

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

In the Matter of the :  
Application of Duke :  
Energy Ohio, Inc., for an : Case No. 22-507-GA-AIR  
Increase in Natural Gas :  
Rates. :

- - -

In the Matter of the :  
Application of Duke Energy :  
Ohio, Inc., for Approval : Case No. 22-508-GA-ALT  
of an Alternative Form of :  
Regulation. :

- - -

In the Matter of the :  
Application of Duke Energy : Case No. 22-509-GA-ATA  
Ohio, Inc., for Tariff :  
Approval. :

- - -

In the Matter of the :  
Application of Duke Energy :  
Ohio, Inc., for Approval : Case No. 22-510-GA-AAM  
to Change Accounting :  
Methods. :

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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 10:05 a.m. on Tuesday,  
May 23, 2023.

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VOLUME I

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Tuesday Morning Session,  
May 23, 2023.

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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. 22-507-GA-AIR, et al., which is captioned In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas 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 take appearances of the parties starting with this end of the table first, please, and we will go around.

MS. VAYSMAN: Sure. Thank you, your Honor. On behalf of Duke Energy Ohio, Larisa Vaysman.

MR. D'ASCENZO: Your Honor, on behalf of Duke Energy Ohio, I am Rocco D'Ascenzo. Business address is 139 East Fourth Street, Cincinnati, Ohio.

MS. AKHBARI: On behalf of the Company, Elyse Akhbari.

MS. BRAMA: Your Honors, it looks like our microphone may be out of batteries, it's blinking



1 red and green.

2 Elizabeth Brama with Taft, Stettinius &  
3 Hollister on behalf of Duke Energy.

4 MR. MICHAEL: Good morning, your Honors.  
5 On behalf of Duke's residential utility consumers,  
6 the Office of the Ohio Consumers' Counsel by Bill  
7 Michael, John Finnigan, and Connor Semple.

8 MR. LINDGREN: Good morning, your Honors.  
9 On behalf of the Commission Staff, Ohio Attorney  
10 General Dave Yost, by Robert Eubanks, Janet Gregory,  
11 and Thomas Lindgren, Assistant Attorneys General, at  
12 30 East Broad Street, 26th Floor.

13 MR. SETTINERI: Good morning, your  
14 Honors. On behalf of the Retail Energy Supply  
15 Association, Michael Settineri and Gretchen Petrucci  
16 with the law firm Vorys, Sater, Seymour and Pease,  
17 LLP, 52 East Gay Street, Columbus, Ohio 43215.

18 Would also like to make an additional  
19 appearance for Amrita Sanyal, also with the law firm  
20 of Vorys, Sater, Seymour and Pease. Thank you.

21 MS. PIRIK: Thank you, your Honors. On  
22 behalf of People Working Cooperatively, the law firm  
23 of Dickerson Wright, PLLC, 180 East Broad Street,  
24 Columbus, Ohio 43215, by Christine Pirik and Terrence  
25 O'Donnell.

1 MR. BOEHM: Good morning, your Honors.  
2 On behalf Ohio Energy Group, Kurt Boehm.

3 MR. BETTERTON: Good morning, your  
4 Honors. On behalf of Interstate Gas Supply, LLC,  
5 Evan Betterton. Business address is 6100 Emerald  
6 Parkway, Dublin, Ohio 43016.

7 EXAMINER SANDOR: Thank you.

8 At this time we will go ahead and address  
9 a few pending motions that are still before us.

10 Duke filed two motions for protective  
11 order in this case, one on June 30, 2022, and  
12 July 14, 2022. No memoranda contra were filed  
13 regarding those motions. We are granting both of  
14 those motions.

15 Moving on to the May 3rd, 2023, motion  
16 filed by OCC to take administrative notice of the  
17 Staff Report in the propane caverns case, which  
18 includes Case Nos. 21-986-GA-ABN and 21-1035-GA-AAM.

19 First, we grant OCC's motion. Second, we  
20 grant Duke's alternative motion filed within its  
21 memorandum contra, and furthermore, we'll be taking  
22 administrative notice of everything in the docket for  
23 those cases. And the parties are free to cite to  
24 those cases in their briefs, and the Commission will  
25 give -- give it the weight it deserves.

1 Any questions on those rulings? Okay.

2 All right. Anything else from the  
3 parties before we get started with witnesses?

4 MR. MICHAEL: Your Honor, Bill Michael  
5 from the Ohio Consumers' Counsel.

6 The Company and the Ohio Consumers'  
7 Counsel have agreed to stipulate to some responses  
8 that the Company made to interrogatories that OCC  
9 propounded on the Company.

10 And if your Honors would be so inclined,  
11 I would like to have it marked as Joint Exhibit 2.  
12 And if your Honors would also be so inclined, I would  
13 simply like to read each one of the interrogatories  
14 into the record so the record is clear.

15 EXAMINER SANDOR: Sure.

16 MR. D'ASCENZO: Your Honors, for purposes  
17 of the record, since we have identified Joint  
18 Exhibit 2, would it be clearer to identify Joint  
19 Exhibit 1 at this time, or wait until the Company  
20 presents witnesses?

21 EXAMINER SANDOR: Maybe wait until the  
22 Company presents witnesses.

23 MR. D'ASCENZO: Okay.

24 MR. MICHAEL: So Joint Exhibit 2, your  
25 Honors, will be made up of the Request and Response

1 to OCC Interrogatory 9-001, the Request and Response  
2 to OCC Interrogatory 9-002, the Request and Response  
3 to OCC Interrogatory 9-003, the Request and Response  
4 to OCC Interrogatory 9-004, the Request and Response  
5 to OCC Interrogatory 9-005 Amended, the Request and  
6 Response to OCC Interrogatory 9-005.

7 And I would point out for the record that  
8 there is an attachment associated with OCC  
9 Interrogatory 9-006. That will also be part of the  
10 documents in Joint Exhibit 2.

11 And the Joint Exhibit will also include  
12 OCC Interrogatory 9-006, the Request and Response;  
13 the Request and Response to OCC Interrogatory 9-008,  
14 the Request and Response to OCC Interrogatory 10-001.

15 And I would point out that there is also  
16 an attachment to that response and that is part of  
17 the stipulated package.

18 The Request and Response to  
19 OCC-POD-10-001, the Request and Response to OCC  
20 Interrogatory 11-001 Amended, the Request and  
21 Response to OCC Interrogatory 11-002, the Request and  
22 Response to OCC Interrogatory 11-003, the Request and  
23 Response to OCC Interrogatory 11-004, and finally the  
24 Request and Response to OCC Interrogatory 11-006.

25 I appreciate your Honors' time.

1 EXAMINER SANDOR: Joint Exhibit 2 will be  
2 so marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 EXAMINER SANDOR: And are there any  
5 objections to the stipulation to this document or its  
6 admission into evidence?

7 MR. SETTINERI: Your Honor, if I may just  
8 briefly just look through those pages real quick?

9 EXAMINER SANDOR: Sure. Go ahead.

10 MS. AKHBARI: Your Honors, we also missed  
11 an appearance on behalf Kodi Verhalen with the Taft  
12 firm.

13 EXAMINER SANDOR: Okay. Thank you.

14 EXAMINER WALSTRA: Will this be referred  
15 to throughout the hearing?

16 MR. MICHAEL: Your Honor, we don't expect  
17 it will be referred to anymore during the hearing.  
18 Part of the rationale behind the stipulation was to  
19 get the responses in, so I don't expect OCC to talk  
20 about it.

21 EXAMINER WALSTRA: Okay. Thank you.

22 MR. SETTINERI: Thank you, your Honor.  
23 We have had a chance to review.

24 EXAMINER SANDOR: Just to be clear, any  
25 objections to the admission of Joint Exhibit 2?

1                   Hearing none, Joint Exhibit 2 will be  
2 admitted.

3                   (EXHIBIT ADMITTED INTO EVIDENCE.)

4                   EXAMINER SANDOR: Okay. Anything else  
5 before we proceed?

6                   Hearing none, Duke, you may call your  
7 first witness.

8                   MR. D'ASCENZO: Thank you, your Honor.  
9 Before we call our first witness, is it okay to do a  
10 little bit of housekeeping in terms of marking  
11 exhibits for the record?

12                   EXAMINER WALSTRA: Sure.

13                   MR. D'ASCENZO: Thank you. So for Duke  
14 Energy Ohio Exhibit No. 1, we would like to mark the  
15 Application that was filed in this proceeding on  
16 June 30, 2022.

17                   For Duke Energy Ohio Exhibit No. 2, we  
18 would like to mark the Application Addendum that was  
19 filed on September 8, I believe, of 2022.

20                   And then for Joint Exhibit 1, the  
21 Stipulation and Recommendation that was filed on  
22 April 23, 2023.

23                   EXAMINER WALSTRA: So marked for Duke  
24 Exhibits 1, 2, and Joint Exhibit 1.

25                   (EXHIBITS MARKED FOR IDENTIFICATION.)

1 MR. D'ASCENZO: Thank you, your Honor.  
2 And we would move those into evidence, subject to  
3 cross-examination of witnesses.

4 EXAMINER WALSTRA: Thank you.

5 MR. D'ASCENZO: And for our first witness  
6 of the day, we would call Amy B. Spiller, please.

7 (Witness sworn.)

8 MR. D'ASCENZO: Your Honor, may we  
9 approach, please?

10 EXAMINER WALSTRA: You may.

11 MR. D'ASCENZO: Your Honors, for purposes  
12 of the record, we would like to mark the direct  
13 testimony of Ms. Amy Spiller.

14 There was a confidential and a public  
15 version that was filed, so we would like to mark the  
16 public version as Duke Energy Ohio Exhibit 3A and the  
17 confidential portion as 3B.

18 EXAMINER WALSTRA: So marked.

19 (EXHIBITS MARKED FOR IDENTIFICATION.)

20 MR. D'ASCENZO: Then Ms. Spiller's  
21 supplemental testimony filed on May 4 as Duke Energy  
22 Ohio Exhibit No. 4.

23 EXAMINER WALSTRA: So marked.

24 (EXHIBIT MARKED FOR IDENTIFICATION.)

25 MR. D'ASCENZO: Thank you.

1                   May I proceed?

2                   EXAMINER WALSTRA: Go ahead.

3                   MR. D'ASCENZO: Thank you.

4   - - -

5   AMY B. SPILLER

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

8   DIRECT EXAMINATION

9 By Mr. D'Ascenzo:

10                   Q. Good morning, Ms. Spiller.

11                   A. Good morning, Mr. D'Ascenzo.

12                   Q. And do you have in front of you what was  
13 just marked as Duke Energy Ohio Exhibits 3A, 3B, 4,  
14 and Joint Exhibit No. 1?

15                   A. I do.

16                   Q. And would you be so kind as to just  
17 identify those documents?

18                   A. Certainly. Duke Energy Ohio Exhibit 3A  
19 is the direct testimony -- is my direct testimony  
20 filed in this proceeding on July 14, 2022.

21   Duke Exhibit Ohio Exhibit 3B is a  
22 confidential document which was an attachment to my  
23 direct testimony.

24   Duke Energy Ohio Exhibit 4 is my  
25 supplemental testimony filed in these proceedings on



1 May 4, 2023.

2 And Joint Exhibit 1 is the Stipulation  
3 and Recommendation in these proceedings that was  
4 docketed on April 28, 2023.

5 Q. And, Ms. Spiller, do you have any changes  
6 or corrections to either your direct testimony or the  
7 supplemental testimony?

8 A. I do not.

9 Q. And if you were asked those same  
10 questions today, would your responses be the same?

11 A. They would.

12 MR. D'ASCENZO: Thank you, your Honor.  
13 The witness is available for cross-examination.

14 EXAMINER WALSTRA: Thank you.

15 Mr. Michael?

16 - - -

17 CROSS-EXAMINATION

18 By Mr. Semple:

19 Q. Good morning, Ms. Spiller. My name is  
20 Connor Semple. I just have a few brief questions for  
21 you today.

22 On page 9 of your supplemental direct  
23 testimony, you testified that this Stipulation is the  
24 product of serious bargaining between knowledgeable,  
25 capable parties, correct?

1           A.    I do.

2           Q.    And you further testified that the  
3 signatory parties to the Stipulation comprise  
4 stakeholder interests representing all customer  
5 classes, correct?

6           A.    I do.

7           Q.    And one of the parties you identified as  
8 representing residential consumers is PUCO Staff,  
9 correct?

10          A.    Correct.

11          Q.    And PUCO Staff, in fact, represents the  
12 interests of all parties, correct?

13          A.    That is correct.

14          Q.    And this includes the interests of the  
15 utility Duke, correct?

16          A.    I would say that's a fair -- a fair  
17 statement.

18          Q.    Okay. Thank you.

19                Could you turn now to page 10 of your  
20 testimony? You testified that this Stipulation  
21 complied, "with all relevant and important principles  
22 and practices," right?

23          A.    I do.

24          Q.    And one principle and practice you  
25 identified in particular is gradualism, correct?

1           A.    In what point of my testimony are you  
2   citing to, sir?

3           Q.    Line 19, page 10.

4           A.    Yes, that is a reference to the testimony  
5   of Duke Energy Ohio Witness Sarah Lawler.

6           Q.    Okay. Ms. Spiller, are you familiar with  
7   the idea of rate shock?

8           A.    I am.

9           Q.    Would you agree that the purpose of  
10  gradualism in ratemaking is to avoid rate shock?

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

12          Q.    Thank you.

13                   And generally speaking, a rate shock  
14  occurs when rate increases are greater than what  
15  consumers can afford, correct?

16          A.    I don't know that the measure is what  
17  con -- is what consumers can afford.

18          Q.    Okay. In preparing your testimony did  
19  you analyze household income data among Duke  
20  consumers?

21          A.    Duke Energy Ohio consumers?

22          Q.    Yes.

23          A.    Duke Energy Ohio natural gas consumers?

24          Q.    Yes.

25          A.    I did not.

1 Q. Okay. Thank you.

2 Did you analyze, for Duke Energy Ohio  
3 natural gas consumers, their average savings?

4 A. Their average household savings?

5 Q. Yes.

6 A. I did not.

7 Q. Thank you. And for Duke Energy Ohio  
8 natural gas consumers, did you analyze the cost of  
9 living in Duke's service territory?

10 A. I did not analyze the cost of living for  
11 Duke Energy Ohio natural gas customers at any point  
12 in time.

13 Q. Okay. Thank you.

14 And lastly, and again, I am looking at  
15 that same line, line 19 on page 10, you identified  
16 cost causation as another important regulatory  
17 principle that the Stipulation complies with,  
18 correct?

19 A. In reference to Ms. Lawler's testimony,  
20 that's correct.

21 Q. Okay. Thank you.

22 And would you agree that cost causation  
23 is achieved when a consumer's bill aligns with what  
24 it costs the utility to provide the natural gas  
25 service?

1           A.    I think that is a general principle of  
2   ratemaking, is that those who -- who are responsible  
3   for the cost should fairly absorb that cost.

4           MR. SEMPLE:   Okay.  I have no further  
5   questions.  Thank you.

6           THE WITNESS:  Thank you, counsel.

7           EXAMINER WALSTRA:  Thank you.

8           Mr. Settineri?

9           MR. SETTINERI:  No questions.  Thank you.

10          EXAMINER WALSTRA:  Any questions?

11          MR. BOEHM:  No questions.

12          EXAMINER WALSTRA:  Staff?

13          MR. LINDGREN:  No questions, your Honor.

14          EXAMINER WALSTRA:  Any redirect?

15          MR. D'ASCENZO:  Just one, your Honor.

16   Well, maybe two.

17   - - -

18   REDIRECT EXAMINATION

19   By Mr. D'Ascenzo:

20           Q.    Do you recall questions from counsel  
21   about Duke Energy Ohio's residential customers and  
22   their household incomes and savings?

23           A.    I do.

24           Q.    And he had mentioned, I think,  
25   affordability as part of the questions.  Can you --

1 do you know when the Company's last natural gas base  
2 rate case was?

3 A. Prior to this present proceeding, we last  
4 filed a natural gas rate case in 2012.

5 MR. D'ASCENZO: Thank you. No further  
6 questions.

7 EXAMINER WALSTRA: Recross?

8 MR. SEMPLE: No recross.

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

11 THE WITNESS: Thank you, your Honor.

12 EXAMINER WALSTRA: Move your exhibits?

13 MR. D'ASCENZO: Yes, your Honor. We  
14 would move for the admission of Duke Energy Ohio  
15 Exhibits No. 3A, 3B, and 4.

16 EXAMINER WALSTRA: Any objections?

17 Hearing none, they will be admitted

18 (EXHIBITS ADMITTED INTO EVIDENCE.)

19 MS. AKHBARI: Your Honors, at this time  
20 Duke Energy Ohio would call Mr. Jim Coyne to the  
21 stand.

22 EXAMINER SANDOR: Please raise your right  
23 hand.

24 (Witness sworn.)

25 EXAMINER SANDOR: Thank you. Please be

1 seated.

2 MS. AKHBARI: Thank you, your Honor.  
3 Permission to approach?

4 EXAMINER SANDOR: You may.

5 MS. AKHBARI: So at this time we would  
6 like to mark Company Exhibit 5, the direct testimony  
7 of Jim Coyne, and Company Exhibit 6, supplemental  
8 direct testimony of Jim Coyne.

9 EXAMINER SANDOR: So marked.

10 (EXHIBITS MARKED FOR IDENTIFICATION.)

11 - - -

12 JAMES M. COYNE

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

15 DIRECT EXAMINATION

16 By Ms. Akhbari:

17 Q. Good morning, Mr. Coyne.

18 A. Good morning.

19 Q. How are you? I am just going to move my  
20 mic.

21 A. I am well. Thank you.

22 Q. Thank you for being with us here today,  
23 Mr. Coyne. Could you please state your full name and  
24 business address for the record?

25 A. My name is James M. Coyne, and my

1 business address is Concentric Energy Advisors, 293  
2 Boston Post Road West, Marlborough, Massachusetts.

3 Q. And I think we got this information with  
4 that address, but by whom are you employed?

5 A. Concentric Energy Advisors.

6 Q. Great. And what is your job title?

7 A. I am a Senior Vice President.

8 Q. And we just marked a number of documents  
9 that you have in front of you. Could you please  
10 start with Company Exhibit 5.

11 Do you recognize this document?

12 A. I do.

13 Q. And what is it?

14 A. It's my direct testimony.

15 Q. And was this direct testimony prepared by  
16 you or at your direction?

17 A. It was.

18 Q. And do you have any changes or  
19 corrections to Company Exhibit 5 as you see it today?

20 A. No.

21 Q. And if I asked you the questions  
22 contained in your direct testimony, would your  
23 answers remain the same?

24 A. Yes.

25 Q. Great. Thanks, Mr. Coyne.



1                     Let's turn to Company Exhibit 6 at this  
2 time, please. And what is this document?

3             A.    This is my supplemental testimony.

4             Q.    Great. And was this testimony prepared  
5 by you or at your direction?

6             A.    It was.

7             Q.    And do you have any changes or  
8 corrections to your supplemental testimony today?

9             A.    No, I do not.

10            Q.    And if I asked you the questions  
11 contained in your supplemental testimony, would your  
12 answers remain the same?

13            A.    They would.

14            MS. AKHBARI: Great. Your Honor, at this  
15 time we would tender the witness for  
16 cross-examination and ask to admit Company Exhibits 5  
17 and 6, subject to any cross.

18            EXAMINER SANDOR: Thank you.

19            OCC?

20                                   - - -

21                                   CROSS-EXAMINATION

22            By Mr. Semple:

23            Q.    Good morning, Mr. Coyne.

24            A.    Good morning.

25            Q.    Can you turn to page 2 of your

1 supplemental direct testimony, please?

2 A. I'm with you.

3 Q. Thank you. And on page 2 you testified  
4 that the Stipulation was the product of serious  
5 bargaining, correct?

6 A. Yes.

7 Q. Did you participate in settlement  
8 negotiations yourself?

9 A. I did not.

10 Q. Okay. So you don't know what concessions  
11 parties other than Duke made during negotiations?

12 A. My awareness is based on what the Company  
13 shared with me in terms of the results, and I have  
14 looked at the resulting Settlement Agreement. That's  
15 the extent of my knowledge.

16 Q. Okay. Thank you.

17 And you further testified that the  
18 stipulated return on equity capital structure and  
19 resulting rate of return in this case comply with  
20 important regulatory practices and principles,  
21 correct?

22 A. Yes.

23 Q. And you read the testimony of OCC Witness  
24 Joe Buckley on these same topics?

25 A. I have.

1 Q. And you recommended a greater return on  
2 equity than Mr. Buckley did, correct?

3 A. I did.

4 Q. One reason that you disagree with his  
5 recommendation is that he used data from the year  
6 2022 to develop his recommendation, correct?

7 A. That was one of my areas of disagreement,  
8 yes.

9 Q. Okay. Whereas, you used market data  
10 updated through March 31st of 2023?

11 A. In my supplemental testimony, yes, I did,  
12 and it confirmed the results that I had from my  
13 direct testimony.

14 Q. Okay. Mr. Coyne, the test year in this  
15 case began on January 1st, 2022, correct?

16 A. Yes.

17 Q. And it ended on December 31st, 2022?

18 A. That's correct.

19 Q. And Duke Energy Ohio itself proposed that  
20 test period, correct?

21 A. That's my understanding, yes.

22 Q. Okay. Turning to page 8 of your  
23 testimony. I'll give you a moment.

24 A. I'm with you.

25 Q. Thank you. Do you agree with me that one

1 of the reasons you recommend using data -- market  
2 data from 2023 to calculate the return on equity in  
3 this case is that certain market conditions are  
4 different this year than in the test year? Is that a  
5 fair summary of your testimony?

6 A. The -- my initial analysis was based on  
7 the most current data that I had available to me at  
8 that time.

9 And with the passage of time and  
10 recognizing that this was -- these rates would be in  
11 effect for several years, and potentially up to five  
12 years, I thought it was important to update that  
13 using the most recent available market data that I  
14 had when I filed my supplemental testimony.

15 And that's -- I find, in my experience,  
16 that's typically the case, that regulatory bodies  
17 would like to avail themselves of the most recent  
18 market data, and I myself wanted to make sure my  
19 recommendations from my direct would be supported by  
20 current market analysis which they were.

21 Q. Sure. But on page 8, I am referencing  
22 specifically lines 3 to 6, you state that it's  
23 particularly important to use updated information in  
24 this case because of market changes that occurred in  
25 2023, and I am talking specifically about your

1 reference to interest rates and inflationary  
2 pressure, correct?

3 A. That's right. There have been dramatic  
4 changes in capital markets that we haven't seen for  
5 over 20 years that have occurred over the last 12  
6 months.

7 Q. Okay. And these changes, in your view,  
8 cause the cost of equity capital to increase, in turn  
9 justifying a higher return on equity, right?

10 A. That's not my testimony. The -- my  
11 initial recommendation was 10.3 percent using  
12 forward-looking market data, and when I updated my  
13 analysis using then current market data in my  
14 supplemental testimony, my results were similar.

15 So the -- my recommendation did not  
16 change as a result of my supplemental testimony  
17 analysis, but the point I was trying to make here is  
18 that given what was occurring in capital markets over  
19 the past 12 months, it was important to be as current  
20 as possible.

21 If you are doing a forward-looking  
22 analysis, as I did when I submitted my original  
23 testimony, you should be able to take some of that  
24 into account, but by virtue of updating it, you can  
25 ensure you have the best available data to you at

1 that point in time. So those really were the points  
2 that I was making here.

3 Q. In preparing your testimony did you  
4 analyze any past cases before the PUCO in which the  
5 cost of equity capital decreased between the end of a  
6 test year and the PUCO ruling on an application to  
7 increase rates?

8 A. I was not aware of those decisions that  
9 had that result, no.

10 Q. Okay. Thank you.

11 Mr. Coyne, have you reviewed the  
12 Company's Application to charge property tax expenses  
13 in this case?

14 A. No.

15 Q. Have you reviewed the testimony of Duke  
16 Energy Ohio Witness Sarah Lawler?

17 A. I have.

18 Q. You have?

19 A. Yes.

20 Q. So you are aware that Duke, in her  
21 testimony, opposed OCC's proposal in objections to  
22 the Staff Report to base property tax expense on  
23 capital as of December 31, 2021?

24 MS. AKHBARI: Your Honor, I would object  
25 to this line of questioning. It's not part of the

1 witness's direct or supplemental testimony, and he  
2 has indicated he has no knowledge of the details  
3 associated with property tax. Ms. Lawler will be  
4 taking the stand later and can address that matter.

5 MR. SEMPLE: Your Honor, I am not sure he  
6 did indicate that. He said he reviewed the testimony  
7 in preparing --

8 EXAMINER SANDOR: I will allow the  
9 question for now and see where this line of  
10 questioning goes beyond -- beyond this.

11 A. Would you mind repeating the question?

12 MR. SEMPLE: Sure. Can I have the  
13 question reread, please?

14 (Record read.)

15 A. No. I don't have that recollection as a  
16 result of my review of Ms. Lawler's testimony.

17 Q. (By Mr. Semple) So you aren't aware of  
18 the Company's position that the PUCO should not  
19 deviate from the date certain in setting that cutoff  
20 date?

21 A. I am not, no. That was not the focus of  
22 my review of Ms. Lawler's testimony.

23 MR. SEMPLE: Okay. Thank you. I have no  
24 further questions.

25 EXAMINER SANDOR: Any cross from any of

1 the other parties?

2 No? Staff?

3 MR. LINDGREN: No, your Honor.

4 EXAMINER SANDOR: Any redirect?

5 MS. AKHBARI: Your Honor, could we have a  
6 minute prior to redirect?

7 EXAMINER SANDOR: Yes. Let's go off the  
8 record.

9 (Recess taken.)

10 EXAMINER SANDOR: Let's go on the record.  
11 Duke, any redirect?

12 MS. AKHBARI: Thanks, your Honor. Just a  
13 couple of questions.

14 - - -

15 REDIRECT EXAMINATION

16 By Ms. Akhbari:

17 Q. Mr. Coyne, do you recall when counsel was  
18 asking you questions regarding the timing and current  
19 nature of data that you analyzed in your testimony?

20 A. I do.

21 Q. And can you share a little bit about why  
22 ROE models are based on forward-looking data?

23 A. The cost of capital is a forward-looking  
24 concept. In a rate case when a Commission is  
25 establishing the revenue requirement and rate of



1 return, it is on a going-forward basis over which  
2 those rates will be in effect, and investors in  
3 utilities also have a forward-looking requirement for  
4 their expected return. So the whole process of  
5 setting the cost of capital is expectational and  
6 forward looking.

7 Q. Mr. Coyne, do you recall when counsel was  
8 asking you about your criticisms of Mr. Buckley's  
9 testimony?

10 A. I do.

11 Q. And did Mr. Buckley's analysis, the  
12 numbers that he provided, go through the end of the  
13 test year in question in this case?

14 A. No, they did not. The -- part of Mr.  
15 Buckley's testimony was to analyze allowed returns by  
16 regulatory commissions.

17 And the data he used went through the  
18 second half of 2022, and so they were not through the  
19 test year and not through current data.

20 Q. And is that current data, or data through  
21 the test year, is that available to you now at this  
22 point in time?

23 A. It is. Mr. Buckley and I rely on the  
24 same source for that data, and the Company called  
25 Regulatory Research Associates, which is part of

1 Standard & Poor's Global, provides that data that  
2 many of us look at in order to be able to track  
3 regulatory decisions, and the most recent data now is  
4 available through the first quarter of 2023 and also  
5 includes the full year 2022.

6 MS. AKHBARI: Your Honor, permission to  
7 approach the witness?

8 EXAMINER SANDOR: You may.

9 MS. AKHBARI: I just handed Mr. Coyne  
10 what is marked as Company Exhibit 7.

11 Q. (By Ms. Akhbari) Mr. Coyne, do you  
12 recognize this document?

13 A. I do.

14 Q. And what is it?

15 A. This is a quarterly summary that S&P  
16 Global RA prepares and publishes to subscribers in  
17 order to be able to track regulatory decisions for  
18 gas and electric utilities in the U.S.

19 They now also publish it for water  
20 utilities as well, and many of us that do this work  
21 follow RA as a source of this data, including  
22 Mr. Buckley and ourselves.

23 EXAMINER SANDOR: Can you give us a copy  
24 of the exhibit?

25 MS. AKHBARI: So sorry.

1 EXAMINER SANDOR: Do you want to mark  
2 this exhibit?

3 MS. AKHBARI: Yes. I was hoping to mark  
4 it Company Exhibit 7, your Honor.

5 EXAMINER SANDOR: So marked.

6 (EXHIBIT MARKED FOR IDENTIFICATION.)

7 MR. SEMPLE: Your Honor, OCC would like  
8 to request an electronic copy of this?

9 MR. MICHAEL: If it's available.

10 MS. AKHBARI: Sure.

11 EXAMINER SANDOR: Yes.

12 It looks like you are working on that.

13 MS. AKHBARI: Yes, we are working on  
14 that.

15 Connor, do you want to have a break until  
16 you receive it?

17 MR. SEMPLE: No. It's okay. Thank you.

18 MS. AKHBARI: Sure.

19 EXAMINER SANDOR: Okay. Please proceed.

20 MS. AKHBARI: Great. Thanks, your Honor.

21 Q. (By Ms. Akhbari) So sorry, Mr. Coyne,  
22 before we got sidetracked by my poor passing out  
23 skills, you were mentioning that this document  
24 represents the most recent version of RRA data that's  
25 analyzed by yourself and Mr. Buckley.

1           Can you share what this information -- or  
2 what this document contains regarding the most  
3 updated information?

4           A.    Yes.  This one was published April --  
5 April 20th, so just over a month ago, and what it  
6 does is it summarizes the electric and gas utility  
7 rate case outcomes in terms of return on equity and  
8 allowed equity ratios and overall rate of returns for  
9 electric and gas utilities over the most recent  
10 period covered.  In this case, it's through the first  
11 quarter of 2023.

12           Q.   And what do the results reveal regarding  
13 ROE?

14           A.   If you turn to Table 2 under "Gas  
15 Utilities," you can see that in the most recent  
16 quarter, and that's Q1 of 2023, the average allowed  
17 ROE was 9.75 percent, and if you go a few columns to  
18 the right, you can see that the average allowed  
19 equity ratio was 53.89 percent in the most recent  
20 quarter.

21           I also like to look at the most recent --  
22 the last 12 months because it gives you a robust  
23 dataset.  You can see that you had eight decisions in  
24 the first quarter, but if you go to the last 12  
25 months, you had 36 decisions, so it's a little bit --

1 a broader dataset.

2 And there you can see that the allowed  
3 ROE was 9.6 percent on average, and the allowed  
4 equity ratio was 52.05 percent.

5 And what you can see there is a trend, if  
6 you look at the data in ROEs and in allowed equity  
7 ratios, that shows them increasing, and I take that  
8 as a sign that over the course of the past years I  
9 discussed, as capital market conditions were  
10 changing, regulators were beginning to respond to  
11 these circumstances through increased ROEs, and also  
12 increased equity ratios in the case of gas utilities.

13 Q. And I know counsel was discussing the  
14 test year for the underlying case. According to the  
15 RA report that you're reviewing marked as Company  
16 Exhibit 7, what is the average for calendar year 2022  
17 as it relates to ROE?

18 A. 9.53 percent, and a 51 point -- as  
19 pertains to ROE, it's 9.53 percent for the full year.

20 MS. AKHBARI: No further questions at  
21 this time, your Honor.

22 EXAMINER SANDOR: Any recross?

23 MR. SEMPLE: No recross. Thank you.

24 EXAMINER SANDOR: Okay. No recross. All  
25 right. Thank you, Mr. Coyne.

1 THE WITNESS: Pleasure.

2 EXAMINER SANDOR: And I believe you have  
3 already moved -- well, you have moved for Exhibits 5  
4 and 6. Would you like to move for 7?

5 MS. AKHBARI: That's right, your Honor.  
6 We would move for Company Exhibits 5, 6, and 7 to be  
7 admitted to the record.

8 EXAMINER SANDOR: Okay. Any objection to  
9 their admission?

10 Hearing none, Duke Exhibits 5, 6, and 7  
11 are admitted.

12 (EXHIBITS ADMITTED INTO EVIDENCE.)

13 EXAMINER SANDOR: You may proceed with  
14 your next witness.

15 MR. D'ASCENZO: Thank you, your Honor.  
16 For our next witness we would call Brian Weisker.

17 EXAMINER WALSTRA: Would you raise your  
18 right hand?

19 (Witness sworn.)

20 EXAMINER WALSTRA: Thank you. Please  
21 take a seat.

22 MR. D'ASCENZO: Your Honor, may we  
23 approach, please?

24 EXAMINER WALSTRA: You may.

25 MR. D'ASCENZO: Thank you.

1                   Your Honor, for purposes of the record,  
2 we would like to identify as Duke Energy Ohio  
3 Exhibit 8, the direct testimony of Brian R. Weisker,  
4 and as Duke Energy Ohio Exhibit No. 9, the  
5 supplemental testimony of Mr. Weisker in support of  
6 settlement.

7                   EXAMINER WALSTRA: So marked.

8                   (EXHIBITS MARKED FOR IDENTIFICATION.)

9                   MR. D'ASCENZO: Thank you.

10                   - - -

11                   BRIAN R. WEISKER

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 morning, Mr. Weisker.

17                   A. Good morning.

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

21                   A. My name is Brian Robert Weisker. My  
22 business address is 4720 Piedmont Row Drive,  
23 Charlotte, North Carolina, and my job title, I am the  
24 Natural Gas -- the Chief Operations Officer for the  
25 Natural Gas Business Unit for Duke Energy.

1 Q. And, Mr. Weisker, do you have in front of  
2 you what was just marked as Duke Energy Ohio Exhibits  
3 numbered 8 and 9?

4 A. I do.

5 Q. And would you please identify those  
6 documents?

7 A. Exhibit No. 8 is my direct testimony  
8 dated July 14, 2022. And Exhibit No. 9 is my  
9 supplemental testimony dated May 4, 2023.

10 Q. And do you have any changes or  
11 corrections to either of those documents?

12 A. I do not.

13 Q. And if you were asked those same  
14 questions then here this morning, would your answers  
15 be the same?

16 A. They would.

17 MR. D'ASCENZO: Thank you.

18 Your Honor, the witness is available for  
19 cross-examination.

20 EXAMINER WALSTRA: Thank you.

21 OCC?

22 - - -

23 CROSS-EXAMINATION

24 By Mr. Finnigan:

25 Q. Good morning, Mr. Weisker.



1           A.     Good morning.

2           Q.     Mr. Weisker, I would like you to please  
3 turn your attention to Joint Exhibit 2, and that is a  
4 set of interrogatory responses. Do you have that  
5 before you?

6                   EXAMINER WALSTRA: Hold up. The Bench  
7 does not. We were told you were not referring to  
8 these.

9                   MR. MICHAEL: I was mistaken.

10                   EXAMINER WALSTRA: All right.

11                   MR. MICHAEL: There is going to be some  
12 brief clarification questions about the attachment.  
13 I can point it out to you real quick. This will be  
14 this one right here.

15                   EXAMINER WALSTRA: Go ahead.

16                   MR. FINNIGAN: Thank you, your Honor.

17           Q.     (By Mr. Finnigan) Mr. Weisker, do you now  
18 have Joint Exhibit 2 before you?

19           A.     It's not titled that, but I have what I  
20 believe to be as Joint Exhibit No. 2.

21           Q.     So a packet of what appears to be  
22 interrogatory responses?

23           A.     Correct.

24           Q.     Could you please turn to one that has  
25 been marked OCC-INT-09-005?

1           A.    I am there.

2           Q.    Okay.  Then turn to the next page.  And  
3 do you see a report there that is labeled in the  
4 upper right-hand corner OCC-INT-09-006 Attachment  
5 page 1 of 3?

6           A.    I do.

7           Q.    Would you please take a few moments to  
8 look over that report?

9           A.    I have.

10          Q.    Okay.  Now, Mr. Weisker, I would just  
11 like to walk through this report with you and just  
12 get a better understanding of what the information is  
13 that's presented in this report.  So what -- what  
14 would this report be called?

15          A.    This is -- this report describes or  
16 identifies the daily amount of dekatherms that were  
17 delivered from the Eastern Avenue propane facility to  
18 the Duke Energy Ohio gas customers on the dates that  
19 are identified.

20          Q.    Did you prepare this report, or do you  
21 know by whom it was prepared?

22          A.    I know by whom.  It was prepared for me.

23          Q.    At your direction?

24          A.    At my direction, correct.

25          Q.    And what is it that you asked them to

1 report on?

2 A. It was to answer the question for --  
3 question No. 5 which was to identify the propane that  
4 was delivered from the Eastern Avenue facility on the  
5 dates for the winter season of '21-'22.

6 Q. Okay. And then looking at the categories  
7 at the top of the report on the first page, it says  
8 "Eastern Avenue." That's the propane facility  
9 located at Eastern Avenue that you described; is that  
10 right?

11 A. That's correct.

12 Q. And daily vaporation is what?

13 A. It's daily vaporization, and so that's  
14 where the liquid propane is vaporized and injected  
15 into the natural gas system.

16 Q. And you've got the year and month, and  
17 that's as shown in the three pages of this report,  
18 correct?

19 A. Correct.

20 Q. The dates are the dates during each one  
21 of those months and year that's reported there; is  
22 that correct?

23 A. That's correct.

24 Q. The "DT" is dekatherms?

25 A. That's dekatherms that were delivered,

1 correct.

2 Q. And dekatherms of what, propane or  
3 natural gas?

4 A. This would be propane.

5 Q. Okay. So this is -- the DT would be the  
6 dekatherms of propane that was vaporized during the  
7 dates represented on this report?

8 A. Correct.

9 Q. The "Total Throughput" is what?

10 A. That's the total number of dekatherms  
11 that were delivered to -- throughout the entirety of  
12 the Duke Energy Ohio natural gas system, both propane  
13 and natural gas.

14 Q. I see. So the column that you just  
15 mentioned earlier, the DT column, that would be  
16 included in the total throughput?

17 A. Correct.

18 Q. So the first entry where you have "DT,"  
19 or dekatherms shown, is for November 3rd, and you  
20 have 9,121 dekatherms, correct?

21 A. That's correct.

22 Q. And so that 9,121 dekatherms would be  
23 included within the 327,014 throughput that was the  
24 total throughput for that day; is that how it works?

25 A. That's correct.

1 Q. And what is "HDD?" Is that heating  
2 degree days?

3 A. The heating degree day, and that's what  
4 the heating degree day was for that date. So if you  
5 go across for the date, you just use November 1st,  
6 the heating degree -- heating degree day on November  
7 1st was an 18 heating degree day.

8 Q. Was the 18th heating degree day of the  
9 year?

10 A. No. It was an 18-degree -- the heating  
11 degree day was 18 degrees.

12 Q. Oh, that was the actual temperature that  
13 day?

14 A. No. It's a -- a heating degree day is  
15 based off of 65, so it's -- would be -- the actual  
16 average temperature would be 65 minus 18.

17 Q. Oh, I see. Okay. And what would the  
18 next column represent, the "GCR Peak/Design Day?"

19 A. So that is what our system is designed to  
20 deliver on a -- on a peak design day to the GCR  
21 customers, and then the next one over -- I'll answer  
22 that question first.

23 Q. Go ahead. Do the next one over.

24 A. And so the next one is what that would be  
25 for Choice customers who procure their gas from

1 someone other than Duke Energy.

2 Q. And then what's that last column  
3 represent, the "Peak Design Day HDD?"

4 A. That is what the system is designed to  
5 deliver on a -- on a peak day, so it would be a 79  
6 degree heating day.

7 MR. FINNIGAN: Excuse me, Mr. Walstra.  
8 May I have one moment?

9 EXAMINER WALSTRA: Sure.

10 MR. FINNIGAN: Your Honor, that's all the  
11 questions I have.

12 Thank you, Mr. Weisker.

13 THE WITNESS: Thank you.

14 EXAMINER WALSTRA: Thank you.

15 Any other questions?

16 Any redirect?

17 MR. D'ASCENZO: Yes, your Honor. Just a  
18 few.

19 - - -

20 REDIRECT EXAMINATION

21 By Mr. D'Ascenzo:

22 Q. Mr. Weisker, I would like to refer you  
23 back to that document that you were just going over  
24 with counsel for the Ohio Consumers' Counsel. And  
25 you had mentioned that the document showed that it

1 was the Eastern Avenue propane facility vaporization.

2 Are there other propane facilities on the system?

3 A. There are. There is --

4 Q. And what -- can you just explain what  
5 those are, please?

6 A. So the other vaporization facility on our  
7 system is the Erlanger facility in Kentucky.

8 Q. And does that Erlanger system also  
9 support the Duke Energy Ohio natural gas delivery  
10 system?

11 A. It does.

12 Q. Can you explain how that happens?

13 A. So the point of injection at the Erlanger  
14 facility is -- is in northern Kentucky, and it  
15 injects into our AM07 pipeline, which then goes under  
16 the Ohio River and feeds into the western portion of  
17 our Ohio portion of the natural gas system.

18 That's at a location -- the metering  
19 regulating station is called Anderson Ferry, and then  
20 that feeds into our western system, western portion  
21 of the natural gas system.

22 Q. And so were there other -- was there  
23 other vaporization that occurred related to that  
24 eastern -- or, I'm sorry, the Erlanger facilities  
25 during that time period that's not shown on this

1 document?

2 A. Correct, there were.

3 Q. And I would like to have you turn to the  
4 Data Request that's directly behind this document  
5 that -- this document was in response to. And it  
6 should be titled "OCC Interrogatory 9-006."

7 A. I'm there.

8 Q. And I believe you mentioned that this  
9 report was prepared in response to this request; is  
10 that correct?

11 A. Correct.

12 Q. Now, I want to call your attention to the  
13 last sentence in that request. Would you please read  
14 that sentence?

15 A. "Identify all days in the month of March  
16 since March 31, 2012, in which propane was injected  
17 and identify the volumes injected on each of those  
18 days."

19 Q. And so did the Company respond to that  
20 question?

21 A. We did.

22 Q. And is that on that page?

23 A. It is.

24 Q. Now, my -- were there -- do those  
25 facilities operate in months other than March?



1           A.    They have historically.

2           Q.    And have they ever operated in months  
3 after March?

4           A.    They have.  They have operated in April  
5 and as well in May.

6           MR. D'ASCENZO:  No further questions.

7                    Thank you, your Honor.

8           EXAMINER WALSTRA:  Thank you.

9                    Additional cross?

10          MR. FINNIGAN:  No further questions.

11                    Thank you, your Honor.

12          EXAMINER WALSTRA:  Thank you for your  
13 testimony.

14                    Any objections to the admission of Duke  
15 Exhibits 8 and 9?

16                    Hearing none --

17          MR. FINNIGAN:  No objection, your Honor.

18          EXAMINER WALSTRA:  Hearing none, they  
19 will be admitted.

20                    (EXHIBITS ADMITTED INTO EVIDENCE.)

21          EXAMINER WALSTRA:  Duke, you may call  
22 your next witness.

23          MS. VAYSMAN:  Thank you, your Honor.  For  
24 our next witness we would like to call Ms. Sarah  
25 Lawler.

1 (Witness sworn.)

2 EXAMINER SANDOR: Thank you.

3 MS. VAYSMAN: Your Honor, may we  
4 approach, please?

5 EXAMINER SANDOR: You may.

6 MS. VAYSMAN: Thank you. And at this  
7 time for record identification purposes, could we  
8 please mark as Duke Ohio Exhibit No. 10, the direct  
9 testimony of Ms. Sarah Lawler, and as Duke Exhibit  
10 Ohio Exhibit No. 11, the supplemental testimony of  
11 Sarah Lawler?

12 EXAMINER SANDOR: So marked.

13 (EXHIBITS MARKED FOR IDENTIFICATION.)

14 MS. VAYSMAN: Thank you, your Honor.

15 - - -

16 SARAH E. LAWLER

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

19 DIRECT EXAMINATION

20 By Ms. Vaysman:

21 Q. Good morning, Ms. Lawler.

22 A. Good morning.

23 Q. Would you please state your name,  
24 business address, and title for the record?

25 A. Sarah Lawler, 139 East Fourth Street,

1 Cincinnati, Ohio 45202. My title is Vice President  
2 Rates and Regulatory Strategy for Ohio and Kentucky.

3 Q. Thank you, Ms. Lawler.

4 And do you have in front of you what we  
5 have just marked as Duke Energy Ohio Exhibits No. 10  
6 and 11?

7 A. I do.

8 Q. And could you please identify those  
9 exhibits?

10 A. Exhibit 10 is my direct testimony, and  
11 Exhibit 11 is my supplemental testimony in support of  
12 the settlement.

13 Q. Thank you. And, Ms. Lawler, do you have  
14 any changes or corrections to either of those  
15 testimonies?

16 A. I do not.

17 Q. And if you were asked those same  
18 questions today, would your answers remain the same?

19 A. They would, yes.

20 MS. VAYSMAN: Thank you.

21 Your Honors, the witness is available for  
22 cross-examination.

23 EXAMINER SANDOR: OCC?

24 MR. FINNIGAN: Your Honor, may I approach  
25 with some documents we may ask to have marked as

1 exhibits?

2 EXAMINER SANDOR: You may.

3 MR. FINNIGAN: And for other counsel,  
4 these were sent earlier this morning by Tracy Greene  
5 of our office, so everyone should have those by  
6 e-mail that was sent within the last hour.

7 - - -

8 CROSS-EXAMINATION

9 By Mr. Finnigan:

10 Q. Good morning, Ms. Lawler.

11 A. Good morning.

12 Q. Nice to see you again.

13 A. Likewise.

14 Q. Ms. Lawler, I have two documents I would  
15 like to ask about this morning. One is the property  
16 tax adjustments, and then the other one is  
17 adjustments that certain riders have for O&M offsets  
18 on the Capital Investment Riders like AMRP.

19 A. Okay.

20 Q. Those are the two topics. So let's start  
21 with property tax expense. And could you please  
22 direct your attention to page 10 of your supplemental  
23 testimony.

24 A. Okay. I'm there.

25 Q. Now, in particular I would like to ask

1 you to direct your attention to the question and  
2 answer that begins on line 7 of page 10. Do you see  
3 that?

4 A. I do.

5 Q. Your answer beginning at line 9 states  
6 that to reflect the latest available property tax  
7 rates. Do you see that?

8 A. I do.

9 Q. And please take a moment to read the  
10 remainder of that answer.

11 A. Okay.

12 Q. Does your answer in that Q and A refer to  
13 real property taxes, or personal property taxes, or  
14 both?

15 A. Both.

16 Q. And your answer there says that the  
17 "Parties agree to apply those rates and percentages  
18 to Plant-In-Service as of March 31, 2022, which  
19 increased the revenue requirement by \$2,269,020."

20 Have I read that portion of your answer  
21 correctly?

22 A. Yes, you have.

23 Q. And when you say the rates, is that --  
24 are you referring to the rates of personal property  
25 tax and the rates of real property tax that the

1 taxing authorities imposed on Duke's property?

2 A. It's the rates that we used that -- that  
3 was provided to us by our tax group, yes.

4 Q. And were those rates that the tax group  
5 provided the rates that local jurisdictions imposed  
6 on Duke's property?

7 A. Yes. As I understand it, yes.

8 Q. And you also say in your answer that Duke  
9 and the signatory parties agree to apply those rates  
10 and percentages. What does "percentages" mean?

11 A. I think it's the percentage -- the  
12 valuation percentage that the taxing authority  
13 determines needs to have the property rates applied  
14 to. That's my understanding. I am not a property  
15 tax expert, but it's my general understanding.

16 Q. Okay. Now, those rates and percentages  
17 change year to year; is that correct?

18 A. They could. I don't know if they change  
19 every year, but they could.

20 Q. Are you familiar with any year during  
21 which the property tax rates and percentages have not  
22 changed?

23 A. I'm not aware, but again, I don't  
24 necessarily follow them every year either.

25 Q. Okay. And the property -- and the

1 property tax adjustment calculates the amount of  
2 property taxes based on plant in service as of  
3 March 31, 2022; is that correct?

4 A. Yes, that's correct.

5 Q. Now, the way personal property taxes and  
6 real property taxes are billed in Ohio is on -- it's  
7 on a lagging basis; isn't that right? In other  
8 words, for property that's in service at the end of  
9 calendar year 2022, you see the bill for that  
10 sometime in 2023.

11 A. Yes.

12 Q. And the taxes are due sometime in 2023.

13 A. Usually, yes. That's my understanding.

14 Q. So as it applies to this adjustment that  
15 you made, the property that was placed in service  
16 during the first quarter of 2022, you did not  
17 actually receive a bill from the taxing authorities  
18 for that property until sometime in 2023?

19 A. That would make sense, yes.

20 Q. And you actually would have paid it in  
21 2023, or will pay it sometime later this year?

22 A. As long as there is no disputes, I think  
23 that's correct, yes.

24 Q. And as to real property, real property  
25 taxes are billed twice a year; is that correct?

1           A.    I don't know.  I'll take your word  
2  though.

3           Q.    And just to try to refresh your memory,  
4  are you aware that real property taxes are billed for  
5  a six-month period of time on a lagging basis?

6           A.    I'm not familiar with that, but it sounds  
7  right.

8           Q.    Okay.  And that the bill for real  
9  property for the first half of 2022 would come  
10  sometime in January of 2023 and would be paid in  
11  February of 2023?

12          A.    I just don't know those exact dates.

13          Q.    Okay.

14          A.    Yeah.

15          Q.    Now, you mention in your testimony that  
16  one reason that Duke made this adjustment for  
17  property tax expense was because Duke uses accrual  
18  accounting?

19          A.    I did say that, yes.

20          Q.    And at what point in time did you accrue  
21  property tax expenses for the property that was  
22  placed in service during those first three months of  
23  2022?

24          A.    I believe accounting would have accrued  
25  for that during 2022.



1           Q.    You say you believe, but do you know to a  
2           certainty whether they did or not?

3           A.    I would say that I know for  
4           certainty 2022 property tax expenses are accrued in  
5           2022 under normal accounting -- accrual accounting,  
6           but I'm not in the accounting department. I didn't  
7           book the actual entries, but that's the -- that's the  
8           process that they are required to follow.

9           Q.    And what tax rate would they have used to  
10          make that accrual?

11          A.    The tax rates that were currently in  
12          effect at the time that they knew at the time they  
13          were making the accrual.

14          Q.    Okay. Now, are you aware that personal  
15          property taxes and real property taxes can change  
16          throughout the year?

17          A.    What do you mean by that?

18          Q.    Well, for example, if you live in a  
19          village in Ohio, that village could hold an election  
20          to raise the property taxes for the residents that  
21          live in that jurisdiction along with any property  
22          that Duke might own in that jurisdiction?

23          A.    Okay. That's fair, yes.

24          Q.    And that could happen during a calendar  
25          year, and then the higher tax rates would be in

1 effect after that election takes place?

2 A. Okay.

3 Q. And my question is for the accrual that  
4 was made for the taxes on the property that was  
5 placed in service in the first quarter of 2022, did  
6 the accounting department use any new tax rates that  
7 were imposed in 2022, or did they use the tax rates  
8 that were in effect for some earlier period like  
9 2021?

10 A. So, you know, like I said, I am not in  
11 the accounting department. I didn't make the actual  
12 entries, but it's my understanding, based on accrual  
13 accounting, they would book accruals based on the  
14 most current information they have available to them  
15 at the time.

16 Q. Do you know what information they had  
17 available to them at the time?

18 A. I don't. I would imagine that they would  
19 stay current on the things that they need to record.

20 Q. Now, when you received the actual tax  
21 bills in 2023 for the property tax expenses actually  
22 owed in 2022, does the accounting department make an  
23 adjustment to adjust the amount of the accrual for  
24 the actual expense owed?

25 A. Are you -- so are you asking do they make

1 a journal entry in 2023 books to adjust the 2022  
2 expense when they get the '23 bill? I am not sure.

3 Q. I am not asking so much when the  
4 adjustment is made but more whether it is made.

5 So what I am trying to ask is whether  
6 there is any reconciliation adjustment that's made  
7 when the actual bill comes in if the amount that is  
8 accrued is any different from what the actual bill  
9 reflects.

10 A. Yes. There would always have to be a  
11 reconciliation.

12 Q. Okay. So it's when that actual bill  
13 comes in in 2023 that you know what your actual  
14 property tax expense is, and then you are able to do  
15 that reconciliation.

16 A. That's right, yes.

17 Q. And so when they get the bills in in  
18 2023, the accounting department will go in and  
19 perform that reconciliation adjustment.

20 A. Correct, yes.

21 Q. Now, how many local governments does Duke  
22 have in its service territory? I am not asking for  
23 any actual number, but by order of magnitude. So  
24 over 100?

25 A. I don't think so. I don't know.

1 Q. Over 75?

2 A. I don't know.

3 Q. Okay. But in any event, those are  
4 located on your tariff sheets? At the beginning of  
5 all your tariffs, you list the communities --

6 A. Yeah.

7 Q. -- that are served? And by communities,  
8 that would be local governments that have taxing  
9 authority over Duke's property.

10 A. Yes.

11 Q. Now, do you recall in 2019 that Duke  
12 filed an application with the Commission for approval  
13 of an alternative rate plan to establish a Capital  
14 Expenditure Program Rider?

15 A. Yes, I do.

16 Q. And I don't believe you filed any  
17 testimony in that case, but did someone in your  
18 department work on that case?

19 A. Yes.

20 Q. And who -- do you recall who that would  
21 have been?

22 A. Well, there were multiple people working  
23 on the case in my group, including myself.

24 Q. And do you typically review filings with  
25 the Ohio Commission in a case that affects the rates

1 and tariffs for the Company?

2 A. I do.

3 MR. FINNIGAN: I would like to, your  
4 Honor, have a document marked as an exhibit at this  
5 time to present to Ms. Lawler, if I may?

6 It's part of the packet of documents I  
7 presented earlier. And this is the document that is  
8 an excerpt from an audit report that was filed in  
9 Case No. 19-791. If I may have that marked as --  
10 this will be OCC Exhibit 1.

11 EXAMINER SANDOR: So marked.

12 (EXHIBIT MARKED FOR IDENTIFICATION.)

13 MS. VAYSMAN: Your Honor, could the  
14 witness please have a copy of the whole exhibit?

15 MR. FINNIGAN: I do not have a copy of  
16 the whole exhibit handy, but we can produce one if  
17 the witness would like to take the time to review the  
18 whole document. However, I only intend to ask her  
19 about one sentence that's in the report.

20 EXAMINER SANDOR: Would you like a full  
21 exhibit for the witness?

22 MS. VAYSMAN: Permission to approach,  
23 your Honor?

24 EXAMINER SANDOR: You may.

25 MS. VAYSMAN: We have our copy.

1           A.     I have it.

2                   MS. VAYSMAN:  Sorry, your Honor.  Did the  
3 copy that counsel received have the whole audit  
4 report, or just an excerpt?

5                   MR. FINNIGAN:  No.  I just have an  
6 excerpt that was presented to the witness.

7                   MS. VAYSMAN:  Passed to the witness.

8                   MR. FINNIGAN:  The document that was  
9 provided to all counsel was just the excerpt.

10                   MS. VAYSMAN:  Was just the excerpt.

11                   MR. FINNIGAN:  But the entire document is  
12 available on the Commission's docket for this case,  
13 so it's the audit report filed in the Case 19-791 on  
14 May 11 of 2020.

15                   So if anyone wants to access the full  
16 report electronically, they could go on the  
17 Commission's docket and pull it up that way.

18                   MS. VAYSMAN:  So, your Honor, I  
19 appreciate that it's on the docket, but it's not  
20 available to the witness, and she may want to review  
21 it before answering the question, so I guess I would  
22 say that maybe counsel could ask the question.  
23 Again, if the witness would like to review the full  
24 report rather than just the excerpt before answering,  
25 then she could express that.

1 EXAMINER SANDOR: Yes. Yep. That works  
2 for the Bench.

3 MS. VAYSMAN: Okay.

4 MR. FINNIGAN: Thank you, your Honor.

5 EXAMINER SANDOR: Please proceed.

6 Q. (By Mr. Finnigan) So let me first ask,  
7 Ms. Lawler, do you have the excerpted audit report  
8 before you that's been marked as OCC Exhibit No. 1?

9 A. I believe I do, yes.

10 Q. And could you identify that document as  
11 an excerpt from the audit report in that case dated  
12 May 11 of 2020?

13 A. Yes. It's the "Plant In Service and  
14 Capital Spending Prudence Audit of Duke Energy Ohio,  
15 Inc., (Natural Gas) Covering the Period April 1, 2012  
16 Through December 31, 2018." It's in Case No.  
17 19-791-GA-ALT.

18 Q. My purpose in showing you this, I just  
19 want to ask you about the methodology for billing  
20 personal property taxes.

21 And we talked earlier about what the  
22 methodology was for billing real property taxes. So  
23 this report discusses how personal property taxes are  
24 billed by the State of Ohio Department of Taxation,  
25 and I wanted to just see whether this refreshes your

1 memory as to what the methodology is for those taxes.

2 So I am going to ask you if you could  
3 please turn to page No. 9 -- 9-10 of that report  
4 going by the numbers in the lower right-hand corner,  
5 and there is a section entitled "Property Taxes." Do  
6 you see that there?

7 A. I do.

8 Q. Okay. And then if you could please take  
9 a look at the last paragraph at the bottom of that  
10 page that begins "We reviewed workpapers." Do you  
11 see that paragraph?

12 A. I do.

13 Q. Now, take a moment to read through that  
14 whole paragraph and it continues onto the top of the  
15 next page.

16 A. Okay. I have read through the first two  
17 paragraphs on the next page. Anything more?

18 Q. Okay. Now I would like to direct your  
19 attention back to the paragraph of 9-10 that begins  
20 "We reviewed workpapers." Do you see that paragraph?

21 A. I do.

22 Q. And please go about the fourth line down  
23 in that paragraph. There's a sentence which begins  
24 "These amounts are then multiplied."

25 A. I see that, yes.



1           Q.    And I am going to read that, and I am  
2 going to ask you whether this comports with your  
3 understanding of how personal property taxes are  
4 billed in Ohio.

5                    What the sentence says is that, "These  
6 amounts are then multiplied by three different  
7 percentages in order to derive the amounts of  
8 deferred property taxes regulatory asset as well as  
9 the annualized property tax expense.  These three  
10 percentages include the 'percent good,' a valuation  
11 percentage, and DEO's average personal property tax  
12 rate."

13                   Does that comport with your understanding  
14 of how personal property taxes are billed in Ohio?

15           A.    That's what it says here and that seems  
16 right to me.  I don't know what Workpaper 7.1 through  
17 7.15 are; but, yes, I think that's an accurate  
18 depiction of how the property taxes are calculated.

19           Q.    Okay.  And personal property taxes are  
20 charged to Duke by the State of Ohio Department of  
21 Taxation as a compilation of amounts owed to various  
22 local jurisdictions; isn't that right?

23           A.    That's my understanding, but again,  
24 that's not my department.  I don't actually pay the  
25 bills, book the entries, but that sounds about right.

1 Q. And this sentence here in the audit  
2 report where it says "the percent good," what is  
3 that -- what does that mean?

4 A. I'm not sure. I think it has something  
5 to do with the valuation of the property that they  
6 are going to apply the property tax rate to --

7 Q. Okay.

8 A. -- but --

9 Q. And what is the valuation percentage?

10 A. Again, I believe that's the percentage of  
11 the property value that the rate gets applied to.

12 Q. And then when it says "DEO," that refers  
13 to Duke Energy Ohio, I presume? Would that be your  
14 understanding too?

15 A. Yes.

16 Q. And it says "DEO's average personal  
17 property tax rate." That would be the average of  
18 what?

19 A. I imagine it would have been the average  
20 of all of the property tax rates that we're obligated  
21 to pay, but again, I don't have the workpapers, so I  
22 am not completely sure.

23 Q. Okay. Now, do any of these variables,  
24 the percent good, the valuation percentage, and DEO's  
25 average personal property tax rate, can any of those

1 variables change from year to year?

2 A. Yes, I believe they can.

3 Q. Which ones?

4 A. Again, this is outside of my expertise.

5 I believe the percent good changes from year to year  
6 based on other rider filings I have been involved in;  
7 but I really don't know how they change, when they  
8 change.

9 Q. And would the process for personal  
10 property taxes be similar to the process you  
11 described for real property taxes in that when you  
12 get the actual bill that comes in, your accounting  
13 department does the reconciliation to reconcile with  
14 whatever amount was accrued for property tax expense  
15 with what the actual tax liability is?

16 A. Yes. Accounting would have an obligation  
17 to true up their estimates to actuals, yes.

18 Q. And the personal property taxes are like  
19 real property taxes in that they both -- for both  
20 types of tax, the bill comes in in calendar year 2023  
21 for taxes for the 2022 year?

22 A. I believe that's the case. I don't know  
23 if some come in in '22 or not but -- because of the  
24 timing but that's my understanding. We get a bill  
25 after the fact.

1           Q.    Now I would like to change the topic and  
2 talk now about an operation and maintenance expense  
3 offset for certain kinds of capital investment by  
4 Duke Energy in its gas plant.  And the first one I  
5 would like to ask you about is the AMRP program.  Are  
6 you familiar with that program?

7           A.    I am, yes.

8           Q.    And is it true that AMRP is Accelerated  
9 Main Replacement Program?

10          A.    Yes.

11          Q.    That's a program where Duke Energy  
12 replaced a great deal of cast iron and bare steel  
13 pipe that was on its system which was many years old  
14 and in need of repair?

15          A.    Yes.

16          Q.    And that's a program that I guess it's  
17 coming to an end in this case; is that right?

18          A.    The program was completed back in 2015.  
19 We continued the rider mechanism as we depreciated  
20 down the assets, and in this case we've rolled all of  
21 those remaining assets into base rates and proposed  
22 that we discontinue the rider.

23          Q.    And what is your familiarity with that  
24 case?  Have you worked on the annual AMRP Rider  
25 update filings?

1           A.    I have, yes.

2           Q.    And how long have you done that?

3           A.    Well, I would say, estimating here a  
4 little bit, but I probably started work on the AMRP  
5 filings in 2017, 2018. So either myself or someone  
6 in my group would have been compiling filings.

7           Q.    And during the time that you worked on  
8 these AMRP update filings, did you ever have occasion  
9 to go back and look at any of the prior history  
10 associated with the AMRP Rider to find out when it  
11 came into effect or how it came into effect and how  
12 it worked, what the terms and conditions of it were?

13          A.    I mean, I have a general understanding,  
14 but I don't know if I did extensive research on the  
15 past.

16          Q.    Okay. Do you recall that the rider came  
17 into existence in connection with a -- a Duke rate  
18 case back in 20 -- 2001 case that was decided in  
19 2002?

20          A.    I don't remember if that's exactly when  
21 it started, but subject to check, yes, I'll take your  
22 word for it.

23          Q.    But in any event, do you have an  
24 understanding that that rider was in effect for many  
25 years before you began to work on it in 2017?

1           A.    Yes.

2           Q.    And now that it's wrapping up, what's  
3 your understanding of how many years the program was  
4 in existence? How long it took Duke to replace all  
5 that pipe?

6           A.    I would say approximately 10 years. I  
7 don't know for sure.

8           Q.    Now, in connection with the AMRP program,  
9 was there any adjustment that Duke made during the  
10 annual rider updates to apply an offset for any  
11 savings in operations and maintenance expense  
12 attributable to the replacement of the cast iron and  
13 bare steel pipe with new pipe?

14          A.    Yes, I believe there was.

15          Q.    And that operation and maintenance  
16 savings offset occurred every year as part of the  
17 AMRP annual filings?

18          A.    It did, yes.

19          Q.    Now, let me direct your attention to  
20 another case, and this is Case No. 21-1035, a case  
21 where Duke applied for a deferral of costs with --  
22 associated with abandoning its propane facilities.  
23 Are you familiar with that?

24          A.    I am, yes.

25                MR. FINNIGAN: And I believe that the

1 Attorney Examiners took administrative notice of the  
2 entire docket in that case earlier today; is that  
3 correct?

4 EXAMINER SANDOR: Correct.

5 Q. (By Mr. Finnigan) Now, what was your  
6 involvement with that case?

7 A. I worked on the filing of the deferral.  
8 I worked on the Stipulation in the case, and I filed  
9 direct testimony supporting the Stipulation.

10 Q. Let me ask whether the Stipulation in  
11 that case included any provision for an operation and  
12 maintenance savings offset associated with --  
13 associated with that filing.

14 A. Do you have a copy of the --

15 Q. I do, yes.

16 A. -- Stipulation?

17 MR. FINNIGAN: Your Honor, at this time I  
18 would like to ask that a document be marked as OCC  
19 Exhibit 2 -- well, strike that.

20 Since we are taking administrative notice  
21 of the entire docket, let me not mark that as a  
22 separate exhibit and -- but I do have a copy for the  
23 witness in the packet of documents I presented  
24 earlier, and it's the Stipulation and Recommendation  
25 filed in that case. If I may present that to the

1 witness?

2 EXAMINER SANDOR: You may.

3 A. Thank you.

4 Q. I will give you that to save a trip.

5 MR. FINNIGAN: Now, your Honor, at this  
6 time I would like to question the witness about this  
7 Stipulation and Recommendation, but I am not going to  
8 ask it to be marked for identification as an exhibit.  
9 But I would just like the record to reflect that the  
10 witness has been handed a copy of the Stipulation and  
11 Recommendation that was filed in this case, 21-1035.

12 Q. (By Mr. Finnigan) Do you have that?

13 A. I do, yes.

14 Q. And I would like to direct your attention  
15 to just one paragraph in that document. And let me  
16 check and see what paragraph that is.

17 MR. FINNIGAN: Your Honor, could we go  
18 off the record for just a moment?

19 EXAMINER SANDOR: Let's go off the  
20 record.

21 (Discussion off the record.)

22 EXAMINER SANDOR: Let's go back on the  
23 record.

24 Q. (By Mr. Finnigan) Ms. Lawler, could you  
25 please turn your attention to page 4 of that



1 document?

2 A. Okay. I'm there.

3 Q. And if you would look at the very last  
4 numbered section which is numbered 2a iv.

5 A. Yes.

6 Q. At the very bottom of that page.

7 A. Yes.

8 Q. And could you please take a moment to  
9 read that section.

10 A. Okay.

11 Q. And what it says there is that, "A credit  
12 for any operation and maintenance (O&M) savings  
13 associated with O&M currently included in base rates  
14 for the operation of the propane caverns from the  
15 time Central Quarter Pipeline was placed into service  
16 until new base rates are effective as a result of the  
17 Company's next natural gas base rate case." Have I  
18 read that correctly?

19 A. Yes, you have. That was a credit to the  
20 proposed estimated deferral.

21 Q. That was part of the Stipulation --

22 A. That's correct.

23 Q. -- in that case? And then I think you  
24 mentioned earlier that you submitted some direct  
25 testimony in support of the Stipulation?

1           A.    I did, yes.

2           Q.    And the gist of your testimony in that  
3 case was that the Stipulation was in the public  
4 interest and consistent with regulatory practices and  
5 principles and should be accepted by the Commission?

6           A.    That was part of my testimony, yes.

7           MR. FINNIGAN:  That's all the questions I  
8 have.  Thank you, Ms. Lawler.

9           THE WITNESS:  Thank you.

10          EXAMINER SANDOR:  Any other  
11 cross-examination?

12          Hearing none, any redirect?

13          MS. VAYSMAN:  Your Honor, could we have a  
14 few minutes before redirect?

15          EXAMINER SANDOR:  We may.

16          Let's go off the record.

17          (Recess taken.)

18          EXAMINER SANDOR:  Let's go on the record.

19          Duke, you may proceed.  Redirect?

20          MS. VAYSMAN:  Thank you, your Honor.

21   - - -

22   REDIRECT EXAMINATION

23          By Ms. Vaysman:

24           Q.    Ms. Lawler, what is the amount of  
25 property tax expense that is embedded in the revenue

1 requirement pursuant to the Stipulation?

2 A. In the test period in this proceeding,  
3 property tax is approximately \$41.5 million.

4 Q. Thank you. And now turning to the  
5 discussion of the AMRP Rider that we just had. What  
6 was the primary purpose of the AMRP Rider?

7 A. That primary purpose of that rider was to  
8 replace old mains that were prone to leaks.

9 Q. Thank you. And how is that different  
10 from the investments made under the CEP Riders?

11 A. Well, the CEP Rider is much broader.  
12 It's not just one specific project. It covers the  
13 vast majority of the capital investment that we made  
14 to provide safe, reliable service to our customers,  
15 so it's not just replacing aging infrastructure.  
16 It's new investments. It's -- it's a more holistic  
17 program than the AMRP program was.

18 Q. And are you aware of any O&M savings  
19 attributable to the Rider CEP investments?

20 A. I am not aware of any net O&M savings as  
21 a result of the CEP investments. You know, there  
22 is -- like I said, there is different projects that  
23 are included in that rider. Some projects could have  
24 increased O&M as a result of those projects. Some  
25 projects may have declines in O&M.

1           But net -- there is really just no proof  
2 that there is O&M net savings as a result of putting  
3 these investments in service.

4           MS. VAYSMAN: Thank you, Ms. Lawler.  
5 No further redirect, your Honor.

6           EXAMINER SANDOR: Any recross?

7                                 - - -

8                                 REXCROSS-EXAMINATION

9           By Mr. Finnigan:

10           Q. Ms. Lawler, have you done a study to  
11 determine how much O&M savings have resulted from  
12 each capital expenditure project?

13           A. I personally have not done the study, and  
14 like I said, I am not aware of there being any O&M  
15 savings as a result of the projects.

16           MR. FINNIGAN: That's all the questions I  
17 have. Thank you.

18           EXAMINER SANDOR: Thank you. Any re?

19           MS. VAYSMAN: No re-redirect, your Honor,  
20 but at this time we would like to move that Duke  
21 Energy Ohio Exhibits 10 and 11, the direct and  
22 supplemental testimonies of Ms. Lawler, be moved into  
23 the record.

24           EXAMINER SANDOR: Thank you.

25                                 And thank you, Ms. Lawler.

1 Any objections to Duke Exhibits 10 and  
2 11?

3 MR. FINNIGAN: No objection, your Honor.

4 EXAMINER SANDOR: Okay. Hearing none,  
5 Duke Exhibits 10 and 11 are admitted.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 EXAMINER SANDOR: Okay. Anything else  
8 from Duke -- oh, OCC exhibit, I'm sorry.

9 MR. FINNIGAN: Yes, your Honor. We would  
10 like to move at this time that OCC Exhibit 1 be  
11 admitted into evidence. That's the excerpt from the  
12 audit report in the 19-791 case.

13 EXAMINER SANDOR: Any objections?

14 MS. VAYSMAN: No objections, your Honor.

15 EXAMINER SANDOR: Okay. OCC Exhibit 1 is  
16 so admitted.

17 (EXHIBIT ADMITTED INTO EVIDENCE.)

18 EXAMINER SANDOR: Now anything further  
19 from Duke?

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

21 EXAMINER SANDOR: Okay. Thank you.

22 EXAMINER WALSTRA: Are you guys putting  
23 off Duke Exhibits 1 and 2? I don't believe those  
24 have been admitted yet.

25 MR. D'ASCENZO: I had moved those into --

1 at the beginning, subject to cross, but we would like  
2 to renew that motion now, your Honor.

3 EXAMINER WALSTRA: Any objections to the  
4 admission of Duke Exhibits 1 and 2?

5 Hearing none, they will be admitted.

6 (EXHIBITS ADMITTED INTO EVIDENCE.)

7 EXAMINER SANDOR: All right. At this  
8 time we are actually going to go ahead and take lunch  
9 early, so we are going to break now and come back at  
10 1:00 p.m.

11 Let's go off the record.

12 (Thereupon, at 11:54 a.m., a lunch recess  
13 was taken.)

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- - -

EXAMINER WALSTRA: We will go on the  
record.

MR. MICHAEL: OCC calls Colleen Shutrump.

EXAMINER WALSTRA: Raise your right hand.  
(Witness sworn.)

EXAMINER WALSTRA: Thank you. Please  
take a seat.

Go off the record a quick second.  
(Discussion off the record.)

EXAMINER WALSTRA: We will go back on the  
record, and you may approach.

MR. MICHAEL: Thank you. Your Honor, I  
would like to have marked as OCC Exhibits 2 and 2A  
the direct testimony of Colleen Shutrump and the  
testimony of Colleen Shutrump for Consumer Protection  
in Opposition to the Stipulation and Recommendation.

EXAMINER WALSTRA: Can we go 2 and 3?

MR. MICHAEL: We certainly can, your  
Honor.

EXAMINER WALSTRA: The initial direct  
testimony will be 2, and then the opposition will be  
3.

1 MR. MICHAEL: Yes, sir.

2 (EXHIBITS MARKED FOR IDENTIFICATION.)

3 EXAMINER WALSTRA: Thank you. Go ahead.

4 - - -

5 COLLEEN SHUTRUMP

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

8 DIRECT EXAMINATION

9 By Mr. Michael:

10 Q. Would you please state your name?

11 A. Colleen Shutrump.

12 Q. And, Ms. Shutrump, where are you  
13 employed?

14 A. At the Office of Consumers' Counsel.

15 Q. And, Ms. Shutrump, you have before you  
16 what was previously marked as OCC Exhibit 2, the  
17 direct testimony of Colleen Shutrump, and OCC  
18 Exhibit 3, the testimony of Colleen Shutrump for  
19 Consumers Protections in Opposition to the  
20 Stipulation and Recommendation. Do you see those  
21 documents?

22 A. Yes.

23 Q. And I identified them correctly?

24 A. Yes.

25 Q. And, Ms. Shutrump, do you have any



1 corrections to either one of those documents?

2 A. Yes, I have corrections to make for my  
3 testimony in opposition of the Stipulation and  
4 Recommendation. The first correction will be on page  
5 5, line 12. There are two words at the end,  
6 "provides" and "gives." I would like to mark out the  
7 word "provides."

8 And then my second correction is on page  
9 8 and that would be line 9. I would like to cross  
10 out letter D -- I'm sorry, letter C.

11 Q. The entirety of that line, Ms. Shutrump?

12 A. Yes.

13 Q. Thank you. And, Ms. Shutrump, was that  
14 testimony prepared by you or at your direction?

15 A. Yes.

16 Q. And if I were to ask you the questions as  
17 reflected in that testimony today with the  
18 corrections you just made, would your answers be the  
19 same?

20 A. Yes.

21 MR. MICHAEL: Your Honor, I move for the  
22 admission of OCC Exhibits 2 and 3, subject to  
23 cross-examination.

24 EXAMINER WALSTRA: Thank you.

25 Go to Duke.

1 MS. BRAMA: Thank you, your Honors.

2 - - -

3 CROSS-EXAMINATION

4 By Ms. Brama:

5 Q. Good afternoon, Ms. Shutrump. My name is  
6 Liz Brama. I am an attorney with the Taft law firm  
7 representing Duke.

8 A. Pleasure.

9 Q. Same. I have a few questions for you  
10 today. I am going to ask you to open your  
11 supplemental testimony to page 3, if you would.

12 A. So the testimony in opposition?

13 Q. Yes.

14 A. Okay. Page 3. Okay. I'm there.

15 Q. And on page 3, lines 8 to 11, you state  
16 your conclusion that "the Settlement fails the second  
17 prong of the PUCO's test for settlements because the  
18 funding for low-income weatherization programs under  
19 the Settlement does not benefit customers or the  
20 public interest." Did I read that correctly?

21 A. Yes.

22 Q. And moving down just a little bit further  
23 to page 4 of the same testimony, you identify that  
24 second prong as asking, "Does the settlement, as a  
25 package, benefit consumers and the public interest,"

1 right?

2 A. Yes.

3 Q. In other words, you are acknowledging  
4 here that the Commission evaluates any settlement as  
5 a package; is that right?

6 A. Yes.

7 Q. Okay. And your testimony speaks solely  
8 to the funding for low-income weatherization  
9 programs; is that also correct?

10 A. Yes.

11 Q. Okay. So you would agree, correct, that  
12 the settlement includes \$200,000 in  
13 shareholder-funded low-income weatherization  
14 programs; is that right?

15 A. Yes.

16 Q. And that's in addition to the additional  
17 funding that's included in the settlement for these  
18 same programs that comes from rates; is that right?

19 A. Yes.

20 Q. Okay. So your issue, as I understand it,  
21 is not that weatherization programming shouldn't  
22 occur, just that a larger portion of the 2 million  
23 should come from shareholders; is that right?

24 A. No.

25 Q. Okay. So it is your position that

1 weatherization programming should not be occurring?

2 A. Weatherization programs -- programming  
3 should be occurring, but I don't think my testimony  
4 says that shareholder contributions should be greater  
5 than -- than consumer contributions.

6 Q. Let me rephrase my question. Maybe I  
7 wasn't clear.

8 My question for you is, do you think that  
9 it -- is it your position that the settlement  
10 shouldn't include any shareholder funding for  
11 contributions?

12 A. That's not my position.

13 Q. Okay. Your position is, as I understand  
14 it, that it should include more money from  
15 shareholders for weatherization; is that right?

16 A. Yes.

17 Q. Okay. So it's not that weatherization  
18 programs don't benefit customers; it's who funds them  
19 that's the issue here?

20 A. Yes.

21 Q. Okay. And I just want to clarify too, is  
22 it your position that weatherization is the only  
23 program benefiting low-income customers in the  
24 Stipulation?

25 A. I don't know the answer to that. I would

1 need to look at the Stipulation.

2 Q. Okay. You only looked at this one piece  
3 of low --

4 A. Yes.

5 Q. -- income -- okay. Thanks for clarifying  
6 those things.

7 Now, on page 4 of your supplemental  
8 direct, a little further down, you say on line 17 --  
9 let me know when you are there.

10 A. I'm there.

11 Q. On line 17 that funding -- sorry. Excuse  
12 me.

13 Starting on 16, "Funding for low-income  
14 weatherization should be considered in a generic case  
15 for adequate customer protections. It should not be  
16 used as a bargaining chip to obtain signatures on a  
17 Settlement in this (or any other) ratemaking  
18 procedure." Did I read that correctly?

19 A. Yes.

20 Q. You understand that PWC represents  
21 low-income customers, right? That's its function?

22 A. Yes.

23 Q. And are you aware of the types of  
24 services PWC provides to those customers, generally  
25 speaking?

1           A.    Generally, yes.

2           Q.    Would you agree that it is in PWC's  
3 interest to agree only to a settlement that PWC feels  
4 will benefit the people it represents?

5           MR. MICHAEL:  Objection, she can't speak  
6 for PWC about that.

7           EXAMINER WALSTRA:  She can answer if she  
8 knows.  Go ahead.

9           A.    Can you repeat the question?

10          Q.    (By Ms. Brama) Sure.  Would you agree  
11 that it is in PWC's interest to only agree to a  
12 settlement that PWC feels will benefit the people it  
13 represents?

14          A.    I don't know the answer to that.

15          Q.    Okay.  And that's fair.  I appreciate  
16 that.

17                The other question I have on this topic  
18 is:  Are you aware of any law or regulation that  
19 requires utility shareholders to make contributions  
20 to programs like weatherization for customers?

21          A.    So the Commission does not have specific  
22 authority to order shareholders to contribute  
23 funding, but there's more to it than that.

24                I think -- I think there have been cases,  
25 and I think I point to those in my testimony for

1 objections where the PUCO has opined on shareholder  
2 funding and the benefit that that would provide --  
3 that that additional funding would provide added  
4 benefits for low-income weatherization. Yeah, so.

5 Q. Okay. I am going to ask you to scroll  
6 forward just a little bit, or turn the page in your  
7 testimony -- I say scroll because I have it on my  
8 screen -- to page 9 of your testimony in opposition  
9 to the settlement.

10 A. Okay.

11 Q. And starting on line 10 of this page, you  
12 say, "Funds from charges to utility consumers for  
13 weatherization programs should relate to services  
14 that will reduce natural gas usage and at-risk  
15 customers' natural gas bills." Do you see that?

16 A. Yes.

17 Q. Okay. And are you aware of the types of  
18 services that the Duke-supported PWC weatherization  
19 program provides?

20 A. No. That information was not provided in  
21 the Application. No information whatsoever was  
22 provided in the Application on the low-income  
23 weatherization program.

24 Q. Did you happen to look at the PWC website  
25 that speaks specifically to the Duke weatherization

1 program and the services provided?

2 A. So I'm generally aware of the services  
3 provided by not only PWC but other community-action  
4 agencies.

5 Q. So you are aware then that the  
6 Duke-supported PWC program includes energy audit  
7 services?

8 A. Yes.

9 Q. And it includes furnace cleaning and  
10 tuning?

11 A. Yes.

12 Q. Sorry, I just need you to answer out loud  
13 so the court reporter can take the answer down.

14 It also includes installation of  
15 weatherization materials when appropriate?

16 A. Yes.

17 Q. And it includes health and safety checks  
18 of combustion appliances, right?

19 A. Yes.

20 Q. And also energy education tips; is that  
21 right?

22 A. Yes.

23 Q. Okay. And isn't a purpose of  
24 weatherization to enable low-income and at-risk  
25 customers to ensure their houses retain heat?



1           A.    Yes.

2           Q.    And doing so allows them potentially to  
3 turn down their furnace, for example, in the winter  
4 because they are no longer leaking as much heat to  
5 the outside; is that right?

6           A.    Yes.

7           Q.    And turning down the furnace also helps  
8 reduce natural gas usage?

9           A.    Yes.

10          Q.    And likewise, a furnace check, for  
11 example, helps make sure the furnace is operating  
12 efficiently --

13          A.    Yes.

14          Q.    -- correct?

15                Okay.  And in general, would you agree  
16 that weatherization programs to retain heat in the  
17 winter also contribute to the overall health and  
18 safety of at-risk customers?

19          A.    Can you repeat that?

20          Q.    Sure.  Would you agree that  
21 weatherization programs focused on retaining heat  
22 during the winter also contribute to the health and  
23 safety of at-risk customers?

24          A.    I would say that's a fair statement.

25          Q.    Okay.  So I am going to have you back up

1 just -- I'm sorry. I am actually not going to have  
2 you do that.

3           You discussed in your direct testimony --  
4 and let me go to the page if you need to -- but isn't  
5 it true, Ms. Shutrump, that Duke was already making  
6 shareholder contributions to weatherization programs  
7 at the time it filed its case?

8           A. Yes. It's my understanding they were.

9           Q. And isn't it also true there were  
10 additional dollars in rates at the filing of this  
11 case for weatherization programs in addition to the  
12 Duke contributions?

13           A. Yes. Consumers currently fund  
14 \$1.8 million annually.

15           Q. And so those funds are in base rates as  
16 we sit here today, right?

17           A. Yes.

18           Q. And they were in base rates long before  
19 settlement discussions occurred in this proceeding;  
20 is that right?

21           A. Yes.

22           Q. And the Commission, of course, then must  
23 have previously approved the inclusion of Duke  
24 weatherization program costs in base rates in order  
25 for them to be in base rates right now; is that

1 right?

2 A. I wouldn't know how to answer that  
3 because I only looked at the settlement in the last  
4 rate case, so I -- I don't recall any time before  
5 that. I don't know where or in what case the  
6 low-income weatherization program was approved.

7 Q. Okay. Lastly, I would like to -- well,  
8 actually I have two other things I would like to ask  
9 you about briefly.

10 One is, you are aware that OCC, of  
11 course, can ask discovery in a base rate case, right?  
12 Fundamentally part of the process?

13 A. Yes.

14 Q. And so if -- if OCC wants information  
15 about what actual amount of weatherization dollars  
16 have been spent in a prior year, it can ask that in  
17 discovery, right?

18 A. It can. I think, though, that in this  
19 case, since there was no information provided on the  
20 low-income weatherization program and there was no  
21 request by Duke to approve continuation of the  
22 program, there was really no framework or foundation  
23 to make discovery productive.

24 Q. Okay. Could you please turn to your  
25 direct testimony, hearing Exhibit 2. And we just

1 need the public version at page 3.

2 A. Okay. So Exhibit 2 in opposition to the  
3 Stipulation, or --

4 Q. No, I'm sorry. My understanding is 3 is  
5 in opposition to the Stipulation. I am looking at  
6 your direct testimony, Exhibit -- OCC Exhibit 2, I  
7 believe.

8 A. Okay. One second. Yes, I have it now.  
9 Sorry.

10 Q. Okay. And there in your direct testimony  
11 at line 20. I'm sorry, page 3, line 20.

12 A. I see it.

13 Q. Yeah. So you see your testimony there  
14 where you acknowledge, "Duke proposed an increase of  
15 \$45,603 per year in consumer funding for the program.  
16 Duke's low-income weatherization program was approved  
17 by settlement in Case No. 12-1685-GA-AIR." Is that  
18 right?

19 A. Yes.

20 Q. Okay. So it was in the Application, was  
21 it not?

22 A. I don't know the answer to that. I only  
23 looked at the Stip -- the Stipulation, the  
24 Settlement, and the Order that approved the  
25 Settlement. So I don't know if the low-income

1 weatherization program was part of the Application.  
2 I did not look at that.

3 Q. Okay. And I guess the reason I am  
4 confused is because the question on page 3 of your  
5 direct starting at line 16 asks, "What are Duke's  
6 recommendations in its application regarding a  
7 low-income weatherization program for its natural gas  
8 consumers?" And that's where you provided the answer  
9 we just discussed.

10 A. Yes.

11 Q. So you did not look at the Application  
12 though? Is that what your testimony is?

13 A. Oh, yes, thank you. Yes, yes, I did.  
14 Yes.

15 Q. All right. Thank you. And so my --  
16 going back to my point, Ms. Shutrump, the Company put  
17 information that it was asking for low-income, or  
18 proposing low-income weatherization dollars in its  
19 application which, in turn, allowed OCC to ask  
20 discovery if it so chose on those programs?

21 A. Yes.

22 Q. Okay. Thank you.

23 Lastly, you reference in your  
24 supplemental testimony, generally, a Pike Natural Gas  
25 Company Rider case related to a separate program.

1           A.    Yes.  Yes.

2           Q.    Right?  Now, just to be clear, that --  
3 and that's on page 9 of your supplemental testimony,  
4 right?

5           A.    It's on page 7.

6           Q.    Oh, page 7.  My fault.  Thank you.  
7                   Now, just to be clear, this case involved  
8 Pike Natural Gas Company and not Duke, right?

9           A.    Yes.

10          Q.    And the Pike program was addressed to  
11 particularly high-demand low-income customers, right?

12          A.    I believe that's so, yes.

13          Q.    And when that issue of a -- came up you  
14 identify in your testimony, it was actually Pike who  
15 filed a motion to suspend the collection of its DSM  
16 Rider and address the program prior to an audit  
17 because expenditures for the program were not keeping  
18 pace with revenues; is that right?

19          A.    I believe that's correct.

20          Q.    So the audit was not necessary in its  
21 absent -- I'll withdraw that.

22                   Isn't it correct, too, that when Staff  
23 conducted an analysis comparing the gas consumption  
24 of those customers who got weatherization program  
25 funds, 7 of the 17 recipients were able to reduce

1 their gas consumption? Do you recall that?

2 A. I think that's accurate.

3 Q. Okay. And there was some debate in that  
4 proceeding about whether that number was actually too  
5 low; is that right?

6 A. Yeah, I think the issue in that  
7 proceeding was whether or not, given the thousands of  
8 dollars that were spent on weather -- weatherization,  
9 there was really no reduction in usage by the  
10 participants.

11 Q. And when you say "really no," you --

12 A. It overall.

13 Q. Okay.

14 A. Yeah. There was more -- more that did  
15 not reduce their usage than those that did.

16 Q. But the issue of whether that was true or  
17 not was a disputed matter in that proceeding, right?

18 A. I don't know the answer to that.

19 Q. Okay. And do you know the answer to  
20 whether the Commission's basis for discontinuing that  
21 program had to do with demand versus the success of  
22 the usage?

23 A. Well, I'm not sure what you mean by  
24 demand. I think that -- I think the program was not  
25 performing.

1                   There was no productivity by the  
2 low-income weatherization provider, the  
3 administrator. There was lack of productivity. They  
4 had some funds available in the rider, and they  
5 weren't utilizing those funds to weatherize homes.

6           Q.    Let me -- let me rephrase that a little  
7 bit to make it a better question.

8                   Isn't it correct that in that proceeding  
9 it was a program that was focused on roof repairs,  
10 full window replacements, and there weren't enough  
11 customers able to take advantage or seeking to take  
12 advantage of that type of replacement versus what we  
13 have in this proceeding?

14           A.    I don't know the answer to that. I  
15 focused on the audit by Staff.

16           Q.    Okay. Thank you. And just to -- that --  
17 the entry that you are referring to in your testimony  
18 is in that footnote 9, and then, of course, cross  
19 referenced in footnote 10, that's where we could find  
20 the Pike outcome if we wanted to look that up?

21           A.    Yes.

22           Q.    Publicly-available document.

23           A.    Yes, it is.

24                   MS. BRAMA: Thank you very much. That's  
25 all I have.



1 EXAMINER WALSTRA: Thank you.

2 Any other questions?

3 MS. PIRIK: Yes, your Honor. I don't  
4 know that I can see the witness though. I don't  
5 think she can see me. Maybe move a little bit.

6 EXAMINER WALSTRA: Thank you. Take your  
7 time.

8 MR. MICHAEL: Can you see the attorney,  
9 Colleen?

10 THE WITNESS: Yes. I think so.

11 MS. PIRIK: Can you see me okay?

12 - - -

13 CROSS-EXAMINATION

14 By Ms. Pirik:

15 Q. Good afternoon. I am Chris Pirik. I am  
16 with the People Working Cooperatively. I am  
17 representing them. Nice to meet you.

18 A. Pleasure.

19 Q. I just have a couple questions for you.  
20 Turning back to your -- let's see, I believe it's OCC  
21 3 which is your response to the Stipulation.

22 A. Uh-huh.

23 Q. On page 6, line 8.

24 A. I'm there.

25 Q. You again mention that, "low-income

1 programs should not be made utility bargaining chips  
2 to garner support for utility rate increase  
3 settlements."

4 At any time have you had any  
5 conversations with anybody at PWC, People Working  
6 Cooperatively, as to the reasons that they signed the  
7 Stipulation?

8 A. No.

9 Q. Okay. So what is the basis of your  
10 statement that they signed the Stipulation as a  
11 utility bargaining chip?

12 MR. MICHAEL: I am going to object to  
13 that question, your Honor, the characterization. I  
14 don't think Ms. Shutrump is asserting that PWC signed  
15 it as a bargaining chip, I think it's a broader  
16 policy issue, so I object to the characterization of  
17 the question.

18 EXAMINER WALSTRA: The witness can  
19 clarify.

20 A. My reference there is based on my  
21 experience here in Ohio being involved with energy  
22 efficiency on both the gas and the electric side.

23 The specific reference is -- involved  
24 FirstEnergy and energy efficiency providers,  
25 including low-income weatherization providers.

1           The energy efficiency providers did sign  
2 a settlement in FirstEnergy's ESP case, which has  
3 nothing to do with energy efficiency.

4           But in FirstEnergy's ESP case they  
5 were -- because of those signatures, they were set to  
6 get hundreds of millions of dollars of rate stability  
7 charges, and in return the energy efficiency  
8 providers would get an increase in consumer charges  
9 for energy efficiency, and that the low-income energy  
10 efficiency provider would get the job of  
11 administering the low-income weatherization program.

12           And indeed, after the settlement was  
13 filed in the ESP, when FirstEnergy's energy  
14 efficiency portfolio case was filed, FirstEnergy  
15 implemented their promise to the energy efficiency  
16 providers.

17           Q.    So this statement isn't with regard to  
18 PWC and its signature on the Duke settlement,  
19 correct?

20           A.    Correct. It is in regard to the concerns  
21 I have with low-income programs being addressed in a  
22 rate case, for example, instead of a generic case.

23           Q.    I am going to ask you a few questions  
24 just to see whether or not you are aware of  
25 certain -- certain documents.

1           Are you aware that PWC receives funding  
2 for the Home Weatherization Assistance Program from  
3 the U.S. Department of Energy and the Health and  
4 Human Services, in addition to the funds that it  
5 receives from Duke?

6           A.    I'm not aware, but that would make sense.

7           Q.    Are you aware that the State of Ohio  
8 Department of Development does an in depth audit of  
9 PWC annually under the Home Weatherization Assistance  
10 Program and that those annual audits include projects  
11 that are funded by Duke?

12          A.    No, I am not aware.

13          Q.    Are you aware that the State of Ohio  
14 Department of Development audits PWC every two years  
15 under the Electric Partnership Program and that those  
16 annual audits include the projects funded by Duke?

17          A.    I am not aware.

18          Q.    Okay. And finally, are you aware that  
19 the accounting firm of Clark Schaefer Hackett audits  
20 PWC annually and that such audits include the  
21 projects funded by Duke?

22          A.    I am not aware.

23                MS. PIRIK: Thank you, your Honor.

24                That's all I have.

25                EXAMINER WALSTRA: Thank you.

1                   Anyone else?

2                   MR. BOEHM:  Nothing, your Honor.

3                   EXAMINER WALSTRA:  Staff?

4                   Any redirect?

5                   MR. MICHAEL:  If we could have a brief  
6 moment, your Honor.

7                   EXAMINER WALSTRA:  Sure.

8                   We'll go off the record.

9                   (Recess taken.)

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

12                  MR. MICHAEL:  Thank you, your Honor.

13   - - -

14   REDIRECT EXAMINATION

15                  By Mr. Michael:

16                         Q.  Ms. Shutrump, do you recall questions you  
17 were asked by counsel of PWC regarding audits that  
18 were performed?

19                         A.  Yes.

20                         Q.  And you did not address those in your  
21 testimony; is that correct?

22                         A.  Correct.

23                         Q.  And can you please explain for the  
24 Commission's benefit why you did not?

25                         A.  Well, I think when -- when I look at PUCO

1 oversight on both electric and gas riders, Staff does  
2 an audit and review of expenses for the low-income  
3 energy efficiency program, and I think that's  
4 important because every single person in this room  
5 pays a charge on their bill to support these programs  
6 and that's why PUCO oversight, especially where the  
7 money is concerned, is necessary to make sure that  
8 funds are being spent wisely.

9           A perfect example of this is Duke's  
10 Energy Efficiency Rider on the electric side. Duke  
11 is notorious for including expense items that Staff  
12 has deemed inappropriate and should be removed from  
13 the revenue requirement.

14           MS. BRAMA: Objection, relevance, and  
15 outside the scope of this case.

16           MR. MICHAEL: I don't think you object  
17 during a pendency of the question. You might be able  
18 to move to strike afterwards, but I am happy to  
19 address it if you would like me to, your Honor.

20           EXAMINER WALSTRA: I'll allow her to  
21 finish.

22           MR. MICHAEL: Okay. Thank you.

23           Q.    (By Mr. Michael) Go ahead, Colleen.

24           A.    So -- so the protections for consumers  
25 that fund these programs come through the rider. The

1 audit and review by Staff is very important, and they  
2 look at expense items that are not appropriate, and  
3 as a result, since 2015, hundreds of thousands of  
4 dollars have been removed from the revenue  
5 requirement, and so, you know, consumers that fund  
6 these programs benefit from that protection.

7 MR. MICHAEL: Okay. Thank you,  
8 Ms. Shutrump.

9 I have no further questions, your Honor.

10 EXAMINER WALSTRA: Thank you.

11 Additional cross?

12 MS. BRAMA: Nothing further. Thank you,  
13 your Honor.

14 MS. PIRIK: Just one question, your  
15 Honor.

16 EXAMINER WALSTRA: Okay.

17 - - -

18 RE-CROSS-EXAMINATION

19 By Ms. Pirik:

20 Q. Just one quick question. Are you aware  
21 that the audits that are conducted by the Ohio  
22 Department of Development also include an audit of  
23 the expenses?

24 A. I've not seen that, so I don't know.

25 MS. PIRIK: Thank you.

1 EXAMINER WALSTRA: No further questions?  
2 You are all set. Thank you for your  
3 testimony.

4 THE WITNESS: Thank you.

5 EXAMINER WALSTRA: Any objection to the  
6 admission of OCC Exhibits 2 and 3?

7 Hearing none, they will be admitted.

8 (EXHIBITS ADMITTED INTO EVIDENCE.)

9 EXAMINER WALSTRA: You may call your next  
10 witness.

11 MR. MICHAEL: Thank you, your Honor.

12 The OCC calls Joseph Buckley.

13 MS. BRAMA: I thought we were doing  
14 Mr. Fortney next.

15 MR. MICHAEL: We can do Fortney. Sorry,  
16 Joe.

17 OCC calls Robert B. Fortney.

18 EXAMINER SANDOR: Please raise your right  
19 hand.

20 (Witness sworn.)

21 EXAMINER SANDOR: Please be seated.

22 MR. MICHAEL: May I approach, your Honor?

23 EXAMINER SANDOR: You may.

24 MR. MICHAEL: Your Honor, if I might, I  
25 would like to have marked as OCC Exhibit 5,



1 Mr. Fortney's direct testimony, and then as OCC  
2 Exhibit 6, his testimony in opposition to the  
3 Stipulation.

4 EXAMINER SANDOR: I think we are missing  
5 Exhibit 4.

6 MR. MICHAEL: I would like to have his  
7 direct testimony marked as OCC Exhibit 4.

8 EXAMINER SANDOR: Okay.

9 MR. MICHAEL: And his testimony in  
10 opposition to the Stipulation as OCC Exhibit 5.

11 EXAMINER SANDOR: So marked.

12 (EXHIBITS MARKED FOR IDENTIFICATION.)

13 MR. MICHAEL: Thank you, your Honor.

14 - - -

15 ROBERT B. FORTNEY

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

18 DIRECT EXAMINATION

19 By Mr. Michael:

20 Q. Would you please state your name?

21 A. Robert Fortney, F-O-R-T-N-E-Y.

22 Q. And where are you employed, Mr. Fortney?

23 A. The Office of the Ohio Consumers'

24 Counsel.

25 Q. And, Mr. Fortney, you have two documents

1 placed in front of you that were previously marked as  
2 OCC Exhibits 4 and 5. Can you please identify those  
3 two documents, starting with OCC Exhibit 4?

4 A. I didn't write down which is which.

5 Q. The testimony of Robert Fortney?

6 A. That's correct.

7 Q. And then the other document, can you  
8 identify for us, Mr. Fortney?

9 A. Testimony for consumer protection in  
10 opposition to the Stip.

11 Q. Thank you. And do you have any  
12 corrections to that testimony, Mr. Fortney?

13 A. No, I don't.

14 Q. And was that testimony provided --  
15 prepared by or at your direction -- by you or at your  
16 direction?

17 A. Yes, it was.

18 Q. And, Mr. Fortney, if I were to ask you  
19 those questions today, would your answers be the  
20 same?

21 A. Yes.

22 MR. MICHAEL: Thank you, your Honors  
23 I would move for the admission of OCC  
24 Exhibits 4 and 5, subject to cross-examination.

25 EXAMINER SANDOR: Thank you.

1 Duke?

2 MS. AKHBARI: Thank you, your Honor.

3 - - -

4 CROSS-EXAMINATION

5 By Ms. Akhbari:

6 Q. Good afternoon, Mr. Fortney.

7 A. Good afternoon.

8 Q. It's nice to see you again.

9 A. Thank you.

10 Q. Great. So you have up there on the  
11 witness stand a copy of your direct testimony and  
12 also a copy of your supplemental testimony in  
13 opposition to the Stipulation --

14 A. Yes.

15 Q. -- is that correct?

16 A. Those two things.

17 Q. And are those both clean copies, no  
18 annotations?

19 A. Yes. They are all clean.

20 Q. Great. Do you have any other documents  
21 or notes on the witness stand with you today?

22 A. Just the direct testimony, the testimony  
23 in opposition, and the stip.

24 Q. Great. Great. So let's start with your  
25 supplemental testimony, OCC Exhibit 5. If you could

1 please turn to page 4. In Q and A 7 and 8 on page 4,  
2 Mr. Fortney, you outline the criteria upon which the  
3 Commission relies for its consideration whether to  
4 adopt a Stipulation and Recommendation or not; is  
5 that correct?

6 A. Question 7 does that, yes.

7 Q. Great. And on lines 7 -- 16 through 19,  
8 staying on page 4, could you please look there? Here  
9 you state that of the three criteria, you are only  
10 testifying in this proceeding as to Criteria No. 2  
11 and Criteria No. 3; is that correct?

12 A. That's correct.

13 Q. And as to Criteria No. 2, you  
14 characterize that as whether there is a benefit to  
15 the public interest associated with adoption of the  
16 Stipulation; is that correct?

17 A. Correct.

18 Q. And for Criteria No. 3, you characterize  
19 that as whether the Stipulation violates any  
20 regulatory principle or practice; is that correct?

21 A. Yes.

22 Q. Great. So you're not testifying today,  
23 Mr. Fortney, as to what you list as Criteria 1, which  
24 is whether the settlement is a product of serious  
25 bargaining, correct?

1           A.    No, I am not testifying to that.

2           Q.    Great. Thank you. And as to what you  
3 label Criteria No. 3, whether the settlement as a  
4 package benefits customers and is in the public  
5 interest, we are going to start there today.

6                    So, Mr. Fortney, Criteria No. 2 does not  
7 call out just one customer group, correct?

8           A.    No, as a package benefits consumers.

9           Q.    And Criteria No. 2 speaks to all types of  
10 customers, correct?

11          A.    Yes.

12          Q.    Let's talk a little bit about your  
13 testimony as to the overall allocation of the revenue  
14 requirement.

15                    I would direct you to your testimony  
16 again starting on page 5, please, lines 9 through 10.  
17 You state that, "OCC recommends that the allocation  
18 of base distribution revenues to the Residential  
19 consumers be no more than 67 percent." Is that  
20 correct?

21          A.    That's correct.

22          Q.    And your recommendation of a 67 percent  
23 allocation to residential classes, would you agree  
24 that is based upon your calculations in RBF-1, which  
25 is attached to your supplemental testimony?

1           A.    Yes.

2           Q.    And that recommendation of 67 percent,  
3           its goal is to achieve a reduction of approximately  
4           \$3 million in residential base revenue distribution  
5           to the residential classes; is that correct?

6           A.    That's correct.

7           Q.    Aside from reducing residential base  
8           revenue distribution, your recommendation does not  
9           reflect the residential class cost of service; is  
10          that correct?

11          A.    No, it does not.

12          Q.    And 67 percent allocation does not move  
13          the residential classes towards their actual cost of  
14          service for natural gas service; is that correct?

15          A.    That's correct.

16          Q.    And I guess so we are all on the same  
17          page as we talk through this, do you know what the  
18          Company originally proposed for an allocation to  
19          residential consumers through its Application and  
20          subsequent discovery responses?

21          A.    What allocation the Company proposed?

22          Q.    The Company proposed, yes.

23          A.    I think that might be in my attachment to  
24          the direct testimony.

25          Q.    Sure, of course.

1           A.     Exhibit RBF-1 to my direct testimony  
2 shows that the current distribution revenue of  
3 67.77 percent. Staff recommended 67.81 percent. It  
4 doesn't show what the Company -- it was fairly close  
5 to what Staff recommended.

6           Q.     No, that's fine. Thank you, Mr. Fortney.  
7                 Subject to check, would you agree that  
8 the Company's proposed initial allocation for  
9 residential consumers was approximately 68.3 percent?

10          A.     I don't have that in front of me. That  
11 sounds a little high to me.

12          Q.     Okay. Excuse me. So it's your testimony  
13 today you are unaware or you are unsure of what the  
14 Company's proposed initial allocation was for  
15 residential consumers in the Application; is that  
16 correct?

17          A.     Yes. That's not in any of my tables that  
18 are attached to the testimonies.

19          Q.     Okay. Mr. Fortney, did you review -- I  
20 believe you already stated, but did you review the  
21 Company's class cost-of-service study in the  
22 underlying case?

23          A.     Yes.

24          Q.     And do you understand that based on the  
25 Company's class cost-of-service study residential

1 consumers are not currently paying their full cost of  
2 service under the proposed allocation in the  
3 Stipulation?

4 A. I believe that the cost-of-service study  
5 shows they are paying slightly less than their cost  
6 of service.

7 Q. And would you agree that the 67.8 percent  
8 allocation recommended in the Stipulation does not  
9 remove the existing residential subsidy under the  
10 class cost of service?

11 A. Yes, I agree.

12 Q. And you would agree that residential  
13 classes are still being subsidized by nonresidential  
14 classes whether they be at a 67 percent allocation or  
15 a 67.8 percent allocation; is that correct?

16 A. I believe that is correct, yes.

17 Q. And are you aware of what allocation to  
18 the residential classes would have been necessary to  
19 represent the residential classes at a full cost to  
20 serve?

21 A. I did check that real quick and I --  
22 my -- my memory isn't all that great, but I think  
23 when I checked, it would have been around 73 percent  
24 maybe.

25 Q. Thank you, Mr. Fortney. That's right. I



1 have approximately the same.

2 A. That would have been at the revenue  
3 requested in the Application.

4 Q. That's correct, yes. So let's revisit  
5 the differences between your recommended class  
6 allocation for residential and that set forth in the  
7 Stipulation.

8 You recommend a maximum of 67 percent for  
9 that residential class allocation, and the  
10 Stipulation recommends and puts forth a 67.8 percent  
11 allocation to residential customers; is that correct?

12 A. OCC recommends 67 percent; in the  
13 settlement it was 67.83 percent.

14 Q. All right. And would you agree that  
15 that's a difference .8 percent?

16 A. .83 percent.

17 Q. Got it. Mr. Fortney, you answered  
18 discovery requests -- or you assisted with the  
19 answering of discovery requests in this case,  
20 correct?

21 A. Yes.

22 Q. And in those requests you were asked to  
23 calculate the typical bill at 57 Mcf that residential  
24 customers would receive by reducing the allocation to  
25 no more than 67 percent versus the 67.8 percent that

1 was recommended by the Stipulation; is that correct?

2 A. I believe that was one of the questions,  
3 yes.

4 Q. And in response you stated that on a  
5 typical bill at 57 Mcf, residential customers would  
6 experience approximately -- under the 67 percent  
7 allocation, that bill would be approximately \$47.52;  
8 is that correct?

9 A. I don't recall the exact number on that  
10 answer to the interrogatory. It would -- it was -- I  
11 had to estimate the volumetric charge based upon the  
12 reduced revenue.

13 Q. Okay. Would it refresh -- refresh your  
14 recollection to see a version of those responses?

15 A. Unless -- unless the calculation is  
16 there, it's probably not going to help me, but feel  
17 free to show it to me.

18 MS. AKHBARI: Okay. Permission to  
19 approach, your Honor?

20 EXAMINER SANDOR: You may.

21 Q. (By Ms. Akhbari) Okay. Mr. Fortney, I am  
22 handing you -- well, I guess, do you recognize the  
23 document I've just handed you?

24 A. I recognize what it is. I've not seen it  
25 before.

1 Q. Okay.

2 A. This exact --

3 Q. Got it. Okay. So, Mr. Fortney, I have  
4 just handed you OCC's third set of responses and  
5 objections.

6 EXAMINER SANDOR: Do you want to mark  
7 this as an exhibit or no? Just refresh?

8 MS. AKHBARI: Sure, yes. And I will not  
9 recall what number we are on.

10 EXAMINER SANDOR: If you are just  
11 refreshing his memory, you don't have to. I just  
12 wanted to clarify.

13 MS. AKHBARI: Yeah. That's fine. We  
14 don't need to mark it then.

15 EXAMINER SANDOR: All right.

16 Q. (By Ms. Akhbari) Mr. Fortney, if you can  
17 please turn to -- the pages are not numbered  
18 unfortunately, but Interrogatory No. 4 which is on  
19 the seventh page of this document.

20 A. I have Interrogatory No. 4.

21 Q. Great. And if you go to the second half  
22 of Interrogatory No. 4 which runs on to page 8, you  
23 will see the word "Respondent" in bold at the top in  
24 the next page and states "OCC counsel" and "Robert  
25 Fortney." Can you just --

1           A.    Yes.

2           Q.    -- confirm that you were involved in  
3 answering this interrogatory?

4           A.    Uh-huh.

5           Q.    Great.  So, Mr. Fortney, in Interrogatory  
6 No. 4 on page 7, it asks, "Please provide the typical  
7 bill at 57 mcf that residential customers will  
8 experience by reducing the allocation to 'no more  
9 than 67 percent' versus the 67.815 recommended by the  
10 Staff Report."

11                       And there is an objection on page 7, but  
12 if you turn to page 8, it states that, "the typical  
13 bill at 57 mcf that residential consumers will  
14 experience by reducing the allocation to 67 percent  
15 would be \$47.52 monthly, rather than \$47.70 under the  
16 Company's proposed," 67.8 percent allocation; is that  
17 correct?

18           A.    That's correct, yes.

19           Q.    And did you assist in performing this  
20 calculation?

21           A.    I quickly had made the calculation.

22           Q.    Got it.  And would you agree that the  
23 difference between 47.40 -- excuse me, I have that  
24 written incorrectly -- 47.70 and 47.52 is 18 cents?

25           A.    Yes.

1           Q.    And would you agree that 18 cents  
2 represents the difference between the allocation  
3 advocated by OCC and yourself and that which is  
4 contained in the Stipulation?

5           A.    That would be for a customer using 57  
6 Mcf, yes.

7           Q.    Thank you, Mr. Fortney.

8                     Mr. Fortney, I guess you can set that  
9 aside for now. If you could please turn to page 5 of  
10 your supplemental testimony.

11          A.    I'm there.

12          Q.    Great. On lines 5 through 10 on page 5,  
13 you identify several concerns you have with financial  
14 hardship as relates to residential consumers; is that  
15 correct?

16          A.    Yes.

17          Q.    These include COVID, high inflation; is  
18 that right?

19          A.    Yes.

20          Q.    In discussing COVID, can you identify any  
21 customer classes that have not experienced issues or  
22 hardships related to COVID?

23          A.    No. I imagine all customer classes have  
24 been impacted by COVID.

25          Q.    And can you identify any customer classes

1 that have not experienced impacts of increased  
2 inflation?

3 A. No.

4 Q. So just to clarify, commercial and  
5 industrial customers would likewise be harmed by  
6 COVID and high inflation, correct?

7 A. Certainly, yes.

8 Q. Okay. Mr. Fortney, the second prong of  
9 the Commission's three-part test, which I think you  
10 called Criteria 2, which we discussed earlier, it's  
11 whether or not the settlement, as a package, benefits  
12 consumers and the public interest, correct?

13 A. Correct.

14 Q. Just to clarify, in your supplemental  
15 testimony you are only considering the benefits  
16 related to residential customers; is that correct?

17 A. Yes.

18 Q. Mr. Fortney, if you can turn to that next  
19 page, page 6 of your supplemental testimony, and in Q  
20 and A 14.

21 Q and A 14 you are taking issue in  
22 particular with the modified straight fixed variable  
23 rate design advocated by Staff and applied in the  
24 Stipulation; is that correct?

25 A. Can I have that reread, please?

1 Q. I can repeat it if helpful.

2 EXAMINER SANDOR: Go ahead and repeat.

3 Q. I will try to make it simpler, too.

4 Sorry, Mr. Fortney.

5 Q and A 14, in this Q and A you are  
6 taking issue with the modified straight fixed  
7 variable rate design applied in the Stipulation; is  
8 that correct?

9 A. In general, yes.

10 Q. And later on in your testimony, for  
11 example, on page 8, lines 8 through 11, if you want  
12 to take a minute to turn there, that's fine.

13 A. Page 8.

14 Q. Page 8, lines 8 through 11, you state  
15 that the modified straight fixed variable rate design  
16 is an inferior rate design; is that correct?

17 A. From a conservation and energy  
18 standpoint.

19 Q. And OCC has advocated in the past in  
20 prior litigation against straight fixed variable rate  
21 design; is that correct?

22 A. Could you ask that one more time, that  
23 first part?

24 Q. Sure. OCC has advocated in the past  
25 against a straight fixed variable rate design; is

1 that correct?

2 A. Many times.

3 Q. Okay. If you could turn back to page 6,  
4 Mr. Fortney. Of your supplemental testimony, sorry.

5 On lines 20 through 21, you represent  
6 that the fixed delivery charge contained in the  
7 Stipulation is 43.29 for -- for residential classes  
8 other than low-income classes; is that correct?

9 A. Correct.

10 Q. And, Mr. Fortney, were you, or are you,  
11 aware of what the total charges for Rider CEP and the  
12 AMRP Rider were at the time that the underlying case  
13 was filed?

14 A. At the time what -- when what was filed?

15 Q. At the time the case that we are  
16 litigating right now, at the time it was filed.

17 A. I believe that's in the answer above,  
18 question and answer 12, AMRP was \$2.72 and the Rider  
19 CEP was \$9.31.

20 Q. Great. And are you aware of the fact  
21 that at the time this case was filed the -- or at the  
22 current -- presently in the fixed residential  
23 delivery charge is 31.26?

24 A. Yes. That's correct.

25 Q. And subject to a math check again, or if



1 you want to take a moment to do it, would you agree  
2 that the sum total of those three numbers, 31.26  
3 being the fixed delivery charge, 2.72 for AMRP, and  
4 9.31 for CEP, the sum total is 43.29?

5 A. Yes, it is, I agree.

6 Q. And 43.29 is the new proposed fixed  
7 delivery charge, correct?

8 A. Yes.

9 Q. Are you aware of the Company's proposal  
10 for what will happen with CEP and AMRP Riders if the  
11 Stipulation is approved?

12 A. They are zeroed and start over.

13 Q. Okay. So it sounds like you are aware  
14 the Company proposed and the Stipulation would  
15 approve rolling those riders into base rates and  
16 zeroing them out; is that correct?

17 A. One more time, please.

18 Q. Sure. Well, I will say it the way you  
19 said it. It sounds like you would agree that AMRP  
20 and CEP would come back -- begin again at zero as a  
21 result of the Stipulation; is that correct?

22 A. Yes, that's correct.

23 Q. So, Mr. Fortney, would you agree that  
24 base rates may increase as a result of the  
25 Stipulation, but riders would decrease?

1           A.    Yes.

2           Q.    So, Mr. Fortney, if you wouldn't mind  
3 turning to page 8 from your testimony. And in Q and  
4 A 16 and 17 you discuss the process of customers  
5 paying their bills via debit or credit card, correct?

6           A.    Reference -- give me the reference number  
7 again.

8           Q.    Sure. Pages 8 and 9, it starts Q and A  
9 16, and Q and A 17, spills over onto page 9.

10          A.    Question 17 has to do with the  
11 convenience charges, yes.

12          Q.    Got it. So, Mr. Fortney, pursuant to  
13 your testimony in your supplemental testimony, isn't  
14 it correct that you believe that customers utilizing  
15 credit or debt card payments should not have to pay  
16 the fees associated with their preferred method of  
17 payment?

18          A.    That would be OCC's recommendation, yes.

19          Q.    Okay. Is that different than your own  
20 recommendation, Mr. Fortney?

21          A.    No.

22                MS. AKHBARI: Sorry.

23                MR. MICHAEL: That's all right.

24          Q.    On page 9, lines 15 through 19, it  
25 states, "Payments by credit or debit card actually

1 provide a benefit to the Company. In some  
2 industries, (for example, insurance) payment by debit  
3 and credit card is actually preferable to the Company  
4 as it saves the additional expense of processing  
5 checks sent through the mail." Did I read that  
6 correctly?

7 A. Yes.

8 Q. Mr. Fortney, you did not perform any  
9 analysis associated with your statements regarding  
10 potential benefits to the Company of paying  
11 convenience fees on behalf of its customers, correct?

12 A. No.

13 Q. And you did not conduct any analysis in  
14 support of your statement that payment by debit or  
15 credit card is actually preferable to the Company or  
16 any company; is that correct?

17 A. When I pay my insurance payment, I pay a  
18 fee for paying by check, so I would say that paying  
19 by a debit or credit card would be preferable to the  
20 insurance company, yes.

21 Q. I am not sure I can unpack that. Okay.  
22 So but you did not conduct any analysis looking at  
23 Duke Energy's practices, Company customers, as it  
24 relates to whether or not it would be preferable to  
25 the Company to receive payment by debit or credit

1 card; is that correct?

2 A. No. That's correct.

3 Q. All right. Mr. Fortney, let's look at Q  
4 and A 18 of your supplemental testimony. That starts  
5 on page 9.

6 A. Okay.

7 Q. And you state in Q and A 18 that "the  
8 Stipulation should be rejected because it violates  
9 the principles of gradualism," correct?

10 A. Correct.

11 Q. You also state on page 10, lines 6  
12 through 9, that "The residential consumers' rate  
13 increase associated with the Stipulation would be  
14 49-1/2 percent for residential consumers"; is that  
15 correct?

16 A. That's correct.

17 Q. Mr. Fortney, did you review the  
18 supplemental testimony of Sarah Lawler prior to  
19 today?

20 A. I don't believe I did, no.

21 Q. Okay. I don't believe it's up there.

22 MS. AKHBARI: Permission to approach,  
23 your Honor?

24 EXAMINER SANDOR: You may.

25 Q. (By Ms. Akhbari) Mr. Fortney, I'll

1 represent to you that I just handed you a copy of  
2 Company Witness Sarah Lawler's supplemental testimony  
3 in support of the Stipulation. It's probably also  
4 one of the many documents on the desk in front of you  
5 but that's a new version. So, Mr. Fortney, you  
6 stated you have not reviewed this document  
7 previously; is that correct?

8 A. I don't recall reviewing it, no.

9 Q. Okay. So let's turn to page 36 of  
10 Ms. Lawler's testimony, please, Mr. Fortney.

11 EXAMINER SANDOR: I'll just clarify for  
12 the record this is Duke Exhibit 11.

13 MS. AKHBARI: Thank you, your Honor.

14 EXAMINER WALSTRA: What page is that?

15 MS. AKHBARI: Page 36, please.

16 Q. (By Ms. Akhbari) Mr. Fortney, I will  
17 direct your attention to lines 6 through 12 on page  
18 36. And there Ms. Lawler is asked to identify the  
19 rate impacts of the settlement on the average  
20 customer. And you will see on lines 9 through 10,  
21 she states that the average bill impact will be  
22 4.8 percent -- will be a 4.8 percent increase on a  
23 total residential customer bill. Do you see that?

24 A. Yes.

25 Q. Mr. Fortney, you state that the bill

1 impact to residential consumers will increase by more  
2 than 10 times that number; is that correct?

3 A. No. I say on page 10 of my testimony in  
4 opposition, line 6, "At the rates contained in the  
5 Settlement, the Base Distribution charge for a  
6 residential customer using 65 Ccf of gas rises from  
7 \$33.27 to \$49.73, an increase of \$16.46, or  
8 49.5 percent." There is a big difference between the  
9 base distribution charge and the distribution bill.

10 Q. Okay. Mr. Fortney, would you agree that  
11 your analysis that includes that 49-1/2 percent  
12 increase does not account for zeroing out riders as a  
13 result of the Stipulation?

14 A. It does not take those two riders  
15 being -- which are fixed costs being folded into the  
16 base distribution charge. It does not -- the  
17 49 percent does not take that into account.

18 Q. Okay. So you would agree that your  
19 increase is only looking at base rates and doesn't  
20 include any analysis of riders at all; is that  
21 correct?

22 A. Well, in answer to -- on page 10, the  
23 49 percent took into account only the base  
24 distribution charge.

25 Q. And according to Ms. Lawler's testimony,

1 average residential rate increase as a result of the  
2 Stipulation would only be 4.8 percent; is that  
3 correct?

4 A. That's what it says, yes.

5 Q. Okay. And did you perform any analysis  
6 as part of your testimony and your reference to  
7 gradualism in your testimony as it relates to an  
8 overall residential rate increase associated with the  
9 Stipulation?

10 A. Yes. I mean, when I saw the rates  
11 proposed in the Stipulation, I did -- ran some  
12 typical residential bills, yes.

13 Q. So would you agree with the 4.8 percent  
14 contained in Ms. Lawler's testimony?

15 A. I see now that the 4.8 percent increase  
16 is on their total bill which would include fuel so,  
17 yes, that's probably an accurate figure.

18 MS. AKHBARI: Thanks, Mr. Fortney.

19 I don't have any further questions at  
20 this time, your Honor.

21 EXAMINER SANDOR: Any other questions on  
22 cross?

23 Hearing none, any redirect?

24 MR. MICHAEL: No redirect, your Honor.

25 EXAMINER SANDOR: Okay. Thank you,

1 Mr. Fortney.

2 THE WITNESS: Thank you.

3 EXAMINER SANDOR: All right. Any  
4 objections to OCC Exhibits 4 or 5 being admitted into  
5 evidence?

6 MS. AKHBARI: No objection, your Honor.

7 EXAMINER SANDOR: Hearing none,  
8 Exhibits 4 and 5 are admitted.

9 (EXHIBITS ADMITTED INTO EVIDENCE.)

10 EXAMINER SANDOR: OCC, you may call your  
11 next witness.

12 MR. MICHAEL: Your Honor, OCC calls  
13 Mr. Joseph P. Buckley.

14 EXAMINER WALSTRA: Raise your right hand.  
15 (Witness sworn.)

16 EXAMINER WALSTRA: Thank you. Take a  
17 seat.

18 MR. MICHAEL: Permission to approach?

19 EXAMINER WALSTRA: You may.

20 MR. MICHAEL: Your Honor, I would like to  
21 have marked as OCC Exhibit 6, Mr. Buckley's direct  
22 testimony, and as OCC Exhibit 7, Mr. Buckley's  
23 testimony in opposition to the settlement.

24 EXAMINER WALSTRA: So marked.

25 (EXHIBITS MARKED FOR IDENTIFICATION.)



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JOSEPH P. BUCKLEY

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

DIRECT EXAMINATION

By Mr. Michael:

Q. Would you please state your name?

A. Joseph P. Buckley.

Q. And where are you employed, Mr. Buckley?

A. The Ohio Consumers' Counsel.

EXAMINER WALSTRA: Mr. Buckley, turn on the button.

THE WITNESS: Okay.

Q. (By Mr. Michael) And you have before you two documents. One was marked as OCC Exhibit 6, and one was marked as OCC Exhibit 7. Can you please identify OCC Exhibit 6?

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

Q. And was that testimony prepared by or for your -- at your direction, by you or at your direction?

A. It was.

Q. And can you identify OCC Exhibit 7, please?

A. That's testimony in opposition of the

1 Stipulation.

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

4 A. It was.

5 Q. And, Mr. Buckley, do you have any edits  
6 or corrections to either one of those documents?

7 A. I do. On page 9 of the opposition to the  
8 Stipulation, at the bottom of the page, the ROE and  
9 cost of debt numbers should be reversed. They are in  
10 the wrong columns.

11 Q. Mr. Buckley, could you spell that out for  
12 my edification exactly what needs to go where,  
13 please?

14 A. Yes. So the 4.07 should be under the  
15 "Cost of Debt" column and the 9.45 should be under  
16 the "ROE" column.

17 Q. Thank you, Mr. Buckley. Mr. Buckley, if  
18 I were to ask you the questions reflected in OCC  
19 Exhibits 6 and 7 today with that edit, would your  
20 answers be the same?

21 A. They would.

22 MR. MICHAEL: Your Honors, I move for the  
23 admission of OCC Exhibits 6 and 7, subject to  
24 cross-examination.

25 EXAMINER WALSTRA: Thank you.

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Duke?

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CROSS-EXAMINATION

By Ms. Brama:

Q. Hi, Mr. Buckley. Liz Brama, I am with Taft representing Duke in this proceeding. I am going to be asking you some questions today.

First of all, just as a clarifying question, as I was looking at your testimony on -- let's look at your direct testimony page 5, if you have it there.

A. Yes.

Q. There on line 20, you talk about an average of 9.52 percent ROE in Staff's calculations in the Staff Report?

A. Yes.

Q. We just talked about a separate place in your testimony where you refer to 9.54 percent.

A. Yes.

Q. So is 9.54 percent actually what's in the Staff Report?

A. Correct.

Q. Okay. So really what -- and you understand that, of course, that the Stipulation specifies an ROE of 9.60 percent?

1           A.    Yes.

2           Q.    Okay.  So we are talking about a  
3 difference in your testimony versus the Stipulation  
4 of 8 basis points; is that right?  Or 6 basis points  
5 actually.

6           A.    6 basis points.

7           Q.    Yes, 6 basis points, thank you.  So going  
8 back to your direct testimony, also on page 5, you  
9 noted that the average ROE granted nationwide during  
10 the period from January 1, 2022, to September 30,  
11 2022, was 9.42 percent, right?

12          A.    Correct.

13          Q.    And this focused on past national average  
14 ROEs for gas cases, not any forward-looking models,  
15 correct?

16          A.    I think when people are setting rates of  
17 return, they are looking forward in -- when they set  
18 them.  So I -- that was the number that was agreed to  
19 at that point in time, but it is a forward-looking  
20 number.

21          Q.    Okay.  That's fair.  Thank you.  You  
22 didn't run any separate models, DCF models, CAPM  
23 models, as presented in your testimony, right?

24          A.    Not that were presented in my testimony  
25 but I ran --

1 Q. Please go ahead.

2 A. I ran models to verify -- to make sure I  
3 was comfortable with what the Staff was coming up  
4 with.

5 Q. Okay. But you didn't present those as  
6 evidence in this proceeding in support of your  
7 testimony?

8 A. I did not.

9 Q. Okay. And so what you are looking at  
10 here are averages that were decided in past  
11 Commission cases, or average ROEs that were decided  
12 in past Commission cases across the country based on  
13 whatever models were accepted in those various  
14 proceedings; is that fair?

15 A. Correct.

16 Q. Okay. Now, both Staff and the Company  
17 did run several models such as DCF and CAPM models to  
18 determine an appropriate ROE; is that right?

19 A. Correct.

20 Q. And they presented those models in either  
21 the Staff Report or in the Company's testimony.

22 A. Correct.

23 Q. Okay. And can we -- can we agree that  
24 the 9.60 percent ROE is within the range of the  
25 9.15 percent and 9.63 percent in the Staff Report's

1 CAPM and DCF models?

2 A. Yeah. And I think I addressed this in  
3 other places in my testimony. The ROE gets a lot of  
4 headlines, but it's the rate of return that's really  
5 important. In my testimony I am talking about more  
6 that the capital structure and the resulting rate of  
7 return and not just the ROE.

8 Q. And I understand that, and we'll get to  
9 that, but the ROE is a component of the rate of  
10 return, right? We just showed the math in the  
11 correction you made to your testimony to get to the  
12 overall rate of return.

13 A. Yeah. It's part of it, but it's not the  
14 only part.

15 Q. I don't disagree with you, but we are  
16 just talking about this part now so. So I guess I  
17 just wanted to make sure, do you need to look at the  
18 Staff Report to confirm that the 9.6 percent ROE in  
19 the Stipulation is within the 9.15 percent and  
20 9.63 percent range in the Staff's Report?

21 A. I do not.

22 Q. You don't know?

23 A. Did you --

24 Q. Or you disagree?

25 THE WITNESS: Could I have the question

1 reread, please?

2 (Record read.)

3 A. My answer to that question is no.

4 Q. And is your answer no because you do not  
5 need to look at the Staff Report to confirm that?

6 A. Could I have the question reread again,  
7 please?

8 Q. Let me just rephrase the question. My  
9 question to you, Mr. Buckley, is isn't it true that  
10 9.60 percent is within the range of the 9.15 percent  
11 and 9.63 percent in the Staff Report's CAPM and DCF  
12 models?

13 A. Yes.

14 Q. Okay. And more than that, that 9.60  
15 percent ROE in the Stipulation is within Staff's  
16 reasonable cost of common equity range recommendation  
17 of 9.03 and 10.40 percent, right?

18 A. Correct.

19 Q. Okay. Now, the data in your testimony  
20 ran through -- for ROE in particular ran through  
21 September 3, 2022, for your direct testimony; is that  
22 right?

23 A. Correct.

24 Q. And your direct testimony was filed on  
25 April 28 of 2023?

1           A.     Correct.

2           Q.     And your supplemental direct was filed on  
3 May 12 of 2023; is that right?

4           A.     Correct.

5           Q.     And you did not update any of the data  
6 points in your supplemental direct testimony to show,  
7 for example, year-end 2022 data, did you?

8           A.     I considered that, and I have been doing  
9 rate of return for a while, and one of the things  
10 that is difficult for me is the rate of return will  
11 be updated or not updated, but the other numbers  
12 won't, so I try -- unless there is a large  
13 discrepancy what -- between what was happening let's  
14 say six months ago and what's happening now, I try  
15 not to update it. So I did not, but I did look at  
16 the changes, and the changes were not that great, so  
17 I did not update it.

18          Q.     Okay.

19                 MS. BRAMA: Your Honors, may we approach?

20                 EXAMINER WALSTRA: You may.

21                 MS. BRAMA: I would like to have this  
22 document premarked as I believe we were up to Duke  
23 Exhibit 12.

24                 EXAMINER WALSTRA: So marked.

25                         (EXHIBIT MARKED FOR IDENTIFICATION.)



1 Q. (By Ms. Brama) So, Mr. Buckley, I am  
2 showing you what's been premarked as Duke Exhibit 12  
3 in this proceeding. You see the title of this is the  
4 "Fourth Set of Responses and Objections to Duke  
5 Energy Ohio, Inc.'s Fourth Set of Interrogatories and  
6 Requests for Production of Documents Propounded to  
7 the Office of the Ohio Consumers' Counsel by Office  
8 of the Ohio Consumers' Counsel"; is that right?

9 A. I believe so, yes.

10 Q. And do you see here that we have three  
11 discovery requests and responses in this set,  
12 question and response 8, 9, and 10 to this fourth  
13 set?

14 A. I do.

15 Q. Is that right? And that's your name as  
16 one of the Respondents to each one of these three  
17 discovery responses in this set?

18 A. Would you point me to that?

19 Q. Certainly. On -- so the pages aren't  
20 numbered here because we were trying to limit this to  
21 those that were your responses, but obviously we have  
22 the cover page, and at the top of what is the third  
23 page, the end of question 8, do you see your name  
24 there, Joe Buckley, Respondent?

25 A. I don't.

1 Q. Okay.

2 A. I'm sorry.

3 EXAMINER WALSTRA: Next page at the top.

4 Q. At the top of the page.

5 A. Okay. I see it.

6 Q. Below that you see question 9?

7 A. Yes.

8 Q. And the response is at the bottom of the  
9 page, and if you turn to the next page, you see your  
10 name as the Respondent to question 9 at the top of  
11 the page?

12 A. Yes.

13 Q. And then below that is question 10 with  
14 the response and your name as the Respondent on the  
15 bottom of the page.

16 A. Correct.

17 Q. And these are your responses to the  
18 Company's Data Requests Set Four, questions 8, 9, 10?

19 A. Correct.

20 Q. Okay. So I am going to have you look at  
21 question 8, the first of the three here.

22 A. Okay.

23 Q. And do you see in subpart C of question 8  
24 you were requested "Please explain why Mr. Buckley  
25 chose to file rebuttal testimony or testimony

1 opposing the Stipulation in this case dated April 28,  
2 2023, regarding a nationwide average ROE that only  
3 includes data through September 30, 2022." And if we  
4 turn the page to -- we can see your answer, the part  
5 C, the response there was simply "This was the most  
6 recent data available when Mr. Buckley analyzed  
7 Duke's proposed rates of return," correct?

8 A. Correct.

9 Q. Now, you chose, therefore, not to update  
10 your analysis to specifically assess the  
11 reasonableness of the stipulated ROE, right?

12 A. So it might be more correct to say first  
13 analyzed. But that was -- when I did my analysis and  
14 wrote my initial direct, that was the most current  
15 data that had been published.

16 Q. Okay. And you say that data from  
17 September 2022 was the most recent data available for  
18 your testimony that was filed in May of 2023; is that  
19 correct?

20 A. As I stated earlier, when I did my  
21 initial analysis, that was the most recent data that  
22 was available and that's what I used as -- go ahead.

23 Q. No. That's okay. Finish your answer.

24 A. No. Go ahead.

25 Q. Okay. Are you aware, Mr. Buckley, or

1 maybe I should just ask were you here this morning  
2 when Company Witness Mr. Coyne testified?

3 A. I was not.

4 Q. So you did not see that he was able to  
5 point to data for Q1 of 2023 and year-end 2022 based  
6 on a report issued in April of 2023?

7 A. As I stated earlier, when I did my  
8 initial analysis, that was the only data that was  
9 available. Obviously -- I'm struggling with you  
10 interrupting me with saying uh-huh and things like  
11 that so if -- I would request that you let me finish  
12 my answer without interruption.

13 Q. That's fine. I did not mean to interrupt  
14 you. I am just trying to acknowledge that you are --  
15 that we are having a dialogue here. Do you need --  
16 do you need to continue the answer? I can have the  
17 court reporter read it back.

18 A. That would be preferable.

19 MS. BRAMA: Would you mind, please,  
20 reading back the question?

21 (Record read.)

22 A. I was not here for that, no.

23 Q. Okay. Do you have information about what  
24 that data would have shown about the average for  
25 natural gas utilities as of year-end 2022?

1           A.    I did look at the exhibits that have been  
2           filed in this case and in this hearing.  I think it  
3           was Exhibit 7 that he was referring to, and I have  
4           that with me.

5           Q.    Okay.  So you do have the data available  
6           as of year-end 2022 coinciding with the end of the  
7           test year?

8           A.    I have it now, but I did not have that  
9           data when I initially ran my analysis.

10          Q.    Okay.  Let's turn to page 8 of your  
11          supplemental direct testimony.

12          A.    Okay.

13          Q.    Are you there?

14          A.    I am.

15          Q.    Okay.  On page 8 of your supplemental  
16          direct testimony, and this same information appears  
17          in your direct testimony, you say on line 3 "The  
18          National Average capital structure for gas utilities  
19          in the first half of 2022 according to S&P Market  
20          Intelligence Focus is 49.00 percent debt and 51.00  
21          percent equity," correct?

22          A.    Correct.

23          Q.    And you go on to say "The average capital  
24          structure of Staff Comparable companies is  
25          57.02 percent debt and 42.95 percent equity as shown

1 below," right?

2 A. Correct.

3 Q. Okay. And --

4 A. Can I? There are some rounding errors.  
5 That's why it doesn't add up to 100 but I think, in  
6 general, that's correct.

7 Q. I am not going to get after you for  
8 rounding errors. That's not a problem. So,  
9 Mr. Buckley, this data that is -- that forms the  
10 basis for the national average for gas utilities that  
11 you reference in the first half of 2022 comes from  
12 your schedule JPB-02; is that right?

13 A. Yes.

14 Q. Okay. And just to clarify, your JPB-02  
15 actually includes data through the first  
16 three-quarters of 2022, not the first half of '22; is  
17 that right?

18 A. Yes.

19 Q. Okay. So I am going to refer you back  
20 then to Duke Exhibit 12 and your discovery response  
21 No. 9.

22 A. Hang on a second. Yes.

23 Q. Okay. And in subpart A, you were asked  
24 that -- that you identify or provide the underlying  
25 data and calculation resulting in the 49 percent

1 average debt ratio that we were just talking about,  
2 right?

3 A. Correct.

4 Q. Okay. Now, in response to subpart -- or  
5 in subpart B of this question, you were asked for the  
6 comparable average equity ratio granted nationwide  
7 for the period from January 1, 2022, through  
8 April 30, 2023, or the latest date for which data is  
9 available. Do you see that?

10 A. I do.

11 Q. And your response was simply "This  
12 information has not been published"; is that right?

13 A. Yes.

14 Q. But, in fact, as of the date of these  
15 responses, data past September of 2022 had been  
16 published, had it not?

17 A. When I conducted my analysis, it had not  
18 been published. Subsequently there -- unfortunately  
19 S&P does not publish the same report all the time.  
20 And, in fact, the report that was listed in I think  
21 it's Exhibit 7 is not the exact same report that I  
22 used. They publish one that's done -- it doesn't  
23 follow a typical schedule. That's the one I was  
24 referring to and that's the one I used. It has more  
25 data on rates of return and not just return on

1 equity.

2 Q. And so my question for you, though, is  
3 the question in discovery asked you to provide  
4 information for the data for which -- the latest date  
5 for which data is available. Are you suggesting that  
6 as of the time you provided this discovery response,  
7 the 17th of May of 2023, the latest data available  
8 was from September of 2022?

9 A. That was the latest date that I found  
10 rate of return information. Maybe not -- there is  
11 some ROE information that has been updated but for  
12 rate of return, I don't believe that information was  
13 available.

14 Q. And -- are you done? I didn't want to  
15 interrupt.

16 A. I am.

17 Q. The question in this discovery though was  
18 about comparable average equity ratios granted  
19 nationwide, right?

20 A. Yes.

21 Q. And that data was available through the  
22 end of 2022 at the time of this discovery response.

23 A. Just the -- just the -- like I said  
24 earlier, the data that I used in my analysis was not  
25 available. The equity and debt numbers probably were



1 available.

2 Q. Could I ask you to look at Exhibit 7? Do  
3 you have it there?

4 A. I do.

5 Q. Would you turn to Table 2, please.

6 A. Do you know what page that's on by  
7 chance?

8 Q. I believe it's the -- this is a  
9 double-sided printed document.

10 A. The page number is at the bottom.

11 Q. Yeah. It says Table 2 in the upper left  
12 corner of the -- of Exhibit 7, so it's about the  
13 third page, third piece of paper.

14 MS. BRAMA: May I approach, your Honors?  
15 I can just provide it.

16 EXAMINER WALSTRA: That would be great.  
17 I don't know if he has it up there.

18 A. Thank you.

19 Q. (By Ms. Brama) Did you find Table 2 on  
20 page 7?

21 A. I did.

22 Q. Okay. On Exhibit 7 -- excuse me, Table 2  
23 of Exhibit 7. So, Mr. Buckley, if we look at Table 2  
24 of Exhibit 7.

25 A. Yes.

1 Q. You can see ROR percent data through the  
2 first quarter of 2023, correct?

3 A. I do, yes.

4 Q. And there is also two columns to the  
5 right "ROE Percent Data Through First Quarter of  
6 2023."

7 A. Correct.

8 Q. And there is also a "Common Equity to  
9 Total Capital Percentages" two columns further to the  
10 right also on the same page through the first quarter  
11 of '23.

12 A. Correct.

13 MS. BRAMA: I think I understand counsel  
14 would like a break, so we are happy to take one now,  
15 if that's acceptable to your Honors.

16 EXAMINER WALSTRA: Sure. Go off the  
17 record.

18 (Recess taken.)

19 EXAMINER WALSTRA: We will go back on the  
20 record then, and you can resume.

21 MS. BRAMA: Thank you, your Honors.

22 Q. (By Ms. Brama) Mr. Buckley, I -- we want  
23 to take you back to your supplemental direct at page  
24 8.

25 And before I ask you the next question, I

1 just want to confirm, you spoke earlier about the  
2 overall cost of capital and overall rate of return  
3 being your primary focus. And we've talked about the  
4 equity ratio and a little bit about capital  
5 structure. You have not proposed any changes to the  
6 Company's cost of debt; is that right?

7 A. I have not.

8 Q. Okay. So the other components of the  
9 rate of return then are the cost of equity and the  
10 capital structure.

11 A. Correct.

12 Q. Okay. So let's talk a little bit about  
13 capital structure -- more, I should say, about  
14 capital structure.

15 So on page 8 of your supplemental direct  
16 testimony, as we talked about before the break, you  
17 reference a 49 percent debt ratio for the national  
18 average for gas utilities in the first half of 2022,  
19 but then reference a 57.02 percent debt ratio for  
20 what you call Staff comparable companies as shown in  
21 your table; is that right?

22 A. Correct.

23 Q. Okay. And Staff used its comparable  
24 companies for purposes of establishing the cost of  
25 equity; isn't that right?

1           A.    Yes.

2           Q.    Okay.  And the Staff Report didn't speak  
3 to these comparable companies, or what you call Staff  
4 comparables, for purposes of establishing an  
5 appropriate capital structure for Duke Energy Ohio,  
6 did it?

7           A.    They did not.  The reason that I used the  
8 average of the Staff comparables is to show that an  
9 unbiased -- at least unbiased by me group of  
10 companies, what their capital structure would look  
11 like.

12          Q.    Okay.  So let's talk about those  
13 companies.  These companies that are listed on page 8  
14 of your supplemental direct in this table, the table  
15 starts with AVANGRID Ticker AGR, these are  
16 consolidated utility holding companies, correct?

17          A.    I believe they are holding companies.

18          Q.    Okay.  And the debt and equity ratios  
19 illustrated in your table are the consolidated  
20 capital structure for the holding companies; is that  
21 right?

22          A.    I believe so, yes.

23          Q.    And so when we are talking about holding  
24 company capital structures, we are talking about  
25 entities that operate in multiple-state jurisdictions

1 potentially; is that right?

2 A. Yes, but they are also the companies that  
3 issue common equity.

4 Q. And some of these the utility operating  
5 companies within these overall consolidated holding  
6 companies issue their own debt at the utility  
7 operating company level, right? If you know.

8 A. Could you repeat the question?

9 Q. Sure. In the case of many of these  
10 utility holding companies, it is the regulated  
11 utility subsidiary or subsidiaries that each issue  
12 their own debt in the marketplace; isn't that right?

13 A. So in -- most holding companies will  
14 issue debt and the subsidiary, such as Duke Energy  
15 parent would issue debt, Duke Energy Ohio could also  
16 issue debt. I think that's what you are asking.

17 Q. That's correct.

18 A. Okay.

19 Q. And the state commissions in the various  
20 states where these utility operating companies  
21 operate have authorization to issue -- or have  
22 jurisdiction to issue an authorized equity ratio only  
23 for the operating utility in their jurisdiction,  
24 right?

25 A. I don't know. I haven't gotten that

1 granular in how the other jurisdictions work.

2 Q. Okay. And in order to look at the  
3 comparability of holding companies' equity and debt  
4 ratios to utility operating equity and debt ratios,  
5 we would have to do an analysis of accounting  
6 differences such as the effects of purchase  
7 accounting on the holding company, wouldn't we?

8 A. One of your previous employees promised  
9 me I would never have to deal with purchase  
10 accounting again but, yes, that is correct.

11 Q. Okay. Now, when we look at the companies  
12 here and the holding company structures, isn't it  
13 also correct that a number of these companies have  
14 unregulated operations within their holding company  
15 umbrella?

16 A. I don't know.

17 Q. Okay.

18 A. I don't know the percentage. I know some  
19 of them do, but I don't know the percentage, whether  
20 it's the majority or not.

21 Q. Fair enough. So let's take, for example,  
22 New Jersey Resources, which you report to have a  
23 37.16 percent equity ratio and a 62.84 percent  
24 capital structure as part of this average.

25 Are you aware that New Jersey Resources,

1 in addition to its utility operations, has separate  
2 unregulated business segments for clean energy  
3 ventures, energy services, midstream, and home  
4 services?

5 A. I am not aware of that.

6 Q. Okay. Did you look at Mr. Coyne's direct  
7 testimony which presented the equity ratio for New  
8 Jersey Resources' regulated gas utility segment?

9 A. I read his testimony. I don't recall --  
10 I don't recall that piece of it.

11 Q. Would it surprise you if his Attachment  
12 JMC-10 indicated the New Jersey Resources' gas equity  
13 was 55.45 percent?

14 A. Subject to check, would it surprise me?  
15 I don't know how they're constructed or what -- what  
16 their situation is like. It could be that they had a  
17 major impairment that caused their equity levels to  
18 go down. So it is a number. That's about as far as  
19 I can say.

20 Q. So as we sit here today, you have no  
21 reason to dispute that New Jersey Resources' natural  
22 gas utility subsidiary has an equity ratio of  
23 54.45 percent?

24 A. No, I have no reason to dispute that.

25 Q. Okay. I would like to last turn to your

1 direct testimony at page 11, I believe. There isn't  
2 a page 11. It must be your supplemental. My  
3 apologies. It is your supplemental testimony  
4 opposing the Stipulation on page 11.

5 A. Yes.

6 Q. I believe the same information appears in  
7 your direct just on a different page number. You  
8 state on page 11, starting at line 3, "Based on the  
9 facts stated in my testimony Duke-Ohio should not  
10 have any trouble accessing capital markets."

11 Mr. Buckley, have you ever had to raise  
12 capital for a regulated gas utility?

13 A. I think the obvious answer to that is I  
14 have not, but I have monitored how companies raise --  
15 how regulated utilities raise capital for a number of  
16 years.

17 Q. Okay. And then you go on to cite a Wall  
18 Street Journal article from December 29, 2022, which  
19 stated that "Utilities (and Healthcare) outperformed  
20 S&P 500 this year by the widest margin in decades and  
21 that 'with that type of volatility expected again,  
22 companies that provide more of a cash-flow buffer in  
23 their returns look attractive.'"

24 Did I quote that properly?

25 A. I believe you read my testimony



1 correctly, yes.

2 Q. Okay. Isn't it true, Mr. Buckley, that  
3 utilities no longer outperformed the S&P 500 in the  
4 first quarter of 2023?

5 A. I don't -- I looked at that the other  
6 day, and I can't remember. I can't answer that  
7 question. I don't know.

8 MS. BRAMA: Okay. Your Honors, may we  
9 approach the witness?

10 EXAMINER WALSTRA: You may.

11 MS. BRAMA: I would like to have this  
12 document premarked as Duke Exhibit 13, I believe.

13 EXAMINER WALSTRA: So marked.

14 (EXHIBIT MARKED FOR IDENTIFICATION.)

15 Q. (By Ms. Brama) So, Mr. Buckley, I am  
16 showing you an article from S&P Capital IQ. Do you  
17 see that in the upper left corner?

18 A. Yes.

19 Q. And S&P Capital IQ is another division of  
20 the same entity you used for your ROE and cap  
21 structure and ROR national average data, right?

22 A. Correct.

23 Q. And this article is dated April 14, 2023;  
24 is that right?

25 A. Correct.

1 Q. And when we look at this article, the  
2 title of it, "Worst-performing utility stocks in Q1  
3 include large-caps Dominion, NexyEra, Duke," do you  
4 see that?

5 A. I do, yes.

6 Q. And isn't it true, as we look at the  
7 chart in the middle of the first page of this  
8 document -- document, that the Dow Jones utility  
9 index is now underperforming the S&P 500 through the  
10 end of the first quarter of 2023?

11 A. For the first quarter, yes.

12 Q. Yes. As you said, as of December 30,  
13 2022, this article shows that it was -- utilities  
14 were largely in line with the S&P 500, right?

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

17 Q. That's okay. We don't need to go back  
18 there.

19 My next question though is, isn't the S&P  
20 500 utilities also underperforming the S&P 500 in  
21 2023, in the first quarter?

22 A. In the first quarter, yes.

23 Q. Yeah. And the S&P 500 Electric Utilities  
24 Sub-Industry Index is underperforming the S&P 500; is  
25 that correct?

1           A.     That's right.

2           Q.     And we don't have a separate line item  
3 for gas here, right?

4           A.     We do not, no.

5                     Again, I think you made the distinction  
6 earlier that we are talking about parent companies  
7 and operating companies, and this is parent companies  
8 that we are talking about now, not operating  
9 companies like Duke Energy Ohio.

10          Q.     So when we looked at your testimony and  
11 you said on page 11, Mr. Buckley, that the Wall  
12 Street Journal stated that utilities outperformed the  
13 S&P 500, you also were referring to consolidated  
14 holding companies, correct?

15          A.     Oh, I was, yes.

16          Q.     Okay. So what we are seeing here is a  
17 change where utility indices are well below the S&P  
18 500 in the first quarter of 2023?

19          A.     For the first quarter, yes.

20          Q.     Okay. And among utilities, Duke Energy  
21 Corp. was among one of those performers who's  
22 struggling the most recording quarter over quarter  
23 declines of more than 6 percent; isn't that right?

24          A.     I believe that -- that is what the  
25 article states.

1 MS. BRAMA: Thank you. Those are all the  
2 questions I have.

3 EXAMINER WALSTRA: Thank you.  
4 Any questions? Staff?  
5 Any redirect?

6 MR. MICHAEL: No, sir.

7 EXAMINER WALSTRA: Thank you,  
8 Mr. Buckley.

9 THE WITNESS: Thank you.

10 EXAMINER WALSTRA: Any objections to the  
11 admission of OCC Exhibits 6 and 7?

12 MS. BRAMA: No objections.

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

15 (EXHIBITS ADMITTED INTO EVIDENCE.)

16 EXAMINER WALSTRA: Duke, do you want to  
17 move?

18 MS. BRAMA: The Company would like to  
19 move the admission of Exhibits 12 and 13, Duke  
20 Exhibits 12 and 13.

21 EXAMINER WALSTRA: Any objections?

22 MR. MICHAEL: No, your Honor.

23 EXAMINER WALSTRA: 12 and 13 will be  
24 admitted.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1 EXAMINER WALSTRA: Call your next  
2 witness.

3 MR. MICHAEL: Your Honor, OCC calls Kerry  
4 Adkins.

5 EXAMINER WALSTRA: Raise your right hand.  
6 (Witness sworn.)

7 EXAMINER WALSTRA: Thank you. Please  
8 take a seat.

9 MR. MICHAEL: May I approach, your Honor?

10 EXAMINER WALSTRA: You may.

11 MR. MICHAEL: Your Honor, I would like to  
12 have marked as OCC Exhibit 8, the direct testimony of  
13 Kerry Adkins, and marked as OCC Exhibit 9, the  
14 Consumer Protection Testimony of Kerry J. Adkins in  
15 Opposition to the Stipulation and Recommendation.

16 EXAMINER WALSTRA: So marked.

17 (EXHIBITS MARKED FOR IDENTIFICATION.)

18 - - -

19 KERRY J. ADKINS

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

22 DIRECT EXAMINATION

23 By Mr. Michael:

24 Q. Would you state your name, please?

25 A. Kerry Adkins.

1 Q. And, Mr. Adkins, where are you employed?

2 A. I'm employed by the Office of the Ohio  
3 Consumers' Counsel.

4 Q. And, Mr. Adkins, you have before you what  
5 was previously marked as OCC Exhibit 8. Do you see  
6 that document?

7 A. Yes.

8 Q. And can you identify that document,  
9 please?

10 A. That is my direct testimony that was  
11 filed in this case on April 28, 2023.

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

14 A. Yes.

15 Q. And do you have any corrections to that  
16 testimony?

17 A. No.

18 Q. And, Mr. Adkins, can you please identify  
19 what was previously marked as OCC Exhibit 9?

20 A. That was my testimony in opposition to  
21 the Stipulation and Recommendation in this case that  
22 was filed on May 12, 2023.

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

25 A. Yes.

1 Q. And do you have any corrections to that  
2 testimony?

3 A. No.

4 Q. And, Mr. Adkins, if I were to ask you the  
5 questions reflected in the testimony marked OCC  
6 Exhibit 8 and OCC Exhibit 9, would your answers be  
7 the same?

8 A. Yes.

9 MR. MICHAEL: Your Honors, I move for the  
10 admission of OCC Exhibits 8 and 9, subject to  
11 cross-examination.

12 EXAMINER WALSTRA: Thank you.  
13 Duke?

14 MS. VERHALEN: Thank you, your Honor.

15 - - -

16 CROSS-EXAMINATION

17 By Ms. Verhalen:

18 Q. Good afternoon, Mr. Adkins.

19 A. Good afternoon.

20 Q. Kodi Verhalen with the Taft law firm on  
21 behalf of Duke Energy. Nice to meet you.

22 A. And you as well.

23 Q. Let's start -- before we get too far  
24 here, let's start with your supplemental testimony,  
25 OCC Exhibit 9.

1 A. Okay.

2 Q. Do you have a copy of that handy?

3 A. I do.

4 Q. Could you take a look at the list of  
5 attachments and exhibits you have in that document,  
6 please. Let me know once you are there. It's in the  
7 table of contents.

8 A. Okay.

9 Q. And here you list three attachments to  
10 your testimony; is that correct?

11 A. Yes.

12 Q. And KG -- excuse me. KJA-01 is a list of  
13 your testimony filed at the PUCO, correct?

14 A. Yes, prior testimony that I have filed at  
15 the PUCO, yes.

16 Q. Thank you for that clarification. And  
17 KJA-02 is a PUCO maintained map of natural gas  
18 distribution service providers in Ohio, correct?

19 A. It is a map that I downloaded from the  
20 Commission's website that indicates, yes, service  
21 areas served by the various gas companies, yes.

22 Q. And KJA-03 is the ODSA census data,  
23 correct?

24 A. The latest data I was able to find, yes.

25 Q. Okay. And then your supplemental



1 testimony includes over 350 pages of documentation  
2 that's not identified as an attachment and contains  
3 no header. Can you explain why that is?

4 A. The --

5 MR. MICHAEL: I am going to object, your  
6 Honor. I think -- point of clarification, I think  
7 they are marked as attachments when they are referred  
8 to in the testimony. I don't know if counsel was  
9 referring simply to the table of contents or not.

10 MS. VERHALEN: Your Honor, I am trying to  
11 clarify his testimony and what's been submitted for  
12 purposes of future reference, for purposes of  
13 briefing, et cetera.

14 Right now, we have 350 pages that have no  
15 headers and no page numbers associated with them, and  
16 so I am just trying to establish what these documents  
17 are, and perhaps did they need a header.

18 EXAMINER WALSTRA: Overruled. Go ahead.

19 A. Each -- each of the additional  
20 attachments to my testimony are indicated in various  
21 footnotes throughout the testimony that they are  
22 attachments and explains what they are.

23 Q. (By Ms. Verhalen) Okay. So the  
24 references to each of those is merely the  
25 parentheticals that say "attached"; you are not

1 providing any additional point of reference for the  
2 reader to find those?

3 MR. MICHAEL: Objection, vague.

4 EXAMINER WALSTRA: Overruled.

5 A. In each instance I believe I've been  
6 clear in the footnote what the documents are, and  
7 where I refer to them or where I quote from them  
8 is -- is self-explanatory within the testimony.

9 Q. (By Ms. Verhalen) Okay. Let's just take  
10 a quick look then at one of those examples. If you  
11 look at footnote 7.

12 A. On which page, please?

13 Q. I'm sorry, not footnote 7, my apologies.  
14 Footnote 32 on page 18 of your testimony, your  
15 supplemental testimony.

16 A. You said footnote 32?

17 Q. I did, yes. And that footnote reads,  
18 "Direct testimony of Sarah Lawler (April 27, 2022)  
19 (attached) at 3-4," correct?

20 A. Yes. That's what it says.

21 Q. And so looking at this attachment of 350  
22 pages, where in there can I find that?

23 A. As I leaf through it, I don't see Sarah's  
24 testimony here, but it should be if it wasn't.

25 Q. Okay. And is there any reason that these

1 weren't marked as attachments, Mr. Adkins?

2 A. They were indicated as attachments within  
3 the testimony. Beyond that I don't know why they  
4 were not specifically identified one after another.

5 Q. Okay. Thank you. Why don't we go back  
6 to the beginning of your supplemental testimony, so  
7 same document, just back a few pages.

8 And at page 4 of your testimony, you  
9 provide a summary of what the Commission would use to  
10 evaluate a stipulation, correct?

11 A. My understanding of the Commission's  
12 three-part test, yes.

13 Q. And you would agree that those are three  
14 criteria that the Commission uses to evaluate a  
15 stipulation and potentially adopt it, correct?

16 A. Yes.

17 Q. And what are those three criteria? You  
18 don't need to read them verbatim; your summary of  
19 those is fine.

20 A. Then I would just point to as I summarize  
21 them in my supplemental direct testimony.

22 Q. Fair enough, Mr. Adkins.

23 So let's go back to page 3 of your  
24 testimony. And starting at line 17, you list "it  
25 does not benefit" -- 17, excuse me, "it does not

1 benefit consumers, is not in the public interest,  
2 violates important regulatory principles, and fails  
3 to offer sufficient consumer protection."

4           Where does that fourth item fall within  
5 those three criteria?

6           A.    I believe it's subsumed in both the  
7 second and probably all three of the criteria, the  
8 idea that -- that -- when you say fails to provide  
9 sufficient consumer protection, that's the -- I mean  
10 all rates in Ohio have to be just and reasonable.  
11 This is a rate case.

12           So I think it's subsumed in the entirety  
13 of all three principles that the rates should be just  
14 and reasonable and fair.

15           Q.    Okay.  So you are not adding a fourth  
16 criteria; this is just a restatement of 2 and 3?

17           A.    I believe it -- as I said, I believe it's  
18 subsumed within probably all three.

19           Q.    Thank you.  Let's move on in your  
20 testimony, again, same piece of testimony,  
21 supplemental testimony, the OCC is objecting to  
22 including the net book value of the pro -- propane  
23 cavern assets, correct?

24           A.    Yes.

25           Q.    And would you mind -- you have a copy of

1 your direct testimony there as well, Exhibit 8,  
2 correct?

3 A. I do.

4 Q. Could you point me to where in that  
5 testimony you discuss objecting to the propane  
6 caverns inclusion in that testimony?

7 A. In my original testimony, which is OCC  
8 Exhibit 8, I was responding to specific -- specific  
9 Staff objections, or objections to the -- specific  
10 objections to the Staff Report, sorry, and -- but I  
11 am also OCC's witness responding to OCC -- I believe  
12 it was objection 1 that indicated that the rates as  
13 set -- as proposed in the Staff Report were not just  
14 and reasonable, and this is part of what goes into  
15 the rates, the amortization of the propane cavern  
16 deferral.

17 And, your Honors, when I say propane  
18 caverns, I mean propane caverns and the associated  
19 vaporization equipment, et cetera.

20 But so you -- you would be looking for  
21 OCC I believe it's objection 1.

22 Q. On page 3 of your direct testimony, OCC  
23 Exhibit 8, you state, "I am specifically supporting  
24 OCC Objection Nos. 22, 23, and 24."

25 I don't see a reference to OCC objection

1 No. 1. Am I missing it?

2 A. It is not listed in my prefiled direct  
3 testimony.

4 Q. Okay. Thank you.

5 In your supplemental testimony, we'll go  
6 back to that document again, page 12. Please let me  
7 know when you are there.

8 A. I'm on page 12.

9 Q. Great. At line 12 you conclude that,  
10 "Because the Central Corridor Pipeline went into  
11 commercial operation on March 14, 2021, the propane  
12 caverns and related facilities were not used and  
13 useful on the date certain...(March 31, 2021),"  
14 correct?

15 A. That's what I state here, yes.

16 Q. Should both of those dates be 2022?

17 A. They should be 2022, thank you. That's a  
18 correction I should have made I didn't catch.

19 Q. Lots of numbers, lots of dates. Just  
20 want to make sure we are all speaking about the same  
21 information.

22 In the giant stack of paper up there, and  
23 if you need some assistance, I will ask for  
24 permission to approach, but can you find the  
25 supplemental testimony of Company Witness Brian

1 Weisker? It's DOE Exhibit 9 that the Company  
2 admitted this morning. And I believe we have a spare  
3 copy, if necessary.

4 A. I would prefer that.

5 MS. VERHALEN: May we approach, your  
6 Honor?

7 EXAMINER WALSTRA: You may.

8 Q. (By Ms. Verhalen) Would you please go to  
9 page 7 of Mr. Weisker's testimony, DEO Exhibit 9?

10 A. I am at page 7.

11 Q. And line 21 on that page. What date did  
12 the Company disconnect, or the term is air gap, the  
13 propane facilities from the natural gas system  
14 according to Mr. Weisker?

15 A. According to Mr. Weisker on page -- I'm  
16 sorry, on line 22 of page 7, it says the natural --  
17 propane facilities were disconnected from the natural  
18 gas system on April 12, 2022.

19 Q. And if you go to page 8, on what date  
20 were they retired?

21 A. Can you point me to a line number,  
22 please?

23 Q. Line 6.

24 A. It says the propane facilities were  
25 retired on April 15, 2022.

1 Q. And you would agree that April 15, 2022,  
2 is after March 31, 2022, correct?

3 A. Yes.

4 Q. Let's go to page -- excuse me. You can  
5 set aside Mr. Weisker's testimony. Thank you,  
6 Mr. Adkins.

7 Let's go to page 15 of your supplemental  
8 testimony again at OCC Exhibit 9.

9 A. I'm at 15.

10 Q. And on page -- on that page at line 14,  
11 you conclude that the Company was able to provide  
12 safe and reliable service to customers, correct?

13 A. I am saying those were the Company's  
14 representations, that it was able to provide safe and  
15 reliable service on that date.

16 Q. And specifically you conclude that that  
17 safe and reliable service was without the propane  
18 caverns, correct?

19 A. I'm saying those were the Company's  
20 multiple representations in multiple cases by  
21 multiple company personnel. May I please finish my  
22 answer?

23 Q. Sure.

24 A. Thank you. I'm saying it was multiple --  
25 in multiple forums, multiple occasions, including the



1 Ohio Power Siting Board, the public, the Commission,  
2 SEC, the Company on multiple occasions represented  
3 that with commercial -- with completion of a central  
4 corridor pipeline, that the propane caverns were no  
5 longer necessary. No longer necessary means no  
6 longer useful.

7 Q. If you look at the first page of the  
8 unnumbered materials to your supplemental testimony,  
9 or the first unheaded page, I guess, what is this  
10 document?

11 A. Are you referring to the document dated  
12 March 15, 2022?

13 Q. I am.

14 A. This appears to be a letter from Theresa  
15 White, Executive Director -- to Theresa White,  
16 Executive Director of the Power Siting Board,  
17 regarding Ohio Power Siting Board Case No.  
18 16-253-GA-BTX, and it appears to be informing the  
19 Power Siting Board that -- that the facility, meaning  
20 the Central Corridor Pipeline, commenced commercial  
21 operation on March 14, 2022.

22 Q. And you said it "appears to be" a couple  
23 times; but, Mr. Adkins, just to be clear, you  
24 attached this to your testimony, correct?

25 A. I did.

1 Q. And in this letter anywhere does it  
2 indicate that the pipeline was operating without the  
3 propane caverns?

4 A. Again, I go back to Duke's  
5 representations multiple times --

6 Q. Mr. Adkins, my question was in this  
7 letter does it state anything about the pipeline  
8 operating without the propane caverns?

9 A. It states that the Central Corridor  
10 Pipeline went into service March 14, 2022.

11 Q. Anywhere in this letter does it state  
12 that the propane caverns are no longer being used?

13 MR. MICHAEL: Objection, asked and  
14 answered.

15 EXAMINER WALSTRA: Overruled.

16 A. I don't see how that's material, but no,  
17 it does not state that.

18 Q. (By Ms. Verhalen) Thank you. Is  
19 commercial operation defined in Ohio law?

20 A. I believe it is, yes.

21 Q. In fact, you quote it and cite it in your  
22 testimony on page 19, correct? If it helps, line 14.

23 A. Yes.

24 Q. And you would agree that commercial  
25 operation, as defined by the State of Ohio, is -- for

1 natural gas is when gas is being transported through  
2 the pipeline in an attempt to offer -- excuse me, in  
3 an attempt to offer to exchange the gas for money,  
4 barter, or anything of value, correct?

5 A. I believe I have adequately quoted the  
6 statute here.

7 Q. But that doesn't -- that definition  
8 doesn't say anything about the pipeline being  
9 operational at its full capacity, correct?

10 A. It does not, but Duke -- in response to  
11 interrogatories Duke made it clear that the pipeline  
12 had passed -- central corridor had passed all  
13 operational testing requirements and was in service  
14 and fully operational to carry the expected load on  
15 the date of commercial operations.

16 Q. Mr. Adkins, you answered a question  
17 different than what I asked. So --

18 A. I answered the question the way I  
19 understood it.

20 Q. The question was, this definition does  
21 not say that the pipeline must be operating at its  
22 full capacity, correct?

23 A. But Duke said it was, and it was capable  
24 of doing so.

25 MS. VERHALEN: Your Honor, I would

1 request that the witness be directed to answer the  
2 question.

3 EXAMINER WALSTRA: Can you answer the  
4 question, Mr. Adkins?

5 A. The quote doesn't include that, no.

6 Q. (By Ms. Verhalen) Is there anything in  
7 that statute that you cited that says the pipeline  
8 needs to be operating at full capacity before it  
9 reaches "commercial operation"?

10 A. There's nothing in the statute but it  
11 was.

12 Q. Thank you.

13 A. Duke's own evidence says that it was.

14 Q. And the notification on March 15, 2022,  
15 to the Commission doesn't say anything about what  
16 amount of gas was transported in that pipeline,  
17 correct?

18 A. Can you refer me back to what you are --

19 Q. It is the first unheaded numbered page of  
20 your supplemental testimony.

21 A. Okay. I'm sorry, I am having trouble  
22 locating it, but I don't believe it says that,  
23 correct. I believe you are correct.

24 Q. Okay. Thank you, Mr. Adkins. I don't  
25 hear that very often, so I will take that "you are

1 correct."

2 And, in fact, when we talked about this  
3 earlier, the Company's testimony is that the propane  
4 caverns were not retired until April 15 according to  
5 Mr. Weisker, correct?

6 A. That's what he said, but that doesn't go  
7 to whether it's useful or not. It just goes to  
8 whether it was perhaps available for use.

9 It doesn't mean it's useful, and Duke's  
10 own testimony -- I'm sorry, Duke's own interrogatory  
11 responses again have pointed out that the propane  
12 caverns weren't actually used for their intended  
13 purposes since January 20, 2020, and also the last  
14 time the propane was used for -- in the last 10 years  
15 was on March 16, the latest date that it was used.

16 Q. Mr. Adkins, would you please point me to  
17 the interrogatory to which you are referring instead  
18 of just having you retestify to a new issue?

19 A. I don't have interrogatory -- I believe  
20 it's --

21 MR. MICHAEL: It was Joint Exhibit 2,  
22 Kerry, if it's up there.

23 THE WITNESS: Joint Exhibit 2. Joint  
24 Exhibit 2.

25 EXAMINER WALSTRA: We can provide him

1 with one copy from the Bench.

2 THE WITNESS: Thank you.

3 MS. VERHALEN: If we can just have a  
4 moment, your Honor. We are locating our copy.

5 EXAMINER WALSTRA: Sure.

6 A. Were you able to find your copy? Are you  
7 ready?

8 Q. Yes. Please go ahead.

9 A. Where I reference the latest date that  
10 the propane was used in -- any time in the last 10  
11 years was in response to OCC-INT-09-006.

12 OCC asked based -- in reference to Brian  
13 Weisker's supplemental testimony filed on May 4,  
14 2023, at page 7, lines 14 through 19, "Identify the  
15 volume of propane vaporized by day in the 2021/2022  
16 winter heating season (through February 2022).  
17 Identify the actual demand volumes for the area  
18 served by the propane on each day propane was  
19 injected. Identify the peak heating day -- Heating  
20 Degree Days and Peak Day Demand for those areas, and  
21 the actual Heating Degree Days on the days propane  
22 were injected, and then operatively identify all the  
23 days in the month of March, since March 31, 2012, in  
24 which the propane was injected, and identify the  
25 volumes injected on those days," and in response "The

1 latest date was March 16, 2014, with 1,112 Mcf,  
2 thousand cubic feet, injected." So that's for that  
3 one.

4 Q. Sure.

5 A. And my other one was --

6 Q. Can we talk about this before we talk  
7 about the other one, please?

8 A. Sure.

9 Q. Thank you. So the question that OCC  
10 asked though, said "Identify all days in the month of  
11 March," correct? "Identify all days in the month of  
12 March since March 31, 2012," correct?

13 A. Well, because --

14 Q. Correct?

15 A. I want to answer the question the way I  
16 want, and if you don't -- the Bench can --

17 MS. VERHALEN: Objection, your Honor. I  
18 would like -- I would request that the witness answer  
19 the question that's been asked, not the question he  
20 wishes he received.

21 EXAMINER WALSTRA: You are to answer the  
22 question you were asked.

23 A. I'm sorry. Would you repeat the  
24 question, please?

25 Q. (By Ms. Verhalen) Sure. So the request

1 from OCC says to "Identify all days in the month of  
2 March since March 31, 2012," correct?

3 A. Yes.

4 Q. So you didn't ask about April?

5 A. Because the date certain in this case was  
6 March 31, 2022. So anything after that date is not  
7 operative.

8 Q. Okay. So the last date --

9 A. In the winter heating season, which ends  
10 March 31.

11 Q. So there weren't any days in which  
12 propane was used in March, correct?

13 A. It says here it was used March 16, 2014,  
14 was the last day it was used.

15 Q. It says "March 5, 2019."

16 A. The latest date in March, which March 16  
17 follows March 5.

18 Q. I guess that's open to interpretation as  
19 to what the latest date means, correct, Mr. Adkins?

20 A. In my world 16 is -- always follows 5.

21 Q. And '19 follows '14, correct?

22 A. It would be the latest date in March  
23 regardless of year.

24 Q. What was the other interrogatory which  
25 you were referring in your comments?



1           A.     It goes back when we were talking about  
2 whether the Central Corridor Pipeline was operating  
3 at normal pressure on the date, and here it says  
4 identify -- I'm sorry, in OCC -- the response to  
5 OCC-INT-09-003 the question was, "Identify whether  
6 the Central Corridor Pipeline was able to operate at  
7 its MAOP," which is maximum allowable operating  
8 pressure, "and/or design capacity at the commercial  
9 operation date."

10           And the response is, "The Central  
11 Corridor Pipeline was able to operate at MAOP on the  
12 commercial operation date."

13           Q.     And the last word -- the last words of  
14 that response are "resulted in capacity that  
15 reasonably met the design model for that date,"  
16 correct?

17           A.     I mean, those are the words, yes.

18           Q.     And do you know what the design model  
19 was, Mr. Adkins?

20           A.     No. For me it was more operative to look  
21 at whether it was meeting its MAOP.

22           Q.     And that would be its pressure. I asked  
23 about capacity earlier, Mr. Adkins, not its design  
24 pressure.

25           A.     As I said, the response says what it

1 says.

2 Q. All right. So let's turn to page 16 of  
3 your supplemental testimony. I will give you a  
4 minute there since we have a lot of paper.

5 A. I have 16.

6 Q. And let's go to line 8 where it states,  
7 "Thus, from the beginning, the whole purpose of the  
8 Central Corridor Pipeline was for it to replace the  
9 propane caverns while maintaining safe and reliable  
10 service to consumers."

11 And to support this you cite to -- in  
12 this paragraph you cite to paragraph 58 of the  
13 Opinion and Order in that case, correct?

14 A. Are you referring to line 8, the sentence  
15 at line 8?

16 Q. Yes.

17 A. There is no citation to the sentence in  
18 line 8.

19 Q. In the paragraph there are two citations,  
20 citation 24 and 25, that you walk through to get to  
21 that conclusion, and those citations are to paragraph  
22 58 of the Opinion and Order, correct?

23 A. Those are the citations, yes. The  
24 citations are to the Order in the Ohio Power Siting  
25 Board case, yes.

1 Q. And you are familiar with that Opinion  
2 and Order, correct?

3 A. I have reviewed it, yes.

4 MS. VERHALEN: All right. Permission to  
5 approach, your Honor?

6 EXAMINER WALSTRA: You may.

7 Q. (By Ms. Verhalen) And would you please --  
8 first of all, does this look familiar to you,  
9 Mr. Adkins?

10 A. As I said, I have reviewed this document.

11 Q. Okay. So as near as you can tell, this  
12 is a true and accurate copy of the Opinion and Order  
13 in the Central Corridor Pipeline case to which you  
14 cite?

15 A. I have no reason to doubt it.

16 Q. Okay. If you could turn to paragraph 58  
17 on page 29, please, Mr. Adkins.

18 A. You said paragraph 58, page 29?

19 Q. Yes, please.

20 A. I'm there.

21 Q. And the first sentence here says that  
22 "the Board finds the need for the project has been  
23 demonstrated based on the need to retire the outdated  
24 propane-air facilities," correct?

25 A. That's a fair characterization --

1 characterization, yes.

2 Q. But then what does the second sentence of  
3 this paragraph state that the OPSB found in its  
4 proceeding?

5 A. "The record, however, also reflects that  
6 the CCE will improve the north/south system supply  
7 balance, which we find is further evidence of need."

8 Q. And then let's look at paragraph 59 on  
9 the next page, specifically the last sentence, it's  
10 quite long but it begins with, "Based on this  
11 evidence, the Board agrees."

12 A. I see that.

13 Q. So if you wouldn't mind, why don't you  
14 take a chance to read that sentence, and then I have  
15 a question for you.

16 A. "Based on this evidence, the Board agrees  
17 that the CCE is an important and reasonable step in  
18 Duke's system planning efforts, will mitigate the  
19 Company's dependence on Foster Station, and will  
20 support the Company's need to improve the north/south  
21 balance in its system, particularly in conjunction  
22 with the retirement of the propane-air peaking  
23 facilities." And then there is some citations.

24 Q. I am not going to make you read those.

25 A. Thank you.

1           Q.     So you would agree that the OPSB found  
2     that the Central Corridor Pipeline would also improve  
3     the north/south balance in the system, correct?

4           A.     My recollection of that case was that the  
5     primary purpose of the -- of the Central Corridor  
6     Pipeline was to replace the propane caverns, but it  
7     also had these other benefits as the Ohio Power  
8     Siting Board describes.

9           Q.     But you would agree that the OPSB found  
10    that the Central Corridor Pipeline would also improve  
11    the north/south balance in the system, correct?

12          A.     My recollection of the record in that  
13    case, it had minor -- minor impact, but yes, it had  
14    an impact.

15          Q.     And then if we look at paragraph 60, and  
16    that first sentence, the Board found that the project  
17    would facilitate Duke's replacement of aging  
18    pipelines, correct?

19          A.     Yes.

20          Q.     So looking at all of this, would you  
21    agree that the purpose of the Central Corridor  
22    Pipeline was multipronged and not, as you stated in  
23    your testimony, where the whole purpose was to  
24    replace the propane caverns, but there were  
25    additional benefits to the project?

1           A.    I would say whole is perhaps a rolling  
2 expansive word.  Probably should have said primary.

3           Q.    Thank you.

4           A.    Or main.

5           Q.    Thank you, Mr. Adkins.

6                    I would like to stay with this document  
7 for just a moment.  If we can go to page 57 -- sorry,  
8 excuse me, paragraph 57.

9           A.    I'm at 57.

10          Q.    This one is a little more tricky because  
11 there aren't line numbers here, so we will both try  
12 and get to the right place at the same time.

13                    There's a sentence about half -- a little  
14 more than halfway down the page.  It begins with,  
15 "However, Duke reasonably explained that the  
16 retirement."  If it helps, it's after the second  
17 parenthetical citation.  Did you find that?

18          A.    I found that.

19          Q.    Okay.  And this finding -- or this  
20 statement in the paragraph says that, "Duke  
21 reasonably explained that the retirement of the  
22 propane-air peaking plants," which you and I have  
23 been referring to as the propane caverns, "is  
24 dependent on current system usage and the adjustment  
25 of demand and system configurations following the

1 installation of the CCE," and the CCE is Central  
2 Corridor Pipeline, correct?

3 A. It is.

4 Q. Okay. And so this is stating that Duke  
5 had said at the time, and the OPSB included in their  
6 paragraph, that the retirement of the caverns was  
7 dependent on system usage and system configurations  
8 following the installation of the Central Corridor  
9 Pipeline, correct?

10 A. Those are the words here.

11 Q. Thank you. So one other item you  
12 discussed in your testimony -- and I am going to  
13 direct you to page 25. We are skipping ahead here a  
14 bit. Let me know when you are there, please.

15 A. I am at page 25.

16 Q. Page (sic) 7, relating to the MGP soil  
17 remediation costs, particularly you raised a concern  
18 that MGP soil remediation costs are potentially  
19 included in the capital costs in this case, correct?

20 A. At line 7, I do say that it's alarming  
21 that -- find out MGP soil remediation costs are  
22 potentially included in the capital project costs in  
23 this case, yes.

24 Q. Yep, but then you go on to acknowledge  
25 that the Company provided an interrogatory response

1 that the costs referred to, to which you found  
2 alarming, were -- let me try that -- explaining that  
3 again, that none of the work described in that report  
4 to which you were referring actually involved any of  
5 the soil remediation, correct?

6 A. I'm saying that Duke claimed that the  
7 term soil remediation as used in the engineering  
8 study was a misnomer and that there were no actual  
9 remediation costs included in, but my point was that  
10 the -- a well-founded prudence review would have  
11 confirmed that. This is Duke's unconfirmed  
12 representation.

13 Q. Okay. But let's take a step back. You  
14 raised a concern, specifically it's alarming to find  
15 out -- "It is alarming to find out that MGP soil  
16 remediation costs are potentially included."

17 And you asked that question of Duke, and  
18 Duke provided you an answer that none of the work  
19 described in the engineering study involved MGP soil  
20 remediation, correct?

21 A. Again, the point I was making was that --  
22 the point I was making was that a well-founded  
23 prudence review would have made sure that there was  
24 no double recovery. Remember, the engineering  
25 study --



1 MS. VERHALEN: Objection, your Honor.  
2 The witness's counsel can ask clarifying questions on  
3 redirect, but I would really like the witness to  
4 answer the questions that I am asking.

5 EXAMINER WALSTRA: I think his testimony  
6 speaks for itself.

7 Q. (By Ms. Verhalen) Mr. Adkins, how many  
8 natural gas pipeline construction and commissioning  
9 projects have you yourself planned and implemented  
10 during your career?

11 A. None.

12 Q. And how many propane cavern  
13 decommissioning projects have you planned and  
14 implemented during your career?

15 A. None.

16 Q. Let's switch topics and go to page 36  
17 of -- actually 37 of your testimony specifically. In  
18 this section -- and we are still on your  
19 supplemental, OCC Exhibit 9.

20 A. I'm on 37.

21 Q. Great. In this section of your  
22 testimony, you are raising concerns around the  
23 formula for the CEP Rider, and specifically on page  
24 37 you are raising a -- you are raising a concern  
25 that the formula should include an O&M savings offset

1 for customers, correct?

2 A. Yes.

3 Q. But there is nothing in the record that  
4 states that there is, in fact, an O&M savings,  
5 correct?

6 A. I am saying there should be. So if --  
7 there isn't one so there should be.

8 Q. But there's nothing in the record that  
9 states that there is an O&M savings, correct?

10 A. No. That's why I am raising it.

11 Q. Okay. And you have not performed any  
12 study or analysis that demonstrates there is no O&M  
13 savings as a result of the Company's investments, the  
14 cost of which is recovered in the CEP Rider, correct?

15 A. I have not performed any studies, but I  
16 believe that it's reasonable -- reasonable to  
17 anticipate there would be, seeing how there was O&M  
18 savings resulting from the accelerated mains  
19 replacement programs, and CEP capital investments  
20 include many of the same pipeline materials,  
21 pipelines that -- the AMRP, so if it stands to reason  
22 that if there was savings in one, there would be  
23 savings in a very similar program as well.

24 Q. Were you here earlier when Ms. Lawler  
25 testified?

1           A.    I was.

2           Q.    And did you hear her explain that while  
3 there may be O&M savings, there may also be O&M  
4 increases?

5           A.    Yes.  And that was also considered in the  
6 AMRP cases where the Commission determined that there  
7 still should be O&M savings.

8           Q.    But the AMRP cases are different than the  
9 CEP investments, correct?

10          A.    Different but similar.

11          Q.    Different but similar.  Thank you.

12                 Let's go to page 38.  At line 10 you  
13 criticize the CEP Rider application review as "vague  
14 and largely undefined," correct?

15          A.    I think I am speaking exclusively to the  
16 piece where Duke would automatically implement CEP  
17 rates.  I believe that part of the CEP Application  
18 process as described in the Settlement is vague and  
19 undefined.

20          Q.    But you would acknowledge that they are  
21 subject to true-up in the annual CEP Rider  
22 Application review process; is that correct?

23          A.    That is my understanding, yes.

24          Q.    And those are filed with the Commission?

25          A.    Yes.

1 Q. And the OCC can intervene in those  
2 proceedings?

3 A. Yes.

4 Q. Thank you. And then down on line 15, you  
5 state that the Settlement "fails to include a defined  
6 renewal period for the CEP."

7 A. Yes. In other cases the Commission has  
8 required -- included a five-year review for AMRP.  
9 For CEP in Columbia, for example, a five year. The  
10 Staff in this case proposed a five-year renewal  
11 period in the Staff Report, and that's all I am  
12 saying here is that there should be a defined  
13 five-year, in my opinion, renewal period or even  
14 less.

15 Q. Yeah, and you also referenced that  
16 Columbia case in your testimony, but those were terms  
17 agreed upon by the parties, right, in a settlement?

18 A. Yes.

19 Q. Thank you. Can you locate a copy of the  
20 Stipulation up there?

21 A. The Stipulation in this case?

22 Q. In this case, yes. Yes, sir. And if  
23 not, we have an extra copy.

24 A. A lot of paper.

25 Q. Understood. If it's easier, Mr. Adkins,

1 we can give you a fresh copy.

2 A. Right now, I am not locating it.

3 Q. Very good.

4 MS. VERHALEN: Permission to approach,  
5 your Honor?

6 EXAMINER WALSTRA: Permission granted.

7 A. It doesn't appear to be up here.

8 Q. It may have walked off on its own.

9 EXAMINER WALSTRA: She handed you a copy.

10 A. I have got it now.

11 Q. (By Ms. Verhalen) Page 8, please,  
12 Mr. Adkins.

13 A. I am at page 8 of the Stipulation in this  
14 case.

15 Q. And when does that last sentence say the  
16 CEP shall -- the CEP Rider should be set to zero?

17 A. It says the Rider CEP shall be reset to  
18 zero by the later of October 31, 2029, or upon full  
19 recovery of the vintage 2027 investments subject to  
20 the 2027 CEP residential rate cap unless the Company  
21 files a natural gas base rate case or alternative  
22 rate case application.

23 Q. So there is an identified endpoint for  
24 this Rider CEP, correct?

25 A. In my opinion, no. Okay. I guess there

1 would be an end point once the vintage 2027  
2 investments are recovered.

3 Q. Thank you.

4 A. But those could be -- that could be 50  
5 plus years because vintage -- the assets included in  
6 the CEP include pipelines, for example, and they have  
7 a very long lifespan. And so they wouldn't be  
8 recovered for decades into the future.

9 Q. But there is an endpoint in that it will  
10 either be October 31, 2029, or when the investments  
11 made through 2027 are recovered, correct?

12 A. That is correct.

13 Q. So let's go to page 52 -- actually, you  
14 know what? You already answered that question. We  
15 can skip that. Let's go to page 54.

16 A. I'm at page 54.

17 Q. Great. On pages 54 and 55 onto 56, you  
18 can take a moment to refresh if you need, but you  
19 discuss some findings of auditors in other cases  
20 before the Commission, correct?

21 A. Yes.

22 Q. And these are all around financial  
23 performance incentives and their inclusion in capital  
24 recovery riders.

25 A. Yes.

1           Q.    And can you point me to where in your  
2 testimony you identify where the Commission has  
3 adopted any of these auditor recommendations in these  
4 two cases?

5           A.    I don't say that in my testimony, that it  
6 was adopted by the Commission.

7           Q.    Okay.  So were these recommendations  
8 adopted by the Commission in either of these cases?

9           A.    Based on my recollection, no.

10          MS. VERHALEN:  Thank you.

11          No further questions, your Honor.

12          EXAMINER WALSTRA:  Thank you.

13          Any questions?

14          Redirect?

15          MR. MICHAEL:  Can we have a moment,  
16 please, your Honor?

17          EXAMINER WALSTRA:  Sure.

18          We'll go off the record.

19          (Recess taken.)

20          EXAMINER WALSTRA:  Whenever you are  
21 ready.

22          MR. MICHAEL:  Thank you, your Honor.  I  
23 do have a brief redirect.

24          EXAMINER WALSTRA:  Sure.

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REDIRECT EXAMINATION

By Mr. Michael:

Q. Mr. Adkins, if I could draw your attention to OCC Exhibit 9.

A. I'm there.

Q. Mr. Adkins, you were asked by counsel for Duke regarding Ms. Lawler's testimony. Do you recall that question?

A. Yes.

Q. And do you recall that at the time you indicated that you did not see that testimony attached to your testimony? Do you recall that?

A. I do.

Q. And have you had the chance to go back and confirm to the extent to which Ms. Lawler's testimony referenced in OCC Exhibit 9 is, in fact, attached to OCC Exhibit 9?

A. Yes. As I sit here, the stack of documents included in OCC Exhibit 9, the last document in the stack is the direct testimony of Sarah Lawler on behalf of Duke Energy Ohio, Inc., in support of the Stipulation.

Q. In what case?

A. In Case No. 21-986-GA-ABN.

Q. Thank you, Mr. Adkins. And, Mr. Adkins,



1 do you recall questions from Duke's counsel regarding  
2 the -- I believe the letter was dated March 15  
3 notifying the Commission of the commercial operation  
4 of the Central Corridor Pipeline?

5 A. I recall the discussion, but I believe  
6 the letter was addressed to the Ohio Power Siting  
7 Board, yes.

8 Q. Okay. Thank you for that correction.

9 Mr. Adkins, you referenced that document  
10 and were questioned about that document on  
11 cross-examination in support of your conclusion that  
12 the propane caverns were not useful on the date  
13 certain, correct?

14 A. Yes.

15 Q. Mr. Adkins, in reaching that conclusion,  
16 did you rely on only that document, and can you  
17 describe for the Commission how you reached that  
18 conclusion, please?

19 A. I did not rely -- in reaching my  
20 conclusion that the propane caverns were not useful  
21 on the date certain in this case, I did not rely  
22 exclusively on that document.

23 I pointed out that that document was  
24 filed on March 14th, 2022, which precedes the date  
25 certain in this case.

1 I also rely on the fact that Duke, in  
2 multiple forums by multiple Duke employees,  
3 represented that the Central Corridor Pipeline would  
4 render the propane caverns unnecessary.

5 That was the primary purpose of  
6 constructing the Central Corridor Pipeline, was to  
7 replace the propane caverns.

8 Therefore, on March 14th, which I have  
9 indicated as -- indicated discussed earlier, that  
10 Duke's own representations -- and I can find -- if  
11 you look on page -- start on page 6 of my testimony,  
12 starting on page 6 of my testimony where I describe  
13 the Power Siting -- the -- Duke's own representations  
14 to the Power Siting Board, you can also point -- I  
15 think in my testimony, point to Mr. Weisker's  
16 testimony, original testimony in this case, his --  
17 his initial direct testimony where he says that  
18 the -- once the Central Corridor Pipeline was in  
19 service, that the pipeline -- the propane caverns  
20 were no longer necessary. No longer necessary means  
21 no longer useful.

22 I mean, that was the purpose of  
23 constructing the Central Corridor Pipeline, was to  
24 replace those caverns. So once the Central Corridor  
25 Pipeline was in service, Duke's own interrogatory

1 responses indicate that the propane -- I'm sorry,  
2 that the Central Corridor Pipeline, on the date it  
3 entered service, had met all testing and was --  
4 had -- was able to operate at maximum allowable  
5 operating pressure.

6           Again, it's a totality of the  
7 circumstances view, and that's what I was looking at.  
8 And I was looking at the last date, but -- the latest  
9 day in March that the propane caverns had been used  
10 for their intended purpose was -- March 16 in 2014  
11 was the latest time that they had been used, the  
12 latest date of the year, which again predates the  
13 date certain in this case.

14           So if the propane caverns -- I'm sorry.  
15 If the propane caverns were a backup for the -- for  
16 the Central Corridor Pipeline as Duke has alleged or  
17 claimed in this case, then why would it have drawn  
18 down the propane inventory if it was -- if it's being  
19 held back for -- used as an emergency, why would Duke  
20 have drawn down the inventory?

21           You wouldn't know how much propane you  
22 would need in an emergency, so Duke -- so again, it's  
23 Duke's own actions and Duke's own words that led me  
24 to -- it's not just the one document.

25           Q.    So you, Mr. Adkins, did not rely on any

1 one document in reaching your conclusions that the  
2 propane caverns were no longer useful on the date  
3 certain; is that correct?

4 A. That's correct.

5 Q. Rather you relied on the totality of the  
6 circumstances; is that correct?

7 A. Yes.

8 MR. MICHAEL: Thank you.

9 No further questions, your Honor.

10 EXAMINER WALSTRA: Thank you.

11 Additional cross?

12 MS. VERHALEN: Yes, your Honor.

13 - - -

14 RE-CROSS-EXAMINATION

15 By Ms. Verhalen:

16 Q. Mr. Adkins, we are going to go back to  
17 the Opinion and Order in this Central Corridor  
18 Pipeline case. It's not an exhibit.

19 EXAMINER WALSTRA: I think it's right up  
20 there on top.

21 THE WITNESS: Thank you. Thank you, your  
22 Honor.

23 Q. (By Ms. Verhalen) If you could go to page  
24 24, please, and read the very last sentence there  
25 that starts with, "Addressing the significance," and

1 goes on to page 25. If you could read that, please.

2 A. "Addressing the" -- excuse me.

3 "Addressing the significance of Duke's intention to  
4 retire the propane-air facilities several years after  
5 the project is in operation, the Company responds  
6 that, as a prudent and responsible operator, it plans  
7 to test the system with the CCE providing peak day  
8 supply and pressure from the north, without using the  
9 propane-air facilities, to ensure adequate winter  
10 reliability; during this period, the propane-air  
11 facilities would stand ready if needed."

12 Q. Thank you. So you just said that you  
13 rely on Duke's own words to create your conclusions.  
14 These are Duke's own words, correct?

15 A. They are, but Duke made several  
16 representations after this.

17 Q. Sure. And so if we can go back to your  
18 supplemental direct testimony, and I would love to  
19 give an actual page number but it's in your unheaded  
20 materials. I know it's page 233 of the PDF, but not  
21 sure what page it is in your stack there. It's page  
22 146 of Duke's financial statements. 146 is in very  
23 small print at the bottom of the page.

24 EXAMINER WALSTRA: What was that PDF  
25 number?

1 MS. VERHALEN: PDF page 243, your Honor.

2 EXAMINER WALSTRA: Thank you.

3 A. You said page 146?

4 Q. Yes. If it helps, you'll see "MGP Cost  
5 Recovery" as a heading toward the bottom as well,  
6 Mr. Adkins.

7 A. Still working on 146.

8 Q. Fair enough. Let me know when you find  
9 146.

10 A. And I have found the "MGP Cost Recovery."

11 Q. Right above that there is a section  
12 titled "Natural Gas Pipeline Extension." Did you  
13 find that?

14 A. Yes.

15 Q. And that states what, Mr. Adkins?

16 A. My copy has a hole punch so -- but I will  
17 try to. I will give you corrections that I  
18 misinterpret. I will let you correct me, and I will  
19 assume you are accurately correcting me.

20 "Duke Energy Ohio installed a new natural  
21 gas pipeline (the Central Corridor Project) in its  
22 Ohio service territory to increase system reliability  
23 and enable retirement of older infrastructure.  
24 Construction of the pipeline extension was completed  
25 and placed in service March 14, 2022, with a total

1 cost of approximately \$170 million (excluding  
2 overheads and AFUDC)."

3 Q. Now, this doesn't say it enabled the  
4 retirement, or that the retirement has also occurred  
5 of those older facilities, merely that prospectively  
6 it will enable the retirement of those facilities,  
7 correct?

8 A. That's what this document says, yes.

9 Q. Thank you.

10 And this document was filed after the  
11 Opinion and Order -- sorry. This document was  
12 prepared after the Opinion and Order in the Central  
13 Corridor Pipeline case, correct?

14 A. It appears so, yes.

15 MS. VERHALEN: Thank you.

16 No further questions, your Honor.

17 EXAMINER WALSTRA: Anything else?

18 Thank you for your testimony.

19 THE WITNESS: Thank you, your Honors.

20 EXAMINER WALSTRA: Thank you.

21 Any objection to the admission of OCC  
22 Exhibits 8 and 9?

23 MS. VERHALEN: No, your Honor.

24 EXAMINER WALSTRA: They will both be  
25 admitted.

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(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER WALSTRA: With that, I think we will adjourn for the day. Come back with your final witness and then Staff's witnesses after that.

MR. MICHAEL: Thank you, your Honor.

EXAMINER WALSTRA: We will go at 10:00 a.m. tomorrow. Thank you.

(Thereupon, at 4:23 p.m., the hearing was adjourned.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, May 23, 2023, and carefully compared with my original stenographic notes.

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Karen Sue Gibson, Registered  
Merit Reporter.

(KSG-7467)

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AAM**

Summary: Transcript of the Duke Energy Ohio, Inc. hearing held on 05/23/23 -  
Volume I electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey,  
Inc. and Gibson, Karen Sue Mrs..