

FILE

**A report by the staff of the
Public Utilities Commission of Ohio**

Duke Energy Ohio, Inc.

Case No. 14-0375-GA-RDR
Case No. 14-0376-GA-ATA
Case No. 15-0452-GA-RDR
Case No. 15-0453-GA-ATA
Case No. 16-0542-GA-RDR
Case No. 16-0543-GA-ATA
Case No. 17-0596-GA-RDR
Case No. 17-0597-GA-ATA
Case No. 18-0283-GA-RDR
Case No. 18-0284-GA-ATA

September 28, 2018

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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.)	Case No. 14-0375-GA-RDR
)	
)	
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.)	Case No. 14-0376-GA-ATA
)	
)	
In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.)	Case No. 15-0452-GA-RDR
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In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.)	Case No. 15-0453-GA-ATA
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In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.)	Case No. 16-0542-GA-RDR
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In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.)	Case No. 16-0543-GA-ATA
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In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.)	Case No. 17-0596-GA-RDR
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In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.)	Case No. 18-0284-GA-ATA
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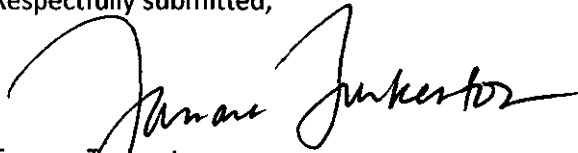
Asim Z. Haque, Chairman
M. Beth Trombold, Commissioner
Thomas W. Johnson, Commissioner
Lawrence K. Friedeman, Commissioner
Daniel R. Conway, Commissioner

To the Honorable Commission:

In accordance with the Opinion and Order from Case No. 12-1685-GA-AIR, *et al.* on November 12, 2013, Duke Energy Ohio, Inc. (Duke or the Company) filed annually from 2014 to 2018 to adjust its rider for two manufacturer gas plants (Rider MGP). Subsequently, the Public Utilities Commission of Ohio's (PUCO) Staff reviewed these filings and herein submits its investigations and findings and recommendations within the Staff Report.

The Staff Report was prepared by the Commissions' Rates and Analysis Department. The Staff Report is intended to present for the Commission's consideration, the result of the Staff investigation. It does not purport to reflect the views of the Commission nor should any party to the proceeding consider the Commission as bound in any manner by the representations or recommendations set forth therein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tamara Turkenton", written over a horizontal line.

Tamara Turkenton
Director, Rates and Analysis Department
Public Utilities Commission of Ohio

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Introduction

In accordance with the Commission's Opinion and Order in Case Number 12-1685-GA-AIR, *et al.* (Duke Gas Rate Case Order),¹ Duke Energy Ohio, Inc. (Duke or Company) filed an application (Application) in the above captioned cases seeking approval by the Public Utilities Commission of Ohio (Commission) to adjust its manufactured gas plant (MGP) rider (Rider MGP) to recover ongoing costs for investigation and remediation incurred in 2013, 2014, 2015, 2016 and 2017 at two former MGP sites in its distribution service area.

Background

In Case Number 09-712-GA-AAM, Duke received Commission authorization to defer environmental investigation and remediation costs related to two former MGP sites in Ohio for potential recovery of reasonable and prudent costs in a future base rate proceeding.²

In the Duke Gas Rate Case Order, the Commission authorized Duke to establish a rider (i.e. Rider MGP) to recover Commission-approved costs associated with Duke's environmental remediation of MGP.³ These costs included actual costs incurred at Duke's East End former MGP site from January 1, 2008 through December 31, 2012 and at its West End former MGP site from January 1, 2009 to December 31, 2012, subject to Commission-specified modifications in the Duke Rate Case Order.⁴ The Commission also authorized Duke to continue deferring, without carrying charges, ongoing MGP environmental investigation and remediation costs incurred beyond December 31, 2012, for which Duke would submit annual updates.⁵

The Duke Gas Rate Case Order further directed the Company to pursue every effort to collect remediation costs available under its insurance policies in order to provide a credit back to ratepayers.⁶ In addition, Duke was ordered to continue to pursue recovery of costs from any third parties who may be statutorily responsible for remediation for the MGP sites.⁷ The Commission determined that Duke must reimburse ratepayers from any proceeds obtained from

¹ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, *et al.*, Opinion and Order at 78 (Nov. 13, 2013) (Duke Gas Rate Case Order).

² *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 09-712-GA-AAM, Finding and Order (Nov. 12, 2009).

³ Duke Gas Rate Case Order at 78.

⁴ The amount authorized for recovery reflected adjustments by the Commission to remove costs originally requested by Duke to purchase a parcel of land adjacent to its East End site, to eliminate 2008 costs incurred at the West End site, and to exclude all carrying charges. This results in a recoverable amount of \$55.5 million, as shown in the Duke Gas Rate Case, Compliance Tariff for Rider Manufacturer Gas Plan and Associated Worksheets (Nov. 27, 2013) and Duke Gas Rate Case, Entry at 6 (Feb. 19, 2014).

⁵ Duke Gas Rate Case Order at 71-72.

⁶ *Id.* at 67.

⁷ *Id.*

insurers or responsible third parties, without interest and net of costs incurred to achieve these proceeds (such as litigation costs).⁸

On June 28, 2018, an Attorney Examiner Entry permitted the Company to consolidate the following cases: Case No. 14-0375-GA-RDR, Case No. 14-0376-GA-ATA, Case No. 15-0452-GA-RDR, Case No. 15-0453-GA-ATA, Case No. 16-0542-GA-RDR, Case No. 16-0543-GA-ATA, Case No. 17-0596-GA-RDR, Case No. 17-0597-GA-ATA, Case No. 18-0283-GA-RDR, and Case No. 18-0284-GA-ATA.

The entry also set the following procedural schedule for the proceedings:

- Motions to intervene should be filed by August 31, 2018
- Initial comments regarding Duke's application should be filed by September 28, 2018
- Reply comments should be filed by October 26, 2018

Duke's Application

Duke filed the initial Rider MGP tariff for recovery of the initial \$55.5 million MGP remediation costs authorized in the Duke Gas Rate Case Order on February 21, 2014, with rates effective March 3, 2014.⁹ Similarly, consistent with the Duke Gas Rate Case Order, Duke filed annual updates for Rider MGP on or before March 31st in 2014, 2015, 2016, 2017 and 2018 describing the Company's annual MGP investigation and remediation activities seeking recovery of the costs summarized in Table 1 below:

Table 1 Summary of Costs

Year	Costs	Time Period	Case Number
2014	\$8,346,698	January 1, 2013 through December 31, 2013	14-0375-GA-RDR
2015	\$686,031	January 1, 2014 through December 31, 2014	15-0452-GA-RDR
2016	\$1,061,056	January 1, 2015 through December 31, 2015	16-0542-GA-RDR
2017	\$1,296,160	January 1, 2016 through December 31, 2016	17-0596-GA-RDR
2018	14,652,068	January 1, 2017 through December 31, 2017	18-0283-GA-RDR
Total	\$26,042,012	January 1, 2013 through December 31, 2017	

The Company supported each annual application with testimony and schedules detailing the annual expenses incurred, remediation activities undertaken, and status of its efforts to locate and analyze potentially applicable insurance coverage and reimbursement from potential

⁸ *Id.*

⁹ See Duke Gas Rate Case, Revised Final Tariff P.U.C.O. No. 18 (Feb. 21, 2014).

The \$55.5 million amount is comprised of the \$62.8 million actual costs Duke originally submitted in the Duke Gas Rate Case minus the following: the amount requested for the purchased parcel on the East End site, the 2008 costs for the West End site, and all carrying charges.

responsible third parties. The Company filed motions contemporaneous with its Applications in 2015, 2016, 2017 and 2018 to consolidate the current case with the preceding case.

Staff's Investigation

Staff investigated Duke's proposed increases to Rider MGP for each of the five years described above by reviewing the Company's Application, schedules, and supporting testimony and by conducting a series of meetings and telephone calls with Duke personnel responsible for implementing Rider MGP. The purpose of Staff's investigation was to obtain detailed information regarding the proposed MGP costs, environmental remediation activities, and efforts to locate and analyze insurance coverage and third party coverage. Based on this investigation, Staff makes the conclusions and recommendations set forth below.

Staff's Conclusions and Recommendation

East End Site

Staff reviewed contractor and other related invoices for investigation and remediation activities at the East End site for each year 2013-2017 in order to ensure that costs to perform the work are reasonable and prudent. Staff also reviewed costs to ensure that ratepayers were not charged for: (1) costs associated with remediation of the parcel of land adjacent to the East End site that the Commission denied for recovery (known as the "Purchased Parcel" in the Duke Gas Rate Case or the "Area West of the West Parcel" or "WOW"),¹⁰ or (2) costs associated with investigation or remediation of soil, water or any other tracts of land located outside the original footprint of the East End site.

Based on the invoices reviewed, Staff discovered that, in 2014, Duke removed certain costs that were directly identified on the invoices as costs for activities associated with the WOW parcel. However, the Company did not remove all such costs in 2014 and it did not remove similar costs associated with the WOW parcel incurred in all other years audited. In response to Staff data requests, the Company indicated that it was "impractical to segregate costs out by parcel."¹¹ As a result of the Company's failure to delineate expenses that were within acceptable boundaries, Staff removed all costs directly associated with the WOW in each year.

¹⁰ Duke Gas Rate Case Order at 60.

¹¹ See, e.g., *In the Matter of the Application of Duke Energy, Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 15-0452-GA-RDR, *et al.*, Company Response to Staff Data Request No. 2 ("2015 MGP Rider Case"), *In the Matter of the Application of Duke Energy, Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 16-0542-GA-RDR, *et al.*, Company Response to Staff Data Request No. 23 ("2016 MGP Rider Case"), and *In the Matter of the Application of Duke Energy, Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 18-0283-GA-RDR, *et al.*, Company Response to Staff Data Request No. 4 ("2018 MGP Rider Case").

Similarly, Staff adjusted Duke's proposed recovery to remove a portion of all remaining costs that could not be tied to any particular parcel of land at the East End site in order to fairly apportion costs associated with the WOW. In a number of data request responses and phone conversations, the Company indicated that it did not record costs by parcel and that it could not differentiate costs for items such as air monitoring, ground water well installations and testing, laboratory fees, permitting fees, soils disposal costs, etc., and therefore, such costs cannot be assigned to any particular parcel.¹² The Company's testimony filed in the these cases, along with associated vendor contracts all indicate that remediation work performed in 2013-2016 was on the WOW and Central parcels at the East End site.¹³ And in 2017, Company testimony and discussions with Staff indicate that a greater portion of the work performed was on the WOW parcel at the East End site.¹⁴

For costs incurred from 2013 through 2016, Staff removed 50 percent of remaining costs because, based on activities recorded on invoices, contracts submitted by vendors, and over-all dollars spent, at least half of the costs were equitably assignable to the WOW parcel. For costs incurred in 2017, Staff removed 70 percent of costs because, as stated above, Company testimony and discussions with Staff indicated Duke's increase spending attributed to the WOW parcel aligned with this apportionment level.

Staff also observed various remediation activities taking place in the Ohio River (outside the East End boundaries). Staff also recommends that these costs not be included for recovery.

Staff recommends that the Commission order the Company to submit future costs only pertaining to permissible East End boundaries as approved in the Duke Gas Rate Case Order, and not including costs associated with the West of the West parcel, for activities taking place in the Ohio River, etc.

Table 2 below summarizes the total Staff-recommended adjustments for the East End site.

Table 2 East End Site

Year	Company Filing	Staff Recommended Adjustments	Recommended for Recovery
2013	\$482,455	(\$274,321)	\$208,134
2014	\$240,810	(\$135,380)	\$105,429
2015	\$329,992	(\$222,780)	\$107,212
2016	\$1,120,402	(\$561,999)	\$558,403

¹² *Id.*

¹³ See, e.g., *In the Matter of the Application of Duke Energy, Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 14-0375-GA-RDR, *et al.*, Direct Testimony of Jessica L. Bednarcik at 7-9 (March 31, 2014) ("2014 MGP Rider Case"); 2015 MGP Rider Case, Direct Testimony of Todd L. Bachand at 8-10 (March 31, 2015); 2016 MGP Rider Case, Direct Testimony of Todd L. Bachand at 8-10 (March 31, 2016); and *In the Matter of the Application of Duke Energy, Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 17-0596-GA-RDR, *et al.*, Direct Testimony of Todd L. Bachand at 9 (March 31, 2017) ("2017 MGP Rider Case").

¹⁴ See, e.g., 2018 MGP Rider Case, Direct Testimony of Todd L. Bachand at 9 (March 28, 2018).

2017	\$13,825,962	(\$10,033,787)	\$3,792,175
Total	\$15,999,621	(\$11,228,268)	\$4,771,353

West End Site

Staff reviewed the Company's filed testimony and invoices for investigation and remediation activities at the West End site for each year 2013-2017 in order to ensure that costs to perform the work are reasonable and prudent. For the West End site, after reviewing the Company's filed testimony and invoices, Staff is recommending adjustments to Duke's proposed recovery amounts to remove costs associated with relocation of an electric substation on the site to accommodate the Brent Spence Bridge replacement project and investigation and remediation work that was performed outside of the West End site boundaries.

The Company's testimony and invoices describe installation of new poles and footings for the new substation, disposal of previously solidified soil, and unspecified substation costs. These costs are capital costs, rather than environmental remediation costs, and therefore should be recovered through the mechanism Duke selects to recover its new substation installation costs and should not be recovered through Rider MGP.

Similarly, invoices provided by the Company include maps showing environmental investigation and remediation activities outside of the West End site boundaries that were identified in maps provided by Duke to Staff during the Duke Gas Rate Case investigation. The Duke Gas Rate Case Order made it clear that Duke's recovery from customers was limited to any investigation or remediation costs incurred within the two original MGP site footprints.¹⁵ As a result, Staff made an adjustment to remove the offsite costs.

The Table 3 below summarizes the total Staff-recommended adjustments for the West End site.

Table 3 West End Site

Year	Company Filing	Staff Recommended Adjustments	Recommended for Recovery
2013	\$7,864,242	(\$22,456)	\$7,841,786
2014	\$445,221	(\$328,299)	\$116,923
2015	\$731,064	(\$97,728)	\$633,336
2016	\$175,758	(\$0.00)	\$175,758
2017	\$826,106	(\$191,149)	\$634,956
Total	\$10,042,391	(\$639,632)	\$9,402,759

¹⁵ See, e.g., Duke Gas Rate Case Order at 71, stating: "[s]uch deferral authority should be limited to the East and West End sites..."

Recovery from Insurance Policies and Responsible Third Parties

As noted above, the Commission ordered the Company to “pursue every effort to collect remediation costs available under its insurance policies” and “...continue to pursue recovery of costs from any third parties who may also be statutorily responsible for remediation of the MGP sites.”¹⁶ Staff conducted several phone calls and in-person meetings with Duke personnel to obtain information regarding the various efforts undertaken by the Company. The Company provided a list of approximately 100 general liability insurance policies issued to the Company from 1940 to 1985, evidence of resistance being given by insurers, counter-arguments to the assertions given by insurance companies as reasons to deny coverage, and evidence to support Duke’s ongoing efforts regarding recovery of historic insurance policies. Staff met with the Company’s outside counsel and received detailed updates on the status of ongoing mediation and potential settlement efforts. In addition, the Company detailed its efforts towards determining liability, if any, of responsible third parties.¹⁷ Staff observes that it appears the Company is complying with the Duke Gas Rate Case Order.

Additionally, the Commission ordered that “proceeds paid by insurers or third parties...should be used to reimburse the ratepayers”¹⁸ without interest and net of the costs to achieve those proceeds. Staff recommends that the Company notify the Commission of the status of the recovery of funds. The Company should also be ordered to work with Staff to establish a process to account for recovered dollars, costs to achieve the proceeds, and return of these dollars to ratepayers. Staff recommends that this collaboration be accomplished through annual filings on the docket affirming that funds either have or have not been obtained for as long as the Company is pursuing mediation, settlement, and/or litigation efforts.

Staff will continue to monitor the Company’s efforts.

Conclusion and Recommendations

Table 4 below summarizes the total Staff-recommended adjustments to Duke’s proposed amounts for recovery for ongoing MGP investigation and remediation costs incurred at its East End and West End former MGP sites in 2013, 2014, 2015, 2016, and 2017. Staff recommends that the Commission adopt all of the Staff’s recommendations and adjustments made herein, and direct the Company to file tariff(s) specifying new Rider MGP rates based on the Staff-recommended amounts for recovery.

¹⁶ *Id.* at 67.

¹⁷ See, e.g., 2014 MGP Rider Case, Direct Testimony of Keith Bone at 3-10 (March 31, 2014); 2015 MGP Rider Case, Direct Testimony of Keith Bone at 3-8 (March 31, 2015); 2016 MGP Rider Case, Direct Testimony of Keith Bone at 3-4 (March 31, 2016); 2017 MGP Rider Case, Direct Testimony of Keith Bone at 3-5 (March 31, 2017); and 2018 MGP Rider Case, Direct Testimony of Keith Bone at 3-4 (March 28, 2018).

¹⁸ Duke Gas Rate Case Order at 67.

Table 4 Total East End and West End Site Adjustments

Year	Company Filing	Total Staff Recommended Adjustments	Total Costs Recommended for Recovery
2013	\$8,346,697	(\$296,777)	\$8,049,920
2014	\$686,031	(\$463,679)	\$222,352
2015	\$1,061,056	(\$320,508)	\$740,548
2016	\$1,296,160	(\$561,999)	\$734,161
2017	\$14,652,068	(\$10,224,936)	\$4,427,132
Total	\$26,042,012	(\$11,867,900)	\$14,174,112