

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for an Increase in its) Case No. 12-1685-GA-AIR
Natural Gas Distribution Rates.)

In the Matter of the Application of Duke) Case No. 12-1686-GA-ATA
Energy Ohio, Inc., for Tariff Approval.)

In the Matter of the Application of Duke)
Energy Ohio, Inc. for Approval of an) Case No. 12-1687-GA-ALT
Alternative Rate Plan for Gas Distribution)
Service.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval to Change) Case No. 12-1688-GA-AAM
Accounting Methods.)

APPLICATION FOR REHEARING

Pursuant to R.C. 4903.10 and Rule 4901-1-35, O.A.C., Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) hereby applies for limited rehearing of the Public Utilities Commission of Ohio's (Commission) Opinion and Order of November 13, 2013, issued in the above-captioned case. Duke Energy Ohio respectfully submits that the Commission reconsider its Opinion and Order only with regard to the timeframe for the recovery of costs incurred for environmental remediation established therein as such timeframe is not supported by the record.

The reasons for granting this Application for Rehearing are set forth in the attached Memorandum in Support. Consistent with R.C. 4903.10, Duke Energy Ohio respectfully requests rehearing and asks the Commission to reconsider its Opinion and Order for the reasons set forth below.

Respectfully submitted,
DUKE ENERGY OHIO, INC.



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**MEMORANDUM IN SUPPORT
OF APPLICATION FOR REHEARING**

I. INTRODUCTION

In these proceedings, Duke Energy Ohio submitted an application for an increase in rates that included recovery of costs for environmental investigation and remediation of manufactured gas plants (MGPs) that had been deferred pursuant to the Commission's earlier approval in Case No. 09-712-GA-AAM. Many of the issues related to the Company's application were resolved by a stipulation that was submitted to the Commission for approval on April 2, 2013. Commission Staff and intervenors in these proceedings agreed to bifurcate issues related to the recovery of MGP costs for hearing, which concluded on May 2, 2013. Subsequent to the hearing, the parties submitted briefs and the Commission's Opinion and Order was issued on November 13, 2013. Therein, the Commission concluded that the Company's environmental

remediation costs reflect a current cost of doing business under R.C. 4909.15(A)(4) and, with some exception, that Duke Energy Ohio met its burden of proof with regard to the recoverability of such costs. The Commission further established a timeframe within which MGP environmental remediation should reasonably be concluded and within which remediation costs applicable to the East End and West End sites are to be recovered.¹ Duke Energy Ohio respectfully submits that this timeframe is not supported by the record and should be reconsidered.

II. STANDARD OF REVIEW

Applications for rehearing are governed by R.C. 4903.10 and 4901-1-35, O.A.C. The statute provides that any party, within thirty days after issuance of an order from the Commission, may apply for rehearing in respect to any matters determined in the proceeding.

In its Opinion and Order, Duke Energy Ohio submits that the Commission erred in establishing periods for recovery applicable to the Company's two MPG sites without adequate support in the record to do so.

III. DISCUSSION

An examination of the record in these proceedings will establish that there is no evidence in the record to support the establishment of ten years as a reasonable timeframe within which to accomplish remediation. The issue was not raised by any of the Parties when objections were filed, and therefore the question was not addressed at hearing. Thus there is no record support for the Commission's decision as related to ten years being a reasonable timeframe to complete the remediation. The evidence presented by the Company, however demonstrates that flexibility

¹ Opinion and Order at p.59.

is required to enable the Company to accomplish the remediation in an efficient and reasonable manner.

Duke Energy Ohio acknowledges the rationale for a reasonable timeframe. It observes, however, that the Commission's Opinion and Order did not include any provision for altering the timeframe specified by the Commission. As detailed in the lengthy transcript of proceedings, environmental remediation is complex, is influenced by numerous factors outside the control of the Company, and involves coordination with multiple third parties, such as the Ohio Environmental Protection Agency (Ohio EPA), Certified Professionals under the Voluntary Action Program, and permitting agencies. Activities must also be coordinated to accommodate internal active operations in order to continue to provide safe and reliable service to customers.

As testified to by Duke Energy Ohio witness Jessica L. Bednarcik at hearing, the nature of environmental remediation is such that the time period for remediation is dependent upon many different factors. For example, Ms. Bednarcik testified to the "sequencing" of the project at East End to facilitate planned operational improvements to the site. The project involved a "clean gas corridor" installed along the southern fence line so that when gas transmission lines are replaced in the future, gas workers will not come in contact with impacted soil. On the West Parcel of East End, the MGP project manager worked with Gas Operations personnel to determine a suitable location for new vaporizers that were installed in 2012. An alternative entrance and road way were constructed, and since the site is in active use, this necessitated the separation of the site into three parcels so that work could continue while remediation was ongoing.² Further, Ms. Bednarcik testified to the change in the prioritization of the West End site as a result of the Ohio Department of Transportation's and Kentucky Department of

² Id. at p.19.

Highways' finalization of the preferred location of the new Brent Spence Bridge Corridor Project.³

Duke Energy Ohio will continue its legally required remediation efforts in a prudent and reasonable manner. However, the timing, expense, and conduct of the remediation effort will be influenced by external factors and by the actions of third parties over which and whom the Company has no control, (e.g., Ohio EPA), thereby potentially jeopardizing its ability to adhere to the timeframe established in the Opinion and Order. Additionally, consistent with the public interest, the Company believes that it should have the ability to reasonably sequence the necessary investigation and remediation activities in a judicious manner.

Duke Energy Ohio, therefore, respectfully requests that the Commission revise its Opinion and Order to enable the Company to request that the timeframe be extended if the need arises during the remediation efforts. The Commission could maintain its ability to evaluate and determine whether such a request is appropriate when the request is made or in the context of the contemplated annual rider filings. Duke Energy Ohio believes this approach is supported by the public interest, while preserving the Commission's authority over this matter.

Duke Energy Ohio observes that the Commission established a timeframe that, absent exigent circumstances, appeared reasonable. To the extent this qualification was intended to enable enlargement of the timeframe, Duke Energy Ohio respectfully seeks clarification of the Opinion and Order with regard to its ability to request that the timeframe be altered.

³ Id.

IV. CONCLUSION

For the reasons stated in this Memorandum, Duke Energy Ohio respectfully requests that the Commission grant rehearing for the limited purpose of considering the timeframe imposed in the Opinion and Order for the remediation work to conclude and remediation costs to be recovered or, in the alternative, clarifying that the Opinion and Order allows the Company to seek an extension of the timeframe as circumstances dictate.

Respectfully submitted,
DUKE ENERGY OHIO, INC.



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 13th day of December, 2013, by U.S. mail, postage prepaid, or by electronic mail upon the persons listed below.


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Summary: Application Application for Rehearing electronically filed by Carys Cochern on behalf of Watts, Elizabeth H. Ms.