

**OCC EXHIBIT NO. \_\_\_\_\_**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of	)	
Duke Energy Ohio, Inc., for an	)	Case No. 21-887-EL-AIR
Increase in Electric Distribution Rates.	)	
In the Matter of the Application of	)	
Duke Energy Ohio, Inc., for Tariff	)	Case No. 21-888-EL-ATA
Approval.	)	
In the Matter of the Application of	)	
Duke Energy Ohio, Inc., for Approval	)	Case No. 21-889-EL-AAM
To Change Accounting Methods.	)	

**SUPPLEMENTAL TESTIMONY IN OPPOSITION TO THE SETTLEMENT  
OF  
JOHN DEFEVER, C.P.A.**

**On Behalf of**  
**Office of the Ohio Consumers' Counsel**  
*65 East State Street, Suite 700*  
*Columbus, Ohio 43215*

**September 29, 2022**

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On Behalf of the Office of the Ohio Consumers' Counsel  
PUCO Case No. 21-887-EL-AIR, et al.*

1    **I.       INTRODUCTION**

2

3    ***Q1.    WHAT IS YOUR NAME, OCCUPATION AND BUSINESS ADDRESS?***

4    ***A1.***    My name is John Defever. I am a Certified Public Accountant, licensed in the  
5           State of Michigan. I am a senior regulatory consultant in the firm of Larkin &  
6           Associates, PLLC, with offices at 15728 Farmington Road, Livonia, Michigan.

7

8    ***Q2.    ON WHOSE BEHALF ARE YOU APPEARING?***

9    ***A2.***    Larkin & Associates, PLLC was retained by the Office of the Ohio Consumers'  
10          Counsel ("OCC") to conduct a review of Duke Energy Ohio's ("Duke" or  
11          "Utility") application for an increase in electric distribution rates.<sup>1</sup> Accordingly, I  
12          am appearing on behalf of the OCC.

13

14   ***Q3.    ARE YOU THE SAME JOHN DEFEVER THAT PROVIDED DIRECT***  
15   ***TESTIMONY IN THIS PROCEEDING?***

16

17   ***A3.***    Yes.

18

19   ***Q4.    WHAT IS THE PURPOSE OF YOUR TESTIMONY?***

20   ***A4.***    On September 16, 2022, Duke filed a Stipulation and Recommendation  
21          ("Settlement") with The Public Utilities Commission of Ohio ("PUCO"), which  
22          was supported by certain parties to this case. The purpose of my testimony is to

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<sup>1</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Case No. 21-887-EL-AIR, et al., (October 1, 2021). (Application).

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1 explain my objections, on behalf of the OCC, to the Settlement related to the  
2 revenue requirement.

3

4 **Q5. DO YOU ADOPT YOUR PREVIOUSLY FILED DIRECT TESTIMONY AS**  
5 **PART OF YOUR SETTLEMENT OPPOSING TESTIMONY?**

6

7 **A5.** Yes. I fully incorporate the entirety of my previously filed direct testimony into  
8 my Settlement opposing testimony as if it were attached hereto.

9

10 **Q6. WHY DO YOU INCORPORATE YOUR DIRECT TESTIMONY INTO YOUR**  
11 **SETTLEMENT OPPOSING TESTIMONY?**

12

13 **A6.** I need to do this for two reasons. First, my direct testimony provides extensive  
14 background and explanations for my recommendations, and it would be  
15 inefficient to repeat this discussion again. Second, my direct testimony is part of  
16 OCC's original litigation position. The PUCO (and a reviewing court) needs to  
17 know OCC's original litigation position in order to decide whether serious  
18 bargaining occurred, whether the Settlement is in consumers' interest and the  
19 public interest and whether the Settlement violates any important principle or  
20 practice.

21

22 **Q7. PLEASE EXPLAIN THE CRITERIA USED BY PUCO TO EVALUATE**  
23 **STIPULATIONS AND SETTLEMENTS?**

24

25 **A7.** In my understanding, stipulations and settlements are evaluated by PUCO using  
26 the following three-pronged test:

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- 1                   1.       Is the proposed stipulation a product of serious bargaining among
- 2                               capable, knowledgeable parties?
- 3                   2.       Does the proposed stipulation, as a package, benefit customers and
- 4                               the public interest?
- 5                   3.       Does the proposed stipulation violate any important regulatory
- 6                               principles or practice?
- 7

8                   In addition to these criteria, the PUCO also routinely considers whether the

9                   parties to the settlement represent diverse interest.

10

11   ***Q8.    DOES THE SETTLEMENT MEET ALL THREE OF THOSE CRITERIA?***

12   ***A8.***   No. I am aware of three issues where the Settlement fails to meet the established

13                   criteria:

- 14                   1.       Gain on Disposition of Property.
- 15                   2.       Board of Directors Fees.
- 16                   3.       Incentive Compensation Expense and Capitalized Incentive
- 17                               Compensation in Rate Base.
- 18

19                   My testimony will discuss how each of these issues violates one or more of the

20                   three prongs discussed above.

**II. THE PUCO SHOULD REJECT THE SETTLEMENT WHICH HARMS  
CONSUMERS AND IS INCONSISTENT WITH IMPORTANT  
REGULATORY PRINCIPLES AND PRACTICES BY ALLOWING THE  
COMPANY TO RETAIN THE GAIN ON SALE OF PROPERTY**

***Q9. DID THE SETTLEMENT ADDRESS THE GAINS ON SALE OF PROPERTY  
DISCUSSED IN YOUR DIRECT TESTIMONY?***

***A9.*** No.

***Q10. PLEASE DESCRIBE THE GAINS ON SALE OF UTILITY PROPERTY  
THAT HAVE OCCURRED SINCE DUKE'S PRIOR RATE CASE.***

***A10.*** During the years 2016 through 2020, Duke has received \$1,440,850 in gains on  
disposition of property.<sup>2</sup> These gains have not been reflected in the Settlement. As  
such, if the Settlement is accepted any gains on sale of property will be unjustly  
and unreasonably retained by Duke.

***Q11. HOW ARE CONSUMERS HARMED AND HOW IS THE SETTLEMENT  
INCONSISTENT WITH IMPORTANT REGULATORY PRINCIPLES AND  
PRACTICES BY THE RETENTION OF SUCH GAINS BY DUKE?***

***A11.*** Because consumers have paid a return of and on the utility property, any gains on  
the sale of the property should be returned to them. Because Duke will retain the  
gains, the settlement is not in the best interest of consumers and is not consistent  
with important regulatory principles and practices, which provide that such gains

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<sup>2</sup> Defever Direct Testimony, p. 11.

1 should be returned to the consumers. This issue was more fully discussed in my  
2 Direct Testimony at pages 10 to 12.

3  
4 **III. THE PUCO SHOULD REJECT THE SETTLEMENT BECAUSE IT**  
5 **HARMS CONSUMERS AND VIOLATES REGULATORY PRINCIPLES**  
6 **BY MAKING CONSUMERS FULLY RESPONSIBLE FOR BOARD OF**  
7 **DIRECTORS FEES**

8  
9 ***Q12. DID THE SETTLEMENT ADDRESS BOARD OF DIRECTORS FEES?***

10 ***A12.*** No.

11  
12 ***Q13. PLEASE EXPLAIN THE ISSUE WITH THE BOARD OF DIRECTORS***  
13 ***FEES.***

14  
15 ***A13.*** As explained in my direct testimony, the board of directors serves the interests of  
16 the shareholders.<sup>3</sup> As a result, Duke and its shareholders receive most of the  
17 benefit from this expense.

18  
19 ***Q14. HOW ARE CUSTOMERS HARMED BY THIS EXPENSE?***

20 ***A14.*** As Duke and its shareholders are the primary beneficiaries of this expense,  
21 consumers should not be responsible for the entire cost. In my testimony, I  
22 recommend a 75/25 sharing of costs for shareholders and consumers, respectively,

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<sup>3</sup> Defever Direct, p. 12.

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1           resulting in a reduction of \$130,949.<sup>4</sup> Consumers are not benefited by this  
2           settlement that holds them responsible for costs that should be borne by the  
3           Company. Moreover, the Settlement is not consistent with important regulatory  
4           principles and practices, which provide that this expense should be accounted for  
5           as outlined above.

6

7   ***Q15. HAS THIS REGULATORY PRINCIPLE BEEN RECOGNIZED IN OTHER***  
8   ***JURISDICTIONS?***

9

10 ***A15.*** Yes, for example, I am aware that PURA in Connecticut has determined that  
11 recovery of board of directors' costs should not be fully borne by consumers.<sup>5</sup>

12

13 **IV. THE SETTLEMENT DOES NOT BENEFIT CONSUMERS AND IS**  
14 **INCONSISTENT WITH IMPORTANT REGULATORY PRINCIPLES**  
15 **AND PRACTICES BECAUSE IT HOLDS CUSTOMERS ACCOUNTABLE**  
16 **FOR FUNDING AN INEFFECTIVE INCENTIVE COMPENSATION**  
17 **PLAN**

18

19 ***Q16. DID THE SETTLEMENT ADDRESS INCENTIVE COMPENSATION***  
20 ***EXPENSE?***

21

22 ***A16.*** Yes. The Settlement removes incentive compensation that is stock-based or  
23 related to financial goals as well as 75 percent of executive short-term incentives.<sup>6</sup>

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<sup>4</sup> Defever Direct, p. 13.

<sup>5</sup> Decision, Docket No. 13-01-19, p. 73.

<sup>6</sup> Lawler Second Supporting Testimony, p. 12.



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1 **Q17. WHAT IS THE ISSUE WITH THE STAFF REPORT ADJUSTMENTS TO**  
2 **INCENTIVE COMPENSATION EXPENSE?**

3  
4 **A17.** The Staff adjustments removed some but not all of the short-term incentive  
5 compensation. As explained in my direct testimony, Duke's short-term incentive  
6 compensation plan does not provide sufficient motivation to result in greater  
7 effort from employees.<sup>7</sup> Because the plan fails to provide sufficient incentive, it is  
8 more of a bonus plan and consumers do not benefit. Because consumers are not  
9 receiving a benefit, they should not be responsible for the cost.

10  
11 **Q18. DID THE SETTLEMENT ADDRESS INCENTIVE COMPENSATION IN**  
12 **RATE BASE?**

13  
14 **A18.** Yes. The Settlement agrees to "include a credit in rate base in this proceeding and  
15 in future Rider DCI and Rider PF filings, as applicable, for the estimated revenue  
16 requirement impact of capitalizing employee bonus expense related to the  
17 achievement of financial goals and stock-based compensation."<sup>8</sup>

18  
19 **Q19. IS THE REMOVAL OF INCENTIVE COMPENSATION BASED ON**  
20 **FINANCIAL GOALS ENOUGH TO PREVENT HARM TO CONSUMERS?**

21  
22 **A19.** No. As discussed above, consumers should not be responsible for any of the costs  
23 related to the short-term incentive plan as they are not receiving benefits from it.  
24 As such, this is not in the best interest of consumers and is not consistent with  
25 important regulatory principles and practices.

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<sup>7</sup> Defever Direct, p. 15-17.

<sup>8</sup> Lawler Second Supporting Testimony, p. 15.

1   **V.     CONCLUSION**

2

3   ***Q20.   DOES THE SETTLEMENT REFLECT A REVENUE INCREASE LOWER***  
4   ***THAN THE INCREASE REQUESTED IN DUKE'S APPLICATION?***

5

6   ***A20.***   The Settlement does propose a smaller increase than Duke originally requested  
7           but that alone does not mean that the Settlement benefits consumers and the  
8           public interest. For example, if a Company's request was \$20 million too high and  
9           the settlement only reduced the Company's request by \$5 million, customers  
10          would still be responsible for \$15 million more than would be reasonable.

11

12   ***Q21.   WHAT IS YOUR CONCLUSION REGARDING THE SETTLEMENT?***

13   ***A21.***   Based on the issues discussed in my direct testimony and this supplemental  
14          testimony, the Settlement should be rejected as it does not provide sufficient  
15          benefits to customers and is inconsistent with important regulatory principles and  
16          practices.

17

18   ***Q22.   DOES THIS CONCLUDE YOUR SETTLEMENT OPPOSING***  
19   ***TESTIMONY?***

20

21   ***A22.***   Yes. However, I reserve the right to incorporate new information that may  
22          subsequently become available. I also reserve the right to supplement my  
23          testimony in the event Duke, the PUCO Staff or other parties submit new or  
24          corrected information.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Supplemental Testimony in Opposition to the Settlement of John Defever, C.P.A. on behalf of Office of the Ohio Consumers' Counsel has been served upon those persons listed below via electronic service this 29<sup>th</sup> day of September 2022.

*/s/ Angela D. O'Brien*

Angela D. O'Brien

Assistant Consumers' Counsel

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Summary: Testimony Supplemental Testimony in Opposition to the Settlement of John Defever, C.P.A. on Behalf of Office of the Ohio Consumers' Counsel electronically filed by Ms. Alana M. Noward on behalf of O'Brien, Angela D.