

**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. 14-375-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 14-376-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates	)	Case No. 15-452-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 15-453-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates	)	Case No. 16-542-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 16-543-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates	)	Case No. 17-596-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 17-597-GA-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates	)	Case No. 18-283-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval	)	Case No. 18-284-GA-ATA
)	

**MEMORANDUM CONTRA DUKE ENERGY OHIO, INC.’S MOTION TO CONTINUE
RIDER MGP RECOVERY OF COSTS INCURRED SINCE 2014
BY
THE OHIO MANUFACTURERS’ ASSOCIATION ENERGY GROUP**

I. INTRODUCTION AND PROCEDURAL HISTORY

The above-captioned consolidated cases concern the extent to which Duke Energy Ohio, Inc. (Duke) may recover its ongoing investigation and remediation costs from customers for two manufactured gas plants (MGP) that are no longer serving customers. Specifically, the Public Utilities Commission of Ohio (Commission) is tasked with determining whether the costs incurred related to these two MGP sites in the years 2013, 2014, 2015, 2016, and 2017 were prudently incurred by Duke and result in just and reasonable charges to customers.

This proceeding consists of several applications that Duke has filed from 2013-2017 to adjust its MGP Rider to charge customers for cleanup efforts for the subject MGP plants subsequent to the 2008-2012 costs authorized to be collected from customers. The Commission, however, has never determined that the costs Duke states it incurred from 2013-2017 were prudently incurred and should be recovered from customers.

The Ohio Manufacturers' Association Energy Group (OMAEG) intervened in Case Nos. 17-596-GA-RDR and 17-597-GA-ATA.¹ The Commission consolidated the cases and set a procedural schedule on June 28, 2018.² The Commission established a September 28, 2018 deadline to file initial comments and an October 26, 2018 deadline to file reply comments.³ By Entry on October 25, 2018, the Commission extended the deadline to file reply comments until October 30, 2018.⁴ The Staff of the Commission filed its report on Duke's applications on September 28, 2018 (Staff Report).⁵ Additionally, the Office of the Ohio Consumers' Counsel

¹ See Case No. 17-596-GA-RDR, et al., Motion to Intervene of the Ohio Manufacturers' Association Energy Group (April 14, 2018)

² See Entry (June 28, 2018).

³ Id. at ¶ 9.

⁴ Entry at ¶ 11 (October 25, 2018).

⁵ See Staff Report (September 28, 2018).

(OCC) filed comments on September 28, 2018.⁶ OMAEG,⁷ Duke,⁸ OCC,⁹ and the Kroger Co. (Kroger)¹⁰ filed reply comments on October 30, 2018.

On May 10, 2019, Duke filed a Motion to Continue Rider MGP Recovery of Costs Incurred Since 2014.¹¹ Through this Motion, Duke asks the Commission to permit Duke to charge its customers for five years' worth of costs associated with the remediation of gas plants, which no longer serve or provide any sort of benefit to customers. OMAEG opposes this Motion by Duke, especially to the extent that Duke is asking the Commission to approve recovery of these additional costs without first determining that the costs were prudently incurred and that the charges are just and reasonable and without affording interested parties due process and the opportunity to be heard. Accordingly, and pursuant to Ohio Adm. Code 4901-1-12(B)(2), OMAEG respectfully submits the following memorandum contra Duke's Motion to Continue Rider MGP Recovery of Costs Incurred Since 2014.

II. ARGUMENT

The record in this proceeding clearly demonstrates that the parties must have the opportunity to assess, question, and present evidence regarding Duke's proposal to seek cost recovery for five years of remediation activity at hearing and that Duke has the burden to demonstrate that the costs its seeks recovery of were prudently incurred¹² and do not result in

⁶ See Comments of the Office of the Ohio Consumers' Counsel (September 28, 2018).

⁷ See Reply Comments of the Ohio Manufacturers' Association Energy Group (October 30, 2018) (OMAEG Reply Comments).

⁸ See Comments of Duke Energy Ohio, Inc. (October 30, 2018) (Duke Reply Comments).

⁹ See Reply Comments of the Office of the Ohio Consumers' Counsel (October 30, 2019) (OCC Reply Comments).

¹⁰ See Reply Comments of the Kroger Co. (October 30, 2019) (Kroger Reply Comments).

¹¹ See Motion of Duke Energy Ohio, Inc., to Continue Rider MGP Recovery of Costs Incurred Since 2014 (May 10, 2019) (Motion to Charge).

¹² See R.C. 4909.154.

unjust and unreasonable charges to customers.¹³ These complicated cases are far from resolved and the continuation of Rider MGP charges under the assumption that Duke will be able to demonstrate the prudence of some or any of the costs incurred from 2013-2017 at some point in the future would be premature, and could subject customers to a lengthy litigation process in order to recover charges paid to Duke for costs that the Commission ultimately determines to be imprudent.

Duke is requesting that the Commission allow Duke to continue charging customers under Rider MGP at the current rates.¹⁴ While Duke attempts to stress the harm that it will be subjected to if its Motion is not approved, it does not offer any substantive arguments regarding the prudence of the costs underlying the recovery sought, as is necessary condition for recovery under R.C. 4909.154. The current rider rates were set based on a determination that certain costs incurred between 2008 and 2012 were appropriate for recovery. No such determination has been made with regard to these costs, and until the Commission determines that Duke has prudently incurred the costs that it seeks to recover in these proceedings, the continuation of Rider MGP at current rates is inappropriate, unjust, and unreasonable. Indeed, were the Commission to determine that costs incurred from 2013-2017 were imprudent as OMAEG and OCC have argued, continuation of Rider MGP rates would be unlawful.

The current dockets for these cases already reflect a substantial difference between what Duke considers to be appropriate cost recovery and the costs that Staff and others consider to be prudent and appropriate for recovery from customers. For example, the Staff Report adjusted

¹³ See R.C. 4909.22.

¹⁴ See *id.* at 13.

Duke's proposed cost recovery for remediation of the two MGP plants by roughly 45.57%, or more than \$11.8 million, after its review of Duke's proposals.¹⁵ Staff found that a number of costs that Duke proposed to charge to customers were inappropriate for inclusion in the MGP Rider. The significant difference between what Duke proposed and what Staff found Duke should receive underscores the need to fully vet the proposed applications and cost recovery at hearing and to provide intervenors an opportunity to challenge the requested cost recovery and the prudence of the costs allegedly incurred. Given that customers are being asked to account for costs incurred by Duke to clean up MGP plants that are no longer in service, 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.

As recommended by OCC in its comments,¹⁶ OMAEG supports that a thorough review of the costs occur through a full audit that is publicly docketed upon completion. 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 only be charged after a transparent process that fully and completely considers any proposed cost recovery by Duke. Such a process would best serve Duke's customers and the public interest by ensuring due process for the parties and also result in the development of a complete record upon which the Commission would base its ultimate decision.

Moreover, as OMAEG advocated in its reply comments, Duke and the Commission should be taking steps to minimize the impact of these remediation costs on customers.¹⁷ OMAEG was

¹⁵ Staff Report at 7.

¹⁶ Comments by the Office of the Ohio Consumers' Counsel at 3 (September 28, 2018) (OCC Comments).

¹⁷ See OMAEG Reply Comments at 4.

joined in this position by Kroger.¹⁸ Customers are not served by the now-defunct MGP plants at issue in this case and receive no direct benefit from Duke's cleanup efforts. In light of this reality, the Commission has directed Duke to continue pursuing cost recovery from insurance companies and other potentially responsible parties.¹⁹ Duke should be using this cost recovery to offset the burden that these remediation activities place on customers simultaneously with any cost recovery from customers that the Commission may approve.²⁰ Alternatively, if Duke is authorized to delay the offsetting of third-party proceeds, OMAEG supports OCC's proposal to include carrying costs on any proceeds recovered from third parties to which customers are entitled.²¹ In any event, Duke has not sufficiently demonstrated that it has exhausted these avenues for recovering costs before and without charging customers. For that reason, allowing Duke to recover the requested costs from customers would be unjust and unreasonable in violation of R.C. 4909.22.

The above-described circumstances of this proceeding necessitate a hearing, as opposed to an approval of additional cost recovery authorized without the development of a full record. Only through a litigated hearing process would the parties be able to conduct discovery, examine witnesses, and present evidence regarding the prudence and propriety of subjecting customers to five years of costs associated with remediation of plants that are not used and useful to the customers being charged; specifically, whether the costs were prudently incurred and the resulting rates would be just and reasonable for customers.

¹⁸ See Kroger Reply Comments at 4;

¹⁹ *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).

²⁰ See OMAEG Reply Comments at 4-5.

²¹ OCC Comments at 5.

III. CONCLUSION

Duke's customers are entitled to a process that allows them to be heard and to demonstrate the imprudence of some or all of the costs that Duke seeks to include through its Motion to Charge. Five years of applications require careful consideration by the Commission, and that consideration will be made easier when interested parties are able to develop a record and present evidence at hearing to determine whether Duke's incurred costs were prudent and whether any charges assessed to customers are just and reasonable. As such, OMAEG respectfully requests that the Commission deny Duke's Motion to Charge.

Respectfully submitted,

/s/ Kimberly W. Bojko

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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 May 28, 2019.

/s/ Kimberly W. Bojko

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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-RD

Summary: Memorandum Memorandum Contra Duke Energy Ohio, Inc.'s Motion to Continue Rider MGP Recovery of Costs Incurred Since 2014 electronically filed by Mr. Brian W Dressel on behalf of The Ohio Manufacturers' Association Energy Group