

**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

**REPLY COMMENTS OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

I. INTRODUCTION AND PROCEDURAL HISTORY

The above-captioned consolidated cases concern the extent to which Duke Energy Ohio, Inc. (Duke) may recover its ongoing investigation and remediation costs from customers for two manufactured gas plants (MGP) that are no longer serving customers. Specifically, the Public Utilities Commission of Ohio (Commission) is tasked with determining whether the costs incurred related to these two MGP sites in the years 2013, 2014, 2015, 2016, and 2017 were prudently incurred by Duke.

This proceeding consists of the applications that Duke filed from 2013-2017 to adjust its MGP Rider to charge customers for cleanup efforts for the subject MGP plants. The Commission consolidated the cases and set a procedural schedule on June 28, 2018.¹ The Commission established a September 28, 2018 deadline to file initial comments and an October 26, 2018 deadline to file reply comments.² By Entry on October 25, 2018, the Commission extended the deadline to file reply comments until October 30, 2018.³ The Staff of the Commission filed its report on Duke's applications on September 28, 2018 (Staff Report).⁴ Additionally, the Office of the Ohio Consumers' Counsel (OCC) filed comments on September 28, 2018.⁵

The Ohio Manufacturers' Association Energy Group (OMAEG) intervened in Case Nos. 17-596-GA-RDR and 17-597-GA-ATA.⁶ OMAEG now respectfully submits the following reply comments for the Commission's consideration.

¹ See Entry

² Id. at ¶ 9.

³ Entry at ¶ 11 (October 25, 2018).

⁴ See Staff Report (September 28, 2018).

⁵ See Comments of the Office of the Ohio Consumers' Counsel (September 28, 2018).

⁶ See Case No. 17-596-GA-RDR, et al., Motion to Intervene of the Ohio Manufacturers' Association Energy Group (April 14, 2018)

II. COMMENTS

A. No Cost Recovery Should Occur Until the Parties Have an Opportunity to Be Heard at Hearing.

Given that Duke is seeking cost recovery for five years of remediation activity, Duke's applications should be subject to a full hearing wherein all parties to these cases may offer testimony and cross-examine witnesses regarding Duke's proposed cost recovery. Such a hearing would ensure due process for the parties and also result in the development of a complete record upon which the Commission would base its ultimate decision.

B. The Staff Report Demonstrates that the Commission Must Carefully Audit Duke's Proposed MGP Cost Recovery.

The Staff Report adjusted Duke's proposed cost recovery for remediation of the two MGP plants by roughly 45.57%, or more than \$11.8 million, after its review of Duke's proposals.⁷ Staff found that a number of costs that Duke proposed to charge to customers were inappropriate for inclusion in the MGP Rider. The significant difference between what Duke proposed and what Staff found Duke should receive underscores the need to fully vet the proposed applications and cost recovery at hearing. Given that customers are being asked to account for costs incurred by Duke to clean up MGP plants that are no longer in service, no longer used and useful, and do not benefit customers, the Commission should be particularly vigilant in ensuring that customers are only charged for costs that are reasonable, prudent, and lawful.

As recommended by OCC,⁸ OMAEG recommends that a thorough review of the costs occur through a full audit that is publicly docketed upon completion. Parties should then be afforded ample time to review this audit and include assessments of the audit in comments,

⁷ Staff Report at 7.

⁸ Comments by the Office of the Ohio Consumers' Counsel at 3 (September 28, 2018) (OCC Comments).

testimony, and/or objections. Duke's customers should only be charged after a transparent process that completely vets any proposed cost recovery by Duke. Such a process would best serve Duke's customers, and the public interest.

C. The Commission Should Work Vigorously to Ensure that Duke Is Exhausting All Available Means to Ensure that Customers Receive the Benefit of Insurance Claims.

Duke and the Commission should endeavor to minimize the impact of these remediation costs on customers. Customers are not served by the now-defunct MGP plants at issue in this case and receive little, if any, direct benefit from Duke's cleanup efforts. In light of this reality, the Commission directed Duke to continue pursuing cost recovery from insurance companies and other potentially responsible parties.⁹

To the extent that Duke has already recovered from insurers or other potentially responsible parties, it should begin immediately offsetting any costs to be recovered from customers with those proceeds. Duke, however, takes a different view. Duke believes that it should be allowed to deny customers this offset (even though the Commission has already determined that customers are entitled to the offset) until all efforts to recover from other parties have ceased. Duke contends that because it is able to net the amount it recovers from insurance companies or other third parties against the costs it incurred in obtaining those third-party proceeds, Duke should be permitted to wait until it has exhausted all of its efforts to collect third-party proceeds before passing the third-party proceeds it has collected on to customers (i.e., Duke wants to net what third-party proceeds it ultimately collects against the cost of collection before it passes any of what it has collected onto

⁹ *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 67 (November 13, 2013) (2013 MGP Order).

customers).¹⁰ While Duke wants customers to wait to benefit from any third-party proceeds, Duke is seeking authority to collect money from customers now for its remediation costs. Duke cannot have it both ways. If customers are going to be paying for Duke's remediation costs, Duke should be required to offset those costs with any third-party proceeds that it has received, as Duke receives them. Alternatively, if Duke is authorized to delay the offsetting of third-party proceeds, OMAEG supports OCC's proposal to include carrying costs on any proceeds recovered from third parties to which customers are entitled.¹¹

Finally, OMAEG agrees with OCC that the Commission should require Duke to more fully describe its efforts to offset the amounts that will be charged to customers, as well as its justification for any failures to pursue recovery from a party that has been identified as potentially responsible for portions of Duke's remediation costs for the two MGP plants.

D. MGP Cost Recovery Should Terminate by December 31, 2019.

The Commission recognized the importance of a prompt completion of this project in its Order authorizing the cost recovery at issue in these proceedings. Specifically, the Commission held that recovery of incurred costs should be limited to a timeframe within which Duke's remediation should have reasonably been concluded.¹² The Commission has determined that such a reasonable timeframe would end on December 31, 2019 for both plants at issue in these proceedings.¹³ The Commission should not abandon these timelines; customer responsibility for Duke's remediation costs should cease at the end of 2019, regardless of how much remediation

¹⁰ Case No. 17-596-GA-RDR, Direct Testimony of Keith Bone on Behalf of Duke Energy Ohio, Inc. at 5 (March 31, 2017).

¹¹ OCC Comments at 5.

¹² 2013 MGP Order at 59.

¹³ 2013 MGP Order at 72; *In re Application of Duke Energy Ohio, Inc. for Authority to Defer Envtl. Investig. & Remediation Costs*, Case No. 16-1106-GA-AAM, Finding & Order (Dec. 21, 2016).

work still needs to be completed. By that point, Duke will have had a reasonable amount of time to complete the project and customers should no longer be responsible for costs beyond that date. If Duke is unable to complete its work in the Commission-established timeframe, it should accept financial responsibility for any work that it is required to complete in 2020 and beyond.

III. CONCLUSION

As Duke seeks cost recovery for remediation efforts related to out-of-service MGP plants, the Commission should work to ensure that Duke is minimizing the expense to customers and acting prudently in incurring remediation costs. Moreover, the Commission should establish a process to allow for due process and a full record to be developed in these proceedings. As such, OMAEG respectfully requests that the Commission consider and implement the reply comments delineated above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served via electronic mail on all parties of record on October 30, 2018.

/s/Kimberly W. Bojko

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Case No(s). 14-0375-GA-RDR, 14-0376-GA-ATA, 15-0452-GA-RDR, 15-0453-GA-ATA, 16-0542-GA-RD

Summary: Reply Reply Comments of The Ohio Manufacturers' Association Energy Group electronically filed by Ms. Cheryl A Smith on behalf of The Ohio Manufacturers' Association Energy Group