

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio Inc., for an Increase in Gas Rates.	:	Case No. 12-1685-GA-AIR
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In the Matter of the Application of Duke Energy Ohio Inc., for Tariff Approval	:	Case No. 12-1686-GA-ATA
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In the Matter of the Application of Duke Energy Ohio Inc., for Approval of an Alternative Rate Plan for Gas Distribution Service.	:	Case No. 12-1687-GA-ATA
	:	
In the Matter of the Application of Duke Energy Ohio Inc., for Approval to Change Accounting Methods	:	Case No. 12-1688-GA-AAM
	:	

PREPARED DIRECT TESTIMONY
OF
KERRY J. ADKINS
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO
UTILITIES DEPARTMENT
ACCOUNTING AND ELECTRICITY DIVISION

STAFF EX. ____

April 22, 2013

1 **1. Q. Please state your name and business address.**

2 A. My name is Kerry J. Adkins and my business address is 180 East Broad
3 Street, Columbus, Ohio 43215-3793.

4 **2. Q. By whom are you employed and in what capacity?**

5 A. I am employed by the Public Utilities Commission of Ohio (Commission or
6 PUCO) as a Public Utilities Administrator 2 in the Accounting and
7 Electricity Division of the Utilities Department. In that capacity, I manage
8 and participate on Commission Staff (Staff) teams that review natural gas,
9 electric, and water utilities' applications for recovery of certain costs asso-
10 ciated with infrastructure replacement and capital improvement programs.
11 In addition, I serve on Staff teams that review utility applications in base
12 rate proceedings and perform other related duties as assigned.

13 **3. Q. Please briefly describe your educational background and work**
14 **experience.**

15 A. I received a B.A. degree from Ohio Northern University and a Master of
16 Public Administration degree with concentrations in regulatory policy and
17 fiscal administration from The Ohio State University. I began my
18 employment with the PUCO in 1989 as a Researcher II in what was then
19 the Consumer Services Department's Nuclear Division. Since that time, I
20 have held a number of analyst and management positions at the

Commission. I was assigned to my present position in January 2008. Prior to my employment with the PUCO, I was employed as an Administrative Deputy for the City of Whitehall, Ohio.

4. Q. Have you previously testified before the Commission?

A. Yes. I have testified before the Commission in several rate and enforcement proceedings and customer complaint cases.

5. Q. What is the purpose of your testimony in this proceeding?

A. I am responding to Duke Energy Ohio, Inc.'s (Duke or Company) Objection 6 and its subparts 6(a) through 6(i) concerning the Staff's recommendations regarding recovery of deferred expenses to remediate former manufactured gas plant (MGP) sites. I am also responding to the Office of the Ohio Consumers' Counsel (OCC) Objections 25, 26, 27, and 29 concerning the Staff's MGP recommendations and the Kroger Company's (Kroger) Objection B relating to the MGP recommendations.

6. Q. Initially, Duke makes a number of broad and general claims in Objection 6. First, Duke claims that the Staff failed to consider the strict liability the Company allegedly faces under state and federal environmental requirements for MGP cleanup. How do you respond?

1 A. This claim is inaccurate. Staff did consider Duke's potential liability for
2 cleaning the MGP sites. It is my understanding that Duke may be legally
3 responsible for remediation of the sites under Federal and/or Ohio law.
4 However, the fact the remediation costs may be necessary does not mean
5 that they are recoverable from ratepayers. Staff recommends that only
6 expenses related to utility property that is both used and useful in rendering
7 gas distribution service on the date certain should be included in gas rates.
8 In this case, the former MGPs ceased operation in 1963 and 1967, so they
9 were clearly not used and useful in rendering natural gas distribution
10 service on March 31, 2012, the date certain in this case. This is essentially
11 a legal issue that will be discussed further in the Staff's post-hearing brief.

12 7. **Q. Although the MGPs were not used and useful in rendering natural gas**
13 **distribution service at the date certain, can Duke recover the costs it**
14 **incurred to investigate and remediate the former MGP sites from gas**
15 **customers through base rates?**

16 A. It depends. Again, this is essentially a legal issue that will be
17 addressed in the Staff's brief, however Staff recommends that Duke should
18 only be allowed to recover remediation and investigation costs of the MGP
19 plants related to the portions of the property that were determined to be
20 used and useful at the date certain. Therefore, Staff examined the present
21 use of the properties and facilities at the former MGP sites to determine if

1 such properties and facilities are currently used and useful in providing
2 natural gas distribution service. If Staff determined certain structures or
3 facilities that are presently used and useful in providing natural gas
4 distribution gas service are located on specific parcels of the sites that were
5 remediated, then the Staff recommended recovery of the deferred MGP
6 remediation expenses associated with these parcels. If, on the other hand,
7 the remediated property was not presently used and useful in rendering
8 natural gas distribution service, then the Staff recommended that the
9 deferred MGP expenses should not be recovered in natural gas rates.

10 **8. Q. The other broad claim in Company Objection 6 is that the Staff**
11 **arbitrarily divided the former MGP sites and then erroneously**
12 **determined that several of the segments were not used and useful.**
13 **How do you respond to this claim?**

14 A. The property divisions described in the Staff Report are not arbitrary.
15 Staff's property divisions are based upon property divisions previously
16 established by the Company long before environmental remediation efforts
17 began at the properties. The Staff reviewed historical aerial photographs
18 from several sources going back to 1993. Some of these photographs are
19 attached to my testimony as Exhibit KA-1. The first page of Exhibit KA-1
20 shows a 2006 aerial view of the East End Site that predates the remediation

1 effort at the site.¹ This aerial image shows the fences around each of the
2 property divisions described in the Staff Report. The remaining pages of
3 Exhibit KA-1 (pages 2-4) are screen captures from Google Map's Street
4 View feature that show the fences separating the Eastern and Western
5 Parcels from the Central Parcel from street level. These pictures were taken
6 in 2009. When I visited the East End Site on October 10, 2012, personally
7 observed the placement of these fences. The photographs contained in
8 Exhibit KA-1 accurately reflect where I observed the fences dividing the
9 East End Site and accurately reflect where these fences are currently
10 located. The top part of the image on each page shows the fences in place
11 in August 2009, while the bottom part of each image shows the street
12 location and orientation of the top image. Staff implemented the same
13 process to subdivide the West End Site, using historical photographs, site
14 inspections, site drawings provided by the Company, and the Company's
15 descriptions of remediation work performed at the site.

16 Furthermore, the divisions used by Staff are the same divisions used by the
17 Company during environmental investigations and remediation. Duke
18 witness Bednarcik described how the East End and West End Sites were
19 segregated into multiple "Identified Areas" or "IAs" during the

¹ The intent of the photograph is to show the pre-existing fences separating the Eastern, Central, and Western Parcels. As a result, not the entire parcel labeled as the "Purchased Property" is shown in the zoomed view.

1 environmental investigations.² She states that the “decision was made to
2 separate the East End Site into three smaller, more manageable IAs”: the
3 “Eastern”, the “Western”, and “Central” portions. She also explained that
4 the West End Site was parceled into multiple IAs. The Company divided
5 the West End Site into two IAs: the area north of Mehring Way and the
6 area south of Mehring Way.

7 **9. Q. In Objection 6, the Company generally objects to your determination**
8 **regarding whether certain portions of the East End and West End Sites**
9 **were used and useful in the provision of gas service. Please describe**
10 **how you determined whether or not certain portions of the properties**
11 **were used and useful in the provision of gas service and whether**
12 **certain portions of the property should be assigned any remediation**
13 **costs.**

14 A. Staff used a three-step process to determine whether certain portions of the
15 property should be assigned any remediation costs. First, Staff reviewed
16 the sites to identify the site boundaries and identify all facilities and
17 structures located at each site. Second, Staff determined whether the
18 identified structures and facilities and their associated property segments
19 were actually used and useful in rendering gas distribution service for

² Initial Direct Testimony of Jessica L. Bednarcik on Behalf of Duke Energy Ohio, Inc. *In the Matter of the Application of Duke Energy Ohio Inc., for an Increase in Gas Rates*, Case No. 12-1685-GA-AIR, et.al. (July 20, 2012), at 9-10, and 15 (Initial Direct Testimony of Bednarcik).

1 customers. Third, if the facilities, structures and related property were
2 used in rendering gas distribution service for customers, Staff then
3 determined whether any remediation work was performed in these areas of
4 the property. If remediation costs were incurred in an area of the site that is
5 used and useful in rendering gas distribution service for customers, then
6 Staff recommended that these costs should be assigned to this particular
7 segment of the property.

8 **10. Q. Please describe how you implemented this three-step process in your**
9 **investigation of the West End Site.**

10 A. Staff reviewed Company-supplied data concerning the use of the land at the
11 West End Site, reviewed Company-supplied descriptions of the remediation
12 work performed, and personally inspected the West End Site.

13 Attachments MGP-9 and MGP-10 in the Staff Report are copies of
14 Company-supplied site drawings that show the boundaries, structures, and
15 facilities at the West End Site and the remediation work zones. As
16 discussed in the Staff Report, Staff divided the West End Site into two
17 parcels: North of Mehring Way and South of Mehring Way.³

18 At the North of Mehring Way Parcel, Staff discovered that the majority of
19 the property is a compacted gravel lot, with a few electric transmission
20 towers. Although there used to be a parking lot and multi-purpose building

³ Staff Report at 44-45.

1 located on the property, they were removed and were not replaced as of the
2 date certain. Nor were these structures replaced at anytime during Staff's
3 investigation. Attachment MGP-9 of the Staff Report is a map of the
4 North of Mehring Way Parcel of the West End Site.⁴ Attachment-MGP-9
5 shows that there are no gas facilities in the remediation work zones.
6 Attached to my testimony as Exhibit KA-2 is a photograph that shows the
7 entire West End Site.⁵ As can be seen from this photograph, the North of
8 Mehring Way Parcel is primarily a large, empty gravel lot and electric
9 transmission towers. None of the facilities in this parcel were being used
10 for the provision of natural gas service. Therefore, Staff determined that
11 none of the remediation costs related to the North of Mehring Way Parcel
12 should be recovered.

13 As for the South of Mehring Way Parcel, the Company provided detailed
14 drawings that showed that most of the parcel is used for electric
15 transmission and electric distribution facilities.⁶ Attachment MGP-10 of
16 the Staff Report shows where remediation work was performed in the

⁴ Attachment MGP-1 was prepared using the information provided in response to DR 68 as supplemented by Duke personnel at the November 15, 2012 interview with Staff.

⁵ This photograph was taken during Staff's October 10, 2012, on-site investigation. I was present when this photograph was taken, and it accurately reflects what I observed at the West End Site during Staff's on-site investigation.

⁶ Staff Report at 44-45.

1 South of Mehring Way Parcel of the West End Site and where the current
2 gas and electric facilities are located. Duke witness Bednarcik provided
3 the information on Attachment MGP-10, which displays the location of
4 remediation work zones, the current electric and gas facilities, and the
5 proposed electric facilities. Attachment MGP-10 clearly shows that the
6 portion of the South of Mehring Way Parcel of the West End Site that was
7 remediated does not contain any facilities that are used the provision of
8 natural gas service. The only gas facilities in the South of Mehring Way
9 Parcel are located in the far eastern edge of the parcel. During Staff's
10 investigation, the Company represented that the only gas facilities located
11 in the South of Mehring Way Parcel are two natural gas pipelines and a
12 metering/regulating ("city gate") station. These pipelines and the
13 metering/regulating station are located east of the I-75/I-71 bridge.⁷ Ms.
14 Bednarcik discusses these gas pipelines and the metering/regulating station
15 in her initial and supplemental direct testimony.⁸ These gas facilities are
16 depicted on Attachment MGP-10 of the Staff Report, which shows "gas
17 pipelines" and a "city gate building" on the far eastern edge of the South
18 Mehring Way Parcel.

⁷ West End Site drawing provided in response to DR 68 as supplemented by Duke personnel at the November 15, 2012 interview with Staff.

⁸ Initial Direct Testimony of Jessica L. Bednarcik at 7; Supplemental Direct Testimony of Jessica L. Bednarcik. *In the Matter of the Application of Duke Energy Ohio Inc., for an Increase in Gas Rates*, Case No. 12-1685-GA-AIR, et.al (February 25, 2013), at 11-12 (Supplement Direct Testimony of Bednarcik).

1 As can be seen from Attachment MGP-10, the gas facilities located at the
2 eastern edge of the South Mehring Way Parcel are at least 300 feet away
3 from the remediation work zone. The remediation work at the South
4 Mehring Way Parcel was not performed remotely close to the “gas
5 pipelines” and “city gate building.” Exhibit KA-3 is a photograph of the
6 South of Mehring Way Parcel. This photograph is facing east towards the
7 I-75/I-71 bridge.⁹ The two underground gas pipelines are located on the far
8 right edge of this photograph, well beyond the existing substation and
9 beyond the bridge. This photo shows that the underground gas pipelines
10 are very far from the remediation zone, which is the fenced-in area in the
11 center of the photograph. Staff concluded that the remediation work at the
12 South of Mehring Way Parcel was not performed to operate, maintain, or
13 repair gas distribution plant. As a result, the Staff recommended no
14 recovery of the West End Site remediation costs at the South of Mehring
15 Way Parcel.

16 **11. Q. Please generally describe how you divided the East End Site during**
17 **your investigation.**

⁹ This photograph was taken during Staff’s October 10, 2012, on-site investigation. I was present when this photograph was taken and it accurately reflects what I observed at the South of Mehring Parcel during Staff’s on-site investigation.

1 A Staff reviewed the existing segments at the East End Site individually and
2 labeled the parcels as: (1) the “Eastern Parcel,” (2) the “Central Parcel,” (3)
3 the “Western Parcel,” and (4) the “Purchased Property.”

4 **12. Q. Please describe how you implemented the three-step investigation**
5 **process for the Eastern Parcel at the East End Site.**

6 A Staff reviewed current and historical aerial photos of the parcel, examined
7 Company-supplied site drawings, and physically inspected the parcel to
8 determine that there are no above ground structures or facilities involved in
9 natural gas distribution service. Attachment MGP-5 of the Staff Report is a
10 engineering drawing of the Eastern Parcel.¹⁰ Based on a review of
11 historical photographs, it appears that there have been no above-ground
12 permanent structures or equipment on the Eastern Parcel for at least 20
13 years. The only facilities that the Staff could identify on the parcel that are
14 used and useful for natural gas distribution are three 20 to 24 inch
15 underground gas pipelines, which were described in the Staff Report.¹¹
16 Staff then determined that these underground gas pipelines were located
17 within a remediated area of the Eastern Parcel. See Attachment MGP 12 of
18 the Staff Report. Staff recommended recovery of the environmental

¹⁰ Attachment MGP-5 was provided by the Company in response to Staff Data Requests DR 69 and was supplemented by Duke witness Bednarcik in an interview with Staff on October 18, 2012 to show the remediation work.

¹¹ Staff Report at 41; Attachment MGP-5 of the Staff Report.

1 investigation and remediation costs associated with property falling within
2 the 50-foot buffer.

3 **13. Q Why is Staff recommending that the Commission limit recovery of**
4 **remediation costs to the 50-foot buffer zone around the underground**
5 **pipelines rather than allowing Duke to recovery all its remediation cost**
6 **related to the Eastern Parcel?**

7 It would be improper to allow Duke to recover all of its remediation cost
8 associated with the Eastern Parcel because the vast majority of this parcel is
9 not being used in rendering gas distribution service. The Eastern Parcel is
10 approximately 9.7 acres, and most of it is a large, empty field. Exhibit KA-
11 4 is a photograph of the Eastern Parcel.¹² This photograph shows that there
12 are no permanent above-ground structures or facilities on the parcel. As
13 discussed on page 41 of the Staff report, the Staff-recommended 50-foot
14 buffer provides the Company enough room to access the pipelines with
15 heavy equipment and provides enough space to repair and maintain the
16 pipelines.

17 **14. Q. What did the Staff's three-step investigation process reveal for the**
18 **Central Parcel of the East End site?**

¹² This photograph was taken during Staff's October 10, 2012, on-site investigation. I was present when this photograph was taken and it accurately reflects what I observed at the Eastern Parcel during Staff's on-site investigation.

1 A As described in the Staff Report, the Staff determined that the entire
2 Central Parcel contains structures and facilities that were used and useful
3 for providing natural gas distribution service on the date certain. As a
4 result, Staff concluded that all remediation expenses directly incurred on
5 the Central Parcel should be recovered. Based on the site drawings
6 provided by the Company, the Staff was able to determine that seven of
7 eight vibration monitors and five of ten air monitors were put in place to
8 protect the infrastructure and workers at the Central Parcel. The costs for
9 these monitors were included in the overall calculation of the remediation
10 expenses that Staff recommended for recovery for the East End Site.

11 **15. Q. How did the Staff implement the three-step investigation process for**
12 **the Western Parcel at the East End Site?**

13 A The Western Parcel has historically been and continues to be a vacant
14 field.¹³ Exhibit KA-5 shows that the Western Parcel is largely vacant.¹⁴
15 As noted on page 42 the Staff Report, Duke is currently constructing new
16 vaporizers on the northeast section of the Western Parcel, but these
17 facilities were not in operation during the Staff site visits or on the date
18 certain in this case.

¹³ Attachment MGP-1 and Attachment MGP 2 of the Staff Report.

¹⁴ This photograph was taken during Staff's October 10, 2012, on-site investigation. I was present when this photograph was taken, and it accurately reflects what I observed at the Western Parcel during Staff's on-site investigation.

1 There is an existing vaporizer building located in the Northwest corner of
2 the Central Parcel. Staff recognized a 50-foot minimum setback from the
3 existing vaporizer building based upon the National Fire Protection
4 Association (NFPA) Code minimum-set back requirements for liquid gas
5 vaporizers and gas-air mixers. Because of the existing vaporizer building's
6 close proximity to the western border of the Central Parcel, part of the 50-
7 foot setback falls within a portion of the Western Parcel that was
8 remediated. The Staff recommends recovery of remediation costs related to
9 these portions of the Western Parcel that fall within the 50-foot setback
10 from the existing vaporizer building. In addition, the Staff recommended
11 recovery of MGP expenses incurred in the area of the Western Parcel where
12 there is sensitive infrastructure that is used for natural gas distribution.
13 Except for the items described above, there are no other facilities or
14 structures located in the Western Parcel that are used in rendering natural
15 gas distribution service. The Staff concluded that MGP expenses that were
16 incurred in the vacant areas or areas where facilities were not in service on
17 the date certain should not be included for recovery.

18 **16. Q. What did the Staff's three-step investigation process reveal for the**
19 **Purchased Property at the East End Site?**

20 A. Staff labeled the newly acquired land at the East End Site as the "Purchased
21 Property." This land is completely vacant as can be seen on Exhibit KA-6,

1 which is photograph of the Purchased Property.¹⁵ There are no permanent
2 structures or underground facilities. Duke claims that it once owned a
3 section of the purchased property and that this section was once part of the
4 MGP facilities. Duke sold the section at one point but then reacquired it
5 when it purchased the entirety of Purchased Property in 2011. It appears
6 that the Purchased Property was used primarily for residential use for
7 decades but is now vacant, devoid of any structures, and unused.
8 Regardless, it was obvious none of the Purchased Property was used or
9 useful at the date certain and Staff recommends that no recovery be allowed
10 related to this parcel.

11 **17. Q. In Objection 6(a), Duke objects to Staff's recommendation that only**
12 **the land 25 feet on either side of the natural gas pipelines on the**
13 **Eastern Parcel of the East End Site is used and useful. Duke argues**
14 **that the Staff's recommendation is arbitrary and contrary to previous**
15 **Commission decisions with regard to the used and useful standard.**
16 **How do you respond?**

17 A. Staff's recommended 50-foot buffer (25 feet on each side of the center line)
18 around the pipelines in the East End Site is not arbitrary. The 50-foot
19 buffer (with 25 feet on each side) would allow sufficient space for the

¹⁵ This photograph was taken during Staff's October 10, 2012, on-site investigation. I was present when this photograph was taken, and it accurately reflects what I observed at the Purchased Property during Staff's on-site investigation.

1 Company to access the pipelines, move and turn heavy equipment that may
2 be necessary to uncover the lines, and pile dirt if uncovering the lines
3 becomes necessary. A 50-foot buffer is common for the size and operating
4 pressure of pipelines found at the Eastern Parcel and is also consistent with
5 a U.S. Sixth Circuit Court of Appeals decision stating that a 50-foot buffer
6 is a reasonable industry standard.¹⁶

7 In response to the Company's allegations that the Staff's determinations
8 regarding the used and useful standard are inconsistent with prior
9 Commission decisions, I can cite to numerous cases that support Staff's
10 application of the used and useful standard in this case.¹⁷

11 **18. Q. In Objection 6(b), Duke objects to the Staff recommendation that only**
12 **the MGP remediation expenses at the Western Parcel of the East End**
13 **Site associated with the property within the 50-foot minimum setback for**
14 **the existing vaporizer building in the Central Parcel should be**
15 **recovered? How do you respond?**

16 A. Page 42-43 of the Staff Report and my response to question 15 fully
17 addresses Objection 6(b).

¹⁶ *Andrews v. Columbia Gas Transmission Corp.*, 544 F.3d 618 (6th Cir. 2008).

¹⁷

See *Columbus & Southern Ohio Electric Co.*, Case No. 83-314-EL-AIR (December 20, 1983); *Ohio American Water Company*, Case No. 91-2123-WW-AIR (May 5, 2010); 391-WS-AIR; *OCC v. PUCO*, 58 Ohio St. 2d 449, 391 NE 2d 311(1979); and *CGE v. PUCO*, 86 Ohio St. 3d 53, 71 NE 2d 670 (1999) .

1 **19. Q. In Objection 6(c), the Company objects to the Staff’s recommendation**
2 **that none of the remediation costs incurred for the Purchased Property**
3 **be recovered and claims that Staff failed to explain its rationale for the**
4 **recommendation. How do you respond?**

5 A. Page 43 of the Staff Report and my response to question 16 explains Staff’s
6 rationale for not including the costs that Duke requested for the Purchased
7 Property. Further, the O&M costs that Duke is seeking related to the
8 Purchased Property was the amount over and above the fair market value that
9 Duke had to pay in order to acquire the land in 2011. This “premium” that
10 Duke paid is not an operating or maintenance expense related to rendering
11 natural gas distribution service and, thus, should not be recovered from
12 Duke’s natural gas distribution customers.

13 **20. Q. In Objection 6(d), Duke objects to the Staff’s recommendation that none**
14 **of the remediation expenses incurred at the North of Mehring Way**
15 **Parcel be recovered because the Staff applied a too narrow**
16 **interpretation of the used and useful standard. How do you respond?**

17 A. Page 44 of the Staff Report and my response to question 10 fully addresses
18 Objection 6(d).

1 **21. Q. In Objection 6(e), Duke claims that Staff overlooked the West End Site’s**
2 **South of Mehring Way Parcel’s usefulness in the provision of natural gas**
3 **distribution services. How do you respond?**

4 A. Page 44-45 of the Staff Report and my response to Duke Objection 10 fully
5 addresses Objection 6(e).

6
7 **22. Q. In Objection 6(f), Duke claims that Staff failed to consider that other**
8 **jurisdictions have authorized utility recovery of MGP environmental**
9 **remediation costs; that its costs are extraordinary, unforeseen and**
10 **related to gas utility operations; and that remediation of the MGP sites**
11 **will benefit gas ratepayers by minimizing environmental litigation costs**
12 **or fines. How do you respond?**

13 A. Other jurisdictions are just that, other jurisdictions. They operate within
14 their own legal frameworks. Staff will address the correct legal standard in
15 its brief. Further, Duke admitted in a Staff data request that “activities
16 occurring in foreign jurisdictions by utilities that are not regulated by this
17 Commission are not material to the issues presented in these Ohio

proceedings.”¹⁸ Duke’s response to DR-97-001 is attached as Exhibit KA-7.

In response to Duke’s assertion that the Staff did not consider that the MGP remediation costs are related to gas utility operations, I believe the Staff Report and my above responses to Duke’s Objections fully address this claim.

In response to the assertion that the Staff failed to consider that gas ratepayers will “benefit” from avoidance of future litigation costs or environmental penalties, it is unclear whether or not gas ratepayers would ever be liable for any future costs or penalties. Duke may believe it is entitled to recover these potential litigation costs or environmental penalties from ratepayers in the future, and may believe forcing customers to pay remediation costs now somehow benefits customers. However, Duke has not (1) shown that these speculative, future “benefits” actually exist and (2) clearly articulated how these alleged “benefits” serve as a basis for recovery in this case.

23. Q. In Objection 6(g), Duke objects to the Staff’s alleged failure to consider that the East and West End Sites have been used continuously for the provision of natural gas service and are therefore used and useful. How do you respond?

¹⁸ Duke response to Staff DR 97-001, October 10, 2012.

1 A. The Staff Report and my above responses to several of Duke’s objections
2 relating to the Staff recommendations concerning the East and West End
3 Sites fully address Objection 6(g).

4 **24. Q. In Objection 6(h), Duke objects that the Staff failed to conclude that the**
5 **cost of delivering utility service encompasses the current cost of doing**
6 **business and reasonably includes costs of complying with environmental**
7 **standards at utility-owned sites. How do you respond?**

8 A. The Staff Report and my previous responses fully address Objection 6(h).

9 **25. Q. In Objection 6(i), Duke states that the Staff’s recommendation**
10 **concerning insurance coverage for the MGP remediation is unreasonable**
11 **because it fails to allow Duke to allow Duke to engage in collection efforts**
12 **on a reasonable basis, fails to allow for the possibility that Duke may only**
13 **receive partial reimbursement, and fails to account for the Company’s**
14 **costs to pursue insurance coverage. In addition, the Company indicates**
15 **that it objects to the Staff’s assumptions regarding calculation of**
16 **carrying costs. How do you respond?**

17 A. First, I do not understand what Duke means by the Staff’s recommendation
18 “fails to allow Duke to engage in collection efforts on a reasonable basis.”
19 The objection is simply too vague to respond to. Second, the Company’s
20 suggestion that the Staff’s recommendation fails to allow for the possibility

1 that Duke may only receive partial insurance reimbursement is wrong. Staff
2 expressly recommended that any insurance settlements that Duke receives
3 should be split between ratepayers and shareholders "...commensurate with
4 the proportion of MGP costs paid by the ratepayers..." Staff Report at 47.
5 This means that any settlement that Duke receives, even partial ones, would
6 be split between ratepayers and shareholders based on the ratio of shareholder
7 to ratepayer contributions towards the MGP costs.

8 For example, assume that the Commission decides ratepayers are not
9 responsible for any of the MGP remediation costs at the West End Site. If
10 Duke received an insurance settlement for the West End Site in the amount of
11 \$15 million, Duke would keep all \$15 million because ratepayers did not pay
12 for any of the West End Site MGP costs. Here is another example: Assume
13 the Commission accepts Staff's position and decides that ratepayers should
14 pay only a portion of the remediation cost for the East End Site. Staff
15 currently recommends that ratepayers pay 25% of the remediation costs for
16 the East End Site.¹⁹ If Duke recovers \$15 million in insurance proceeds for
17 the East End Site, customers would receive approximately \$3.75 million
18 (approximately 25%) and Duke's shareholders would keep approximately
19 \$11.25 million (approximately 75%).

¹⁹ Staff recommends that ratepayers pay only \$5,757,023 (exclusive of carrying costs) for the remediation at the East End Site. The total amount Duke sought to recover in remediation costs for the East End Site was \$23,232,036 (exclusive of carrying costs). \$5,757,023 divided by \$23,232,036 = **25%**.

1 In response to Duke's objection that the Staff's recommendation does not
2 consider the Company's costs in pursuing insurance claims, the company has
3 not shown that such costs would be incremental to what is or will be included
4 in base rates. The Company's current base rates and the base rates that will
5 be set in this case encompass labor expenses that include staff attorneys,
6 insurance analysts, etc. as well as allocations that include attorneys, insurance
7 specialists, and other resources provided to Duke by employees of affiliated
8 companies through approved service agreements. These are the types of
9 resources that will likely be used to pursue insurance claims and are already
10 built into rates.

11 Finally, the Staff agrees with Duke that some of the assumptions supporting
12 the Staff Report recommendation regarding insurance reimbursements were
13 incorrect. Staff should have recommended that any insurance
14 reimbursements that Duke makes to ratepayers should be net of carrying costs
15 that Duke is entitled to retain pursuant to the 09-712 Order. Second, Staff
16 should have recommended that the Duke pay customers an interest rate that is
17 linked to customers instead of Duke. To correct this error, I recommend that
18 the interest rate paid to customers should be the rate that Duke provides to
19 customers when refunding customer deposits held more than 180 days
20 pursuant to O.A.C. 4901:1-17-05(B)(4), or not less than 3% in accordance
21 with the rule.

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26. Q. In its Objection 25, the OCC maintains that all MGP-related expenses should have been disallowed under the Commission’s ratemaking formula. How do you respond?

A. I disagree. The costs were known and measurable and were deferred under authority granted to the Company by the Commission Opinion and Order in Case No. 09-712-GA-AAM. As such, the Staff is of the opinion that they were eligible for consideration for recovery. After its investigation, the Staff was able to determine that a portion of the MGP investigation and remediation expenses at the East End Site were incurred at areas of the site that were used and useful in providing natural gas distribution service and therefore should be recovered. These areas were fully described in the Staff Report.

27. Q. In Objection its 26, the OCC argues that the scope of the Staff’s investigation was too narrow and that the Staff should have expanded its investigation to determine whether Duke’s remediation activities were excessive and the resulting costs were unreasonable. How do you respond?

A. I believe it was reasonable for Staff to limit the scope of its investigation in this case. The Company employed an Ohio Environmental Protection

1 Agency (Ohio EPA) Certified Professional to direct its remediation
2 activities and verify that applicable Ohio EPA standards were met.
3 Because Staff currently has limited expertise in the area of verifying the
4 adequacy of environmental remediation efforts under the applicable
5 environmental legal standards, Staff believes it was reasonable to accept the
6 opinion of Duke's Ohio EPA Certified Professional. However, Staff does
7 not believe that its position should preclude other parties from addressing
8 the reasonableness of Duke's remediation expenses or limit the
9 Commission's ability to address this issue.

10 **28. Q. In its Objection 27, the OCC claims that Staff incorrectly relied on**
11 **Duke's assertions that it intends on filing a rate case in three years and**
12 **thus three year is an appropriate amortization period for recovery of any**
13 **approved MGP expenses. OCC argues that a three-year amortization**
14 **period is too short considering the age of the MGP contamination and**
15 **the period of time that the MGPs have been retired. How do you**
16 **respond?**

17 A. I agree with the OCC that a longer amortization period is warranted if the
18 Commission authorizes Duke to recover significantly more MGP expenses
19 than recommended by the Staff. If the Commission agrees with the Staff,
20 however, then I believe that a three-year amortization period is reasonable.
21 The relatively small amount of MGP expenses that the Staff is

1 recommending for recovery spread out over three years and over Duke's
2 customer base will result in a relatively small monthly charge assessed to
3 Duke's gas customers.

4 **29. Q. In its Objection 29, the OCC contends that the Staff did not address the**
5 **issue of allocation of any MGP expenses approved for recovery; that the**
6 **Staff implicitly accepts Duke's proposed allocation of authorized MGP**
7 **expenses by customer class; and that if Duke is allowed to recover MGP-**
8 **related costs then a cost of service study should be performed to**
9 **determine how the costs will be functionalized, classified, and allocated.**
10 **How do you respond?**

11 A. In the Staff Report, the Staff recommends that any MGP-related expenses
12 that are approved for recovery should be recovered via a rider and allocated
13 to customers pursuant to the rate allocation ultimately adopted in this case.
14 There is no reason to believe that these expenses would have any different
15 cost causation characteristics than any other cost in this case and collection
16 on the same basis as any other cost is therefore reasonable. This treatment
17 is consistent with the Commission-approved allocations in a number of
18 rider cases that I am familiar with. I believe that it is appropriate for this
19 case as well.

1 **30. Q. In its Objection B, Kroger objects to the Staff's recommendation to**
2 **permit Duke to recover approximately \$6.4 million in deferred MGP**
3 **remediation expenses. Kroger contends that there are many outstanding**
4 **questions regarding potential insurance reimbursements for the MGP**
5 **costs and allocation of any such reimbursements. How do you respond?**

6 A. I am not sure if I fully understand Kroger's objection, but I believe have
7 addressed any issues regarding the availability of insurance coverage in my
8 response to question 23 and page 47 of the Staff Report.

9 **31. Q. Does this conclude your Prepared Direct Testimony?**

10 A. Yes it does.

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Prefiled Testimony of Kerry J. Adkins** on behalf of the Staff of the Public Utilities Commission of Ohio was served via electronic mail upon the following Parties of Record, this 22nd day of April, 2013.

/s/ Devin D. Parram

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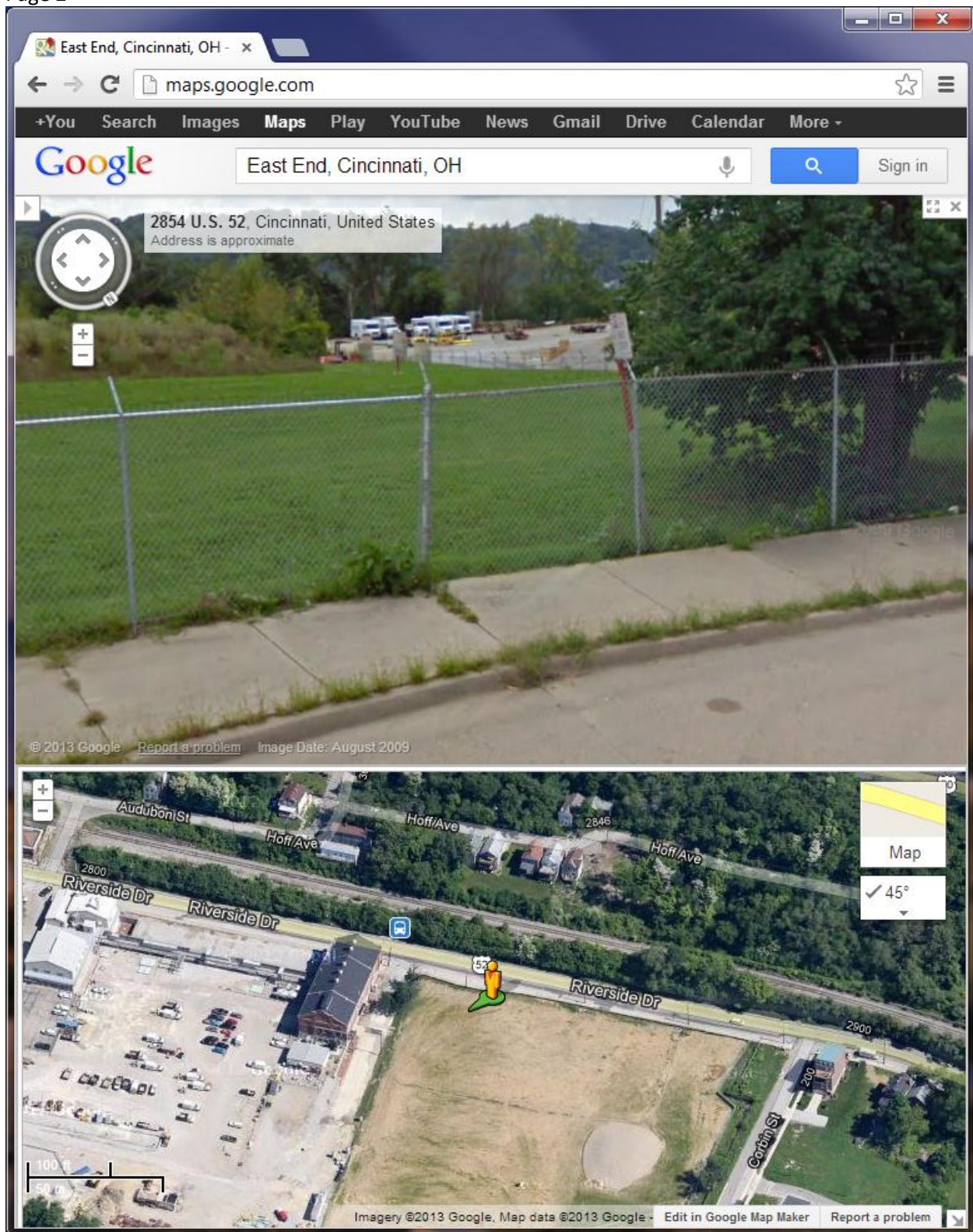
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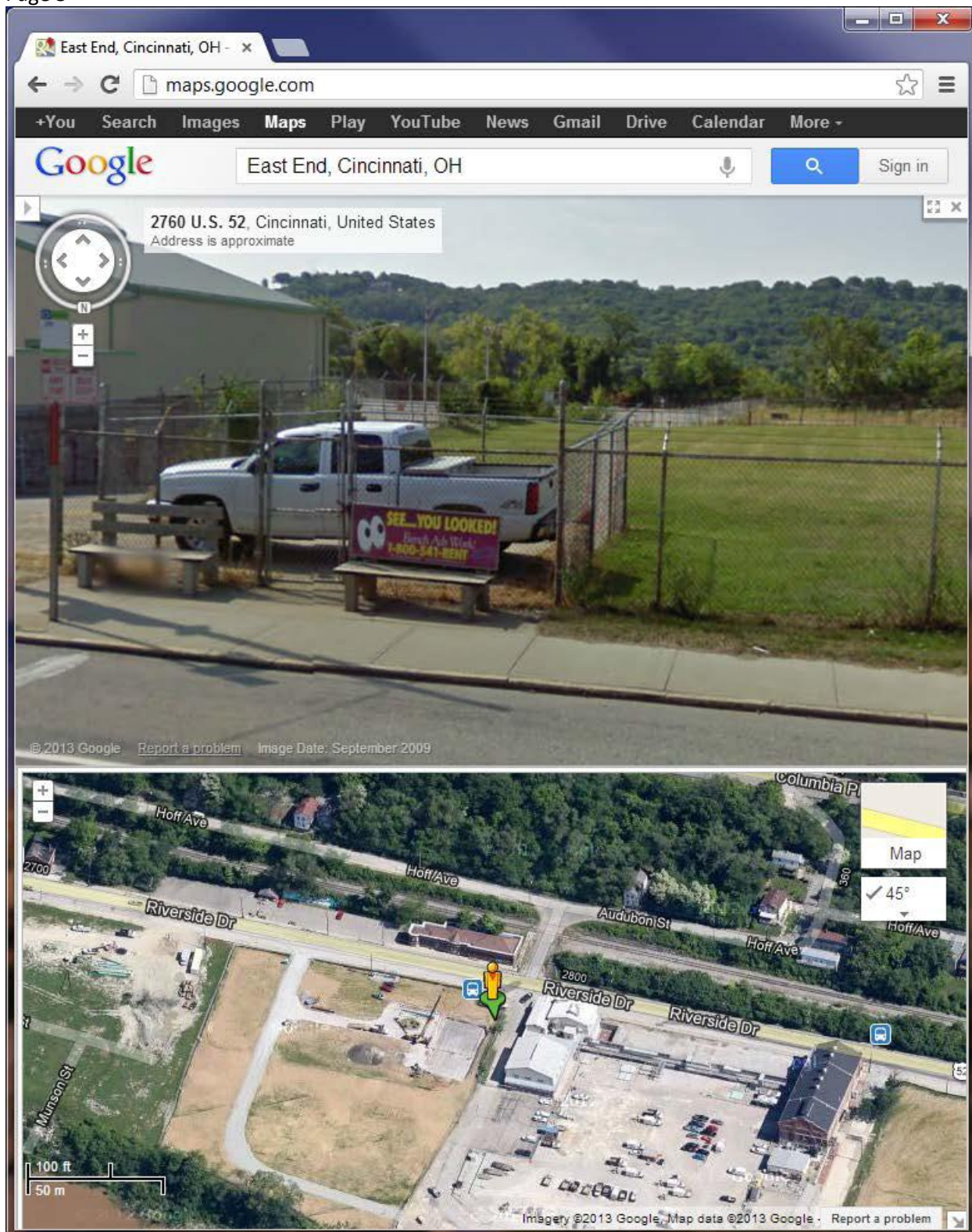
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Exhibit KA-7

Duke Energy Ohio
Case No. 12-1685-GA-AIR
Staff Ninety-Seventh Set Data Requests
Date Received: September 20, 2012

STAFF-DR-97-001

REQUEST:

The Frequently Asked Questions (FAQ) bulletin regarding remediation at the West End site that is available at the Duke Energy ("Duke" as opposed to Duke Energy Ohio or "Duke-Ohio") website indicates that Duke has 43 manufactured gas plant (MGP) sites in its service territory and that cleanup has been completed at 22 of those sites. (Response to FAQ-27) In addition, the response to FAQ-19 states that Duke has "completed remediation of three sites in South Carolina, six sites in North Carolina and twelve sites in Indiana." Please respond to the following:

- Has any Duke company applied to the public service commission in South Carolina, North Carolina, or Indiana for rate-recovery or deferral authority MGP site remediation costs?
 - a. If so, please provide a chart that lists the relevant case numbers, identifies the type of authority sought (e.g., rate recovery, deferral authority, etc.), provides a case history and background, and fully describes the current status.
 - b. If not, please provide a detailed explanation as to why not.

RESPONSE:

The sites located in North Carolina, South Carolina, and Indiana have never been owned or operated by Duke Energy Ohio. As such, Duke Energy Ohio submits that the remediation – and related – activities occurring in foreign jurisdictions by utilities that are not regulated by this Commission are not material to the issues presented in these Ohio proceedings. Further, because decisions regarding potential rate recovery and/or deferral authority would have been made by an entity other than Duke Energy Ohio, Duke Energy Ohio has no knowledge regarding why such decisions may have been made. However, Duke Energy Ohio submits that, to the best of its knowledge and belief, there has been no request for rate recovery or deferral authority in respect of the completed remediation activities referenced above and there are no gas customers in such jurisdictions.

PERSON RESPONSIBLE: Jessica Bednarcik
Legal

Duke Energy Ohio
Case No. 12-1685-GA-AIR
Staff Ninety-Seventh Set Data Requests
Date Received: September 20, 2012

STAFF-DR-97-002

REQUEST:

The Frequently Asked Questions (FAQ) bulletin regarding remediation at the West End site that is available at the Duke Energy ("Duke" as opposed to Duke Energy Ohio or "Duke-Ohio") website indicates that Duke has 43 manufactured gas plant (MGP) sites in its service territory and that cleanup has been completed at 22 of those sites. (Response to FAQ-27) In addition, the response to FAQ-19 states that Duke has "completed remediation of three sites in South Carolina, six sites in North Carolina and twelve sites in Indiana." Please respond to the following:

- Are any of the 19 remaining MGP sites (not counting those described above or the East and West End sites) located in Duke-Ohio's electric service territory or natural gas service area? If so, please list and describe the sites, describe Duke-Ohio's remediation plans (including projected timelines), and indicate if Duke-Ohio intends to seek to defer and/or rate-recovery for remediation of the sites.

RESPONSE:

The only two former MGP sites located within the Duke Energy Ohio electric service territory or natural gas service area are those referenced in the Direct Testimony of Jessica Bednarcik.

PERSON RESPONSIBLE: Jessica Bednarcik

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Case No(s). 12-1685-GA-AIR, 12-1686-GA-ATA, 12-1687-GA-ALT, 12-1688-GA-AAM

Summary: Testimony Pfiled Testimony of Kerry J. Adkins electronically filed by Mrs. Tonnetta Y Scott on behalf of PUCO