

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 10:07 a.m. on Thursday,
October 6, 2022.

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VOLUME III

- - -

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OCC EXHIBIT

IDENTIFIED ADMITTED

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JOINT EXHIBIT

IDENTIFIED ADMITTED

1 Stipulation and
Recommendations

I-13 452

2 Corrected Attachment No. 4 to
Stipulation and
Recommendations

I-14 452

- - -

1 Thursday Morning Session,
2 October 6, 2022.

3 - - -

4 EXAMINER WALSTRA: We'll go back on the
5 record. We are here for day three of Case No.
6 21-887-EL-AIR. We are back in person.

7 And I believe, OCC, if you would like to
8 call your next witness.

9 MR. FINNIGAN: Thank you, your Honor.
10 Your Honor, OCC calls Mr. John Defever.

11 EXAMINER WALSTRA: Could you raise your
12 right hand?

13 (Witness sworn.)

14 - - -

15 JOHN DEFEVER
16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Mr. Finnigan:

20 Q. Good morning, Mr. Defever.

21 A. Good morning.

22 MR. FINNIGAN: Your Honor, at this time I
23 would like to state for the record that we have two
24 pieces of testimony that have been premarked for
25 identification. I provided copies to the other

1 attorneys, those were provided Tuesday, and they have
2 been filed in the docket of the case. You have
3 copies before you and the court reporter, and the
4 witness has copies. The two documents for
5 identification are OCC Exhibit 5, which is the direct
6 testimony of Mr. Defever, that was filed on
7 September 2.

8 EXAMINER WALSTRA: So marked.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 MR. FINNIGAN: Thank you. And the other
11 document that's been marked is OCC Exhibit 4, which
12 is the supplemental testimony of Mr. Defever.

13 EXAMINER WALSTRA: So marked. Thank you.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 MR. FINNIGAN: Thank you, your Honor.

16 Q. (By Mr. Finnigan) Mr. Defever, do you
17 have before you two documents that have been marked
18 OCC Exhibits 4 and 5?

19 A. Yes.

20 EXAMINER WALSTRA: Could you turn your
21 mic on? The button at the bottom. Hold it actually.
22 Yep. Good to go. Thank you.

23 Q. (By Mr. Finnigan) Could you -- could you
24 state your name for the record, please.

25 A. John Defever.

1 Q. And what is your employment, please?

2 A. I work for Larkin & Associates in
3 Michigan.

4 Q. And have you been retained as an expert
5 for OCC in this proceeding?

6 A. Yes, I have.

7 Q. So, Mr. Defever, do you have before you
8 two pieces of testimony that have been marked as OCC
9 Exhibits 4 and 5?

10 A. Yes.

11 Q. Could you identify what those documents
12 are, please?

13 A. Exhibit No. 5 is my direct testimony.
14 Exhibit No. 4 is my supplemental testimony.

15 Q. Did you prepare those two documents?

16 A. Yes, I did.

17 EXAMINER WALSTRA: If you could speak up.
18 I think people are having trouble hearing.

19 Let's go off the record.

20 (Discussion off the record.)

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

23 Thank you.

24 MR. FINNIGAN: Thank you, your Honor.

25 Q. (By Mr. Finnigan) Mr. Defever, do you

1 have any changes or corrections to OCC Exhibits 4 or
2 5?

3 A. I do. I have a correction to Exhibit No.
4 4.

5 Q. Please explain that.

6 A. On page 4, where it says, "During the
7 years 2016 through 2020," it should also say "and the
8 test year."

9 Q. Any other changes or corrections?

10 A. Nope. That's it.

11 Q. Other than that one change, if I were to
12 ask you the same questions that were in both pieces
13 of testimony, would your answers be the same?

14 A. Yes.

15 MR. FINNIGAN: Your Honor, I would ask
16 that OCC Exhibits 4 and 5 be admitted into evidence,
17 subject to cross-examination of the witness. The
18 witness is available for cross-examination.

19 EXAMINER WALSTRA: Thank you.

20 Duke.

21 MS. VERHALEN: Thank you.

22 - - -

23 CROSS-EXAMINATION

24 By Ms. Verhalen:

25 Q. Good morning, Mr. Defever.

1 A. Good morning.

2 Q. My name is Kodi Verhalen, and I represent
3 Duke Energy Ohio in this proceeding. To start with
4 in your testimony at supplemental, so what's been
5 marked as Exhibit 4, page 3, you discuss the
6 three-prong test the Commission here in Ohio uses in
7 evaluating settlements and stipulations, correct?

8 A. Yes.

9 Q. Your testimony doesn't speak to whether
10 it's a product of serious bargaining, correct?

11 A. Correct.

12 Q. And it also doesn't speak to whether it
13 represents diverse interests?

14 A. Correct.

15 Q. Thank you. And as part of that
16 three-prong test, one is to consider whether the
17 Stipulation benefits customers in the public
18 interest.

19 A. Correct.

20 Q. And at -- that evaluation requires
21 evaluating it as a package, correct?

22 A. Ul -- ultimately.

23 Q. Thank you. And you list just below
24 there, at lines 14 through 17, three issues you
25 identify with respect to the settlement.

1 A. Yes.

2 Q. And those are gains on disposition of
3 property, board of director fees, and incentive
4 compensation, correct?

5 A. Correct.

6 Q. So should -- should this list include an
7 and or an or between items No. 2 and 3 on that list?

8 A. I'm not sure I understand the question.

9 Q. Sure. I will ask it a different way. Is
10 the presence of any one of these issues as it relates
11 to a stipulation grounds for the stipulation to fail,
12 or do all three of these as a package cause the
13 Stipulation to fail?

14 MR. FINNIGAN: Objection, your Honor. It
15 calls for a legal conclusion.

16 EXAMINER WALSTRA: Overruled.

17 A. Each one stands individually.

18 Q. Thank you. Let's take a look at page 4
19 of your supplemental testimony, Exhibit 4 here. At
20 lines 23 -- well, first, here in the section you are
21 discussing gain on the sale of property, correct?

22 A. Correct.

23 Q. And at lines 23 to 24, you state, "any
24 gains on the sale of property should be returned to
25 them." By "them," are you referring to consumers?

1 A. Yes.

2 Q. And the issue of gains on disposition of
3 property is not specifically addressed in the
4 Stipulation; is that correct?

5 A. Correct.

6 Q. This was an issue that you originally
7 raised in your direct testimony, Exhibit 5, on the
8 Staff Report?

9 A. Correct.

10 Q. And here in your supplemental -- we will
11 stay here for a moment -- you continue on that this
12 current accounting treatment, not using that phrase,
13 but that not returning the gains on sale -- let me
14 start that question over.

15 You state that not returning the gains on
16 the sale of property, "is not consistent with
17 important regulatory principles and practices."

18 A. Correct.

19 Q. And then you go on to state at page 5
20 that it's discussed more fully in your direct
21 testimony on pages 10 through 12, correct?

22 A. Correct.

23 Q. If you could take a look at your direct
24 testimony and point me to where on pages 10 through
25 12 you identify the regulatory principles that this

1 is not consistent with, I would appreciate that.

2 A. Okay. For the regulatory principles, I
3 used as my source Bonbright's "Principles of Utility
4 Ratemaking." I think that's title. It could be just
5 rates. And he states that one of the principles is
6 that it should be in the consumers' interest. So by
7 describing how it's not in the consumers' interests,
8 that is how I have described it where it doesn't meet
9 the ratemaking principle.

10 Q. Okay. Let's take a look at your direct
11 testimony, Exhibit 5, page 10.

12 A. Okay.

13 Q. And where here do you cite to Bonbright?

14 A. I don't cite to Bonbright.

15 Q. Oh, okay. And where is the quotation or
16 the summary that you just gave in the record here?

17 A. It isn't in the record. That's just --
18 when I say it doesn't meet the principles, that's
19 what I am referring to. I --

20 Q. Thank you.

21 A. Okay.

22 Q. And so you are not citing to any specific
23 Ohio law or PUCO principle?

24 A. True.

25 Q. And what the Company has proposed here,

1 and would be a part of a settled case as a result of
2 the Stipulation, so not returning gains on sale of
3 property to consumers, as you've couched it as an
4 issue, is no different than what the Company has done
5 previously and what PUCO approved in the 27 case,
6 correct?

7 A. I am not aware.

8 Q. Let's take a step back to the overall
9 recommendation. You're recommending gains be
10 returned to consumers, correct?

11 A. Correct.

12 Q. What if the Company experiences losses on
13 property?

14 A. They did. If you look at the chart on
15 page 11 of my direct testimony, in 2020, there was
16 a -- there was a loss so that was factored in.

17 Q. And at that location on page 11 of your
18 direct testimony, Exhibit 5, you cite that your
19 source is the Application Schedule C 10.2, correct?

20 A. Correct.

21 MS. VERHALEN: Permission to approach,
22 your Honor.

23 EXAMINER WALSTRA: You may.

24 MS. VERHALEN: Thank you.

25 Q. (By Ms. Verhalen) And, Mr. Defever, have

1 you had a chance to look at this document?

2 A. Yes.

3 Q. And is this the schedule from the
4 application that you extracted those numbers on page
5 11 of your direct testimony?

6 A. Yes, it is.

7 Q. Could you tell me what line that's
8 located on in that spreadsheet?

9 A. Line 33.

10 Q. And this page is an excerpt from
11 Exhibit 1 that the court -- or that the -- your Honor
12 has already admitted into the record in this
13 proceeding which is a -- from Volume 6 of the
14 application. Is that your understanding as well,
15 Mr. Defever?

16 A. Yes.

17 Q. And line 33 here is titled -- would you
18 mind reading the title of that line?

19 A. "Gain on disposition of property."

20 Q. And then would you read for me the title
21 of line 36.

22 A. "Loss on disposition of property."

23 Q. And did you include those numbers in line
24 36 in your calculations?

25 A. I did not.

1 Q. Thank you. You can set that to the side,
2 Mr. Defever. Let's move on to your next
3 recommendation in your supplemental testimony.
4 That's related to board of director fees; is that
5 correct?

6 A. Yes.

7 Q. And here you state at lines 15 through
8 16, page 5 of your supplemental testimony, "the board
9 of directors serves the interests of the
10 shareholders." The issue of board of director fees
11 is not specifically addressed in the Stipulation,
12 correct?

13 A. Correct.

14 Q. And you are aware that, as a corporation,
15 Duke Energy is required by law to have a board of
16 directors, aren't you?

17 A. Yes.

18 Q. And you go on to conclude that the
19 settlement is not consistent with regulatory
20 principles. This is on -- onto the next page, that
21 it's not consistent with reg -- important regulatory
22 principles and practices which provide that the
23 expense should be accounted for above the line.
24 What's your citation to regulatory principles and
25 practices there?

1 A. That's the same principle I referred to
2 before, that it should be to the customers' benefit.

3 Q. And when you say the principle, you
4 referred to -- before you are referring to --

5 A. To Bonbright.

6 Q. Thank you. And if we go back to your --
7 and I apologize for the back and forth here, but with
8 the cross references, it gets a little complicated.
9 Back to your direct testimony, you include a document
10 there to support the same position, correct, that
11 board of directors fees should be split?

12 A. What page?

13 Q. I am looking at, in your direct
14 testimony, page 13.

15 A. The decision I am referring to?

16 Q. Yes.

17 A. Okay. Yes.

18 Q. And where is that decision made from?

19 A. That's from a Connecticut rate case.

20 Q. Let's turn to that decision. Actually,
21 before we turn to that decision, we will go to the
22 attachments though to your testimony at JD-5. That
23 again is JD-5 to your direct testimony. Let me know
24 when you are there, Mr. Defever.

25 A. What are we looking for? You said 5?

1 Q. Attachment JD-5 to your direct testimony.

2 A. Okay. I'm there.

3 Q. And this is a data request that OCC
4 provided to the Company, correct?

5 A. Correct.

6 Q. And in the second sentence of that
7 request it's requesting transportation, lodging,
8 meals, catering, meeting materials, et cetera,
9 related to such meetings of the board of directors,
10 correct?

11 A. Correct.

12 Q. All right. So keeping that in mind,
13 let's go to page 72 of that Connecticut authority --
14 Connecticut authority's decision, which is page 77 of
15 188 of schedule JD-6, but is numbered page 72 at the
16 bottom. And I will give you a moment to get there,
17 Mr. Defever.

18 A. Which page of JD-6?

19 Q. It's -- it's a little overwritten at the
20 top, but it's page 77 of 188. It's numbered page 72
21 as well.

22 A. Okay. I'm there.

23 Q. And looking at that first paragraph under
24 section c, this is where the Connecticut authority
25 discusses the board of directors fees for this

1 particular utility, correct?

2 A. Correct.

3 Q. And the utility at issue for this
4 Connecticut authority decision is not Duke Energy,
5 correct?

6 A. That is correct.

7 Q. Thank you. And they discuss that the
8 costs to which they're analyzing include restricted
9 stock expense, UIL legal and consulting matters,
10 director stocks, director retirement pension, and
11 director expense, correct?

12 A. Correct.

13 Q. Were any of those expenses specifically
14 requested in that Data Request we just looked at?

15 A. Specifically, no.

16 Q. And looking at this exhibit, it states,
17 "Consistent with the determinations regarding public
18 company costs discussed above," and the Authority
19 determines a 25 percent inclusion is correct -- or is
20 allowable here; is that correct, in the second
21 paragraph?

22 A. Correct.

23 Q. So if we go back one page to page 76 of
24 188, there's a little heading with a small b there.
25 Is this the "Other Public Company Costs" section to

1 which the authority was referring there on the page
2 we were just looking at?

3 A. I am not sure. Where is the reference?

4 Q. Sure.

5 A. On the first page?

6 Q. On page 77, it states, second paragraph
7 under section b, third sentence, "Consistent with the
8 determinations regarding public company costs
9 discussed above."

10 A. Okay. Presumably, yes. No. Okay, yes.
11 They are saying the determination is consistent with
12 the determination they made above.

13 Q. Thank you very much, Mr. Defever. At
14 that section little b on page 76 of 188, there is a
15 paragraph just above that little b.

16 A. Okay.

17 Q. And there they are also referencing a
18 split of recovery, correct?

19 A. Correct.

20 Q. And it's stating it's applying that
21 25 percent recovery consistent with the 2006 and 2009
22 decisions of that utility, correct?

23 A. Correct.

24 Q. So here in this decision you attach, the
25 Connecticut authority had done this for a number of

1 years, correct?

2 A. Correct. I think.

3 Q. What prior --

4 A. Where do I say it was for a number of
5 years?

6 Q. You don't.

7 A. Oh.

8 Q. The Connecticut authority is stating here
9 that, "The authority finds no compelling reason to
10 stray from the treatment applied in the 2006 and 2009
11 Decisions."

12 A. Right.

13 Q. So the action it is taking here in this
14 decision you attached from 2013 would be consistent
15 with those two prior decisions of the Connecticut
16 authority.

17 A. For a different issue. For the directors
18 and officers of insurance, that's not for the board
19 of directors costs.

20 Q. This paragraph to which we are looking at
21 here leads into section b, Other Public Company
22 Costs, correct?

23 A. It's before it, but it's not connected.

24 Q. Oh, it -- okay. So let's go to page 75
25 then. Would you agree that the little section a,

1 which discusses the 2006 and 2009 decisions;
2 subsection b, which discusses other public company
3 costs; and subsection c, which discusses board of
4 directors is all under the main heading "Corporate
5 Service Charges?"

6 A. Correct.

7 Q. Are there any prior Public Utilities
8 Commission of Ohio entries for Duke Energy Ohio that
9 provide precedent for a 25 percent limitation on
10 board of directors fees?

11 A. Not that I am aware of.

12 Q. And on this issue you specifically state
13 that it violates regulatory principle -- that
14 including 100 percent of board of directors fees
15 violates regulatory principles. Is that again a
16 Bonbright reference?

17 A. Yes.

18 Q. So beyond this Connecticut authority that
19 you attach, can you -- do you have any Ohio precedent
20 for this recommendation?

21 A. I do not.

22 Q. Let's move on to incentive compensation.
23 I will give you a minute to reassemble your testimony
24 since I made you pull it all apart.

25 A. All right.

1 Q. And we'll start with your supplemental
2 testimony on this issue, Mr. Defever.

3 A. Okay.

4 Q. And in your supplemental testimony you
5 raise an issue that the settlement does not benefit
6 customers in the way that it is holding customers
7 accountable for funding incentive compensation,
8 correct?

9 A. Correct.

10 Q. And much of your discussion on this issue
11 is citing back to your direct testimony.

12 A. Correct.

13 Q. So if we go back to your direct testimony
14 on page 16. Let me know when you are there, please.

15 A. I'm there.

16 Q. You cite an observation -- you provide
17 two tables, and then you cite an observation at lines
18 4 through 5 that, "every employee eligible for
19 short-term incentive compensation over the past three
20 years received an award," correct?

21 A. Correct.

22 Q. Did each of those individuals receive
23 100 percent of the short-term incentive compensation?

24 A. I am not aware.

25 Q. And these two tables that you provide

1 here in your direct testimony, the source of those
2 are a Data Request, correct?

3 A. Correct.

4 Q. And that's attached to your testimony as
5 JD-7. If you would go there, please.

6 A. Okay. I'm there.

7 Q. And this Data Requests -- sorry, this
8 Data Request only asks for 2019, 2020, and 2021,
9 correct?

10 A. Correct.

11 Q. Do you know what any of the short-term
12 incentive eligibility either employee numbers were or
13 dollar amounts were in years prior to 2019?

14 A. I do not.

15 Q. So sticking with this same topic, let's
16 go back to the body of your direct testimony, page
17 17, please, Mr. Defever.

18 A. Okay.

19 Q. Are you there?

20 A. Yes.

21 Q. I'm sorry.

22 A. Sorry.

23 Q. That's quite okay. At lines 3 through 4
24 you state that, "If employees know that regardless of
25 how much effort they make they may not receive a

1 bonus, the incentive to work harder is diminished."

2 What are you relying on to make that statement?

3 A. I think that's common knowledge. I think
4 if -- if you are -- you know, you are working towards
5 a goal, and they say regardless of how hard you work,
6 you may not get it, that's going to influence how
7 hard you work. I don't -- I don't think that's
8 controversial.

9 Q. So is your position that there should not
10 be an initial financial gate that needs to be met by
11 a company before they pay out an incentive plan?

12 A. Oh, no, that's not my -- my position was
13 that their plan was ineffective. For instance, that
14 chart you mentioned earlier where it shows 1 -- they
15 have over 8,000 employees, and every single one
16 received the bonus.

17 Q. But you --

18 A. Now, either the Company is asking us to
19 believe that every single employee worked, you know,
20 provided an extra effort or was above average, or
21 they are asking ratepayers to pay for -- extra for
22 average work.

23 Q. Mr. Defever, just a couple moments ago
24 you admitted that you didn't know if all of those
25 employees received 100 percent of their short-term

1 compensation, correct?

2 A. Right. But that wasn't my point.

3 Q. Thank you, Mr. Defever.

4 MR. FINNIGAN: Your Honor, may the
5 witness be allowed to finish his answer?

6 EXAMINER WALSTRA: You can address that
7 on redirect if he needs to follow up, but I think he
8 answered the question.

9 Q. (By Ms. Verhalen) So your -- and correct
10 me if I am misstating it, but your position is where
11 an employee knows that their company has to achieve
12 certain overall financial metrics, they will not be
13 incentivized to work toward earning their own bonus
14 or own incentive compensation?

15 A. No, that is not correct.

16 Q. Okay.

17 A. I said it would be diminished, not that
18 there would be no incentive.

19 Q. Okay. By what amount would it be
20 diminished?

21 A. I can't answer that.

22 Q. Thank you. If we go to lines 10 through
23 13 on that same page, you state that, "This further
24 undermines the ability of an employee to directly
25 determine the amount of incentive pay received." You

1 are referring to the team goals there, correct?

2 A. Correct.

3 Q. What amount did the team goals undermine
4 the ability?

5 A. Again, if you are asking a percentage,
6 it's -- again, it's the idea if you don't think your
7 direct effort is going to impact your bonus, then you
8 are not going to be incentivized to work harder.
9 That's the bottom line.

10 Q. If there is a team goal, doesn't each
11 individual employee's direct effort impact the team
12 goal?

13 A. Possibly.

14 Q. Thank you. Have you ever worked as part
15 of a team --

16 A. Yes.

17 Q. -- Mr. Defever?

18 A. Yes.

19 Q. As part of that team, were you motivated
20 to continue to do a good job so that team would be
21 recognized as doing a good job?

22 A. I have had it both ways. There is times
23 when you are on a team and you know that, you know,
24 everybody on the team is going to receive the same
25 award and they are not trying at all. That's a

1 disincentive.

2 Going back to the idea that everybody is
3 going to get a bonus, you don't want to work harder
4 when you see that everybody else is slacking off and
5 you are all going to get a bonus.

6 Q. But isn't the team goal just part of the
7 incentive compensation?

8 A. It is just part and that's all I am
9 talking about there is that part.

10 MS. VERHALEN: Thank you. No further
11 questions, your Honor.

12 EXAMINER WALSTRA: Thank you.

13 Any additional cross? No?

14 Any redirect?

15 MR. FINNIGAN: Your Honor, may we take a
16 short break?

17 EXAMINER WALSTRA: Sure. We will go off
18 the record for 5 minutes.

19 (Recess taken.)

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

22 MR. FINNIGAN: Thank you, your Honor.

23 - - -

24

25

1 REDIRECT EXAMINATION

2 By Mr. Finnigan:

3 Q. Mr. Defever, you were asked some
4 questions on cross-examination about why the
5 short-term incentive comp. should not be collected as
6 part of the rate case settlement. Could you please
7 explain your reasons for your position.

8 A. Okay. Yes. I'll start by going back to
9 Bonbright. Another principle from Bonbright is that
10 a cost should be determined by its effectiveness.
11 Its reasonableness should be determined by its
12 effectiveness. And my whole point about the
13 incentive comp. is that it is not -- it is not
14 effectively designed.

15 The -- the way it's designed, it's more
16 of just a bonus program where everybody receives
17 money regardless of the effort. As I mentioned, you
18 know, 8,000 employees all receive it. I don't think
19 it's appropriate for ratepayers to pay for that.

20 There's also a financial trigger where
21 regardless of how hard they work, if the Company
22 doesn't meet that goal, they are not going to receive
23 it. So in the end it just doesn't provide -- to be
24 an incentive program, it has to provide an incentive
25 for greater effort. I feel it's lacking in that

1 area.

2 MR. FINNIGAN: Nothing further, your
3 Honor. I would ask that OCC Exhibits 4 and 5 be
4 admitted into evidence.

5 EXAMINER WALSTRA: Any additional cross?

6 MS. VERHALEN: No, your Honor. Thank
7 you.

8 EXAMINER WALSTRA: Thank you.

9 Any objections to the admission of OCC
10 Exhibits 4 or 5?

11 MS. VERHALEN: No, your Honor.

12 EXAMINER WALSTRA: Hearing none, they
13 will be admitted.

14 (EXHIBITS ADMITTED INTO EVIDENCE.)

15 MR. FINNIGAN: Your Honor, I would ask --
16 Mr. Defever is from out of town. I would ask that he
17 be excused from the rest of the hearing.

18 EXAMINER WALSTRA: Absolutely.

19 THE WITNESS: Thank you.

20 EXAMINER WALSTRA: Thank you for coming
21 in.

22 I believe OCC is done for today on
23 witnesses? No further witnesses today?

24 MS. O'BRIEN: No. Bob Fortney is ready
25 to go on Tuesday. We have confirmed.

1 EXAMINER WALSTRA: I believe, Staff, you
2 have a remaining witness.

3 MR. EUBANKS: Yes, your Honor. I would
4 like to call to the stand David Lipthratt.

5 EXAMINER WALSTRA: Welcome. Raise your
6 right hand.

7 (Witness sworn.)

8 EXAMINER WALSTRA: Thank you.

9 MR. EUBANKS: Your Honor, may I approach?

10 EXAMINER WALSTRA: You may.

11 MR. EUBANKS: Your Honor, I would like to
12 have marked as Staff's Exhibit 8A, the prefiled
13 testimony in support of the Stipulation of David
14 Lipthratt.

15 EXAMINER WALSTRA: You said 8A?

16 MR. EUBANKS: Yes.

17 EXAMINER WALSTRA: So marked.

18 MR. EUBANKS: And then as 8B, prefiled
19 testimony in response to the objections to the Staff
20 Report of David Lipthratt.

21 EXAMINER WALSTRA: Can we just go 8 and
22 9?

23 MR. EUBANKS: That's fine.

24 EXAMINER WALSTRA: In support of the
25 Stipulation will be 8, and response to objections

1 will be 9.

2 (EXHIBITS MARKED FOR IDENTIFICATION.)

3 MR. EUBANKS: Okay.

4 - - -

5 DAVID M. LIPTHRATT

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

8 DIRECT EXAMINATION

9 By Mr. Eubanks:

10 Q. Good morning. Could you state your name
11 and spell it.

12 A. David M. Lipthratt, L-I-P-T-H-R-A-T-T.

13 Q. And your position with the Staff?

14 A. I'm a Public Utility Administrator with
15 the Rates and Analysis Department.

16 Q. Did you file testimony in this matter?

17 A. I did.

18 Q. Could you name the testimony that you
19 filed.

20 A. Yes, sir. Excuse me. Exhibit 8 is my
21 prefiled testimony -- testimony in support of the
22 Stipulation, and Exhibit 9 is my prefiled testimony
23 in response to objections to the Staff Report.

24 Q. Could you take a look at both of those
25 documents and tell me if they are true and accurate

1 copies of what was filed with the Commission.

2 A. Yes. It looks correct.

3 Q. Are there any corrections you would like
4 to make to your testimony?

5 A. No, sir.

6 Q. If I were to ask you the same questions
7 that are found in both documents, would you provide
8 the same answers?

9 A. Yes, sir.

10 MR. EUBANKS: With that I offer the
11 witness for cross-examination, and I move to have
12 Staff's Exhibits 8 and 9 placed into evidence,
13 subject to cross-examination.

14 EXAMINER WALSTRA: Thank you.

15 OCC.

16 MR. FINNIGAN: Thank you, your Honor.

17 - - -

18 CROSS-EXAMINATION

19 By Mr. Finnigan:

20 Q. Good morning, Mr. Lipthratt.

21 A. Good morning.

22 Q. Nice to see you again.

23 A. Same here.

24 Q. Mr. Lipthratt, could you -- do you have a
25 copy of the Stipulation in this case available to

1 you?

2 A. Yes, sir, I do.

3 Q. Could you please turn to page 21 of the
4 Stipulation.

5 A. I'm there.

6 Q. Now, if you look at page 21 of the
7 Stipulation in this case, do you see a heading for
8 letter I, City of Cincinnati?

9 A. Yes, sir.

10 Q. Is it your understanding that the
11 provisions that follow underneath that are the ones
12 that affect the City of Cincinnati's involvement in
13 this case?

14 A. Yes, sir.

15 Q. And could you please take a moment to
16 flip through the next few pages that deal with the
17 settlement provisions affecting the City of
18 Cincinnati?

19 A. Okay.

20 Q. Okay. Now, the City of Cincinnati has a
21 dual interest in this case, one is its interest as a
22 commercial customer of Duke Energy, and the other one
23 is as a municipality who has residents that are
24 consumers of Duke Energy; would that be fair?

25 A. I believe so.

1 Q. Now, if we look under section 1, all the
2 provisions there affect the City of Cincinnati's
3 status as a commercial customer of Duke Energy until
4 we get to one that's item No. 5; is that right?

5 A. Yes. Yes.

6 Q. Okay. Now, that item No. 5 has to do
7 with the franchise fee; is that correct?

8 A. Yes, sir. Yes, sir.

9 Q. What is a franchise fee?

10 A. It's a form of payment that utilities or
11 other entities would have to pay to a municipality, a
12 city. It's like a tax basically to perform, so that
13 the city can fund the necessary work it needs to
14 perform. I would just kind of chock it up to kind of
15 like a tax, if you will.

16 Q. Okay. How does the utility collect the
17 cost for that franchise fee?

18 A. Typ -- typically through base rates.
19 It's a -- it's a -- it's not considered a tax, but
20 it's a -- I take that back actually. It is -- it is
21 a level of expense that's typically embedded in base
22 rates.

23 Q. Okay. So a franchise fee payment goes to
24 the City of Cincinnati?

25 A. Yes, sir.

1 Q. Okay. And it benefits the City and the
2 residents of the City?

3 A. That's correct.

4 Q. But the franchise fee expense is
5 collected from all consumers of Duke Energy?

6 A. Yes.

7 Q. Whether they live in the City or not?

8 A. It is a cost to serve, and as a result of
9 being -- as part of the cost to serve, that -- that
10 level to provide service to customers is allocated
11 amongst various rate classes and is -- and -- and as
12 a result of that, customers -- Duke Energy Ohio's
13 customers, depending on the rate tariffs that they
14 are on, would pay that expense should it be
15 applicable.

16 Q. And that would be paid by all consumers
17 of Duke Energy throughout its service territory
18 regardless of whether they lived in the City?

19 A. Generally speaking, yes.

20 Q. Okay. Is there any limit on what a city
21 can charge as a franchise fee?

22 A. That I'm not sure of.

23 Q. Okay. Let's say the city wanted to
24 charge a franchise fee of \$25 million. Is there
25 anything that the utility could do about it?

1 MS. AKHBARI: Objection, your Honor. The
2 witness just said he has no knowledge of the
3 limitations.

4 MR. FINNIGAN: Your Honor, I asked if
5 there was any limit. This is a different question,
6 if they are charging one of \$25 million.

7 MS. AKHBARI: Your Honor, I would also
8 object as asking for a legal conclusion if that is
9 the question.

10 MR. FINNIGAN: And, your Honor, this is
11 also -- it's on cross-examination, so I think I'm
12 entitled to explore this witness's knowledge about
13 the franchise fee which is part of the Stipulation.

14 EXAMINER WALSTRA: He can answer if he
15 knows.

16 A. So I don't know the legality of what a
17 franchise fee can or -- you know, what limits are set
18 upon franchise fees. I will say as a member of
19 Staff, we've never seen a franchise fee at your
20 hypothetical of 25 million. If we saw it, we
21 typically would -- I mean, we definitely would flag
22 it, explore it, involve legal. It would be explored.

23 Q. Okay. And I believe you mentioned
24 earlier that the franchise fee is like a tax, and
25 it's something that the city uses to cover its costs

1 of administering the franchise, or to pay for the
2 costs that arise from the utility's use of the city's
3 right-of-way.

4 A. I think that's fair.

5 Q. Now, in this case it appears under this
6 item 5 that some of the money from the franchise fee
7 payment is going to be used for a bill assistance
8 program for the residents of the City; is that
9 correct?

10 A. That's correct.

11 Q. Would that suggest to you that the amount
12 of the franchise fee might be in excess of what's
13 needed for the City to pay for the costs of
14 administering the franchise fee and to pay for the
15 costs that arise from Duke's use of the right-of-way?

16 A. That -- that in and of itself does not
17 indicate to me or Staff that that -- the franchise
18 fee is unreasonable, in part because that franchise
19 fee has been in place for years on -- decades upon
20 decades. It's not out -- out of line of what we've
21 typically seen.

22 We are aware that it's based upon the
23 Company's revenues. It seems to be reasonable on the
24 basis of previous levels that we have seen and -- and
25 the Company's revenue requirement.

1 Q. Providing bill assistance to residents of
2 the City would not appear to be related to the cost
3 of administering the franchise or paying for Duke's
4 use of the right-of-away, would it?

5 MS. AKHBARI: Objection, asked and
6 answered.

7 EXAMINER WALSTRA: Overruled.

8 A. May you -- do you mind reasking your
9 question?

10 Q. Sure. A bill assistance program would
11 not appear to be related to Duke's costs -- or the
12 City's costs of administering the franchise or paying
13 for the cost of Duke Energy's use of the
14 right-of-way, would it?

15 A. I can't speculate what the City's cost is
16 and what it takes to manage that, the ins and outs of
17 the City's budget. What they account for, how they
18 account for it, it would be purely speculation on my
19 part.

20 Q. Okay. Can you think of any reason or any
21 way how a bill assistance program would be related to
22 the City's cost of administering the franchise or
23 paying for Duke's use of the right-of-way?

24 MR. EUBANKS: Objection, calls for
25 speculation.

1 EXAMINER WALSTRA: Any response?

2 MR. FINNIGAN: Your Honor, I am testing
3 his knowledge about the Stipulation provision
4 relating to the franchise fee and this bill
5 assistance program.

6 He was the head of the team from Staff
7 that reviewed this Stipulation and agreed to its
8 provisions, so I am simply testing his understanding
9 of the -- this component of the Stipulation.

10 MR. EUBANKS: But the question was
11 literally can you think of any way. He is asking him
12 to hypothesize on what the potential reasons are.

13 EXAMINER WALSTRA: I'll sustain.

14 MR. FINNIGAN: Your Honor, may I approach
15 the witness with an exhibit to be marked?

16 EXAMINER WALSTRA: You may.

17 MR. EUBANKS: Do I already have that
18 document?

19 MR. FINNIGAN: I'm sorry?

20 MR. EUBANKS: I don't have the document
21 you passed out.

22 MR. FINNIGAN: It's the Stipulation from
23 the 2017 case.

24 MR. EUBANKS: Okay. I have it, I just
25 didn't know what it was.

1 MR. FINNIGAN: That's okay. Your Honor,
2 let the record reflect that I've handed the witness
3 marked -- I have handed the witness a document marked
4 as OCC Exhibit 13 for identification purposes. And
5 it's a copy of the Stipulation from the 2017 ESP case
6 for Duke Energy.

7 EXAMINER WALSTRA: It will be so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MS. GRUNDMANN: Can I ask a clarifying
10 question? Is this the Exhibit 13 you circulated
11 earlier this week in the electronic version?

12 MR. FINNIGAN: Yes. We provided that
13 Tuesday to everyone.

14 MS. GRUNDMANN: Okay. Thank you.

15 Q. (By Mr. Finnigan) Mr. Lipthrott, do you
16 have before you a document that's been marked as OCC
17 Exhibit 13?

18 A. Yes, sir.

19 Q. And what is that document?

20 A. Appears to be the Stipulation from the
21 Company's last rate case, 17-32-EL-AIR, and it also
22 includes aspects of their previous ESP resolution --
23 or Stipulation resulting from their last
24 Stipulation -- last ESP as well.

25 Q. Okay. And is that the current ESP that

1 the Company is operating under?

2 A. Yes, sir.

3 Q. Is that commonly referred to as ESP
4 No. IV?

5 A. I lose track between the companies, but I
6 believe that is correct.

7 Q. Okay. And if you turn to page 4 of the
8 Stipulation, I believe it shows that the ESP IV was
9 intended to be in effect through May of -- 31st of
10 2025; is that correct?

11 A. Yes, sir.

12 Q. Okay. Now, were you involved in that
13 case on behalf of Staff?

14 A. I was.

15 Q. What role did you play in that case?

16 A. I was responsible for the oversight of
17 the rate case portion, primarily the revenue
18 requirement, not so much the rate design but the
19 general over -- general supervisor managing the rate
20 case process, and I assisted in processing the ESP
21 portions as well.

22 Q. Okay. And who prepared this document,
23 OCC Exhibit 13, and filed it with the Commission?

24 A. My -- going off memory, it was a, you
25 know, product of a Stipulation. There was a lot

1 of -- as these things work, a lot of turns of
2 redlines and it was a collaborative effort amongst
3 the signatory parties to develop this document.

4 Q. Okay. So whoever signed that
5 Stipulation, all of those parties were among the ones
6 who drafted the document.

7 A. Yes. I think that's correct.

8 Q. Now, this ESP IV, which you have before
9 you, it was later approved by the Commission in an
10 Opinion and Order?

11 A. Yes.

12 Q. And the Stipulation for the ESP IV
13 contains many terms that relate to the distribution
14 service provided by Duke Energy; is that correct?

15 A. Yes, sir.

16 Q. One of the terms of that Stipulation was
17 that Duke would come in and file another distribution
18 rate case while the ESP IV was in effect; isn't that
19 right?

20 A. I believe so.

21 Q. And that's the rate case that we are in
22 now, right?

23 A. Yes.

24 Q. Okay. Now, I want to shift gears a
25 little bit here and ask about the Commission's policy

1 on whether terms agreed to in an ESP act -- are
2 binding during the time the ESP is in effect, so
3 that's the general topic I want to ask you about, and
4 I want to ask you about that in reference to another
5 company's cases, DP&L. Now, are you familiar --

6 MS. AKHBARI: Your Honor, I would object
7 to this line of questioning as it's outside the scope
8 of the witness's direct testimony and supplemental
9 testimony.

10 EXAMINER WALSTRA: I will see where it
11 goes.

12 MR. FINNIGAN: Your Honor, this is within
13 the scope of his testimony --

14 EXAMINER WALSTRA: You can go ahead.

15 Q. (By Mr. Finnigan) So I would like to ask
16 you about the Commission's policy on whether ESP
17 terms have a binding affect while the ESP governs the
18 utility's service. This has come up in some recent
19 cases involving DP&L that you have been involved in,
20 hasn't it?

21 A. Depending on the nature of your question,
22 it's hard for me to answer affirmatively without
23 really knowing specifics of what you are getting to.

24 Q. Okay. Well, let me set the stage for
25 that with a little bit of background. Just as

1 background, DP&L had an ESP I that was in effect that
2 contained a Rate Stabilization Charge; is that right?

3 A. Yes.

4 Q. Okay. And then DP&L came in and filed an
5 ESP II that the Commission later approved, right?

6 A. That is correct.

7 Q. And that ESP II was later overturned by
8 the Supreme Court of Ohio?

9 A. Is that a question to me?

10 Q. Yes.

11 A. I thought it was a later ESP that was
12 overturned, but DP&L tends to have so many reversions
13 back to ESP I, it's sometimes hard to keep track.

14 Q. Well, you anticipated my next question.
15 That was going to be as a result of some ruling, DP&L
16 decided to revert back to the ESP I.

17 A. That's correct.

18 Q. Okay. And the Commission does periodic
19 earning reviews of a utility's earnings and those are
20 known as SEET cases.

21 A. Yes, sir.

22 Q. Do you recall being involved in a SEET
23 case for DP&L where the issue has come up as to
24 whether that Rate Stabilization Charge should be
25 included in the earnings for DP&L under the SEET,

1 OCC took the position that it should not because the
2 Rate Stabilization Charge was illegal, but the
3 Commission ruled that the Rate Stabilization Charge
4 should be included in the earnings because it was
5 part of ESP I --

6 MS. AKHBARI: Your Honor, I am going to
7 object. Counsel is testifying at this point and
8 entering a lot of information into the record that he
9 hasn't established this witness has knowledge of, and
10 this case is not relevant to the case at hand. We
11 are not here for DP&L today.

12 MR. FINNIGAN: Your Honor, I would ask
13 that before any objections are made, that I be
14 allowed to finish my question rather than being
15 interrupted.

16 And then I would also say that this is
17 relevant to the case, and it's within the scope of
18 this witness's testimony because it goes to the
19 three-prong test that the Commission reviews as -- in
20 deciding whether to approve the settlement. Part of
21 that has to do with whether the settlement is
22 consistent with important ratemaking policies or
23 practices and that's what this goes to.

24 So I started out on this line of
25 questioning asking about the Commission's policy as

1 to whether terms agreed to in an ESP are considered
2 binding while the ESP is in effect. That's the
3 important ratemaking policy or principle I am asking
4 about.

5 I am doing it by way of illustration with
6 a DP&L case that Mr. Lipthratt has been involved in.
7 So I was just -- I was just setting the stage as
8 background for my questions about the Commission's
9 policy that ESP terms are binding while the ESP is in
10 effect.

11 EXAMINER WALSTRA: I mean, if you want to
12 make sure he understands, that he actually has
13 knowledge of what you are talking about, that you are
14 not trying to inform him of everything that's going
15 on; but, yeah, ideally I was hoping you would get to
16 the question sooner rather than later.

17 MR. FINNIGAN: Okay.

18 EXAMINER WALSTRA: But I will allow you
19 to answer the question -- ask the question.

20 MR. FINNIGAN: Thank you, your Honor.

21 Q. (By Mr. Finnigan) So, Mr. Lipthratt, I
22 was asking you a question and that had to do with the
23 Rate Stabilization Charge that is contained in the
24 ESP I for DP&L. OCC made the objection in the SEET
25 case that it shouldn't be included in the earnings,

1 but the Commission ruled that since the Rate
2 Stabilization Charge was in the ESP I, the Company
3 reverted to the ESP so that's binding precedent that
4 remains in effect. Do you recall that?

5 MS. AKHBARI: Your Honor, I'm going to
6 object again. He can break these down into
7 individualized questions to ensure that Mr. Lipthratt
8 has knowledge of each of the statements that he is
9 making. If he is not, he is simply testifying on the
10 record and getting information in.

11 EXAMINER WALSTRA: I will allow him to
12 answer the question, and he can ask for clarification
13 if he needs to.

14 A. So I am familiar with RSC as it relates
15 to ESP I primarily more so from a rate case
16 perspective because I am generally the rate case
17 manager. I am vaguely familiar with the SEET review,
18 and -- but just generally so. So I am not sure if
19 that answers your question. At this point I have
20 lost track of your question.

21 Q. Okay. Let me move on. So do you recall
22 another issue that came up in the last Dayton Power
23 and Light rate case having to do with whether a rate
24 freeze must remain in effect per the terms of the ESP
25 I?

1 A. Yes, sir.

2 Q. And you were a witness in that case,
3 weren't you?

4 A. I was.

5 Q. And were you the head of the Staff team
6 that was reviewing the application for the rate
7 increase --

8 A. Yes, sir.

9 Q. -- in that case?

10 A. Yes, sir.

11 Q. And so the issue that came up there was
12 whether the Company could implement new rates while
13 that rate freeze was in effect under ESP I, right?

14 A. That was an issue in the case.

15 Q. And the Staff took the position that any
16 increase in rates could not take affect while ESP I
17 was in effect and could not be implemented until the
18 ESP I was completed.

19 A. I testified to that issue, and I think
20 what my testimony was is that Staff is not putting
21 forth a legal opinion on that matter.

22 Q. Okay. But that was the basic position.

23 A. Staff's not putting forth a legal opinion
24 on that matter. That was our position.

25 Q. You left that for Commission

1 determination.

2 A. Yes, sir.

3 Q. Okay. Now, I want you to turn to page 7
4 of the Stipulation in the ESP IV case, please.

5 A. I'm there.

6 Q. And do you see a section there on ROE?

7 A. Yes, sir.

8 Q. Now, this section on ROE is underneath
9 heading D which is entitled "Distribution Services";
10 is that right?

11 A. Yes, sir.

12 Q. And that's where it -- it begins a number
13 of terms relating to Duke's electric distribution
14 service that were decided or agreed upon as part of
15 this Stipulation that's been marked as Exhibit 13; is
16 that correct?

17 A. It appears there was five provisions or
18 issues related to distribution service, yes, sir.

19 Q. Okay. And the first one is this ROE
20 issue?

21 A. Yes, sir.

22 Q. Okay. Now, what that term spells out is
23 what the ROE would be for the rate case that was also
24 decided at the same time as the ESP IV; is that
25 right?

1 A. Yes, sir.

2 Q. Now, I want to ask you to read that
3 paragraph on ROE and let me know when you have had a
4 chance to read that.

5 A. I've read it.

6 Q. Okay. Now I want to direct your
7 attention to the line that's three lines down from
8 the heading that contains the language "until such
9 time." Do you see that?

10 A. Yes, sir.

11 Q. Okay. So that paragraph lays out what
12 the ROE would be at the beginning of the ESP IV
13 period, and then it says that that ROE would remain
14 in effect, and then "until such time as new rates are
15 effective with a new ROE as authorized by the
16 Commission in the Company's next base electric
17 distribution rate case." Have I read that correctly?

18 A. I believe so.

19 Q. Now turn to page 9 of the Stipulation,
20 please. And that's the Stipulation that's been
21 marked as Exhibit 13.

22 A. I'm there.

23 Q. Do you see about five lines down from the
24 top it provides what the customer charge would be for
25 residential consumers?

1 A. \$6; is that correct?

2 Q. Yes.

3 A. Yes.

4 Q. For rates RS and any other rate schedules
5 listed there?

6 A. Yes, sir.

7 Q. Okay. Now, does that also contain the
8 language that we saw for the ROE that that \$6
9 customer charge would remain in effect until rates
10 are determined in the next base electric distribution
11 rate case?

12 A. I might -- excuse me. I may be missing
13 it, but I don't actually see that type of language
14 here.

15 Q. So the fact that that language wasn't
16 included for the customer charge would seem to
17 suggest that the \$6 charge would remain in effect for
18 the entire ESP IV period, wouldn't it?

19 MR. EUBANKS: Objection, calls for a
20 legal conclusion.

21 MR. FINNIGAN: Your Honor, I am just
22 asking this witness's opinion.

23 MR. EUBANKS: You are asking for a legal
24 opinion. You can make this argument in your brief,
25 and the Commission will determine whether or not

1 that's the case.

2 EXAMINER WALSTRA: He can answer.

3 A. Not being an attorney, but given my
4 experience with years of processing rate cases and
5 orders and stipulations such as this, that doesn't
6 necessarily indicate to me that it is a term that is
7 a mandatory term throughout the ESP.

8 In between ESPs there may or may not be
9 rate cases that are filed in between that changes
10 certain components of what you typically see in a
11 base rate case, and this language as written does not
12 read to me as that it is locked in through the
13 duration of the ESP.

14 Q. Then what's the purpose of putting it in
15 the ESP?

16 A. Again, this Stipulation speaks to the
17 rate case and the ESP. It's a joint document -- or
18 it's a document that addresses both the ESP and the
19 rate case. The purpose is to state for transparency
20 for consumers, for stakeholders what the customer
21 charge is going to be, and customer charges are
22 typically set in rate cases. That's where you would
23 set a customer charge.

24 Q. In any event, by including the language
25 with respect to the ROE, saying that that ROE decided

1 in the ESP IV where it expressly states it would
2 remain in effect until the next base rate case and
3 not including similar language for the customer
4 charge at least creates a little ambiguity about
5 whether that should remain in effect or change at the
6 next rate case, doesn't it?

7 MR. EUBANKS: Objection, calls for a
8 legal conclusion.

9 MS. GRUNDMANN: Your Honor, Walmart would
10 join. It also appears that we've begun to move into
11 issues that are probably best addressed in
12 post-hearing briefs, and I think asking the witness
13 to speculate as to the legal implications of the
14 inclusion or exclusion of language into a prior
15 document is something that parties can address in
16 their post-hearing filings.

17 MS. AKHBARI: Your Honor, we would just
18 also raise the fact this issue was not raised by OCC
19 in their objections to the Staff Report at this
20 point, so they are beyond the scope of what they
21 raised as issues.

22 MR. FINNIGAN: Your Honor, we raised the
23 customer charges as an issue in our objections to the
24 Staff Report.

25 EXAMINER WALSTRA: I agree you are

1 starting to call for a legal conclusion. We are
2 parsing the words pretty delicately here and asking
3 for what's ambiguous and what's not. I mean, I think
4 that's best served in briefs by the lawyers.

5 MR. FINNIGAN: Thank you, your Honor.

6 Q. (By Mr. Finnigan) Mr. Lipthrott, would
7 you agree with me that the amount of the customer
8 charge for residential consumers is an important
9 regulatory principle for them because that's really
10 the chief way they have to control their electricity
11 bill, isn't it?

12 A. Could you restate the question, please?

13 Q. I will reask it.

14 A. Thank you.

15 Q. So would you agree with me,
16 Mr. Lipthrott, that the amount of the customer charge
17 for residential consumers is an important regulatory
18 principle because that's really the main way they
19 have to control their electricity bill, isn't it?

20 A. I agree that the customer charge is an
21 important regulatory principle and is vital in
22 consideration in setting rates. I struggle a bit
23 because, you know, the customers don't really control
24 that.

25 The cost of service is what it is. If

1 it's -- monthly charge is what it is to cost to serve
2 those customers. So I am struggling with your
3 question in that the customers can choose where they
4 want to live, what size home, things of that nature,
5 but they don't really control the customer charge.

6 Q. Okay. Now, I want to ask you about the
7 Staff's recommendation for the customer charge for
8 residential consumers as indicated in the Staff
9 Report. Do you have the Staff Report handy?

10 A. Yes, sir, I do.

11 Q. And I would like you to direct your
12 attention to page 29 of the Staff Report.

13 A. I'm there.

14 Q. Now, in the Staff Report, the Staff
15 recommended a customer charge for residential
16 consumers of \$7.32 a month?

17 A. One moment, please.

18 Yes, that is correct.

19 Q. When the Staff makes a recommendation on
20 the amount of the customer charge for residential
21 consumers, it uses a methodology that it refers to as
22 the minimum compensatory methodology; is that right?

23 A. That might have been a better question
24 for Staff Witness Baas, but yes, generally -- as I
25 indicated earlier, I am generally responsible for the

1 main oversight of the rate case, but primarily
2 focused on the revenue requirement. Rates and
3 tariffs is led by another team, but I will do the
4 best I can at answering questions; and, yes, that's
5 generally what I understand.

6 Q. Okay. And the Staff tries to be
7 consistent in that it uses that same methodology for
8 all utilities in rate cases of this minimum
9 compensatory method in preparing recommendations for
10 the customer charge.

11 A. I can't speak to the Staff -- I can't
12 speak to -- I can't affirm that is always the
13 methodology used. I just don't have that experience
14 or expertise to answer affirmatively.

15 Q. Would it generally be true that Staff
16 tries to be consistent in the type of analysis it
17 does in making its recommendations for the different
18 terms of distribution service?

19 A. Yes. Consistency is important, and we do
20 strive to maintain that consistency.

21 Q. And that consistency is an important
22 regulatory principle, isn't it, so that utilities are
23 all treated uniformly and consumers of utilities are
24 all treated uniformly throughout the state?

25 A. I would agree.

1 Q. Now, I would like to turn your attention
2 to Rider DCI. Are you familiar with that?

3 A. Yes, sir.

4 Q. Now, could you please refer to pages 10
5 to 13 of the Stipulation in the ESP IV case that's
6 been marked as OCC Exhibit 13 and take a few moments
7 to review those pages.

8 A. I've quickly reviewed.

9 Q. Okay. And that section has to deal with
10 the rate caps for Rider DCI during the years through
11 2025; is that right?

12 A. Yes, sir.

13 Q. Okay. Now, please look at page 12 of the
14 Stipulation at the bottom of the page and go about
15 three -- three lines up.

16 A. Is it the beginning of that like
17 paragraph C that you are asking me to look at? Page
18 12, right?

19 Q. Yes, sir, that's right.

20 A. Yeah. Three lines up it starts that new
21 paragraph in a proceeding initiated under paragraphs
22 7B?

23 Q. You know, I'm not sure we are talking
24 about the same thing, but I am talking about
25 Exhibit 13, the Stipulation in the ESP IV case.

1 A. My bad. I apologize. The previous ESP,
2 yes, page 12, three lines up, yes, sir.

3 Q. Okay. Are you there now?

4 A. Yes, I am. Sorry.

5 Q. Now, do you see a sentence three lines up
6 from the bottom of the page that talks about if the
7 Company files a base electric rate case?

8 A. Yes, sir.

9 Q. Okay. And this talks about how the Rider
10 DCI revenue caps might need to be adjusted if a rate
11 case was filed, right?

12 A. Let me read this sentence.

13 Q. I'm sorry?

14 A. I'm sorry. I was just going to read the
15 sentence before I responded.

16 Q. Please do. I'm sorry.

17 A. Yes, it would be -- the DCI caps would be
18 adjusted should the Company file a new base rate
19 case.

20 Q. Okay. And what it says, the caps would
21 need to be adjusted only if the Company files a rate
22 case before May 31 of 2014, right -- 2024?

23 A. I thought I heard you say -- use the word
24 "only," and I'm -- I'm looking for such a word. I
25 don't see the word "only."

1 Q. I just -- what I meant to ask was that
2 the adjustment to the rate caps only needs to be made
3 if the Company files that distribution rate case
4 earlier than May 31 of 2024; is that right?

5 A. So what it's saying is if the Company
6 files early, the rate caps would be reset, and if it
7 does not file by that date, the cap -- basically the
8 rider would sunset, and the caps would go to zero.

9 Q. Okay. Right. Now the reason that the
10 caps might need to be reset if there is a case
11 earlier than May 31 of 2024 is that there would be
12 money that's collected through the rider that would
13 be transferred to base rates, right?

14 A. Typically when a capital investment
15 rider -- when a rate case is filed, it's not
16 unusual -- it's pretty typical that any capital
17 investment rider the utility may have, those
18 investments are embedded in base rates as part -- if
19 those prior to dates are embedded in rate base and
20 the capital investment rider would be reset and
21 those -- any applicable caps would be reestablished.

22 Q. Okay. And so what's happening is that
23 the caps are ratcheted downward to reflect the fact
24 that money is being taken out of the rider and
25 transferred into base rates when that rate case

1 occurs.

2 A. I struggle with the word "ratcheted
3 downward." So any prior investment that was
4 previously being recovered through the capital
5 investment rider, as I indicated, would now -- any
6 net book value would be recovered through base rates,
7 and the resetting of the caps is not so much that
8 it's ratcheted downward; it's just reset.

9 And typically for electric companies it's
10 not unusual for Staff to recommend 3 -- or somewhere
11 between 3, maybe 4 percent of base distribution
12 revenues that -- in order to set the caps.

13 Q. Okay. But here the amount of any revenue
14 adjustments for the Rider DCI are spelled out in the
15 ESP IV Stipulation, aren't they?

16 A. I didn't follow. Do you mind reasking
17 your question?

18 Q. Sure. The document that you have before
19 you, the ESP IV Stipulation, if you look at pages 10
20 to 13 of that document, that spells out what the
21 revenue caps would be for Rider DCI while stip --
22 while the ESP IV is in effect.

23 A. I agree, in part. I mean, again, keep in
24 mind this is also a rate case Stipulation and this is
25 typically the language you would see in a rate case.

1 The caps are generally reset in rate cases. So you
2 keep referring to it as the ESP Stipulation. It is,
3 but it is also the rate case Stipulation.

4 Q. Okay. But just like the ROE, that -- the
5 ROE is changed in every rate case, isn't it?

6 A. Yes.

7 Q. Okay. And for some reason the people
8 that drafted the ESP IV Stipulation saw fit to
9 expressly provide that the ROE that was spelled out
10 in that Stipulation would remain in effect until the
11 next rate case. That language isn't included for the
12 revenue caps for Rider DCI in the ESP IV Stipulation;
13 is that correct?

14 MS. GRUNDMANN: Your Honor, I am going to
15 object to this. This is Carrie from Walmart. I'm
16 going to object to this. This is exactly within the
17 scope of the prior objection regarding the import of
18 inclusion or exclusion of language is best addressed
19 as a legally addressed issue in a post-hearing brief.

20 EXAMINER WALSTRA: I -- the document
21 speaks for itself, but I will allow the question to
22 go.

23 MS. AKHBARI: Your Honor, I would also
24 note that the question has been asked and answered.

25 MR. FINNIGAN: Well, I asked that

1 question with respect to the customer charge. I
2 haven't asked it with respect to the revenue caps for
3 Rider DCI but...

4 Q. (By Mr. Finnigan) Mr. Lipthratt, do you
5 understand the question, or would you like to have
6 the court reporter reask it?

7 THE WITNESS: Yeah, if you could reask,
8 please.

9 EXAMINER WALSTRA: Thank you, Karen.

10 (Record read.)

11 A. It doesn't need to be in that. You know,
12 rate of returns could be updated based upon cost of
13 debt, cost of equity. It fluctuates in between rate
14 cases, and what signatory parties are agreeing to and
15 the Commission is ordering is being set as a point in
16 time.

17 You know, DCI caps aren't -- they are not
18 updated in between rate cases. They are set during
19 the course of a rate case to be for a period of time
20 at certain levels, and then generally they sunset.
21 And if the Commission -- excuse me, if the Company
22 doesn't come in to file a new rate case, typically
23 this -- the recommendation is that the caps go to
24 zero. So there is not -- there is not a need for
25 that language.

1 MR. FINNIGAN: That's all the questions I
2 have.

3 EXAMINER WALSTRA: Thank you.

4 MR. FINNIGAN: Thank you, Mr. Lipthrott.

5 THE WITNESS: Thank you.

6 EXAMINER WALSTRA: Any redirect?

7 MR. EUBANKS: Can I -- can I get --
8 convene with my client?

9 EXAMINER WALSTRA: Sure. We will go off
10 the record.

11 (Recess taken.)

12 EXAMINER WALSTRA: We will go back on the
13 record.

14 MR. EUBANKS: Thank you, your Honor.
15 Staff has no redirect.

16 EXAMINER WALSTRA: You are excused.
17 Thank you.

18 MR. FINNIGAN: Your Honor, I would ask
19 that OCC Exhibit 13 -- that the Commission take
20 administrative notice of this document. It's a
21 Stipulation that was filed in the ESP IV case.

22 EXAMINER WALSTRA: We'll take
23 administrative notice of that.

24 MR. FINNIGAN: Thank you, your Honor.

25 EXAMINER WALSTRA: Would Staff like to

1 move their --

2 MR. EUBANKS: Yes. Staff would like to
3 move Staff's Exhibits 8 and 9 into evidence.

4 EXAMINER WALSTRA: And I also believe we
5 have the Staff Report.

6 MR. EUBANKS: Yes, Staff Report and Joint
7 Stipulation.

8 EXAMINER WALSTRA: And Joint Exhibit 1?

9 MR. EUBANKS: Yes.

10 MR. D'ASCENZO: And 2.

11 MS. AKHBARI: There is a Joint 2.

12 EXAMINER WALSTRA: Joint 1 and 2, Staff
13 Exhibit 1, Staff Exhibits 8 and 9. Any objections?

14 Hearing none, Staff Exhibits 1, 8, and 9
15 and Joint Exhibits 1 and 2 will be admitted to the
16 record.

17 (EXHIBITS ADMITTED INTO EVIDENCE.)

18 EXAMINER WALSTRA: And with that I
19 believe we are done for the week. We will reconvene
20 Tuesday at 10:00 a.m., and everyone have a great
21 weekend.

22 Thank you. We are off the record.

23 (Thereupon, at 11:37 a.m., the hearing
24 was adjourned.)

25 - - -

CERTIFICATE

I do hereby certify that the foregoing is
a true and correct transcript of the proceedings
taken by me in this matter on Thursday, October 6,
2022, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7346)

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Summary: Transcript of Duke Energy Ohio, Inc. hearing held on 10/06/22 - Volume III electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.