly basis, that's $690,963, right?

A. That sounds right, subject to check.

Q. And that amount was recovered in -- for five quarters, correct?

A. That is correct, yes.

Q. And, Ms. Lawler, it is also correct that Duke incorrectly included the cost for land held for future use in the DCI filing, correct?

A. Yes, that's correct.

Q. The Stipulation, Ms. Lawler, reduces the DCI revenue requirement by $62,464 for four quarters in connection with that land held for future use,

1 correct?
2 A. That's correct. The 62,464 is the
3 annualized amount that would be in the rider as a
4 credit for four quarters.
5 Q. Okay. And not 14 quarters, correct?
6 A. That's correct, yes.
7 Q. Stepping away from the Stipulation just
8 for a moment, Ms. Lawler, it's true that Rider DCI is
9 subject to quarter -- Duke makes quarterly filings
10 associated with Rider DCI, correct?
11 A. We do make quarterly filings, yes.
12 Q. And then at the end of the year there is
13 an annual audit and true-up associated with Rider
14 DCI, correct?
15 A. There -- an audit is conducted. It's
16 fiscal year ended June 30 of every year, and the
17 Company has historically made adjustments to the
18 rider as a result of some of the auditor's findings,
19 yes.
20 Q. And Rider DCI specifically acknowledges
21 those adjustments, if any, would be made as a result
22 of the audit, correct?
23 A. I don't know what --
24 Q. That was inartfully said. I apologize.
25 Rider DCI specifically acknowledges that it is

1 subject to adjustment based on the auditor's filings,
2 correct?
3 MS. WATTS: Objection. If the -- counsel
4 would put the actual rider language in front of the
5 witness, she may be able to answer the question
6 better, but I think right now he is asking for what
7 gets into legal argument and so.
8 MR. MICHAEL: I will withdraw the tariff,
9 what the tariff says. Thank you.
10 EXAMINER WALSTRA: Thank you.
11 Q. (By Mr. Michael) All right. I would like
12 to direct your attention now, Ms. Lawler, if I could,
13 to what's been previously marked as Duke Exhibit 1,
14 your testimony, and let me know when you are there,
15 please.
16 A. Okay. I have my testimony in front of
17 me.
18 Q. And I would direct your attention
19 Ms. Lawler, to page 3, line 4 first and let me know
20 when you are there.
21 A. Okay. I'm there.
22 Q. And on that line you reference the
23 "Compliance Audit." Do you see that?
24 A. I do, yes.
25 Q. And please describe for me what your

1 understanding of what a compliance audit is.
2 A. Well, the compliance audit, like I said
3 earlier, has annually an external auditor that's
4 appointed by Commission Staff comes in and reviews in
5 detail the mechanics of our rider filings, our four
6 quarterly rider filings in that annual period.
7 Q. And I want to focus your attention, if I
8 might, Ms. Lawler, on the word "Compliance."
9 Compliance with what?
10 A. I guess I would say compliance with
11 the -- it's ensuring that what is included in the
12 rider filing is appropriate, that it's correctly
13 including distribution plant, it's correctly
14 including all of the associated expenses, that
15 everything that's supposed to be in the rider filing
16 is in there as accurately as possible.
17 Q. And by the same token, anything that's
18 not supposed to be in there should be removed.
19 A. Correct, yep.
20 Q. And if I could draw your attention,
21 Ms. Lawler, please, still on page 3, line 10, let me
22 know when you are there.
23 A. Okay. Yes.
24 Q. You see there you reference revenue
25 requirement adjustments, correct?

A. Yes.

Q. And revenue requirement adjustments in this case were necessary because transmission costs -- in part necessary because transmission costs were included in Rider DCI, correct?

A. Correct.

Q. And also there was some land held for future use included in DCI that should not have been, correct?

A. Correct.

Q. And still on line 10, Ms. Lawler, but going on to line 11, you see there you reference for all adjustments proposed? Do you see that?

A. Yes, I do.

Q. And those adjustments included an adjustment for the incorrectly included transmission cost, correct?

A. Yes.

Q. For the incorrectly included land held for future use, correct?

A. Yes.

Q. And remind me if there were any others that you can remember.

A. Just go to the Stipulation. There were a couple of other adjustments that we listed out in the

1 Stipulation on page 5. So there were those two
2 adjustments and then we also had some corrections for
3 contributions in native construction that weren't
4 billed timely and then there was also an adjustment
5 for some CWIP reclassifications.
6 Q. Okay. Thank you. If I could draw your
7 attention to lines 14 and 15, Ms. Lawler, still on
8 page 3. Let me know when you are there, please.
9 A. I'm there.
10 Q. And on that line you state "has already
11 taken action to make corrections to the underlying
12 plant-in-service values." Do you see that?
13 A. I do.
14 Q. Can you please describe for me what
15 actions Duke has taken.
16 A. So, for example, on the transmission
17 plant it's right now correctly classified in our
18 books and records as transmission plant. It's no
19 longer classified as distribution plant. There was a
20 journal entry made to correct that immediately upon
21 finding the mistake. The land held for future use,
22 it's, you know, correctly classified in our books and
23 records already, but we -- as soon as we realized the
24 mistake, excluded it from the query that we used to
25 populate the plant-in-service balances in the DCI

1 Rider filings so that's no longer in the DCI Rider.
2 Q. And -- I apologize.
3 A. And the other adjustments have been
4 appropriately reflected in the books and records too.
5 Q. And so it's Duke's expectation that those
6 adjustments will correct the error on a going-forward
7 basis, correct?
8 A. They already have, yes.
9 Q. Okay. And as a result of the
10 Stipulation, Duke is going to make an adjustment to
11 make up for a portion of the incorrectly included
12 costs in DCI, specifically transmission and land held
13 for future use, correct?
14 A. For the amounts that were incorrectly
15 included in DCI in the past in this -- in this audit
16 period, the proposal in the Stipulation is to make
17 corrections for those mistakes.
18 Q. And there were transmission costs
19 included in DCI and land held for future use costs in
20 DCI that the Stipulation does not address, correct?
21 A. I --
22 Q. Costs before the audit period.
23 A. Well, I mean, the cost -- all of the
24 costs have been corrected. We aren't correcting for
25 any revenue requirements outside of the audit period.

Q. Okay. Thank you for that clarification. Ms. Lawler, on lines 15 and 16 of your testimony, I would refer you to the statement where it says "necessity of these revenue requirement adjustments." Do you see that?

A. I do.

Q. And the necessity arose out of the fact that Duke included in Rider DCI certain costs, specifically transmission and land held for future use, that did not belong there, correct?

A. Yes. They were correcting mistakes.

Q. And under the Stipulation, the "correction of those mistakes" does not include a reduction in the revenue requirement for transmission costs and land held for future use before the audit period, correct?

A. You can't really go back in time and correct the underlying plant balances, but the revenue requirements -- the revenue that the Company was earning in DCI outside of this audit period is not being corrected. But the fact of the matter is if things would have been correctly classified, we would have been recording this through our transmission rider, and customers would have been paying more so.

1 MR. MICHAEL: Your Honor -- I apologize.
2 A. The mistake is ultimately benefiting
3 customers.
4 MR. MICHAEL: Your Honor, I would move to
5 strike the witness's response when she began -- I
6 believe she began by saying the fact of the matter is
7 if we would included it in the right place. I would
8 like to strike that portion of her testimony as
9 nonresponsive. My question was solely limited to the
10 fact that there were no adjustments made for
11 transmission costs and land held for future use prior
12 to this particular audit period.
13 EXAMINER WALSTRA: Ms. Watts?
14 MS. WATTS: I believe the witness is
15 fully answering the question and should be permitted
16 to do so.
17 MR. MICHAEL: I would just additionally
18 perhaps add, your Honor, that portion of Ms. Lawler's
19 response is laced with legal conclusions as to
20 whether or not costs would have been, could have
21 been, should have been included in BTCR. Perhaps if
22 Ms. Watts would like to explore that issue with the
23 witness on redirect, that's certainly her prerogative
24 but I think that's an additional reason to strike at
25 this time.

EXAMINER WALSTRA: Karen, can I have the answer read back.

MS. WATTS: Your Honor, may I respond?

EXAMINER WALSTRA: Yes, you can respond.

MS. WATTS: Well, what we are getting into here is central to what's going to be discussed all day long today and if Mr. Michael wants to delete the testimony of Mr. Williams around the same topic, maybe that would be a way to go, but it's central to what we are discussing and we might as well get into it now as opposed to any other time.

EXAMINER WALSTRA: Can you read the question, please -- or the answer.

(Record read.)

EXAMINER WALSTRA: I'll grant the motion to strike after "But the fact of the matter is."

MR. MICHAEL: Thank you, your Honor.

Q. (By Mr. Michael) Ms. Lawler, if I could direct your attention still on page 3 to line 17 and you'll see there you referenced "un-unitized Plant." Do you see that?

A. Yes.

Q. Could you describe for me what un-unitized plant is and its corollary, I would think, unitized plant?

A. Yes. I will do my best not being a plant accountant, but the way I understand it is that, you know, when we work on projects, we spend money. The costs initially get recorded to a CWIP account, construction work in process. And then when the assets are energized, electrified, whatever the word is, we place them in service into more of like a high level plant-in-service account.

And then as time goes by, we give the engineers and the people working on the projects a little bit of time to make sure all of the costs got in for the project, and then at some point in time we have to unitize that high level plant down to more detailed units of property in the plant ledger and so that's -- so we -- that's what we are talking about. Un-unitized is before that unitization down to those more detailed units of property get recorded in the ledger system.

Q. And are you able to describe for me, Ms. Lawler, the purpose of the unitization?

A. Well, it gets -- it gets all of the assets recorded on the -- on the -- on the balance sheet at the most detailed level of units of property.

Q. Thank you. And further on on line 17,

1 Ms. Lawler, you reference "backlog." Do you see
2 that?
3 A. I do.
4 Q. And is that backlog associated with both
5 the unitization of plant and RWIP?
6 A. It is, correct.
7 Q. Okay. And sticking with just the
8 unitization issue, why was there a backlog?
9 A. I don't know if I know why there was a
10 backlog.
11 Q. Okay. Are you able to say -- if there
12 was not a backlog, would Duke have noticed the fact
13 that transmission costs were included in DCI earlier?
14 A. I don't think so. You know, this mistake
15 happened when we were going through unitization. And
16 so it did happen as a result of the unitization
17 process, but I don't know if that's because we were
18 behind in our unitization or not or if there was a
19 timely project being unitized, I'm not sure, but it
20 did happen as part of the unitization process.
21 Q. Still on page 3, Ms. Lawler, I would like
22 to direct your attention to lines 18 through 20, and
23 you'll see there you mention that the Company has
24 also agreed to review its Contributions In Aid of
25 Construction processes and procedures, correct?

A. Yes.

Q. And can you please explain why that review is necessary.

A. I believe as part of the audit the auditor found one project that had not been billed timely to customers, and he had recommended that maybe it's time to take a fresh look at those processes and procedures to make sure that we're doing everything we can to ensure that we're billing customers timely.

Q. And does --

A. We felt like that was a reasonable request.

Q. And has the Company began that review process yet?

A. Yes, we have.

Q. And has the Company concluded what it is going to do as a result of that review process yet?

A. We have not yet concluded that review process. I think the agreement in the Stipulation was that we would be finished with that review by September 30 of this year.

Q. Okay. If I could direct your attention, Ms. Lawler, to page 6 of your testimony and first specifically lines 14 and 15.

A. Okay.

Q. I think you just testified you are not quite sure what enhanced controls and processes are going to be implemented yet, correct?

A. We don't know that yet, that's correct.

Q. But you will have them in place per the Stipulation by September 30 of this year?

A. We will have -- by September 30 we will have decided what we need to do, and the Stipulation noted that we would implement any of those recommended changes by the first of the year, January 1 of 2020, I believe.

Q. Okay. If I could draw your attention, Ms. Lawler, to lines 20 and 21 on page 6.

A. Okay.

Q. And you reference there "established regulatory principles and practices," correct?

A. Yes.

Q. And, Ms. Lawler, my question is are you familiar with the concept of the filed rate doctrine?

A. I don't know if I am familiar with that term "filed rate doctrine."

Q. Are you -- are you familiar with the concept that absent a special arrangement or unique arrangement, utilities have to offer service to their

1 customers based on the terms as set forth in its
2 tariff?
3 A. I guess I would say that I know that the
4 Company needs to abide by its tariffs.
5 Q. Okay. And it can charge only those
6 charges and only in those amounts set forth in the
7 tariffs, correct?
8 A. That sounds reasonable, yes.
9 Q. And when you were evaluating -- and I am
10 going to for purposes of our discussion, Ms. Lawler,
11 characterize what we just discussed as the filed rate
12 doctrine, okay?
13 A. Okay.
14 Q. When you evaluated the Stipulation, did
15 you evaluate whether or not it was consistent with
16 the filed rate doctrine?
17 A. So the question is did I evaluate whether
18 or not this Stipulation was ensuring that the Company
19 was only charging customers what was on a tariff?
20 Q. Correct.
21 A. I don't see any reason why this
22 Stipulation would be saying anything otherwise.
23 Q. Okay.
24 A. We plan to always abide by what's on the
25 tariff.

Q. Okay. And I just -- so then the answer is, no, you did not evaluate the Stipulation to see whether it was consistent with the filed rate doctrine; is that correct?

A. I don't know if I said that, no.

Q. Please clarify then. So you -- I guess I will go back to the beginning then. Did you evaluate the Stipulation to see if it was consistent with the filed rate doctrine?

A. I think I'm fairly confident that the Stipulation is -- we are in compliance with the tariff; the Stipulation is in compliance with the tariff.

Q. I apologize for the delay, Ms. Lawler. Are you familiar with FERC Account 106?

A. Yes.

Q. And prior to identifying the incorrect inclusion of transmission costs in Rider DCI, would FERC Account 106 have included the transmission costs?

A. I'm sorry. Could you repeat the question?

Q. Certainly.

MR. MICHAEL: May I have it repeated, please, Karen.

(Record read.)

Q. Would transmission have been included in FERC Account 106?

A. I'm sorry. There was transmission plant incorrectly recorded into distribution FERC accounts but they were all in the correct FERC account. And I'm spacing for a second. Is 106 the CWIP account or is that plant-in-service? I can't remember.

Q. It's construction waiting to be classified.

A. Okay. So there's no CWIP in Rider DCI. I may still be confused about what the question is. I'm sorry.

Q. Okay. So is it true that upon unification of FERC Account 106, the -- it goes to 101?

A. Okay. So what -- so CWIP, which is 106, goes to plant-in-service, which I think is 101.

Q. Correct.

A. And then 101, I think, goes to, is it, 105 in the unitization process? Do I have my FERC accounts right? So, I mean, that's how -- that's how it happens so.

Q. So 101 is plant-in-service?

A. I believe so.

Q. Okay. So and I think we -- we talked about earlier the fact that transmission was included incorrectly in plant -- distribution plant-in-service?

A. Correct.

Q. So does that necessarily mean it would have been included in 106 before the unitization process?

A. No. It was in 101 before the unitization process.

Q. Okay.

A. So we go from CWIP to a higher level plant-in-service to a more detailed unitized plant-in-service. CWIP was never an issue.

MR. MICHAEL: I have no further questions, Ms. Lawler. Thank you for your time.

EXAMINER WALSTRA: Thank you.

MR. BEELER: No questions, your Honor. Thank you.

EXAMINER WALSTRA: Any redirect?

MS. WATTS: Just a brief moment, your Honor, if we may.

EXAMINER WALSTRA: Sure. Off the record.

(Discussion off the record.)

EXAMINER WALSTRA: Go back on the record.

REDIRECT EXAMINATION

By Ms. Watts:

Q. Ms. Lawler, counsel for OCC asked you some questions about an incorrect accounting -- this is redundant, an accounting error with respect to the Rider DCI in that certain transmission costs were incorrectly included in that rider, correct?

A. Correct.

Q. The costs that were incorrectly included in Rider DCI, where did those costs belong?

A. They should have been -- well, if it was correctly recorded as transmission plant-in-service, we would have been recovering those dollars in our Rider BTR.

Q. And during the time that they were in -- had those costs been correctly classified in Rider BTR, would they have been higher or lower?

A. So the rate of return in the Rider BTR is higher than the rate of return in the Rider DCI, so had they been correctly classified in BTR, in transmission plant, and, therefore, recovered in Rider BTR, customers would have been paying more.

Q. So, in effect, customers benefited from the fact that the amount was improperly classified.

A. Yes, they did.

MS. WATTS: Thank you. I have no further questions.

EXAMINER WALSTRA: Thank you.

Mr. Michael?

MR. MICHAEL: None. Thank you.

MR. BEELER: No questions, thank you.

EXAMINER WALSTRA: You are all set. Thank you.

THE WITNESS: Thanks.

EXAMINER WALSTRA: Do you want to move your exhibits?

MS. WATTS: Yes, your Honor. Can we move admission of Duke Energy Ohio Exhibit 1 and Joint Exhibit 1?

EXAMINER WALSTRA: Staff, the audit report?

MR. BEELER: I can do that when I do...

EXAMINER WALSTRA: Okay. Any objections?

MR. MICHAEL: No.

EXAMINER WALSTRA: They will be admitted.

(EXHIBITS ADMITTED INTO EVIDENCE.)

MR. BEELER: Thank you, your Honor. Staff would call Doris McCarter to the stand. May I approach?

EXAMINER WALSTRA: You may.

MR. BEELER: I would like to have marked as Staff Exhibit 2 the testimony in support of the Stipulation of Doris McCarter.

EXAMINER AUGOSTINI: So marked.

(EXHIBIT MARKED FOR IDENTIFICATION.)

MR. BEELER: Thank you.

(Witness sworn.)

EXAMINER AUGOSTINI: Thank you.

- - -

DORIS McCARTER

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

DIRECT EXAMINATION

By Mr. Beeler:

Q. Good morning.

A. Good morning.

Q. Please state your name for the record.

A. My name is Doris McCarter.

Q. By whom are you employed and what is your position?

A. I am employed by the Public Utilities Commission of Ohio. I am the Chief of the Capital Recovery and Financial Analysis Division, and for purposes of this hearing, I am the person responsible for the oversight of the DCI Rider.

Q. Turn your microphone on or speak up. It's not on.

A. Not on? Okay.

Q. There you go. Do you have in front of you what has been marked as Staff Exhibit 2?

A. Yes, I do.

Q. What is it?

A. It is my prefiled testimony in support of the Stipulation.

Q. Do you have any changes to that testimony?

A. No, I do not.

Q. Is this testimony true and accurate to the best of your knowledge?

A. Yes, it is.

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

A. Yes, they would.

MR. BEELER: At this time, your Honors, I would move for the admission of Staff Exhibit 2, subject to cross-examination.

EXAMINER AUGOSTINI: The witness is available for cross.

MR. MICHAEL: Thank you, your Honor.

- - -

CROSS-EXAMINATION

By Mr. Michael:

Q. Ms. Carter, how are you?

A. I am doing well. How are you?

Q. I am very well, thank you. Ms. McCarter, you were in the room during Ms. Lawler's testimony, correct?

A. Yes, I was.

Q. Is there anything that Ms. Lawler said something about which you disagree?

A. Not that I recall, no.

Q. Okay. And by and large you are in agreement with the testimony that Ms. Lawler provided, correct?

A. I didn't go over her testimony recently, but I do not recall anything in particular that -- that Staff disagreed with.

Q. Okay. Thank you. Ms. McCarter, do you know how long the issue with Duke's unitization has been going on?

A. Exactly, no. Definitely two years.

Q. Okay.

A. In terms of being pulled out in the audit, the issue goes further back inside of Duke, but at least two audits have mentioned it.

Q. Okay. And you're familiar with Duke's BTR tariff, correct, Ms. McCarter?

A. In general.

Q. Okay. And in general can you explain how that tariff works?

A. In general, because I am not the expert, but my understanding is from -- from speaking with people on Staff who actually do have the oversight of it, that basically it's -- for lack of a better term, I don't want to say that it's a passthrough tariff, but basically they -- they take the review of what has been filed at FERC and then basically assure that the rates that are being proposed that are set by Duke are recovering their transmission costs.

Q. And when you reference, Ms. McCarter, what has been filed at FERC, what -- what are you referring to? What is filed at FERC?

A. That is where my general understanding comes in but I think they are looking at the plant -- the transmission plant costs in the proposed rates. I really can't go any -- in too much more detail than that.

Q. Okay. And so it would be safe to say then, Ms. McCarter, you don't know what, if any, review process there is at FERC of any transmission

1 costs that Duke might submit to FERC?
2 A. That's true.
3 Q. And because you don't know what, if any,
4 review process would occur at FERC, you would be
5 unable to say whether or not any particular
6 transmission costs submitted to FERC would be, in
7 fact, approved for cost recovery from Duke's retail
8 consumers in Ohio, correct?
9 A. I am not familiar with FERC's review.
10 MR. MICHAEL: I have no further
11 questions, Ms. McCarter.
12 Thank you, your Honor.
13 EXAMINER AUGOSTINI: Is there any more
14 cross?
15 MS. WATTS: No, your Honor.
16 EXAMINER AUGOSTINI: Redirect?
17 MR. BEELER: No redirect.
18 EXAMINER AUGOSTINI: You are free to go.
19 Mr. Beeler, would you like to move into
20 admission Staff Exhibit 1 and 2?
21 MR. BEELER: Yes, your Honor. I would
22 move for the admission of Staff Exhibit 1, which is
23 the audit report in this case, and Staff Exhibit 2,
24 the testimony of Doris McCarter.
25 EXAMINER AUGOSTINI: Are there any

1 objections?
2 MR. MICHAEL: No, your Honor.
3 EXAMINER AUGOSTINI: They will be
4 admitted into the record.
5 (EXHIBITS ADMITTED INTO EVIDENCE.)
6 MR. MICHAEL: Your Honor.
7 EXAMINER AUGOSTINI: Please proceed.
8 MR. MICHAEL: Your Honor, OCC would like
9 to call Mr. Jim Williams to the stand, please.
10 (Witness sworn.)
11 EXAMINER AUGOSTINI: Thank you. Please
12 be seated.
13 THE WITNESS: Thank you.
14 MR. MICHAEL: Your Honor, I would like to
15 have marked, if I could, as OCC Exhibit 1 the direct
16 testimony of James D. Williams in opposition to the
17 Joint Stipulation and Recommendation.
18 EXAMINER AUGOSTINI: So marked.
19 (EXHIBIT MARKED FOR IDENTIFICATION.)
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21
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25

JAMES D. WILLIAMS

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

DIRECT EXAMINATION

By Mr. Michael:

Q. Would you state your name, please.

A. Yes. My name is James D. Williams.

Q. And, Mr. Williams, do you have before you what's been previously marked as OCC Exhibit 1?

A. Yes, I do.

Q. And could you identify that document, please.

A. Yes. This is my direct testimony in opposition to the Joint Stipulation and Recommendation in this case.

Q. And that was prepared by you or at your direction?

A. Yes, it was.

Q. And do you have any changes or modifications to that testimony?

A. No, I do not.

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

A. Yes.

MR. MICHAEL: Your Honor, I would move for the admission of OCC Exhibit 1, subject to cross-examination.

EXAMINER AUGOSTINI: The witness is available for cross.

MS. WATTS: Thank you, your Honor.

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CROSS-EXAMINATION

By Ms. Watts:

Q. Good morning, Mr. Williams.

A. Good morning.

Q. We meet again. And I apologize. I know you know the drill, so I am going to ask some questions that you are very familiar with. Sir, you are not an attorney, and you are not an accountant, correct?

A. I am not.

Q. Okay. And you've actually been a witness in many Duke Energy Ohio cases, correct?

A. In a few, yes.

Q. And they have covered a range of subject matter -- subject matters, correct?

A. Yes.

Q. So would you think it's fair to say you're somewhat familiar with the Company's various

1 riders and tariffs?
2 A. I'm familiar with many of them,
3 specifically the DCI.
4 Q. And, sir, as a matter of policy, is it
5 fair to say that OCC generally opposes single-issue
6 ratemaking?
7 A. I wouldn't say that OCC opposes
8 single-issue ratemaking. OCC supports customers
9 getting all the benefits that should go along with
10 single-issue ratemaking. For example, riders for
11 SmartGrid we support. We're not opposed to SmartGrid
12 as much as we want to make sure that customers are
13 also getting the benefits from the program the same
14 as DCI and other programs and that their -- their
15 customers are getting a fair shot at being charged
16 accurately for -- for what the Company is doing.
17 Q. Okay. Can you tell me what you reviewed
18 today in preparation for your testimony.
19 A. I reviewed the audit report again. I
20 reviewed the comments that were filed in this case.
21 I am not sure if I reviewed the replies but at least
22 the comments. I reviewed the testimony of Ms. Lawler
23 as well as Ms. McCarter and the Joint Stipulation.
24 And I think that's it.
25 Q. Thank you. You stated that you reviewed

1 the comments but perhaps not the replies, correct?
2 A. Yeah. I did take a look at the comments,
3 but I don't think I looked at the replies again.
4 Q. So on page 4 of your testimony beginning
5 at line 13, you lay out beginning there the issues
6 that you have with the Stipulation in this case,
7 correct?
8 A. That's correct.
9 Q. And beginning with your question and
10 answer at line 13, you state that you object to the
11 settlement because customers paid for a transmission
12 cost that did not belong in the DCI Rider, correct?
13 A. That is correct.
14 Q. And a second issue is that plant held for
15 future use, though not used and useful, was included,
16 correct?
17 A. Yes. I provided these as examples, yes.
18 Q. Okay. And then the third one is the
19 Stipulation fails to require the Company to comply
20 with its own capitalization policy guidelines,
21 correct?
22 A. That is correct.
23 Q. Okay. Those are the three things I saw
24 in your testimony. Are there any others?
25 A. No. I wanted -- I mean, in general I

1 oppose the settlement. These are the three examples
2 that I provided.
3 Q. Okay. Do you have any other examples to
4 raise?
5 A. Nothing as I sit here today other than I
6 felt that the issues that was kind of lacking in this
7 settlement was while the Company agreed to take
8 certain actions within a period of time, there
9 wasn't -- there wasn't really any type of enforcement
10 provisions if the Company fails to take those
11 actions. I didn't get into each and every one of
12 those in the settlement. I just addressed it with
13 the one issue with the unitization.
14 Q. Sir, you stated that you have some
15 familiarity with the Company's riders and tariffs.
16 Are you familiar with Company's Rider BTR?
17 A. Just that it exists and that it recovers
18 transmission costs. I myself have not worked on a --
19 one of those types of cases.
20 Q. Okay.
21 MS. WATTS: Your Honor, may we approach?
22 EXAMINER AUGOSTINI: You may.
23 Q. (By Ms. Watts) Sir, would you take a
24 moment to review that.
25 A. I've reviewed it.

Q. Okay. Do you see a paragraph in that statute that starts "Notwithstanding Chapters 4905 and 4909"?

A. Which paragraph are you --

Q. Let me find it for you.

A. -- referring to?

Q. I apologize.

EXAMINER WALSTRA: It's in Section 2, about five, six lines down.

Q. Yeah. Do you see that, Jim? One, two, three, four, five, six, seven lines down in Section 2.

A. I do.

Q. Would you read that -- that sentence, please.

A. "Notwithstanding Chapters 4905 and 4909 of the Revised Code, Commission authority under this Chapter shall include the authority to provide for the recovery to a reconcil -- reconcilable rider on an electric distribution utility's distribution rates, of all transmission and transmission-related costs, including ancillary and congestion costs, imposed on or charged to the utility by the Federal Energy Regulatory Commission or a regional transmission organization, independent transmission

1 operator, or similar organization approved by the
2 Federal Energy Regulatory Commission."
3 Q. So, Mr. Williams, in your
4 responsibilities at OCC, are you required to from
5 time to time review statutes and regulations that are
6 pertinent to the Commission's oversight?
7 A. Yes, as part of my responsibilities, yes.
8 Q. Okay.
9 A. And as I explained, typically I've not
10 gotten involved in any of the transmission cost
11 recovery types of issues in the past.
12 Q. Okay. In your nonlegal opinion but based
13 on your experience with the Commission, does it
14 appear that this statute allows the Company to pass
15 through transmission costs in a rider --
16 MR. MICHAEL: I would object.
17 Q. -- generally?
18 MR. MICHAEL: I would object, your Honor.
19 I appreciate counsel's caveat asking for
20 Mr. Williams' nonlegal opinion. But in addition to
21 that, I would note that not only is Mr. Williams not
22 a lawyer, he has said that he is not responsible for
23 transmission-related issues so not only is he not a
24 lawyer, but he is not even a regulatory expert in
25 this particular field. So I would object to the

1 question.
2 EXAMINER AUGOSTINI: Mr. Williams, you
3 are not testifying as an attorney?
4 THE WITNESS: I am not.
5 EXAMINER AUGOSTINI: Okay. I think the
6 statute speaks for itself.
7 MS. WATTS: Okay. Thank you, your Honor.
8 Q. (By Ms. Watts) Sir, are you familiar with
9 the term NITs, N-I-T-S?
10 A. No, I'm not.
11 Q. Okay.
12 A. I do think I understand unitization now.
13 Q. That's helpful for all of us. You've
14 heard testimony today by Ms. Lawler and Ms. McCarter
15 that there was some transmission costs that was
16 improperly classified in DCI, correct?
17 A. Yes.
18 Q. Do you dispute that that -- that cost
19 should have been included in Rider BTR?
20 A. I don't know if it should have been
21 included in BTR or not. I myself don't have any
22 firsthand experience of -- on any of this outside of
23 what's been stated by the auditor.
24 Q. So you wouldn't know where those costs
25 should go other than DCI.

A. Are you talking about the transmission costs? I don't believe the transmission costs should have been included in DCI.

Q. And that's what your testimony says and I just want to confirm that you will say that it should not be included in DCI, but beyond that you don't know where those costs should be properly classified.

A. Yeah. I don't know where they should be classified, but were it not for the fact that Duke had a DCI, they never would have shown up here either so.

Q. On page 9 at line 10 of your testimony --

A. I'm there.

Q. -- you state there that the tariff -- and from this, I presume, you mean the DCI tariff; is that correct?

A. Yes. I was looking at the DCI tariff.

Q. Okay. And you are saying that the tariff specifically supports providing refunds to customers based on the results of compliance audits and orders rendered by the PUCO; is that correct?

A. That's my read on -- on that tariff.

Q. Okay. And in support of that statement, you referred to Duke Energy Ohio's tariff by footnote, correct?

A. Yes, I did.

Q. Do you have a copy of that with you by any chance?

A. I do not.

MS. WATTS: May we approach, your Honor?

EXAMINER AUGOSTINI: You may.

Q. (By Ms. Watts) Do you want to take a moment to review it? My question is with respect to paragraph 3 of that tariff.

A. I've reviewed it.

Q. Is it correct that that paragraph refers the -- it states that the rider is subject to reconciliation ordered by the Commission as a result of audits in accordance with an Opinion and Order in Case No. 17-1263?

A. Yes, it does say that.

Q. And just to be clear, I didn't read it verbatim. I sort of shortened the sentence there, but we agree it refers to that Opinion and Order, correct?

A. Yes.

MS. WATTS: May we approach?

EXAMINER AUGOSTINI: You may.

Q. (By Ms. Watts) Mr. Williams, do we agree Duke Ohio's Rider DCI is an automatically adjusting

rider?

A. Yeah. My understanding is that it adjusts on a quarterly basis, and then it's subject to a more comprehensive audit on an annual basis.

Q. Okay. Would you refer, please, to the Commission's Opinion and Order in Case No. 17-32-EL-AIR. There are 10 case numbers on there. I just read the first.

A. I do remember the case.

Q. Yes.

MR. MICHAEL: Don't we all.

Q. Would you turn, please, to paragraph 110 of that Opinion and Order. It's on page 38, if that's helpful.

A. That is helpful. Thank you. I'm there.

Q. Okay. And does that paragraph refer to automatically adjusting riders?

A. It does.

Q. And would you agree then that the language in that paragraph would refer to Rider DCI?

A. I believe that it does.

MS. WATTS: Okay. I have no further questions. Thank you.

EXAMINER AUGOSTINI: Mr. Beeler, do you have any cross?

MR. BEELER: No, no questions, your Honor.

EXAMINER AUGOSTINI: Redirect?

MR. MICHAEL: Yeah, just real briefly, your Honor.

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REDIRECT EXAMINATION

By Mr. Michael:

Q. Mr. Williams, do you recall Ms. Watts' questions about whether you knew what rider -- or, pardon me, what rider transmission costs should have gone into?

A. Yes.

Q. You don't know what other rider, if any, those costs should go into, but you know they shouldn't be in Rider DCI; is that correct?

A. That's correct. Were it not for DCI, there wouldn't have been a place for Duke to stick these costs.

MR. MICHAEL: Okay. Thank you.

I don't have any further questions, your Honor.

EXAMINER AUGOSTINI: Okay. Would you like to move into admission OCC Exhibit 1? Do you have any questions?

MS. WATTS: No questions, your Honor.

EXAMINER AUGOSTINI: Sorry.

MR. MICHAEL: I would like to so move, your Honor.

EXAMINER AUGOSTINI: Are there any objections?

MS. WATTS: No objections.

EXAMINER AUGOSTINI: It will be so admitted into the record.

(EXHIBIT ADMITTED INTO EVIDENCE.)

EXAMINER AUGOSTINI: You may be excused.

THE WITNESS: Thank you.

EXAMINER AUGOSTINI: Are there any other issues?

MR. BEELER: Do you want to mark the comments just for briefing? I don't know. Sometimes we do; sometimes we don't.

EXAMINER WALSTRA: We can go off the record.

(Discussion off the record.)

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

After discussion off the record, initial briefs will be -- should be filed by August 28 and replies will be due September 11.

MS. WATTS: Thank you.

EXAMINER WALSTRA: And we are adjourned. Thank you.

(Thereupon, at 11:01 a.m., the hearing was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, July 24, 2019, and carefully compared with my original stenographic notes.

Karen Sue Gibson

Karen Sue Gibson, Registered Merit Reporter.

(KSG-6782)

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Summary: Transcript In the Matter of the Review of Duke Energy Ohio, Inc.'s Distribution Capital Investment Rider, hearing held on July 24th, 2019. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.