

**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. 14-375-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 14-376-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 15-452-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 15-453-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 16-542-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 16-543-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 17-596-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 17-597-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 18-283-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 18-284-GA-ATA
)	

**COMMENTS
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

In these consolidated cases, Duke Energy Ohio seeks to charge customers millions in costs that it has incurred to clean up defunct manufactured gas plant (“MGP”) sites from 2013 through 2017. The Public Utilities Commission of Ohio (“PUCO”) must determine whether these costs were prudently incurred.¹ The Office of the Ohio Consumers’ Counsel (“OCC”) submits these comments² on behalf of Duke’s nearly 400,000 residential natural gas consumers.

I. BACKGROUND

These ten consolidated cases represent five years of Duke’s proposed charges to customers to remediate environmental hazards at two defunct MGP sites (the “East End” and “West End” sites). According to Duke’s testimony, it proposes to charge customers the following amounts for MGP cleanup:

Year	Amount
2013	\$8,346,698 ³
2014	\$686,031 ⁴
2015	\$1,061,056 ⁵
2016	\$1,296,160 ⁶
2017	\$14,651,798 ⁷
TOTAL	\$26,041,743

The PUCO has not ruled on any of Duke’s pending MGP applications.

¹ See R.C. 4909.154. See also *In re Application of Duke Energy Ohio, Inc. for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, Opinion & Order at 72 (Nov. 13, 2013) (“In these subsequent cases wherein Duke will be updating Rider MGP, Duke shall bear the burden of proof to show that the costs incurred for the previous year were prudent.”).

² See Entry ¶ 9 (June 28, 2018).

³ Case No. 14-375-GA-RDR, Laub Testimony, Attachment PAL-1.

⁴ Case No. 15-452-GA-RDR, Laub Testimony, Attachment PAL-1.

⁵ Case No. 16-542-GA-RDR, Laub Testimony, Attachment PAL-1.

⁶ Case No. 17-596-GA-RDR, Lawler Testimony, Attachment SEL-1.

⁷ Case No. 18-283-GA-RDR, Lawler Testimony, Attachment SEL-1.

II. RECOMMENDATIONS

A. **The PUCO should order an audit of Duke’s charges to customers under the MGP Rider to determine whether the costs were prudently incurred.**

Duke is not permitted to charge customers for any MGP remediation costs that were not prudently incurred.⁸ To date, the PUCO Staff has not yet published the results of any review it has performed regarding Duke’s MGP remediation efforts in these cases. To protect consumers from paying unjust and unreasonable rates—including, but not limited to, charges for imprudently-incurred costs—the PUCO should hire an independent auditor to audit Duke’s MGP rider for the years 2013 through 2017.⁹ This type of periodic audit is necessary to ensure that Duke is diligently pursuing the least-cost opportunities to remediate the MGP sites, thus minimizing the charges to customers who pay for that remediation.

Upon completion of the audit, the auditor should file a publicly-available audit report in a PUCO docketed case. Parties should have an opportunity to respond to the report consistent with Ohio Adm. Code 4901-1-28(E), including, but not limited to testimony, comments, and objections to the audit report, plus a hearing, if necessary.¹⁰

⁸ See R.C. 4909.154. See also *In re Application of Duke Energy Ohio, Inc. for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, Opinion & Order at 63 (Nov. 13, 2013) (describing the application of the prudence standard to MGP costs) (the “2013 MGP Order”); Hearing Tr. Vol. III at 750:21-751:12 (Duke witness Wathen acknowledging that the MGP rider would be subject to annual PUCO prudence review)

⁹ At the time the PUCO approved Rider MGP, “Staff did not investigate or make any findings or recommendations regarding necessity or scope of the remediation work performed by Duke” because it had “limited expertise in the area of verifying the adequacy of environmental remediation efforts under applicable legal standards.” See 2013 MGP Order at 28. Thus, the PUCO should hire an outside auditor to review Duke’s MGP remediation efforts.

¹⁰ See, e.g., *In re the 2011 through 2016 Review of the Energy Efficiency and Peak Demand Reduction Rider Contained in the Tariffs of Ohio Power Co.*, Case No. 17-30-EL-RDR (PUCO opening a docket for an outside audit of six years of charges to consumers under AEP’s energy efficiency rider and allowing parties an opportunity to review the audit and file initial and reply comments).

B. The PUCO should ensure that customers receive the benefits of all insurance proceeds related to the MGP sites.

Under the 2013 MGP Order, Duke is required to pursue insurance recovery to reduce the amount that customers pay to remediate the MGP sites:

The Commission agrees that Duke should continue to use every effort to collect all remediation costs available under its insurance policies, and Duke should continue to pursue recovery from any third parties who may also be statutorily responsible for the remediation of the MGP sites. We find that any proceeds paid by insurers or third parties for MGP investigation and remediation should be used to reimburse the ratepayers.¹¹

To date, Duke has not credited the MGP rider revenue requirement with any insurance proceeds or any funds from other responsible parties.¹² Duke witness Bone has testified that Duke has begun to make some progress in settling claims against its various insurers. According to Mr. Bone, Duke has reached the following agreements:

- In 2016, Duke reached an agreement with the administrator for two insolvent English insurance companies.¹³
- In 2017, Duke reached a settlement with insurer AEGIS.¹⁴
- In 2017, Duke reached settlements or settlements in principle with all but three of its remaining insurers.¹⁵

According to Mr. Bone, Duke has already received settlement funds from AEGIS but will not credit any of them to customers yet because it is waiting “until the conclusion

¹¹ 2013 MGP Order at 67.

¹² See Case No. 14-375-GA-RDR, Laub Testimony, Attachment PAL-1; Case No. 15-452-GA-RDR, Laub Testimony, Attachment PAL-1; Case No. 16-542-GA-RDR, Laub Testimony, Attachment PAL-1; Case No. 17-596-GA-RDR, Lawler Testimony, Attachment SEL-1; Case No. 18-283-GA-RDR, Lawler Testimony, Attachment SEL-1.

¹³ Case No. 17-596-GA-RDR, Direct Testimony of Keith Bone on Behalf of Duke Energy Ohio, Inc. at 5 (Mar. 31, 2017).

¹⁴ Case No. 18-283-GA-RDR, Direct Testimony of Keith Bone on Behalf of Duke Energy Ohio, Inc. at 3 (Mar. 28, 2018).

¹⁵ *Id.* at 4.

of the settlement process in order to allow netting of the proceeds to include costs incurred in obtaining the insurance recovery.”¹⁶ While it is true that Duke is allowed to net its costs against any recovery,¹⁷ the conclusion of the recovery process could take years.¹⁸

To provide customers the benefit of these insurance proceeds, the PUCO should (i) order Duke to credit the MGP rider revenue requirement *now* with the amount of insurance proceeds received, minus any costs that Duke incurred through 2017, or (ii) at a minimum, Duke should be required to provide customers with carrying costs on the insurance proceeds—which belong to customers—while Duke continues to hold those funds.

C. Duke should be required to explain its failure to recover any funds from other potentially responsible parties.

In addition to insurance proceeds, Duke is also required to “continue to pursue recovery from any third parties who may also be statutorily responsible for the remediation of the MGP sites.”¹⁹ Duke’s filings in these MGP rider cases do not discuss Duke’s efforts to pursue third parties that might be responsible for remediation of the MGP sites. Consistent with its 2013 MGP Order, the PUCO should order Duke to supplement its testimony in these cases to describe all efforts it has taken to date to (i) identify other potentially responsible parties, (ii) contact any such parties, and (iii) attempt to recover funds from such parties.

¹⁶ *Id.*

¹⁷ 2013 MGP Order at 67.

¹⁸ *See* Case No. 18-283-GA-RDR, Direct Testimony of Keith Bone on Behalf of Duke Energy Ohio, Inc. at 4 (Mar. 28, 2018) (stating that the trial against the remaining insurers is set for May 2019).

¹⁹ 2013 MGP Order at 67.

D. The PUCO should order Duke to complete all remediation efforts by the end of 2019.

In the 2013 MGP Order, the PUCO found that Duke should only be allowed to charge customers for MGP remediation costs for a limited time:

[W]e conclude that recovery of incurred costs should be limited to a reasonable timeframe commencing with the event that triggered remediation efforts mandated by CERCLA and ending at a point in time where remediation efforts should reasonably be concluded. We believe that such determination of said timeframe is essential and in the public interest, and will provide certainty that the remediation will be carried out in a responsible and expeditious manner by the Company and its shareholders, so that recovery through Rider MGP will be finite.²⁰

Consistent with this conclusion, the PUCO ordered Duke to complete its remediation of the East End site by December 31, 2016 and the West End site by December 31, 2019.²¹ The PUCO subsequently extended the East End remediation period for the East End site to December 31, 2019 over the objections of OCC, Kroger, and OPAE.²²

Consistent with OCC's recommendation above for an audit of Duke's MGP rider, any such audit should address the prudence of Duke's spending patterns with a particular focus on whether Duke is properly pacing its remediation efforts to complete them by the end of 2019. And if Duke does not complete its efforts by the end of 2019, then Duke's shareholders should bear any financial responsibility for remediation efforts beyond that

²⁰ 2013 MGP Order at 59.

²¹ 2013 MGP Order at 72.

²² *In re Application of Duke Energy Ohio, Inc. for Authority to Defer Env'tl. Investig. & Remediation Costs*, Case No. 16-1106-GA-AAM, Finding & Order (Dec. 21, 2016).

point. This will ensure that “[Duke] and its shareholders are held accountable” for the MGP remediation, as the PUCO ordered in the 2013 MGP Order.²³

E. The PUCO should not approve any charges to consumers for cleanup of manufactured gas plants until parties have an opportunity for testimony and a hearing.

In the 2012 case, the Consumers’ Counsel’s expert identified significant Duke expenditures that were not prudent and should not be charged to consumers for cleanup of 19th century manufactured gas plants. At this time, there should be no decision regarding the prudence of Duke’s cleanup costs and no costs approved for charging to consumers. The parties should have an opportunity to file testimony and for a hearing before any decision is made in this case regarding further charges to consumers for manufactured gas plant cleanup.

III. CONCLUSION

To protect consumers, the PUCO should order an outside audit of Duke’s MGP rider charges. Duke should remediate the MGP sites in a responsible, cost-efficient manner. It should pursue all available insurance proceeds and funding from third parties to reduce the burden on consumers. And after December 31, 2019, Duke’s shareholders should take full responsibility for the cost of further remediation efforts. Customers have been burdened with these costs for long enough.

²³ 2013 MGP Order at 72.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments was served on the persons stated below via electric transmission this 28th day of September 2018.

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Summary: Comments Comments by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Healey, Christopher Mr.