

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke :
Energy Ohio, Inc., for an Increase in Gas : Case No. 12-1685-GA-AIR
Rates. :

In the Matter of the Application of Duke : Case No. 12-1686-GA-ATA
Energy Ohio, Inc., for Tariff Approval. :

In the Matter of the Application of Duke :
Energy Ohio, Inc., for Approval of an : Case No. 12-1687-GA-ALT
Alternative Rate Plan. :

In the Matter of the Application of Duke :
Energy Ohio, Inc., for Approval to Change : Case No. 12-1688-GA-AAM
Accounting Methods. :

**MEMORANDUM CONTRA
DUKE ENERGY OHIO, INC.’S MOTION TO CLARIFY THE SCOPE OF
THESE PROCEEDINGS
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO**

The Staff of the Public Utilities Commission of Ohio (“Staff”) submit this memorandum contra Duke Energy Ohio’s Inc.’s (“Duke”) Motion to Clarify the Scope of the These Proceedings (“Motion to Clarify”).

1. Duke’s Motion should be denied because Duke is inappropriately trying to limit the scope of the Commission’s ability to examine the prudence and reasonableness of Duke’s MGP remediation expenditures.

Duke asks the Commission to limit the scope of its statutory authority to examine the prudence and reasonableness of expenditures that Duke wants to recover through rates. Instead providing a sound, legal basis for such a request, Duke relies largely upon its misinterpretation of Staff’s position in the Staff Report. This is entirely inappropriate. The Commission’s ability to examine and question the prudence or reasonableness of Duke’s MGP remediation expenses is not somehow diminished by the Staff Report. It is true that Staff did not “investigate or make any finding or recommendations regarding the necessity or scope of the remediation work that Duke performed.”¹ This does not mean, however, that an examination of the prudence of Duke’s remediation expenditures is outside of the Commission’s purview. The Commission has the authority to examine Duke’s expenditures and determine what should and should not be included in Duke’s rates. The Commission has this authority regardless of Staff’s position in this case. The Staff Report clearly states this:

The Staff Report is intended to present for the Commission’s consideration the results of the Staff’s investigation. It does not purport to reflect the views of the Commission *nor should any party to said proceeding consider the Commission as bound in any manner by the representations or recommendations set forth therein.* The Staff Report, however, is legally cognizable evidence upon which the Commission may rely in reaching its decision.²

¹ Staff Report at 40.

² Staff Report at ii. (emphasis added)

Duke claims that Staff's decision to limit the scope of its investigation was an "acknowledgement of the boundaries of the Commission's jurisdiction." Motion to Clarify at 6. Duke has no basis for this statement. Staff's position in this case should not be misused by Duke to minimize the Commission's statutory authority to examine the reasonableness of Duke's MGP remediation expenditures.

2. Duke's Motion should be denied because it is unclear exactly what Duke is asking the Commission to do.

Duke's Motion should be denied for a more basic reason - it is simply unclear what Duke is asking for. On the one hand, Duke wants the Commission to "exclude testimony on and inquiry into the *scope and necessity of the environmental remediation decisions* made by the Company." Motion to Clarify at 7 (emphasis added). On the other hand, Duke states that "the Commission can *scrutinize the prudence and reasonableness of Duke Energy Ohio's MGP remediation expenditures.*" *Id.* (emphasis added). Duke states that the Commission, while scrutinizing the prudence and reasonable of Duke's MGP remediation expenditures, can specifically examine:

1. "[T]he Company's due diligence and decision-making with respect to its determination that it has an MGP remediation obligation;"
2. "[The Company's] due diligence and decision-making in the selection of contractors and vendors for this project;"
3. "[T]he reasonableness of the contracts entered into for this project; and"
4. "[T]he reasonableness of the actual MGP remediation expenditures."

Id.

Duke's request to limit the scope of the hearing contradicts its stated belief that the Commission can examine the above mentioned aspects of Duke's remediation efforts. Duke cannot have it both ways. The things it believes "the Commission may examine" (see 1-4 listed above) inherently involve an "inquiry into the scope and necessity of the environmental remediation decisions made by the Company." Although Duke suggests that its main concern is the Commission interpreting the VAP Rules, Duke's proposed "clarification" seems to go well beyond addressing its purported concern. Duke asks "the Commission [to] clarify that the propriety of [Duke's] environmental remediation efforts... is not proper for consideration by the Commission in the above-captioned proceeding." *Id.* at 1-2. How can the Commission avoid considering "the propriety of [Duke's] environmental remediation efforts" while also "scrutiniz[ing] the prudence and reasonableness of [Duke's] MGP remediation expenditures"? Staff does not believe the Commission can. More importantly, Duke does not explain how it thinks the Commission can.

While it is unclear exactly what Duke wants from the Commission, Duke agrees that "the Commission can scrutinize the prudence and reasonableness of Duke Energy Ohio's MGP remediation expenditures." *Id.* at 7. Based upon this statement alone, it appears Duke's Motion is entirely unnecessary and should be denied.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Memorandum Contra to Duke Energy Ohio, Inc.’s Motion to Clarify the Scope of These Proceedings** on behalf of the Staff of the Public Utilities Commission of Ohio was served via electronic mail upon the following Parties of Record, this 19th day of April, 2013.

/s/ Devin D. Parram

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Summary: Memorandum Memo Contra Duke Motion to Clarify electronically filed by Mr. Devin D Parram on behalf of Staff of the PUCO