

**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
)	

**MEMORANDUM CONTRA DUKE ENERGY OHIO, INC.’S MOTION TO CONTINUE
RIDER MGP RECOVERY OF COSTS INCURRED SINCE 2014
BY
THE KROGER CO.**

I. INTRODUCTION AND PROCEDURAL HISTORY

The above-captioned cases all concern attempts by Duke Energy Ohio, Inc. (Duke) to recover its ongoing investigation and remediation costs from customers for two manufactured gas plants (MGP) that do not serve customers. Duke asks the Public Utilities Commission of Ohio (Commission) to approve cost recovery for remediation efforts undertaken between 2014 and 2018, even though the remediation provides no benefit to customers. In determining whether cost recovery is appropriate, the Commission must determine whether or not Duke has prudently incurred the costs that it seeks to recover.

The Kroger Co. (Kroger) intervened in Case Nos. 17-596-GA-RDR and 17-597-GA-ATA.¹ The Commission consolidated the cases and set a procedural schedule on June 28, 2018.² The Commission solicited initial comments to be filed by September 28, 2018 and reply comments to be filed by October 26, 2018.³ The Staff of the Commission filed its report on Duke's applications on September 28, 2018 (Staff Report),⁴ and the Office of the Ohio Consumers' Counsel (OCC) filed initial comments on that same day.⁵ Kroger,⁶ Duke,⁷ OCC,⁸ and the Ohio Manufacturers' Association Energy Group (OMAEG)⁹ then filed reply comments on October 30, 2018.

¹ See Case No. 17-596-GA-RDR, et al., Motion to Intervene of the Kroger Co. (April 19, 2018).

² See Entry (June 28, 2018).

³ Id. at ¶ 9.

⁴ See Staff Report (September 28, 2018).

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

⁶ See Reply Comments of the Kroger Co. (October 30, 2019) (Kroger Reply Comments).

⁷ See Comments of Duke Energy Ohio, Inc. (October 30, 2018) (Duke Reply Comments).

⁸ See Reply Comments of the Office of the Ohio Consumers' Counsel (October 30, 2019) (OCC Reply Comments).

⁹ See Reply Comments of the Ohio Manufacturers' Association Energy Group (October 30, 2018) (OMAEG Reply Comments).

On May 10, 2019, Duke filed a Motion to Continue Rider MGP Recovery of Costs Incurred Since 2014 (Motion).¹⁰ Through this Motion, Duke asks the Commission to permit Duke to charge its customers for costs associated with the remediation of gas plants which no longer serve customers. Kroger opposes this Motion by Duke for two reasons. First, Duke is requesting that the Commission approve cost recovery without any sort of hearing wherein customers have the opportunity to be heard on Duke's proposal. Second, Duke has not demonstrated that the costs it seeks to recover were prudently incurred and would not result in unjust and unreasonable rates for Duke's customers.

Pursuant to Ohio Adm. Code 4901-1-12(B)(2), Kroger respectfully submits the foregoing memorandum contra Duke's Motion to Continue Rider MGP Recovery of Costs Incurred Since 2014.

II. ARGUMENT

Here, Duke seeks Commission approval to charge customers under Rider MGP at the same level the Commission approved for recovery of costs incurred prior to 2013 until the Commission approves the recovery of charges for the succeeding years, and does so without proposing any sort of hearing that would allow other interested parties to be heard on Duke's proposal. Ohio law, however, limits Duke's recovery to only those charges that are prudently incurred.¹¹ The Commission has not made a determination that the costs Duke seeks to recover were prudently incurred. Therefore, the Commission should not allow Duke to begin recovering those costs from customers under the assumption that the Commission will, at some point in the future, determine

¹⁰ See Motion of Duke Energy Ohio, Inc., to Continue Rider MGP Recovery of Costs Incurred Since 2014 (May 10, 2019) (Motion to Populate).

¹¹ R.C. 4909.154.

that some or all of the costs were prudently incurred.

Duke is requesting that the Commission allow Duke to continue charging customers under Rider MGP at the current rates.¹² Importantly, these rates were not set based on any of the charges that Duke now seeks to recover. They were set based upon costs Duke incurred in prior years, after the Commission determined that those costs were prudent. While Duke attempts to stress the harm that it will be subjected to if its Motion is not approved, it does not offer substantial argument regarding the prudence of the costs underlying the recovery sought. Duke also does not ask the Commission to make a determination of prudence under R.C. 4909.154. Until the Commission determines that Duke has prudently incurred the costs that it seeks to recover in these proceedings, the continuation of Rider MGP at current rates is inappropriate, as such a continuation would constitute cost recovery for costs that the Commission has not determined to be prudent.

Indeed, Duke's view on prudence has not necessarily been adopted by the Commission or its Staff, as reflected by the dockets for this proceeding. 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.¹³ Staff found that a number of costs that Duke proposed to charge to customers were inappropriate for inclusion in the MGP Rider. Certainly, if Staff has already found that 45.57% of Duke's costs were imprudent, it is possible that a hearing could reveal that additional costs were similarly imprudent. Only through a hearing would the Commission be able to make a full determination on the prudence of the costs that Duke seeks to recover. And under Ohio law, customers cannot be charged until that determination is made.

¹² See *id.* at 13.

¹³ Staff Report at 7.

Under R.C. 4909.22, the Commission is also required to make a determination that the rates charged by Duke are just and reasonable. Allowing Duke to recover charges from customers without any sort of determination by the Commission that such charges were prudently incurred would be unjust and unreasonable, in violation of that provision. Kroger contends that any rates charged without a hearing or even a determination by the Commission that the rates are based on costs prudently incurred by the utility would be unjust and unreasonable.

Allowing the requested charges would be further unjust and unreasonable because Duke has not demonstrated that it is making efforts to minimize the impact of its remediation efforts 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. The Commission has ordered that Duke must continue pursuing cost recovery from insurance companies and other potentially responsible parties.¹⁴ This cost recovery from third parties would offset the burden that these remediation activities place on customers.¹⁵ Until Duke demonstrates that it has exhausted these avenues for recovering costs without charging customers, continued recovery under Rider MGP would be unjust and unreasonable.

III. CONCLUSION

Duke's request to continue charging customers under Rider MGP without a prudence determination by the Commission runs afoul of Ohio law and would result in unjust and unreasonable rates for Duke's customers. Duke's customers should be afforded the right to be heard through the Commission's normal hearing process before the Commission grants recovery

¹⁴ *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).

¹⁵ See OMAEG Reply Comments at 4-5.

to Duke. Only through use of this hearing process will the Commission be able to fairly evaluate the merits of Duke's request and the prudence of the costs it now seeks to pass on to customers. Accordingly, Kroger respectfully requests that the Commission deny Duke's Motion to Populate.

Respectfully submitted,

/s/ Angela Paul Whitfield

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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 May 28, 2019.

/s/Angela Paul Whitfield

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Summary: Memorandum Contra Duke Energy Ohio, Inc.'s Motion To Continue Rider MGP Recovery Of Costs Incurred Since 2014 By The Kroger Co. electronically filed by Debra A Gaunder on behalf of Kroger