

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO – EASTERN DIVISION

Anthony Williams et al. v. Duke Energy International, Inc. et al.

Case No. 1:08-cv-00046

NOTICE OF (I) PROPOSED SETTLEMENT; (II) SETTLEMENT FAIRNESS HEARING; AND
(III) MOTION FOR AN AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES

TO: ALL PERSONS AND ENTITIES WHO ARE MEMBERS OF THE CERTIFIED CLASS IN THIS ACTION.
(See definition of the Class set forth in paragraph 1 below).

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

NOTICE OF SETTLEMENT: Please be advised that the Court-approved Plaintiffs, Anthony Williams, BGR, Inc., Munafo, Inc., and Aikido of Cincinnati (collectively, "Lead Plaintiffs" or "Plaintiffs"), have reached a proposed settlement of the above-captioned class action lawsuit (the "Action") with Defendants Duke Energy Corporation and Duke Energy, Ohio, Inc. (collectively "Defendants") for a total of \$80,875,000 (eighty million eight hundred seventy-five thousand dollars) (the "Settlement Amount") in cash that, if approved, will resolve all claims in the Action.¹

PLEASE READ THIS NOTICE CAREFULLY. This Notice explains important rights you may have, including the possible receipt of cash from the Settlement. If you are a Class Member, your legal rights will be affected whether or not you act.

If you have any questions about this Notice, the proposed Settlement, or your eligibility to participate in the Settlement, please DO NOT contact Duke Energy Corporation or its legal counsel. All questions should be directed to Plaintiffs' Counsel or the Claims Administrator (see ¶ 65 below).

1. **Description of the Consolidated Action and Class:** This Notice relates to a proposed Settlement of claims in a class action lawsuit brought by Southwest Ohio consumers of Duke Energy Corporation's electric services alleging, among other things, that the Defendants violated two federal statutes, the Robinson-Patman Act and the Civil Racketeer Influenced and Corrupt Organizations Act, and a state statute, Ohio's Patten of Corrupt Activity Act. The Plaintiffs also asserted common-law claims for fraud and civil conspiracy. As a result of Defendants' actions, Lead Plaintiffs alleged that the Class incurred damages. The Court certified a class on March 13, 2014. The proposed Settlement, if approved by the United States District Court for Southern District of Ohio (the "Court"), will settle claims of the following class of persons and entities (the "Class"):

All ratepayers who received retail electric generation service from Duke Energy Corp. and/or Cinergy Corp. or their subsidiaries or affiliates at any time between January 1, 2005, and December 31, 2008, in the CG&E/Duke Energy Ohio electric service territory and did not receive rebates under the side agreements.

Excluded from the Class are Defendants, including all predecessors, successors, past, present or future parents, subsidiaries or affiliates of Duke, and the members of the Industrial Energy Users-Ohio, Ohio Hospital Association, and Ohio Energy Group who entered into option agreements with Cinergy Retail Sales/Duke Energy Retail Sales prior to 2008. Also excluded are those potential members of the certified Class that have previously opted out. The Class Period as referenced herein is January 1, 2005 through December 31, 2008.

2. **Residential and Non-Residential Subclasses:** The above-stated Class is subdivided into two subclasses: the Residential Class, and the Non-Residential Class. The Residential Class is "[a]ll residential ratepayers who received retail electric generation service from Duke Energy Corp. and/or Cinergy Corp. or their subsidiaries or affiliates at any time between January 1, 2005, and December 31, 2008, in the CG&E/Duke Energy Ohio electric service territory and who did not receive rebates under the side agreements." The Non-Residential Class is "[a]ll other ratepayers who received retail electric generation service from Duke Energy Corp. and/or Cinergy Corp. or their subsidiaries or affiliates at any time between January 1, 2005, and December 31, 2008, in the CG&E/Duke Energy Ohio electric service territory and who did not receive rebates under the side agreements."

3. **Statement of Class's Recovery:** Subject to Court approval, and as described more fully below, Lead Plaintiffs, on behalf of themselves and the Class, have agreed to settle all claims based in this Action for the consideration of the Settlement Sum of \$80,875,000. The Class will recover the Settlement Sum less (i) any Taxes, (ii) any Notice and Administration Costs, (iii) any litigation expenses awarded by the Court; and (iv) any attorneys' fees awarded by the Court, plus any interest and attributable to funds for disbursement to the Class. The funds will be distributed in the manner approved by the Court. From the Settlement Fund, three separate funds will be created to benefit the class: (i) one fund not to exceed \$25,000,000 plus accrued interest for Residential Class Members; (ii) one fund not to exceed \$25,000,000 plus accrued interest for Non-Residential Class Members; and (iii) one fund of \$8,000,000 for the purpose of benefitting both participating and absent Class Members that will be used to fund and promote programs and projects related to energy programs designed to leverage settlement dollars with respect to Class Members, thereby providing a direct benefit to Class Members.

¹ All capitalized terms used in this Notice that are not otherwise defined herein shall have the meanings provided in the Stipulation of Settlement dated October 19, 2015 (the "Stipulation"), which is available on the website for this Action at www.dukeclassaction.com.

4. **Recovery for the Residential Class:** Out of the Settlement Sum, an amount not to exceed \$25,000,000 plus any accrued interest will be allocated to the settlement of claims made by the Residential Class Members and any associated expenses related to the claims-made process. From the amount not to exceed \$25,000,000 for Residential Class Members, Residential Class Members may receive a minimum payment based upon the total number of days Class Members received electric service from Defendants during the Class Period (“Claim Days”).

5. **Recovery for the Non-Residential Class:** Out of the Settlement Sum, an amount not to exceed \$25,000,000 plus any accrued interest will be allocated to the settlement of claims made by the Non-Residential Class Members and any associated expenses related to the claims-made process. The fund not to exceed \$25,000,000 for Non-Residential Class Members is separate and distinct from the up to \$25,000,000 fund for Residential Class Members. From the amount not to exceed \$25,000,000 for Non-Residential Class Members, Non-Residential Class Members may receive a minimum payment based upon the total number of Claim Days and also a usage payment based on the Non-Residential Class Member’s individual usage.

6. **Calculation of Damages Based Upon Number of Claim Days:** Class Member payments will be determined through calculating the total number of Claim Days, which are the number of days Class Members received electric service from the Defendants during the Class Period. Furthermore, Non-Residential Class Members may receive an additional payment based upon the amount of Defendants’ electric service received within the Class Period.

7. **Statement of Attorneys’ Fees, Expenses, and Class Representative Incentive Awards Sought:** The Action has been prosecuted on a wholly contingent basis since its inception in 2008. Court-approved Plaintiffs’ Counsel, Markovits, Stock & DeMarco, LLC, and Freking, Myers & Reul, LLC representing the Lead Plaintiffs (collectively “Plaintiffs’ Counsel”), have not received any payment of attorneys’ fees for their representation of the Class and have advanced millions of dollars in expenses necessarily incurred in order to prosecute the Action. As set forth in greater detail below (see ¶¶ 16-27 below), Plaintiffs’ Counsel have taken this case from inception to summary judgment, and were responsible for, among other things: (i) conducting an extensive investigation into the Class’s claims; (ii) drafting detailed amended complaints; (iii) successfully appealing to the Sixth Circuit Court of Appeals to reverse the District Court’s decision to dismiss Plaintiffs’ claims; (iv) successfully opposing Defendants’ request for rehearing en banc to the Sixth Circuit Court of Appeals; (v) successfully opposing Defendants’ petition for writ of certiorari to the U.S. Supreme Court; (vi) successfully briefing Lead Plaintiffs’ motion for class certification; (vii) engaging in an extensive discovery program; (viii) briefing and arguing a motion for summary judgment; and (ix) engaging in extensive settlement negotiations including several mediations with the Court and a private mediator.

Because the unusual length of this litigation (roughly eight years), its difficulty, the amount of time expended by the Plaintiffs’ Counsel, the fact that the case was dismissed before being reinstated by the Sixth Circuit Court of Appeals, and a comparison with fee awards in comparable cases, Plaintiffs’ Counsel’s Fee and Expense Application will ask the Court for an award from the Settlement Sum of (i) reimbursement of out-of-pocket expenses incurred in prosecuting the Action, not to exceed \$2 million plus the costs of settlement administration; (ii) attorneys’ fees in an amount not to exceed 24% of the Settlement Sum, after preapproval litigation expenses and class certification notice expenses have been deducted; and (iii) interest on the attorneys’ fees and expenses awarded by the Court at the same rate and for the same periods as earned by the Settlement Sum from the date of the deposit of the Settlement Amount until the date the attorneys’ fees and expenses are paid by the Settlement Sum. Plaintiffs’ Counsel also will request Court approval of incentive awards to the Lead Plaintiffs, Anthony Williams, BGR, Inc., Munafo, Inc., and Aikido of Cincinnati, not to exceed \$80,000 collectively, for the time, effort, and risk associated with acting as class representatives.

8. **Identification of Attorneys’ Representatives:** Lead Plaintiffs and the Class are being represented by: W. B. Markovits, Esq. of Markovits, Stock & DeMarco, LLC, 119 East Court St., Cincinnati, Ohio 45202; and Randolph Freking of Freking, Myers & Reul, LLC, 525 Vine Street, Suite 600, Cincinnati, OH 45202.

9. **Reasons for the Settlement:** Lead Plaintiffs’ principal reason for entering into the Settlement is the substantial cash benefit for the Class without the risk or the delays inherent in further litigation. Moreover, the substantial cash benefit provided under the Settlement must be balanced against the significant risk that a smaller recovery – or, indeed, no recovery at all – might be achieved after a trial of the Action and the likelihood of appeals that could last many months, or even years, into the future. The Defendants, who deny all allegations of wrongdoing or liability whatsoever, are entering into the Settlement to eliminate the uncertainty, burden and expense of further protracted litigation.

YOUR LEGAL RIGHTS AND OPTIONS IN THE SETTLEMENT:	
SUBMIT A CLAIM FORM BY: APRIL 13, 2016.	This is the only way to be eligible to receive a payment from the Settlement. If you are a Class Member, you will be bound by the Settlement as approved by the Court and you will give up any Settled Class Claims (as defined in ¶ 47 below) that you have against the Defendants (as defined in ¶ 1, above), so it is in your interest to submit a Claim Form.
OPT-BACK INTO THE CLASS BY SUBMITTING A WRITTEN REQUEST TO WITHDRAW YOUR PREVIOUSLY SUBMITTED REQUEST FOR EXCLUSION SO THAT IT IS RECEIVED NO LATER THAN MARCH 14, 2016.	If you previously submitted a request for exclusion from the Class in connection with the Class Certification Notice and now want to be part of the Class and be eligible to receive a payment from the Settlement Fund (by submitting a valid Claim Form by the claim filing deadline), you must follow the steps for “Opting-Back Into the Class” as set forth in ¶¶ 52-55 below. If you previously submitted a request for exclusion from the Class in connection with the Class Certification Notice and wish to remain excluded from the Class, no further action is necessary.
OBJECT TO THE SETTLEMENT BY	If you object to the proposed Settlement, or the request for attorneys’ fees and

SUBMITTING A WRITTEN OBJECTION SO THAT IT IS RECEIVED NO LATER THAN MARCH 14, 2016.	reimbursement of litigation expenses, you may (but are not required to) write to the Court and explain why you object. You cannot object to the Settlement, or the fee and expense request unless you are a Class Member and you did not previously submit a request for exclusion in connection with the Class Notice.
GO TO THE HEARING ON APRIL 18, 2016 AT 10 A.M., AND FILE A NOTICE OF INTENTION TO APPEAR SO THAT IT IS RECEIVED NO LATER THAN MARCH 14, 2016.	Filing a written objection and notice of intention to appear by March 14, 2016 allows you to speak in Court at the discretion of the Court about the fairness of the proposed Settlement, or the request for attorneys' fees and reimbursement of litigation expenses. If you submit a written objection, you may (but do not have to) attend the Settlement Fairness Hearing and, at the discretion of the Court, speak to the Court about your objection.
DO NOTHING.	If you are a member of the Class and you do not submit a Claim Form by April 13, 2016, you will not be eligible to receive any payment from the Settlement Fund. You will, however, remain a member of the Class, which means that you give up your right to sue about the claims that are resolved by the Settlement and you will be bound by any judgments or orders entered by the Court in the Action.

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WHY DID I GET THIS NOTICE?

10. This Notice is being sent to you pursuant to an Order of the Court because you may have paid for electric services from Defendants during the Class Period. The Court has directed us to send you this Notice because, as a potential Class Member, you have a right to know about your options before the Court rules on the proposed Settlement of this case. Additionally, you have the right to understand how a class action lawsuit may generally affect your legal rights. If the Court approves the Settlement, The Garden City Group, Inc. ("GCG"), the claims administrator selected by Lead Plaintiffs and approved by the Court, will distribute payments pursuant to the Settlement after any objections and appeals are resolved.

11. In a class action lawsuit, under a federal law governing lawsuits such as this one, the Court approves of one or more plaintiffs to represent the class, known as class representatives, to oversee litigation brought on behalf of all plaintiffs with similar claims, commonly known as the class or the class members. In this action, the Court has approved the Lead Plaintiffs to represent the Class's interest in this Action and has approved of the law firms Markovits, Stock & DeMarco, LLC and Freking, Myers & Reul, LLC as Plaintiffs' Counsel for Lead Plaintiffs and the Class in the Action. A class action is a type of lawsuit in which the claims of a number of individuals are resolved together, thus providing the class members with both consistency and efficiency. Here, the Court has already certified the Class. Accordingly, the Settlement, if approved by the Court, will resolve all issues on behalf of the Class Members, except for any Persons who previously submitted a request for exclusion in connection with the Class Certification Notice who do not opt-back into the Class.

12. The Court in charge of this case is the United States District Court for the Southern District of Ohio, and the case is known as *Williams v. Duke Energy*, Case No.1:08-cv-00046. The Judge presiding over this case is the Honorable Edmund Sargus, United States District Judge. The people who are suing are called plaintiffs, and those who are being sued are called defendants. In this case, the plaintiffs are referred to as Lead Plaintiffs and they are suing on behalf of themselves and the Class, and the defendants are Duke Energy Corporation and Duke Energy, Ohio, Inc. (see ¶1 above). If the Settlement is approved, it will resolve all claims in the Action by Class Members against the Defendants and will bring the Action to an end.

13. This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them, and how to get them. The purpose of this Notice is to inform you that a settlement has been reached in this Action and how you might be affected. It also is being sent to inform you of the terms of the proposed Settlement, and of a Hearing on Final Approval of Settlement to be held by the Court to consider the fairness, reasonableness, and adequacy of the proposed Settlement, the proposed Plan of Allocation, and the motion by Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of litigation expenses (the "Settlement Fairness Hearing").

14. The Settlement Fairness Hearing will be held on April 18, 2016 at 10 a.m., before the Honorable Edmund Sargus,

at the Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio, 45202, to determine:

- a) whether the proposed Settlement is fair, reasonable, and adequate and should be approved by the Court;
- b) whether the Action should be dismissed with prejudice against the Defendants as set forth in the Stipulation;
- c) whether Plaintiffs' Counsel's request for an award of attorneys' fees and reimbursement of litigation expenses should be approved by the Court; and
- d) any other relief the Court deems necessary to effectuate the terms of the Settlement.

15. This Notice does not express any opinion by the Court concerning the merits of any claim in the Action, and the Court still has to decide whether to approve the Settlement. If the Court approves the Settlement, payments to Authorized Claimants will be made after any appeals are resolved, and after the completion of all claims processing. There potentially are over a million claims that may be submitted during the claims process, and thus, the claims process could take substantial time to complete fully and fairly. Please be patient.

WHAT IS THIS CASE ABOUT?

A. Summary of Procedural History and Background on Lead Plaintiffs' Claims

16. On January 16, 2008, Lead Plaintiffs filed a class action complaint against Duke, alleging federal RICO and antitrust claim, as well as violations of state RICO statutes, other states state statutes and common law. On March 21, 2008, Duke filed a motion to dismiss. On May 30, 2008, Lead Plaintiffs filed an amended complaint, in part adding defendant General Motors Corporation. Duke renewed their motion to dismiss on June 30, 2008.

17. Lead Plaintiffs filed a motion to certify the Class on October 31, 2008. On November 11, 2008, the Court stayed that motion until disposition of the motion to dismiss. On March 31, 2009, the Court granted Duke's and General Motors' motions to dismiss.

18. On April 29, 2010, Lead Plaintiffs filed a notice of appeal. Following a full briefing and oral argument, on June 5, 2012, the Sixth Circuit Court of Appeals issued an opinion reversing this Court's order granting Duke's motion to dismiss and remanding the case for further proceedings consistent with its opinion. On July 25, 2012, the Sixth Circuit Court of appeals denied Duke's petition for rehearing or rehearing en banc. On January 14, 2013, the United State Supreme Court denied Duke's petition for certiorari.

19. On June 4, 2013, Lead Plaintiffs filed a renewed motion for class certification. On March 13, 2014, the Court granted Lead Plaintiffs' motion for class certification, and the class was subsequently given notice. In April 2015, a Class Certification Notice was (1) sent via regular U.S. Mail to roughly 400,000 potential Class Members; (2) sent via electronic mail to approximately 49,000 potential Class Member email addresses; (3) published in the *Cincinnati Enquirer*, *Wilmington News Journal*, *Hillsboro Gazette*, and *Dayton Daily News*; and (4) posted on the Class Website: www.dukeclassaction.com. An abbreviated form of notice containing the URL to the Class Website was placed on Facebook through geographically-targeted advertisements.

20. On September 18, 2013, Lead Plaintiffs filed a Second Amended Complaint with Jury Demand. This complaint dropped General Motors as a defendant and all claims against it.

21. On April 22, 2014, the Court scheduled a jury trial to begin July 27, 2015.

22. Fact discovery concluded on October 15, 2014, with over 65,000 pages of documents produced and 27 witnesses deposed. All discovery concluded on February 11, 2015; Lead Plaintiffs had four experts and Defendants had four experts.

B. The Settlement Negotiations

23. On June 16, 2015, with the summary judgment motion pending, Lead Plaintiffs' and Defendants engaged in mediation with the aid of and before Judge Sargus of the Southern District of Ohio. Additional sessions took place before Judge Sargus on June 23, 2015, and July 20, 2015.

24. The Parties had also engaged in prior, unsuccessful mediation efforts: on December 6, 2012, with Magistrate Judge Norah McCann King acting as mediator; on January 25, 2014, with Magistrate Judge Norah McCann King acting as mediator; and on March 13, 2015, before Eric Green, a mediator agreed to by the Parties.

25. Based upon their investigation, prosecution and mediation of the case, Plaintiffs' Counsel have concluded that the terms and conditions of the Stipulation are fair, reasonable and adequate to the Lead Plaintiffs and the other members of the Class, and in their best interests. Based on Lead Plaintiffs' direct oversight of the prosecution of this matter and with the advice of Plaintiffs' Counsel, each of the Lead Plaintiffs has agreed to settle the claims raised in the Action pursuant to the terms and provisions of the Stipulation, after considering (a) the very substantial financial benefit that Lead Plaintiffs and the other members of the Class will receive under the proposed Settlement, (b) the significant risks of continued litigation and trial, and (c) the desirability of permitting the Settlement to be consummated as provided by the terms of the Stipulation. The fact that Lead Plaintiffs have agreed to settle the Action shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Lead Plaintiff of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of Defendants' affirmative defenses to liability have any merit.

26. Defendants are entering into the Stipulation to eliminate the uncertainty, burden and expense of further protracted litigation. Defendants deny any wrongdoing, and the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants, with respect to any claim or allegation of any wrongdoing or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Defendants have, or could have asserted. The Defendants expressly deny that Lead Plaintiffs have asserted any valid claims as to any of them, and expressly deny any and all allegations of fault, liability, wrongdoing or damages whatsoever.

27. On October 21, 2015, the Court preliminarily approved the Settlement, authorized this Notice to be disseminated to potential Class Members, and scheduled the Settlement Fairness Hearing to consider whether to grant final approval to the Settlement.

HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT?

28. If you are a member of the Class, you are subject to the Settlement unless you are excluded from the Class as set forth below. The Class consists of:

All ratepayers who received retail electric generation service from Duke Energy Corp. and/or Cinergy Corp. or their subsidiaries or affiliates at any time between January 1, 2005, and December 31, 2008, in the CG&E/Duke Energy Ohio electric service territory and did not receive rebates under the side agreements.

Excluded from the Class are Defendants, including all predecessors, successors, past, present or future parents, subsidiaries or affiliates of Duke, and the members of the Industrial Energy Users-Ohio, Ohio Hospital Association, and Ohio Energy Group who entered into option agreements with Cinergy Retail Sales/Duke Energy Retail Sales prior to 2008.

Also excluded from the Class are any Persons who submitted a request for exclusion in connection with the Class Notice as set forth on Exhibit 9 to the Stipulation who do not opt-back into the Class in accordance with the instructions set forth herein (see ¶¶ 52-55 below).

PLEASE NOTE: RECEIPT OF THIS NOTICE DOES NOT MEAN THAT YOU ARE A CLASS MEMBER OR THAT YOU WILL BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU ARE A CLASS MEMBER AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE REQUIRED TO SUBMIT THE CLAIM FORM POSTMARKED NO LATER THAN APRIL 13, 2016.

WHAT ARE LEAD PLAINTIFFS' REASONS FOR THE SETTLEMENT?

29. The principal reason for Lead Plaintiffs' consent to the Settlement is that it provides an immediate and substantial benefit to the Class in the form of a substantial monetary recovery. The benefit of the present Settlement must be compared to the risk that no recovery might be achieved after a contested trial and likely appeals, possibly many months, or even years, into the future.

30. But for the Settlement achieved on September 16, 2015, this Action would either have faced potential dismissal upon resolution of the remaining summary judgment motions, or would have proceeded to trial. The claims advanced by the Class in this Action involve numerous complex legal and factual issues. If the Action were to proceed to trial, Lead Plaintiffs would have to overcome significant defenses. Among other things, the Lead Plaintiffs and Defendants disagree about (i) whether Lead Plaintiffs or the Class have suffered any damages, (ii) whether Defendants' agreements with third parties were option contracts, and (iii) whether Lead Plaintiffs or the Class were harmed by the conduct alleged in the Complaint. The Lead Plaintiffs and Defendants also disagree on the appropriate methodology for determining damages, if liability were established. This Settlement enables the Class to recover without incurring any additional risk or costs.

31. Defendants have expressly denied and continue to deny all assertions of wrongdoing or liability against them arising out of any of the conduct, statements, or acts, alleged, or that could have been alleged, in the Action. Defendants also continue to believe that the claims asserted against them in the Action are without merit. Defendants have agreed to enter into the Settlement, as embodied in the Stipulation, to avoid the uncertainty, burden and expense of further protracted litigation.

32. In light of the risks associated with a trial of this Action, the monetary amount of the Settlement and the immediacy of this recovery to the Class, Lead Plaintiffs believe that the proposed Settlement is fair, reasonable and adequate, and in the best interests of the Class. Lead Plaintiffs believe that the Settlement provides a substantial benefit to the Class, namely a \$80,875,000 Settlement Amount (less the various deductions described in this Notice), as compared to the risk that the claims in the Action would produce a smaller, or no, recovery after summary judgment or trial and appeals.

WHAT MIGHT HAPPEN IF THERE WERE NO SETTLEMENT?

33. If there were no Settlement and Lead Plaintiffs failed to establish any essential legal or factual element of their claims, neither Lead Plaintiffs nor the other members of the Class would recover anything from Defendants. Also, if Defendants were successful in proving any of their defenses, either at summary judgment, at trial or on appeal, the Class likely would recover substantially less than the amount provided in the Settlement, or nothing at all.

HOW MUCH WILL MY PAYMENT BE?

34. At this time, it is not possible to make an exact determination as to how much any individual Class Member may receive from the Settlement until the number of Claim Days for the Class and the amount of the Non-Residential Class Members' usage totals (see ¶ 5 above) are determined. The total number of Claim Days for the Class and Non-Residential Class Members' usage totals will be finalized within the next 30 days. The minimum payout for a valid and timely claim from an eligible Residential Class Member who qualifies for the entire Class Period will be a total of approximately \$40; that amount may go up to a maximum of approximately \$400 depending on the total number of Claim Days calculated for the Class. Non-Residential Class Members will receive fixed, and possibly variable amounts based upon usage, for each qualifying day they paid a tariffed rate during the Class Period, from a settlement fund not to exceed \$25,000,000. The minimum payout for a valid and timely claim from an eligible Non-Residential Class Member that qualifies for the entire Class Period will be a total of approximately \$200; that amount may go up to a maximum of approximately \$4,000 depending on the total number of Claim Days calculated for the Class. Class Members who qualify for lesser time periods will receive lesser total payouts so long as they are \$10.00 and above. As noted in ¶ 5, Non-Residential Class Members will receive a minimum payment for the Number of Claim Days it received electric service from Defendants during the Class Period and may potentially receive an additional usage payment based on the amount of electric services it received from Duke during the Class Period. Any estimated payments included in this paragraph are estimated numbers and shall not be relied upon with certainty as they may end up be lower or higher when the claims are processed.

35. Pursuant to the Settlement, Defendants will set aside \$80,875,000.00 for Settlement of this Action, which will include the payment of attorneys' fees and expenses, the payment of all federal, state and local taxes on any income earned by the Settlement Fund and the reasonable costs incurred in connection with determining the amount of and paying taxes owed by the Settlement Fund (including reasonable expenses of tax attorneys and accountants), the costs and expenses incurred in connection with providing notice to Class Members and administering the Settlement on behalf of the Class Members, the establishment of a fund not to exceed \$25,000,000 for Residential Class Members, the establishment of a fund not to exceed \$25,000,000 for Non-Residential Class Members, and the establishment of a \$8,000,000 Class Benefit Fund which shall be used to fund and promote programs and projects related to energy programs to leverage settlement dollars with respect to Class Members, thereby providing a direct benefit to Class Members.

36. Payments to Residential Class Members, Non-Residential Class Members, and for programs under the Class Benefit Fund will not be distributed until the Court has approved the Settlement, and the time for any petition for rehearing, appeal or review, whether by certiorari or otherwise, has expired.

37. Defendants shall not have any liability, obligation or responsibility for the administration of the Settlement, or the disbursement of the Settlement Sum.

38. Only Class Members will be eligible to share in the distribution of \$50,000,000 of the Settlement Sum.

39. Each Class Member wishing to participate in the distribution must timely submit a valid claim form establishing membership in the Class ("Claim Form") online through the Class Website (www.dukeclassaction.com) no later than April 13, 2016, or by mail postmarked on or before April 13, 2016 to the address set forth in the Claim Form.

40. Unless the Court otherwise orders, any Class Member who fails to submit a Claim Form electronically through the Class Website or postmarked on or before April 13, 2016 shall be fully and forever barred from receiving payments pursuant to the Settlement but will in all other respects remain a Class Member and be subject to the provisions of the Stipulation, including the terms of any Judgment entered and the releases given. This means that each Class Member releases the Settled Class Claims (as defined in ¶ 60 below) and will be enjoined and prohibited from filing, prosecuting, or pursuing any of the Settled Class Claims whether or not such Class Member submits a Claim Form.

41. Information Required on the Claim Form: the Class Member must sign the claim form and attest that the Class Member paid Defendants for electric services at the relevant address during the Class Period.

42. The Court has reserved jurisdiction to allow, disallow, or adjust on equitable grounds the claim of any Class Member. Each claimant shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim.

43. If a claimant disputes GCG's decision to reject the claim in whole or in part, the claimant must, within 20 days after the date of GCG's mailing of the notice rejecting the claim in whole in or in part, serve GCG with a notice and a statement of reasons indicating the claimant's grounds for contesting the rejection along with any supporting documentation. If the claimant provides this required notice of the claimant's desire to contest the rejection and the dispute concerning a claim cannot be otherwise be resolved, Plaintiffs' Counsel shall thereafter present the request for review to the Court.

44. Persons and entities that either are excluded from the Class by definition or whose names appear on Exhibit 9 to the Stipulation because they previously submitted a request for exclusion in connection with the Class Certification Notice who do not elect to opt- back into the Class, will not be eligible to receive a distribution from the Settlement Sum and should not submit Claim Forms.

45. Distributions will be made to Authorized Claimants whose claims entitle them to a payment of no less than \$10.00 after all claims have been processed and after the Court has finally approved the Settlement.

HOW ARE CLASS MEMBERS AFFECTED BY THE ACTION AND THE SETTLEMENT?

46. If you are a Class Member, you will be bound by any orders issued by the Court. If the Settlement is approved, the

Court will enter a judgment (the "Judgment"). The Judgment will dismiss with prejudice the claims against Defendants and will provide that, upon the Effective Date of the Settlement, Lead Plaintiffs and all other Class Members, on behalf of themselves, their heirs, executors, administrators, predecessors, successors, affiliates and assigns, will fully and finally release, to the fullest extent that the law permits their release in this Action, all Settled Class Claims (as defined in ¶¶ 46-47 below).

47. "Settled Class Claims" means any and all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, whether based in law or equity, on federal, state, local, foreign, statutory or common law, or any other law, rule, or regulation (including, but not limited to, all claims for fraud, violations of state or federal RICO laws, federal antitrust laws, and conspiracy), whether known or unknown, whether or not concealed or hidden, accrued or not accrued, foreseen or unforeseen, matured or not matured, that were asserted or that could have been asserted directly, indirectly, representatively or in any other capacity, at any time, in any forum by Plaintiffs against the Defendants arising out of, based upon, or related in any way (a) to electric services Plaintiffs' received from Defendants during the Class Period, any agreements Defendants made with third parties during the Class Period for rebates in electric services; and any information Defendants did or did not disclose to the Public Utilities Commission of Ohio during the Class Period; or (b) the Settlement or resolution of the Action (including, without limitation, any claim for attorneys' fees by Lead Plaintiffs or any Class Member) (the "Settled Class Claims"). Settled Class Claims shall also include any Unknown Claims. Unknown Claims means any claims that any Plaintiff does not know or suspect to exist in his, her, its or their favor at the time of the release of the Defendants which, if known by him, her, it, or them might have affected his her, its or their settlement with and release of the Defendants, or might have affected his, her, its, or their decision not to object to this Settlement. Settled Class Claims also include any claims of any person or entity that submitted a request for exclusion as set forth in Exhibit 9 to the Stipulation and who does not opt back into the Class. Settled Class Claims do not include claims relating to the enforcement of the Settlement.

* Pursuant to its Order Preliminarily Approving Proposed Settlement and Providing for Notice dated October 21, 2015, the Court is not ordering that Class Members be provided with a second opportunity to exclude themselves from the Class.

**WHAT PAYMENT ARE THE ATTORNEYS FOR THE CLASS SEEKING?
HOW WILL THE LAWYERS BE PAID?**

48. Plaintiffs' Counsel have not received any payment for their services in pursuing claims against the Defendants on behalf of the Class, nor have they been reimbursed for their out-of-pocket expenses. Before final approval of the Settlement, Plaintiffs' Counsel, on behalf of themselves and all other Plaintiffs' Counsel will apply to the Court for an award of attorneys' fees from the Settlement Sum in the amount of 24% of the Settlement Fund, after certain other costs and expenses have been deducted. At the same time, Plaintiffs' Counsel also intend to apply for the reimbursement of litigation expenses not to exceed \$2 million plus the costs of settlement administration, which may include an application for reimbursement of the reasonable costs and expenses incurred by Lead Plaintiffs directly related to their representation of the Class. The Court will determine the amount of any award of attorneys' fees or reimbursement of litigation expenses. Such sums as may be approved by the Court will be paid from the Settlement Sum. Class Members are not personally liable for any such fees or expenses.

HOW DO I PARTICIPATE IN THE SETTLEMENT? WHAT DO I NEED TO DO?

49. To be eligible for a payment from the proceeds of the Settlement, you must be a member of the Class and you must timely complete and return the completed Claim Form **postmarked no later than April 13, 2016**, or timely submit a valid Claim Form through the Class Website **no later than April 13, 2016**. A Claim Form will be mailed and emailed to known potential Class Members, or you may obtain one from the website for this Action, www.dukeclassaction.com, or you may request that a Claim Form be mailed to you by calling the claims administrator, GCG, toll free at (844) 322-8220. If you are excluded from the Class by definition or you previously submitted a request for exclusion in connection with the Class Notice and do not opt-back into the Class in accordance with the instructions set forth in ¶52-55 below, or if you do not submit a timely and valid Claim Form, you will not be eligible to share in the Net Settlement Fund.

50. As a Class Member, you are represented by the Lead Plaintiffs and Plaintiffs' Counsel, unless you enter an appearance through counsel of your own choice at your own expense. You are not required to retain your own counsel, but if you choose to do so, such counsel must file a notice of appearance on your behalf and must serve copies of his or her notice of appearance on the attorneys listed in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?," below.

51. If you are a Class Member who has not previously submitted a request for exclusion in connection with the Class Certification Notice and you wish to object to the Settlement, or Plaintiffs' Counsel's application for attorneys' fees and reimbursement of litigation expenses, you may present your objections by following the instructions in the section entitled, "When and Where Will the Court Decide Whether to Approve the Settlement?," below.

OPTING-BACK INTO THE CLASS - WHAT IF I PREVIOUSLY REQUESTED EXCLUSION FROM THE CLASS AND NOW WANT TO BE ELIGIBLE TO RECEIVE A PAYMENT FROM THE SETTLEMENT FUND? HOW DO I OPT-BACK INTO THE CLASS?

52. If you previously submitted a request for exclusion from the Class in connection with the Class Certification Notice (see Exhibit 9 to the Stipulation), you may elect to opt-back into the Class and be eligible to receive a payment from the Settlement.

53. If you believe that you previously submitted a request for exclusion but your name does not appear on Exhibit 9 to the Stipulation, you can contact the claims administrator, GCG, at (844) 322-8220 for assistance.

54. In order to opt-back into the Class, you, individually or through counsel, must submit a written Request to Opt-Back Into the Class to GCG, addressed as follows: *Williams v. Duke Energy*, c/o The Garden City Group, Inc., P.O. Box 10092, Dublin, Ohio 43017-6692. This request must be **received** no later than March 14, 2016. Your Request to Opt-Back Into the Class must (a) state the name, address and telephone number of the person or entity requesting to opt-back into the Class; (b) state that such person or entity “requests to opt-back into the Class in the *Williams v. Duke Energy*, Case No. 1:08-cv-00046”; and (c) be signed by the person or entity requesting to opt-back into the Class or an authorized representative.

55. You may not opt-back into the Class for the purpose of objecting to any aspect of the Settlement, or Plaintiffs’ Counsel’s request for attorneys’ fees and reimbursement of litigation expenses.

PLEASE NOTE: OPTING-BACK INTO THE CLASS IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH ABOVE DOES NOT MEAN THAT YOU WILL AUTOMATICALLY BE ENTITLED TO RECEIVE PROCEEDS FROM THE SETTLEMENT. IF YOU OPT-BACK INTO THE CLASS AND YOU WISH TO BE ELIGIBLE TO PARTICIPATE IN THE DISTRIBUTION OF PROCEEDS FROM THE SETTLEMENT, YOU ARE ALSO REQUIRED TO SUBMIT THE COMPLETED CLAIM FORM POSTMARKED NO LATER THAN APRIL 13, 2016.

**WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?
DO I HAVE TO COME TO THE HEARING? MAY I SPEAK AT THE HEARING IF I DON’T LIKE THE SETTLEMENT?**

56. Class Members do not need to attend the Settlement Fairness Hearing. The Court will consider any submission made in accordance with the provisions below even if a Class Member does not attend the hearing. You can participate in the Settlement without attending the Settlement Fairness Hearing.

57. The Settlement Fairness Hearing will be held on April 18, 2016 at 10 a.m. before the Honorable Edmund Sargus, at the Potter Stewart U.S. Courthouse, 100 East Fifth Street, Cincinnati, Ohio, 45202. The Court reserves the right to approve the Settlement, Plaintiffs’ Counsel’s motion for an award of attorneys’ fees and reimbursement of litigation expenses and/or any other matter related to the Settlement at or after the Settlement Fairness Hearing without further notice to the members of the Class.

58. Any Class Member who did not submit a request for exclusion from the Class in connection with the Class Certification Notice may object to the proposed Settlement, or Plaintiffs’ Counsel’s motion for an award of attorneys’ fees and reimbursement of litigation expenses. Objections must be in writing. You must file any written objection, together with copies of all other papers and briefs supporting the objection, with the Clerk of the Court at the address set forth below on or before March 14, 2016. You must also serve the papers on Plaintiffs’ Counsel for the Class and Defendants’ Counsel at the addresses set forth below so that the papers are **received** on or before March 14, 2016.

<p>Clerk’s Office United States District Court Southern District of Ohio Clerk of the Court Joseph P. Kinneary United States Courthouse 85 Marconi Boulevard Columbus, Ohio 43215</p>	<p>Class Counsel</p> <p>Markovits, Stock & DeMarco, LLC W.B. Markovits, Esq. 119 E. Court St., Suite 530 Cincinnati, Ohio 45202</p> <p>Freking, Myers & Reul, LLC Randolph Freking, Esq. 525 Vine St., Suite 600 Cincinnati, OH 45202 <i>Plaintiffs’ Counsel</i></p>	<p>Defendants’ Counsel</p> <p>Porter Wright Morris & Arthur LLP James King, Esq. 41 South High Street, Suite 2900 Columbus, Ohio 43215</p> <p>Sidley Austin LLP Frank Volpe, Esq. 1501 K Street, N.W. Washington, D.C. 20005 <i>Counsel for Defendants</i></p>
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59. Any objection to the Settlement (a) must state the name, address and telephone number of the person or entity objecting and must be signed by the objector; (b) must contain a statement of the Class Member’s objection or objections, and the specific reasons for each objection, including any legal and evidentiary support the Class Member wishes to bring to the Court’s attention; and (c) must include documents sufficient to prove the objector’s membership in the Class such as proof of payment to Duke for electric services during the Class Period at an address in Southwest Ohio and/or ownership or control of a property in Southwest Ohio that received Duke electric service during the Class Period. You may not object to the Settlement, or Plaintiffs’ Counsel’s motion for attorneys’ fees and reimbursement of litigation expenses if you previously submitted a request for exclusion from the Class in connection with the Class Notice or if you are not a member of the Class.

60. You may file a written objection without having to appear at the Settlement Fairness Hearing. You may not, however, appear at the Settlement Fairness Hearing to present your objection unless you first filed and served a written objection in accordance with the procedures described above, unless the Court orders otherwise.

61. If you wish to be heard orally at the hearing in opposition to the approval of the Settlement, or Plaintiffs’ Counsel’s motion for an award of attorneys’ fees and reimbursement of litigation expenses, and if you file and serve a timely written objection as described above, you must also file a notice of appearance with the Clerk’s Office and serve it on Plaintiffs’ Counsel and Defendants’ Counsel at the addresses set forth above so that it is **received** on or before March 14, 2016. Persons who intend to object and desire to present evidence at the Settlement Fairness Hearing must include in their written objection or notice of appearance the identity of any witnesses they may call to testify and exhibits they intend to introduce into evidence at the hearing. Such persons may be heard

orally at the discretion of the Court.

62. You are not required to hire an attorney to represent you in making written objections or in appearing at the Settlement Fairness Hearing. However, if you decide to hire an attorney, it will be at your own expense, and that attorney must file a notice of appearance with the Court and serve it on Plaintiffs' Counsel and Defendants' Counsel at the addresses set forth above so that the notice is **received** on or before March 14, 2016.

63. The Settlement Fairness Hearing may be adjourned by the Court without further written notice to the Class. If you intend to attend the Settlement Fairness Hearing, you should confirm the date and time with Plaintiffs' Counsel.

64. **Unless the Court orders otherwise, any Class Member who does not object in the manner described above will be deemed to have waived any objection and shall be forever foreclosed from making any objection to the proposed Settlement, or Plaintiffs' Counsel's motion for an award of attorneys' fees and reimbursement of litigation expenses. Class Members do not need to appear at the Settlement Fairness Hearing or take any other action to indicate their approval.**

CAN I SEE THE COURT FILE? WHOM SHOULD I CONTACT IF I HAVE QUESTIONS?

65. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in this Action, you are referred to the papers on file in the Action, including the Stipulation, which may be inspected during regular office hours at the Office of the Clerk, United States District Court for the Southern District of Ohio, Joseph P. Kinneary, U.S. Courthouse, Room 121, 85 Marconi Boulevard, Columbus, Ohio 43215. Additionally, copies of the Stipulation and any related orders entered by the Court will be posted on the website for this Action, www.dukeclassaction.com. All inquiries concerning this Notice or the Claim Form should be directed to GCG or Plaintiffs' Counsel at:

Williams v. Duke Energy
c/o The Garden City Group, Inc.
P.O. Box 10092
Dublin, Ohio 43017-6692
(844) 322-8220
www.dukeclassaction.com

and/or

Markovits, Stock & De Marco, LLC
W. B. Markovits, Esq.
119 East Court St., Suite 530
Cincinnati, Ohio 45202

Freking, Myers & Reul, LLC
Randolph Freking, Esq.
525 Vine Street, Suite 600,
Cincinnati, OH 45202

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE CLERK OF COURT REGARDING THIS NOTICE.
DO NOT CALL OR WRITE DUKE ENERGY CORPORATION AND ITS COUNSEL REGARDING THIS NOTICE.**

Dated: October 21, 2015

By Order of the Clerk of Court United States
Southern District of Ohio