

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matters of the Applications of	:	Case No. 14-375-GA-RDR
Duke Energy Ohio, Inc., for	:	Case No. 15-452-GA-RDR
Adjustments to Rider MGP Rates.	:	Case No. 16-542-GA-RDR
	:	Case No. 17-596-GA-RDR
	:	Case No. 18-283-GA-RDR
	:	Case No. 19-174-GA-RDR
	:	
In the Matters of the Applications	:	Case No. 14-376-GA-ATA
of	:	Case No. 15-453-GA-ATA
Duke Energy Ohio, Inc. for Tariff	:	Case No. 16-543-GA-ATA
Approval.	:	Case No. 17-597-GA-ATA
	:	Case No. 18-284-GA-ATA
	:	Case No. 19-175-GA-ATA

REPLY BRIEF
SUBMITTED ON BEHALF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

Dave Yost
Ohio Attorney General

John H. Jones
Section Chief

Thomas W. McNamee
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, OH 43215
614.644.4395 (telephone)
614.644.8764 (fax)
thomas.mcnamee@ohioattorneygeneral.gov

**On behalf of the Staff of
The Public Utilities Commission of Ohio**

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INTRODUCTION

Duke Energy Ohio (“Company”) spends much time in its brief discussing the Commission’s general discussion of its rationale in the rate case order *In re Duke Energy Ohio* Case Number 12-1685-GA-AIR Opinion and Order November 13, 2013 (“Rate Case Order”). This misses the fundamental point. What should be examined is what the Commission *actually did* in its Rate Case Order. From the perspective of the Staff, the Commission’s Rate Case Order is perfectly clear. The Commission barred recovery of costs associated with the West of West (“WOW”) site, did not authorize recovery for work in the Ohio River, and required the return of all net insurance recoveries to

ratepayers. These understandings shaped the Staff's analysis in this case. Staff's analysis represents the only correct implementation of the Commission's Rate Case Order in this record and, as such, should be adopted by the Commission.

WOW

As noted in Staff's Initial Brief in this case, the Commission barred recovery of expenditures related to the WOW property. It said so, clearly. The language is:

Thus, when applying the requirement for recovery set forth in R.C 4909.15(A)(4), we are not willing to entertain Duke's unsubstantiated request for recovery of costs related to property has not been shown on the record in these cases to provide, either in the past or in the present, utility services that caused the statutorily mandated environmental remediation.

Rate Case Order at 60. So, there could be no confusion, the Commission said it again, specifically:

However, the Commission determines that Duke's request to recover the costs related to the purchased parcel located west of the East End site, the costs incurred in 2008 for the West End site, and all carrying charges should be denied.

Rate Case Order at 73. As the Commission barred recovery of costs associated with the WOW property, the Staff worked quite hard to identify and remove such expenditures from the Company's requests. In this way, an aspect of the Commission's Rate Case Order has been implemented.

OHIO RIVER

The situation with the expenditures in the Ohio River is somewhat different. The Commission simply did not authorize recovery of any amount related to work in the Ohio

River. In fact, it never even considered it. This conclusion requires an examination of the Rate Case Order.

The Rate Case Order includes the word “river” in only six instances. Three of these instances are merely observations that there are gas lines which cross the Ohio River. Rate Case Order at 38, 39, 43. These are not relevant to the issue at hand. Likewise, two more references are to the observation that groundwater is not being discharged into the Ohio River. Rate Case Order at 35. Again, this is not relevant to the issue at hand.

The sole remaining reference in the Rate Case Order provides that “...Ohio River, which is adjacent to the sites...”. Rate Case Order at 34. Clearly, in the Commission’s view, the Ohio River is *adjacent* to the sites it was considering *not part of them*. As the Commission was only considering recovery of expenditures related to the sites themselves, it did not consider the river at all. Because the Commission was not even considering the river, it did not authorize recovery.

In the Staff’s view, costs need to be authorized for recovery to be included in the Company’s applications. Remediation and other work in the Ohio River was not authorized and so the Staff worked quite hard to eliminate such expenditures from the company applications. In this way, the Staff implemented this aspect of the Rate Case Order.

THE AUDIT

The Staff's efforts to implement the WOW and Ohio River aspects of the Rate Case Order were greatly hampered by the way in which the Company's chose¹ to keep its records.² Only a minority of the invoices provided to the Staff identified expenditures by parcel or by being in the river. Staff was forced to allocate.

The Company takes great issue with allocation but there was simply no alternative. Clearly money was being spent for items that were not authorized for recovery. Some method needed to be developed to account for this. Allocation had to be done and allocation is always reliant upon judgement.

Thankfully the Staff witness in the case was the one individual best positioned to perform this allocation. She is the only one who has tracked these expenditures from the beginning through to this point in time. She has reviewed every invoice, every contract, and every document provided to the Staff across the entire eight years of this Process. She is, quite literally, the only one in a position to have an informed and unbiased view of the question.³ As discussed in Staff's initial brief, the Staff directly assigned costs where there was sufficient information to do so and developed an allocation method to account for those improperly included items when there was not sufficient information to directly assign costs. While Staff would have preferred that the records had been kept so as to

¹ Tr. I at 225.

² Staff does not mean to suggest that the Company *intentionally* made the task more difficult. Rather the Company chose to record expenditures in a way that, as an unintended consequence, made the task vastly more difficult. Though the resulting difficulty was an unintended consequence, it was still a consequence and a very serious one.

³ As discussed in Staff's initial brief, company witness Bachand tried very hard to accomplish this same sort of analysis at the eleventh hour, but the task was impossible despite his best efforts.

avoid the need for allocation, the company's choice of how to keep the records made that impossible. The Staff simply did what was necessary to effectuate the Commission's Rate Case Order.

As the Staff's evaluation is the only one in the record which captures the Commission's intent, it should be adopted by the Commission.

INSURANCE PROCEEDS

The question of what to do with the \$55 million in insurance proceeds has largely been determined by the Commission. The amount should not be allocated, rather the net proceeds should go to the benefit of customers. Rate Case Order at 67. The only remaining question is *when* ratepayers should get these funds.

In the Staff's view, the time is now. We know ratepayers are entitled to the money. We know that the Company has the money. Ratepayers have already paid a vast amount for these remediation efforts. If the funds are not returned to ratepayers now, there is no logical point in time to return the money until the project is done and there is no estimate whatsoever as to when that might be. Ratepayers might have to wait years, even a decade to get the money to which the Commission has already determined they are entitled. With each passing day of this period, however long it might be, the match between those customers who have already paid toward these costs and the return of the funds to which they are entitled becomes worse. There is no reason for delay. The company's legitimately incurred costs will be collected from ratepayers regardless. Today is the day.

MINOR ISSUES

The Staff's initial brief has already considered several minor issues, relocation of an electric substation and disposing of previously solidified soil. These have been argued sufficiently and the arguments will not be restated here.

Respectfully submitted,

Dave Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Thomas W. McNamee

Thomas W. McNamee
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 16th Floor
Columbus, OH 43215
614.644.4395 (telephone)
614.644.8764 (fax)
thomas.mcnamee@ohioattorneygeneral.gov

**On behalf of the Staff of
The Public Utilities Commission of Ohio**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief**, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via electronic mail upon the below parties of record this 14th day of February, 2020.

/s/ Thomas W. McNamee

Thomas W. McNamee

Assistant Attorney General

Parties of Record:

Christopher M. Healey

(Counsel of Record)

Amy Botschner-O'Brien

Assistant Consumers' Counsel
Office of the Ohio Consumers' Counsel
65 East State Street, 7th Floor
Columbus, Ohio 43215-4213
christopher.healey@occ.ohio.gov
amy.botschner.obrien@occ.ohio.gov

*Counsel for Office of the Ohio
Consumers' Counsel*

Robert Dove

Associate
Kegler Brown Hill + Ritter L.P.A.
65 East State Street, Suite 1800
Columbus, Ohio 43215
rdove@keglerbrown.com

*Counsel for Ohio Partners for Affordable
Energy*

Angela Paul Whitfield

Kimberly W. Bojko

Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
paul@carpenterlipps.com
bojko@carpenterlipps.com

Counsel for The Kroger Co.

David F. Boehm

Michael L. Kurtz

Jody Kyler Cohn

Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkylercohn@BKLawfirm.com

Counsel for Ohio Energy Group

Rocco D'Ascenzo

Deputy General Counsel

Elizabeth H. Watts

Associate General Counsel

Larisa M. Vaysman

Senior Counsel

139 East Fourth Street, ML 1303

Cincinnati, Ohio 45202

rocco.dasenzo@duke-energy.com

elizabeth.watts@duke-energy.com

larisa.vaysman@duke-energy.com

Kevin N. McMurray

Frost Brown Todd LLC

301 East Fourth Street

Great American Tower, Suite 3300

Cincinnati, Ohio 45202

kmcmurray@fbtlaw.com

Counsel for Duke Energy Ohio, Inc.

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