

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

**DUKE ENERGY OHIO, INC.'s REPLY TO THE MEMORANDUM
CONTRA SUBMITTED BY THE OHIO MANUFACTURERS' ASSOCIATION
ENERGY GROUP, THE KROGER CO., AND THE OFFICE OF THE OHIO
CONSUMERS' COUNSEL**

I. INTRODUCTION

These proceedings, ten total cases, were filed according to the process for recovery of investigation and remediation costs related to the operation of two former manufactured gas plants (MGP) required by both State and Federal Law. The process whereby Duke Energy Ohio, Inc. (Duke Energy Ohio or the Company) files annual applications to recover prudently incurred investigation and remediation expense through a separate rider, Rider MGP, was ordered by the Public Utilities Commission of Ohio (Commission) in Duke Energy Ohio's last base natural gas rate case, Case No. 12-1685-GA-AIR (Gas Rate Case).¹ The creation of Rider MGP itself was supported by a stipulation and recommendation (Stipulation), signed by numerous parties, including the Ohio Manufacturers' Association (OMA), the Kroger Co., and the Office of the Ohio Consumers' Counsel (OCC).² While the stipulating parties reserved their rights to litigate the amount of remediation costs, recovery through Rider MGP was not disputed.³ And both Kroger and OCC litigated the issue of whether the Company should be permitted to continue its deferral of ongoing MGP remediation and investigation expenses and to recover such costs through the Rider MGP.⁴

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 p.74 (November 13, 2013).

² *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.*, Stipulation and Recommendation, pp. 8-9 (April 2, 2013).

³ *Id.* See also, Fn 2.

⁴ *Id.* p. 71; *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.* Entry on Rehearing p. 25 (January 8, 2014).

The Commission ruled in the affirmative (Commission Order).⁵ Ultimately, the Ohio Supreme Court (Court) upheld the Commission's decision allowing for recovery of remediation costs as a present cost of providing utility service.⁶

Notwithstanding the indisputable recoverability of MGP remediation and investigation expense, the Company's annual Rider MGP applications remain unresolved. As the Company explained in its Motion to Continue Rider MGP Recovery of Costs Incurred Since 2014 (Motion), the delay in resolving these proceedings has resulted in financial harm to Duke Energy Ohio that the Company never contemplated could occur, and presumably was never intended by the Commission, considering the Commission and ultimately the Court decided the initial MGP-related cost recovery issues in the Company's favor. Duke Energy Ohio is merely seeking a reasonable balance of interests, recovery of costs already incurred from years past, and due process to customers, until the Commission addresses the ten underlying proceedings.

OCC, Kroger, and OMA oppose the Company's Motion and thus seek to perpetuate the harm experienced by Duke Energy Ohio while these cases have remained unresolved. Their respective Memoranda Contra raise numerous issues previously litigated and decided by the Commission and the Court. Allegations that the former MGP sites are currently used and useful are irrelevant.⁷ Claims that the Company's remediation efforts are excessive are meritless and have already been determined to be reasonable and consistent with Ohio law under the Voluntary Action Plan (VAP).⁸ Moreover, the assertions by OCC, OMA and Kroger that due process is being denied are foundationless. Duke Energy Ohio's MGP

⁵ *Id.*

⁶ *In re Application of Duke Energy Ohio, Inc.*, 150 Ohio St. 3d 437, pp. 441-443 (June 29, 2017).

⁷ *Id.*

⁸ Commission's Order, pp. 60-65.

investigation and remediation expenses have been prudently incurred and incurring such expenses was necessary in compliance with the law. Interested parties have had up to six years now to conduct discovery regarding the reasonableness of these expenses, and the Commission could still hold an evidentiary hearing. While Duke Energy Ohio believes an evidentiary hearing is not required under the Rider MGP process or Ohio law, nonetheless, the Commission could allow Rider MGP to continue and establish a procedural schedule to provide such a hearing so to avoid further financial harm to Duke Energy Ohio due to continued delays in resolving these proceedings. Allowing Rider MGP to continue at its existing level to recover costs Staff has agreed are reasonable until the balance of the costs in dispute can be resolved will mitigate confusion and ultimately rate volatility for customers.

II. ARGUMENT

A. The Used and Useful Standard Does Not Apply.

Throughout their Memorandum Contra, OMA and Kroger continually allege that the Commission should not grant the Company's Motion because the former gas plants are not in service, not benefitting customers, and are not used and useful.⁹ Such proclamations are wholly irrelevant. Both the Commission and Court have rejected Kroger and OMA's positions and have conclusively determined that the used and useful standard set forth under R.C. 4909.15(A)(1) is inapplicable here.¹⁰ The Court, affirming the Commission's Order, agreed that remediation costs were service-related and recoverable through rates

⁹ See e.g. *Memorandum Contra Duke Energy Ohio, Inc.'s Motion to Continue Rider MGP Recovery of Costs Incurred Since 2014 By the Ohio Manufactures' Association Energy Group*, pp. 2, 3, 5, and 6 (May 28, 2019); and *Memorandum Contra Duke Energy Ohio, Inc.'s Motion to Continue Rider MGP Recovery of Costs Incurred Since 2014 By the Kroger Co.*, pp. 3 and 5 (May 28, 2019).

¹⁰ *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 p. 54 (November 13, 2013); See also: *In re Application of Duke Energy Ohio, Inc.*, 150 Ohio St. 3d 437, pp. 441-443 (June 29, 2017).

under R.C. 4909.15(A)(4) and not subject to the used and useful standard set forth under R.C. 4909.15(A)(1).¹¹ The Court acknowledged, “[a]s the current owner or operator of facilities from which there is a release or threatened release of hazardous material, Duke is strictly liable for remediation of the MGP sites under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA).”¹² Furthermore, the Court confirmed that such legally mandated costs incurred in providing service are recoverable and pointed out that the appellants’ interpretations of the applicability of the used and useful standard under R.C.4909.15(A) “runs aground on the plain language of the statute...”¹³

Likewise, the Commission’s Order made it very clear that “it is undisputed on the record that [Duke Energy Ohio] has the societal obligation to clean up these [MGP] sites for the safety and prosperity of the communities in those areas...therefore, these costs are a current cost of doing business.”¹⁴ The Commission reiterated this determination on rehearing, finding “[i]t is also undisputed that such remediation provides direct benefits to society, the Company and its employees, and the environment.”¹⁵ So for OMA and Kroger to now claim there is no customer benefit to the Company’s MGP investigation and remediation is both disingenuous and contrary to prior findings by the Commission as upheld by the Court.¹⁶

Because the Commission and the Court have already settled the matter, the Commission should disregard claims by OMA and Kroger that the Company’s

¹¹ *In re Application of Duke Energy Ohio, Inc.*, 150 Ohio St. 3d 437, pp. 441-443 (June 29, 2017).

¹² *Id.* p. 438; citing 42 U.S.C. 9601, *et seq.*

¹³ *Id.* p. 442 .

¹⁴ Commission’s Order, p. 59 (November 13, 2013).

¹⁵ *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.* Entry on Rehearing p. 9 (January 8, 2014).

¹⁶ *In re Application of Duke Energy Ohio, Inc.*, 150 Ohio St. 3d 437, pp. 438, 441-443 (June 29, 2017).

investigation and remediation efforts are improper or not beneficial to customers on the false premise the MGP sites are not considered used and useful.

B. Duke Energy Ohio's Remediation Efforts are Reasonable and Consistent with Ohio Law.

OCC, Kroger and OMA further oppose the Company's Motion by arguing that the Company has not demonstrated, and the Commission has not yet determined, that the Company's investigation and remediation costs were prudently incurred.¹⁷ OCC even goes so far as to claim, without any supporting evidence, that the Company's efforts are excessive and that no recovery should be allowed whatsoever.¹⁸ These allegations are misguided and wrong. As previously stated, the Commission and the Court have collectively determined that the Company has both a legal and societal obligation to clean up the MGP-related contamination. During the Gas Rate Case, the Commission thoroughly examined Duke Energy Ohio's MGP-related investigation and remediation efforts, management practices, decisions and activities finding they were appropriate, prudent and in accordance with R.C. 4909.154.¹⁹ Duke Energy Ohio continues to follow these same efforts, management practices, decisions and activities and has done so throughout the MGP investigation and remediation process.²⁰ The Company's direct testimony filed in support of its annual applications directly references these prior processes and affirms that all of the environmental work at the MGP sites continues to be performed by environmental consulting firms experienced in MGP site remediation and under the oversight of Ohio

¹⁷ Kroger Memo Contra at 5; OMAEG Memo Contra at 6.

¹⁸ OCC Memo Contra at 9, 10.

¹⁹ Commission's Order, pp. 60-65.

²⁰ See e.g., Case Nos. 14-0375-GA-RDR, *et al.* Direct Testimony of Jessica L. Bednarcik pp. 5-6 (March 31, 2014), Case Nos. 15-0452-GA-RDR, *et al.* Direct Testimony of Todd L. Bachand pp. 5-7 (March 31, 2015); Case Nos. 16-0542-GA-RDR, *et al.* Direct Testimony of Todd L. Bachand pp. 5-7 (March 31, 2016); Case Nos. 17-596-GA-RDR, *et al.* Direct Testimony of Todd L. Bachand pp. 6-8 (March 31, 2017); 18-283-GA-RDR, *et al.* Direct Testimony of Todd L. Bachand pp. 6-8 (March 28, 2018).

EPA VAP Certified Professionals (CPs), whose role is to ensure activities are compliant with Ohio EPA's VAP regulations.²¹ The Ohio EPA VAP CPs and environmental consultants hired to perform activities at the two sites continue to work to ensure that the work complies with the VAP and meets all applicable local, state, and federal standards, as well as to ensure that the environmental conditions at the sites are protective of human health and the environment, both short-term and long-term.²² The Company further described the remediation activities that occurred and supported the reasonableness and prudence of the costs.²³ OCC, Kroger and OMA challenged the Company's remediation strategies in 2013 and the Commission found in the Company's favor. Put another way, the Commission has already thoroughly examined the Company's remediation efforts, practices etc., and found them to be reasonable, prudent, and more importantly, in compliance with the Ohio VAP.²⁴

C. Allowing Rider MGP to Continue at Current Levels Does Not Deny Due Process.

OCC, Kroger and OMA argue that the Commission must first determine that the Company's MGP investigation and remediation activities between 2013 to 2017 are prudent before the Company can commence recovery of such costs through its Rider MGP and that the Company has failed to demonstrate its remediation efforts were prudent. Additionally, these interested parties further claim that a full evidentiary hearing must occur before the Commission can allow recovery. To make such claims, one must ignore

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Commission's Order, pp. 60-65.

the evidence in the record to date, and disregard the fact that the Commission routinely approves adjustments to riders without holding an evidentiary hearing.

OMA and Kroger further claim that the due process demands that interested parties be given an opportunity to be heard regarding the prudence of the Company's MGP-related activities since 2012, the same activities previously found to be prudent and reasonable.²⁵ Indeed, interested parties have had six years of due process. These interested parties conveniently ignore the Company's desire for due process to have its applications decided in a timely manner. Nonetheless, the Company's proposal to maintain its Rider MGP at existing levels until the Commission rules on these underlying annual applications absolutely provides additional time for due process, including an evidentiary hearing if the Commission determines one necessary.

A full evidentiary hearing is not necessary for the Commission to determine that the Company has acted prudently and reasonably in its MGP-related investigation and remediation. As explained below, the Commission has already thoroughly investigated the Company's remediation strategies at the sites in question and following a full litigation by numerous parties, including those opposing the Company's Motion herein, found them to be prudent and reasonable. Moreover, R.C. 4909.18 only requires the Commission to set a matter for hearing if it finds the Company's application may appear to be unjust or unreasonable. The Commission has previously approved adjustments to both new and existing riders without holding a full evidentiary hearing. For example, the Commission recently approved Duke Energy Ohio's application to implement a new rider to implement the impacts of the Tax Cuts and Jobs Act (Rider TCJA for the Company's electric

²⁵ OMA Memorandum Contra at 3; Kroger Memorandum Contra at 3.

distribution business without holding an evidentiary hearing.²⁶ Similarly, the Commission recently approved the Company's application in Case No. 19-169-EL-RDR without an evidentiary hearing and based upon Staff's recommendations.²⁷

D. Staff's Recommended Disallowances Were Not Due to Any Finding of Imprudence.

On September 28, 2018, the Staff of the Commission issued a report on the Company's Rider MGP annual filings for the Review Periods (Staff Report).²⁸ Kroger, OCC, and OMA make much ado about the Staff Report's recommendation¹ to disallow recovery of approximately \$11.9 million in remediation costs and draw the inappropriate conclusion that such a recommendation supports their position that the Company's remediation activities were imprudent.²⁹ Nothing is further from the truth. In fact, contrary to the claims of OCC, Kroger, and OMA, while the Staff Report did describe its scope of review, the Staff did not recommend disallowance of any investigation or remediation costs due to findings of imprudence of the Company's work. Rather, Staff's recommendations to exclude recovery of costs through Rider MGP were due to: 1) costs the Staff believed were appropriate for recovery as capital costs for electric transmission work;³⁰ and 2) geographic limitations of work performed at the MGP sites that Staff believed were performed outside of "permissible boundaries," most significantly, work performed in the area known as the "West of the West parcel" of the East End MGP site.³¹ Prudence of the Company's investigation and remediation efforts, management practices, decisions and

²⁶ *In the Matter of the Application of Duke Energy Ohio, Inc., for Implementation of the Tax Cuts and Jobs Act of 2017, et al.*, Case No. 18-1185-EL-UNC, *et al.*, Finding and Order (February 20, 2019).

²⁷ *In the Matter of the Application of Duke Energy Ohio, Inc., to Adjust and Set Rider ESRR*, Case No. 19-169-EL-RDR, Staff's Review and Recommendation, p. 2 (May 13, 2019).

²⁸ See Staff Report, September 28, 2018.

²⁹ Kroger Memorandum Contra at 4; OMA Memorandum Contra at 5; OCC Memorandum Contra at 5.

³⁰ Staff Report at 5.

³¹ Staff Report at 4.

activities were not the bases for any of Staff's recommended disallowance. And Duke Energy Ohio has already demonstrated that Staff's recommended disallowances were in error.

As the Company explained in its responsive comments to the Staff Report, the parcel designations used for purposes of the MGP remediation were not tied to specific real property boundaries, but rather were purely used for sequencing of remediation work as is allowed under the Ohio VAP process.³² The Company's comments included maps proving:

... a significant portion of the Area West of the West Parcel, including the specific area within the Area West of the West Parcel where remediation work has occurred (labeled as "Phase 2 Area"), was actually formerly owned by Duke Energy Ohio (and predecessor companies) and was part of the East End site since 1928, during the site's operation as an MGP, until it was sold in 2006.³³

Moreover, Staff's opinion that a literal line in the sand must be drawn to determine eligibility of remediation costs for recovery is contrary to findings of the Commission and the Court that the Company is obligated to address contamination under CERCLA.³⁴ The Commission and the Court made it abundantly clear that costs incurred by the utility related to its provision of service are recoverable independent of whether the costs are being incurred on property that is used and useful. Despite guidance from the Commission and the Court, the Staff's recommended disallowance is based on its conflation of two statutes, R.C. 4909.15(A)(1) and 4909.15(A)(4) and by drawing a line in the sand based upon the Company's sequencing of remediation activities under the Ohio VAP without any consideration to the actual presence and location of former MGP operations and facilities or the strict liability imposed under the law for performing remediation related to

³² Duke Energy Ohio Comments at 11.

³³ Comments of Duke Energy Ohio, p. 13, (October 10, 2018).

³⁴ Commission's Order, p. 54 (November 13, 2013).

contamination from such operations. Further, Staff's bright-line exclusion of MGP investigation and remediation work performed on the West of the West Parcel based upon its interpretation of the Commission's Order conflicts with subsequent Commission decisions whereby the Commission granted the Company's extension request of its MGP deferral authority for the East End MGP site, citing in part, the "unique complexities" in the East End Middle Parcel *and area West of the West Parcel* that "require further investigation and remediation."³⁵ If the Commission intended to disallow recovery of MGP remediation and investigation expense related to the area West of the West Parcel at the East End Site there was no need relative to that property to grant continued deferral authority.

Nonetheless, Duke Energy Ohio's Motion herein takes Staff's position into account. The Company's proposal is that Rider MGP persist at current levels so to begin recovery of investigation and remediation expense that Staff has already confirmed as reasonable and prudent, approximately \$14 million. The Commission should rule on these costs only so that the interested parties, including Staff, OCC, Kroger, and OMA, and even the Company would remain free to litigate the issues involving the work Staff believes was performed outside the boundaries of the MGP sites.

Notwithstanding OCC's, Kroger's, and OMA's claims, Duke Energy Ohio has indeed requested the Commission find its actions were prudent and reasonable, and supported such each year through its annual application under Rider MGP. Moreover, as previously explained, if the Company's investigation and remediation practices withstood

³⁵ *In the Matter of the Application of Duke Energy Ohio, Inc. For Authority to Defer Environmental Investigation and Remediation Costs*, Case No 16-1106-GA-AAM, *et al.*, Finding and Order pp. 13-14 (December 21, 2016). *Emphasis Added*.

high scrutiny and full litigation in 2013, it stands to reason that they would continue to do so each year thereafter.

E. Duke Energy Ohio has suffered real financial harm due to the delayed resolution of these proceedings.

OCC's belief that the Company has not suffered any financial harm due to the delays resolving these proceedings is baseless. It is factual that the Company expended funds, approximately \$26 million between January 1, 2013, and December 31, 2017, for MGP investigation and remediation costs.³⁶ It is further undeniable that to date, the Commission has not ruled on any of the Company's six annual applications to recover these costs. Assuming the deferred balance of costs incurred from January 1, 2013, through December 31, 2018, accrued carrying charges at the Company's long-term debt rate approved in Case No. 12-1685-GA-AIR, *et al.*, the Company has been harmed by \$4.7 million as depicted in the attached schedule accompanying this Reply.³⁷ OCC's dubious assertion that Duke Energy Ohio cannot claim to be harmed by the loss of something that the Commission ruled it could not receive is astounding. It is precisely because the Commission denied recovery of carrying costs that the Company has a time-value of money loss. Had the Commission issued its decisions in the underlying cases in the year filed, there would be no such loss.

F. OCC's Opposition to Single Issue Rate-Making is a Non-Sequitur.

In a single sentence and footnote, OCC subtly claims that Duke Energy Ohio is not permitted to recovery any of its incremental MGP investigation and remediation expense as it would result in an unlawful single-issue ratemaking.³⁸ OCC agreed to the creation of

³⁶ Staff Report at 7.

³⁷ Attachment A.

³⁸ OCC Memorandum Contra p. 5.

Rider MGP in 2013 to recover MGP-related costs approved by the Commission.³⁹ OCC exercised its right to oppose the use of Rider MGP for ongoing recovery of MGP-related costs. The Commission found against OCC, whom then sought rehearing on this issue, and was ultimately denied.⁴⁰ Commission precedent is replete with evidence and support for the creation of cost recovery mechanisms such as Rider MGP. Moreover, R.C. 4929.11 explicitly allows alternative regulation for natural gas utilities.⁴¹ OCC's dislike of "single-issue rate-making" should not be confused with what is and is not permitted under Ohio law.

G. Allowing Rider MGP to continue at existing levels makes sense for customers.

As the Company explained in its Motion, allowing Rider MGP to persist at current levels will benefit customers by avoiding confusion, mitigating volatility in rates, and mitigating future Rider MGP adjustments. Allowing Rider MGP to reset to zero only to have it revert to a higher charge some time later will only serve to create customer confusion and erode satisfaction. Despite OCC's claims, customers do value predictability and stability in their utility rates. Allowing the Company to commence some recovery of the costs of investigation and remediation expense for the period of 2013 through 2017 will reduce the balance of recoverable MGP expenses. The Commission will maintain its existing levels of oversight and authority over Rider MGP adjustments if it grants the Company's request. Therefore, customers will not be harmed as any over or under

³⁹*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.*, Stipulation and Recommendation, pp. 8-9 (April 2, 2013).

⁴⁰*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.* Entry on Rehearing p. 7 (January 8, 2014).

⁴¹ R.C. 4929-11(A).

collections that could occur could easily be corrected through the Commission's decisions in the subsequent Rider MGP annual review cases.

H. Insurance proceeds will be addressed at the appropriate time.

Duke Energy Ohio has diligently pursued recovery of insurance proceeds for legacy insurance policies that provided potential coverage for MGP-related contamination. In doing so, Duke Energy Ohio sued the solvent insurance companies that provided relevant liability policies to it from 1940, the first year for which it had any policy evidence, through 1986. Starting in the mid-1980s, liability policies issued by the insurance industry typically contained absolute pollution exclusions and, therefore, often do not provide coverage for the kind of environmental property damage found at the MGP Sites. OCC, Kroger, and OMA each demand that the insurance proceeds begin being flowed back to customers now. Such a demand is premature and fails to recognize the issues related to allocation of responsibility for costs incurred at the area West of the West Parcel as previously described, future remediation that cannot be completed due to current inaccessibility, and continuing investigation in and along the Ohio River.

The settlement amounts paid by the Historical Insurers were not just for costs previously incurred. Rather, the settlements were obtained for costs that Duke Energy Ohio has incurred and will continue to incur to address its liability to investigate and remediate environmental damage allegedly caused by the Company's historical operations at the MGP Sites, including to neighboring landowners, to the groundwater, including groundwater beyond Duke Energy Ohio's property boundaries, and to the sediments of the Ohio River. If determined to be sufficiently impacted or damaged by releases from the former MGP operations, all of these areas must be remediated under applicable environmental laws, including CERCLA, even though such properties are not owned by

Duke Energy Ohio. These settlements recognize that many of the contaminants at issue continue to migrate through soil, groundwater and sediments until they have been remediated. The migration of contaminants has occurred over decades and will likely continue to occur until the remediation is complete. In other words, Duke Energy Ohio's obligation to investigate and remediate under the law is not restricted by property boundaries.

Until the recovery of all of these issues are resolved, it is premature to begin crediting of the insurance proceeds. If it is ultimately determined that Duke Energy Ohio cannot recover its MGP investigation and remediation costs through Rider MGP, but must instead be apportioned some amount of those costs, so too should the insurance proceeds be ratably apportioned. The ability to obtain such proceeds was in regards to the entire scope of potential MGP-related contamination to be addressed.

I. Amending Rider MGP to add Refund Language is not necessary.

OCC demands that Duke Energy Ohio's Rider MGP should be amended to include refund language like the Commission has approved for other of the Company's discrete cost recovery mechanisms. Such an amendment is superfluous as it relates to Rider MGP. Rider MGP only recovers costs that the Commission determines are appropriate for recovery. It does not recover prospective costs. The recoverability of MGP investigation and remediation costs has already been affirmed by the Court. So there is no need to include superfluous language to the Company's Rider MGP. If the Commission grants the Company's Application in these proceedings, the Commission's final order can account for any amounts already recovered and adjust accordingly for any additional amounts that the Commission determines should be recoverable. As the Commission is aware, the

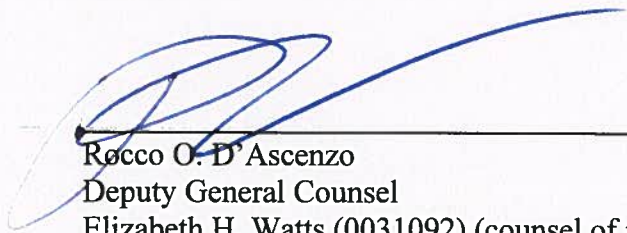
approximately \$26 million at issue does not include amounts in the Company's Rider MGP application for calendar year 2018, as such amounts are the subject of an entirely separate proceeding.⁴² Moreover, as the Company's current deferral authority extends through December 31, 2019, another Rider MGP application will be filed in 2020 to account for investigation and remediation costs incurred during calendar year 2019.

III. CONCLUSION

For the foregoing reasons, the Commission should disregard the objections of OCC, Kroger and OMA and allow Rider MGP to continue at its current level until it issues a decision in the Company's annual Rider MGP filings. Allowing Rider MGP to continue at existing levels until the Commission can review and issue a decision in the Company's annual rider filings for the calendar years 2013 through 2017 will ensure that neither customers nor the Company will be harmed and allows interested parties to have the opportunity to address their concerns in the Staff Report.

⁴² *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No.19-174-GA-RDR *et al.*, Application (March 29, 2019).

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion was served via electronic mail or ordinary mail on the following parties this 4th day of June 2019.



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Duke Energy Ohio

Estimated Lost Time Value of Money from No Carrying Cost on MGP

Month	Beg Balance	New Spend	End Balance	Carrying Cost on Unrec Balance	Accum Carrying Cost
Jan-13	\$0	\$695,558	\$695,558	\$1,542	\$1,542
Feb-13	695,558	695,558	1,391,116	4,625	6,167
Mar-13	1,391,116	695,558	2,086,674	7,709	13,876
Apr-13	2,086,674	695,558	2,782,233	10,793	24,669
May-13	2,782,233	695,558	3,477,791	13,876	38,546
Jun-13	3,477,791	695,558	4,173,349	16,960	55,506
Jul-13	4,173,349	695,558	4,868,907	20,044	75,549
Aug-13	4,868,907	695,558	5,564,465	23,127	98,677
Sep-13	5,564,465	695,558	6,260,023	26,211	124,887
Oct-13	6,260,023	695,558	6,955,581	29,295	154,182
Nov-13	6,955,581	695,558	7,651,139	32,378	186,560
Dec-13	7,651,139	695,558	8,346,698	35,462	222,022
Jan-14	8,346,698	57,169	8,403,867	37,130	259,153
Feb-14	8,403,867	57,169	8,461,036	37,384	296,536
Mar-14	8,461,036	57,169	8,518,205	37,637	334,174
Apr-14	8,518,205	57,169	8,575,374	37,891	372,065
May-14	8,575,374	57,169	8,632,544	38,144	410,209
Jun-14	8,632,544	57,169	8,689,713	38,398	448,606
Jul-14	8,689,713	57,169	8,746,882	38,651	487,258
Aug-14	8,746,882	57,169	8,804,051	38,905	526,162
Sep-14	8,804,051	57,169	8,861,221	39,158	565,320
Oct-14	8,861,221	57,169	8,918,390	39,411	604,732
Nov-14	8,918,390	57,169	8,975,559	39,665	644,397
Dec-14	8,975,559	57,169	9,032,728	39,918	684,315
Jan-15	9,032,728	88,421	9,121,150	40,241	724,556
Feb-15	9,121,150	88,421	9,209,571	40,633	765,189
Mar-15	9,209,571	88,421	9,297,992	41,025	806,214
Apr-15	9,297,992	88,421	9,386,414	41,417	847,631
May-15	9,386,414	88,421	9,474,835	41,809	889,440
Jun-15	9,474,835	88,421	9,563,256	42,201	931,641
Jul-15	9,563,256	88,421	9,651,678	42,593	974,235
Aug-15	9,651,678	88,421	9,740,099	42,985	1,017,220
Sep-15	9,740,099	88,421	9,828,520	43,377	1,060,597
Oct-15	9,828,520	88,421	9,916,942	43,769	1,104,366
Nov-15	9,916,942	88,421	10,005,363	44,161	1,148,527
Dec-15	10,005,363	88,421	10,093,785	44,553	1,193,080

Duke Energy Ohio
Estimated Lost Time Value of Money from No Carrying Cost on MGP

Month	Beg Balance	New Spend	End Balance	Carrying Cost on Unrec Balance	Accum Carrying Cost
Jan-16	10,093,785	108,013	10,201,798	44,989	1,238,069
Feb-16	10,201,798	108,013	10,309,811	45,467	1,283,536
Mar-16	10,309,811	108,013	10,417,825	45,946	1,329,482
Apr-16	10,417,825	108,013	10,525,838	46,425	1,375,907
May-16	10,525,838	108,013	10,633,851	46,904	1,422,811
Jun-16	10,633,851	108,013	10,741,865	47,383	1,470,194
Jul-16	10,741,865	108,013	10,849,878	47,862	1,518,056
Aug-16	10,849,878	108,013	10,957,891	48,341	1,566,397
Sep-16	10,957,891	108,013	11,065,905	48,819	1,615,216
Oct-16	11,065,905	108,013	11,173,918	49,298	1,664,514
Nov-16	11,173,918	108,013	11,281,931	49,777	1,714,291
Dec-16	11,281,931	108,013	11,389,945	50,256	1,764,547
Jan-17	11,389,945	1,221,006	12,610,951	53,202	1,817,749
Feb-17	12,610,951	1,221,006	13,831,956	58,615	1,876,364
Mar-17	13,831,956	1,221,006	15,052,962	64,028	1,940,393
Apr-17	15,052,962	1,221,006	16,273,968	69,441	2,009,834
May-17	16,273,968	1,221,006	17,494,973	74,854	2,084,689
Jun-17	17,494,973	1,221,006	18,715,979	80,268	2,164,956
Jul-17	18,715,979	1,221,006	19,936,985	85,681	2,250,637
Aug-17	19,936,985	1,221,006	21,157,990	91,094	2,341,731
Sep-17	21,157,990	1,221,006	22,378,996	96,507	2,438,238
Oct-17	22,378,996	1,221,006	23,600,002	101,920	2,540,158
Nov-17	23,600,002	1,221,006	24,821,007	107,333	2,647,491
Dec-17	24,821,007	1,221,006	26,042,013	112,746	2,760,237
Jan-18	26,042,013	1,650,336	27,692,349	119,111	2,879,349
Feb-18	27,692,349	1,650,336	29,342,685	126,428	3,005,776
Mar-18	29,342,685	1,650,336	30,993,021	133,744	3,139,520
Apr-18	30,993,021	1,650,336	32,643,356	141,061	3,280,581
May-18	32,643,356	1,650,336	34,293,692	148,377	3,428,958
Jun-18	34,293,692	1,650,336	35,944,028	155,694	3,584,652
Jul-18	35,944,028	1,650,336	37,594,364	163,010	3,747,662
Aug-18	37,594,364	1,650,336	39,244,700	170,327	3,917,988
Sep-18	39,244,700	1,650,336	40,895,036	177,643	4,095,632
Oct-18	40,895,036	1,650,336	42,545,372	184,960	4,280,591
Nov-18	42,545,372	1,650,336	44,195,708	192,276	4,472,867
Dec-18	\$44,195,708	\$1,650,336	\$45,846,044	\$199,593	\$4,672,460

Total Projected Loss of Time Value of Money through 2018

\$4,672,460

Carrying Cost Rate (Annual rate from Case No. 12-1685-GA-AIR)

5.32%

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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 Duke Energy Ohio, Inc.'s Reply to the Memorandum Contra Submitted by the Ohio Manufacturers' Association Energy Group, The Kroger Co., and The Office of the Ohio Consumers' Counsel electronically filed by Mrs. Debbie L Gates on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco O. Mr. and Watts, Elizabeth H and Kingery, Jeanne W