

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
CASE NO. 15-452-GA-RDR
CASE NO. 16-542-GA-RDR
CASE NO. 17-596-GA-RDR
CASE NO. 18-283-GA-RDR
CASE NO. 19-174-GA-RDR
CASE NO. 20-53-GA-RDR**

**IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR TARIFF
APPROVAL.**

**CASE NO. 14-376-GA-ATA
CASE NO. 15-453-GA-ATA
CASE NO. 16-543-GA-ATA
CASE NO. 17-597-GA-ATA
CASE NO. 18-284-GA-ATA
CASE NO. 19-175-GA-ATA
CASE NO. 20-54-GA-ATA**

**IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR
IMPLEMENTATION OF THE TAX CUTS AND
JOBS ACT OF 2017.**

CASE NO. 18-1830-GA-UNC

**IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR
APPROVAL OF TARIFF AMENDMENTS.**

CASE NO. 18-1831-GA-ATA

**IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR
AUTHORITY TO DEFER ENVIRONMENTAL
INVESTIGATION AND REMEDIATION
COSTS.**

CASE NO. 19-1085-GA-AAM

**IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR TARIFF
APPROVAL.**

CASE NO. 19-1086-GA-UNC

ENTRY ON REHEARING

Entered in the Journal on June 15, 2022

I. SUMMARY

{¶ 1} The Commission grants the joint application for rehearing filed by Retail Energy Supply Association and Interstate Gas Supply, Inc. on May 20, 2022, for the purpose of further consideration of the matters specified in the application for rehearing.

II. DISCUSSION

{¶ 2} Duke Energy Ohio, Inc. (Duke or the Company) is a natural gas company, as defined by R.C. 4905.03, and a public utility, as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission.

A. Duke Manufactured Gas Plant Proceedings

{¶ 3} On November 12, 2009, the Commission authorized Duke to defer environmental investigation and remediation costs related to two former manufactured gas plant (MGP)¹ sites in Ohio for potential recovery of reasonable and prudent costs in a future base rate proceeding. *In re Duke Energy Ohio, Inc.*, Case No. 09-712-GA-AAM, Finding and Order (Nov. 12, 2009) at 4.

{¶ 4} On November 13, 2013, the Commission authorized the recovery of such environmental investigation and remediation costs as had been incurred by the Company between 2008 and 2012. The Commission authorized Duke to recover and continue deferring environmental investigation and remediation costs, indicating further that the Company would be able to recover those costs which were prudently incurred through Rider MGP. *In re Duke Energy Ohio, Inc.*, Case No. 12-1685-GA-AIR, et al., Opinion and Order (Nov. 13, 2013) at 70-74.²

¹ The MGPs were operated in Ohio from approximately 1850 through 1950 in order to produce commercial grade gas from the combustion of coal, oil, and other fossil fuels. Although these MGPs no longer exist, the remains of the subsurface structures and associated residuals such as coal tar, scrubber wastes, chemicals, and tanks are commonly found to remain under ground.

² The Supreme Court of Ohio affirmed the Commission's decision authorizing Duke to recover and continue deferring environmental investigation and remediation costs associated with the MGP sites. *In re Application of Duke Energy Ohio, Inc.*, 150 Ohio St.3d 437, 2017-Ohio-5536, 82 N.E.3d 1148.

{¶ 5} On March 31, 2014, Duke filed an application in Case Nos. 14-375-GA-RDR and 14-376-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2013 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to \$8,346,698 (*2013 Rider MGP Adjustment*).

{¶ 6} On March 31, 2015, Duke filed an application in Case Nos. 15-452-GA-RDR and 15-453-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2014 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to \$686,031 (*2014 Rider MGP Adjustment*).

{¶ 7} On March 31, 2016, Duke filed an application in Case Nos. 16-542-GA-RDR and 16-543-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2015 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to \$1,061,056 (*2015 Rider MGP Adjustment*).

{¶ 8} On March 31, 2017, Duke filed an application in Case Nos. 17-596-GA-RDR and 17-597-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2016 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to \$1,296,160 (*2016 Rider MGP Adjustment*).

{¶ 9} On March 28, 2018, Duke filed an application in Case Nos. 18-283-GA-RDR and 18-284-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2017 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to \$14,652,068 (*2017 Rider MGP Adjustment*). On that same date, Duke also filed a motion to consolidate the *2013-2017 Rider MGP Adjustments*.

{¶ 10} By Entry issued on June 28, 2018, the attorney examiner granted the motion to consolidate the *2013-2017 Rider MGP Adjustments* and set a comment period.

{¶ 11} Staff, as directed by the June 28, 2018 Entry, filed its review and recommendations in relation to the *2013-2017 Rider MGP Adjustments* on September 28, 2018. Among other recommendations, Staff ultimately proposed to reduce the Company's requested recovery amounts for years 2013-2017 by \$11,867,900.00.

{¶ 12} On March 29, 2019, Duke filed an application in Case Nos. 19-174-GA-RDR and 19-175-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2018 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to \$19,804,031 (*2018 Rider MGP Adjustment*).

{¶ 13} On July 12, 2019, Staff filed its review and recommendations in the *2018 Rider MGP Adjustment*. Staff, again, proposed to reduce the requested recovery amount by \$11,366,243, in addition to other recommendations, such as netting the recommended disallowances against insurance proceeds.

{¶ 14} By Entry issued August 13, 2019, the attorney examiner consolidated the *2018 Rider MGP Adjustment* with the other ten rate adjustment cases and established a procedural schedule.³ The procedural schedule also set a deadline for intervention in the *2018 Rider MGP Adjustment* of September 13, 2019. By Entry issued September 4, 2019, the evidentiary hearing was rescheduled to commence on November 18, 2019, at the offices of the Commission. The hearing was held as scheduled and post-hearing briefs were submitted by the parties.

³ The August 13, 2019 Entry consolidated the following cases: Case Nos. 14-375-GA-RDR, 14-376-GA-ATA, 15-452-GA-RDR, 15-453-GA-ATA, 16-542-GA-RDR, 16-543-GA-ATA, 17-596-GA-RDR, 17-597-GA-ATA, 18-283-GA-RDR, 18-284-GA-ATA, 19-174-GA-RDR, and 19-175-GA-ATA.

{¶ 15} Additionally, in Case Nos. 19-1085-GA-AAM and 19-1086-GA-UNC, Duke had filed an application seeking authorization to extend its deferral and collection of MGP investigation and remediation costs from customers beyond December 31, 2019. By Entry issued August 13, 2019, the attorney examiner set September 13, 2019, as the intervention deadline and established a comment period. Initial comments were received by September 13, 2019, and reply comments by October 2, 2019.

{¶ 16} Apart from the consolidated proceedings, on March 31, 2020, as amended on July 7, 2020, Duke filed an application in Case Nos. 20-53-GA-RDR and 20-54-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2019 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to \$39,435,627 (*2019 Rider MGP Adjustment*). Staff filed its report for the *2019 Rider MGP Adjustment* on July 23, 2020, recommending a total negative adjustment for recovered costs of \$3,897,930, thus, suggesting the Company be authorized to recover a total of \$35,537,697. For purposes of this Opinion and Order, Case Nos. 14-375-GA-RDR, 14-376-GA-ATA, 15-452-GA-RDR, 15-453-GA-ATA, 16-542-GA-RDR, 16-543-GA-ATA, 17-596-GA-RDR, 17-597-GA-ATA, 18-283-GA-RDR, 18-284-GA-ATA, 19-174-GA-RDR, 19-175-GA-ATA, 20-53-GA-RDR, and 20-54-GA-ATA will collectively be referred to as the “*Duke MGP Proceedings*.”

B. Duke Tax Cuts and Jobs Act Proceedings

{¶ 17} On December 21, 2018, in response to the passage of the 2017 Tax Cuts and Jobs Act (TCJA), Duke filed its application in Case Nos. 18-1830-GA-UNC and 18-1831-GA-ATA (collectively, “*Duke TCJA Proceedings*”) to establish its natural gas TCJA rider to address the impacts of the reduction in the corporate income tax rate from 35 percent to 21 percent for its natural gas operations, including a reduction of the federal income tax rate and creation of excess accumulated deferred income taxes (EDIT), ultimately reducing natural gas bills for customers. A hearing was scheduled and held on August 7, 2019, and post-hearing briefs were submitted by the parties.

C. Joint Stipulation

{¶ 18} On August 31, 2021, Duke, the Ohio Consumers' Counsel (OCC), Ohio Energy Group (OEG), and Staff (collectively, Signatory Parties) filed a stipulation and recommendation (Stipulation), which they claim resolves all the issues raised by the Signatory Parties in the *Duke MGP Proceedings* and the *Duke TCJA Proceedings*, in addition to affording various customer protections and benefits. The Stipulation also provides a commitment to transition from Duke's gas cost recovery (GCR) mechanism to a standard service offer (SSO) competitive auction format for natural gas supply,⁴ a requirement for Duke to provide OCC, upon request, shadow billing information for natural gas customers in a format to be mutually agreed upon by Duke and OCC, and a new bill format proposal to include an SSO price-to-compare message on natural gas bills. The Signatory Parties aver that the Ohio Manufacturers' Association Energy Group (OMAEG), The Kroger Co. (Kroger), and Ohio Partners for Affordable Energy have agreed not to oppose the Stipulation. Duke also filed proposed tariffs, as well as the direct testimony of Amy Spiller and the supplemental testimony of Sarah Lawler in support of the Stipulation.

{¶ 19} On September 17, 2021, and September 29, 2021, respectively, Interstate Gas Supply, Inc. (IGS) and Retail Energy Supply Association (RESA) filed motions for leave to intervene in the above-captioned proceedings.

{¶ 20} Memoranda contra the motions for leave to intervene were timely filed by Duke, OCC, and OEG, to which RESA and IGS filed replies on October 12, 2021.

{¶ 21} By Entry issued October 15, 2021, the attorney examiner, citing the unique circumstances of these proceedings, granted limited intervention to RESA and IGS in order to address the three areas discussed in their motions for leave to intervene, namely Duke's commitment to transition from the GCR mechanism to an SSO competitive auction format

⁴ While the application has not been filed, a docket has been opened: *In re the Application of Duke Energy Ohio, Inc. for Approval of a General Exemption of Certain Natural Gas Commodity Sales Services or Ancillary Services*, Case No. 21-903-GA-EXM, et al.

for natural gas supply, the proposed SSO price-to-compare message on natural gas bills, and the commitment to provide OCC aggregate shadow billing data on an ongoing basis. The October 15, 2021 Entry also established a procedural schedule, setting November 15, 2021, as the deadline for testimony in opposition to the Stipulation, and November 22, 2021, as the date on which the evidentiary hearing would commence.

{¶ 22} Duke filed a motion for protective order on October 22, 2021, in which it requested that the Commission issue an order providing that Duke need not respond to certain interrogatories, as they exceeded the scope of discovery permitted by the October 15, 2021 Entry.

{¶ 23} IGS and RESA filed memoranda contra Duke's motion for protective order on October 29, 2021.

{¶ 24} On October 27, 2021, RESA filed a motion to move the hearing date. Duke filed, on November 1, 2021, its memorandum contra RESA's motion to move the hearing.

{¶ 25} By Entry issued November 3, 2021, the attorney examiner granted RESA's motion to move the hearing date and rescheduled the hearing to begin on November 18, 2021, at 11:00 a.m. via remote hearing technology, as well as adjusted the deadline for testimony in opposition to the Stipulation. Further, the attorney examiner found that the motion for protective order appeared to be moot, given Duke's attempts to provide responses to the discovery requests, but, nonetheless, provided additional guidance in response to the parties' arguments regarding the scope of discovery to be had in these proceedings. Ultimately, the attorney examiner noted that RESA and IGS were being provided ample opportunity to offer evidence and/or argument in opposition, consistent with Ohio Adm.Code 4901-1-30, but also within the confines of their limited intervention status. The November 3, 2021 Entry neither expanded nor reduced the ability of these parties to participate in these proceedings as provided in the October 15, 2021 Entry.

{¶ 26} On November 8, 2021, RESA and IGS filed a joint interlocutory appeal and request for certification, pursuant to Ohio Adm.Code 4901-1-15(B).

{¶ 27} On November 10, 2021, Duke and OCC filed memoranda contra the joint interlocutory appeal and request for certification.

{¶ 28} By Entry issued November 10, 2021, the attorney examiner denied certification of the interlocutory appeal as moot after providing additional guidance to the parties, noting that there was “nothing in the October 15, 2021, or November 3, 2021 Entries that would prohibit RESA or IGS from contesting the inclusion of the competitive market provisions in the Stipulation, including whether such inclusion renders the Stipulation unreasonable pursuant to the Commission’s three-prong test. To find otherwise would be contrary to the Commission’s rules and past precedent, as well as the explicit language used in the November 3, 2021 Entry.” Entry (Nov. 10, 2021) at ¶ 30.

{¶ 29} The hearing was held, as scheduled, on November 18, 2021. At the hearing, Duke witnesses Sarah Lawler and Amy Spiller testified in support of the Stipulation, and RESA/IGS witnesses James Cawley, Frank Lacey, and James Crist testified in opposition.

{¶ 30} Initial briefs were timely filed on December 9, 2021, by Staff, Duke, OEG, OCC, and jointly by RESA and IGS. OMAEG and Kroger filed correspondence indicating they would not be filing an initial brief. Reply briefs were timely filed by Staff, Duke, OCC, and jointly by RESA and IGS, on December 23, 2021. OEG filed correspondence indicating that it would not be filing a reply brief.

{¶ 31} The Commission issued its Opinion and Order on April 20, 2022, in which it approved and adopted the joint stipulation and recommendation filed by Duke, Staff, OEG, and OCC.

{¶ 32} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined

in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 33} On May 20, 2022, RESA/IGS filed a joint application for rehearing of the Commission's Opinion and Order, asserting nine separate assignments of error.

{¶ 34} On May 31, 2022, OCC and Duke filed memoranda contra the application for rehearing.

{¶ 35} The Commission believes that sufficient reason has been set forth by RESA/IGS to warrant further consideration of the matters specified in the application for rehearing. Accordingly, the application for rehearing filed by RESA/IGS should be granted for the purpose of further consideration of the matters specified therein.

III. ORDER

{¶ 36} It is, therefore,

{¶ 37} ORDERED, That the joint application for rehearing filed by RESA/IGS on May 20, 2022, be granted for further consideration of the matters specified in the application for rehearing. It is, further,

{¶ 38} ORDERED, That a copy of this Entry on Rehearing be served upon each party of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

MJA/mef

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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-RDR, 16-0543-GA-ATA, 17-0596-GA-RDR, 17-0597-GA-ATA, 18-0283-GA-RDR, 18-0284-GA-ATA, 18-1830-GA-UNC, 18-1831-GA-ATA, 19-0174-GA-RDR, 19-0175-GA-ATA, 19-1085-GA-AAM, 19-1086-GA-UNC, 20-0053-GA-RDR, 20-0054-GA-ATA

Summary: Entry on Rehearing granting the joint application for rehearing filed by Retail Energy Supply Association and Interstate Gas Supply, Inc. on May 20, 2022, for the purpose of further consideration of the matters specified in the application for rehearing electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio