

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Gas Rates.	)	
	)	Case No. 12-1685-GA-AIR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	
	)	Case No. 12-1686-GA-ATA
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Rate Plan for Gas Distribution Service.	)	
	)	Case No. 12-1687-GA-ALT
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	
	)	Case No. 12-1688-GA-AAM
	)	

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**REPLY BRIEF OF THE OHIO MANUFACTURERS' ASSOCIATION**

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**I. INTRODUCTION**

The Ohio Manufacturers' Association ("OMA") is a nonprofit entity established for the purpose of educating and providing information to energy consumers, regulatory boards and suppliers of energy; advancing energy policies to promote the adequate, reliable and efficient supply of energy at reasonable prices; and, advocating in critical cases before the Public Utilities Commission of Ohio ("Commission"). OMA is comprised of manufacturers, all of which consume significant amounts of natural gas and must rely on Duke Energy Ohio ("Duke") to deliver cost-effective natural gas energy to their operations.

On July 9, 2012, Duke filed an application for increase of its natural gas rates in which it seeks an increase to address a number of different issues, including Duke's request to recover the costs of environmental remediation at two old Manufactured Gas

Plants ("MGP") sites.<sup>1</sup> Specific to MGP, Duke seeks to recover approximately \$62.8 million for costs incurred for remediation of the two MGP sites plus carrying costs through December 31, 2012. On January 4, 2013, having completed an investigation of Duke's application, Commission Staff issued its Report of Investigation ("Staff Report").<sup>2</sup> Again specific to the MGP issue, the Staff Report includes a recommendation that the Commission disallow the majority of Duke's requested recovery. Staff recommended allowing recovery of \$6,367,724 in remediation costs.<sup>3</sup>

After the Staff Report was filed, parties to the case resolved most of the issues in a Stipulation and Recommendation ("Stipulation") filed on April 2, 2013, as corrected on May 10, 2013. The parties to the Stipulation agreed that there would be a zero base rate increase, and that Duke may establish a rider for recovery of MGP costs subject to approval by the Commission and after an evidentiary hearing on the matter. A hearing on issues related to Duke's recovery for MGP remediation costs commenced on April 29, 2013.

On June 6, 2013, initial briefs were filed by Duke, the Ohio Consumers' Counsel and Ohio Partners for Affordable Energy, Commission Staff, Greater Cincinnati Health Council and Cincinnati Bell Telephone Company, and the Kroger Company. Columbia Gas of Ohio filed a motion for leave to file an Amicus Curiae brief. The OMA filed a letter indicating that it was not filing an initial brief but reserved the right to file a reply brief. In accordance with the schedule established by the Attorney Examiners in this proceeding, OMA respectfully submits its reply brief for the Commission's consideration.

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<sup>1</sup> Company Exhibit 2.

<sup>2</sup> Staff Ex. 1.

<sup>3</sup> *Id.* at pp. 45-46.

The OMA respectfully urges the Commission to adopt the reasoning and analysis set forth in the Staff Report to disallow the majority of the requested MGP costs and limit recovery, as required by Ohio law, to only those costs that are just and reasonable and for property that is currently used and useful. The OMA further supports Staff's recommendation that any recoverable costs be offset by the proceeds of insurance or other funds reducing total remediation costs and urges the Commission to adopt Staff's recommendation to amortize the costs through a mechanism other than inclusion in the base rates.

## **II. ARGUMENT**

OMA members that are served by Duke rely upon a fair and uniform application of the laws, including application of the long-standing principle that utility rates should be established to recover a reasonable rate of return plus operating expenses, for service rendered to them. Ohio Revised Code Section ("R.C.") 4909.15(A)(4). Here, Duke asks this Commission to allow recovery from current customers for costs related to property that is no longer used or useful, and that has little role in the provision of services to those current customers. The two MGP sites at issue have little present day usefulness and almost no relation to the provision of current utility service.

R.C. 4909.15(A)(1) requires this Commission to fix rates based upon its determination of the "valuation as of the date certain of the property of the public utility used and useful or, with respect to a natural gas, water-works, or sewage disposal system company, projected to be used and useful as of the date certain, in rendering the public utility service for which rates are to be fixed and determined." As noted in the Initial Post Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission, a long series of Ohio Supreme Court cases and prior Commission

precedent supports the principle that expenses related to property that is no longer “used and useful” is not appropriate for recovery.<sup>4</sup>

Ohio law is clear that current customers, like those OMA members that rely upon Duke for natural gas service, should not be liable for costs associated with property that is not used in the provision of such service and provided no benefit to them. As the Ohio Supreme Court noted:

. . . the General Assembly has adopted a consistent position in balancing investor and consumer interests in utility ratemaking. Pursuant to the statutory ratemaking formula investors are assured a fair and reasonable return on property that is determined to be used and useful, R.C. 4909.15(A)(2), plus the return of costs incurred in rendering the public service, R.C. 4909.15(A)(4), while consumers may not be charged “for utility investments and expenditures that are neither included in the rate base nor properly categorized as costs.

*Dayton Power & Light Co. v. Public Utilities Com.* (1983) 4 Ohio St. 3d 91, 103, internal quotations omitted.

Commission Staff conducted a thorough and detailed review of both MGP sites and identified those discrete portions of each site that were properly considered in the rate recovery. The OMA urges this Commission to find that the Staff recommendations are in compliance with the legislative framework established in R.C. 4909.15 and achieves the balance between investor and consumer interests highlighted by the Court in *Dayton Power & Light Co.* *Id.* Duke’s current customers did not cause the environmental issues on Duke’ MGP sites and received no benefit from those sites. It is fundamentally inequitable and contrary to past precedent and Ohio law to shift responsibility for such costs from investors to ratepayers.

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<sup>4</sup> Initial Post-Hearing Brief of Commission Staff at pp. 8-11.

The OMA also urges the Commission to favorably view Staff recommendations regarding the application of any insurance proceeds.<sup>5</sup> As noted by the Kroger Company in its Post-Hearing Brief, Duke's customers have already paid for Duke's insurance policies as a part of their rates and should be entitled to any benefits that may flow from those policies.<sup>6</sup> Finally, the OMA urges this Commission to consider the mechanisms to be employed for any properly recoverable expenses. Noting the longer-term nature of base rates, the Staff Report reasonably recommends the use of a rider as a more appropriate cost recovery mechanism, and this mechanism was included in the stipulations between the parties. Finally, the OMA respectfully urges the Commission to amortize the recovery granted, if any, over such period of time that is appropriate to minimize the impact of this increase on ratepayers.

### **III. CONCLUSION**

For the foregoing reasons, the OMA respectfully requests that the Commission adopt the Commission Staff's position.

Respectfully submitted on behalf of  
THE OHIO MANUFACTURERS' ASSOCIATION



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<sup>5</sup> Staff Ex. 1 at p. 47.

<sup>6</sup> Post-Hearing Brief of the Kroger Co. filed June 6, 2013.

## **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Reply Brief of the OMA was served upon the parties of record listed below this 20<sup>th</sup> day of June 2013 *via* electronic transmission.



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Summary: Reply Brief of The Ohio Manufacturers' Association electronically filed by Teresa Orahood on behalf of J. Thomas Siwo