

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 : Case No. 21-888-EL-ATA
Energy Ohio, Inc., for :
Tariff Approval. :
:

In the Matter of the :
Application of Duke Energy: :
Ohio, Inc., for Approval : Case No. 21-889-EL-AAM
to Change Accounting :
Methods. :
:

- - -

PROCEEDINGS

before Mr. Nicholas Walstra and Mr. Matthew Sandor,
Attorney Examiners, at the Public Utilities
Commission of Ohio, 180 East Broad Street, Room 11-A,
Columbus, Ohio, called at 10:00 a.m. on Tuesday
October 4, 2022.

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VOLUME I

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9 On behalf of the Staff of the PUCO

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Tuesday Morning Session,
October 4, 2022.

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EXAMINER SANDOR: Let's go on the record.
The Commission has set for hearing at this time and
place Case No. 21-887-EL-AIR, et al. which is
captioned In the Matter of the Application of Duke
Energy Ohio, Inc. For an Increase in its Electric
Distribution Rates.

My name is Matt Sandor and with me is
Nick Walstra. We are the Attorney Examiners assigned
by the Commission to hear this case.

Now let's go ahead and take appearances
of the parties, and we will start on this right side
from my perspective and go down the table.

MR. BOBB: Thank you. Nicholas Bobb of
Kegler, Brown, Hill & Ritter on behalf of Ohio
Partners for Affordable Energy. I will be joined by
my colleague Robert Dove at some point in the
proceedings as well.

MS. VERHALEN: Kodi Verhalen with the law
firm Taft, Stettinius & Hollister, LLP, on behalf of
Duke Energy Ohio.

MS. BRAMA: Good morning. Elizabeth
Brama also with Taft, Stettinius & Hollister on

1 behalf of Duke Energy Ohio.

2 MR. D'ASCENZO: Good morning. Rocco D.
3 D'Ascenzo on behalf of Duke Energy Ohio.

4 MS. VAYSMAN: Good morning. Larisa
5 Vaysman on behalf of Duke Energy Ohio.

6 MS. AKHBARI: Good morning. Elyse
7 Akhbari on behalf of Duke Energy Ohio.

8 MR. EUBANKS: Good morning. Robert
9 Eubanks, Assistant Attorney General on behalf of
10 Staff. I will be also be joined by Werner Margard
11 and Shaun Lyons.

12 MS. O'BRIEN: Good morning, your Honors.
13 On behalf of Ohio Residential Utility Consumers, Ohio
14 Consumers' Counsel Bruce Weston, Angela D. O'Brien,
15 John Finnigan, Ambrosia Wilson and Conner Semple,
16 Assistant Consumers' Counsel, 65 East State Street,
17 Columbus, Ohio 43215. Thank you.

18 MR. DARR: On behalf of the Retail Energy
19 Supply Association, Frank Darr.

20 MS. CATHCART: On behalf Interstate Gas
21 Supply, Stacie Cathcart and Evan Betterton.

22 MS. WHALING: Good morning. On behalf of
23 the City of Cincinnati, Gretchen Whaling. I will be
24 joined by my colleagues Jim Lang and Scott Franson,
25 and we are with the law firm Calfee, Halter &

1 Griswold.

2 MR. WYGONESKI: Good morning. On behalf
3 of the Ohio Manufacturers' Association Energy Group,
4 Kimberly W. Bojko and Jonathan Wygonski of the law
5 firm Carpenter, Lipps & Leland, 280 North High
6 Street, Suite 1300, Columbus, Ohio.

7 MS. WHITFIELD: Good morning. On behalf
8 of The Kroger Company, Angela Paul Whitfield with the
9 law firm Carpenter, Lipps & Leland.

10 MS. GRUNDMANN: Good morning. Carrie
11 Grundmann with the law firm of Spilman, Thomas &
12 Battle, here today on behalf of Walmart, Inc.

13 MS. COHN: Good morning, your Honors. On
14 behalf of the Ohio Energy Group, Jody Kyler Cohn,
15 Kurt Boehm, and Michael Kurtz, with the law firm of
16 Boehm, Kurt & Lowery.

17 MR. BORCHERS: Good morning. On behalf
18 of the ChargePoint, Dylan Borchers with the law firm
19 of Bricker & Eckler.

20 MS. PIRIK: Good morning on behalf of
21 People Working Cooperatively, the law firm of
22 Dickinson Wright, Christine Pirik, Terrence
23 McDonnell, and Matthew McDonald.

24 MS. SHEELY: Good morning. On behalf of
25 One Energy Enterprises, Sommer Sheely and Matthew

1 Warnock with Bricker & Eckler, also Katie Treadway
2 and James Dunn with One Energy Enterprises.

3 MR. DOUGHERTY: Good morning. On behalf
4 of Citizens Utility Board of Ohio, Trent Dougherty
5 law firm of Hubay Dougherty.

6 MR. SAILERS: Good morning, Bruce Sailers
7 from Duke Energy.

8 EXAMINER SANDOR: Anyone else? Anyone
9 from Nationwide Energy Partners, LLC?

10 Okay. Hearing none, all right. I
11 believe that's everybody. All right. We will go
12 ahead and address some of the pending motions -- some
13 of the pending motions today.

14 For all parties who filed motions to
15 intervene in this proceeding, we are granting these
16 motions.

17 For the September 1, 2021, motion for
18 permission to appear pro hoc vice for Elizabeth Brama
19 on behalf of Duke, we are granting this motion. For
20 the February 24, 2022, motion for permission to
21 appear pro hoc vice for Scott C. Franson on behalf of
22 City of Cincinnati, we are granting this motion.

23 There are two motions for protective
24 order filed by Duke that we are deferring ruling on.

25 And then also the June 9, 2022, motion

1 for Duke's consumers to participate virtually at
2 local public hearings filed by OCC, the Attorney
3 Examiners are denying this motion. We believe it's
4 unnecessary. We note that there were three public
5 hearings held within Duke's service territory which
6 we believe is sufficient.

7 Moreover, people who decided not to
8 attend were free to file comments throughout the
9 pendency of the case on the Commission's docket or
10 mail in these comments. Some members of the public
11 chose to take this path. Also these comments are
12 reviewed prior to a decision being issued.

13 Okay. Are there any questions from
14 counsel before we begin?

15 Okay. Hearing none, Duke, you may begin
16 with the first witness.

17 MR. D'ASCENZO: Thank you, your Honor.
18 For our first witness we would call Amy Spiller.
19 And, your Honor, we would like at this moment also to
20 mark some exhibits for the record.

21 EXAMINER WALSTRA: Go ahead.

22 MR. D'ASCENZO: Thank you. We would like
23 to mark as Joint Exhibit No. 1, the Stipulation &
24 Recommendation -- the Corrected Stipulation and
25 Recommendation that was filed on September 19, 2022,

1 as Joint Exhibit No. 2, the corrected attachment
2 No. 4 to the Stipulation and Recommendation that was
3 filed on September 26, 2022, and then as Duke Energy
4 Ohio Exhibit No. 1, the Application of the Company
5 filed in these proceedings on October 1, 2021.

6 EXAMINER WALSTRA: So marked.

7 (EXHIBITS MARKED FOR IDENTIFICATION.)

8 MR. D'ASCENZO: Thank you. And then as
9 Duke Energy Ohio Exhibit No. 2A we would like to mark
10 the direct testimony of Amy Spiller, the public
11 version, as Duke Energy Ohio Exhibit 2B, the
12 confidential version of Amy Spiller's direct
13 testimony, both of which were filed on October 15,
14 2021. And then as Duke Energy Ohio Exhibit No. 3,
15 the supplemental testimony of Amy Spiller that was
16 filed in these proceedings on September 22, 2022.

17 EXAMINER WALSTRA: So marked.

18 (EXHIBITS MARKED FOR IDENTIFICATION.)

19 MR. D'ASCENZO: Your Honor, at this time
20 I would like to move those exhibits into evidence,
21 subject to cross-examination.

22 EXAMINER WALSTRA: Thank you.

23 MR. D'ASCENZO: May we approach
24 Ms. Spiller, please?

25 EXAMINER WALSTRA: Yes.

1 (Witness sworn.)

2 EXAMINER WALSTRA: Thank you. Please be
3 seated.

4 MS. GRUNDMANN: Can I ask a clarifying
5 question? Is there a second supplemental testimony
6 of Ms. Spiller?

7 MR. D'ASCENZO: There is not.

8 MS. GRUNDMANN: Okay. Thank you.

9 MR. D'ASCENZO: She only filed direct and
10 then supplemental testimony in support of the
11 Stipulation. Thank you, your Honor.

12 - - -

13 AMY B. SPILLER

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

16 DIRECT EXAMINATION

17 By Mr. D'Ascenzo:

18 Q. Ms. Spiller, good morning.

19 A. Good morning.

20 Q. Would you please state your name and
21 business address and position with the Company for
22 the record, please?

23 A. Sure. Amy Spiller, state president for
24 Duke Energy Ohio and Kentucky. My business address
25 is 139 East Fourth Street, Cincinnati, Ohio 45202.

1 Q. Thank you, Ms. Spiller. And do you have
2 in front of you several documents that were just
3 marked as Duke Energy Ohio Exhibit No. 2 and Duke
4 Energy Ohio No. 3, and Joint Exhibits 1 and 2?

5 A. I do, Mr. D'Ascenzo.

6 Q. And could you please -- with respect to
7 Joint Exhibit No. 1, are you -- are you familiar with
8 that document?

9 A. This is the Corrected Stipulation and
10 Recommendation filed in these proceedings.

11 Q. And Joint Exhibit No. 2, are you familiar
12 with that?

13 A. I am, sir.

14 Q. And joint exhibit -- I'm sorry, Duke
15 Energy Ohio Exhibit No. 2, would you please identify
16 that?

17 A. Joint Exhibit No. -- I'm sorry, Duke
18 Energy Ohio Exhibit 2A is the public version of the
19 direct testimony I filed in these proceedings on
20 October 15, 2021.

21 Q. And would you please identify Duke Energy
22 Ohio Exhibit No. 3?

23 A. That is my supplemental testimony filed
24 in support of the settlement, the Stipulation and
25 Recommendation filed in these proceedings, my

1 supplemental testimony was filed on September 22,
2 2022.

3 Q. Thank you. And with respect to those two
4 testimonies, do you have any changes or corrections?

5 A. I do not.

6 Q. If you were asked those same questions
7 today, would your answers then be the same?

8 A. They would.

9 MR. D'ASCENZO: Thank you, Ms. Spiller.
10 Your Honor, the witness is available for
11 cross-examination.

12 EXAMINER WALSTRA: Thank you.
13 I will go straight to OCC.

14 MR. FINNIGAN: Your Honor, may I approach
15 the witness with some cross-exam exhibits?

16 EXAMINER WALSTRA: You may.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Finnigan:

20 Q. Good morning, Ms. Spiller, nice to see
21 you again.

22 A. Mr. Finnigan, nice to see you.

23 Q. Ms. Spiller, I have a few questions about
24 the parties that signed the Stipulation. The first I
25 would like to ask you about is People Working

1 Cooperatively. The Stipulation provides at page 16
2 that Duke Energy Ohio will continue the same level of
3 funding for PWC for weatherization that currently
4 exists. Do you accept, subject to check, that that
5 level of funding is 522,000 a year?

6 A. Subject to check, Mr. Finnigan, that
7 would have been reflected in our initial Application
8 and supporting documents.

9 Q. And does PWC receive, or is it eligible
10 to receive, other types of funding from Duke Energy?

11 A. In what respect, sir?

12 Q. Well, in any respect.

13 A. Duke Energy Ohio provides funding to PWC
14 through our base rates as noted in the Stipulation
15 filed in this case.

16 Q. And are there any other ways that Duke
17 Energy provides funding to PWC?

18 A. Duke Energy Ohio also has provisions for
19 funding through our electric gas base rates -- I'm
20 sorry, through our natural gas base rates.

21 Q. And are there any other ways that it
22 provides funding to PWC?

23 A. For purposes of their services that they
24 provide to eligible customers?

25 Q. For any purpose.

1 A. There could be, on occasion, some small
2 monetary amounts for events that PWC has in the
3 community. We also provide what I would call sweat
4 equity as we do with any other organizations in the
5 greater Cincinnati area to help with volunteerism and
6 philanthropy.

7 Q. Does PWC receive grants, or is it
8 eligible to receive grants, from the Duke Energy
9 Foundation?

10 A. I don't believe in recent memory that PWC
11 has received grants from the Duke Energy Foundation.

12 Q. But as a nonprofit providing community
13 services, would it be eligible for such grants?

14 A. It may be.

15 Q. Does -- do Duke Energy Ohio employees
16 participate in fundraisers for PWC?

17 A. I believe that they -- we have
18 participated -- it would be through sponsorship
19 dollars as would be done with any other organization
20 for which we may provide sponsorship support.

21 Q. Now, is it true that PWC's primary
22 mission is to perform services to low income
23 homeowners that allow the homeowners to remain in
24 their home and live independently?

25 A. I don't have personal knowledge as to

1 PWC's mission statement, sir.

2 Q. Are you aware that they perform home
3 repairs for low income homeowners in addition to
4 weatherization services?

5 A. I believe that they do provide home --
6 they provide repairs to homes, yes.

7 Q. And they also provide other home repair
8 services like plumbing and making a home handicap
9 accessible?

10 A. I don't have direct knowledge as to the
11 home related repairs that PWC may perform.

12 Q. When Duke Energy makes a grant to PWC for
13 weatherization services, is there any limitation on
14 PWC's use of that money that it spends for an
15 individual homeowner in that it can only be used for
16 weatherization, or if they are doing some
17 weatherization for an individual homeowner and while
18 they are at the houses can they also perform other
19 repairs like making the home handicap accessible?

20 MR. D'ASCENZO: Objection, your Honor.
21 This was a compound question.

22 EXAMINER WALSTRA: I'll allow it.

23 A. I am not aware, Mr. Finnigan, of Duke
24 Energy Ohio making grants to PWC.

25 Q. Well, I'm sorry. I didn't mean to

1 reference a grant. I meant to ask for the 522,000 a
2 year in funding.

3 A. The conditions for that, Mr. Finnigan,
4 would be set forth in the Stipulation.

5 Q. Okay. Well, the Stipulation only refers
6 to weatherization and so I am trying to drill down a
7 little bit deeper and ask how those weatherization
8 services are delivered, and the question is for that
9 \$522,000 a year that Duke Energy Ohio provides, is
10 that amount limited to only weatherization services
11 at a home, or if PWC is doing weatherization services
12 at a home, can it also deliver other services to that
13 same homeowner like making it handicapped accessible?

14 MR. D'ASCENZO: Objection, your Honor.
15 Again, there is like three questions in there.

16 EXAMINER WALSTRA: I will allow it.

17 A. The funding, Mr. Finnigan, is intended to
18 be used consistent with the terms and conditions of
19 the Stipulation.

20 Q. Okay. So if the Stipulation only says
21 weatherization, and there is no further detail
22 provided, that's all the detail you can offer?

23 A. That's all the detail I can offer.

24 Q. Okay. Isn't it true that of the total
25 amount of spending that PWC makes every year, less

1 than half of it is for weatherization services?

2 A. I have no personal knowledge of that.

3 Q. Would you agree with me to the extent
4 that PWC is performing home repairs or making a home
5 handicap accessible, that provides no benefit to Duke
6 Energy's electric customers?

7 A. I can't agree with that.

8 Q. How does making a home handicap
9 accessible benefit Duke Energy's electric consumers?

10 A. Well, it certainly benefits the
11 individual who is in that home and would prefer to
12 age in place in an environment that is safe and
13 secure.

14 Q. Okay. So anything -- any other benefits
15 besides that one individual homeowner?

16 A. Well, that certainly is one that comes to
17 mind for my mind.

18 Q. Now, I would like to direct your
19 attention to the document before you marked as OCC
20 Exhibit 8. It's a two-page document. One is an
21 annual report -- for PWC and then the one is another
22 document that references about PWC. It's a two-page
23 document. Do you see it there before you?

24 A. I have your Exhibit 8.

25 Q. And on that document, do you recognize

1 the PWC logo in the upper left-hand corner?

2 A. I am familiar with their logo.

3 MS. PIRIK: Your Honor, could we see a
4 copy of the exhibit?

5 EXAMINER WALSTRA: Would you like to mark
6 this exhibit? Let's do.

7 MR. FINNIGAN: I'm sorry, I was asking
8 you do you recognize the logo in the upper left-hand
9 corner of the document?

10 A. I am familiar with the logo.

11 Q. And do you see in the lower left-hand
12 corner of the document --

13 EXAMINER WALSTRA: Mr. Finnigan, are we
14 marking this exhibit?

15 MS. GRUNDMANN: Your Honor, in addition
16 to marking it, I don't know that any other party has
17 copies of this document.

18 MR. FINNIGAN: Your Honor, I don't have
19 copies for all counsel here. I did bring copies for
20 the witnesses and the attorneys and for the Bench. I
21 can have it sent out to other counsel, but I don't
22 have paper copies with me.

23 EXAMINER WALSTRA: Would that work with
24 parties if he e-mails it?

25 MS. GRUNDMANN: Your Honor, no opposition

1 from my perspective, I won't speak on behalf of other
2 parties, but I would indicate to the extent there are
3 other exhibits that they intend to use in this and
4 other cross that providing them instead of on a
5 piecemeal fashion, but if we can have them sort of at
6 the same time the witness has them, that would be
7 very helpful, so we can all be looking at it at the
8 same time.

9 MS. O'BRIEN: And, your Honor, I would
10 just add, you know, we brought -- how many copies of
11 different cross Exhibits we have. We can't control
12 how many specific attorneys are in the room. We will
13 try to provide copies as we have them. We did bring
14 them for the Bench, for the witness, for the court
15 reporter, and we will try to make some accommodations
16 as we can.

17 EXAMINER WALSTRA: I appreciate that. So
18 if you could at least e-mail this one out, and do you
19 have others you expect to share especially during
20 this witness?

21 MR. FINNIGAN: Your Honor, those will be
22 sent out shortly by e-mail to all the attorneys in
23 the case.

24 EXAMINER WALSTRA: Thank you. Are you
25 marking this exhibit?

1 MR. FINNIGAN: Yes. It's already
2 premarked as OCC Exhibit 8. I've provided copies for
3 both of you and for the court reporter.

4 EXAMINER WALSTRA: People Working
5 Cooperatively Annual Report we marked as OCC
6 Exhibit 8.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 MR. FINNIGAN: Your Honor, may I proceed?

9 EXAMINER WALSTRA: You may.

10 MR. FINNIGAN: Thank you, your Honor.

11 Q. (By Mr. Finnigan) Ms. Spiller, do you see
12 in the left-hand corner of that document there is a
13 column that says "People Working Cooperatively 2020
14 Community Impact Summary?"

15 MS. PIRIK: Your Honor, I am going to
16 object. It appears as if he is trying to
17 authenticate a document that we just received of a
18 witness that may or may not be aware of where this
19 came from or what this is or what this says.

20 EXAMINER WALSTRA: I will allow him to
21 ask questions to figure that out.

22 A. So, Mr. Finnigan, you are asking me about
23 the gray box on the left side of the page?

24 Q. Yes.

25 A. You've read it correctly. It says

1 "People Working Cooperatively 2020 Community Impact
2 Summary."

3 Q. And do you see about two-thirds of the
4 way down that column where it says Services (by job
5 type)?

6 MR. D'ASCENZO: Your Honor, I would like
7 to object here at this point as well. He has laid no
8 foundation that the witness has any knowledge of this
9 document. He is just having her read off of it.
10 It's improper.

11 MS. PIRIK: In addition to that, your
12 Honor, I don't see the relevance of this type of a
13 document.

14 EXAMINER WALSTRA: I agree. There is no
15 foundation that she has seen this before or is
16 familiar with this.

17 MR. FINNIGAN: Your Honor, this is not a
18 document that is required to establish that the
19 individual witness is familiar. This document is in
20 the nature of an annual report for PWC. So it's
21 self-authenticating from the information that -- that
22 is on the document itself. It's apparent it comes
23 from their website.

24 The relevance of the document is to show
25 that this organization is primarily an organization

1 that performs home repairs and things like plumbing
2 and weatherization and making homes handicap
3 accessible for low income consumers. So -- and it
4 also shows the amount of services that they provide
5 every year.

6 And so the point of the document and why
7 it's relevant is to show that they perform very few
8 services in the nature of energy efficiency or
9 weatherization, and their primary mission is to do
10 home repair type services such that there is really
11 very little benefit to the consumers of Duke Energy
12 Ohio, so that's the relevance --

13 MS. PIRIK: Your Honor, it almost appears
14 as if counsel is testifying. I mean, the Stipulation
15 speaks for itself, it says it will be utilized for
16 weatherization. Ms. Spiller, that was how she
17 responded. She had no other knowledge with regard to
18 PWC. This just does not seem to be an appropriate
19 line of questioning.

20 MR. FINNIGAN: Your Honor, I was just
21 responding. Someone objected on evidentiary grounds
22 and I was just establishing, first, that it's
23 relevant and that's what I was addressing there. And
24 then the other thing I was going to say is that under
25 the Rules of Evidence 901, the document is self

1 authenticating, it's in the nature of an annual
2 report of the Commission's practices to admit annual
3 reports of organizations, certainly utilities. They
4 admit their annual reports all the time.

5 It's obviously from the markings on the
6 document that the document comes from the website of
7 PWC, so in that respect there are indicia that the
8 document is what it purports to be, an annual report
9 of PWC.

10 MR. D'ASCENZO: Your Honor, may I
11 respond, please?

12 EXAMINER WALSTRA: Please.

13 MR. D'ASCENZO: Counsel for OCC is
14 attempting to cross-examine a Duke witness about what
15 PWC does. If OCC wished to cross -- to put into
16 evidence information about what -- what PWC does,
17 they could have subpoenaed PWC.

18 It's not appropriate for counsel to
19 cross-examine a Duke witness who has already
20 testified that she has no knowledge of what other
21 services they may provide.

22 He is using this document regardless of
23 whether it -- it purports to be an annual report, but
24 regardless of whether or not it's
25 self-authenticating, it's still inappropriate to

1 cross-examine the Company's witness who has already
2 testified that she has no knowledge of those things
3 that Mr. Finnigan just purported this document is
4 going to show, as well as not laying any foundation
5 whatsoever that the witness has ever seen this, has
6 reviewed it, has any knowledge of the information on
7 it. He is simply having the witness read it into
8 evidence and that's not proper.

9 EXAMINER WALSTRA: I am going to sustain.
10 I mean, you can ask her about her personal knowledge
11 of PWC, which I think you have explored. But I don't
12 think we need to -- I don't see the relevance, and
13 again, I don't think she has experience with this
14 document and I think she has testified as to her
15 understanding of PWC.

16 MR. FINNIGAN: Your Honor, as to
17 relevance, I will just add that Ms. Spiller testified
18 in her direct testimony that all the signatories to
19 the Stipulation were knowledgeable and experienced
20 parties, and knowledgeable in terms of energy issues.
21 And this document goes to the fact that this
22 organization performs very few services in those
23 areas, but I will move on.

24 EXAMINER WALSTRA: Thank you.

25 Q. (By Mr. Finnigan) So, Ms. Spiller, do you

1 know how many customers or low income households are
2 served by PWC?

3 A. I do not, sir.

4 Q. Do you know how much of the funding that
5 Duke provides to PWC every year is actually used for
6 weatherization as opposed to other services?

7 A. Are we talking about the provisions, sir,
8 of the Stipulation before the Commission in these
9 proceedings?

10 Q. Yes.

11 A. Well, that money has yet to be spent.

12 Q. Well, how about the same level of funding
13 that's been spent in past years?

14 A. I would assume that that funding would
15 have been allocated consistent with the terms of
16 the -- any Stipulation to which it may have been
17 subject.

18 Q. Okay. And you don't have any documents
19 to -- well, strike that.

20 Does Duke Energy audit the funding it
21 provides to PWC to find out how it actually is used?

22 A. There are certainly -- there is an
23 exchange of information between the organizations.

24 Q. Does Duke Energy actually audit the
25 funding that it provides to PWC to find out how it

1 actually is used?

2 A. There is an exchange of information.

3 Q. Is it an audit?

4 A. Define an audit for me.

5 Q. Well, an audit -- you are familiar with
6 audits from your practice before the Commission where
7 somebody with accounting background is hired to go
8 through the records of an organization to track how
9 money is used.

10 A. I am aware of the audits that the
11 Commission Staff has conducted of our business, yes.

12 Q. Does Duke perform a similar audit of
13 PWC's use of the weatherization funding?

14 A. I don't believe that such an audit with
15 that degree of riggor occasioned by the Commission
16 Staff is applied, but there is an exchange of
17 information as between the two entities.

18 Q. Is the area that PWC serves, is it
19 contiguous with Duke Energy Ohio's service territory?

20 A. I believe they serve -- they provide
21 services within our service territory, yes.

22 Q. Do they provide services outside of Duke
23 Energy Ohio's service territory?

24 A. I am -- I am not aware of that. I just
25 don't know.

1 Q. Okay. And to the extent that they
2 receive \$522,000 in weatherization funding from Duke
3 Energy Ohio, but they spend it outside of Duke Energy
4 Ohio's service territory, that wouldn't benefit the
5 residential consumers of Duke Energy Ohio, would it?

6 A. I have no knowledge, sir, that that would
7 even occur.

8 Q. No. But if it would, it wouldn't provide
9 any benefit, would it?

10 MR. D'ASCENZO: Objection, calls for
11 speculation.

12 EXAMINER WALSTRA: Overruled.

13 A. You are asking me to speculate on where
14 those services are provided.

15 Q. No. I am asking you to make an
16 assumption. I am asking you to assume that if the
17 weatherization services were provided outside of Duke
18 Energy Ohio's service territory, then it wouldn't
19 benefit Duke Energy Ohio's electricity consumers.

20 MS. PIRIK: Objection, your Honor. It
21 has been asked and answered. She's answered the best
22 she could.

23 EXAMINER WALSTRA: Overruled.

24 A. You are speaking of the funding provided
25 for in this Stipulation?

1 Q. Yes.

2 A. The expectation is the funding is
3 provided in Duke Energy Ohio's service territory.

4 Q. Okay. That's your expectation, right?

5 A. I think it's the expectation of the
6 signatory parties.

7 Q. Okay. Show me where in the Stipulation
8 that it restricts PWC's use of that weatherization
9 funding to Duke Energy Ohio's service territory.

10 A. The Stipulation, Mr. Finnigan, references
11 the existing funding that's provided for in our
12 annual revenue requirement, that reference therefore
13 being to the Application, so we might need to take a
14 look at the Application filed in these proceedings as
15 well, but certainly the expectation is that our
16 customers, to the extent that dollars are provided
17 for in base rates, those dollars are distributed and
18 used within the Duke Energy Ohio's service territory.

19 Q. Okay. Well, I understand that might be
20 your expectation. I was just asking you if you could
21 point to any language that contains that restriction.
22 Is there anything in the Stipulation that restricts
23 the spending to Duke Energy Ohio's service territory?

24 A. Not expressly within the Stipulation, but
25 again, there is that reference back to the existing

1 funding mechanisms as provided for in base rates.

2 Q. And then is there anything in the
3 Application that restricts PWC's spending of the
4 weatherization dollars to low income households
5 within Duke Energy Ohio's service territory?

6 A. I would have to look at the document,
7 sir. That was filed several months ago.

8 Q. Well, please take your time if you think
9 there might be language there.

10 A. I don't have that document.

11 Q. Do you have any recollection that there
12 is any doc -- any language about that in the
13 Application?

14 A. Again, sir, having not taken a look at
15 that Application, that multipage filing, for several
16 months, I don't have any direct knowledge as I sit
17 here today.

18 Q. Okay. But you did reference that you
19 thought there might be some language in the
20 Application. You referenced that. Do you recall?

21 A. What I said, Mr. Finnigan, is that the
22 Stipulation references the existing funding
23 mechanisms as already provided for in base rates,
24 thus triggering a review of the Application.

25 Q. Okay. Are you aware of whether there is

1 any language in the Application that restricts the
2 spending of the weatherization dollars to Duke Energy
3 Ohio's service territory?

4 A. Again, Mr. Finnigan, having not taken a
5 look at that document for several months, I don't
6 have any present recollection.

7 Q. Do you know John Pitts, the CEO of PWC?

8 A. I do know him.

9 Q. You have met him.

10 A. I have.

11 Q. And are you aware their offices are
12 located over on Paddock Road in Bond Hill in Hamilton
13 County?

14 A. According to this Exhibit 8, that is
15 their address.

16 Q. Now, do any present or former
17 representatives of Duke Energy serve on the PWC Board
18 of Directors?

19 A. Zach Kuznar is presently on their Board
20 of Directors.

21 Q. Anyone else?

22 A. From Duke Energy?

23 Q. Yes.

24 A. No, sir, not --

25 Q. Any past or former -- past or present

1 representatives of Duke Energy's interests?

2 A. I am not aware of the identity of all of
3 the Board members of PWC's -- all of the members of
4 PWC's Board.

5 Q. So Mr. Kuznar is the only one you are
6 familiar with?

7 A. Correct. He is a current employee.

8 Q. Okay. Could you please look at the
9 document before you marked as OCC Exhibit 9?

10 A. I have it.

11 Q. That --

12 EXAMINER WALSTRA: Would you like to mark
13 this exhibit?

14 MR. FINNIGAN: I'm sorry, your Honor?

15 EXAMINER WALSTRA: Would you like to mark
16 this exhibit?

17 MR. FINNIGAN: It's already premarked.

18 EXAMINER WALSTRA: You need to identify
19 it for the Bench and the court reporter.

20 MR. FINNIGAN: It's Form 990 for People
21 Working Cooperatively. It's in the nature of a tax
22 return that they file. Similar to a 1040 that an
23 individual will file, a nonprofit files a Form 990.

24 EXAMINER WALSTRA: It will be so marked
25 as OCC Exhibit 9.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MR. FINNIGAN: May I proceed, your Honor?

3 EXAMINER WALSTRA: You may.

4 Q. (By Mr. Finnigan) Ms. Spiller, do you
5 have a document before you marked as OCC Exhibit 9,
6 which purports to be a -- an IRS Form 990 for People
7 Working Cooperatively?

8 A. I do, for calendar year 2019.

9 Q. Okay. And that references Mr. Pitts as
10 the Chief Executive Officer for the organization?

11 A. He's listed as the principal officer.

12 Q. On page 1 there?

13 A. Under Section F where it says name and
14 address of principal officer.

15 Q. Can you flip through a couple pages back
16 of the document? I think it starts at page 8 or 9
17 where it lists the Board of Directors for the
18 organization.

19 A. I'm on page 8 of the document.

20 Q. Would you flip through there and find the
21 name of Paul Colbert?

22 MR. D'ASCENZO: Your Honor, I am going to
23 object again for the same reasons as before. Counsel
24 for OCC has not laid any foundation that Ms. Spiller
25 has any knowledge whatsoever of this tax return form

1 of PWC. Again, he is asking her to just read off of
2 the document. There has been no foundation laid, and
3 frankly it's irrelevant.

4 EXAMINER WALSTRA: I'll allow some
5 questions to see where this is going, but I don't see
6 the reference -- page reference you were talking
7 about, Mr. Finnigan.

8 MR. FINNIGAN: I believe -- sorry?

9 EXAMINER WALSTRA: I'm not following the
10 page reference.

11 MR. FINNIGAN: And I don't -- I don't
12 have the copy before me, but I think Ms. Spiller
13 found it. It's a listing of the Board of Directors
14 that starts a few pages back in the document.

15 A. Well, I have a page 8 of the document,
16 the 2019 form which is also page 8 of 52 of OCC's
17 Exhibit 9. There is a Section A for officers,
18 directors, trustees, key employees, and highest
19 compensated employees, and at least the version I
20 have, that section is blank.

21 Q. (By Mr. Finnigan) Okay. You see the page
22 No. 12 going by the numbers in the upper right-hand
23 corner of the document?

24 A. The exhibit no. or the form number?

25 Q. The form number.

1 A. I have page 12 of the form.

2 Q. And you see the next page after that, it
3 says additional data?

4 A. I see that.

5 Q. And please go to the third page of
6 additional data.

7 A. I'm there.

8 Q. And do you see where that says Part 7,
9 compensation of officers, directors, et cetera?

10 A. That's the heading for this Part 7.

11 Q. And do you see underneath that heading it
12 has a list of person's names and their positions as
13 Board members?

14 A. With respect to calendar year 2019, I see
15 that.

16 Q. And could you scroll down there and see
17 if you can find an individual by the name of Paul
18 Colbert?

19 MS. PIRIK: Your Honor, I am going to
20 object. I mean, again, it is a document. It's a
21 document that we have in front of us that not
22 everyone has in front of them, and it has a list of
23 names on here. He's trying to create a foundation
24 for this document with this witness, and Ms. Spiller
25 is not with PWC, she's with Duke as counsel for Duke

1 has pointed out. I fail to see the relevancy of this
2 and I fail to see how this is the correct witness,
3 and he is trying to create a foundation for something
4 that clearly is not within this witness's expertise
5 for purposes of this hearing.

6 EXAMINER WALSTRA: I'll allow some
7 questions and see where this is going, but I am --

8 MS. GRUNDMANN: Your Honor, I would like
9 to lodge a continuing objection subject matter wise,
10 not by issue, but not having the document is an
11 issue.

12 Even during COVID times parties were
13 obligated to circulate their premarked exhibits 24
14 hours in advance, prior to COVID parties brought
15 copies of their exhibits to the hearing. And so
16 since we are on Exhibits 8 and 9 premarked, there are
17 clearly at least seven others, and without knowing
18 what those would be and whether those would create a
19 prejudicial issue by having them discussed without
20 having any substance, I have some concerns about
21 asking witnesses about exhibits when only like four
22 people in the room have copies of them, whether
23 that's electronic or otherwise.

24 MS. O'BRIEN: Your Honors, if I may just
25 add, Exhibits 1 through 7 we are reserving for our

1 own testimony, so starting at cross Exhibit 8 and
2 going on are cross exhibits.

3 Like I said, we brought copies of
4 different cross exhibits that we are using. You
5 know, there's -- as you see there are many, many
6 counsel in this room. We don't know who all is going
7 to be here so I don't -- if we can have some leeway
8 to maybe e-mail the document out to people. Like I
9 said, we brought it for your Honors, the witness --

10 EXAMINER WALSTRA: Have you guys e-mailed
11 that yet?

12 MS. GRUNDMANN: No, they have not
13 e-mailed any exhibits. That's why we are following
14 up because we have now moved to a second exhibit and
15 neither of them have been provided.

16 MS. O'BRIEN: We actually did e-mail the
17 first.

18 MR. FINNIGAN: Your Honor, we've already
19 asked someone on our administrative staff to send
20 those out electronically. We expect that that will
21 be done very shortly so that everybody has that.

22 EXAMINER WALSTRA: All right. That's not
23 just for all the exhibits you plan to use for this
24 witness?

25 MR. FINNIGAN: Those are the ones that

1 are before your Honor and before the witness. I've
2 shared those with Duke counsel. I've shared those
3 with the parties that the documents relate to like
4 PWC's counsel and CUB's counsel, so the attorneys
5 that documents relate to have copies of them and the
6 rest of the attorneys will be getting those shortly.

7 EXAMINER WALSTRA: We'll take a 5-minute
8 recess for those documents to get e-mailed out?

9 MS. O'BRIEN: And, your Honors, if I just
10 may add too, because I have different cross exhibits
11 that are actually discovery responses, I brought hard
12 copies of them here today.

13 I brought an unlimited number of hard
14 copies, but all the parties in this room as parties
15 to this case should have access to those discovery
16 responses electronically because they are served on
17 all the parties, so I would just say to the extent
18 that cross exhibit is used -- is a discovery response
19 from the Company or someone else, parties should have
20 that and have those available to them.

21 EXAMINER WALSTRA: Okay. If you can
22 identify which ones you will be using for the parties
23 so they can have those at hand.

24 MS. O'BRIEN: Well, I mean, I would
25 prefer to do that when I do my cross as opposed to

1 right now. I mean, normally when we are in person
2 hearings, we provide our cross exhibits when we are
3 cross-examining the witnesses.

4 EXAMINER WALSTRA: And do you have
5 documents for everyone to pass out.

6 MS. O'BRIEN: I have ten copies.

7 EXAMINER WALSTRA: You are either going
8 to have to share it, have copies for everybody, or
9 share it electronically which ones so people can have
10 it ready to go.

11 MS. O'BRIEN: All right.

12 EXAMINER WALSTRA: So we'll break until
13 11:00.

14 (Recess taken.)

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

17 MR. FINNIGAN: Thank you, your Honor. I
18 apologize for that delay in circulating those
19 exhibits.

20 Q. (By Mr. Finnigan) Ms. Spiller, I believe
21 before we went on break I had a question asking if
22 you could reference a page in that Form 990 for PWC
23 that listed Paul Colbert as a member of the Board of
24 Directors for PWC.

25 MR. DARR: Objection, your Honor.

1 A. Is that a question? Sorry, Mr. Darr.

2 MR. DARR: Again, a continuing objection.

3 I want to reiterate what has already been raised.
4 There still remains no authentication of this
5 document, no indication -- and by that I mean the
6 document hasn't been authenticated by this witness.
7 This witness has indicated previously that she has
8 little or no understanding of internal operations of
9 PWC, which makes putting their tax form in front of
10 her somewhat suspect on its face.

11 The alternative ways of authenticating
12 this document have also not been demonstrated.
13 Either under a very liberal reading of Rule 901 which
14 goes to the witness providing some evidence of
15 authentication, or under the self-authenticating
16 requirements, which in this instance would be nearly
17 impossible since there's nothing on this document
18 that indicates that there is a ground for
19 self-certification.

20 Compounding that, she is now being asked
21 to testify as to the truth of matters contained
22 within this document. So in addition to there being
23 inherently a problem with self-authentication or any
24 authentication, there is now a hearsay problem, which
25 I can pretty soundly believe has to be demonstrated

1 since this is a business record of some sort, has to
2 be supported by testimony of a witness to demonstrate
3 that it fits in with one of the hearsay exceptions.

4 She certainly cannot testify -- this
5 witness cannot testify as to the third party
6 statements of PWC contained in this form unless that
7 hearsay exception is met.

8 On that basis, your Honor, this whole
9 line of questioning is highly suspect, and to save us
10 all a lot of aggravation and time I think it's -- I
11 would ask that you sustain the objection to this line
12 of questioning.

13 EXAMINER WALSTRA: Any response?

14 MS. PIRIK: Your Honor, I'm sorry. Thank
15 you, Mr. Darr. That was very well said. PWC
16 continues that objection along these lines of
17 questioning with this document.

18 MR. D'ASCENZO: As does the Company, your
19 Honor.

20 MR. FINNIGAN: Your Honor, this document
21 is relevant because it speaks to the types of
22 services that PWC performs, and also it shows that
23 members of the Board of Directors of PWC have ties to
24 Duke Energy. So it's relevant for those reasons.

25 And then it's admissible under the Ohio

1 Rules of Evidence because under Rule 9017, the
2 document is a public record or a report, a record
3 that's filed in a public office, in this case the
4 Internal Revenue Service, and also it's admissible
5 under Rule 902.

6 So because it's self-authenticating by
7 presumption of law that when somebody files a tax
8 return with the Internal Revenue Service, they have
9 an obligation to provide truthful information, so for
10 those reasons, both self-authenticating, and that
11 also overcomes any hearsay objection.

12 EXAMINER WALSTRA: I will allow a few
13 more questions, but very short leash with this one.

14 Q. (By Mr. Finnigan) So, Ms. Spiller, I was
15 asking if you can reference the page in the PWC Form
16 990 that lists Paul Colbert as a member of the Board
17 of Directors.

18 MR. DARR: Again, I have an objection,
19 your Honor.

20 EXAMINER WALSTRA: Noted.

21 A. I see that on page 17 of 52 of the OCC
22 Exhibit 9 for calendar year 2019.

23 Q. And Mr. Colbert is a long time former
24 attorney employed by -- who was formerly employed by
25 Duke Energy Ohio?

1 A. Mr. Colbert was formerly employed by Duke
2 Energy.

3 Q. And do you see on the same page a listing
4 for another member of the Board of Directors by the
5 name of Charles Gephart (sic)?

6 MR. DARR: Objection, your Honor.

7 A. It's Charles Gerhardt, Mr. Finnigan.

8 Q. Please?

9 A. You said Gephart. It's Charles Gerhardt.

10 Q. Yes, Gerhardt. Do you see him listed on
11 the same page as a member of the Board?

12 A. I do.

13 Q. And what relationship does he have to
14 Duke Energy?

15 A. Mr. Gerhardt provides consulting services
16 for us.

17 Q. When you say consulting, does that mean
18 lobbying?

19 A. It can.

20 Q. Well, let me turn your attention to CUB
21 Ohio. CUB Ohio is a relatively new energy nonprofit
22 in Ohio, is it not?

23 A. I don't know that to be true. I don't
24 know their date of incorporation.

25 Q. Please take a look at the document before

1 you marked as OCC Exhibit 10.

2 A. I have it.

3 Q. Does that --

4 EXAMINER WALSTRA: Would you like to mark
5 this exhibit?

6 MR. FINNIGAN: It's already been
7 premarked.

8 EXAMINER WALSTRA: You need to identify
9 it for us and for the court reporter. Thank you.

10 MR. FINNIGAN: Your Honor, I would now
11 ask the witness to refer to OCC Exhibit 10, which is
12 a document that is the CUB Articles of Incorporation.

13 EXAMINER WALSTRA: Thank you. So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. Now, Ms. Spiller, the document that's
16 marked as Exhibit 10, which you have before you, that
17 purports to be CUB's Articles of Incorporation?

18 MR. D'ASCENZO: Objection, your Honor.

19 MR. DOUGHERTY: Object for the same
20 reason the objection were for the two documents from
21 PWC, relevance, authentication. I'm pretty sure this
22 is not the only document that's filed with the
23 Secretary of State's office. If it is -- but just
24 state those objections.

25 MR. D'ASCENZO: I would like to add also,

1 your Honor, no foundation has been laid. The witness
2 has already stated she's not aware of when CUB Ohio
3 came into existence in Ohio.

4 A. I would also -- I'm sorry.

5 MR. FINNIGAN: You are reverting to your
6 attorney days, not your president days.

7 THE WITNESS: Sorry.

8 EXAMINER WALSTRA: Your response,
9 Mr. Finnigan?

10 MR. FINNIGAN: Yes, your Honor. This
11 document is relevant for the reason that as part of
12 the three-prong test that the Commission uses to
13 review the Stipulation, one of the prongs is whether
14 the parties are knowledgeable and experienced.

15 If the evidence shows that this
16 organization was incorporated in 2020 in Ohio, then
17 that raises a question as to what their level of
18 experience is. So it's relevant for that reason.

19 The document is admissible here under
20 Ohio Rules of Evidence 901.7 because it's a public
21 record or report similar to the IRS Form 990. This
22 is a document that's filed in a public office, in
23 this case the Ohio Secretary of State, so it's
24 admissible for that reason, and it's also admissible
25 under Ohio Rule of Evidence 902.1 which refers to

1 public documents filed under seal. This document has
2 the seal of Frank LaRose, the Secretary of State, so
3 it's self-authenticating and it's admissible under
4 those rules.

5 MR. DOUGHERTY: Your Honor, there's no --
6 under the three-prong test, he brings up the
7 three-prong test. There is nothing under the
8 three-prong test that says you have to be in
9 existence longer than two years or whatever, so I
10 again question the -- the relevance of this document
11 and this document fitting into this.

12 I'm not sure -- this document has one,
13 two, three, four, five pages, even though it says on
14 page 4 of 5 that it's page 4 of 6 of, the document
15 you have here has five pages, I am not sure whether
16 it is a complete document, so I will just add that to
17 my objections as well.

18 EXAMINER WALSTRA: I will allow
19 questions, but again, a short leash.

20 Q. (By Mr. Finnigan) So, Ms. Spiller, the
21 document you have before you, OCC Exhibit 10, shows
22 that the organization was incorporated in Ohio in
23 2020; is that correct?

24 A. The first page of this document is a
25 State of Ohio certificate with domestic nonprofit

1 corporation articles effective June 2020. That's
2 what the document says.

3 Q. Have you had any prior dealings with this
4 organization?

5 A. I have not, no, sir.

6 Q. Have they approached Duke Energy for
7 funding?

8 A. Not that I am aware of.

9 Q. Do they have any offices in Duke Energy
10 Ohio's service territory?

11 A. I don't know what their business
12 addresses are, Mr. Finnigan.

13 Q. How many members of CUB Ohio reside in
14 Duke Energy Ohio's service territory?

15 A. I have no personal knowledge of that.

16 Q. What energy related services has CUB
17 provided to residents who live within Duke Energy
18 Ohio's service territory?

19 A. Well, my understanding of this
20 organization, Mr. Finnigan, is that they are a -- I
21 will call them a utility watchdog advocating on
22 behalf of residential and small business owners, all
23 of whom would be utility customers.

24 Q. And in reference to their role as a
25 utility watchdog, what specifically have they done

1 for consumers within Duke Energy Ohio's service
2 territory?

3 A. What they do typically is to advocate on
4 behalf of particular rate outcomes in respect of
5 utility customers.

6 Q. Okay. Now, we know that they have
7 intervened in this case. Have they provided any
8 communications to residential consumers within Duke
9 Energy Ohio's service territory?

10 A. I would have no personal knowledge of
11 that.

12 Q. Are you a residential consumer in Duke
13 Energy Ohio's service territory?

14 A. I am.

15 Q. Have you received any communications from
16 CUB Ohio in your role as a residential consumer in
17 Duke Energy Ohio's service territory.

18 A. I don't recall.

19 Q. Now, I want to direct your attention to
20 another Intervenor, OPAC. Are you familiar with that
21 organization?

22 A. I am familiar.

23 Q. OPAC's members primarily consist of
24 community action agencies with which in turn provide
25 services for low income residents in their community;

1 is that correct?

2 A. I don't know that representation of their
3 primary membership, Mr. Finnigan.

4 Q. Are you familiar with community action
5 agencies within Duke Energy Ohio's service territory
6 like the Hamilton County Community Action Agency?

7 A. I am familiar with the Hamilton County
8 Community Action Agency.

9 Q. Does Duke Energy fund -- does Duke Energy
10 provide funding to the community action agencies
11 within its service territory?

12 A. No.

13 Q. Please?

14 A. No.

15 Q. Does Duke Energy provide any money for
16 bill assistance that's administered through community
17 action agencies?

18 A. Can you restate the question, please?

19 Q. Does Duke Energy provide any funding for
20 bill assistance that's administered by community
21 action agencies within its service territory?

22 A. Duke Energy provides assistance. It is
23 not financial in nature.

24 Q. Does Duke Energy provide funding for
25 HEAP? Are you familiar with the term HEAP services,

1 H-E-A-P?

2 A. Home Energy Assistance Programs?

3 Q. Yes.

4 A. I am.

5 Q. Does Duke Energy provide funding for HEAP
6 services that is administered through community
7 action agencies?

8 A. Duke Energy Ohio has its own fund Share
9 the Light. I believe that HEAP and LIHEAP, those are
10 governmental -- they are funded through government --
11 through the government.

12 Q. Okay. Does Duke Energy provide funding
13 for weatherization services that is administered by
14 the community action agencies?

15 A. Not to my knowledge.

16 Q. Okay. Does either Duke Energy
17 Corporation or Duke Energy Ohio or Duke Energy
18 Foundation provide any funding to the community
19 action agencies within Duke Energy Ohio's service
20 territory?

21 A. Well, Duke Energy Corporation would not.
22 The Foundation, to my knowledge, has not issued a
23 grant to the community action agencies within the
24 Duke Energy Ohio's service territory, and we have
25 already covered the financial or other assistance

1 provided by Duke Energy Ohio.

2 Q. Now, does Duke Energy have a program
3 known as the Environmental Stewardship Social
4 Responsibility and Corporate Governance Initiative?

5 A. Duke Energy Corporation?

6 Q. Any Duke Energy entity that's affiliated
7 with Duke Energy Ohio.

8 A. Well, Duke Energy Corporation has
9 initiatives.

10 Q. Okay. And that initiative is known as
11 the Environmental Stewardship Social Community and
12 Corporate Governance Initiative?

13 A. Are you asking about Duke Energy
14 Corporation's ESG report, Mr. Finnigan?

15 Q. Yes. I am going to get to that in a
16 moment.

17 A. Okay. I am.

18 Q. I am just asking you now if Duke Energy
19 Corp has that initiative that's also known as the ESG
20 initiative?

21 A. It does have an initiative related to
22 environment, sustainability and governance.

23 Q. And could you identify the document
24 before you that's been marked as Exhibit 12? Can you
25 identify that document as a copy of the Duke Energy

1 ESG report for 2021?

2 A. It is the Duke -- it purports to be a
3 copy of the Duke Energy Corporation 2021 ESG report.

4 Q. And you mentioned that that initiative
5 includes an environmental prong. Would that involve
6 reducing carbon emissions as part of the
7 environmental component of the ESG initiative?

8 MR. D'ASCENZO: Objection, your Honor.
9 There has been no foundation laid.

10 EXAMINER WALSTRA: Are you marking this
11 as Exhibit 12?

12 MR. FINNIGAN: Yes.

13 EXAMINER WALSTRA: It will be so marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 EXAMINER WALSTRA: And I'll agree as to
16 foundation. If you could ask her knowledge of this
17 document.

18 MR. FINNIGAN: Sure.

19 Q. (By Mr. Finnigan) So, Ms. Spiller, as a
20 company president, it -- your responsibility includes
21 being aware of major corporation initiatives of Duke
22 Energy Corp.; is that correct?

23 A. That's a fair statement.

24 Q. And is the ESG program a fundamental part
25 of Duke Energy's business strategy?

1 A. Our climate strategy is very important to
2 the corporation, as well as our customers and the
3 communities we serve.

4 Q. Okay. And not only the climate or
5 environmental aspect, but isn't it true that the
6 entire ESG initiative, all three prongs of it, are a
7 fundamental part of Duke Energy's business strategy?

8 A. I think that's a fair statement.

9 Q. Okay. And as company president, you
10 receive information from Lynn Good, the chief
11 executive officer, on these, you know, fundamental
12 initiatives of Duke Energy Corp.

13 A. From time to time, that's correct.

14 Q. And the fundamental initiatives of Duke
15 Energy Corp. like ESG, they are carried out not just
16 in Charlotte, but they are carried out throughout
17 Duke Energy's service territory which includes Duke
18 Energy Ohio; isn't that correct?

19 A. To the extent they are applicable.

20 Q. And would all three of the prongs of the
21 ESG initiative be applicable in Duke Energy Ohio's
22 service territory?

23 MR. D'ASCENZO: I am going to object,
24 your Honor, for vagueness. He keeps talking about
25 three prongs, but there has been no identification of

1 what he is referring to.

2 MR. FINNIGAN: Well, it's in the name,
3 your Honor, environment, social responsibility, and
4 corporate governance.

5 EXAMINER WALSTRA: Thank you.

6 A. Mr. Finnigan, we do not own any
7 generation here in Ohio and so net zero carbon, the
8 net zero carbon goal would not be applicable insomuch
9 as it concerns the carbon output of generating
10 facilities owned by a Duke Energy entity.

11 Q. Does Duke Energy Ohio provide funding for
12 weatherization services that is part of the
13 environmental component of the ESG, the initiative?

14 A. Does Duke Energy Ohio?

15 Q. Yes.

16 A. The weatherization services provided --
17 or the financial support provided for weatherization
18 services in the Duke Energy Ohio service territory is
19 that reflected in the Stipulation filed in these
20 proceedings.

21 Q. All right. And you would agree with me
22 that weatherization is a form of energy efficiency
23 service?

24 A. It is.

25 Q. Okay. And is energy efficiency one

1 component of the ESG initiative?

2 A. The corp -- the enterprise wide
3 initiative.

4 Q. Yeah. And which is administered in all
5 of the service territories including Duke Energy
6 Ohio, correct?

7 A. To the extent it's applicable to the
8 jurisdiction.

9 Q. Okay. And for many years Duke Energy
10 corp. issued a sustainability report. Are you
11 familiar with that?

12 A. I'm familiar with the sustainability
13 reports that Duke Energy Enterprise or Duke Energy
14 Corporation had issued.

15 Q. And that's now been replaced by this ESG
16 initiative, isn't that correct?

17 A. I don't know that it's been replaced by
18 the initiative. It's been complimented by the
19 initiative.

20 Q. Can you please turn to page 4 of the
21 document?

22 A. I'm there.

23 Q. Do you see the heading at the top that
24 says, "A message from our CEO"?

25 A. I see that.

1 Q. Do you see the full third paragraph down
2 that begins the first -- for the past 15 years?

3 A. Uh-huh, I see --

4 Q. Would you take a moment to read that
5 paragraph, please.

6 A. I've read it.

7 Q. Okay. And does that paragraph refresh
8 your memory that the sustainability report has now
9 been renamed and expanded into what is now called the
10 ESG report?

11 A. Your question was about this report
12 replacing the sustainability report. These words
13 here from our CEO says that the sustainability report
14 has been renamed and expanded.

15 Q. Well, yeah, that's what I meant by
16 replaced, renamed.

17 A. I said it complimented, expanded.

18 Q. Okay. And then -- then so your job as
19 company president includes being familiar with the
20 Company's major initiatives that impact the service
21 territory that you are responsible for, in this case
22 Duke Energy Ohio and Kentucky?

23 A. That's correct.

24 Q. All right. Let me ask you some questions
25 about this report. Now, isn't it true that the ESG

1 initiative includes programs such as energy
2 efficiency and weatherization?

3 A. The overall program. Whether or not
4 those initiatives are applicable to Duke Energy Ohio
5 and its service territory is another question.

6 Q. Well, I guess they would be applicable to
7 whatever part of the service territories they are
8 delivered, right?

9 A. That they are made available, correct.

10 Q. And in this case we know that Duke Energy
11 is providing funding of some 522,000 to PWC for
12 weatherization. Is that amount included in the
13 totals that Duke Energy Corp. lists for its ESG
14 spending?

15 A. I don't know. I would further note,
16 Mr. Finnigan, that the Stipulation here is
17 prospective in nature and we are discussing a 2021
18 ESG report.

19 Q. Well, the funding for PWC has been in
20 effect for several years; is that right?

21 A. There has been funding for PWC in the
22 electric base rates for several years.

23 Q. And that would include 2021?

24 A. Yes.

25 Q. Okay. Now, another objective of the ESG

1 program is social, that is to provide assistance to
2 low income communities; is that right?

3 A. Among others, correct.

4 Q. That includes things like energy bill
5 assistance and grants to community action agencies?

6 A. Is there a particular point in the ESG
7 report where you are identifying grants to community
8 action agencies?

9 Q. Well, I will get to specific portions of
10 the report in a minute, but I am just asking you if
11 you are generally familiar with that as part of the
12 services that Duke Energy Corp. provides for low
13 income citizens?

14 A. Duke Energy Corp. would not be providing
15 those services.

16 Q. Well, I'm sorry, providing funding for
17 those services?

18 A. Duke Energy Corp. would not be providing
19 the funding for those services.

20 Q. Okay. So the services are provided by --
21 I'm sorry, the funding is provided by which entities
22 that's reported on in the Duke Energy Corp. ESG
23 report?

24 A. It depends on the source of the funding.

25 Q. Okay. But it would be some Duke Energy

1 affiliated source funding, wouldn't it?

2 A. It may be.

3 Q. Well, Duke Energy Corp. is not going to
4 take credit for spending by other corporations or
5 other organizes in its ESG report, is it? Or would
6 they?

7 A. They would not.

8 Q. Are PWC, OPAC, and CUB as organizations
9 that provide services to low income citizens and in
10 some cases energy efficiency related services, would
11 those organizations be eligible for funding under
12 Duke Energy Corp.'s ESG initiative?

13 A. The initiative is not the source of the
14 funding. The initiative reflects funding that may
15 happen through various jurisdictions that roll-up to
16 Duke Energy Corporation.

17 As I've previously told you,
18 Mr. Finnigan, Duke Energy Ohio has not provided
19 funding to CUB or to OPAC. The funding that is
20 relevant to these proceedings, as reflected in the
21 Stipulation, is that provided to PWC.

22 Q. Okay. So my question is -- and I didn't
23 want to limit it to the funding that's reflected in
24 the Stipulation. We've talked about that. I am just
25 asking you whether PWC, CUB, and OPAC, and the

1 community action agencies represented by OPAAE, are
2 all eligible for the type of funding that's reflected
3 in the Duke Energy ESG report --

4 MR. D'ASCENZO: Objection, asked and
5 answered.

6 Q. -- regardless of which Duke Energy
7 affiliated organization that funding may come from?

8 A. What specific funding within the ESG
9 report are you referring to?

10 Q. Please take a look at page 20 of the ESG
11 report.

12 A. I'm there.

13 Q. Now, do you see a reference to funding
14 provided and reported on in the 2021 report?

15 A. I see charitable giving on page 20 of 70
16 of your exhibit.

17 Q. The charitable giving for 2021 was
18 \$44.8 million as indicated in that report?

19 A. From the Duke Energy Foundation.

20 Q. And what is your understanding of how
21 much Duke Energy Corp. spends per year on its ESG
22 initiative?

23 A. There isn't an annual budget associated
24 with the ESG initiative.

25 Q. What's your understanding of the amount

1 of funding that Duke Energy provided in the last
2 reporting period for its ESG initiative?

3 A. Again, the funding is -- the initiative
4 is not furthered solely by the funding. The funding
5 compliments and advances the initiative.

6 Q. Okay. But what's the amount of funding
7 as reported in the most recent results by Duke Energy
8 Corp. for its ESG initiative?

9 MR. D'ASCENZO: Objection, your Honor.
10 This is all highly irrelevant. What's at issue here
11 in this proceeding is the Stipulation. What Duke
12 Energy Corp. does and what happens in any other
13 jurisdiction is irrelevant.

14 EXAMINER WALSTRA: Overruled.

15 A. So, Mr. Finnigan, on page 17 of 70, there
16 is a summary of the 2021 charitable giving on behalf
17 of the Duke Energy enterprise. And I mean that
18 enterprise to include the Foundation as well as other
19 subsidiaries of Duke Energy Corp. I would further
20 note there is also a financial approximate for
21 volunteers' time.

22 Q. Okay. Thank you. And now I would like
23 to direct your attention to another exhibit, please.

24 MR. FINNIGAN: And, your Honor, at this
25 time I would like to have an exhibit -- actually it's

1 been premarked as OCC Exhibit 11, and I will
2 represent that this is a press release by Duke
3 Energy. It's three pages. It's dated July 20, 2022.

4 Q. (By Mr. Finnigan) Ms. Spiller, do you
5 have that exhibit before you?

6 EXAMINER WALSTRA: So marked.

7 (EXHIBIT MARKED FOR IDENTIFICATION.)

8 A. I have OCC Exhibit 11.

9 Q. And can you identify that as a Duke
10 Energy press release dated July 20, 2022?

11 A. It doesn't look like a complete document
12 that I would typically see in the form of a press
13 release. There are probably some headers and footers
14 that are missing.

15 Q. Okay. But at least the information that
16 is in this document, does -- does that appear to be
17 the same style that Duke Energy uses when it releases
18 a press release? In other words, it has the byline,
19 the date, and then the Charlotte, North Carolina,
20 which is where its headquarters is, correct?

21 A. Press releases can be issued out of
22 Cincinnati as well.

23 Q. Yeah. And do you have any doubt that
24 this was issued as a press release? Because they are
25 on your website, and we could go to your website

1 and -- for earlier this year on July 20 and we could
2 reference this -- I mean, I could get it on my
3 computer right now and take about 5 minutes if you
4 have any doubt in your mind as to whether Duke Energy
5 issued this press release.

6 A. I don't dispute that Duke Energy Ohio
7 has -- Duke Energy has caused this press release to
8 be issued.

9 Q. Okay. And this press release talks about
10 \$40 million in aid for customers and communities; is
11 that right?

12 A. The heading is "Duke Energy aid for
13 customers, communities rises to 40 million."

14 Q. And is that for calendar year 2022?

15 A. The press release is dated July 2022, so
16 it could not be for calendar year 2022.

17 Q. Why not?

18 A. Because the calendar year 2022 had yet to
19 conclude when the press release was issued.

20 Q. Well, does it say in this press release
21 that that's the amount that has been spent or will --
22 or does it say will be spent?

23 MS. PIRIK: Your Honor, I am going to
24 object. There's no foundation for this. There's no
25 authentication. The fact that he can pull it up on

1 the web really is not justification for crossing this
2 witness on something that -- you know, so far I have
3 not seen any foundation that she is aware of this
4 document in any other fashion other than it's been
5 put before her, and relevancy. I just don't see how
6 that's relevant to the Stipulation.

7 EXAMINER WALSTRA: I will allow some more
8 questions on this.

9 MR. FINNIGAN: Your Honor, if I could
10 respond to the objection?

11 EXAMINER WALSTRA: I gave you the
12 question. You can go ahead.

13 Q. (By Mr. Finnigan) So -- that's all the
14 questions I have on this document.

15 Ms. Spiller, before becoming president of
16 Duke Energy Ohio, you worked as an attorney for Duke
17 Energy Business Services?

18 A. That is correct.

19 Q. And as part of your work as an attorney,
20 you represented Duke Energy Ohio in proceedings
21 before the Public Utilities Commission of Ohio.

22 A. I did.

23 Q. And that included legal services for the
24 ESP that Duke Energy Ohio is currently operating
25 under?

1 A. That is correct. I left the Legal
2 Department prior to its conclusion, but I was
3 involved as legal counsel for a large part of that.

4 Q. And were you the lead attorney on the
5 team of lawyers that negotiated and prepared the
6 Stipulation in that case?

7 A. Again, Mr. Finnigan, I left the legal
8 department while that case was in process, so I would
9 not characterize myself as the sole lead attorney.

10 Q. Okay. But you were one of the lead --
11 lead attorneys that worked on -- on that case at the
12 time it was filed during -- well, strike that.

13 When did you become president?

14 A. I became president of Duke Energy Ohio
15 and Kentucky in June of 2018, but prior to that had
16 been serving as vice president of community relations
17 for -- vice president of community relations and
18 government affairs for Ohio from January '18 through
19 the end of May of '18.

20 Q. So would it be fair to say then that you
21 would have done legal work up through when? Did you
22 say -- I didn't catch that. January of 2018?

23 A. Correct.

24 Q. Okay. So as far as Duke Energy's ESP
25 goes, then you would have worked on providing legal

1 services related to that ESP up until January of
2 2018, but thereafter, you would not have been
3 involved in that?

4 A. I would not have been involved as legal
5 counsel on behalf of Duke Energy Ohio after leaving
6 its Legal Department.

7 Q. Okay.

8 MR. FINNIGAN: Your Honor, may I just
9 have one moment, please? I think I am just about
10 finished with my questions. I may have just a few
11 more.

12 EXAMINER WALSTRA: Sure.

13 MR. FINNIGAN: Your Honor, I have no
14 further questions for Ms. Spiller. Thank you,
15 Ms. Spiller.

16 THE WITNESS: Thank you, Mr. Finnigan.

17 EXAMINER WALSTRA: Thank you. I assume
18 no additional cross. I will ask for any redirect.

19 MR. D'ASCENZO: Could we have just a
20 brief moment, your Honor?

21 EXAMINER WALSTRA: Sure. We'll break
22 until -- we will come back in 5 minutes.

23 MR. D'ASCENZO: Okay. Thank you.

24 (Recess taken.)

25 EXAMINER WALSTRA: Ready?

1 MR. D'ASCENZO: Just a few questions,
2 your Honor.

3 EXAMINER WALSTRA: Sure.

4 - - -

5 REDIRECT EXAMINATION

6 By Mr. D'Ascenzo:

7 Q. Ms. Spiller, do you recall questions from
8 counsel with OCC pertaining to the low income funding
9 in the Stipulation?

10 A. I do.

11 Q. And particularly the funding that was
12 made available to PWC?

13 A. I do.

14 Q. Could you please turn to that provision
15 in the Stipulation, please?

16 MS. GRUNDMANN: Mr. D'Ascenzo -- could
17 you just ask counsel to get a little closer? We are
18 so far apart here in this football field, so if you
19 could get a little closer to the mic.

20 EXAMINER WALSTRA: Thank you.

21 A. I have that, Mr. D'Ascenzo. It's on page
22 16 of the Corrected Stipulation Section E.

23 Q. And what does the heading for that
24 Section E state?

25 A. "Funding for low-income customers

1 (at-risk populations)."

2 Q. And, Ms. Spiller, would Duke Energy Ohio
3 enter into a settlement involving any customers other
4 than its own customers?

5 A. It would not.

6 Q. Thank you. Ms. Spiller, do you recall
7 questions from counsel for OCC about Board members on
8 PWC?

9 A. I do as of calendar year 2019.

10 Q. And one of the names mentioned was Paul
11 Colbert.

12 A. That's correct.

13 Q. Do you know who Paul Colbert is?

14 A. I do.

15 Q. And I believe you had stated that he was
16 formerly with the Company. Do you recall when Mr.
17 Colbert left Duke Energy?

18 A. 2008.

19 Q. Thank you. And regarding Board
20 membership, Ms. Spiller, are you on any boards
21 yourself?

22 A. I am.

23 Q. And as a board member, who do you owe a
24 fiduciary duty to?

25 A. The organization of which I am a board

1 member.

2 MR. D'ASCENZO: Thank you.

3 THE WITNESS: Thank you.

4 MR. D'ASCENZO: No further questions.

5 EXAMINER WALSTRA: Thank you.

6 OCC?

7 MR. FINNIGAN: No recross, your Honor.

8 EXAMINER WALSTRA: Okay. You are all
9 set.

10 THE WITNESS: Thank you.

11 EXAMINER WALSTRA: Renew your motions to
12 move your exhibits?

13 MR. D'ASCENZO: Yes, your Honor. At this
14 time I would like to renew our motions to admit Duke
15 Energy Ohio Exhibit 1, 2A, 2B, and 3.

16 EXAMINER WALSTRA: Any objections?

17 Hearing none, Exhibits 1, 2A, 2B, and 3
18 will be admitted.

19 (EXHIBITS ADMITTED INTO EVIDENCE.)

20 EXAMINER WALSTRA: Mr. Finnigan.

21 MR. FINNIGAN: Your Honor, I would like
22 to move into evidence OCC Exhibits 8 through 12.

23 EXAMINER WALSTRA: Any objections?

24 MR. D'ASCENZO: Yes, your Honor.

25 MR. DARR: Yes, your Honor.

1 EXAMINER WALSTRA: We will start with
2 Duke.

3 MR. D'ASCENZO: Your Honor, we object to
4 the admission of Exhibits 8, 9, and 10 for the
5 reasons stated previously. Counsel failed to
6 establish any foundation.

7 Exhibit 8, you know, the annual report
8 for PWC, the witness had testified she was not
9 familiar with PWC's operations. Likewise with OCC
10 Exhibit 9, the tax return for PWC, there was no
11 foundation that Ms. Spiller had any knowledge
12 whatsoever of those documents.

13 Similar for OCC 10 which was the Articles
14 of Incorporation for CUB Ohio. I would add to that
15 as it relates to the Exhibit No. 8, your Honor, that
16 itself is -- there is no certification as was pointed
17 out that this is an accurate document. It is not
18 self -- therefore not self-authenticating.

19 EXAMINER WALSTRA: Thank you. Who was
20 next to chime in?

21 MS. PIRIK: Yes, your Honor. We -- we
22 would likewise object to those documents that Duke
23 has objected to. We would also like to add that not
24 only is there no foundation, there is no
25 authentication, and it's not relevant for purpose of

1 this proceeding, but we would also like to point out
2 that OCC Exhibit 8 is actually not a document. It's
3 two pages out of what purportedly could be a
4 document, but what we were E-mailed and what we
5 actually received, it's not a document. It's a cover
6 page that perhaps came off a website, in addition to
7 all the other objections.

8 MR. DOUGHERTY: CUB Ohio supports the
9 objections from the Company and PWC and what I am
10 sure Frank is going to say next.

11 MS. GRUNDMANN: Your Honor, Walmart has
12 one objection, I think, to I believe it's the 2019
13 document that counsel for OCC questioned the witness
14 with respect to members of the Board of PWC.

15 It seems to me to be absolutely no
16 relevance to who may or may not have been a board
17 member in 2019, when we are questioning 2022
18 provisions in a Stipulation that would be applicable
19 going forward and nothing in the evidence deduced in
20 the record reflected that any of the individuals
21 identified in the 2019 document, which I believe is
22 Exhibit 9, are or continue to be members of the Board
23 as of 2022, so I can see no relevance, and the only
24 purpose for which Exhibit 9 was used was to identify
25 potential or former Duke-related individuals as

1 members of the PWC Board.

2 MR. DARR: Thank you, your Honor. I
3 would join in the objections to Exhibits 8 and 9 on
4 the grounds they were never authenticated properly.
5 Assertions to the contrary are allied by the fact
6 that documents are not self-authenticating under any
7 sections of 902.

8 Simply because there is a signature
9 attached to a tax form doesn't make it authenticated.
10 In fact, if that were the case, tax hearings would be
11 a lot different than what we are commonly aware of.

12 If you get around the problem of
13 authentication, then you have got the problem of
14 hearsay. And so in addition to objecting on those
15 grounds that they are not properly authenticated, I
16 would also ask for a limiting instruction, if they
17 are admitted at all, they can't be used for the truth
18 of the matter asserted in them.

19 Further, as counsel has pointed out, the
20 whole idea that this is somehow relevant at this
21 point, particularly with regard to membership of the
22 Board using a 2019 document and not demonstrating
23 what the membership of the Board is today, renders
24 the documents irrelevant for this proceeding. Thank
25 you.

1 EXAMINER WALSTRA: Go ahead.

2 MS. WHITFIELD: Your Honor, can I just
3 for the record, note that Kroger joins in on the
4 objections to the admission of the Exhibit 8 and 9
5 for the reasons that have already been stated by the
6 other parties?

7 EXAMINER WALSTRA: Noted.

8 MS. COHN: Your Honor, OEG would also
9 object for the record.

10 MR. BOHN: OPAE as well.

11 EXAMINER WALSTRA: Got it.

12 MR. WYGONSKI: Your Honor, OMAEG joins
13 that as well.

14 MS. CATHCART: IGS joins as well.

15 MS. WHALING: Cincinnati as well, your
16 Honor.

17 EXAMINER WALSTRA: Mr. Finnigan.

18 MR. FINNIGAN: Your Honor, we are greatly
19 outnumbered here, but I am going to try. And, your
20 Honor, I just want to make sure I heard the
21 objections correctly in terms of which exhibits are
22 being objected to. I heard 8, 9, and 10. I didn't
23 hear any objection to 11 and 12, the two documents
24 that were Duke Energy documents; is that correct?

25 EXAMINER WALSTRA: That is what I heard

1 as well.

2 MR. FINNIGAN: I would then ask that
3 Exhibits 11 and 12 be moved into evidence there being
4 no objection.

5 EXAMINER WALSTRA: Exhibits 11 and 12
6 will be admitted.

7 (EXHIBITS ADMITTED INTO EVIDENCE.)

8 MR. FINNIGAN: Now, your Honor, with
9 respect to Exhibit 8, that's PWC's annual report
10 that's available from the internet. The document is
11 relevant because it shows that this organization is
12 primarily an organization that performs home repairs
13 for low income citizens with a view towards trying to
14 allow them to remain in their home as opposed to
15 going to a facility. And the document indicates and
16 provides a breakdown of the types of services they
17 perform.

18 And in that breakdown it lists the energy
19 efficiency or weatherization services, and it
20 provides the number there and it's obvious the number
21 is very small. So it shows that this organization
22 reaches very few --

23 EXAMINER WALSTRA: I am just going to
24 interrupt. I think we can all see what the document
25 says, but why should it be admitted?

1 MR. FINNIGAN: Going to the relevance,
2 because I heard an objection on relevance so I was
3 trying to establish that first. So it's relevant for
4 that reason because the settlement purports there are
5 these benefits for Duke Energy Ohio's residential
6 consumers that this organization signed on to the
7 Stipulation for. And the relevance is to show that
8 this organization provides very few services to low
9 income residents in Duke Energy Ohio service
10 territory, so that's the relevance.

11 As far as the admissibility, the -- the
12 authenticity and the hearsay -- nonhearsay nature of
13 the information is established under Ohio Rule of
14 Evidence 901(a) where there's general information
15 associated with a document that tends to show that
16 the document is what it purports to be, an annual
17 report.

18 Ms. Spiller testified that she recognized
19 the logo, that the document did indicate in the lower
20 left-hand corner that it appeared to come from the
21 PWC website.

22 It's the Commission's practice to admit
23 annual reports of organizations, and in particular
24 it's commonly done with utilities. In fact, I think
25 the last time I am aware of that that's been done was

1 in a Dayton Power and Light rate case where there was
2 a witness, Ms. Storm, who was being questioned about
3 whether Dayton Power and Light had any available
4 sources of funding to it that it could tap into to
5 fulfill its reliability responsibilities. And in
6 that case, I believe the Commission allowed the
7 witness to -- or allowed the admission of annual
8 reports from various utilities about different
9 funding sources that they had tapped into like hedge
10 funds and foreign investment organizations.

11 So it's the Commission's practice to
12 admit into evidence these annual reports from
13 organizations, so for that reason and under Rule
14 901(a) I would submit that Exhibit 8 is admissible.

15 As to Exhibit 9, this is a form filed
16 with the Internal Revenue Service. It's just like a
17 tax return, a Form 1040 that you or I would file with
18 the IRS. Only this is the type of form that a
19 nonprofit organization is required to form -- file.
20 It's a Form 990.

21 And, of course, we all know that when you
22 report your financial information to the IRS, there's
23 an obligation to report it truthfully. So that's the
24 indicia that the information in that report is
25 reliable.

1 Also, the information lists Jock Pitts as
2 the chief executive officer. Ms. Spiller confirmed
3 that she knew Mr. Pitts was the chief executive
4 officer. The form is available on the internet. I
5 could pull it up here on my computer from the IRS
6 database, which is where I got it. They make the
7 forms available to the public. And so it's
8 admissible under Ohio Rule of Evidence 901.7 which
9 applies to public records or reports that are filed
10 in a public office, in this case, the IRS, where
11 similar records are kept, in this case additional
12 form 990 that anybody can access by going on their
13 website, so it's admissible for that reason.

14 `It's also admissible under Ohio Rule of
15 Evidence 902.10 which applies to self-authentication
16 by presumption of law. And again, that goes to the
17 fact that there's an obligation to report financial
18 information, and other information about it and
19 organization to the IRS truthfully so that's --
20 that -- those things are the indicia of reliability
21 and of trustworthiness that we need to look at when
22 considering the admissibility of any document into
23 evidence. This certainly passes that test with five
24 gold stars, an IRS report.

25 Now, as far as Exhibit 10 goes -- excuse

1 me for one minute, please. Okay. Exhibit 10 is the
2 CUB Articles of Incorporation. This article is
3 available from the Secretary of State's website.
4 That's where I downloaded it.

5 The relevance is to show that the
6 organization was incorporated in 2020. Now, as part
7 of the Commission's three-prong test, one of the
8 prongs is whether the parties are knowledgeable,
9 capable, and experienced parties.

10 Now, if an organization was only
11 incorporated in 2020, that would go to whether that
12 organization is experienced dealing with energy
13 issues in the State of Ohio.

14 Now, the energy issues that we deal with
15 in these cases are extremely complex. They require
16 the experience of many years. I look around the
17 room. I see several people with gray hair like
18 myself that comes with that kind of experience that
19 this organization doesn't have if it was only
20 incorporated a couple years ago. So the document is
21 relevant from that standpoint.

22 It's admissible under the requirements
23 for authentication and nonhearsay nature under Rule
24 901(7) and 902(1). 901(7) is the same one I cited
25 for the Form 990, the IRS form. It's a public record

1 or report. In this case the database is the
2 Secretary of State's database which anyone can access
3 with a computer. You just go online, and you
4 download. Any corporation's Articles of
5 Incorporation are available through the Secretary of
6 State's website. So it's a public record, and it's
7 filed in a public office, the Secretary of State,
8 where similar records are kept, other Articles of
9 Incorporation filed by all the corporations in Ohio
10 that are incorporated under Ohio law.

11 It's also admissible under Ohio Rule of
12 Evidence 902(1). 902(1) has to do with the public
13 document that's filed under seal, and you can see
14 from page 1 of the document that the document has the
15 official seal of the Ohio Secretary of State, Frank
16 LaRose. So it's admissible for that reason as well.

17 And then 11 and 12 there was no objection
18 to.

19 So with that I will move into evidence
20 OCC Exhibits 8 through 10.

21 EXAMINER WALSTRA: Thank you.

22 MR. D'ASCENZO: Your Honor, may I briefly
23 respond?

24 EXAMINER WALSTRA: Yes.

25 MR. D'ASCENZO: Thank you. OCC had the

1 opportunity to subpoena witnesses. If they wanted to
2 cross-examine someone on the annual report of PWC,
3 they could have subpoenaed PWC. Your Honors
4 sustained the objection of the cross-examination of
5 Ms. Spiller on that -- on that document. As has been
6 pointed out, it's incomplete. It's two pages of what
7 could be the entire annual report. We just don't
8 know. It's not appropriate to admit that document
9 into evidence.

10 I would renew Mr. Darr's and agree with
11 Mr. Darr's observation about OCC Exhibit No. 9. What
12 OCC is trying to -- attempting to point out is that
13 the -- that board members that existed in 2019 are
14 board members that allegedly exist today. That's
15 hearsay. So, therefore, that document should not be
16 admitted.

17 MS. O'BRIEN: Your Honor, may I briefly
18 respond to Mr. D'Ascenzo?

19 EXAMINER WALSTRA: No, you may not.

20 MR. FINNIGAN: Your Honor, if I may
21 respond to that, the document is relevant not only
22 for listing the board of directors, but it also
23 describes the nature of the organization that PWC is.
24 So if you look at page 1 of the document, it says
25 what it does, and it says that it's an organization

1 that performs home repairs for low income citizens
2 to -- for their homes, and it makes their homes
3 accessible so that they continue to live in place
4 rather than going into a facility.

5 So the point there is that providing
6 funding to an organization that provides -- that
7 primarily does home repairs so an individual can
8 reside in their own residence doesn't sound like
9 anything that would have any benefit at all for the
10 consumers of the electricity of Duke Energy Ohio.
11 It's just totally unrelated.

12 So the document is -- is relevant for
13 that reason, not just the board of directors. The
14 fact is that that's the most recent document that's
15 available on the IRS's website in terms of the Form
16 990s and --

17 EXAMINER WALSTRA: I think we are ready
18 to rule here.

19 MS. PIRIK: Your Honor, can I just --
20 it's a PWC document. Is it all right if I just have
21 a moment?

22 EXAMINER WALSTRA: If you feel the need,
23 go for it.

24 MS. PIRIK: I mean, I just want to note
25 that, you know, I appreciate the fact that OCC feels

1 that these have been authenticated and that there has
2 been foundation, but there really hasn't been. They
3 did have the opportunity -- you know, there are
4 subpoena powers. There is a certain process that it
5 should go through in order for information to come on
6 to the record.

7 It's just troublesome that any document
8 could come in for any witness at any time without any
9 relevancy for that particular witness or even the
10 proceeding for that matter. So, you know, it's a
11 little disconcerting that all the Rules of Evidence
12 are coming out as if it supports, you know, these
13 documents coming into the record when, in fact, it
14 just comes down to they weren't authenticated. There
15 is no foundation and they are not complete documents.

16 EXAMINER WALSTRA: Thank you.

17 I am going to deny admission of
18 Exhibit 8. It was not authenticated. We don't know
19 if it's the full report. Ms. Spiller had no
20 knowledge of seeing this before.

21 As to Exhibit 9 and 10, the Bench will
22 take administrative notice of those two documents.

23 MR. FINNIGAN: Thank you, your Honor.

24 EXAMINER SANDOR: Duke, you may call your
25 next witness.

1 MR. D'ASCENZO: Thank you, your Honor.

2 For our next witness we call Chris Bauer.

3 EXAMINER SANDOR: Please raise your right
4 hand.

5 (Witness sworn.)

6 EXAMINER SANDOR: Thank you. Please be
7 seated.

8 MR. D'ASCENZO: Your Honor, for
9 identification purposes, could we please mark as Duke
10 Energy Ohio Exhibit No. 4, the direct testimony of
11 Christopher Bauer, and as Duke Energy Ohio Exhibit
12 No. 5, the supplemental testimony of Christopher
13 Bauer?

14 EXAMINER SANDOR: Those exhibits are so
15 marked.

16 (EXHIBITS MARKED FOR IDENTIFICATION.)

17 MR. D'ASCENZO: Thank you. May we
18 approach?

19 EXAMINER SANDOR: You may.

20 MR. D'ASCENZO: Thank you, your Honor.

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CHRISTOPHER BAUER

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

DIRECT EXAMINATION

By Mr. D'Ascenzo:

Q. Good afternoon, Mr. Bauer.

A. Good afternoon.

Q. Do you have -- let me start off, would
you please state your name, business address, and
position with the Company for the record?

A. Sure. My name is Christopher Bauer. I
am the Director of Corporate Finance and Assistant
Treasurer of Duke Energy Corp. My business address
is 400 South Tryon Street, Charlotte, North Carolina
28202.

Q. And, Mr. Bauer, do you have in front of
you what has just been marked as Duke Energy Ohio
Exhibits No. 4 and 5?

A. Yes, I do.

Q. And could you please identify those
exhibits?

A. Sure. I see the direct testimony -- my
direct testimony that I filed in this proceeding as
well as a supplemental testimony in support of the
settlement.

1 Q. And, Mr. Bauer, do you have any changes
2 or corrections to either of those testimonies?

3 A. No, I do not.

4 Q. And if you were asked those same
5 questions today then, would your answers be the same?

6 A. They would be.

7 MR. D'ASCENZO: Thank you.

8 Your Honor, the witness is available for
9 cross-examination.

10 EXAMINER SANDOR: Thank you.

11 OCC, I will go to you.

12 - - -

13 CROSS-EXAMINATION

14 By Ms. O'Brien:

15 Q. Good morning, Mr. Bauer. How are you?

16 A. Good afternoon. I am well.

17 Q. I guess good afternoon. You are correct.

18 My name is Angela O'Brien. I am an Assistant
19 Consumers' Counsel with the Office for the Ohio
20 Consumers' Counsel, and I just have some very brief
21 questions for you today.

22 A. Sure.

23 Q. And primarily I am going to be working
24 off of what's been marked as Duke Energy Ohio
25 Exhibit 5, which is your supplemental testimony.

1 A. Okay.

2 Q. If you could just get that ready. Okay.
3 Now, you testified regarding the three-part test that
4 the PUCO uses to evaluate settlements; is that
5 correct?

6 A. That's correct.

7 Q. And can you tell me your understanding of
8 that settlement test?

9 A. It's general in nature, but I do
10 understand the concepts within the three prongs.

11 Q. Okay. Can you tell me what those three
12 prongs are?

13 A. Flip to the pages that describe it. The
14 first is that the settlement product -- the
15 settlement is a product of serious bargaining among
16 capable, knowledgeable parties.

17 The second prong is whether the
18 settlement violates any important regulatory
19 principles or practices, and the third prong is
20 whether the settlement, as a package, benefits
21 customers in the public interest.

22 Q. Okay. Thank you. Now, can you turn to
23 page 3 of your testimony, please, and let me know
24 when you are there?

25 A. I'm there.

1 Q. Okay. Lines 2 and 3, you state that your
2 testimony concerns whether the settlement benefits
3 customers and is in the public interest; is that
4 correct?

5 A. That's correct.

6 Q. And you are not testifying that the
7 settlement is a product of serious bargaining among
8 knowledgeable parties; is that correct?

9 A. That's correct.

10 Q. And you are also not testifying as to
11 whether the settlement violates regulatory
12 principles; is that correct?

13 A. That's correct.

14 MS. O'BRIEN: Okay. Thank you,
15 Mr. Bauer. That's all I have for you today.

16 EXAMINER SANDOR: Okay. Any other cross?
17 Any redirect?

18 MR. D'ASCENZO: No, your Honor.

19 EXAMINER SANDOR: Okay. Well, I guess go
20 ahead and renew your motion for the exhibits.

21 MR. D'ASCENZO: Thank you. Duke Energy
22 moves for the admission of Exhibits No. 4 and 5.

23 EXAMINER SANDOR: Any objections?

24 MS. O'BRIEN: No objection from OCC.

25 EXAMINER SANDOR: Okay. Duke Energy Ohio

1 Exhibits 4 and 5 are so admitted.

2 (EXHIBITS ADMITTED INTO EVIDENCE.)

3 EXAMINER SANDOR: Thank you. You are
4 excused, Mr. Bauer.

5 EXAMINER WALSTRA: Would you like to call
6 your next witness?

7 MS. VAYSMAN: Yes, your Honor. Thank
8 you. Duke would like to call Thomas (TK) Christie at
9 the stand, please.

10 EXAMINER WALSTRA: Raise your right hand.

11 (Witness sworn.)

12 EXAMINER WALSTRA: Thank you. Please
13 take a seat.

14 MS. VAYSMAN: Thank you, your Honor. And
15 for purposes of the record, at this time we would
16 like to mark Duke Energy Ohio Exhibit 6 as the direct
17 testimony of Thomas (TK) Christie that was filed in
18 this proceeding on October 5, 2021.

19 EXAMINER WALSTRA: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MS. VAYSMAN: And may we approach?

22 EXAMINER WALSTRA: You may.

23 MS. VAYSMAN: Thank you.

24 - - -

1 THOMAS K. (TK) CHRISTIE

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

4 DIRECT EXAMINATION

5 By Ms. Vaysman:

6 Q. Good afternoon, Mr. Christie.

7 A. Good afternoon.

8 Q. Would you please state your name, your
9 business address, and your position with the Company
10 for the record?

11 A. Yes. Thomas K. Christie. Position is
12 Director of Distribution Vegetation Management. And
13 address of business is 1000 East Main Street, Plain
14 Field, Indiana.

15 Q. Thank you, Mr. Christie. And do you have
16 before you what's just been marked as Duke Energy
17 Ohio Exhibit 6?

18 A. Yes.

19 Q. And is that your direct testimony in this
20 proceeding?

21 A. It is.

22 Q. Thank you. And do you have any
23 corrections or changes to that testimony today?

24 A. I do not.

25 Q. And if I were to ask you the questions in

1 that document again, would your responses be the
2 same?

3 A. Yes.

4 Q. Thank you, Mr. Christie. Are they true
5 and accurate to the best of your knowledge?

6 A. Yes.

7 MS. VAYSMAN: Thank you.

8 Your Honor, Mr. Christie is available for
9 cross-examination.

10 EXAMINER WALSTRA: Thank you.

11 OCC?

12 MS. WILSON: Yes, thank you, your Honor.

13 - - -

14 CROSS-EXAMINATION

15 By Ms. Wilson:

16 Q. Good afternoon, Mr. Christie. My name is
17 Ambrosia Wilson, Assistant Consumers' Counsel with
18 Office of the Ohio Consumers' Counsel. If you would,
19 please turn to page 1 of your testimony which has
20 just been marked as Duke Exhibit 6. And first of
21 all, I want to go through some of your background.
22 You state on lines 13 and 14 that you have been in
23 the electric utility industry for 25 years; is that
24 correct?

25 A. Correct.

1 Q. And have you spent those entire 25 years
2 at Duke?

3 A. No.

4 Q. Okay. How long have you been at Duke --
5 with Duke?

6 A. A little over 16 years.

7 Q. And how long have you been in your
8 current role?

9 A. Almost four years.

10 Q. Thank you. Now on the same page, line 17
11 through 22, you discuss your duties and
12 responsibilities as the director of distribution
13 vegetation management. Would you agree with that?

14 A. Yes.

15 Q. And on line 19, you state that you
16 oversee Duke's midwest distribution management
17 activities for more than 34,000 miles of electric
18 distribution lines; is that correct? In Kentucky,
19 Indiana, and Ohio?

20 A. Correct for distribution.

21 Q. And of those 34,000 miles, are you aware
22 of how many of those are located in Ohio?

23 A. Yes. Subject to check, I believe it's --
24 I think it's about 8,000, maybe a little over
25 8,000 miles.

1 Q. Thank you. Going to page 2 of your
2 testimony, let me know when you are there.

3 A. I'm there.

4 Q. On lines 1 and 2 of this -- of your
5 testimony, you state you are the primary
6 jurisdictional leader responsible for overseeing
7 Duke's contractors who are performing distribution
8 vegetation management; is that accurate?

9 A. Correct.

10 Q. Are you aware of what the annual expense
11 is for overseeing this distribution vegetation
12 management in Ohio, Kentucky, and Indiana?

13 MS. VAYSMAN: Objection, relate -- the
14 other jurisdictions are not relevant. We ask to
15 limit the question to Ohio.

16 MS. WILSON: That's -- that's fine.

17 Q. Ohio please.

18 EXAMINER WALSTRA: Thank you.

19 A. Are you looking for a specific year?

20 Q. Current.

21 A. So for '22, our projection and budget is
22 22.9 million.

23 Q. And what was it for last year? If you
24 know.

25 A. I think -- I think it was in the 23

1 range.

2 Q. And then you also state on the same page
3 that you make sure that Duke and its contractors, the
4 Company's contractors performing distribution
5 vegetation management, adhere to the contract
6 strategy terms & work plan executed to the company's
7 standards; is that correct?

8 A. Correct.

9 Q. And would you agree that the contractors
10 who perform distribution vegetation management in
11 Ohio are the same contractors performing distribution
12 vegetation management in Kentucky and Indiana as
13 well?

14 MS. VAYSMAN: Objection, your Honor,
15 relevance.

16 EXAMINER WALSTRA: Overruled. You can
17 answer.

18 A. Okay. No. The contractors are
19 different.

20 Q. And moving on to page 3 of your
21 testimony.

22 A. Okay.

23 Q. On lines 10 through 12, you discuss the
24 Company's distribution management vegetation
25 management program. And you state as part of this

1 plan the Commission reaffirmed a five-year
2 distribution trimming cycle for Duke, and this is in
3 Case 20-944; is that accurate?

4 A. Correct.

5 Q. And would you agree that this is the same
6 cycle that Duke uses in its other surrounding states
7 Kentucky and Indiana?

8 MS. VAYSMAN: Objection, your Honor,
9 irrelevant what Duke does in other jurisdictions. We
10 are here to talk about what Duke does in Ohio.

11 EXAMINER WALSTRA: Overruled.

12 Q. (By Ms. Wilson) You can answer.

13 A. Sorry.

14 EXAMINER WALSTRA: Sorry.

15 A. It is. So I will say this, Indiana we
16 trim one-fifth of the system miles annually, and the
17 Kentucky is the same cycle as Ohio.

18 Q. I am sorry, could you repeat that? I
19 couldn't hear what you said before miles.

20 A. Yeah. So in Indiana, on average it's a
21 five-year cycle so specifically we trim one-fifth of
22 the system miles annually in Indiana.

23 Q. Okay. And that's the same in Kentucky as
24 well?

25 A. Kentucky and Ohio we trim on a five-year

1 cycle. It means we trim circuits every five years in
2 Ohio and Kentucky.

3 Q. And moving to page 4 of your testimony,
4 lines 15 through 18, you discuss whether employees
5 and contractors have specific qualifications to
6 perform vegetation management activities. Would you
7 agree with that statement?

8 A. Can you repeat that? Sorry.

9 Q. Sure. On page 4 of your testimony, lines
10 12 through 18, you discuss specific qualifications
11 that Duke requires employees and contractors to have
12 to engage in vegetation management activities.

13 MS. VAYSMAN: Objection, your Honor. It
14 misstates the testimony. The testimony does not
15 discuss specific qualifications on the stated lines.

16 MS. WILSON: Your Honor, the question
17 literally reads, "Do employees and contractors have
18 specific qualifications to engage in vegetation
19 management activities?"

20 EXAMINER WALSTRA: Overruled.

21 Q. (By Ms. Wilson) Would you agree with
22 that?

23 A. Yes.

24 Q. And would you agree that Duke performs
25 the training of its employees and the contractors

1 itself?

2 A. No.

3 Q. Who provides this training?

4 A. For employees -- so what this statement
5 is referring to is ISA certifications which is
6 trained by the ISA organization. On the contractors'
7 side all of our contractors have to be line clearance
8 certified which is done by a third party outside of
9 Duke.

10 Q. What does line -- being line clearance
11 certified indicate?

12 A. It means that the -- vegetation workers
13 can work within a certain distance of our overhead
14 power lines.

15 Q. Do the outside contractors with their ISA
16 certification, do they receive different training
17 than Duke's contractors -- or employees? Sorry.

18 A. Yeah, our employees don't have to be line
19 clearance certified because our employees are not
20 performing vegetation management, you know, line
21 clearance duties.

22 Q. Okay. So none of Duke's employees
23 perform this?

24 A. Not -- not on line clearance duties.

25 Q. Okay. And then on the same page

1 beginning at line 19, you -- question, "How does the
2 Company source its distribution vegetation management
3 functions?" You state in your testimony that Duke
4 engages in a request for proposal process to seek out
5 the companies that can provide the best service for a
6 reasonable cost. Did I read your testimony
7 accurately?

8 A. Correct. Well, Duke Energy supply chain.

9 Q. Thank you. And you oversee this process.

10 A. I do not. That's supply chain. I
11 participate in the process but I don't oversee it.

12 Q. As a participant in the process, could
13 you explain how Duke evaluates vendors to determine
14 who can provide the best service for a reasonable
15 cost?

16 A. So there's two components, so the
17 commercial evaluation piece is done solely by supply
18 chain. You know, as -- as part of operations, we get
19 to review and rank bidders on -- during the -- during
20 the, you know, bid process -- bid cycle that we get
21 to look at resources, experience, what is their --
22 what does their organization look like, and we get to
23 rank it, we get to rank companies in those criteria.
24 I might have missed one or two, but that's to the
25 best of my memory.

1 Q. So in reviewing these bids, would you
2 agree that the Duke Energy supply chain, with your
3 participation, determines what a reasonable cost is
4 in this instance?

5 A. I guess compared to all the other costs
6 that were, you know, provided from other bidders.

7 Q. And is this reasonable cost? Is that
8 referring to a reasonable cost to Duke Energy supply
9 chain, or for the customers?

10 A. For the customers.

11 Q. And, Mr. Christie, to confirm, you are
12 not an attorney; is that correct?

13 A. Correct.

14 Q. But are you personally involved in
15 negotiating the agreements with the contractors?

16 A. I don't -- I am not directly involved
17 with negotiating pricing if that's what you are
18 asking, that's supply chain's duties.

19 Q. But as --

20 A. I get --

21 Q. I'm sorry. As the director you are
22 familiar with the terms and conditions of these
23 contracts?

24 A. Correct.

25 Q. And referring to the agreements with

1 qualified contractors on page 5 of your testimony,
2 would you agree these are one-year agreements or
3 more?

4 A. You are asking about contractual terms?

5 Q. Yeah, the terms. How long are these --
6 are these contracts with contractors?

7 A. So there are three-year agreements with
8 extension options.

9 Q. And Duke has several vendors under
10 contract for distribution -- vegetation distribution
11 management in Ohio?

12 A. Yes.

13 Q. Are you aware how many of these
14 contractors Duke uses in Ohio?

15 A. Yeah. For line clearance duties there is
16 three.

17 Q. 30?

18 A. Three.

19 Q. Three?

20 A. Three, yeah.

21 Q. And are you aware -- aware of when these
22 contracts were negotiated and executed?

23 A. Yes. So the bid event occurred in 2020.
24 And they went into effect 2021, January 1, 2021.

25 Q. Still on page 5 of your testimony,

1 looking at line 4, the question is, "Have these
2 higher costs prompted Duke Energy Ohio to alter its
3 distribution vegetation management activities?" And
4 on a per circuit mile basis can you explain how the
5 distribution management costs in Ohio compare to the
6 costs in Kentucky and Indiana?

7 MS. VAYSMAN: Objection, your Honor.
8 That's not relevant. That's not relevant to this
9 proceeding. This proceeding is about Ohio and
10 whether -- the reasonableness of the Stipulation in
11 Ohio for Ohio vegetation.

12 MS. WILSON: Your Honor, the witness is
13 testifying and the Company is asserting that, you
14 know, they want to -- they want more money and they
15 are altering their distribution vegetation management
16 activities, so the question is since we are very
17 geographically close, are the higher costs reflected
18 in Indiana and Kentucky as well, or is it just Ohio.

19 MS. VAYSMAN: Your Honor, that sounds
20 like a fishing expedition. Also there is different
21 service territories, different terrain, environmental
22 factors, maybe different kinds of vegetation in the
23 different areas. They are not -- they are not
24 necessarily identical and we have not established
25 that they are comparable for this purpose.

1 EXAMINER WALSTRA: I will allow the
2 question. If you need to clarify on redirect, you
3 can clarify.

4 A. Yeah. Can you repeat the question then?

5 MS. WILSON: Karen, can you repeat that,
6 please?

7 (Record read.)

8 A. I cannot, because each circuit is
9 different and kind of what Larisa said was every
10 circuit is different. If you are talking urban,
11 rural, the cost is going to be different.

12 Q. Do you know on average if Ohio's costs
13 are trending higher than those other states?

14 MS. VAYSMAN: Objection, asked and
15 answered.

16 EXAMINER WALSTRA: Overruled.

17 A. Can you repeat the question?

18 MS. WILSON: Karen, can you read it,
19 please.

20 (Record read.)

21 A. I don't have that with me.

22 Q. Okay. And would you agree Duke recovers
23 its vegetation management costs the same way in
24 Kentucky and Indiana as it does Ohio; in other words
25 charges to consumers through a rider?

1 MS. VAYSMAN: Objection, your Honor.

2 It's not relevant how Duke -- what other recovery
3 mechanisms Duke has in other jurisdictions with other
4 regulatory schemes, nor is that within the scope of
5 this witness's testimony.

6 EXAMINER WALSTRA: I will allow the
7 question.

8 A. So in -- to my knowledge, in Kentucky I
9 don't believe there is a rider. In Indiana there is
10 a mechanism that allows us to -- if we go over or
11 under, we can either credit the customers or obtain
12 recovery in the next rate case, to the best of my
13 knowledge.

14 Q. Thank you. So based upon what you just,
15 stated, you would agree that Duke's Kentucky
16 operation also has single-issue ratemaking riders
17 like Ohio ESRR to collect incremental distribution
18 vegetation expenses?

19 MS. VAYSMAN: Objection, your Honor,
20 that's mischaracterizing what the witness just said.

21 EXAMINER WALSTRA: I'll sustain.

22 Q. (By Ms. Wilson) Moving on to page 6 of
23 your testimony, you are discussing the operating and
24 maintenance expenses Duke Energy expects to incur for
25 vegetation management costs in the future and Ohio;

1 is that correct?

2 A. Correct.

3 Q. And would you agree that these numbers
4 you provided on lines 5 and 6, 22.4 million in 2021,
5 22.9 million in 2022, 25.5 million in '23, and
6 25.5 million in '24, did you calculate these amounts
7 yourself or under your direction?

8 A. That was from our vegetation governance
9 group that helped with -- provide those numbers with
10 my assistance.

11 Q. And would you -- you said with your
12 assistance? Would you agree that these numbers are
13 based on the costs up to May 31 of 2045?

14 A. I am not sure I understand the question.

15 MS. VAYSMAN: Yeah. Objection, your
16 Honor. I think maybe the year 2045 was not the year
17 counsel meant to say.

18 Q. (By Ms. Wilson) Yeah, I am guessing I
19 meant to write down 2025. Sorry.

20 A. So these are for known costs and
21 escalations through our current contract which is
22 2024.

23 Q. Are these costs -- strike that.

24 So you would agree that these numbers, at
25 least for 2023 and 2024, these are projections?

1 A. Those are our projections and estimates
2 to the best of our knowledge.

3 Q. And were these amounts calculated, or
4 just picked a number?

5 A. No. They are calculated.

6 Q. And what's included in these
7 calculations?

8 A. The amount of miles we plan to trim in
9 our three different vegetation management specialists
10 areas. Costs are different for each contractor so we
11 are -- we use those numbers to project what the total
12 cost is -- would be.

13 Q. Now let's move to page 7 of your
14 testimony. On lines 20 -- I'm sorry, on line 20 you
15 state that, "Alternative pricing strategies with
16 regard to how work is planned and billed were
17 explored and implemented to mitigate significant
18 increases in costs." Is that an accurate reading of
19 your testimony?

20 A. Yes.

21 Q. Could you explain what you mean by
22 alternate pricing strategies?

23 A. Yes. So during the benefit -- bid event
24 in -- that started in '21, so during 2020, we asked
25 contractors to -- typically, historically we have

1 asked for unit pricing. So the alternative pricing
2 we also asked for cost per mile in addition to unit
3 pricing.

4 Q. So the cost per mile is the only -- is
5 the only alternative pricing strategy?

6 A. It was, and I will say that one of the
7 three areas we award the contractor that did submit
8 the cost per mile cost structure which provided
9 savings to the customers.

10 Q. And could you explain how these
11 strategies result in a mitigation of a significant --
12 significant increases to costs?

13 A. Yes. So we use what we call unit
14 profiles which are historical units that -- for
15 specific circuits. So we took those unit profiles to
16 calculate what a unit cost would be based on rates
17 that contractors provided during the bid event on
18 what the total cost would be for a particular year.

19 And then we took the cost per mile that
20 the contractor provided during the bid event,
21 calculated the number of miles that they planned to
22 do that calendar year, and you compare those costs
23 and that's how you get the savings.

24 Q. Thank you. Would you agree that you are
25 familiar with Ohio's retail electric policies?

1 MS. VAYSMAN: Objection, your Honor.
2 That's a really vague question. And broad. And well
3 beyond the scope -- the scope of this witness's
4 particular testimony.

5 EXAMINER WALSTRA: Overruled. He can
6 clarify if he needs to.

7 A. I am not familiar -- I mean, with that --
8 just retail in general -- I'm probably familiar with
9 portions of it but not everything.

10 Q. Would you agree, subject to check, and
11 it's under Revised Code 4928 -- I realize you are not
12 an attorney, would you agree if I explained to you
13 the policy is to promote adequate, reliable, safe,
14 efficient, and nondiscriminatory and reasonably
15 priced electric service?

16 MS. VAYSMAN: Objection, your Honor, that
17 is an argumentative question. She is reading him a
18 statute that's not even in front of him. That's
19 inappropriate and it's something for brief. It's an
20 argument essentially.

21 EXAMINER WALSTRA: Can you rephrase?

22 MS. WILSON: Yes.

23 Q. (By Ms. Wilson) Would you agree that you
24 personally expect adequate, reliable, safe,
25 efficient, nondiscriminatory and re -- I'm sorry,

1 reasonably priced electric service?

2 A. I expect that, yes.

3 Q. Then wouldn't you agree, given the
4 \$22.5 million increase to base rates, the additional
5 \$10 million in spending for vegetation management
6 through the ESRR promotes inefficiency and
7 unreasonably priced retail electric service?

8 MS. VAYSMAN: Objection, your Honor.
9 That is a compound question. That's argumentative.
10 It goes to one of the legal issues in this case. And
11 it's not appropriate for this witness to answer.

12 MS. WILSON: The witness discusses the
13 \$22.5 million on page 8 of his testimony.

14 MS. VAYSMAN: And also misstates facts.

15 EXAMINER WALSTRA: I will allow him to
16 answer and he can clarify if he needs to.

17 A. I think that question is better suited
18 for Ms. Lawler.

19 Q. Thank you.

20 MS. WILSON: Would you direct the witness
21 to please answer that question?

22 EXAMINER WALSTRA: Can you reask it?

23 MS. WILSON: Karen, could you repeat it,
24 please?

25 (Record read.)

1 MS. VAYSMAN: Part of the objection to
2 that question, your Honor, is there is not a
3 \$22.5 million increase in base rates as I believe the
4 question said. And there is not an additional 10
5 million dollars.

6 MS. WILSON: On page 8 of Mr. Christie's
7 testimony, lines 8 through 9 it says the Company is
8 proposing to include approximately 22.5 million of
9 contractor O&M expenses in its electric base
10 distribution rates.

11 MS. VAYSMAN: Yes, include not increase
12 by. It's not a \$22.5 million increase. And I would
13 also make part of my objection the reasonableness of
14 rates and the amount of the rider and mechanism of
15 the rider is a question better suited to Ms. Lawler.

16 EXAMINER WALSTRA: Sustained.

17 Q. Could you explain the purpose of the
18 ESRR?

19 A. I am not an expert in riders, but if you
20 go to page 8 of my testimony, lines 9, 10, maybe 11,
21 it says the Company is proposing 22.5 million of
22 contractor and expenses in its electric base
23 distribution rates and to refund or collect from
24 customers actual vegetation management contractor
25 costs over or under the amount in base rates through

1 the Rider ESRR. So that's my understanding of the
2 rider.

3 Q. So you would agree that there is no cap
4 to the amount of expenses Duke can collect during
5 this rider?

6 MS. VAYSMAN: Objection, your Honor.
7 This witness is not the subject matter expert on --
8 again on the rider mechanism. His -- the scope of
9 his testimony is the vegetation management program
10 contract oversight, et cetera. And that question
11 about cap or no cap would be better directed to
12 Mrs. Lawler.

13 MS. WILSON: Your Honor, if I may, as the
14 director of the vegetation management program for
15 Duke, I would expect he is familiar with the costs
16 and any associated caps associated with this -- with
17 these programs that he oversees.

18 EXAMINER WALSTRA: He can answer if he
19 knows.

20 A. So currently I think there's the ESRR,
21 you know, is -- has an additional 10 million in -- as
22 the rider. Our intention is not to use, you know, 10
23 million plus the 22.5.

24 Our intention is those incremental costs
25 such as there is no escalations every year for our

1 contractors that averages 2-and-a-half to 3 percent.
2 There's also quarterly fuel settle-up clauses that
3 allow our contractors to true-up fuel cost if there
4 is a rise in fuel costs so those known escalations is
5 our intention to utilize the rider for.

6 Q. That's not exactly what I asked. Would
7 you agree that there is no cap on spending under the
8 ESRR?

9 MS. VAYSMAN: Objection, your Honor. The
10 witness mentioned the potential for up to
11 \$10 million. It's asked and answered.

12 EXAMINER WALSTRA: Overruled. You can
13 answer.

14 A. My understanding is it's the 10 million
15 in the rider is the cap. That's my understanding,
16 but that's my limited understanding of riders.

17 Q. Are you aware of any incentives that Duke
18 has to mitigate vegetation management costs since
19 they can all be collected through the ESRR?

20 A. Can you repeat that question, please?

21 Q. Sure. Are you aware of whether Duke has
22 any incentives to mitigate the vegetation management
23 costs since they can all be charged to consumers
24 through the ESRR?

25 MS. VAYSMAN: Objection, your Honor. That

1 question assumes -- assumes facts that are not in
2 evidence. All rider recovery is reviewed by the
3 Commission as I think everyone here knows, for
4 reasonableness, et cetera, and there is no -- there's
5 no evidence into -- in this proceeding that -- that
6 the Company could require -- infinite costs would be
7 guaranteed to require any amount of cost that applied
8 under the Rider ESRR as the question presumes.

9 EXAMINER WALSTRA: Overruled. You can
10 answer.

11 A. So programs, I mean, that's not specific
12 but as -- as the owner of the budget, me and my team
13 always looks for cost savings. Employees on my team
14 are Duke Energy Ohio customers as well. So we always
15 strive to drive down the cost and to provide cost
16 savings for our customers.

17 Q. And so when you are able to find these
18 cost savings, do you pass those on to consumers?

19 A. Yes.

20 MS. WILSON: Thank you, your Honor.
21 Thank you, Mr. Christie. I have no further
22 questions.

23 EXAMINER WALSTRA: Thank you. Any
24 redirect?

25 MS. VAYSMAN: Can you give us a second,

1 your Honor?

2 EXAMINER WALSTRA: Sure. We will be off
3 the record.

4 (Discussion off the record.)

5 MS. VAYSMAN: No redirect, your Honor.
6 Thank you.

7 EXAMINER WALSTRA: Go ahead.

8 MS. VAYSMAN: No redirect for Mr.
9 Christie, your Honor. Thank you.

10 EXAMINER WALSTRA: Thank you. You are
11 excused.

12 MS. VAYSMAN: We would at this time like
13 to re-move our motion to move in Mr. Christie's
14 direct testimony as Duke Exhibit 6.

15 EXAMINER WALSTRA: Any objections?
16 Hearing none it will be admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER WALSTRA: We'll go off the
19 record and break until 2:00.

20 (Thereupon at 1:01 p.m., a lunch recess
21 was taken.)

22 - - -

23

24

25

1 Tuesday Afternoon Session,
2 October 4, 2022.

3 - - -

4 EXAMINER SANDOR: Let's go on the record.
5 We just returned from a lunch break. We will go
6 ahead and continue with Duke and its witnesses.
7 Please proceed.

8 MS. VAYSMAN: Thank you, your Honor.
9 Duke would like to call, your Honor, Jeff -- Jeffrey
10 W. Hesse to the stand.

11 EXAMINER SANDOR: Please raise your right
12 hand.

13 (Witness sworn.)

14 EXAMINER SANDOR: Okay. Thank you.
15 Please take a seat. Please proceed.

16 MS. VAYSMAN: Your Honor, may we
17 approach?

18 EXAMINER SANDOR: You may.

19 MS. VAYSMAN: Thank you. And, your
20 Honor, for purposes of the record we would like to
21 mark two Duke exhibits. The first of the two will be
22 Duke Energy Ohio Exhibit 7, the direct testimony of
23 Jeffrey Hesse filed on October 15, 2021, in this
24 proceeding.

25 EXAMINER SANDOR: So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 MS. VAYSMAN: Thank you, your Honor. The
3 second of the two exhibits we would like to mark is
4 the second supplemental direct testimony of Jeffrey
5 Hesse in support of the Stipulation and that
6 testimony was filed in this proceeding on
7 September 22, 2022, and we would like to mark that as
8 Duke Ohio Exhibit 8, please.

9 EXAMINER SANDOR: So marked.

10 (EXHIBIT MARKED FOR IDENTIFICATION.)

11 MS. VAYSMAN: Thank you, your Honor.

12 - - -

13 JEFFREY W. HESSE

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

16 DIRECT EXAMINATION

17 By Ms. Vaysman:

18 Q. All right. Good afternoon, Mr. Hesse.

19 A. Good afternoon.

20 Q. Would you please state for the record
21 your full name, your business address, and position
22 with the Company?

23 A. Yes. Jeffrey -- sorry, can you hear me?
24 Jeffrey Hesse. I am an asset design director for
25 north area. I am at 7600 Colerain Avenue,

1 Cincinnati, Ohio 45239.

2 Q. And, Mr. Hesse, do you have before you
3 the two exhibits that have just been marked as Duke
4 Energy Ohio Exhibits 7 and 8?

5 A. I do.

6 Q. And those would be your direct testimony
7 filed on October 15, 2021 in this proceeding, and
8 your second supplemental direct testimony filed on
9 September 22, of 2022 in this proceeding?

10 A. Yes.

11 Q. Thank you. And if I -- do you have any
12 corrections today to either of those testimonies?

13 A. I do not.

14 Q. And if I were to ask you the questions
15 contained therein again, would your responses be the
16 same?

17 A. They would be.

18 Q. Are they true and accurate to the best of
19 your knowledge?

20 A. They are okay.

21 MS. VAYSMAN: Thank you, Mr. Hesse.

22 Your Honor, Mr. Hesse is available for
23 cross-examination.

24 EXAMINER SANDOR: Thank you.

25 OCC?

CROSS-EXAMINATION

By Ms. O'Brien:

Q. Good afternoon, Mr. Hesse.

A. Afternoon.

Q. It's nice to see you again. I met you the other day in the deposition. My name is Angela O'Brien, I am an Assistant Consumers' Counsel with the office of the Ohio Consumers' Counsel.

So I am going to be asking you some questions about primarily what's been marked as Duke Energy Ohio Exhibit 8, your testimony in support of the settlement. So if you could have that available that would be great.

Okay. Now, your testimony focuses on whether the settlement benefits -- I'm sorry, excuse me, the settlement benefits customers and is in the public interest, correct?

A. That's one of the parts.

Q. Okay. But that's -- that's what your testimony concerns primarily?

A. It's one of the aspects of my testimony, yes.

Q. Okay. But you are not testifying as to whether the settlement violates regulatory principles, are you?

1 A. I am not specifically within this second
2 supplemental direct testimony piece, no.

3 Q. Okay. Are you testifying to that in your
4 direct testimony?

5 A. No.

6 Q. Okay. And you are not testifying as to
7 whether the settlement is the product of serious
8 bargaining among capable and knowledgeable parties,
9 are you?

10 A. So if you are referring to the
11 three-party rule and some of the aspects in there, I
12 know I have other individuals within Duke that are
13 closer to that than I am.

14 Q. Okay. Can you show me where in your
15 testimony you are testifying as to whether the
16 settlement is a product of serious bargaining among
17 capable and knowledgeable parties?

18 MS. VAYSMAN: Objection, your Honor. He
19 didn't say that he was testifying to that. He
20 specifically said other people were testifying to
21 that. Asked and answered.

22 EXAMINER SANDOR: Overruled. I will
23 allow him to clarify.

24 MS. O'BRIEN: Your Honor.

25 EXAMINER SANDOR: Answer the question.

1 MS. O'BRIEN: Yes.

2 A. Yeah. So -- can you repeat the question?
3 I'm sorry.

4 MS. O'BRIEN: Karen, could you please
5 read it back?

6 (Record read.)

7 THE WITNESS: I don't have anything in my
8 direct testimony or my second supplemental direct on
9 that.

10 Q. Okay. So to be clear, your testimony
11 primarily concerns whether the settlement benefits
12 customers and is in the public interest, correct?

13 A. My testimony primarily focuses on the
14 Rider DCI and how it applies to our consumers,
15 correct, and customers.

16 Q. And how the Rider DCI benefits customers?

17 A. That's one aspect of it, correct.

18 Q. Okay. But your testimony primarily
19 concerns Rider DCI, right?

20 A. That's correct.

21 Q. Okay. And can you briefly explain to me
22 what Rider DCI is?

23 A. So as you can see from my second
24 supplemental direct testimony on page 8 -- sorry,
25 page 4, you have an explanation of the DCI. It's --

1 it's Electric Security Plan, the rider covers the
2 Company's incremental revenue requirement associated
3 with the return on and of distribution and capital
4 investments including but not limited to ongoing
5 capital -- or maintenance capital as well as the cost
6 to implement very specific programs or initiatives
7 designed to harden and maintain the safe and
8 reliability of the Company's electric distribution
9 system.

10 Q. And how does this settlement at issue in
11 this case, how does the settlement address the Rider
12 DCI?

13 A. So the settlement where we are currently
14 at has two main purposes or why we've come to where
15 we are at, so one of those is we've initially
16 requested a certain amount. This settlement we have
17 actually come to a lower amount than initially
18 requested.

19 The other aspect of the Rider DCI is we
20 are looking to continue to meet our reliability
21 metrics, continue to give better in the reliability
22 base to benefit our customers. In order to do so we
23 need those capital investments to continue to invest
24 and meet some of those reliability targets.

25 Q. Thank you. And when you say the

1 settlement addresses a lower amount, what are you
2 referring to?

3 A. We initially requested a certain dollar
4 which you can see in some of my direct testimony.
5 It -- then Staff had come to us to associate a dollar
6 that was less. The settlement actually meets at a
7 different value that's less than what our initial
8 request was.

9 Q. So now are you testifying about the caps
10 set by the --

11 A. I don't get into the fine details of all
12 the cap dollars. Again, my day-to-day is more in the
13 engineering space so I typically get more into the
14 actual estimates of those associated costs, providing
15 those more to one of my other witnesses, Sarah later
16 on.

17 Q. Okay. But you're testifying that the
18 settlement sets caps or an amount that Duke can
19 recover --

20 A. I am sure --

21 Q. -- under the DCI CAP; is that correct?

22 A. I am not sure I understand the question.

23 Q. Okay. Maybe -- what -- what are you
24 testifying to with respect to the DCI when you say a
25 lower amount, what do you mean? Do you mean the cap

1 that's referred to in the settlement?

2 A. Yeah. There's a cap amount that's being
3 requested for recovery associated for the remainder
4 of this year and through 2025.

5 Q. Okay. So that's what I was getting at,
6 but the lower amount. So yes, so the settlement sets
7 certain caps for each year through 2025 that Duke can
8 recover under Rider DCI?

9 A. That's correct.

10 Q. Okay. Great. Now, if you could turn to
11 your testimony at page 9, and let me know when you
12 are there.

13 A. I'm there.

14 Q. And if you look at 9 -- I'm sorry, line
15 6, here you say one of the reasons the DCI rider
16 provisions in the settlement benefit -- benefit
17 consumers is because "the negotiated caps are lower
18 than what the Company requested." Did I -- did I
19 read your testimony correctly?

20 A. I don't see what line you are seeing.

21 Q. If you --

22 A. This -- this reduced cap will serve to
23 limit the increases to customers in between base rate
24 proceedings as it proceeds to recover incremental
25 distribution capital investment.

1 Q. Okay. I apologize, I got the wrong -- I
2 have got the wrong reference. Okay. But it's your
3 testimony that one of the benefits of the settlement
4 is that the negotiated caps are lower than what the
5 Company initially requested in its application; is
6 that correct?

7 A. It's one of the aspects of it, but not
8 necessarily the benefit. The benefit really comes
9 down to it keeps from that increase being one larger
10 increase. It is incremental in nature.

11 Q. Okay. So are you saying the fact that
12 Duke cannot recover as much under the Rider DCI as it
13 initially requested in the application, are you
14 saying that that is not a benefit of the settlement?

15 A. The benefit is that incrementally sets
16 those increases to our customers.

17 Q. Okay. And when you say -- could you
18 please read his response back, Karen?

19 (Record read.)

20 Q. Okay. Could you explain that? I don't
21 quite understand that answer.

22 A. So it's a balance of interests. So
23 having this to where you're having reduced caps serve
24 the customer because you are seeing those incremental
25 changes to the rate associated to what we are able to

1 recover, instead of seeing us go back to the rate at
2 2025 and seeing a much larger amount that we would be
3 requesting.

4 Q. Okay. So what did Duke initially request
5 with respect to the DCI caps in the application?

6 A. I don't recall the exact amount.

7 Q. Would it be in your direct testimony in
8 support of the Application?

9 A. I don't believe it is.

10 Q. Okay. If you could turn to page 14 of
11 your testimony.

12 A. Sorry. The direct or second
13 supplemental?

14 Q. The second supplemental, I apologize.

15 A. Uh-huh. Okay.

16 Q. Okay. Here beginning about halfway down
17 the page at line 9, you testify regarding the
18 reliability standards set in Duke's last rate case;
19 is that correct?

20 A. Yes.

21 Q. And are you aware that in that case there
22 was a settlement that extended the Rider DCI through
23 2025?

24 A. Yes.

25 Q. Now one of the reliability standards that

1 came out of the last rate case with respect to Rider
2 DCI is the system average interruption frequency
3 index; is that right?

4 A. That was one including CAIDI.

5 Q. And if I refer to that specific index as
6 the SAIFI or SAIFI, will you understand my meaning?

7 A. I do.

8 Q. And you would agree with me that the
9 SAIFI is -- the SAIFI index is a requirement set
10 forth within the PUCO's rules regarding distribution
11 system reliability; is that correct?

12 A. SAIFI including a couple other metrics
13 are both included in one of the reliability items.

14 Q. Okay. We will get to those. Now the
15 other reliability standard coming out of the rate
16 case -- and by rate case I mean the prior rate case,
17 is the customer average interruption duration index;
18 is that right?

19 A. When you say prior, you mean the
20 2017-2018 rate case that we --

21 Q. Yeah, the one -- the rate case prior to
22 this -- the one in Case No. 17-32.

23 A. And you are saying CAIDI, C-A-I-D-I?

24 Q. Yes, C-A-I-D-I.

25 A. That was correct.

1 Q. Okay. And you would agree that the CAIDI
2 standard is also a requirement set forth in the
3 PUCO's rules regarding distribution system
4 reliability.

5 A. It was in that case.

6 Q. Is it not no longer?

7 A. It still is.

8 Q. Okay. So it is still a distribution
9 system reliability requirement in the Commission's
10 rules; is that your understanding?

11 A. You said system?

12 Q. CAIDI, C-A-I-D-I, is it your
13 understanding that that index is a requirement set
14 forth in the PUCO's rules regarding distribution
15 system reliability?

16 A. Yeah. I thought I heard you wrong in
17 system. That's correct, CAIDI is.

18 Q. Now, it's your testimony that Duke did
19 not achieve the SAIFI, the S-A-I-F-I, standard in
20 2021; is that correct?

21 A. Duke has met CAIDI and SAIFI every year
22 since 2017 minus the 2021 time in which we did miss.
23 However, we have seen progression into a decrease in
24 those metrics.

25 MS. O'BRIEN: Your Honor, I am going to

1 request that his answer be stricken. It's a yes or
2 no question and he went on to talk about before 2021
3 and what's happened since. I asked specifically with
4 respect to 2021 and the SAIFI index.

5 MS. VAYSMAN: Your Honor, counsel is --
6 was asking about the previous rate case and the
7 standards set there and the standards were set for
8 the span of years and Mr. Hesse was just answering
9 for the time span and the order -- of the order that
10 OCC counsel was asking about.

11 EXAMINER SANDOR: So I am going to deny
12 the motion to strike as of right now. We would
13 instruct the witness going forward if it is a yes or
14 no answer, try to answer that to the best of your
15 ability in that respect, and if it needs further
16 clarification, it can be added at that time. But
17 denied as of right now.

18 MS. O'BRIEN: Okay.

19 Q. (By Ms. O'Brien) So again, and just to
20 clarify, I am not -- I don't want to subject myself
21 to an asked and answered objection, your testimony is
22 that Duke did not achieve the SAIFI standard in 2021;
23 is that correct?

24 A. We did not.

25 Q. Now, the settlement at issue in this rate

1 case now proposes new higher DCI caps for Duke; is
2 that correct?

3 MS. VAYSMAN: Objection. The question is
4 vague. Counsel doesn't say higher relative to what.

5 MS. O'BRIEN: Okay. I will rephrase.

6 EXAMINER SANDOR: Thank you.

7 Q. (By Ms. O'Brien) The settlement at issue
8 now proposes new higher DCI caps than what was
9 adopted in the prior rate case; is that correct?

10 A. That's correct.

11 Q. And the settlement also allows Duke to
12 recover additional amounts under the Rider DCI if it
13 meets a certain reliability standard; is that
14 correct?

15 A. It does allow for an additional incentive
16 if we meet a SAIDI metric.

17 Q. Okay. And we'll get to the SAIDI in just
18 a minute, but under the settlement you would agree
19 with me that does not have to satisfy either the
20 SAIFI or the CAIDI reliability standards in order to
21 receive the additional amounts under the DCI; is that
22 correct?

23 A. CAIDI and SAIFI are a potential penalty
24 that could be applied for not meeting. However, it
25 is not required in order to meet those caps:

1 Q. And now instead Duke -- well, under the
2 settlement at issue here, Duke must instead meet the
3 SAIDI, the S-A-I-D-I, which is the system average
4 interruption duration index standard; is that right?

5 A. That's correct.

6 Q. Okay. And would you agree with me that
7 under the PUCO's rules, the SAIDI standard measures
8 distribution circuit performance?

9 A. I am not sure I understand the question.
10 Are you asking for the definition of SAIDI?

11 Q. I am asking whether you are aware if the
12 SAIDI standard under the -- under the PUCO's rules
13 measures distribution circuit performance?

14 A. So SAIDI measures the duration associated
15 to what all of our customers see. We do submit the
16 SAIDI metric within our work performing circuit Rule
17 11. However, it doesn't necessarily measure the
18 worst performing circuit or circuit metric. CAIDI
19 and SAIFI are also circuit metrics.

20 Q. Okay. Well, if I were to represent to
21 you that the PUCO 4901:1-10-11 specifically
22 references SAIDI as a measurement of distribution
23 circuit performance, would you have any reason to
24 disagree with me?

25 MS. VAYSMAN: Objection, your Honor.

1 That's argumentative. The witness is aware of the
2 rule. He just clarified what -- what he views the
3 metric as measuring and what he understands the rule
4 uses it for. And he has answered the question.

5 MS. O'BRIEN: Your Honor, I am just
6 trying to clarify. I mean if I am going to get an
7 objection for each question I am asking we are going
8 to be here for a long time. It's a simple question.

9 EXAMINER SANDOR: Overruled.

10 MS. O'BRIEN: If that's what the rule
11 states then that's fine.

12 EXAMINER SANDOR: Okay.

13 Q. (By Ms. O'Brien) So I'll just move on.
14 And you would agree with me that with respect to the
15 SAIDI, the System Average Interruption Duration
16 Index, the PUCO has not previously approved the use
17 of a SAIDI as a distribution reliability standard for
18 Duke; is that correct?

19 A. I am not aware of one for Duke but I
20 believe so for other utilities.

21 MS. O'BRIEN: Okay. Again, your Honor, I
22 am going to move to strike after I am not aware for
23 Duke. I wasn't asking about other utilities. I was
24 asking with respect to Duke.

25 EXAMINER SANDOR: Motion is denied. I am

1 okay with him adding that on to the answer to help
2 clarify his answer.

3 Q. (By Ms. O'Brien) Okay. Now, under the
4 settlement, and I think we just discussed this but I
5 just want to clarify again, Duke can receive an
6 increase in the DCI Rider revenue cap if it satisfies
7 the SAIDI but fails to meet the SAIFI or the CAIDI;
8 is that correct?

9 A. That is correct.

10 MS. O'BRIEN: Your Honor, may I approach?

11 EXAMINER SANDOR: You may.

12 MS. O'BRIEN: And I would like to mark --
13 try not to trip over everything. I would like to
14 mark OCC Cross Exhibit 14. And this was sent out via
15 e-mail to all of the parties earlier.

16 EXAMINER SANDOR: Thank you for
17 clarifying that.

18 MS. GRUNDMANN: Is this the direct exam
19 of Christie that was entered into the record already
20 or do I have it misnumbered?

21 MS. O'BRIEN: I think you have it
22 misnumbered.

23 MS. VAYSMAN: There were two Exhibit 14s
24 sent out.

25 MS. O'BRIEN: Well, Duke -- Duke admitted

1 Christie's testimony as an exhibit, I believe.

2 MS. GRUNDMANN: Give me just a second.
3 In the -- in the electronic file Exhibit 14 is marked
4 as Christie's direct. Just give me a second. Can
5 you tell me what it's identified as?

6 MS. O'BRIEN: This is identified as OCC
7 Exhibit 14. It's in the e-mail I sent out earlier.
8 Duke admitted --

9 MS. GRUNDMANN: That's okay. The
10 discovery response number. I am trying to find it
11 here because -- give me just a second.

12 EXAMINER SANDOR: So the other parties do
13 have it?

14 MS. O'BRIEN: I've e-mailed it.

15 EXAMINER SANDOR: All right. Thank you.

16 MS. O'BRIEN: So what I've marked as OCC
17 cross Exhibit 14, this is a Duke response to OCC
18 Stipulation interrogatory 03-008 and, Mr. Hesse --

19 EXAMINER SANDOR: One moment. So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 MS. O'BRIEN: Sorry.

22 Q. (By Ms. O'Brien) Mr. Hesse, do you see
23 where it says person responsible?

24 A. I do.

25 Q. Okay. And do you see your name after

1 that?

2 A. I do.

3 Q. Okay. And did you provide the response
4 in OCC cross Exhibit 14?

5 A. I did.

6 Q. Okay. Great. Now, in this -- in this
7 cross exhibit you state that through August 2022, the
8 year-to-date SAIFI was .58 and the year-to-date CAIDI
9 was 140.82; is that right?

10 A. That's what it reads, yes.

11 Q. And am I correct to assume that when you
12 say year-to-date, you are referring to these .58 and
13 140.28 as annual numbers?

14 MS. VAYSMAN: Objection, your Honor. The
15 question is a little hard to understand. Counsel
16 could maybe rephrase.

17 EXAMINER SANDOR: If you could rephrase
18 it or clarify.

19 Q. (By Ms. O'Brien) Okay. Is this an
20 annual -- is this an annual metric right here when
21 you say year-to-date, what do you mean?

22 A. Yeah. So those numbers are from
23 January 1 through August of 2022.

24 Q. Okay. So it's not an annual.

25 A. Sorry, did you have -- I didn't hear what

1 you said.

2 Q. I'll get there, thanks.

3 A. Sorry.

4 Q. Okay. That's what I wanted to clarify
5 with that as to whether or not that was through
6 January to August of this year or whether it was for
7 an annual amount.

8 Okay. Now, with respect to -- you would
9 agree with me that Duke is responsible for making
10 sufficient investment in the distribution system to
11 provide reliable service according to the PUCO
12 minimum service standards; is that correct?

13 A. I am not sure I understand your question.
14 Can you repeat?

15 Q. Duke is responsible for making sufficient
16 investment into its system to meet the SAIFI and
17 CAIDI standards under the PUCO's rules; is that
18 right?

19 A. We do put substantial dollars into trying
20 to make our system very reliable and safe for our
21 customers.

22 Q. Okay.

23 A. How --

24 Q. Go ahead.

25 A. I was going to say, however, it is a

1 metric that has a lot of variables involved and so we
2 use involved best engineering knowledge and means
3 that we can to be able to try to meet those
4 associated metrics.

5 Q. And you would agree with me that that
6 obligation of Duke's exists regardless of what amount
7 it receives through the DCI?

8 MS. VAYSMAN: Objection, your Honor.

9 EXAMINER SANDOR: I will allow him to
10 answer if he knows. You can answer, sir, you know.

11 A. So those metrics were in place from our
12 2017 rate case, yes.

13 Q. Okay. So let me state it another way, I
14 think you just said that Duke is responsible for
15 meeting its SAIFI and CAIDI metrics under the PUCO's
16 rules, right?

17 A. Our 2018 rate case was through 2025 for
18 those metrics.

19 Q. Okay. But you -- I thought you just
20 testified previously that both SAIFI and CAIDI are
21 reliability metrics under the PUCO's rules.

22 A. They are for the DCI.

23 Q. Okay. Great. Now, Duke has to meet
24 those metrics whether it recovers the money for doing
25 so through base rates or through the Rider DCI; is

1 that right?

2 A. Not exactly.

3 Q. Okay. How am I wrong?

4 A. Those metrics are in place with the
5 possibility of penalty. However the associated rates
6 that we get back are not warranted on just those
7 metrics.

8 Q. Okay. But regardless, Duke is
9 responsible for maintaining a safe and reliable
10 system, right?

11 A. We are.

12 Q. Okay. Now, can you tell me what portion
13 of Duke's capital investment in improving reliability
14 is represented in the stipulated caps?

15 A. I am not sure I understand the question.

16 Q. What -- okay. I am trying -- I am trying
17 to figure out how I can -- how much -- okay. Let me
18 break it down this way, okay? The DCI cap, the money
19 that Duke recovers under the DCI cap is to help Duke
20 maintain system reliability, correct?

21 A. It is one aspect of it.

22 Q. Okay. What is the portion of capital
23 investment that is represented under the caps set
24 forth in the settlement?

25 A. This is for 2022? Your -- overall those

1 cap amounts go for more than just the reliability
2 aspect. Everything is tied together. So I can't
3 just break out one small segment. And I think I have
4 your question correct.

5 You can't just break out one small
6 segment of what we do from an improvement perspective
7 and say that is only specifically associated to the
8 reliability aspect.

9 Q. Okay. So would your answer be the same
10 if I asked you what is the total capital investment
11 Duke would need on an annual basis to maintain the
12 PUCO reliability standards without the DCI Rider?

13 MS. VAYSMAN: Objection, calls for
14 speculation. The metric -- metric is not
15 achieving -- the metric is not directly tied in
16 advance to any particular amount of investment. The
17 Company -- counsel is asking the witness to speculate
18 as to how much money would result -- what kind of
19 metrics would result from how much investment.

20 MS. O'BRIEN: Your Honor, he is their
21 witness with respect to the Rider DCI caps. If he
22 doesn't know the answer to the question, he is
23 perfectly capable of stating he doesn't know. That's
24 what I am trying to get at.

25 EXAMINER SANDOR: Yeah. Overruled. If

1 you know, you can answer the question.

2 A. Can you repeat the question?

3 Q. (By Ms. O'Brien) What is the total
4 capital investment Duke would need on an annual basis
5 to maintain the PUCO reliability standards meaning
6 the SAIFI and the CAIDI without the DCI Rider?

7 A. So aggressive targets in both aspects and
8 the fact that there is a lot of variables, right?
9 And we've talked about cost variables, what we see
10 just around COVID, what we've talked about in
11 vehicular accidents, and those metrics and things
12 that are out of Duke's control keep an exact dollar
13 from being hard to mention.

14 Based on the best we can, we are
15 providing some of those dollar amounts that we think
16 would help us be more successful in meeting those
17 metrics.

18 Q. So is the answer to my question you don't
19 know?

20 A. I don't know the exact amount, exact
21 dollar. Again, using the best means possible that we
22 have knowing that us improving our lines and
23 increasing and installing new equipment to get better
24 in our reliability, we do project we will hit those
25 more often based on some of these increases.

1 Q. Thank you. Now, if Duke did not have the
2 DCI Rider, how often would Duke have to file rate
3 cases to recover capital investment to maintain
4 system reliability?

5 MS. VAYSMAN: Objection, your Honor.
6 This witness is not -- is not a rates expert and does
7 not know -- how often Duke would have to file a rate
8 case is beyond the scope of his testimony, as well as
9 the fact that it calls for immense speculation taking
10 into account all sorts of other things like the
11 interest rates and who knows what else goes into a
12 rate case.

13 EXAMINER SANDOR: Overruled. I will
14 allow him to answer if he knows.

15 THE WITNESS: I'm not sure.

16 Q. Now, I think you just mentioned and I
17 know you testified about this -- well, let me go
18 back. Okay.

19 I believe you testify that additional
20 investments are needed to improve Duke's system
21 reliability and improve on the prior year's metrics.
22 Is that -- is that an accurate characterization of
23 your testimony?

24 A. It is.

25 Q. Okay. What additional investments will

1 Duke -- or what additional investments is Duke or
2 will Duke be making into its system?

3 A. So a lot of our capital investments in
4 this space -- in this space is helping to usher in
5 the grid of the future. A lot of those programs are
6 very focused into either safety reliability or
7 resiliency.

8 Some primary ones, very specifically that
9 we are doing is some of our self-optimizing grid
10 work, some of our deteriorated conductor work, some
11 of our pole replacement work as well.

12 Q. Thank you. Now, I believe you just
13 mentioned the motor vehicle accidents; is that right?

14 A. Yeah. I spoke about that a while ago.

15 Q. Okay. And in your testimony you
16 reference an increase in motor vehicle accidents as a
17 reason why Duke didn't satisfy the SAIFI standard in
18 2021; is that a correct characterization in your
19 testimony?

20 A. Two aspects to the motor vehicle but,
21 yes, we did see an increase that we did not
22 anticipate for our motor vehicle accidents.

23 There also was an associated policy
24 change around some of the motor vehicles that went
25 into place that calls for some not anticipated

1 numbers in the SAIFI space.

2 Q. Okay. So just -- and we will get to the
3 second part about the policy change that you
4 mentioned, but with respect to the motor vehicle
5 accidents have you or has Duke done any studies or
6 analyses to determine the specific costs that Duke
7 has incurred as a result of the increases in motor
8 vehicle accidents?

9 A. I'm sorry, did you ask about the costs?

10 Q. Yes.

11 A. Not to my knowledge.

12 Q. And now what specific investments is Duke
13 making, or does Duke plan to make to counteract
14 reliability issues related to what you testify is an
15 increase this motor vehicle damage?

16 A. So one of the big ones is around some of
17 our self-optimizing grid work, so installing some of
18 those reclosers on our lines that allow for two-way
19 power flow, reducing some of the customers impacted
20 from when we do have those associated outages is just
21 one of those aspects.

22 Q. Now I am going to get back to I think
23 what is the policy change that you referenced. Is
24 that policy change where -- does that -- is that
25 where you testify about de-energizing the poles to

1 protect workers? I think it -- I believe it's at
2 page 15 of your testimony.

3 A. Yes. It's the safety procedure that went
4 into place in 2022 in which we're requiring that
5 lines are de-energized when the lines are not able to
6 be maintained in order to be safe. It's really one
7 of those aspects that through observation and what we
8 were seeing, we had many concerns, and required to us
9 really change.

10 Q. Okay. Now, that was a procedure that was
11 implemented by Duke, correct?

12 A. It was.

13 Q. Okay. So it was not mandated -- excuse
14 me. I can't talk correctly. It was not mandated by
15 the PUCO, was it?

16 A. It was mandated by safety for public in
17 our personnel.

18 Q. Okay. What I asked you -- my question
19 was, was it mandated by the PUCO?

20 A. It wasn't but -- no.

21 Q. Okay. Was it mandated as part of the
22 National Electric Code?

23 A. Our procedures and policies, to my
24 knowledge, aren't mandated typically either of those
25 things. They might be provided, but they are

1 typically mandated by providing safety to both
2 personnel and public safety.

3 Q. Okay. So the answer to my question is
4 this policy change was not mandated as part of the
5 National Electric Code?

6 A. Not to my knowledge.

7 Q. Thank you. Just give me a couple
8 minutes.

9 EXAMINER SANDOR: Okay.

10 MS. O'BRIEN: Okay. Thank you,
11 Mr. Hesse, that's all my questions for today.

12 THE WITNESS: You are welcome.

13 MS. O'BRIEN: Thank you for your time.

14 EXAMINER SANDOR: I assume no cross from
15 other parties? Any redirect from Duke?

16 MS. VAYSMAN: Just one quick redirect
17 question, your Honor.

18 - - -

19 REDIRECT EXAMINATION

20 By Ms. Vaysman:

21 Q. Mr. Hesse, you were talking about the
22 safety procedure that was implemented earlier in your
23 testimony, I believe you said 2022. But I --

24 A. 2020.

25 Q. Yeah. But the correct year -- thank you

1 for the correct year.

2 A. I apologize.

3 MS. VAYSMAN: No worries. That's all,
4 your Honor. Thank you.

5 EXAMINER WALSTRA: What year were you
6 correcting?

7 MS. VAYSMAN: What?

8 EXAMINER WALSTRA: What did you just
9 correct?

10 MS. VAYSMAN: It was -- I asked the
11 safety procedure that was implement by de-energizing
12 the poles. He said earlier when he was speaking
13 about it that it was implemented in 2022. And that
14 was -- I just had him confirm that was a misspeaking
15 and the correct year was 2020.

16 EXAMINER WALSTRA: Thank you.

17 EXAMINER SANDOR: Any recross on that one
18 question?

19 MS. O'BRIEN: No, your Honor.

20 EXAMINER SANDOR: Okay. If you could
21 please proceed with the exhibits. Oh, and you are
22 excused, Mr. Hesse.

23 THE WITNESS: Thank you.

24 MS. VAYSMAN: Thank you, your Honor. So
25 we renew -- we renew our motion, your Honor, to move

1 Mr. Hesse's direct testimony, Duke Energy Ohio
2 Exhibit 7, and Mr. Hesse's second supplemental direct
3 testimony, Duke Energy Ohio Exhibit 8, into the
4 record as evidence.

5 EXAMINER SANDOR: Any objections?

6 MS. O'BRIEN: No objection.

7 EXAMINER SANDOR: All right. Duke Energy
8 Ohio Exhibit 7 and 8 are admitted into the record.

9 (EXHIBITS ADMITTED INTO EVIDENCE.)

10 EXAMINER SANDOR: Now, OCC, your exhibit.

11 MS. O'BRIEN: Yes. At this time I would
12 like to move for the admission of OCC Cross
13 Exhibit 14.

14 EXAMINER SANDOR: Any objections?

15 Okay. Hearing none, OCC Exhibit 14 is
16 admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER SANDOR: Thank you.

19 EXAMINER WALSTRA: You may call your next
20 witness.

21 MS. AKHBARI: Thank you, your Honor. At
22 this time the Company calls Mr. Bruce Sailors to the
23 stand.

24 (Witness sworn.)

25 EXAMINER WALSTRA: Thank you. Please

1 take a seat.

2 MS. AKHBARI: And before we get going
3 with Mr. Sailers, we have three exhibits that the
4 Company would like to premark. Exhibit 9A would be
5 the public direct testimony of Bruce Sailers filed
6 October 15, 2021, 9B the confidential direct
7 testimony of Bruce Sailers also filed October 15,
8 2021, and Exhibit -- Company Exhibit 10, second
9 supplemental testimony of Mr. Sailers filed
10 September 22, 2022. And permission -- well,
11 permission to approach.

12 EXAMINER WALSTRA: You may approach and
13 we will -- the exhibits will be so marked.

14 (EXHIBITS MARKED FOR IDENTIFICATION.)

15 MS. AKHBARI: If every one has what they
16 need great.

17 - - -

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

21 DIRECT EXAMINATION

22 By Ms. Akhbari:

23 Q. Thank you, Mr. Sailers, for being with us
24 here this afternoon. Would you please state your
25 full name and business address for the record.

1 A. Sure. Bruce Lee Sailers, 139 East Fourth
2 Street, Cincinnati, Ohio 45202.

3 Q. And by whom are you employed?

4 A. Duke Energy Business Services.

5 Q. Great. And what is your job title?

6 A. Director Jurisdictional Rate
7 Administration.

8 Q. Great. All right. So, Mr. Sailers, you
9 have a number of documents in front of you hopefully.

10 A. I do.

11 Q. Let's start with what has been previously
12 marked as Company Exhibit 9A. Do you recognize
13 Exhibit 9A?

14 A. This looks like my direct testimony in
15 this proceeding.

16 Q. Great. And is it the public version
17 hopefully?

18 A. Public version.

19 Q. Great. Do you also have Exhibit 9B
20 currently before you?

21 A. Second supplemental direct testimony.

22 Q. Great. And would this be the
23 confidential version of that testimony? Oh, I'm
24 sorry.

25 A. I don't believe I have a confidential

1 version of this testimony.

2 MS. AKHBARI: Sorry. Just a moment.
3 Sorry, your Honor. We are just grabbing the
4 confidential version.

5 EXAMINER WALSTRA: No problem.

6 Q. (By Ms. Akhbari) All right. Mr. Sailers,
7 let's start this over. So do you have before you
8 what's been premarked as Company Exhibit 9B?

9 A. Yes. Is that the one -- the confidential
10 version of my direct testimony.

11 Q. Great. So was the -- was this testimony
12 prepared by you or at your direction?

13 A. It was.

14 Q. And looking at Exhibits 9A and 9B, do you
15 have any changes or corrections to those exhibits
16 today?

17 A. I do not.

18 Q. And if I asked you the same questions in
19 your direct testimony today, would your answers
20 remain the same?

21 A. They would.

22 Q. Great. Thanks, Mr. Sailers. Let's turn,
23 please, to the second document -- or third, I guess,
24 that you have before you, previously been marked as
25 Company Exhibit 10. And do you recognize this

1 document?

2 A. This is my second supplemental direct
3 testimony.

4 Q. Great. And was this testimony prepared
5 by you or at your direction?

6 A. Yes.

7 Q. And do you have any changes or
8 corrections to Exhibit 10 today?

9 A. I do not.

10 Q. If I asked you the questions contained in
11 your second supplemental direct testimony, would your
12 answers remain the same?

13 A. They would.

14 MS. AKHBARI: Great. Thanks,
15 Mr. Sailors. With that, your Honor, we would seek
16 the introduction of these exhibits, subject to
17 cross-examination, and present the witness for cross.

18 EXAMINER WALSTRA: Thank you.

19 OCC?

20 - - -

21 CROSS-EXAMINATION

22 By Mr. Semple:

23 Q. Good afternoon, Mr. Sailors. How are you
24 doing today?

25 A. Good. How are you?

1 Q. I am doing all right, thank you. My name
2 is Connor Semple, and I am here today with the Ohio
3 Consumers' Counsel. Can you hear me okay?

4 A. I can.

5 Q. Okay.

6 A. Can you hear me?

7 Q. Yes, I can. Thank you. I am going to be
8 asking you a couple questions about a document that's
9 been marked Duke Energy Exhibit 10. So if you can
10 have that available.

11 A. I do.

12 Q. It's your position -- you are going to
13 testify today about all three prongs of the PUCO
14 standard for evaluating a stipulation, correct?

15 A. Yes. In my nonlegal opinion, I make
16 statements to support all three prongs and with the
17 focus on the calculation of the base tariff rates and
18 also tariff changes.

19 Q. And you are familiar with all three
20 prongs of the PUCO standard?

21 A. Yes.

22 Q. Okay. It's your testimony that this
23 proposed Stipulation satisfies the first prong of the
24 standard, correct?

25 A. Does that mean the --

1 MS. AKHBARI: Could I object, your Honor?
2 Could counsel for OCC just identify the prongs that
3 he is referring to just to avoid any confusion with
4 the witness?

5 MR. SEMPLE: Sure.

6 EXAMINER WALSTRA: Thank you.

7 Q. (By Mr. Semple) Mr. Sailers, it's your
8 testimony that this stipulation is a product of
9 serious bargaining between capable parties, correct?

10 A. Correct.

11 Q. Thank you. And you testified that this
12 Stipulation has been signed by representatives of
13 every stakeholder, correct?

14 A. Correct. I think I listed the
15 stakeholder groups.

16 Q. Okay. And I would like to direct you to
17 page 12 of your testimony. You testified that these
18 stakeholder groups include all customer classes,
19 correct?

20 MS. AKHBARI: Could we just give the
21 witness a minute to get to the page?

22 A. I believe you are referring to lines
23 where I say this clearly reflected in the number of
24 stakeholder interests either supporting or
25 nonopposing the settlement. This includes groups

1 representing all customer classes, residential, the
2 low income, commercial/industrial, government, market
3 interests, suppliers, and brokers, Staff.

4 Q. Yes. Thank you. Can I direct you now to
5 page 3 of your testimony, specifically lines 9 and
6 10.

7 A. Okay.

8 Q. It's your testimony that the City of
9 Cincinnati is one of the parties to the Stipulation
10 that represents customer classes in particular,
11 correct?

12 A. They are. They represent several.

13 Q. Okay. Mr. Sailors, how many electric
14 consumers does Duke have in the State of Ohio?

15 A. Approximately -- have to go find the
16 form, but approximately 700,000.

17 Q. 700,000. Do you know how many residents
18 there are in the City of Cincinnati?

19 A. I do not.

20 Q. If I told you that it was approximately
21 300,000, would you have any reason to doubt me?

22 MS. AKHBARI: Objection, calls for
23 speculation.

24 EXAMINER WALSTRA: Overruled.

25 A. Do I have any reason to doubt you? I

1 would have no basis to know whether it would be true
2 or not.

3 Q. Are there electric consumers of Duke
4 Energy that reside in cities other than Cincinnati?

5 A. Certainly.

6 Q. Okay. Are any of those cities party to
7 the Stipulation?

8 A. Not all of them, no. No, I don't believe
9 so.

10 Q. Okay. Thank you. And it's true that
11 this Stipulation, in fact, provides for funding to
12 the City of Cincinnati from Duke, correct?

13 A. There is a provision, yes.

14 Q. Okay. Are you familiar with an
15 organization called Ohio Partners for Affordable
16 Energy?

17 A. OPAE?

18 Q. OPAE, yes.

19 A. They are one of the parties to the
20 Stipulation.

21 Q. Okay.

22 A. I am not detailed in what they do.

23 Q. Okay. Are they one of the parties that
24 you have identified as a representative of
25 residential consumers?

1 A. They very well may, yes.

2 Q. Okay. Are you aware of any funding that
3 Duke Energy provides to OP&A?

4 A. I am not aware.

5 Q. Okay. Are you familiar with an
6 organization called People Working Cooperatively?

7 A. Yes. They are part of the Stipulation.

8 Q. Okay. Are they an organization that you
9 have identified as a representative of residential
10 consumers?

11 A. They are one of the signatory parties to
12 the Stipulation who I believe represent low income or
13 work with low income consumers.

14 Q. Okay. Are you aware of any funding that
15 Duke Energy provides People Working Cooperatively?

16 A. Only through the Stipulation and what was
17 discussed earlier.

18 Q. Okay. And the Stipulation does, in fact,
19 provide for funding from Duke Energy to People
20 Working Cooperatively, correct?

21 A. I believe it does.

22 Q. Okay. Thank you. I would like to move
23 on to the second prong of the standard. It's your
24 testimony that this Stipulation benefits consumers
25 and the public interest, correct?

1 A. Correct.

2 Q. Okay. Can I direct you now to page 12 of
3 your testimony? And if you would let me know when
4 you --

5 A. I'm there.

6 Q. Thank you. Looking at lines 7 and 8,
7 it's your testimony that one benefit of this
8 Stipulation is that it provides for lower rates than
9 what was requested, correct?

10 A. Correct, on line 7 and 8.

11 Q. Okay. Can you clarify for me what you
12 mean when you say what was requested?

13 A. Through the serious bargaining for the
14 Stipulation between parties, the revenue requirement
15 was significantly reduced from what it originally was
16 requested in the application, in the Company's
17 application.

18 Q. So you are referring to the initial
19 application, okay.

20 A. Correct.

21 Q. But that -- the initial application is a
22 separate document from the stipulated agreement that
23 is at issue today, correct?

24 A. Yes. It would be a separate document,
25 correct.

1 Q. Okay. And prong 2 of the PUCO's standard
2 for reviewing stipulations, again, prong 2 being that
3 it benefits consumers and the public interest, it
4 doesn't make any reference to a utility's
5 application, correct?

6 A. To my eyes it doesn't or does. No, not
7 specifically.

8 Q. The word application doesn't appear in
9 that portion of the standard.

10 A. It doesn't appear in that from my
11 nonlegal opinion.

12 Q. And, in fact, the prong asks whether the
13 settlement as a package benefits consumers, correct?

14 A. Correct.

15 Q. And by the terms of the settlement at
16 issue today, consumers would be paying higher rates
17 than they were before, correct?

18 A. There would be an increase in the revenue
19 requirement, yes.

20 Q. Okay. Thank you. Lastly, I would like
21 to ask you a little bit about the third prong of the
22 PUCO standard. It's your position this proposed
23 Stipulation complies with regulatory practices and
24 principle, correct?

25 A. Correct.

1 Q. Okay. And PUCO rules require Duke to
2 meet certain performance standards, correct,
3 reliability standards?

4 A. I am only aware based on what was said
5 earlier today.

6 Q. I'm sorry. Can you repeat your answer?

7 A. I am only aware from what was said
8 earlier today, if you are referring to CAIDI and
9 SAIDI and SAIFI.

10 Q. SAIFI is what I would like to ask about
11 in particular, yes.

12 A. Okay.

13 Q. Are you familiar with that reliability
14 standard?

15 A. I am not familiar with how they calculate
16 it.

17 MS. AKHBARI: Your Honor, I would just
18 object to the sense this is outside the scope of the
19 witness's direct testimony.

20 EXAMINER WALSTRA: Overruled for now.

21 Q. (By Mr. Semple) So just to clarify, are
22 you familiar with the SAIFI standard?

23 MS. AKHBARI: Objection, asked and
24 answered.

25 A. I am not.

1 Q. Okay. Thank you. Are you familiar
2 with -- are you familiar with Section 4905.22 of the
3 Ohio Revised Code?

4 A. Could you read that section to me?

5 Q. Are you familiar that -- with the
6 requirement that a utility charge rates that are no
7 more than just and reasonable?

8 A. Yes, I am familiar with those terms, just
9 and reasonable.

10 Q. Are you familiar with the requirement
11 that utilities furnish and provide necessary and
12 adequate services and facilities?

13 A. Not -- I cannot recite the code section
14 that you've mentioned, no.

15 Q. Are you familiar with those general
16 obligations on a utility under Ohio law?

17 A. Can you repeat that?

18 Q. Are you familiar with those general
19 obligations --

20 A. I'm sorry. What obligations?

21 Q. With the obligation to provide necessary
22 and adequate facilities and services.

23 A. Since I can't recite the section, I am
24 going to have to say I do not recall.

25 Q. Okay. Do you know whether Duke Energy

1 met its SAIFI target in the year 2021?

2 MS. AKHBARI: Your Honor, I would just
3 object again. The SAIFI witness just got done
4 testifying, if Mr. Semple had questions for him in
5 this regard. This is outside the scope of Mr.
6 Sailers' testimony.

7 EXAMINER WALSTRA: I'll sustain in the
8 sense he said he does not know what SAIFI is.

9 MR. SEMPLE: Okay. Your Honor, I
10 understand that he testified he wasn't aware of how
11 to calculate it. My question was just whether he was
12 aware of whether Duke had met that standard
13 regardless of whether he knows the way it's
14 calculated.

15 MS. AKHBARI: Your Honor, I would just
16 respond it's still beyond the scope of what
17 Mr. Sailers' direct testimony is here today.

18 EXAMINER WALSTRA: I will allow him to
19 answer.

20 MR. SEMPLE: Thank you.

21 A. Can you repeat the question?

22 MR. SEMPLE: Karen, would you please read
23 back the question that I asked Mr. Sailers?

24 (Record read.)

25 A. I recall Witness Hesse talking about not

1 meeting one of the targets, but I can't recall which
2 one. I do not recall.

3 Q. Thank you.

4 MR. SEMPLE: If you could give me just
5 one moment, please.

6 EXAMINER WALSTRA: Sure.

7 Q. Mr. Sailers, this Stipulation provides
8 for caps on revenue that Duke can collect through the
9 DCI Rider, correct?

10 MS. AKHBARI: I would object again, your
11 Honor. That's outside the scope of this witness's
12 testimony.

13 EXAMINER WALSTRA: He can answer if he
14 knows.

15 A. Yes, I think there are caps in the
16 Stipulation, and Witness Lawler has -- can support
17 those.

18 Q. Are you aware of whether or not Duke's
19 ability to meet those caps or collect to those caps
20 is contingent on its meeting any reliability standard
21 of which you are aware?

22 A. I believe Mr. -- Witness Hesse just
23 testified that there are PUCO penalties in place and
24 also there is another metric in the Stipulation that
25 can provide incremental funds for the caps.

1 MR. SEMPLE: Okay. Thank you. I have no
2 further questions.

3 EXAMINER WALSTRA: Thank you.
4 Any redirect?

5 MS. AKHBARI: Nothing on redirect, thank
6 you, your Honor.

7 EXAMINER WALSTRA: You are excused.
8 Thank you.

9 MS. AKHBARI: At this time the Company
10 would seek to move into evidence or for the admission
11 of Exhibits -- Company Exhibits 9A, 9B, and 10.

12 EXAMINER WALSTRA: Any objections?
13 Hearing none, it will be admitted.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 EXAMINER SANDOR: Duke, you may proceed
16 with your next witness.

17 MS. AKHBARI: I apologize, your Honor.
18 Ms. D'Ascenzo is presenting the next witness, and he
19 just stepped out for a minute.

20 EXAMINER WALSTRA: Sounds like you're up.

21 MS. AKHBARI: Okay.

22 EXAMINER WALSTRA: Take your time.

23 MS. AKHBARI: Is it okay if we go off the
24 record?

25 EXAMINER WALSTRA: That's fine.

1 MS. AKHBARI: Is it okay if we approach
2 and do the preliminary paperwork?

3 EXAMINER WALSTRA: Absolutely.

4 MS. GRUNDMANN: Your Honor, do you mind
5 if we take a 5-minute break?

6 EXAMINER WALSTRA: That's fine. We will
7 break until 3:15.

8 (Recess taken.)

9 EXAMINER SANDOR: All right. Let's go on
10 the record.

11 We just returned from a break. Duke,
12 please proceed with your next witness.

13 MR. D'ASCENZO: Thank you, your Honor.
14 For its next witness Duke Energy Ohio calls Sarah
15 Lawler.

16 EXAMINER SANDOR: Please raise your right
17 hand.

18 (Witness sworn.)

19 EXAMINER SANDOR: Thank you.

20 MR. D'ASCENZO: Your Honor, may we please
21 approach?

22 EXAMINER SANDOR: Yes.

23 MR. D'ASCENZO: For purposes of the
24 record, we would like to mark as Duke Energy Ohio
25 Exhibit No. 11 the direct testimony of Sarah Lawler

1 filed in this proceeding on October 15, 2021, and as
2 Duke Energy Ohio Exhibit No. 12, the second
3 supplemental testimony of Ms. Lawler also filed in
4 these proceedings.

5 EXAMINER SANDOR: Those exhibits are so
6 marked.

7 (EXHIBITS MARKED FOR IDENTIFICATION.)

8 EXAMINER SANDOR: You may proceed.

9 MR. D'ASCENZO: Thank you, your Honor.

10 - - -

11 SARAH LAWLER

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

14 DIRECT EXAMINATION

15 By Mr. D'Ascenzo:

16 Q. Good afternoon, Ms. Lawler.

17 A. Good afternoon.

18 Q. You have in front of you -- well, let me
19 take a step back. Would you please state your name,
20 business address, and position with the Company for
21 the record, please?

22 A. Sarah Lawler, business address 139 East
23 Fourth Street, Cincinnati, Ohio 45202. Vice
24 President Rates and Regulatory Strategy for Duke Ohio
25 and Kentucky.

1 Q. And do you have in front of you what was
2 just marked as Duke Energy Ohio Exhibits No. 11 and
3 12?

4 A. I do.

5 Q. And would you please identify those
6 documents?

7 A. Exhibit 11 is the direct testimony of
8 Sarah Lawler in this proceeding, and Exhibit 12 is
9 the second supplemental direct testimony of Sarah
10 Lawler in support of the Stipulation.

11 Q. And, Ms. Lawler, do you have any changes
12 or corrections to either of those testimonies?

13 A. I do not.

14 Q. And if you were asked those questions
15 today then, would your answers be the same?

16 A. Yes, they would.

17 MR. D'ASCENZO: Thank you.

18 Your Honor, I would like to move Exhibits
19 No. 11 and 12 into evidence, subject to
20 cross-examination, and the witness is available for
21 cross.

22 EXAMINER SANDOR: Thank you.

23 OCC?

24 MS. O'BRIEN: May I approach?

25 EXAMINER SANDOR: You may.

1 MS. O'BRIEN: Your Honor, I would like to
2 mark at this time OCC Cross Exhibit 15 which is a
3 Duke discovery response to OCC Stip INT-01-001.

4 EXAMINER SANDOR: So marked.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 MS. O'BRIEN: Anyone else need copies?
7 I would also like to mark at this time
8 OCC Cross Exhibit 16 which is a Duke discovery
9 response to OCC Stip INT-01-009.

10 EXAMINER SANDOR: So marked.

11 (EXHIBIT MARKED FOR IDENTIFICATION.)

12 MS. O'BRIEN: Anyone else need copies?

13 MS. GRUNDMANN: Angela, on 16 are you
14 marking the discovery response and the spreadsheet
15 that was circulated?

16 MS. O'BRIEN: Yes, because it's an
17 attachment to.

18 - - -

19 CROSS-EXAMINATION

20 By Ms. O'Brien:

21 Q. Okay. Good afternoon, Ms. Lawler. How
22 are you?

23 A. Good afternoon. I'm good. How are you
24 doing?

25 Q. Good. You will have to bear with me

1 here. Trying to get my bearings. Okay. Now, the
2 Staff Report of Investigation regarding Duke's
3 proposed rate increase recommended a revenue increase
4 on the low end of 1.86 million and on the high end of
5 about 15.3 million; is that correct?

6 A. Yes.

7 Q. And the settlement has agreed upon a rate
8 increase of 23.1 million; is that correct?

9 A. It's a \$23.1 million increase in base
10 distribution revenues offset by a decrease of 500,000
11 of miscellaneous revenues, so the net increase is
12 22.6 million in revenues.

13 Q. Okay. Thank you. And now I believe you
14 testified that residential consumers will pay
15 64 percent of the total revenue requirement under the
16 settlement; is that correct?

17 A. The total percentage of the base
18 distribution revenue allocated to residential
19 customers is 64 percent, yes, that's correct.

20 Q. Okay. And according to your testimony,
21 the Staff Report recommended that residential
22 consumers pay 65 percent of the total revenue
23 requirement?

24 A. That's correct.

25 Q. However, it's true, isn't it, that

1 residential consumers will pay 92.4 percent of the
2 23.1 million increase; is that right?

3 A. That's the math to get you to 64 percent
4 of the total base distribution revenue requirement.

5 Q. And now I would like to refer you to
6 what's previously been marked as OCC Cross
7 Exhibit 16. And that is the Duke response to OCC
8 Stip INT-01-009. Do you have that in front of you.

9 A. -009, yes.

10 Q. Yes. And this is Duke dis -- response to
11 OCC's discovery regarding the Stipulation.

12 A. Yes.

13 Q. And do you see here where it says person
14 responsible?

15 A. Yes.

16 Q. Okay. And next to that it says Sarah
17 Lawler?

18 A. Yes.

19 Q. Okay. Did you prepare this discovery
20 response?

21 A. Yes, I did.

22 Q. And was the spreadsheet attached to it
23 prepared by you or under your direction?

24 A. Under my direction.

25 Q. Thank you. Now, you testify that the

1 settlement is a product of serious bargaining among
2 capable and knowledgeable parties; is that correct?

3 A. Yes.

4 Q. And you testified that the settlement
5 represents stakeholder interests including
6 residential consumers; is that correct?

7 A. Yes.

8 Q. What settlement signatory parties
9 represent residential consumers' interests?

10 A. Several, the City of Cincinnati being
11 one, Ohio Partners for Affordable Energy being
12 another, People Working Cooperatively, Citizens'
13 Utility Board.

14 Let me just go through the rest of the
15 signatory parties to make sure I didn't miss anybody
16 that might -- I don't have that with me. One second.
17 The Commission Staff represents residential
18 customers. NEP may support residential customers.
19 That's about it.

20 Q. Okay. Now, you mentioned PUCO Staff.

21 A. Yes.

22 Q. They are a signatory party to the
23 settlement, right? Now, you would agree with me that
24 PUCO Staff represents -- in addition to residential
25 consumers' interests, they also represent the

1 interests of nonresidential consumers; is that
2 correct?

3 A. Yes.

4 Q. Okay. And they also represent the
5 interests of utilities; is that correct?

6 A. Yes.

7 Q. Now, you also mention Ohio Partners for
8 Affordable Energy, or OPAE, right?

9 A. Yes.

10 Q. Okay. And I think you stated that they
11 represent low income interests; is that correct?

12 A. I think I said that they represent
13 residential customers.

14 Q. Okay.

15 A. But I would agree that they do look after
16 low-income customers.

17 Q. Okay. And is it your understanding that
18 OPAE primarily provides weatherization services?

19 A. I don't know if that's the case or not.

20 Q. Well, what's your understanding of what
21 they do?

22 A. I don't know the specifics of all of the
23 things that they do. They do provide weatherization
24 and assistance to low-income customers.

25 Q. Okay. Well, I guess respectfully if you

1 don't know what they do, how do you know that they
2 represent consumers' interests?

3 A. I know that -- you know, I know that they
4 support weatherization and low-income interests, but
5 I don't have all of the details and the intricacies
6 of the day in and day out of what they do.

7 Q. Okay. Sure. So -- but you do agree they
8 provide weatherization services?

9 A. Yes.

10 Q. And, in fact, the settlement provides
11 that -- I believe that OP&E will receive -- will be
12 involved in some way in -- well, strike that.

13 Let me go back. Does OP&E receive
14 funding from Duke to your knowledge?

15 A. I am not aware of any funding.

16 Q. Now, with respect to the Citizens'
17 Utility Board of Ohio, you stated that they also
18 represent residential consumers' interests; is that
19 correct?

20 A. I believe so, yes.

21 Q. Okay. Is it your understanding that they
22 also represent the interests of small businesses?

23 A. Yes.

24 Q. With respect to People Working
25 Cooperatively, or PWC, you would agree with me that

1 they provide weatherization services as well,
2 correct?

3 A. Yes.

4 Q. And under the settlement, they -- they
5 receive funding from Duke, right?

6 A. Funding that's part of the Stipulation
7 was included in the Application and it's been in base
8 rates, so it's not a new provision of the settlement.

9 Q. Okay. I didn't ask if it was a new
10 provision of the settlement. I asked you whether or
11 not PWC receives funding from Duke.

12 A. You said as part of the settlement. It
13 was part of the Application.

14 Q. Okay. I apologize. I misspoke.

15 A. Okay.

16 Q. But they do receive funding from Duke; is
17 that correct?

18 A. Yes.

19 Q. Okay. The City of Cincinnati, I think
20 you stated they also represent nonresidential -- or
21 I'm sorry, residential consumers, right?

22 A. Yes.

23 Q. Okay. The City of Cincinnati also
24 represents nonresidential consumers, correct?

25 A. Yes.

1 Q. And, in fact, the City of Cincinnati is
2 itself a consumer of Duke; is that right?

3 A. What do you mean by the City itself?

4 Q. Well, the City has streetlights; is that
5 correct?

6 A. Yes.

7 Q. Okay. So they pay Duke for electric
8 service; is that right?

9 A. Yes.

10 Q. So they are a consumer of Duke as well.

11 A. Yes.

12 Q. So would you agree with me that each of
13 the parties that we just discussed each has interests
14 beyond those of just residential consumers?

15 A. No.

16 Q. You wouldn't?

17 A. Beyond -- all of those parties you just
18 mentioned have interests beyond just residential
19 consumers? I don't know if PWC does.

20 Q. Well, they provide weatherization
21 services, right?

22 A. For residential customers?

23 Q. To residential consumers.

24 A. Correct.

25 Q. But that's -- would you agree with me

1 that providing weatherization services is something
2 different than providing bill payment assistance or
3 advocating on behalf of lower rates? Would you agree
4 with that?

5 A. Weatherization of a home helps a
6 residential customer manage their utility bill, and
7 it can lead to lower rates, yes. So I don't -- I
8 don't agree with you.

9 Q. It can lead to lower rates, but did PWC
10 advocate in this case for lower rates for consumers?

11 A. They signed onto the Stipulation, and the
12 Stipulation has many benefits for low-income
13 consumers --

14 Q. Okay.

15 A. -- for not increasing their low-income
16 fixed charge. There is lots of advantages in the
17 Stipulation.

18 Q. Okay. That's -- respectfully that's not
19 what I asked. I asked if providing weatherization is
20 something different than advocating for lower rates
21 for consumers. Is that something different?

22 A. Providing weatherization allows bills to
23 be lower for consumers.

24 Q. Ultimately, correct?

25 A. Ultimately or not ultimately, it's lower.

1 Q. But you would agree with me that not all
2 low-income consumers receive weatherization services
3 from PUCO, right?

4 A. I doubt it. I don't know exactly.

5 Q. Okay. But all residential consumers
6 within Duke's service territory receive electric
7 distribution service from Duke, right?

8 A. Electric distribution service, yes, if --

9 Q. And they will --

10 A. -- their power is on, yes.

11 Q. Okay. And they will pay the rates that
12 result from this proceeding, correct?

13 A. Yes.

14 Q. Okay. Now with respect to the City of
15 Cincinnati, your supplemental testimony in support of
16 the settlement indicates that a portion of the City
17 of Cincinnati's franchise fee will go to residential
18 consumer bill payment assistance; is that correct?

19 A. That sounds familiar. Let me get to the
20 page. Do you have a page number reference that I can
21 get there faster?

22 Q. No, I don't.

23 EXAMINER WALSTRA: Take your time.

24 A. So I am on page 6 in the third bullet; is
25 that what you are referencing?

1 Q. Yes.

2 A. So this does say the resolution of the
3 last franchise fee issue includes commitment from the
4 City to use a portion of the franchise fee to fund
5 low-income weatherization/energy efficiency and bill
6 assistance programs for qualifying Duke Energy Ohio
7 customers through City's Warm Up Cincy program.

8 Q. So help me understand, as an initial
9 matter, my understanding is that the franchise fee is
10 a fee -- and correct me if I am wrong, because I may
11 not get this right, is a fee that Duke pays to the
12 City of Cincinnati or, for example, another city to
13 use like, for example, the City's rights of ways; is
14 that correct?

15 A. I don't know what the City uses the fee
16 for exactly, but it is a fee that we pay to the City
17 of Cincinnati.

18 Q. Okay. Do you know what the fee -- why do
19 you pay the franchise fee?

20 A. It's in accordance with an agreement.

21 Q. I'm sorry. I didn't hear you.

22 A. It's in accordance with a franchise
23 agreement.

24 Q. Okay. What is the franchise fee for?

25 A. It's for the City to make improvements as

1 they see fit in their city.

2 Q. Okay. And does Duke charge consumers for
3 the franchise fee through rates?

4 A. The franchise fee has always been in base
5 rates for decades, yes.

6 Q. Now, under the settlement, 50,000 of the
7 franchise fee annually will go to bill payment
8 assistance for the City of Cincinnati residents,
9 correct?

10 A. Get to that section of the Stipulation.
11 It says at least 50,000 of that amount dedicated
12 annually to bill assistance.

13 Q. Okay. And am I correct under the
14 settlement, the settlement provides that the City of
15 Cincinnati must use 350,000 of the franchise fee for
16 weatherization, bill payment assistance, and things
17 of that nature; is that correct?

18 A. The City agrees that it will commit to
19 use at least 350,000 of the franchise fee annually to
20 provide weatherization, energy efficiency
21 improvements, and utility bill assistance.

22 Q. Okay.

23 EXAMINER SANDOR: Just to clarify the
24 record, that's page 24 of the Stipulation?

25 THE WITNESS: Yes, correct.

1 MS. O'BRIEN: Thank you.

2 Q. (By Ms. O'Brien) And so of that, at least
3 \$50,000 has to go to bill payment assistance, right?

4 A. Yes.

5 Q. Now, under the settlement, isn't it also
6 true that this bill payment assistance will go only
7 to qualifying consumers under the City of Cincinnati
8 Warm Up Cincy program?

9 A. I think so, yes.

10 Q. Okay. And also under the settlement, I
11 am referencing page 24 and 25, the City of Cincinnati
12 has the discretion to determine who qualifies for
13 assistance under the Warm Up Cincy program; is that
14 right?

15 A. Yes.

16 Q. And I think you just mentioned that the
17 franchise fee is paid for through base rates, right?

18 A. Yes.

19 Q. So the bill payment assistance that we're
20 talking about in the settlement, it's not funded by
21 Duke's shareholders, is it?

22 A. Correct.

23 Q. Okay. Does Duke require any other cities
24 or municipalities within its service territory to
25 provide bill payment assistance?

1 A. Do we require other communities to offer
2 bill assistance to customers?

3 Q. Yes.

4 A. No.

5 Q. And with -- and we just discussed that
6 \$350,000 of the franchise fee is to go to
7 weatherization and energy efficiency improvements,
8 right?

9 A. Yes, with at least 50,000 going to bill
10 assistance.

11 Q. Okay. And I think that we just discussed
12 that both PWC and Ohio Partners for Affordable
13 Energy, they both provide weatherization and energy
14 efficiency improvements; is that right?

15 A. Yes, that's my understanding.

16 Q. And they are both signatories to the
17 settlement, right?

18 A. Yes.

19 Q. Will PWC or OPAC receive any of the City
20 of Cincinnati franchise fee funding to provide
21 weatherization and energy efficiency improvements?

22 A. I don't know. I think we just discussed
23 that it's at the City's discretion what they do with
24 the funds.

25 Q. But you don't know.

1 A. No.

2 Q. Okay. Now with respect to the City of
3 Cincinnati, the settlement also contains provisions
4 regarding Smart City technology; is that correct?

5 A. Yes.

6 Q. And can you tell me what Smart City
7 technology is?

8 A. I don't think that we specify exactly
9 what type of Smart City technology they are going to
10 deploy here. We just call it Smart City technology.
11 All we are agreeing to is a process with the City to
12 evaluate what their options are. Everything will be
13 paid under Duke tariffs.

14 Q. So -- so you don't know what Smart City
15 technology is being deployed through the settlement?

16 A. I would -- we haven't agreed to anything
17 specific. It just says we are agreeing to a process
18 to explore the options.

19 Q. Okay. Now, I guess what I am asking you
20 is what is Smart City technology? I understand that
21 you say the settlement doesn't specify. What type of
22 Smart City technology?

23 A. I don't -- I don't know what Smart City
24 technology they are going to do. We are agreeing to
25 a process to determine that.

1 Q. So I guess is it your testimony today
2 that you don't know what Smart City technology is?

3 A. I mean, very broadly it's just
4 technologies that are automated that are attached to
5 our poles.

6 Q. Okay.

7 A. There is nothing specifically agreed to
8 for specific types of technologies in the
9 Stipulation. We are just agreeing to a process to
10 evaluate what they would like to do, whether or not
11 it's feasible to do it within the guise of our
12 tariffs.

13 Q. Okay.

14 A. That's it.

15 Q. So it's your testimony today that Duke --
16 that the City of Cincinnati -- that Duke entered into
17 a settlement with the City of Cincinnati to provide
18 Smart City technology, and you don't know what Smart
19 City technology is going to be?

20 MR. D'ASCENZO: Objection, misstates what
21 the witness has testified to and what's in the
22 Stipulation.

23 MS. O'BRIEN: Your Honor, she can
24 clarify. I am just trying to understand. If she can
25 clarify -- I just want to know what exactly is going

1 to be deployed under the settlement. I don't think
2 that's a difficult question.

3 EXAMINER SANDOR: I think she has touched
4 on this but if you can clarify any further.

5 A. The answer is we don't know what we are
6 going to deploy yet. We are agreeing to a process to
7 find out what we are going to deploy from a Smart
8 City technology perspective. I don't know the
9 specific things we will end up doing if we do
10 anything.

11 Q. Okay. Does Duke provide Smart City
12 technology to other cities within its service
13 territory?

14 A. I don't know. And I would say, too, that
15 we are not agreeing to provide smart technology. We
16 are agreeing to a process under our existing tariffs.

17 Q. And what is that process under your
18 tariffs?

19 A. There is attachment fees and different
20 street lighting rates that we have.

21 Q. Okay. Now, you also testified regarding
22 the electric service reliability rider, the ESRR; is
23 that right?

24 A. Yes.

25 Q. And you would agree with me Duke charges

1 consumers for vegetation management costs through the
2 ESRR; is that right?

3 A. Today customers pay for vegetation
4 management through base rates and through Rider ESRR,
5 yes.

6 Q. And my -- and like you just mentioned
7 through base rates, my understanding is Duke is
8 permitted 22.5 million for vegetation management.

9 A. In the case that we are proposing today
10 and part of the Stipulation, \$22.5 million is part of
11 the base rates for vegetation management, yes, that's
12 correct.

13 Q. And is it also true that under the
14 settlement Duke would be allowed to collect an
15 additional 10 million in vegetation management
16 through ESRR?

17 A. No. There is no additional 10 million
18 referenced anywhere in the application.

19 Q. Okay. What do I have wrong?

20 A. The \$10 million is what exists today in
21 the rider. Right now today, we only have
22 10.7 million in base rates, and we are allowed to
23 include another up to \$10 million of vegetation
24 management costs depending on the total actual costs.
25 So today we have 10.7 in base rates. We have a rider

1 that's capped at 10. What we're proposing in this
2 application is to move 22.5 million into base rates
3 and then keep the rider for any over or
4 under-recovery.

5 Up to now it was only an under-recovery
6 provision. Now we have said let's make sure it's an
7 overrecovery too. To the extent that 22.5 is too
8 much, we credit back to customers. If it's too
9 little, we charge to customers through the rider.

10 Q. Okay. So were you here earlier today
11 when Mr. Christie testified?

12 A. Yes.

13 Q. I just want to clear something up, and
14 you correct me if I got this testimony wrong, I think
15 he said that it's Duke's intention not to use the
16 \$10 million in the ESRR.

17 A. There is no \$10 million in an ESRR any
18 more if this Stipulation is approved. It's just a
19 rider mechanism to collect over or under the 22.5. I
20 don't think we have an intention of spending
21 \$32.5 million in vegetation if we can help it. It's
22 not the intention.

23 The intention is 22.5 million in base
24 rates. The rider, just like the storm rider, is to
25 say customers pay no more, no less than what's in

1 base rates.

2 Q. So does Duke collect that much currently
3 for vegetation management?

4 A. Today we have so .7 in base rates and we
5 have been at the \$10 million cap so we've been
6 collecting around 20.7 million.

7 Q. Okay. Now, you also testify regarding
8 the elimination of certain supplier fees; is that
9 right?

10 A. Yes.

11 Q. Okay. Can you tell me what the impact to
12 residential consumers is of the elimination of the
13 supplier fees?

14 A. What the impact is to residential
15 consumers of the elimination of supplier fees. So up
16 to now we had miscellaneous revenues where we were
17 collecting from suppliers a certain amount of dollars
18 that we then otherwise wouldn't have to collect in
19 the overall cost to service from residential
20 customers, from non-residents, from everybody.

21 Now that we don't have those
22 miscellaneous revenues being collected any further if
23 the Stipulation is approved, we won't have that
24 offset to total base distribution revenues any more.
25 But arguably, you know, because we have a system now

1 that's automated, we don't have the costs associated
2 with those transactions that we were charging the
3 fees for.

4 If we hadn't removed the miscellaneous
5 revenues you could argue that maybe suppliers would
6 have been subsidizing the overall base rates, so this
7 is just cost causation getting the revenues collected
8 from where the costs are being expended now.

9 Q. Okay. So what do residential consumers
10 pay extra as a result of these provisions in the
11 settlement?

12 A. They are just paying their -- their
13 appropriate allocation of the revenue requirements,
14 64 percent.

15 Q. Okay. So if we could refer now to what
16 you've previously marked as OCC Exhibit 15.

17 A. Is that Stip INT 01-001?

18 Q. Yep.

19 A. Yeah, I have got it.

20 Q. And you see on the second page here where
21 it says person responsible?

22 A. Yes.

23 Q. And it's got your name after it?

24 A. Yes.

25 Q. So does that mean that you prepared the

1 response to this?

2 A. I prepared part of it and assisted -- I
3 had assistance but reviewed all of it.

4 Q. Okay. So I'm just -- because -- and I
5 apologize if I am just dense, but I am just trying to
6 kind of get a better idea. I just -- what I am
7 trying to understand is because I thought that
8 elimination of these fees didn't cost residential
9 consumers anything, and now I guess what I am hearing
10 from you is that, no, they are getting 64 percent
11 allocation. And then in this response it looks like
12 an average consumer has a 9 cent impact on their
13 monthly bill.

14 So I am just trying to make sense of all
15 the different things. And if you could just clarify
16 that for me, that would be great.

17 A. This is just the math of moving those
18 miscellaneous revenues to base rates. If we had not
19 moved the miscellaneous revenues to base rates,
20 customers on average would be paying 9 cents a month
21 less than they should have been.

22 Q. Just give me a few minutes.

23 Okay. Before when we were testifying
24 about what signatory parties represent residential
25 consumers' interests, I believe you mentioned

1 Nationwide Energy Partners; is that correct?

2 A. Yes.

3 Q. Now, can you tell me what Nationwide
4 Energy Partners do or what that Company does?

5 A. They are a submetering company is my
6 understanding.

7 Q. Okay. And how would they represent
8 residential consumers?

9 A. Providing a service for residential
10 consumers.

11 Q. Are you aware that Duke has filed a
12 complaint against Nationwide Energy Partners --

13 A. I am aware, yes.

14 Q. -- regarding their submetering service?

15 A. I am not familiar with the specifics of
16 what the complaint is, but I am aware there is one.

17 Q. Okay. So you have no idea what that
18 complaint is about?

19 A. I don't.

20 MS. O'BRIEN: Okay. I have no further
21 questions.

22 EXAMINER SANDOR: Okay. Any redirect?

23 MR. D'ASCENZO: Just a few, your Honor.

24 - - -

25

REDIRECT EXAMINATION

By Mr. D'Ascenzo:

Q. Ms. Lawler, do you recall questions from counsel from OCC about the 64 percent allocation and then the 92 percent increase?

A. I do, yes.

Q. Can you just explain the difference between those two numbers, please?

A. Yes. So the -- if you look at the Stipulation, we're asking for, on page 3, a \$23.1 million increase in base distribution rates to a total of 578.1 million that's comprised of 565.7 million of base distribution revenues. So residential customers are getting 64 percent of the \$565.7 million.

And the only way to arrive at that is to do the math such that you have to allocate out the \$23.1 million increase, and the math just says if you get to 64 percent of 565.7, 92 percent of the 23.1 is going to residential customers, but customers are only paying 64 percent of the total base distribution revenues.

Q. Can you explain why that 92 percent allocation is going to residential customers?

A. It's just a function of how the math has

1 to get allocated, and so if you have 64 percent of
2 565.7 million, which is 362 million on page 5, in
3 order to get from 578 to 565, that's just the math
4 that has to happen. We -- the Company has not
5 removed any of the subsidy that exists from, you
6 know, nonresidential customers subsidizing the
7 residential customers. Had we done that, that
8 92 percent would have had to have been much more but
9 it's just the math to get to that 64 percent total
10 base D from what we have today.

11 Q. You mentioned a subsidy. Can you explain
12 what that is, please?

13 MS. O'BRIEN: Objection, your Honor.
14 Beyond the scope of cross.

15 MR. D'ASCENZO: Your Honor, I am just
16 asking her to explain her answer.

17 EXAMINER SANDOR: I will allow it.

18 MR. D'ASCENZO: Thank you.

19 A. You know, when the Company does their
20 cost of service, we look at how the cost needs to be
21 allocated to -- you know, among the classes. And for
22 quite some time we have had a subsidy where
23 nonresidential customers are paying more than they
24 otherwise would, and residential customers are paying
25 less than they otherwise would in terms of the true

1 cost of service.

2 And in order to keep costs gradually
3 increasing at a moderate rate, we have not eliminated
4 that subsidy. To the extent that we would eliminate
5 that subsidy, you would see, you know -- at least
6 from our application if we would have eliminated that
7 subsidy, residential customer rates would have been
8 going up like 226 percent. Right now, we are asking
9 for -- or I'm sorry. It would have been allocated
10 226 percent of the revenue requirement. But we are
11 not eliminating any of that subsidy. It's remaining
12 in rates such that all customers only experience a
13 small measured gradual increase in rates.

14 Q. Thank you. Ms. Lawler, do you recall
15 questions surrounding the franchise fee for the City
16 of Cincinnati and the bill assistance program in
17 particular?

18 A. Yes.

19 Q. And I believe you stated that the
20 franchise fee has been in the Company's base rates
21 for decades; is that correct?

22 A. Yes, that's my understanding.

23 Q. And are you aware of any parameters or
24 commitments regarding how the City uses those
25 franchise fees that it receives from Duke Energy

1 today?

2 A. No.

3 Q. And do you recall questions from counsel
4 about the ESRR?

5 A. Yes.

6 Q. And in particular, what we're proposing
7 in the Company's application and what's been agreed
8 to in the Stipulation?

9 A. Yes.

10 Q. And I think there was maybe some
11 confusion around, you know, this \$10 million that
12 existed -- you know, currently exists versus what's
13 agreed to in the Stipulation. And could you just
14 clarify for the record what exactly we are agreeing
15 to -- what we applied for in this application and
16 what we are agreeing to in the Stipulation with
17 respect to how the ESRR will work?

18 A. Yes. So what we've agreed to is
19 including 22.5 million in base rates. That's how
20 much will be recovered in base rates.

21 The rider mechanism remains, and what
22 we've done to the rider mechanism is we've modified
23 it slightly to allow for an over-recovery position
24 such that if we are over-recovered on the 22.5, in
25 other words, if we spend less than what we are

1 recovering, then we will credit that back to
2 customers. Before today there was only an
3 under-recovery provision, so now the rider is in
4 place such that customers pay no more, no less than
5 the actual costs incurred.

6 Q. So when you say no more, no less than the
7 actual costs incurred, if the Company -- if the
8 Company's actual costs were 21.5 million, customers,
9 would they get a million --

10 A. They would get a million dollar credit in
11 the rider.

12 Q. And, conversely, if the Company were to
13 spend 23.5 million, what would happen?

14 A. There would be a \$1 million charge in the
15 rider.

16 MR. D'ASCENZO: Thank you. No further
17 questions.

18 EXAMINER SANDOR: Any recross?

19 MS. O'BRIEN: Briefly.

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21 RECROSS-EXAMINATION

22 By Ms. O'Brien:

23 Q. Referring to what's been marked as OCC
24 Cross Exhibit 16 and the spreadsheet that's
25 referenced in Duke's discovery response, just to

1 clarify, again, the increase of the Duke rate
2 increase, residential consumers pay 29.4 percent of
3 that increase, correct?

4 MS. COHN: Objection, asked and answered.

5 MS. O'BRIEN: Your Honor, I can recross.

6 EXAMINER SANDOR: I will allow her to
7 start with this questioning and see where it goes.

8 MS. O'BRIEN: Okay.

9 A. When you say the customer pays, they are
10 not just paying the increase. They are paying the
11 total revenue requirement.

12 Q. Okay. I am looking -- I am looking
13 specifically here at the Excel spreadsheet --

14 A. Yes.

15 Q. -- that was provided in response to
16 Duke's discovery response, and I am looking right
17 here, allocation of the increase, residential class
18 it says 92.4 percent; is that right? Am I reading
19 that right?

20 A. Are you in the second to last column?

21 Q. Yes.

22 A. I honestly can't read it but it's
23 29.4 percent of the increase. That's not just what
24 customers are paying though. That's what I was
25 clarifying.

1 Q. Yes, exactly. So of the increase
2 residential consumers pay 92.4 percent of the
3 increase, correct?

4 A. They are not just paying that. I am
5 taking exception to the word pay.

6 Q. Okay. So they are allocated 92.4 percent
7 of the increase?

8 A. Yes.

9 Q. That's my mistake. The rest of the
10 customer classes, meaning nonresidential customer
11 classes, are paying less than 8 percent of -- or
12 allocated?

13 A. Yes. And if we would have removed the
14 subsidy, they would have been paying less than that,
15 but we didn't.

16 MS. O'BRIEN: Your Honor, it's a simple
17 question. I move to strike her testimony.

18 Q. (By Ms. O'Brien) Ms. Lawler, my question
19 is, I am looking straight at the Excel spreadsheet
20 here that you provided in response to OCC's discovery
21 request, nonresidential classes are being allocated
22 less than 8 percent of the revenue increase.

23 A. And I am answering your question that
24 this spreadsheet represents us not removing any of
25 the subsidy. If we would have removed the subsidy,

1 those numbers would have been even less.

2 Q. Okay. But you agree with me that they
3 are being allocated less than 8 percent of the
4 revenue increase.

5 A. Of just the increase, yes.

6 Q. Okay. Thank you.

7 A. That's the math that gets you to how much
8 they are paying of the total revenue requirement.
9 They are not paying 8 percent of our revenues.

10 Q. Now with respect to the ESRR --

11 A. Yes.

12 MS. O'BRIEN: Strike that. I have no
13 further questions.

14 EXAMINER SANDOR: Okay. Duke, any
15 re-redirect?

16 MR. D'ASCENZO: No, your Honor.

17 EXAMINER SANDOR: No? Okay. We won't be
18 providing it anyway.

19 All right. Thank you, Ms. Lawler.

20 THE WITNESS: Thank you.

21 EXAMINER SANDOR: You are excused.

22 Duke, your exhibits.

23 MR. D'ASCENZO: Thank you. At this time
24 we would renew our motion to admit Duke Energy Ohio
25 Exhibits 11 and 12.

1 EXAMINER SANDOR: Any objections?

2 MS. O'BRIEN: No objection.

3 EXAMINER SANDOR: All right. Duke Energy
4 Ohio Exhibits 11 and 12 are admitted.

5 (EXHIBITS ADMITTED INTO EVIDENCE.)

6 EXAMINER SANDOR: OCC.

7 MS. O'BRIEN: OCC moves for admission of
8 OCC Cross Exhibit 15 and OCC Cross Exhibit 16.

9 EXAMINER SANDOR: New objections?

10 MR. D'ASCENZO: No, your Honor.

11 EXAMINER SANDOR: Okay. Exhibits 15 and
12 16 are admitted.

13 (EXHIBIT ADMITTED INTO EVIDENCE.)

14 EXAMINER SANDOR: All right. Thank you.

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

17 (Thereupon, at 4:01 p.m., the hearing was
18 adjourned.)

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1 CERTIFICATE

2 I do hereby certify that the foregoing is
3 a true and correct transcript of the proceedings
4 taken by me in this matter on Tuesday, October 4,
5 2022, and carefully compared with my original
6 stenographic notes.

7
8
9 Karen Sue Gibson, Registered
10 Merit Reporter.

11 (KSG-7344)

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Case No(s). 21-0887-EL-AIR, 21-0888-EL-ATA, 21-0889-EL-AAM

Summary: Transcript of Duke Energy Ohio, Inc. hearing held on 10/04/22 - Volume I electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.