

**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. 14-0375-GA-RDR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 14-0376-GA-ATA
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates	)	Case No. 15-0452-GA-RDR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 15-0453-GA-ATA
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates	)	Case No. 16-0542-GA-RDR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 16-0543-GA-ATA
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates	)	Case No. 17-0596-GA-RDR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 17-0597-GA-ATA
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates	)	Case No. 18-0283-GA-RDR
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 18-0284-GA-ATA
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**REPLY COMMENTS OF  
THE KROGER CO.**

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## **I. INTRODUCTION**

On June 28, 2018, the Public Utilities Commission of Ohio (Commission) consolidated five separate proceedings on Duke Energy Ohio, Inc.'s (Duke) applications to adjust its MGP Rider to charge customers for Duke's cleanup efforts for the two manufactured gas plants (MGP) for the years 2013 through 2017.<sup>1</sup> In doing so, the Commission established a procedural schedule requiring initial comments be filed on September 28, 2018 and reply comments be filed on October 26, 2018.<sup>2</sup> The Staff of the Commission filed its report of its review of Duke's applications on September 28, 2018 (Staff Report).<sup>3</sup> And, the Office of the Ohio Consumers' Counsel (OCC) filed initial comments on September 28, 2018.<sup>4</sup> Thereafter, on October 25, 2018, the Commission extended the deadline to file reply comments until October 30, 2018.<sup>5</sup>

Specifically, this consolidated proceeding addresses to what extent Duke can recover its ongoing investigation and remediation costs from customers for two MGP sites that currently are not serving customers. Accordingly, the Commission must determine whether Duke prudently incurred the costs related to these two MGP sites in the years 2013, 2014, 2015, 2016, and 2017. The Kroger Co. (Kroger) intervened in Case Nos. 17-596-GA-RDR and 17-597-GA-ATA<sup>6</sup> and now submits its reply comments for the Commission's consideration.

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<sup>1</sup> See Entry

<sup>2</sup> *Id.* at ¶ 9.

<sup>3</sup> See Staff Report (September 28, 2018).

<sup>4</sup> See Comments of the Office of the Ohio Consumers' Counsel (September 28, 2018).

<sup>5</sup> Entry at ¶ 11 (October 25, 2018).

<sup>6</sup> See Case No. 17-596-GA-RDR, et al., Motion to Intervene of the Kroger Co. (April 19, 2018)

## **II. COMMENTS**

### **A. Duke's Proposed MGP Remediation Cost Recovery Must Be Audited Thoroughly By The Commission.**

Kroger agrees with OCC<sup>7</sup> that a thorough and complete review of the any costs Duke seeks to recover should occur through a full audit that is made publicly available when it is completed. Parties should then be afforded ample time to review this audit and include assessments of the audit in comments, testimony, and/or objections. Duke's customers should not be charged unless the prudence of such charges is confirmed through a transparent process that allows all parties to conduct a complete review of any proposed cost recovery by Duke. Such a process would best serve Duke's customers and the public interest.

The Staff Report illustrates the necessity of such a thorough review. For example, after an extensive review of these applications, Staff recommended adjusting Duke's proposed cost recovery for remediation of the two MGP plants by \$11.8 million, which was 45.57% of the total amount Duke requested.<sup>8</sup> In so recommending, Staff found that many of the costs that Duke proposed to charge to customers should not be included in the MGP Rider. The significant difference between what Duke proposed and what Staff concluded underscores the need to thoroughly and completely review the proposed applications and cost recovery at hearing. Given that customers are potentially being charged for costs incurred by Duke to clean up MGP plants that are no longer in service, are no longer used and useful, and do not benefit customers, the Commission should be particularly vigilant in ensuring that customers are only charged for costs that are reasonable, prudent, and lawful.

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<sup>7</sup> Comments by the Office of the Ohio Consumers' Counsel at 3 (September 28, 2018) (OCC Comments).

<sup>8</sup> Staff Report at 7.

**B. To Ensure That Customers Receive The Benefit Of Any Insurance Claims, Duke Should Be Required To Exhaust All Available Means Before Seeking Cost Recovery From Customers.**

Duke and the Commission should do everything possible to minimize the burden of these remediation costs on customers. The MGP plants at issue in this case do not serve customers, who receive little, if any, direct benefit from Duke's cleanup of these plants. As such, the Commission ordered Duke to continue pursuing cost recovery from insurance companies and other potentially responsible parties.<sup>9</sup>

To the extent that Duke has already recovered from insurers or other potentially responsible parties, it should begin immediately offsetting any costs to be recovered from customers with those proceeds. Duke, however, believes that it should be allowed to deny customers this offset, even though the Commission has already determined that customers are entitled to the offset, until all efforts to recover from other parties have ceased. Duke contends that because it is able to net the amount it recovers from insurance companies or other third parties against the costs it incurred in obtaining those third-party proceeds, Duke should be permitted to wait until it has exhausted all of its efforts to collect third-party proceeds before passing the third-party proceeds it has collected on to customers.<sup>10</sup> While Duke wants to wait before passing the benefits of these proceeds to customers, Duke is seeking authority to collect money from customers now for its remediation costs. Duke cannot have it both ways. As such, Duke should be required to offset those costs with any third-party proceeds that it has received, as Duke receives them. At a minimum, if the Commission allows Duke to delay the offsetting of third-party proceeds, Kroger agrees with

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<sup>9</sup> *In re Application of Duke Energy Ohio, Inc. for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, Opinion & Order at 67 (November 13, 2013) (2013 MGP Order).

<sup>10</sup> Case No. 17-596-GA-RDR, Direct Testimony of Keith Bone on Behalf of Duke Energy Ohio, Inc. at 5 (March 31, 2017).

OCC's proposal to include carrying costs on any proceeds recovered from third parties to which customers are entitled.<sup>11</sup>

Finally, Kroger agrees with OCC that Duke must more fully describe its efforts to offset the amounts that will be charged to customers, as well as its justification for any failures to pursue recovery from a party that has been identified as potentially responsible for portions of Duke's remediation costs for the two MGP plants.

**C. MGP Cost Recovery Should Be Cut-Off By December 31, 2019.**

When it approved MGP cost recovery, the Commission held that recovery of incurred costs should be limited to a reasonable timeframe, ending on December 31, 2019, within which Duke could reasonably complete its remediation efforts.<sup>12</sup> The Commission should maintain these timelines; customer responsibility for Duke's remediation costs should cease at the end of 2019, regardless of how much remediation work has been completed. By that point, Duke will have had a reasonable amount of time to complete the project and customers should no longer be responsible for costs beyond that date. If Duke is unable to complete its work by the close of 2019, it should accept financial responsibility for any work that it is required to complete in 2020 and beyond.

**D. The Parties Should Be Afforded Due Process Before Any Cost Recovery Can Occur.**

Given that Duke is seeking cost recovery for five years of remediation activity, the Commission should hold a full hearing wherein all parties to these cases can offer testimony and cross-examine witnesses regarding Duke's proposed cost recovery. Such a hearing would ensure due process for the parties and also result in the development of a complete record upon which the

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<sup>11</sup> OCC Comments at 5.

<sup>12</sup> 2013 MGP Order at 59, 72; *In re Application of Duke Energy Ohio, Inc. for Authority to Defer Env'tl. Investig. & Remediation Costs*, Case No. 16-1106-GA-AAM, Finding & Order (Dec. 21, 2016).

Commission would base its ultimate decision.

### **III. CONCLUSION**

As Duke seeks cost recovery for remediation efforts related to out-of-service MGP plants, the Commission should work to ensure that Duke is minimizing the expense to customers and acting prudently in incurring remediation costs. Moreover, the Commission should establish a process to allow for due process and a full record to be developed in these proceedings. As such, Kroger respectfully requests that the Commission consider and implement the reply comments set forth above.

Respectfully submitted,

/s/ Angela Paul Whitfield

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served via electronic mail on all parties of record on October 30, 2018.

/s/Angela Paul Whitfield

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Summary: Reply Reply Comments Of The Kroger Co. electronically filed by Mrs. Angela Whitfield on behalf of The Kroger Co.