

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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

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,  
August 7, 2019.

- - -

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

- - -

APPEARANCES:

Duke Energy Ohio, Inc.  
By Mr. Rocco D'Ascenzo  
Ms. Jeanne W. Kingery  
and Ms. Larisa Vaysman  
139 East Fourth Street  
Cincinnati, Ohio 45202

On behalf of the Applicant.

Bruce J. Weston, Ohio Consumers' Counsel  
By Mr. William Michael  
and Ms. Ambrosia E. Logsdon,  
Assistant Consumers' Counsel  
65 East State Street  
Columbus, Ohio 43215-3485

On behalf of the Residential Consumers of  
Duke Energy Ohio, Inc.

Dave Yost, Ohio Attorney General  
By Ms. Jodi Bair  
and Mr. Robert Eubanks,  
Assistant Attorney General  
30 East Broad Street  
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

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1                               Wednesday Morning Session,  
2                               August 7, 2019.

3                               - - -

4                               EXAMINER WALSTRA: The Public Utilities  
5 Commission of Ohio has called for hearing at this  
6 time and place Case No. 18-1830-GA-UNC, being in the  
7 Matter of the Application of Duke Energy Ohio,  
8 Incorporated, for Implementation of the Tax Cuts and  
9 Jobs Act of 2017.

10                              My name is Nick Walstra. This is Lauren  
11 Augostini. We are the Attorney Examiners assigned by  
12 the Commission to hear this case. And we will start  
13 by taking appearances from the parties.

14                              MS. KINGERY: Thank you, your Honor. On  
15 behalf of Duke Energy Ohio, Rocco D'Ascenzo, Jeanne  
16 Kingery, Larisa Vaysman, 139 East Fourth Street,  
17 Cincinnati, Ohio.

18                              EXAMINER WALSTRA: Thank you.

19                              MR. MICHAEL: Good morning, your Honors.  
20 On behalf of Duke's residential utility consumers,  
21 the Office of the Ohio Consumers' Counsel, by Bill  
22 Michael and Ambrosia Logsdon.

23                              MS. BAIR: On behalf of Staff of the  
24 Public Utilities Commission of Ohio, Dave Yost,  
25 Attorney General, Jodi Bair, Robert Eubanks, 30 East

1 Broad Street, Columbus, Ohio 43215.

2 EXAMINER WALSTRA: All right. And the  
3 Applicant can go whenever they are ready.

4 MS. KINGERY: Thank you very much, your  
5 Honor. Duke Energy Ohio would call Don Wathen to the  
6 stand. And may we approach?

7 EXAMINER WALSTRA: You may.

8 MS. KINGERY: Your Honors, before we get  
9 started with Mr. Wathen, we would like to mark as  
10 Duke Energy Ohio Exhibit 1 the application filed in  
11 this case on December 21, 2018.

12 EXAMINER WALSTRA: So marked.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MS. KINGERY: Thank you. And we would  
15 ask that Mr. Wathen's testimony be filed -- be marked  
16 as Duke Energy Ohio Exhibit 2.

17 EXAMINER WALSTRA: So marked.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 EXAMINER WALSTRA: Mr. Wathen, if you  
20 could raise your right hand.

21 (Witness sworn.)

22 EXAMINER WALSTRA: Thank you.

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WILLIAM DON WATHEN, JR.

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

DIRECT EXAMINATION

By Ms. Kingery:

Q. Good morning, Mr. Wathen.

A. Hello.

Q. Would you state your full name and  
business address for the record, please.

A. My name is William Don Wathen, Jr.,  
W-A-T-H-E-N, and my business address is 139 East  
Fourth Street, Cincinnati, Ohio 45202.

Q. And do you have in front of you what has  
just been marked as Duke Energy Ohio Exhibit 2?

A. I do.

Q. And is -- would you identify that  
document, please.

A. It's my direct testimony in this case.

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

A. Yes.

Q. Do you have any changes to make to that  
testimony this morning?

A. Not at this time.

Q. Thank you. And if I were to ask you all

1 of the questions in that testimony today, would your  
2 answers be the same?

3 A. Yes.

4 MS. KINGERY: Thank you.

5 The witness is available for  
6 cross-examination.

7 EXAMINER WALSTRA: Thank you.

8 Mr. Michael.

9 MR. MICHAEL: Your Honor, would you  
10 entertain motions to strike at this time?

11 EXAMINER WALSTRA: I would.

12 MR. MICHAEL: And if we could approach,  
13 your Honor, there's a document that might be helpful  
14 to your Honor to understand the motion to strike.

15 EXAMINER WALSTRA: You may approach.

16 MR. MICHAEL: Thank you.

17 MS. KINGERY: Mr. Michael, do you have a  
18 copy?

19 MR. MICHAEL: It's the Stipulation in the  
20 Columbia case.

21 MS. KINGERY: Okay.

22 MS. BAIR: 2202?

23 MR. MICHAEL: Yeah. Your Honor, I'll  
24 identify the portions of Mr. Wathen's testimony that  
25 I would request be stricken, and then I will argue

1 the grounds. The first part of the testimony is on  
2 page 12 of Mr. Wathen's testimony, lines 1 through  
3 10.

4 The second part is on page 13, beginning  
5 with line 6, and the sentence beginning with the word  
6 "Since" and through line 12.

7 Next piece is page 14, beginning on line  
8 10 with the sentence beginning "In addition" and all  
9 the way through line 14.

10 The next piece will begin on page 15,  
11 line 18, through page 18, line 18.

12 Next is page 20, lines 5 through 10.

13 Next is page 21, lines 13 through 22.

14 Next is page 25, line 15, beginning with  
15 the word "that" to the end of that sentence.

16 EXAMINER WALSTRA: Can you say that one  
17 again?

18 MR. MICHAEL: Certainly. Page 25, line  
19 15, beginning with the word "that" and through the  
20 end of that sentence.

21 EXAMINER WALSTRA: Okay.

22 MR. MICHAEL: Still on page 25, line 21  
23 through 23, ending with the word "both."

24 Next, your Honor, page 28, line 5 through  
25 line 8, ending with the word "then."



Next page 29, line 7, beginning with the word "interesting" through page 30, line 2.

And, your Honor, the grounds for the motion to strike is that Mr. Wathen relies on a Stipulation entered into in another case involving another utility, and I would direct your attention, your Honor, to the document I provided your Honor; and counsel for Duke and counsel for Staff has the document. It is the Stipulation and Recommendation to which Mr. Wathen refers in Case No. 17-2202-GA-ALT.

I would direct your Honors' attention to page 13, paragraph 27. And your Honor is certainly capable of reading what that paragraph provides, but in short, as with most stipulations entered into before the Commission, it clearly states that the Stipulation doesn't represent any particular party's position -- litigation position. It's a compromise.

It's based on the facts and circumstances of that particular case and the issues involved in that particular case and that it also says, your Honor, and I would highlight this, "This Stipulation shall not be cited as precedent in any future proceeding for or against any signatory party if the Commission approves the Stipulation without material

modification."

So, your Honor, I think quite clearly the Stipulation upon which Mr. Wathen relies in his testimony, in those portions of his testimony that I have identified for the Bench, is contrary to practice before the Commission, how settlements are used and contrary to the parties in that Stipulation's clear intent that it not be cited, relied upon because as the parties recognize, the Stipulation reached in that case was based on that case, that case's facts and circumstances, and is inapplicable to any other or subsequent cases.

So for that reason, your Honor, I would move to strike the portions of Mr. Wathen's testimony that I previously identified for your Honor. Thank you.

EXAMINER WALSTRA: Ms. Kingery.

MS. KINGERY: Thank you, your Honor. While I agree with counsel for OCC that the Stipulation itself says that it is not to be cited as precedent, that doesn't say anything about the parties' opinions about particular issues where they've been stated otherwise. So if there's testimony, for example, about what one party thinks about an issue, that is still within the bounds of

1 what can be cited in a future case. If the  
2 Commission talks about why it is approving or  
3 disapproving a Stipulation, it can -- we can  
4 certainly talk about what the Commission's opinion  
5 was.

6 Certainly the Commission sometimes, as --  
7 as all of us in this room know, will not approve a  
8 Stipulation or will modify a Stipulation, and when it  
9 does so, it states its rationale. It talks about its  
10 belief about particular aspects of that Stipulation.  
11 And those opinions are on the record so then we know  
12 what the Commission believes about a particular  
13 issue.

14 Now, the Commission also, as we all know,  
15 can't approve a Stipulation unless it concludes that  
16 all of the provisions are legal and don't violate any  
17 regulatory principles or practices. So it is still  
18 relevant what a Stipulation says because if the  
19 Commission has approved a Stipulation, then we know  
20 that it believes that there was nothing in that  
21 Stipulation that was illegal or contrary to  
22 regulatory practice.

23 MR. MICHAEL: And I would simply point  
24 out, your Honor, very quickly that Duke is not  
25 offering the Opinion and Order. Should they choose

1 to do so or should they choose to cite the Opinion  
2 and Order in their brief, I will deal with that at  
3 that time. But what they are offering is the  
4 Stipulation and Recommendation in that case. And I  
5 think the fundamental principle is that stipulations  
6 are entered to -- based on the facts and  
7 circumstances of that case. Multiple issues are  
8 involved in different cases and, in fact, in the  
9 Columbia case multiple issues were involved that are  
10 not germane here.

11 Further, they are not offering testimony,  
12 as Duke's counsel suggested, the Bench may entertain.  
13 And to the degree they did, I'm not sure it would  
14 come in as evidence. It might come in as, you know,  
15 impeachment purposes, impeach prior testimony, but I  
16 am certainly not willing to say that testimony itself  
17 comes in as evidence. So I don't think any of the  
18 grounds that Duke's counsel argued are sufficient to  
19 overcome what is the Commission's practice and  
20 clearly the parties intent in that case that it not  
21 be used for any other purpose other than that  
22 particular case based on that particular case's facts  
23 and circumstances.

24 EXAMINER WALSTRA: We will deny the  
25 motion to strike. Obviously the Stipulation says

1 what it says, and the Commission Order approving it  
2 will say what it says. And as it relates to this  
3 case, I think the Commission can give it the weight  
4 it deserves.

5 MR. MICHAEL: Okay. Thank you, your  
6 Honor. I do have one more motion to strike, your  
7 Honor. It will be more brief than the previous one.  
8 Beginning on page 5, lines 15 through 20, ending with  
9 the parenthetical period on line 20.

10 Still on page 5, lines 21, beginning with  
11 the word "included" and ending with the  
12 "\$241 million" figure.

13 Then on page 9, your Honor, beginning on  
14 line 17 with the word "revised" and ending with the  
15 word "rates" on line 20. And that's all, your Honor.

16 In that portion of Mr. Wathen's testimony  
17 he relies on an out-of-court statement for the truth  
18 of the matter asserted, namely, some testimony that  
19 was filed in a different case. The witness's  
20 testimony cited by Mr. Wathen is not testifying in  
21 this case, and it's -- it's clearly hearsay and  
22 should be stricken from Mr. Wathen's testimony.

23 MS. KINGERY: Your Honor, the testimony  
24 in question was in a different case but that was  
25 testimony that was presented in the hearing room

1 under oath. It was subject to cross-examination, and  
2 it was the basis, and particularly that revised  
3 Schedule A-1 was the basis, of the Commission's  
4 ultimate decision in that case. It was a rate case  
5 for Duke Energy Ohio.

6 The -- Mr. Wathen included this  
7 information here so that the Commission today would  
8 have the ability to see where the figures that we are  
9 relying on came from. And they came from the Revised  
10 Schedule A-1. There's no other way that we can  
11 support those figures other than to point to Staff's  
12 calculations.

13 MR. MICHAEL: And, your Honor, I would  
14 just highlight the fact that counsel for Duke  
15 conceded, as I think she has to, that it was  
16 testimony given in another case, subject to  
17 cross-examination in another case. As your Honor is  
18 well aware, that's not the standard for determining  
19 what is hearsay and if Duke wanted to provide  
20 documentation for what those figures were, then  
21 perhaps different documents other than an  
22 out-of-court statement being offered for the truth of  
23 the matter asserted should have been used.

24 MS. KINGERY: And as your Honor knows, if  
25 I might, hearsay rules do not apply necessarily in

1 this Commission in the same way that they would in a  
2 court. This Commission knows perfectly well the  
3 truth of that matter because it adopted the figures  
4 in Revised Schedule A-1 in the order in that case.

5 EXAMINER WALSTRA: I am going to deny the  
6 motion to strike here as well. I think that's  
7 something if you want to explore the number on  
8 cross-examination, I think he is just giving support  
9 to where it came from. If you want to dive into  
10 that, obviously it's a case that is before the  
11 Commission that the Commission looked at before. So  
12 I will deny that motion to strike.

13 MR. MICHAEL: Thank you, your Honor.

14 - - -

15 CROSS-EXAMINATION

16 By Mr. Michael:

17 Q. Mr. Wathen, if I could direct your  
18 attention to what was previously marked as Duke  
19 Exhibit 2, your testimony, and specifically page 6,  
20 and I will be asking you questions regarding the Q  
21 and A beginning on line 11.

22 A. I'm there. Go ahead.

23 Q. And I apologize, Mr. Wathen. Please  
24 let's start with lines 5 through 10.

25 A. Okay.

1           Q.    And isn't it true that Duke changes its  
2    billing system every time a rider is added or there  
3    is a rate increase?

4           A.    Not necessarily. We'll adjust a table,  
5    the numbers in a table, but we don't necessarily  
6    adjust the billing system.

7           Q.    But adjust the amount going through the  
8    rider.

9           A.    We adjust -- if there is a rate -- for  
10   example, in materials we included in our -- in our  
11   attachment to the application, we would modify the  
12   rate, that's just changing numbers in a table.  
13   That's not adding columns or anything like that.

14          Q.    And for those riders that are subject to  
15   a true-up, they also -- Duke also has to adjust the  
16   rates, correct?

17          A.    Same way.

18          Q.    Same way. And Duke has -- Duke's gas  
19   operation, which is what all my questions will be  
20   focused on, has 14 riders right now, right, in its  
21   tariff?

22          A.    I mean, it depends on the customers  
23   really how many riders there are but give me a  
24   second. I'll tell you.

25          Q.    Thank you.



1           A.    So on the residential tariff sheet right  
2 now, there is I count nine different riders so if you  
3 include the excise tax rider so.

4           Q.    And how about for the commercial tariff?

5           A.    On Rate GS I have got same thing, 11  
6 riders, 10 or 11 riders all together.

7           Q.    So how many total notwithstanding rate  
8 class riders does Duke's gas operations have on its  
9 tariff?

10          A.    I don't know. Unless I have the entire  
11 sheet I couldn't tell you.

12          Q.    No less than 14 though, right?

13          A.    Again, without knowing I can't tell you  
14 whether it's 14 or more. I know it's at least 11.

15          Q.    Okay. Does Duke's gas business and  
16 Duke's electric business use the same billing system?

17          A.    It's same -- the same. We call it the  
18 CMS system right now but that's the same, that's  
19 correct. However, we are getting -- we are on the --  
20 in the process of modifying that system.

21          Q.    Do you know how many riders Duke's  
22 electric operation has?

23          A.    Actually I do know that one as I put the  
24 table together.

25          Q.    Conveniently not gas though.

1           A.    There is 19 riders, 19 different  
2 residential, 19 different riders.

3           Q.    So between Duke's gas and electric  
4 operation there's roughly 30 or more riders between  
5 the two businesses.

6           A.    If you have the table of our riders --

7           Q.    I am just using your numbers.  You  
8 counted at least 11, and you said electric had 19.

9           A.    There is some riders that might be  
10 overlapping.  I'm not sure.

11          Q.    Okay.  So in any event as rates change  
12 and as the numbers collected through those riders  
13 change, Duke is experienced in adjusting the riders  
14 to accommodate those rate changes, correct?

15          A.    They are experienced.  That doesn't mean  
16 there is not more work to do it.

17          Q.    Now, I would like to draw your attention,  
18 Mr. Wathen, we are going to stay on page 6, lines 18  
19 through 23.  Just read that to yourself, if you will,  
20 please.  Refresh your recollection.

21          A.    18 to 23?

22          Q.    Yes, sir.

23          A.    Yes.  Okay.

24          Q.    Have you calculated the purported  
25 difference in that that you reference in that part of

1 your testimony?

2 A. No.

3 Q. So it's a -- because you have not  
4 performed that calculation, Mr. Wathen, you really  
5 don't know which measure more accurately reflects the  
6 reduction in FIT, correct?

7 A. Trying to measure the 18 or 19 actuals is  
8 because we have a corporate sharing allocation  
9 methodology and, you know, we have gas/electric  
10 split. It wouldn't -- even if I tried to measure 18  
11 and took it off the books, it wouldn't be a  
12 regulatory income tax. It would just be the per  
13 books tax which doesn't necessarily reflect, you  
14 know, what's attributable to electric -- I mean to  
15 gas-regulated operations.

16 Q. Okay. But if you don't make the  
17 calculation, you can't say whether this one is more  
18 accurate or that one is more accurate.

19 A. I can't say but, you know, just  
20 intuitively if we are making less money in one of  
21 those years, then likely we are paying less taxes.  
22 If we are making more money, we are paying more taxes  
23 so.

24 Q. If I could draw your attention,  
25 Mr. Wathen, to page -- oh, yes, 7, please, and your

1 discussion in lines 1 through 15.

2 A. Okay.

3 Q. Does Duke prepare month end balance  
4 sheets?

5 A. I am sure accounting does. I am not part  
6 of that.

7 Q. Does it prepare month end income  
8 statements?

9 A. We have not -- not formally to my  
10 knowledge. Anything we report we do the 10-K, 10-Q,  
11 so we have quarterly pretty defined settlement  
12 statements, but I don't know about monthly.

13 Q. And does Duke prepare year-end financials  
14 to include income statements and balance sheets?

15 A. We have a Form 1 and Form 3Q that we have  
16 to file that has audited financials, quarters.

17 Q. Draw your attention to page 8,  
18 Mr. Wathen, and specifically lines 7 through 9.

19 A. Okay.

20 Q. Duke had to change its billing system to  
21 reflect the lower FIT for Riders AU and the other one  
22 AMRP, correct?

23 A. Not necessarily. We just changed the  
24 rate. We didn't change the billing system.

25 Q. Okay. I draw your attention, Mr. Wathen,

1 to page 9, lines 1 through 3, please.

2 A. Okay.

3 Q. The gross up by -- for credit will  
4 require a change in Duke's billing system, correct?

5 A. No.

6 Q. The rates?

7 A. No. It just changes the rate. Whatever  
8 the rate is, whatever rate we are going to flow  
9 through, it's just changing a number in a table. It  
10 doesn't change the rate -- when you say changing the  
11 billing system, I am thinking of changing our total  
12 billing system, CMS, to a new system. That's not  
13 what this change is going to be doing.

14 Q. Okay. If you would turn, please,  
15 Mr. Wathen, to page 10 and I will direct your  
16 attention to lines 5 through 7.

17 A. Okay.

18 Q. Are there -- there are deferrals involved  
19 in Duke's Capital Expense Program, correct?

20 A. Capital Expense Program.

21 Q. CEP program.

22 A. That's correct. We have some deferrals  
23 related to our Capital Expense Program, Capital  
24 Expenditure Program.

25 Q. And those deferrals lead to I know it as

1 ADIT. Could you please remind me what ADIT stands  
2 for? Accumulated deferred income tax, correct?

3 A. That's correct.

4 Q. And those deferrals that we discussed  
5 lead to ADIT, correct?

6 A. The way -- bear with me. The CEP allows  
7 us to defer property taxes, depreciation, and the  
8 carrying costs of the debt rate. So those are --  
9 those are items that are being done on the books but  
10 not for tax so there is a deferred tax associated  
11 with those, that's correct.

12 Q. If I could draw your attention now,  
13 Mr. Wathen, to page 11, lines 12 through 13.

14 A. Okay.

15 Q. And you say there, Mr. Wathen, that "If  
16 shareholders are required to bear the burden of an  
17 expense, then shareholders should benefit from any  
18 tax benefits generated by that expense," correct?

19 A. That's correct.

20 Q. And would you say -- you would say the  
21 same thing for customers too, wouldn't you?

22 A. That's correct.

23 Q. And now I draw your attention to the same  
24 page, Mr. Wathen, lines 16 through 18.

25 A. Okay.

1 Q. And there you state "Unless and until  
2 those deferrals are ultimately approved for recovery,  
3 it is unreasonable for customers to receive a benefit  
4 related to any cost they are ultimately not going to  
5 pay through rates," correct?

6 A. That's correct, reading in my testimony,  
7 yes.

8 Q. And how does -- how does Duke's proposal  
9 in this case account for the eventuality that  
10 recovery is, in fact, approved?

11 A. Well, our proposal is to use the 3-31-12  
12 balances of EDITs and there are no -- there are no  
13 accumulated deferred taxes or excess deferred taxes  
14 associated with these items that were on the books at  
15 3-31-12.

16 Q. So any excess deferred income taxes  
17 generated after 3-31-12 would not be passed back to  
18 consumers in the event recovery was approved,  
19 correct?

20 A. If our proposal was approved, that's  
21 correct.

22 Q. If I could draw your attention,  
23 Mr. Wathen, to page 13, lines 11 through 12.

24 A. Yes.

25 Q. You state that Duke's proposal is

1 essentially the same as that approved for Columbia.  
2 What is the difference between the two?

3 A. Well, there is two differences. One of  
4 them is their test year was back to 2007, and ours  
5 was 2012 so there is a longer period of time in  
6 there. The only other difference I am aware of is  
7 that they -- they took the deferred tax balance for  
8 the accelerated depreciation on plant and rolled it  
9 forward through time to -- to essentially lower the  
10 deferred tax balance that they owed customers, so  
11 they reduced the liability by doing this. This  
12 deferred taxes on a single asset are going to change  
13 over time, ultimately be zero, so they rolled forward  
14 the deferred tax calculation to current year, and  
15 it -- it reduced the liability that Columbia had in  
16 their case.

17 Q. Did you read the Stipulation in the  
18 Columbia case, Mr. Wathen?

19 A. I did, yeah.

20 Q. And you are aware that that Stipulation  
21 addresses matters beyond just tax issues, correct?

22 A. I am aware of that.

23 Q. I would draw your attention, Mr. Wathen,  
24 if I might, to page 13, line 16 through 18 at this  
25 point.



1           A.    16 through 18?

2           Q.    Yes, sir.

3           A.    Okay.

4           Q.    You have not calculated the potential  
5 cost changes to the Company's billing system,  
6 correct?

7           A.    I know it's more than \$1, so it's not  
8 nothing, but I don't have a number.

9           Q.    Okay. And obviously you have provided no  
10 schedules to the Commission about what that cost  
11 would -- could be in this case, correct?

12          A.    We -- our proposal didn't contemplate the  
13 proposal that the Staff came up with, so we didn't --  
14 we didn't file it with the application because we  
15 didn't think we needed to.

16          Q.    But you do say it will lead to potential  
17 cost; and, therefore, your proposal is better, right?

18          A.    That's right.

19          Q.    But you don't provide any schedules about  
20 what that cost might be.

21          A.    The point of my discussion is it doesn't  
22 matter whether it's \$1 or a million dollars. It's  
23 still not worth it for what we achieve.

24               MR. MICHAEL: I would move to strike,  
25 your Honor. I asked him a yes or no question whether

1 or not they produced any schedules on the potential  
2 costs, and the witness's answer was nonresponsive.

3 MS. KINGERY: Your Honor, his answer was  
4 responsive, and the information he provided was an  
5 explanation of that answer.

6 EXAMINER WALSTRA: Denied.

7 Q. (By Mr. Michael) If I could draw your  
8 attention to page 15, Mr. Wathen, and specifically  
9 lines 7 through 8.

10 A. Okay.

11 Q. And there you state "Some utilities filed  
12 cases very soon after the TCJA was enacted but before  
13 the Commission had fully vetted the issues," correct?

14 A. That's correct.

15 Q. When were those cases filed?

16 A. Well, I can't -- I am not sure I can give  
17 you the exact date on all of them without doing my  
18 research, but I know Dayton had a pending case from  
19 '15 in 2015. It was 15-1830. We had a case 15-32  
20 that was being worked on after the TCJA was done.  
21 Vectren filed a case shortly after the end of the  
22 year in 2017. Ohio Gas filed one shortly after the  
23 end of the year.

24 Q. Columbia?

25 A. Columbia -- no. Columbia has not filed a

1 case since 2007. Dominion has not filed a case since  
2 2007. Vectren filed one right after the -- right in  
3 the early part of 2018. Ohio Gas filed one in there.

4 Q. Okay. My understanding of that sentence,  
5 Mr. Wathen, is you are discussing in that part of  
6 your testimony basically treatment of the TCJA,  
7 correct?

8 A. Well, I am trying to get to the point  
9 that there's --

10 Q. Please do.

11 A. -- eight or nine utilities, and they are  
12 all being treated differently so.

13 Q. And in that part of your testimony,  
14 again, correct me if I am wrong, my understanding was  
15 that the TCJA was -- came into being January 1, 2018,  
16 correct?

17 A. It was enacted the prior year, but it  
18 became effective that date, right.

19 Q. Right. And in terms of how the impact of  
20 the TCJA is treated, some utilities filed very --  
21 cases very soon after its effective date is what I  
22 understand you to be saying on line 7 through 8.

23 A. No. The point I am trying to make here  
24 they filed full blown rate cases under the AIR case  
25 system. The first case I know of that got filed

1 under the TCJA was AEP and that was in June, so it  
2 was six months after the TCJA was filed.

3 Q. Okay.

4 A. The first one that was approved was  
5 probably October for the same case.

6 Q. So in that -- on line 7 through 8, you  
7 are referring to AIR cases; is that correct?

8 A. That's correct. That's correct.

9 Q. Do you recall when Columbia filed its  
10 case that resulted in a Stipulation that you discuss  
11 in your testimony?

12 A. Well, they filed -- the case they filed  
13 was 17-2202 and it was a case to establish their CEP  
14 Rider and without filing a separate case, they rolled  
15 into -- they rolled in the TCJA matters so there's --  
16 to my knowledge there is no separate case for  
17 Columbia that -- that reflects the TCJA, but it got  
18 wrapped up into the CEP Rider.

19 Q. But you would agree that case was -- the  
20 tax issue for Columbia was resolved very soon after  
21 the TCJA, correct?

22 A. I am not witnessing that. I don't think  
23 the order came out until the end of the year.

24 Q. Don't assume it. I mean, it's a factual  
25 matter, right? I mean, it was resolved.

1           A.    Can you give me the date when the order  
2   was issued?

3           Q.    Well, let's look at the Stipulation that  
4   was --

5           A.    The date of the Stipulation is fine.

6           Q.    Bear with me a moment, please.

7                   EXAMINER WALSTRA:   Page 13.

8                   MR. MICHAEL:   13?   Thank you, your Honor.

9           Q.    October 2018.

10          A.    10 months after the TCJA.   That's four  
11   months after we settled our case.   You know, four  
12   months after AEP.   So I wouldn't say they are the  
13   first one.

14          Q.    That wasn't my question.   My question was  
15   whether it was very soon after the enactment of the  
16   TCJA.

17          A.    If you call 10 months soon, that's fine.

18          Q.    I want to know what you think.

19          A.    I don't consider that soon so.

20          Q.    Mr. Wathen, you refer to Case No. -- you  
21   are familiar with Case No. 18-47-AU-COI which is the  
22   order regarding ordering utilities to deal with the  
23   TCJA, correct?

24          A.    I am.

25          Q.    And you are familiar with the fact that

1 Finding and Order came out in October of 2018,  
2 correct?

3 A. There was a couple of orders that came  
4 out. I know there was an order that came out at the  
5 end of October, but I don't remember if that was the  
6 finding and order. It was an order.

7 Q. If you would please turn, Mr. Wathen, now  
8 to page 19 and specifically lines 15 through 17.

9 A. Yes.

10 Q. And among other things you say in there  
11 that the rate design is different. And can you  
12 explain for me for what. What rate designs are you  
13 comparing there?

14 A. Well, the rate design we proposed was  
15 going to be a per bill charge across the board so  
16 that -- that would be easy, just put in, you know, 5  
17 percent of \$33 would be the credit. But in our  
18 tariff we -- I think we are the only major utility  
19 that still has a volumetric rate for base, so we have  
20 to calculate percentage of the volumetric rate for  
21 customers on -- in part of our RS rate.

22 Q. So is the rate design you are comparing  
23 the rate design in Duke's proposal versus Staff's  
24 proposal?

25 A. Yes.

1 Q. Okay.

2 MR. MICHAEL: I may be done, your Honor;  
3 but if I could have a moment to consult with my  
4 colleagues, I will confirm that for you.

5 EXAMINER WALSTRA: Sure.

6 MR. MICHAEL: I have no further  
7 questions. Thank you.

8 Thank you, Mr. Wathen.

9 EXAMINER WALSTRA: Thank you.

10 Ms. Bair.

11 MS. BAIR: Yes, thank you, your Honor.

12 - - -

13 CROSS-EXAMINATION

14 By Ms. Bair:

15 Q. Good morning, Mr. Wathen.

16 A. Hello.

17 Q. I've got some questions regarding Duke  
18 Exhibit 2, your testimony, if you could please turn  
19 to page 7.

20 A. Duke Exhibit 2?

21 Q. That's your testimony.

22 A. Oh, I'm sorry.

23 Q. Page 7.

24 A. Just say my testimony, that's easier.

25 Q. Your testimony page 7.

1           A.     Okay.

2                   MR. MICHAEL:   We are here to make it easy  
3     for you, Mr. Wathen.

4                   THE WITNESS:   I hope so.   I wish  
5     everybody felt that way.

6           Q.     (By Ms. Bair) And I am focusing on line 6  
7     through 9.

8           A.     Okay.

9           Q.     You have discussed absent a separate  
10    forum to fully review whether the Company is actually  
11    earning an approved rate of return.   Do you see that?

12          A.     Yes.

13          Q.     What is the Company's rate of return in  
14    the last year?

15          A.     I don't know.   We don't -- I mean, again,  
16    we don't do a full blown regulatory calculation of  
17    return so.   Because we are a combination company it's  
18    a difficult challenge to figure out how much we are  
19    earning in particular on gas or electric.

20          Q.     So you filed -- you don't do anything  
21    just on behalf of the gas company ever like a  
22    quarterly statement?

23          A.     We do quarterly statements, and we have a  
24    general idea of return, but it's not a -- not a  
25    calculation that you would do in a rate case, you



1 know.

2 Q. What's your general idea of the return of  
3 the Company last year?

4 A. I don't know. Probably 7 or 8 percent,  
5 something like that --

6 Q. Thank you.

7 A. -- for gas.

8 Q. For gas, yeah. Just the gas company in  
9 Ohio. That's all you have. Okay.

10 A. That isn't all we have. We have gas in  
11 Kentucky and other states.

12 Q. Okay. Could you please go to page 10 of  
13 your testimony.

14 A. Okay.

15 Q. I am focusing on the last sentence  
16 starting with line 16 through 18.

17 A. Okay.

18 Q. And you're saying "As of December 31,  
19 2017, there was an accumulated deferred income tax  
20 associated with the deferred MGP costs incurred up to  
21 that date," correct?

22 A. That is correct.

23 Q. So the accumulated tax association with  
24 the deferred MGP costs is a known number as of  
25 12-31-17? That's what you are saying there, correct?

1           A.    Say it again, the first part.

2           Q.    The accumulated deferred income tax  
3 associated with the deferred MGP costs is a known  
4 number as of December 31, 2017.

5           A.    That is correct.

6           Q.    Now, I would like you, please, to move  
7 over to page 11 looking at lines 14 through 18.

8           A.    Okay.

9           Q.    And your discussion there is that the  
10 recovery is not yet approved. Is it your  
11 recommendation that the Commission make a decision in  
12 those cases that you are referring to here before it  
13 makes a decision in this case?

14          A.    My point is that if we use 3-31-12  
15 balances, it won't matter what happens to the  
16 decisions in those cases.

17          Q.    So a different decision regarding those  
18 balances in those tariff cases will not be made in  
19 those tariff cases?

20          A.    A different decision in those cases, a  
21 different -- any decision in those cases won't impact  
22 the number if we use a 3-31-12 balance. A decision  
23 in -- will effect the balance of the deferred taxes  
24 that are owed back to customers in those cases if we  
25 use 12-31-17.

1           Q.    I would like to ask you, please, to turn  
2 to page 14, your question and answer No. 7, please.

3           A.    At line 7?

4           Q.    Yeah, yes, line 7.

5           A.    Okay.

6           Q.    Is Staff proposing a different allocation  
7 for flowing the TCJA benefits back to customers?

8           A.    For overall? All the benefits or just  
9 the FIT issue we are talking about here?

10          Q.    Exactly what you are talking about there  
11 on line 7.

12          A.    Well, what I'm talking about in line --  
13 well, the question is probably more general than the  
14 answer is. What I am talking about here is the  
15 impact of the FIT on the base rates. The Staff  
16 proposal gets customers exactly the same number as  
17 ours. It just means we have to create another rider  
18 separate than base rates.

19          Q.    Okay. I understand the number is the  
20 same. Is the allocation the same?

21          A.    Necessarily it is the same if the numbers  
22 are the same.

23          Q.    Now, I would ask you please to turn to  
24 page 17, and in general I believe it would be lines 1  
25 through probably 12, your discussion of the Ohio Gas

1 case. Are you familiar with that?

2 A. Yes, yes, somewhat.

3 Q. And you say there were no refunds in the  
4 Gas case; is that correct?

5 A. My understanding of the Stipulation in  
6 that case was that they traded -- traded the idea of  
7 giving refunds for -- at least most of the refunds of  
8 the EDITs for the not coming in for a rate case using  
9 the EDITs.

10 Q. Was there specifically in that  
11 Stipulation and in the Commission's Order a reduction  
12 in base rates noted specifically for the tax savings?

13 A. Well, in the Ohio Gas tax case -- in the  
14 Ohio Gas rate case, they did essentially what we are  
15 proposing here is adjusting the base rates so there  
16 is not a rider flowing through the FIT true --  
17 benefit. It's built into the base rates, so the Ohio  
18 Gas base rates reflect a lower income tax.

19 Q. Was the Ohio Gas a rate case, an AIR  
20 case?

21 A. It was two cases. There was a -- there  
22 was an AIR case, and then they filed a waiver case.

23 Q. Has Duke filed an AIR case in this case  
24 we are discussing today?

25 A. We did not file -- there is no AIR case

1 but there is no waiver case either so.

2 MS. BAIR: Okay. I think I'm finished.

3 Could I have a quick minute, please?

4 Thank you. I have no more questions.

5 EXAMINER WALSTRA: Thank you.

6 Any redirect?

7 MS. KINGERY: May I have just a minute?

8 EXAMINER WALSTRA: Sure. We can go off  
9 the record.

10 (Discussion off the record.)

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

13 MS. KINGERY: We just have a couple of  
14 questions, your Honor.

15 EXAMINER WALSTRA: Okay.

16 - - -

17 REDIRECT EXAMINATION

18 By Ms. Kingery:

19 Q. Mr. Wathen, do you recall when you were  
20 being cross-examined by Ms. Bair she asked you to  
21 look at page 10 of your testimony, lines 16 through  
22 18? And she asked about the accumulated deferred  
23 income tax associated with deferred MGP costs  
24 incurred up to the end of 2017. Do you recall that?

25 A. I do.

1 Q. Would you clarify your response, please.

2 A. Well, first of all, the accumulated  
3 deferred income taxes that existed on 12-31-17  
4 represent the dollars that we've spent but have not  
5 yet recovered from customers. We get -- if we are  
6 taking the expense for tax purposes and not for book  
7 purposes, the -- it's not only the accumulated  
8 deferred income taxes, but it's the excess deferred  
9 income taxes defined at that date, and it represents  
10 that deferral.

11 So as I mention on the next page, I mean,  
12 that number is somewhat contingent on what the  
13 ultimate outcome of the MGP cases are so. Because it  
14 could be -- we know it's not going to be more, but it  
15 could be less if the Commission accepts the Staff's  
16 recommendation to disallow a substantial portion of  
17 that cost.

18 MS. KINGERY: Okay. Thank you very much.  
19 No further questions.

20 EXAMINER WALSTRA: Thank you.

21 Mr. Michael?

22 MR. MICHAEL: I have nothing, your Honor.

23 EXAMINER WALSTRA: Ms. Bair?

24 MS. BAIR: Nothing.

25 EXAMINER WALSTRA: Thank you, sir.

1 MS. KINGERY: Your Honor, Duke Energy  
2 Ohio would move for the admission of Exhibit -- Duke  
3 Energy Ohio Exhibits 1 and 2.

4 EXAMINER WALSTRA: Any objections?

5 MR. MICHAEL: Subject to the motions to  
6 strike, none, your Honor.

7 MS. BAIR: No objections.

8 EXAMINER WALSTRA: Duke Exhibits 1 and 2  
9 will be admitted.

10 (EXHIBITS ADMITTED INTO EVIDENCE.)

11 MS. KINGERY: Thank you, your Honor.

12 EXAMINER WALSTRA: Any other witnesses?

13 MS. KINGERY: No, your Honor.

14 EXAMINER WALSTRA: Mr. Michael.

15 MR. MICHAEL: Thank you, your Honor. OCC  
16 would call Kerry Adkins. I would request that the  
17 direct testimony of Kerry J. Adkins be marked as OCC  
18 Exhibit 1.

19 EXAMINER AUGOSTINI: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MR. MICHAEL: Does your Honor have a copy  
22 of that?

23 EXAMINER AUGOSTINI: I do.

24 (Witness sworn.)

25 EXAMINER AUGOSTINI: Thank you. Please

1 be seated.

2 - - -

3 KERRY J. ADKINS

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

6 DIRECT EXAMINATION

7 By Mr. Michael:

8 Q. Would you state your name and place of  
9 employment, please.

10 A. It's Kerry J. Adkins. I'm employed by  
11 the Office of the Ohio Consumers' Counsel referred to  
12 as OCC.

13 Q. Do you have before you, Mr. Adkins, what  
14 was previously marked as OCC Exhibit No. 1?

15 A. I do.

16 Q. And can you identify that document,  
17 please.

18 A. That is my prefiled direct testimony in  
19 this proceeding.

20 Q. And was that testimony prepared by you or  
21 at your direction, Mr. Adkins?

22 A. It was.

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



1           A.     Yes.

2                   MR. MICHAEL:   Your Honor, I would move  
3     for the admission of OCC Exhibit 1, the direct  
4     testimony of Kerry J. Adkins, subject to  
5     cross-examination.

6                   EXAMINER AUGOSTINI:   Thank you.   The  
7     witness is available for cross.

8                   MS. KINGERY:   Thank you.

9                                         - - -

10                                       CROSS-EXAMINATION

11     By Ms. Kingery:

12                 Q.     Good morning, Mr. Adkins.

13                 A.     Good morning.

14                 Q.     You have never worked for a public  
15     utility; is that correct?

16                 A.     That is correct.

17                 Q.     And since you've never worked for a  
18     public utility, am I correct in assuming that you've  
19     never helped set up a utility billing system?

20                 A.     I have never set up a utility billing  
21     system.   I have certainly reviewed utility billing  
22     systems in the course of my career, but I have never  
23     set one up.

24                 Q.     Have you ever audited costs for either  
25     setting up or altering a utility billing system?

1           A.    Yes.

2           Q.    In what circumstance?

3           A.    I believe, if my memory serves, as part  
4 of a water case I worked one time, might be Water and  
5 Sewer, LLC, but I can't be 100 percent certain, they  
6 had billing costs. There might be others as well.

7           Q.    Would that be listed in the appendix to  
8 your testimony?

9           A.    No. I was only working on part of that  
10 case. Another witness would have testified in that  
11 case.

12          Q.    And do you have any IT training or  
13 expertise?

14          A.    I've certainly been exposed to various  
15 IT. I would not consider myself an IT professional.

16          Q.    So you can't change computer programs  
17 and -- or write computer programs?

18          A.    I don't have much experience doing so.

19          Q.    And do you have any specific training or  
20 expertise with regard to tax accounting?

21          A.    As part of my career at PUCO, I have  
22 certainly reviewed utility taxes, federal taxes,  
23 federal income taxes, state taxes, property taxes.  
24 But to answer your question, I do have experience.

25          Q.    And are you a CPA?

1           A.    I am not.

2           Q.    Okay.  Let's talk first for very briefly  
3   about Staff's proposal to reflect the reduction in  
4   FIT in the GTCJA.  That is Duke's proposed gas TCJA  
5   Rider rather than simply reducing base rates.  Could  
6   you look at page 7 of your testimony, please.

7           A.    I'm there.

8           Q.    Okay.  And on line 13, you suggest that  
9   it would be "a relatively straightforward process for  
10  Duke to add the FIT reduction to Rider GTCJA."  Did I  
11  read that correctly?

12          A.    You did.

13          Q.    Thank you.  Do you have any personal  
14  knowledge about how Duke Energy Ohio's billing system  
15  is set up?

16          A.    Personal knowledge, no, but certainly,  
17  you know, I have -- in the course of my career I have  
18  discussed riders and rates that Duke would have  
19  implemented through its billing system with Duke or  
20  CG&E before Duke.

21          Q.    And you don't know exactly what system  
22  changes would be necessary in order to make the  
23  change that Staff is recommending here, correct?

24               MR. MICHAEL:  I am going object at this  
25  point, your Honor.  I've given counsel for Duke a

1 little leeway to explore Mr. Adkins' billing system  
2 credentials. It's beyond the scope of his testimony,  
3 and he has -- his testimony clearly states he's not  
4 referring to the billing system. He's referring to  
5 adding the FIT reduction to Rider GTCJA, so I think  
6 questions from counsel for Duke are beyond the scope  
7 of Mr. Adkins' testimony.

8 MS. KINGERY: Your Honor, if I might, the  
9 Rider GTCJA would be billed through the billing  
10 system, so it is relevant. And Mr. Adkins  
11 specifically says on page 7, line 13, that "it should  
12 be a relatively straightforward process," and further  
13 looking down that page to lines 18 through 20, he  
14 specifically says that Duke would not -- should not  
15 incur any additional costs by doing so. But he has  
16 no -- I'm trying to explore with him whether he has  
17 any knowledge on which to base that testimony.

18 EXAMINER AUGOSTINI: Overruled.

19 MS. KINGERY: Thank you, your Honor.

20 Karen, could you read back the question.

21 (Record read.)

22 A. The point I am making here is that Duke  
23 is a very sophisticated utility, that some people  
24 have stated that Duke is the largest utility in the  
25 country and perhaps the world. I'm familiar with

1 numerous riders where there are differing rates, rate  
2 structures under the same rider. Duke itself has  
3 what I count was 14 riders currently that's -- I'm  
4 sorry, in its tariffs, in its gas tariffs.

5 Mr. Wathen stated earlier there is at least 19 more  
6 in electric so there are numerous riders, numerous  
7 rate structures, Duke collects volumetric rate, Duke  
8 collects customers -- straight customers charge.

9 I'm familiar with other utilities that  
10 have the same rider but collect volumetric --  
11 volumetrically for some customer classes and straight  
12 customers charges for others. The point is that Duke  
13 is a sophisticated utility. It has riders all the  
14 time. There's nothing here that strikes me as should  
15 be incremental costs that Duke would incur. It has  
16 people who develop riders and rate structures under  
17 riders all the time.

18 MS. KINGERY: Your Honor, I would move to  
19 strike the entire answer as nonresponsive.

20 MR. MICHAEL: Well, I would simply point  
21 out that counsel for Duke was misunderstanding the  
22 nature of Mr. Adkins' testimony; and he, I think,  
23 corrected the record and what his testimony said  
24 which was different than the understanding that  
25 Duke's counsel had, so I think in the interest of

1 clarifying the record, Mr. Adkins indeed started off  
2 his response by saying, well, the point I am trying  
3 to make here is, so he was simply clarifying what the  
4 nature of his testimony was.

5 And, further, I think to the extent that  
6 there wasn't any misunderstanding, he was pointing  
7 out the level of sophistication for Duke, the types  
8 of riders it has, it both collects straight fees and  
9 volumetric fees, and, therefore, that's the basis for  
10 his comments that it is not the big deal that Duke is  
11 making it out to be.

12 MS. KINGERY: And, your Honor, just one  
13 more comment. If, as OCC's counsel is suggesting,  
14 Mr. Adkins was attempting to -- through that answer  
15 to modify his testimony, I would note that he did not  
16 modify it under direct cross.

17 EXAMINER AUGOSTINI: Denied.

18 MS. KINGERY: Thank you, your Honor. I  
19 am trying to think where I am.

20 Q. (By Ms. Kingery) Mr. Adkins, can you  
21 confirm then that Duke Energy Ohio would not incur  
22 any additional administrative or IT costs with regard  
23 to changes in the billing system if the Commission  
24 orders the FIT reductions to be flowed through the  
25 rider?

1           A.    Again, I would suggest that a company as  
2   sophisticated as Duke that already has structures in  
3   place, it has multiple riders in place, through --  
4   that it collects volumetrically and through direct  
5   charges, it's -- to me it appears unlikely that they  
6   would incur incremental costs that aren't already  
7   recovered in base rates.

8           Q.    So is your answer, yes, you would testify  
9   that the Company would incur no additional  
10   administrative or IT costs if that's the outcome of  
11   this proceeding?

12          A.    I think unlikely it would incur  
13   incremental costs.

14          Q.    Okay. Mr. Adkins, have you reviewed the  
15   testimony of Mr. Borer filed in this case?

16          A.    I reviewed it, yes.

17          Q.    Are you aware that Staff believes, and he  
18   so states in his testimony, that customers will be  
19   funding investments and where that happens it's  
20   proper to suggest that customers recognize over --  
21   strike that. I am going to start over again. That  
22   was getting turned around.

23                Mr. Borer states that where customers  
24   will be funding investments it is proper to suggest  
25   that the customers recognize over the life of the

1 investments the same tax benefits as the Company.

2 Would you agree with that statement?

3 THE WITNESS: Your Honor, may I have the  
4 question reread, please?

5 EXAMINER WALSTRA: Sure. Please, Karen.

6 (Record read.)

7 MR. MICHAEL: And before the witness  
8 answers, your Honor, I would object to foundation. I  
9 think it first needs to be established whether or  
10 not, excuse me, Mr. Adkins is familiar with the fact  
11 that Mr. Borer may or may not have made that  
12 statement in his testimony. To ask the witness to  
13 confirm or deny something in that testimony without  
14 even knowing whether he, in fact, agrees that was  
15 stated I think is improper; and, therefore, I object  
16 on foundation grounds.

17 MS. KINGERY: And, your Honor, I did ask  
18 whether he was familiar with the testimony. He said  
19 he was, and I merely stated -- asked him whether he  
20 would agree with this statement. I didn't ask him  
21 whether it was made by Staff.

22 MR. MICHAEL: Asking if he is familiar  
23 with the testimony is different than picking it out  
24 what counsel has purported to be a statement in that  
25 testimony.



1 MS. KINGERY: I can rephrase, if you  
2 would like, without reference to Mr. Borer.

3 EXAMINER AUGOSTINI: Sure. Why don't we  
4 do that.

5 Q. (By Ms. Kingery) Mr. Adkins, would you  
6 agree that if customers are funding an investment  
7 that's made by the Company, they should recognize  
8 over the life of that investment the same tax  
9 benefits as the Company?

10 A. I would suggest that -- I would agree  
11 with that. Any EDIT that is associated with  
12 investments that the customers will ultimately fund  
13 should be -- associated EDIT should flow back to the  
14 customers, yes, I do agree with that.

15 Q. Would you agree that the Company's  
16 treatment of a capital investment for tax purposes as  
17 compared with book purposes is what gives rise to the  
18 EDITS?

19 A. What would give rise to the EDITS -- what  
20 you just suggested would give rise to ADIT,  
21 accumulated deferred income taxes. The EDIT would  
22 come once there was a rate change, once there was a  
23 federal income tax rate change.

24 Q. Thank you. Thank you for the  
25 clarification. So how the Company may have treated a

1 capital investment for tax purposes is not a factor  
2 in determining whether to credit EDITs back to the  
3 customer, correct?

4 A. I disagree. The amount of ADIT on the  
5 Company's books, the Company has taken the tax  
6 advantage of in the early part of an asset's life,  
7 the Company has taken the tax advantage through  
8 accelerated depreciation of that asset which lowers  
9 the Company's, I guess, net income for federal tax  
10 purposes.

11 So the Company -- in effect, I think  
12 Witness Borer described pretty well, is a tax free  
13 loan to the Company. That reverses over time unless  
14 there is a change. In this case there was a change,  
15 and the federal income tax rate was lowered -- the  
16 federal income tax embedded in base rates is 35  
17 percent. It was lowered to 21 percent which gives  
18 rise to the EDIT. So I think I disagree with what  
19 you just said. I don't think I do; I do disagree  
20 with what you just said.

21 Q. Does it matter in your opinion whether  
22 the customer in question has funded the investment in  
23 any regard by the time that tax change is made?

24 A. If the customers are ultimately going to  
25 be paying, no. I -- I think if customers are

1 ultimately going to be responsible for the assets  
2 that gave rise to the EDIT, I think customers should  
3 get the benefit of that as well.

4 Q. When the customers ultimately are  
5 responsible for paying for or funding that  
6 investment, if that's at a subsequent point in time,  
7 wouldn't the value of that investment on the books  
8 have been depreciated over time?

9 A. The asset would depreciate through the  
10 depreciation expense, but the -- but the ADIT that's  
11 accumulated is there on the books. I don't know that  
12 it -- I don't think it depreciates so I'm --

13 Q. I didn't mean to suggest that the ADIT  
14 depreciates. I was talking about the asset.

15 A. The asset depreciates --

16 Q. What would ultimately go into rate base  
17 at a subsequent point in time when the customers are  
18 going to begin to start paying on it, it goes into  
19 rate base at a depreciated value if it's been on the  
20 books for a period of time, correct?

21 A. Ordinarily, yes, but in Duke's case, for  
22 example, the Capital Expenditure Program, Duke is  
23 deferring the -- the depreciation expense associated  
24 with it, and I believe since Duke has completed  
25 its -- its Accelerated Replacement Program, then

1 basically all the capital investment would probably  
 2 fall under the CEP, the Capital Expenditure Program  
 3 therefore, Duke's deferring for future recovery the  
 4 property tax expense, the depreciation expense,  
 5 post-service carrying costs as Mr. Wathen suggested  
 6 this morning. Those do give rise to accumulated  
 7 deferred income taxes and then there is -- with the  
 8 tax law change that became excess deferred income  
 9 taxes that customers will be -- the underlying assets  
 10 customers will be on the hook for paying for,  
 11 therefore, the customers should get the EDIT benefit  
 12 associated with that.

13 MS. KINGERY: I may be close to done.  
 14 May I have just a minute?

15 EXAMINER AUGOSTINI: You may.

16 MS. KINGERY: Nothing further, your  
 17 Honor.

18 EXAMINER AUGOSTINI: Thank you. Do any  
 19 parties have cross?

20 MS. BAIR: I have no questions.

21 EXAMINER AUGOSTINI: Redirect?

22 MR. MICHAEL: Your Honor, may I have a  
 23 brief moment?

24 EXAMINER AUGOSTINI: You may. Let's go  
 25 off the record.

1 (Discussion off the record.)

2 EXAMINER AUGOSTINI: Let's go back on the  
3 record.

4 MR. MICHAEL: I do, your Honor, with your  
5 indulgence have a brief redirect examination.

6 - - -

7 REDIRECT EXAMINATION

8 By Mr. Michael:

9 Q. Mr. Adkins, do you recall counsel for  
10 Duke's questions to you about any purported  
11 additional costs that might be associated with the  
12 billing system?

13 A. I do.

14 Q. And my recollection of your response was  
15 that there would be no -- to your understanding any  
16 incremental -- your opinion there would be no  
17 incremental costs; is that correct?

18 A. That's correct.

19 Q. Is there any further analysis that you  
20 could share with the Commission regarding the nature  
21 of that question from Duke's counsel?

22 A. I think the idea would be that even if  
23 there is costs, and I don't acknowledge that there is  
24 incremental costs, the Company didn't put a schedule  
25 or include anything in a schedule that identifies

1 those costs. But even if there is, I am not  
2 conceding that there is, but even if there is,  
3 there's also benefits from setting the right one that  
4 is transparency associated with the rider, and it's  
5 also consistent with the Commission's past policies  
6 regarding single issue rate changes.

7 The Commission typically changes base  
8 rates through a base rate proceeding and single  
9 issues such as this, this is a single issue, then  
10 that's consistent, Commission typically does that  
11 through riders evidenced by the proliferation of  
12 riders across all utilities.

13 Q. Thank you, Mr. Adkins. And do you also  
14 recall counsel for Duke's questions with you  
15 regarding your experience?

16 A. I do.

17 Q. And you recall questions regarding  
18 whether or not you were a CPA --

19 A. I do.

20 Q. -- from Duke's counsel?

21 A. I do recall those questions. While I  
22 admitted I am not a CPA, this case is about setting  
23 rates, and I do have 30 years of experience in the  
24 rates -- Commission rate setting process, the last 10  
25 of which when I was here at the PUCO involved setting

1 rider rates for gas utilities.

2 MR. MICHAEL: Thank you, Mr. Adkins. I  
3 have no further questions, your Honor.

4 EXAMINER AUGOSTINI: Recross?

5 MS. KINGERY: Thank you, your Honor.

6 - - -

7 RECROSS-EXAMINATION

8 By Ms. Kingery:

9 Q. Just one. You noted, Mr. Adkins, that  
10 the Company didn't file a schedule showing the  
11 incremental costs it would incur to change the  
12 billing system. Do you recall that?

13 A. I do.

14 Q. Did OCC, to the best of your knowledge,  
15 ask any discovery questions about that matter?

16 A. Not that I recall.

17 MS. KINGERY: Thank you, your Honor.

18 That's all.

19 EXAMINER AUGOSTINI: Thank you.

20 Do you have any questions?

21 MS. BAIR: No, thank you.

22 EXAMINER AUGOSTINI: You may be excused.

23 Thank you.

24 MR. MICHAEL: I would renew my motion for  
25 the admission of what has previously been marked as

1 OCC Exhibit 1, the direct testimony of Kerry J.  
2 Adkins.

3 EXAMINER AUGOSTINI: Are there any  
4 objections?

5 MS. KINGERY: No, your Honor.

6 MS. BAIR: No, your Honor.

7 EXAMINER AUGOSTINI: OCC Exhibit 1 will  
8 be admitted into the record. Thank you.

9 (EXHIBIT ADMITTED INTO EVIDENCE.)

10 MR. MICHAEL: Thank you.

11 MS. BAIR: Staff calls Jonathan Borer as  
12 its witness.

13 (Witness sworn.)

14 EXAMINER AUGOSTINI: Thank you. Please  
15 have a seat.

16 - - -

17 JONATHAN BORER

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

20 DIRECT EXAMINATION

21 By Ms. Bair:

22 Q. Could you please state your name and  
23 spell it for the record.

24 A. Jonathan Borer, it's B-O-R-E-R.

25 Q. By whom are you employed and what are



1 your responsibilities?

2 A. Employed by the Public Utilities  
3 Commission of Ohio as a Utility Specialist.

4 MS. BAIR: Your Honor, I would like to  
5 mark as Staff Exhibit 1 the Staff Review and  
6 Recommendations docketed with the PUCO on April 17,  
7 2019.

8 EXAMINER AUGOSTINI: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MS. BAIR: Thank you.

11 Q. (By Ms. Bair) Do you have what has been  
12 marked as Staff Exhibit 1 before you?

13 A. I do.

14 Q. And did you contribute to that exhibit in  
15 creating that document?

16 A. Yes.

17 Q. Thank you.

18 MS. BAIR: Your Honor, I would like to  
19 have marked as Staff Exhibit 2 Jonathan Borer's  
20 prefiled testimony.

21 EXAMINER AUGOSTINI: So marked.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 Q. (By Ms. Bair) And do you have that before  
24 you?

25 A. Yes.

1 Q. And could you please tell me what that  
2 is.

3 A. This is my prefiled testimony.

4 Q. Was this testimony prepared by you or  
5 under your direction?

6 A. It was.

7 Q. Do you have any changes, corrections, or  
8 additions that you would like to make to that  
9 exhibit?

10 A. I do not.

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

13 A. They would.

14 MS. BAIR: Your Honor, I would like to  
15 move Staff Exhibit 2, subject to cross-examination,  
16 into evidence.

17 EXAMINER AUGOSTINI: Thank you. The  
18 witness is available for cross.

19 MS. KINGERY: Thank you, your Honor.

20 - - -

21 CROSS-EXAMINATION

22 By Ms. Kingery:

23 Q. Good morning, Mr. Borer.

24 A. Good morning.

25 Q. You've never worked for a public utility,

1 correct?

2 A. That's correct.

3 Q. And you've never either helped set up or  
4 helped to alter a public utility's billing system,  
5 have you?

6 A. That's correct.

7 Q. And have you ever audited costs for  
8 either setting up or altering a billing system?

9 A. No, I have not.

10 Q. And do you have any specific IT training  
11 or expertise?

12 A. I wouldn't call it expertise, but I have  
13 familiarity with information systems.

14 Q. Okay. Let's look at page 2 of your  
15 testimony, if we could.

16 A. I'm there.

17 Q. Starting on line 11, you indicate that  
18 the purpose of your testimony is to address those  
19 aspects of Staff's recommendations with which the  
20 Company disagrees, correct?

21 A. Correct.

22 Q. And then starting on line 17 of that  
23 page, you summarize those areas of disagreement  
24 breaking the disagreements down into two categories,  
25 the first being the use of Rider GTCJA as the means

1 for passing back fixed savings as opposed to the base  
2 rates, correct?

3 A. Correct.

4 Q. And the second of those disagreement  
5 areas being the use of December 31, 2017, as the date  
6 on which refundable EDIT balances would be based,  
7 correct?

8 A. Correct.

9 Q. And those are the only items you are  
10 addressing in your testimony, correct?

11 A. From a very high level, yes.

12 Q. Okay. So on page 3 of your testimony,  
13 you start discussing the FIT issues, the first of  
14 those two issues, correct?

15 A. Correct.

16 Q. And Staff is recommending that the FIT  
17 adjustment flow through the rider because it would be  
18 more transparent to customers rather than a simple  
19 decrease in base rates; is that correct?

20 A. That's correct.

21 Q. And increased transparency is the only  
22 reason that you gave in your testimony for  
23 recommending that it flow through the rider, correct?

24 A. Correct.

25 MS. BAIR: Objection, mischaracterization

1 of the testimony. Only?

2 Q. (By Ms. Kingery) In your testimony,  
3 Mr. Borer, is there any other rationale that you  
4 provide besides increased transparency for putting  
5 the FIT reduction in the rider?

6 A. No. Staff only highlights the  
7 transparency in my testimony.

8 Q. Thank you. If you could jump to page 6.

9 A. Okay. I'm there.

10 Q. I apologize, page 4.

11 A. Okay.

12 Q. It helps if I look at the page I told you  
13 to go to. Look at line 6 on page 4. And you say  
14 there that "The Columbia Gas case has been the only  
15 TCJA-related case in which the FIT adjustment has  
16 been reflected as a base rate reduction." Did I read  
17 that correctly?

18 A. That's correct. And that's -- that is  
19 true that the Columbia Gas case is the only case  
20 where the TCJA was separately addressed from a base  
21 rate case, and the FIT reduction was incorporated  
22 into base rates.

23 MS. KINGERY: Could I have that answer  
24 read back.

25 (Record read.)

1           Q.    Isn't that a little bit different than  
2    what you said in your testimony?  Your testimony, as  
3    I just read that sentence, said that it was the only  
4    TCJA-related case in which the FIT adjustment was  
5    reflected as a base rate reduction, and your  
6    testimony just a moment ago in response to my  
7    question said it was the only non-rate case related  
8    to the TCJA, et cetera.

9           A.    So perhaps it needs be -- my testimony  
10   needs to be clarified that the TCJA-related case  
11   would refer to separate independent TCJA cases that  
12   are not associated with base rate cases, single issue  
13   TCJA cases.

14          Q.    So now you are saying that the Columbia  
15   Gas case has been the only TCJA single issue case in  
16   which the FIT was reflected as a base rate reduction.

17               MS. BAIR:  Objection.  Is there a  
18   question?  I believe that the attorney is not asking  
19   a question.

20               MS. KINGERY:  I will add the word correct  
21   on the end.

22               MS. BAIR:  Thank you.

23               MS. KINGERY:  I apologize.  I thought  
24   that was implied.

25          A.    If I understand the question correctly,

1 yes.

2 Q. So, Mr. Borer, you would agree that there  
3 are other cases, although not single issue  
4 TCJA-related cases, in which the FIT adjustment was  
5 reflected as a base rate reduction, correct?

6 A. Correct. Those are base rate cases.

7 Q. And was one of those that you are  
8 referring to now, one of those base rate cases, was  
9 that -- would DP&L's recent base rate case be one of  
10 those?

11 A. Correct. The base rates reflected  
12 federal incomes taxes at 21 percent.

13 Q. And so in DP&L's base rate case outcome,  
14 there was no separate line item that resulted from  
15 that that would reflect the reduction in the FIT,  
16 correct?

17 A. There's something sort of related to the  
18 FIT adjustment, the deferrals from January 1, 2018,  
19 through rates being affected and that is addressed in  
20 DP&L's separate tax case, but the reduction in the  
21 tax expense from 35 percent to 21 percent was  
22 reflected in DP&L's base rates.

23 Q. And when -- when you looked at that, did  
24 it concern you that there would not be transparency  
25 as -- for the customers about the FIT reduction since

1       there was no separate line item?

2               MR. MICHAEL: I would object, your Honor,  
3       to foundation. She assumes that he did look at it.  
4       And I -- at least I haven't heard the witness say  
5       that the witness looked at that issue in the DP&L  
6       case or not, so I object for lack of foundation.

7               MS. KINGERY: Your Honor, I would ask  
8       that administrative notice be taken of Mr. Borer's  
9       testimony in Case No. 15-1830-EL-UNC. And I have a  
10      copy that I can provide to refresh the witness's  
11      recollection.

12              MR. MICHAEL: I would just simply say I  
13      didn't hear him say he was involved in that case. If  
14      he was, he was, but I think that needs to be  
15      established first.

16              Q.     (By Ms. Kingery) Do you recall being  
17      involved in that case?

18              A.     I do.

19              Q.     And did you testify in that case?

20              A.     I did.

21              Q.     And do you recall in your testimony  
22      whether you addressed the need for transparency  
23      regarding the FIT rate?

24              A.     I don't recall specifically addressing  
25      that. It's -- given that it was a base rate case, it



1 wasn't something Staff found the need to evaluate on  
2 transparency of a single issue such as the tax  
3 reduction.

4 Q. So transparency to customers in that case  
5 of the reduction of the federal income tax was not  
6 important to you, correct?

7 A. Given that it was in the context of a  
8 base rate case, it's -- we gave the weight that it --  
9 we deemed necessary.

10 MS. KINGERY: Your Honor, I would renew  
11 my motion for administrative notice of that  
12 testimony.

13 EXAMINER AUGOSTINI: We'll take  
14 administrative notice. Thank you.

15 MS. KINGERY: Thank you.

16 Q. (By Ms. Kingery) So going back again to  
17 our discussion from a few minutes ago about this  
18 sentence on lines 6 to 7 of page 4, when we were  
19 talking about the fact there were other cases that  
20 were not single issue cases?

21 A. Yes.

22 Q. Yes. Okay. Are you familiar with  
23 Vectren's most recent rate case, Case No. 18-298?

24 A. Yes.

25 Q. And did you testify in that case?

1 A. I did.

2 Q. So you recall the issues in the case.

3 A. I'm familiar with most of the issues. I  
4 should say that I am most familiar with the issues to  
5 which I testified.

6 Q. And you testified about EDITs, correct?

7 A. Yes.

8 Q. And do you recall what Staff's opinion  
9 was in that case regarding the appropriate treatment  
10 of the reduction in FIT?

11 A. Yes.

12 Q. And what was that opinion?

13 A. Which part of the -- for just the FIT  
14 expense?

15 Q. The reduction of the FIT, what was  
16 Staff's opinion about how the reduction in the FIT  
17 should be treated with regard to Vectren and its  
18 customers?

19 A. Given that it was a base rate case, staff  
20 felt like it should be incorporated into base rates.

21 Q. And did that result in any separate line  
22 item on Vectren's customers' bills so that they would  
23 have the transparency of seeing how much their bills  
24 were going down?

25 A. No.

1           Q.   And did Staff express any concern about  
2   that in its opinions in that case?

3           A.   Staff -- no, Staff did not express its  
4   concerns given that it was a base rate case.

5           MS. KINGERY:   And, your Honor, I would  
6   request that we take administrative notice of the  
7   testimony of Mr. Borer and Mr. Lipthratt in Vectren's  
8   Case No. 18-298-GA-AIR as well as Staff's brief,  
9   post-hearing brief in that case.

10          MS. BAIR:   I object based on Lipthratt  
11   and the brief and what -- just I guess the relevance  
12   to this proceeding, if you are going to refer to it.  
13   You haven't yet.

14          MS. KINGERY:   Your Honor, if I might.

15          Q.    (By Ms. Kingery) Mr. Borer, was Staff's  
16   opinion about how the FIT reduction should be treated  
17   in that case, was that in your testimony?

18          A.    I believe it was.

19          Q.    I thought you testified a few minutes ago  
20   that you testified about EDITs in that case.

21          A.    Maybe I should clarify, I don't perfectly  
22   recall my testimony from the Vectren case.

23          MS. BAIR:   Your Honor, Attorney -- if  
24   Jeanne is going to ask about it, could she give him a  
25   copy or something?  It's kind of like shooting in the

1 dark. It doesn't seem appropriate.

2 MS. KINGERY: Your Honors, I have a copy  
3 with me of Mr. Lipthratt's testimony in that case  
4 wherein he does discuss this issue. Mr. Borer stated  
5 a moment ago that his testimony was only about EDITs.  
6 I can, however, just go with Staff's brief,  
7 post-hearing brief, if that would be preferable.

8 MS. BAIR: I object to Lipthratt and the  
9 brief. If the Company chose to make this point, they  
10 should have made it in direct testimony, not through  
11 cross-examination of another witness's testimony in a  
12 different case.

13 MR. MICHAEL: And I join the objection,  
14 your Honor.

15 EXAMINER AUGOSTINI: Let's limit to  
16 Mr. Borer's testimony specifically in Vectren's case.

17 MS. KINGERY: Thank you.

18 EXAMINER AUGOSTINI: And just to clarify,  
19 we will take administrative notice of Mr. Borer's  
20 testimony in Case No. 18-298.

21 MS. KINGERY: Great. Thank you very  
22 much, your Honor.

23 Q. (By Ms. Kingery) Mr. Borer, are you aware  
24 of whether the Commission has approved outcomes for  
25 any other utilities where there is a FIT benefit

1 passthrough that would not appear on a specific line  
2 item?

3 A. I'm sorry. Could you rephrase the  
4 question?

5 Q. Let's just go to a specific example.

6 A. Okay.

7 Q. Are you familiar with the TCJA case for  
8 Ohio Power?

9 A. Yes.

10 Q. And that was Case No. 18-1007, correct?

11 A. Correct.

12 Q. And there the outcome included flowing a  
13 significant portion of benefits from the lower FIT  
14 rate through Ohio Power's Distribution Investment  
15 Rider; is that correct?

16 A. I don't know if I would agree with  
17 significant. I believe the refund of excess deferred  
18 income taxes was flowed through the Investment  
19 Distribution Rider, but I don't know that I would  
20 agree it would be significant.

21 Q. That's fair. So with regard to that  
22 portion, whether it's significant or not, will Ohio  
23 customers be able to see on their bills a specific  
24 line item that indicates the amount of TCJA benefits  
25 that are being passed through?

1           A.    If I recall correctly, the FIT savings  
2 were flowed through a separate rider, credit  
3 mechanism.

4           Q.    You just said that they -- the FIT  
5 benefits with regard to the assets that are -- where  
6 the costs are recovered through the Distribution  
7 Investment Rider are flowed through that rider.

8           A.    I believe I said that excess deferred  
9 taxes, the EDITs, were flowed through that rider.

10          Q.    So the FIT is not.

11          A.    Correct. I believe that is a separate  
12 rider.

13          Q.    Are you familiar with Duke Energy Ohio's  
14 electric TCJA case, Case No. 18-1185?

15          A.    Yes, I am familiar with it.

16          Q.    And in that case was the result one that  
17 included flowing benefits from the lower FIT through  
18 the Rider DCI?

19          A.    Some portion of them, yes.

20          Q.    And with regard to that portion, will  
21 Duke Energy Ohio customers be able to see on their  
22 electric bills a specific line item indicating the  
23 amount of TCJA benefits being passed through the  
24 rider?

25          A.    Just depends on the amount of tax sales

1 relative to the revenue collected through the DCI.

2 Q. So are you saying that there would not be  
3 a specific line item?

4 A. There would not be a line item on their  
5 bill saying tax credit rider for that portion.

6 Q. Thank you. And are you familiar with the  
7 FirstEnergy utilities' TCJA which I believe was Case  
8 No. 18-1604?

9 A. Yes, I am.

10 Q. And I am going to ask the same question  
11 about that one, whether the outcome of that case was  
12 that benefits from the lower FIT would be flowed  
13 through Rider DCR?

14 A. If I remember correctly, all of the tax  
15 savings flowed through a separate credit mechanism  
16 for FirstEnergy.

17 Q. So the lower FIT did not to the best of  
18 your recollection flow through Rider DCR?

19 A. For FirstEnergy, no.

20 Q. In all of the cases we've talked about in  
21 the last -- since I've been talking with you, were  
22 any of those utilities required to flow 100 percent  
23 of their FIT reduction through a separate dedicated  
24 rider?

25 A. What do you mean by FIT reduction? The

1 FIT expense?

2 Q. Yeah. The benefits from the government  
3 having reduced the FIT.

4 A. Each company has different mechanics to  
5 how that's refunded. It's --

6 Q. And I am asking you whether any --  
7 whether the Commission has required any of these  
8 other utilities we've just talked about to have a  
9 separate dedicated rider to flow through 100 percent  
10 of the FIT reduction.

11 A. If I recall correctly, I believe  
12 FirstEnergy's has all of it go through separate  
13 credit mechanisms. They can blur the lines there  
14 have been so many cases, but I do believe FirstEnergy  
15 has it all going through a separate rider.

16 Q. There have been many cases, I agree. In  
17 your recollection FirstEnergy is the only one that  
18 might fall into that category; is that correct?

19 A. Off the top of my head, yes.

20 Q. Thank you. And isn't it true that even  
21 in this case Staff is recommending that some of the  
22 TCJA benefits would flow through other riders?

23 A. Yes.

24 Q. So Riders AU and AMRP would be examples  
25 of that, correct?



1           A.     Correct.

2           Q.     And the TCJA benefits that are credited  
3     or refunded through those riders would not appear as  
4     their own separate line items on customer bills,  
5     correct?

6                   THE WITNESS:   I'm sorry.   Could I have  
7     the question reread.

8                   (Record read.)

9           A.     It wouldn't be labeled at line item TCJA  
10    savings for Rider AU or AMRP, no.   It would just be  
11    rolled into the revenue requirements of those riders.

12          Q.     We've talked a little bit earlier today  
13    about the possibility or not that the Company might  
14    incur additional costs to implement the Staff  
15    recommendation costs in the nature of IT costs to  
16    change -- make changes to the billing system.   Do you  
17    recall those conversations?

18          A.     I do.

19          Q.     And if that were to happen, do you  
20    believe that Duke customers would ultimately pay  
21    those additional costs?

22          A.     I can't say for certain.

23          Q.     And if hypothetically they did end up  
24    having to pay some additional costs for that -- that  
25    separate line -- for the change to the billing

1 system, would there be a specific line item  
2 transparently telling customers how much they were  
3 paying to have a line item on their bill for --

4 MS. BAIR: Objection, your Honor.

5 Q. -- reduction?

6 MS. KINGERY: I will withdraw the  
7 question.

8 Q. Did staff, when it was making its  
9 recommendation as expressed in the Staff Report,  
10 consider the possibility that it might cost Duke  
11 something extra to comply with their recommendation?

12 A. No. Staff didn't believe that it would  
13 have any incremental costs associated with it.

14 Q. So Staff did think about whether it would  
15 and decided that it would not; is that what you are  
16 saying?

17 A. It wasn't a consideration for Staff  
18 because it's -- no other company has subjected to  
19 incremental costs with updating the billing system  
20 that Staff is familiar with.

21 Q. And has Staff asked any other company to  
22 flow through both FIT reductions and EDITs through a  
23 rider?

24 A. Yes.

25 Q. And that would be what companies?

1           A.    At least FirstEnergy.

2           Q.    Based on your recollection as we  
3 discussed before, correct?

4           A.    Correct. And I believe that Duke  
5 electric has FIT, certain balance of the FIT expense  
6 savings in addition to the amortization of EDITs  
7 going through a credit mechanism, so I don't know if  
8 I would be able to cover a comprehensive list, but I  
9 know it's at least more than one.

10          Q.    Okay. And do you personally have any  
11 knowledge of what IT or other administrative  
12 requirements might come into play with making the  
13 changes to the billing system that would be required?

14               MS. BAIR: Objection. There's no  
15 testimony that this witness has provided that's  
16 relative to that question.

17               MS. KINGERY: Your Honor, the witness  
18 just stated that Staff didn't believe that there were  
19 going to be any incremental costs, so I am asking if  
20 he has any personal knowledge of what the  
21 requirements might be that might give rise to  
22 additional costs or not.

23               EXAMINER AUGOSTINI: Overruled.

24               MS. KINGERY: Thank you.

25               THE WITNESS: Could I have the question

1 reread.

2 (Record read.)

3 A. Not specifically, no.

4 Q. Thank you. Do you believe that providing  
5 customers with a separate exclusively TCJA line item  
6 on the bill showing the change to the FIT outweighs  
7 any possible costs of changing the billing system no  
8 matter how high they might be?

9 A. It's a bit of a hypothetical given that  
10 Staff is not familiar with specifically what those  
11 costs would be and the only sort of dollar amount  
12 I've mentioned is that it's possible it's more than  
13 \$1, so it's hard to say with certainty without  
14 knowing more information.

15 Q. So if it were \$1 more, would you think  
16 the transparency was more important?

17 A. I would think so, yes.

18 Q. And did Staff issue any data requests  
19 with regard to the costs of changing the billing  
20 system?

21 MR. MICHAEL: I would object, your Honor.  
22 Duke is the Applicant in this case. Counsel is  
23 suggesting that Staff and previously OCC had some  
24 sort of burden to disprove what they say in their  
25 application, so I think the implication of the

1 question is completely inappropriate; and, therefore,  
2 I object to it.

3 MS. KINGERY: And, your Honors, all I am  
4 trying to do is point out that this is a question  
5 that Staff could have asked if they knew they were  
6 making a change.

7 MR. MICHAEL: And I will simply  
8 reiterate, your Honor, Duke is the Applicant in this  
9 case. If they are making an assertion that their  
10 billing system is going to increase on costs as a  
11 result of Staff's proposal, it's their burden to  
12 prove. It's not anybody else's burden to disprove  
13 it.

14 MS. KINGERY: And, your Honor, I would  
15 note that the burden on us is to prove what's in our  
16 application, not what was in the Staff Report.

17 MS. BAIR: Well, objection. There is  
18 nothing about the billing cost in the Staff Report.

19 EXAMINER AUGOSTINI: Overruled.

20 A. Staff wasn't aware there were any  
21 concerns of the billing system until the Company  
22 filed its reply comments.

23 Q. Thank you. You're familiar with the  
24 Columbia Gas rate case, correct, in which the TCJA  
25 matters were resolved?

1           A.     Rate case?

2           Q.     I apologize.  It's not a rate case.  You  
3 got me.

4                     MR. MICHAEL:  Got one by you, Borer.

5           Q.     So let me rephrase that.  You are  
6 familiar with the Columbia Gas case in which the TCJA  
7 issues were resolved, correct?

8           A.     I'm familiar with the TCJA-related issues  
9 and only vaguely familiar with the CEP and other  
10 issues.

11          Q.     That's fair.  And is it correct that the  
12 Commission approved in that case a refund of EDIT  
13 balances calculated as of the date of Columbia Gas's  
14 last rate case?  More precisely I believe it was the  
15 date certain in that case.

16          A.     Correct, for base-related EDITs.

17          Q.     And do you recall that date?

18          A.     September 2007.  I don't recall  
19 specifically.

20          Q.     But it was a 2007 rate case -- or 2008 --

21          A.     I don't recall.

22          Q.     Okay.  That's fair.  It was what it was,  
23 right?

24          A.     I'll accept that.

25          Q.     And litigating that case before the

1 Commission, it was Staff's position, was it not, that  
2 no individual provision in the Stipulation violated  
3 any Ohio laws or regulations, correct?

4 MS. BAIR: Objection, calls for legal  
5 opinion.

6 MS. KINGERY: Your Honor, it simply calls  
7 for reading Staff's brief or testimony. That's -- I  
8 am not asking him whether he thinks that there was  
9 any violation. I'm asking what he believes Staff's  
10 position was.

11 MS. BAIR: I do believe it requested a  
12 legal opinion. The witness has stated he is not  
13 familiar with that case with the exception of the  
14 issues that's being -- the Company counsel is asking  
15 about the entire case which he has stated he is not  
16 familiar with.

17 EXAMINER AUGOSTINI: Mr. Borer, you can  
18 answer if you know.

19 A. I would assume it didn't violate law but.

20 Q. Do you have any idea sitting here today  
21 whether Staff in that case believed that the  
22 treatment of the EDIT balances was reasonable and did  
23 not violate Ohio laws or regulations?

24 A. I wouldn't want to comment on the Staff's  
25 specific opinions on individual issues. Staff found

1 the Stipulation itself as a whole to be reasonable.

2 Q. That's fair. Duke Energy Ohio's current  
3 base rates reflect its capital investments made prior  
4 to March 31, 2012, the date certain in its last rate  
5 case, correct?

6 A. Yes, correct.

7 Q. And am I correct that that is because the  
8 date certain is the date on which the rates are based  
9 in a rate case?

10 A. On which certain balance sheet items are  
11 made, yes, correct. It's usually the test year, yes,  
12 correct.

13 Q. And so you would agree that Duke Energy  
14 Ohio has not recovered any costs for capital  
15 investments made between April 1, 2012, and December  
16 31, 2012 -- 17, sorry, other than through specific  
17 riders that may have allowed recovery; is that  
18 correct?

19 A. Those would not have been incorporated in  
20 customers' base rates. To that extent, that's  
21 correct.

22 Q. So assuming they are not recoverable  
23 through a specific rider, Duke Energy Ohio would not  
24 have recovered any costs for those investments,  
25 correct?



1           A.    From customers, that's --

2           Q.    From customers.

3           A.    As of today, that's correct.

4           Q.    Okay. Thank you. So customers are not  
5 currently paying for any of those investments.

6           A.    Currently, no, but they will be whenever  
7 Duke files its next base rate case.

8           Q.    And that was going to be my next  
9 question. Brilliant. Does Duke currently have a gas  
10 base rate case open?

11          A.    I don't believe so.

12          Q.    And in your experience, how long does it  
13 usually take to complete a base rate case from the  
14 date of the initial filing until the Commission has  
15 issued a final order?

16          A.    It's hard to tell. It really varies  
17 given whatever issues are at stake in the case,  
18 whether it's -- it's really hard to tell.

19          Q.    But it's not -- not just a matter of a  
20 couple of months, right?

21          A.    Correct.

22          Q.    And in your experience how often is a  
23 utility's base rate case application approved  
24 entirely as filed without any disallowances?

25          A.    I'm not sure how often.

1           Q.    Have you ever seen that happen to the  
2   best of your recollection?

3           A.    I am not aware of any specific inc --  
4   occurrences of a case being approved in its entirety  
5   without adjustments.

6           Q.    So based on the conversation we've just  
7   had, it could be several years before customers pay  
8   even a penny for costs associated with gas-related  
9   investments, capital investments, made between April  
10  1, 2012, and December 31, 2017, correct?

11          A.    It could be, but I believe Duke has  
12  control of over when it files its next base rate  
13  case. I am not aware of any specific restrictions of  
14  when they can or cannot come in, so Duke is in  
15  control of when they file.

16          Q.    And it's impossible to predict with any  
17  certainty what costs will and will not be allowed for  
18  recovery from customers, correct?

19          A.    Can't predict it perfectly, no. That's  
20  correct.

21          Q.    But nevertheless you are recommending  
22  that customers begin to collect refunds of tax  
23  balances accumulated on capital investments now even  
24  before they have paid for any costs associated with  
25  those investments and before the amount of those

1 costs is fully known --

2 MS. BAIR: Objection.

3 Q. -- correct?

4 MS. BAIR: I think there is several  
5 questions in there. Is there one question  
6 specifically?

7 MS. KINGERY: I thought that was one  
8 question, but I will try to break it down.

9 Q. (By Ms. Kingery) So are you recommending,  
10 Mr. Borer, that customers begin to collect refunds of  
11 tax balances before they've paid for any costs  
12 associated with those investments?

13 A. Yes.

14 Q. And you are recommending that even though  
15 the total amount of those costs that might be  
16 approved for recovery is known? It's currently  
17 unknown? Let me rephrase that for you because I  
18 confused myself.

19 You are making that recommendation even  
20 though it is currently unknown how much of those  
21 costs will be approved for recovery.

22 A. That's correct. That's not the first  
23 time Staff has recommended it in a TCJA-related case.

24 Q. Where else have they recommended that?

25 A. Every single case except for Columbia or

1 a company that had a rate case with a date certain on  
2 or after December 31, 2017.

3 Q. Okay. So if you're Columbia or if you  
4 have a rate case with a date certain after the Tax  
5 Act became effective, then you are one category and  
6 otherwise this other category; is that correct?

7 A. I don't know if I would put it -- phrase  
8 it that way but effectively, yes.

9 Q. Could you turn to page 6 of your  
10 testimony.

11 A. Yes. I'm there.

12 Q. Starting on line 15, you state that using  
13 the December 31, 2017, date would be appropriate  
14 because, now I quote, "the underlying capital  
15 investments will be incorporated into customer rates  
16 at the time the Company files for its next base rate  
17 case. Therefore, customers will ultimately pay for  
18 the underlying investments." Do you see that?

19 A. It's an accurate reading of my testimony.

20 Q. Thank you. And would you agree that the  
21 way that happens is that the calculation of the  
22 Company's rate base will be higher; and, therefore,  
23 the amount that the Company is allowed to earn will  
24 be correspondingly higher?

25 A. I would say that these capital

1 investments are put into rate base, and looking  
2 exclusively at the investments, I would limit it to  
3 that. There are other incremental expenses possibly  
4 associated with those but those investments become  
5 part of rate base.

6 Q. And as rate base increases, in theory  
7 just looking at that by itself, customer rates go up,  
8 correct?

9 A. Not necessarily. Rate base goes up, rate  
10 of return goes down. Customers increase, it's  
11 possible rates go down. There are too many variables  
12 to say with certainty.

13 Q. Okay. Holding all those variables the  
14 same and looking just at this specific item, the way  
15 that the customer ends up paying for an investment is  
16 that his rate goes up to pay for the increase in the  
17 rate base, in essence?

18 A. All else equal, yes, rates would go up.

19 Q. Thank you. So, in essence, you are  
20 saying, and correct me if this is wrong, that if  
21 customers will ultimately pay the Company a return on  
22 a given investment, then any EDITs associated with  
23 that investment should be refunded to the customers,  
24 correct?

25 A. Those investments are incorporated into

1 customers rates, then customers should receive a  
2 refund of the excess for taxes.

3 Q. And, conversely, if customers will not  
4 ever pay the Company a return on a given investment,  
5 then logically no refund of EDITs is appropriate,  
6 correct?

7 A. Correct.

8 Q. Are you familiar with Duke Energy Ohio  
9 Rider MGP?

10 A. Very generally.

11 Q. Are you aware that on that -- with regard  
12 to that rider the Commission prohibited the Company  
13 from earning any return on Rider MGP in the form of  
14 carrying charges?

15 MS. BAIR: Objection, your Honor,  
16 relevance to this proceeding. Carrying charges in  
17 the MGP case is not related to the tax cuts in this  
18 case. Irrelevant.

19 EXAMINER AUGOSTINI: Overruled.

20 MS. KINGERY: Thank you, your Honor.

21 A. I am really not aware of much of the  
22 specifics with the MGP-related cases. I know truly  
23 very little about them.

24 Q. Would it refresh your recollection if I  
25 showed you that portion of the Commission's order

1 addressing the carrying charges on Rider MGP?

2 MS. BAIR: Your Honor, I object. He has  
3 stated he doesn't know any -- I mean, little about  
4 it. He is the inappropriate witness to ask about  
5 this. The Company should have produced their own  
6 witness.

7 MS. KINGERY: And, your Honor, I merely  
8 asked if it would refresh his recollection. If he's  
9 never seen it and knows that little about the case  
10 that he hasn't seen the Commission's order, then his  
11 answer would be no.

12 MS. BAIR: And in my opinion that's what  
13 he stated, he is barely familiar with it. Now  
14 producing something is -- is irrelevant to this  
15 witness in the proceeding.

16 MS. KINGERY: He has not -- he has not  
17 been given an opportunity to answer my question.

18 EXAMINER AUGOSTINI: You may answer.

19 A. So the Commission order, there would be  
20 no recollection that could even be refreshed.

21 Q. That's fine. Could we turn to page 7 of  
22 your testimony. Starting on line 6, you are  
23 discussing your Attachment JJB-1, correct?

24 A. Correct.

25 Q. And you describe the calculation on

1 that -- that attachment as an example, correct?

2 A. Correct.

3 Q. And looking now, I am going to be looking  
4 at line 10, so your calculation of a "permanent tax  
5 savings of \$938,222" is not based on any real  
6 investment that actually happened by the Company; is  
7 that correct?

8 A. No. It's not based on any specific  
9 dollar amount invested by the Company. It is just  
10 truly an example.

11 Q. Okay. So with that I would like to go to  
12 the attachment itself.

13 A. Okay. I'm there.

14 Q. Okay. Forgive me if I have trouble here  
15 because our copy of this seems to be minute but I am  
16 going to try. So on that attachment it appears that  
17 you were making the assumption that the Company made  
18 an investment of \$30 million on the day before the  
19 date certain in the 2012 rate case; is that correct?

20 A. I don't believe -- it just mentions the  
21 year that the investment was made, not the date so.

22 Q. How about any time -- sometime before the  
23 date certain.

24 A. So, no, this would not occur before the  
25 date certain given that the -- if it was before the



1 date certain, it would be Company rates, therefore,  
2 the Company would not incur the tax savings.

3 Q. So if -- if the investment that you are  
4 hypothesizing in this attachment was made after the  
5 date certain and is not in base rates, then would you  
6 agree that the customers are receiving the benefit of  
7 that investment without paying any return of or on  
8 the investment or without paying any taxes, property  
9 or other income taxes, during this time period?

10 A. No. I would disagree. So this example  
11 actually shows -- is supposed to show that the  
12 Company files a rate case in 2022, this investment  
13 would be put into rate base, so the Company would be  
14 getting a return of and on the investment, so the  
15 customers will ultimately pay for it. And it kind of  
16 highlights the difference between whether or not --  
17 what happens if the Company refunds the excess  
18 deferred taxes versus if they do not.

19 Q. Isn't it true that if the Company had a  
20 rate base in 2022 under your example, the investment,  
21 the \$30 million investment, wouldn't go into base  
22 rates -- wouldn't go into rate base, I'm sorry, at  
23 \$30 million since it's been depreciated for a number  
24 of years?

25 A. This example makes no claims what the

1 ultimate revenue requirement effect would be putting  
2 that into base rates so that doesn't take that into  
3 consideration.

4 Q. But the customers won't be paying for it  
5 at \$30 million.

6 A. And it doesn't try to claim that they  
7 will be.

8 Q. So let's look back at the testimony  
9 itself on page 8.

10 A. Okay. I'm there.

11 Q. You acknowledged that the recovery of  
12 some of the investments made after the date certain  
13 in the last rate case and giving rise to  
14 non-normalized EDITs might be disallowed by the  
15 Commission, correct?

16 A. This is one of the things that I am  
17 actually familiar with in the MGP is that the Company  
18 decided, I believe, \$12 million in Staff's  
19 recommended disallowances, so it's possible that the  
20 Commission orders a disallowance but can't say with  
21 certainty.

22 Q. And in your testimony you suggest that if  
23 that would happen, the Company nevertheless having  
24 been refunding the EDITs along the way should simply  
25 work with Staff to reconcile the disallowances; is

1     that fair?

2             A.     So ultimately it's that the Company would  
3     not need to be -- be forced to refund that money to  
4     customers related to any of the disallowances, and  
5     it's not like of the refund \$1 is an MGP dollar and  
6     another dollar is from other non-normalized deferred  
7     taxes. It's that this is recommending that -- that  
8     the refund associated with the disallowances will be  
9     effectively resolved such that the Company isn't  
10    forced to return those dollars.

11            Q.     And who would have to initiate the  
12    process of reconciliation?

13            A.     I honestly won't know. The Commission  
14    Staff, I am not familiar with the kind of  
15    administrative side of things like that.

16            Q.     Has Staff considered how it would  
17    recommend the proper amount for reconciliation be  
18    calculated? So let's say there's a \$1 million  
19    disallowance made on December 31, 2020. Do you have  
20    any thoughts about how you would go about calculating  
21    the reconciliation?

22            A.     Not in detail on the reconciliation  
23    process but it's -- Staff is generally familiar with  
24    how to calculate the amounts and work with the  
25    Company to come up with a more precise number on what

1 the exact balance of excess deferred taxes would be.

2 Q. On page 9 of your testimony, you suggest  
3 that Rider AMRP and Rider AU EDIT balances should  
4 flow through the respective riders while the rest of  
5 the EDITs would be refunded through Rider GTCJA,  
6 correct?

7 A. Correct.

8 Q. And Staff is recommending that  
9 segregation of the EDIT refunds even if the  
10 Commission uses the December 31, 2017, date for their  
11 calculation, correct?

12 A. Correct.

13 Q. And does segregating the EDIT refund into  
14 both the Rider GTCJA and the AU and AMRP Riders, does  
15 that segregation change the amount of the refund to  
16 customers in any regard?

17 A. No.

18 Q. But it would make the amount of the  
19 refunds less transparent to customers; is that  
20 correct?

21 A. No, because the tax savings associated  
22 with those specific riders would be incorporated into  
23 the riders themselves.

24 Q. But as we discussed earlier, I believe  
25 you stated that looking at the rider itself you

1 wouldn't be able -- a customer would not be able to  
2 determine how much of that charge reflected a  
3 reduction based on the TCJA, correct, because there's  
4 no separate line item for the rider reductions?

5 THE WITNESS: Could I have the question  
6 reread.

7 (Record read.)

8 Q. Perhaps I can say it more simply. Some  
9 of the TCJA EDIT-related refunds would show up in  
10 Rider GTCJA, correct?

11 A. Correct.

12 Q. But other portions of those EDIT refunds  
13 would not be visible to the customers because they  
14 would be subsumed in the rider rates for Rider AU and  
15 AMRP, correct?

16 A. Correct, and that wouldn't be unique to  
17 Duke. Other companies have had the tax savings  
18 reflected in riders where possible.

19 Q. It's still a reduction in transparency  
20 though, you would agree?

21 A. So I think the transparency comparison is  
22 whether you have all the FIT savings from base rates  
23 as a tariff reduction. I think you compare the  
24 transparency of that versus having the base rate FIT  
25 savings as a separate rider.

1           Q.    So you think transparency is important  
2   for the FIT reduction but not for the EDITs; is that  
3   what you are saying?

4           A.    I think that they are two separate  
5   issues.

6           Q.    But transparency -- is transparency  
7   important with regard to the refund of the EDITs?

8           A.    So I think the two separate issues are  
9   the rider-related FIT savings and the base  
10   rate-related FIT savings, and the importance to Staff  
11   is the base rate-related FIT savings are -- show  
12   transparency as a separate rider.

13          Q.    If you've not just come in for a pending  
14   rate case, correct?

15          A.    Correct.

16                MS. KINGERY:  No further questions, your  
17   Honor.

18                EXAMINER AUGOSTINI:  Does OCC have cross?

19                MR. MICHAEL:  It does not.

20                EXAMINER AUGOSTINI:  Redirect?

21                MS. BAIR:  Yes.  Could we take a break?

22                EXAMINER AUGOSTINI:  Yes.  Let's go off  
23   the record.

24                (Discussion off the record.)

25                EXAMINER AUGOSTINI:  Let's go back on

1 record.

2 MS. BAIR: Thank you, your Honor. I have  
3 no redirect, and I would like to move Staff Exhibit  
4 1, the recommendations made by Staff, and also Staff  
5 Exhibit 2, Mr. Borer's testimony, into the record.

6 EXAMINER AUGOSTINI: Are there any  
7 objections?

8 MS. KINGERY: No, your Honor.

9 EXAMINER AUGOSTINI: Okay. Staff Exhibit  
10 1 and Staff Exhibit 2 will be admitted into the  
11 record. Thank you.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 EXAMINER AUGOSTINI: Mr. Borer, you may  
14 be excused. Thank you.

15 Let's go off the record.

16 (Discussion off the record.)

17 EXAMINER WALSTRA: Go ahead.

18 MS. KINGERY: Your Honor, at this time  
19 Duke Energy Ohio would move for the opportunity to  
20 file rebuttal testimony with regard to certain new  
21 matters that were brought up either in prefiled  
22 testimony or on the record today. We would propose  
23 filing that rebuttal testimony in the docket by the  
24 end of next week and then schedule a hearing for  
25 cross-examination on that testimony sometime

1       thereafter.

2                       MR. MICHAEL:   Your Honor, OCC, I guess,  
3       first would request a lot more specificity in the  
4       nature of the rebuttal testimony the Company would  
5       propose to file.   I generally don't like to do this  
6       but there was a discussion had off the record and the  
7       nature of the rebuttal testimony referenced by Duke's  
8       counsel was different than what Duke's counsel just  
9       described on the record.   So I guess I would request  
10      first that perhaps the Bench require Duke to be more  
11      certain regarding what sort of rebuttal testimony  
12      they plan on filing, and I would like to reserve the  
13      right to object to that request by Duke pending what  
14      Duke's response is.

15                    EXAMINER WALSTRA:   If you could provide  
16      some specifics.

17                    MS. KINGERY:   Yes, your Honor,  
18      absolutely.   Attached to Mr. Borer's testimony was  
19      a -- an example of what he believed might happen  
20      under certain circumstances.   It was not well enough  
21      described in the testimony for us to be able to  
22      determine how to cross-examine him prior to today,  
23      and we would like the opportunity to print our own  
24      examples of similar circumstances.

25                    MS. BAIR:   Your Honor, I agree with OCC's



1 objection to limiting it and I disagree because  
 2 Mr. Borer's testimony has an attachment that has been  
 3 there since he filed that testimony and in his  
 4 testimony himself he referred to it as an example.  
 5 That has not changed the characteristics of his  
 6 attachment as an example. So I don't think that that  
 7 needs rebuttal as it was introduced in his testimony  
 8 and prefiled.

9 MR. MICHAEL: Yeah -- if I might just.

10 MS. KINGERY: Go ahead.

11 MR. MICHAEL: Thank you. And to the  
 12 extent that Duke believes it was somehow unclear and  
 13 they couldn't prepare cross for it, that's an issue  
 14 for exploring on cross-examination. You know, there  
 15 wasn't sufficient -- whatever they think. There  
 16 wasn't sufficient detail. There wasn't sufficient  
 17 citation to authority, whatever. I mean, the purpose  
 18 of rebuttal testimony isn't to get a second bite of  
 19 the apple to shore up your case or shore up your  
 20 cross-examination, so I would object to rebuttal  
 21 testimony.

22 And I would say, you know, to the extent  
 23 that Duke plans to include in any sort of rebuttal  
 24 testimony costs associated with their billing system  
 25 which was previously characterized as perhaps a

1 subject matter of rebuttal, I would object to that.  
 2 Again, the purpose of rebuttal isn't to say, oh, gee  
 3 whiz, we had a hole in our case, and we need to fix  
 4 it. So if they wanted to provide that, they should  
 5 have done that in their direct case.

6 OCC and Staff effectively cross-examined  
 7 the Company on that point, and they conceded they  
 8 didn't have any idea how many costs -- how much the  
 9 cost would be and that's just -- you know, that's not  
 10 the purpose of rebuttal and it takes away from a  
 11 party's ability to effectively cross-examine if every  
 12 time we poke holes they get to file new testimony.

13 MS. KINGERY: And, your Honor, if I  
 14 might, Mr. Michael is talking about something that I  
 15 just said we weren't filing. We only want to file  
 16 rebuttal testimony with regard to the exhibit that  
 17 was attached to Mr. Borer's testimony. We would not  
 18 be filing anything on billing system change costs.

19 And with regard to that exhibit, we  
 20 should have the ability to rebut what he proposed in  
 21 his testimony and to show that it is not correct or  
 22 not representative of the outcomes.

23 MS. BAIR: And, your Honor, I would just  
 24 add they had the opportunity to cross Mr. Borer and  
 25 present him with cross-examination regarding his

1 exhibit today.

2 MS. KINGERY: And, your Honors, I would  
3 note that the assumptions that Mr. Borer was relying  
4 on in that exhibit were not set forth fully, not such  
5 that we could cross-examine.

6 MS. BAIR: I don't believe counsel even  
7 asked what those assumptions were in today's  
8 cross-examination.

9 MS. KINGERY: Counsel did.

10 MS. BAIR: I don't remember it.

11 EXAMINER WALSTRA: We are going to deny  
12 rebuttal. I think counsel had an opportunity to  
13 cross-examine the witness, can go into it more on  
14 briefs. But like he said, he said it was an example,  
15 and I don't think rebuttal would sufficiently provide  
16 more evidence further for the Commission that would  
17 be necessary. I think it's better just to get this  
18 case moving along. So I will deny the request for  
19 rebuttal.

20 MS. KINGERY: Thank you, your Honor.

21 EXAMINER WALSTRA: So let's go off the  
22 record and discuss a briefing schedule.

23 (Discussion off the record.)

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

1 Initial briefs will be due 9-11 with  
2 reply due 9-25.

3 MR. MICHAEL: Correct.

4 MS. KINGERY: That's fine.

5 EXAMINER WALSTRA: Anything further to  
6 come before the Bench?

7 MS. KINGERY: No, your Honor.

8 EXAMINER WALSTRA: Hearing nothing, we  
9 are adjourned.

10 (Thereupon, at 12:43 p.m., the hearing  
11 was adjourned.)

12 - - -

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, August 7,  
2019, and carefully compared with my original  
stenographic notes.

*Karen Sue Gibson*

Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-6790)

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Summary: Transcript In the Matter of the Application of Duke Energy Ohio, Inc., for Implementation of the Tax Cuts and Jobs Act of 2017 and In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of Tariff Amendments, hearing held August 7, 2019. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.