

FILE

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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In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates.)	Case No. 19-0174-GA-RDR
)	
In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.	)	Case No. 19-0175-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
)	

Sam Randazzo, Chairman
M. Beth Trombold, Commissioner
Lawrence K. Friedeman, Commissioner
Dennis P. Deters, Commissioner
Daniel R. Conway, Commissioner

To the Honorable Commission:

In accordance with the Opinion and Order from Case No. 12-1685-GA-AIR, *et al.* on November 12, 2013, Duke Energy Ohio, Inc. (Duke or the Company) filed to adjust its rider for two manufacturer gas plants (Rider MGP) in Case No. 19-0174-GA-RDR. The Company also filed a motion to continue Rider MGP in Case No. 14-0375-GA-RDR, *et al.* Separately, the Company filed an application to extend deferral authority in Case No. 19-1086-GA-AAM.

The Public Utilities Commission of Ohio's (PUCO) Staff reviewed these filings and herein submits its investigations and findings and recommendations within the Staff Report.

The Staff Report was prepared by the Commissions' Rates and Analysis Department. The Staff Report is intended to present for the Commission's consideration, the result of the Staff investigation. It does not purport to reflect the views of the Commission nor should any party to the proceeding consider the Commission as bound in any manner by the representations or recommendations set forth therein.

Respectfully submitted,

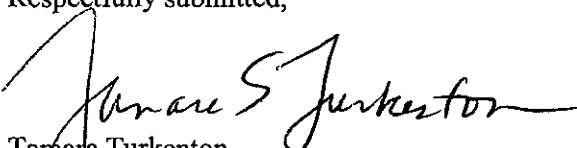

Tamara Turkenton
Director, Rates and Analysis Department
Public Utilities Commission of Ohio

Table of Contents

INTRODUCTION:.....	4
SUMMARY OF APPLICATION.....	4
STAFF'S REVIEW AND RECOMMENDATIONS:.....	5
Application to Adjust Rider MGP Rates, Case No. 19-0174-GA-RDR	5
EAST END SITE	5
WEST END SITE	6
Insurance Proceeds.....	6
Motion to Continue Rider MGP, Case No. 14-0375-GA-RDR, <i>et al.</i>	7
Application for Continued Deferral Authority, Case No. 19-1085-GA-AAM	7
SUMMARY OF COSTS AND STAFF ADJUSTMENTS 2013-2018.....	8

INTRODUCTION:

In accordance with the Commission's Opinion and Order in Case No. 12-1685-GA-AIR, *et al.* (Rate Case Order),¹ on March 29, 2019, Duke Energy Ohio, Inc. (Duke or Company) filed an application (Application) in Case No. 19-0174-GA-RDR seeking approval by the Public Utilities Commission of Ohio (Commission) to adjust its manufactured gas plant (MGP) rider (Rider MGP) to recover ongoing costs for investigation and remediation incurred in 2018 at two former MGP sites in its distribution service area. On May 10, 2019, in Case No. 14-0375-GA-RDR, *et al.*, Duke filed a motion to continue Rider MGP. Separately, on May 10, 2019, in Case No. 19-1085-GA-AAM, Duke filed an application requesting authority to continue deferral of MGP costs. This report responds to all three of these filings.

In 2018, Staff submitted a detailed report to comment on investigation and remediation costs incurred for the period 2013-2017 (2018 Staff Report).² This current report incorporates the 2018 Staff Report and addresses specific adjustments for costs incurred in 2018, to provide additional detail pertaining to insurance proceeds, to respond to the Company's motion pertaining to the continuation of Rider MGP, and to respond to the Company's application requesting an extension of MGP deferral authority. A summary of costs and adjustments pertaining to the entire period of 2013-2018 have been provided in tables at the end of this document.

SUMMARY OF APPLICATION:

On February 21, 2014, Duke filed the initial Rider MGP tariff for recovery of the initial \$55.5 million in MGP remediation costs authorized in the Rate Case Order, with rates effective March 3, 2014.³ Consistent with the Rate Case Order, and similar to filings made from 2014 through 2018, Duke filed an annual update for Rider MGP on March 29, 2019 describing the Company's annual MGP investigation and remediation activities seeking recovery of the costs.

The Company supported the annual application with testimony and schedules detailing the annual expenses incurred, remediation activities undertaken, and status of its efforts to locate and analyze potentially applicable insurance coverage and reimbursement from potential responsible third parties. The Company also filed testimony by two environmental experts to address Ohio Environmental Protection Agency's (OEPA) Voluntary Action Plan (VAP), Duke's compliance with the VAP, and its applicability to the East and West End sites in this case. Finally, the Company filed testimony on the scope and coverage of historic insurance policies with regard to the MGP sites.

Consistent with the Rate Case Order, Duke filed an annual update for Rider MGP investigation and remediation activities seeking recovery of an additional \$19,804,031 for costs incurred in 2018. This amount includes \$17,022,976 for costs incurred on the East End site and \$2,781,055 for costs incurred on the West End site.

¹ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, *et al.*, Opinion and Order at 78 (Nov. 13, 2013) (Rate Case Order).

² *See In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates*, Case No. 14-0375-GA-RDR, *et al.*, Staff Report (Sept. 28, 2018) (2018 Staff Report).

³ *See Duke Gas Rate Case*, Revised final tariff (Feb. 21, 2014).

STAFF'S REVIEW AND RECOMMENDATIONS:

Application to Adjust Rider MGP Rates, Case No. 19-0174-GA-RDR

Consistent with 2018 Staff Report, Staff investigated Duke's proposed increases to Rider MGP for 2018 by reviewing the Company's Application, schedules, and supporting testimony and by conducting a series of meetings and telephone calls with Duke personnel responsible for implementing Rider MGP. The purpose of Staff's investigation was to obtain detailed information regarding the proposed MGP costs, environmental remediation activities, and efforts to locate and analyze insurance coverage and third party coverage. Based on this investigation, Staff makes the conclusions and recommendations set forth below. The Company submitted a total of \$19,804,031 for ongoing MGP recovery for 2018. Staff recommends removal of \$11,366,243 and recovery of \$8,437,788. Details pertaining to the adjustments are included below. Tables outlining the adjustments have been included at the end of the report.

EAST END SITE

Staff reviewed the Company's filed testimony, vendor contracts, and various invoices for investigation and remediation activities at the East End site for 2018 to ensure that costs to perform the work are reasonable. Staff also reviewed costs to ensure that ratepayers were not charged for: (1) costs associated with remediation of the parcel of land adjacent to the East End site that the Commission denied for recovery, known as the Area West of the West Parcel (WOW"),⁴ or (2) costs associated with investigation or remediation of soil, water or any other tracts of land located outside the original footprint of the East End site.

The Rate Case Order made it clear that Duke's recovery from customers was limited to any investigation or remediation costs incurred within the two original MGP site footprints.⁵ It is Staff's understanding that when the Commission approved recovery of MGP remediation costs associated with the East and West End sites, that the sites were defined by current property boundaries. It is Staff's understanding that in this case, the southern boundary for the East and West End sites is defined by the water's edge of the Ohio River and does not extend into the river, it does not extend to an historic property boundary that may have existed in the past when river levels were different than they are today, nor does it extend to the Ohio/Kentucky border within the Ohio River.⁶

As discussed in the 2018 Staff Report, Staff discovered that, in 2014, Duke removed certain costs that were directly identified on the invoices as costs for activities associated with the WOW parcel.⁷ And similar to prior years, in 2018 the Company did not remove these costs. In response to Staff data requests, the Company indicated that it was "impractical to segregate costs out by parcel."⁸ Similar to prior years, the Company indicated through data requests that it did not record costs by parcel and that it could not differentiate costs for items such as air monitoring, ground water well installations and testing, laboratory

⁴ Also known as the Purchased Parcel. 2018 Staff Report at 3.

⁵ Rate Case Order at 60, 71.

⁶ In this case, the boundaries were defined by property maps provided by the Company during the Duke Gas Rate Case, identified in detail by Staff in its Staff Report in the 2012 Rate Case, and affirmed by a Company witness in testimony filed in the 2012 Rate Case. See *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, *et al.*, Staff Report at 41-42 (Jan. 4, 2013) and Second Supplemental Testimony of Gary Hebbeler at 3 (Apr. 22, 2013).

⁷ 2018 Staff Report at 3.

⁸ Case No. 19-0174-GA-RDR, Staff DR 4.

fees, permitting fees, soils disposal costs, etc., and therefore, such costs cannot be assigned to any particular parcel.⁹

As a result of the Company's failure to delineate expenses that were within acceptable boundaries, Staff removed all costs directly associated with the WOW parcel in 2018. In cases where invoices were clearly marked and included work not located on the WOW parcel, Staff did not make an adjustment. However, Staff removed 50 percent of remaining costs because at least half of the costs were equitably assignable to the WOW parcel based on activities recorded on invoices, contracts submitted by vendors, and over-all dollars spent. Finally, Staff removed all costs associated with investigation and clean up in the Ohio River (outside the East End site boundaries).

The Company spent \$17,022,976 on the East End site in 2018. Staff recommends removing \$9,366,276 and recommends the Company should be permitted to recover \$7,656,700.

WEST END SITE

Staff reviewed the Company's filed testimony and invoices for investigation and remediation activities at the West End site for 2018 to ensure that costs to perform the work are reasonable. Based on Company testimony filed in this case and responses to various data request, Duke conducted environmental investigation and remediation activities outside of the West End site boundaries. As mentioned above, these boundaries were established by maps provided by Duke to Staff during the Duke Gas Rate Case investigation. As a result, Staff made an adjustment to remove the offsite costs, specifically, costs that were associated with investigation and remediation in the Ohio River.

Additionally, during the course of the investigation, Staff discovered invoices for relocation of nitrogen tanks for use in the electrical substation and construction of a new metal staircase to access the building on the West End site totaling \$226,091.¹⁰ Staff removed these costs since they are associated with capital costs, rather than environmental remediation costs, and therefore should be recovered through other means.

The Company spent \$2,781,055 on the West End site in 2018. Staff recommends removing \$1,999,967 and recommends the Company should be permitted to recover \$781,088.

Insurance Proceeds

Staff continued to investigate the Company's efforts to pursue collection of insurance proceeds, as directed by the Commission in the Rate Case Order.¹¹ Staff conducted phone calls and meetings with Duke personnel to obtain information regarding various efforts undertaken by the Company. Staff met with the Company's outside counsel and received detailed updates on the status of ongoing mediation and potential settlement efforts. Staff verified that as of December 31, 2018, Duke successfully collected a significant amount of insurance proceeds, net of legal fees, from multiple insurance companies.¹² Staff will continue to monitor the Company's efforts. These funds have not yet been reimbursed to ratepayers. Staff recommends that any discussion pertaining to Duke's recovery of ongoing MGP costs should be directly tied to or netted against insurance proceeds collected by the Company.

⁹ *Id.*

¹⁰ The cost for the metal staircase of \$16,091 was included in costs for the East End site. Staff's adjustment is reflected in the table pertaining to the East End site below.

¹¹ Rate Case Order at 67.

¹² Case No. 19-0174-GA-RDR, Staff DR 10 and Staff DR 9. (Confidential).

Motion to Continue Rider MGP, Case No. 14-0375-GA-RDR, et al.

On May 10, 2019, in Case No. 14-0375-GA-RDR, *et al.*, Duke filed a motion requesting authority to continue Rider MGP to recover costs incurred since 2014. Duke will have recovered all of the funds permitted under this rider sometime by the third quarter in 2019.¹³ At that time, absent any Commission action, the rider rate will default to \$0.00. Duke claims an ongoing rider is necessary to avoid financial harm for the Company and to avoid customer confusion.

Staff recommends that this request be denied. First, the Commission has not yet ruled on the Company's application in the consolidated cases. From 2013-2017 and in the current case for 2018, Staff recommends a significant adjustment which would lower the overall collection required under the ongoing rider. Before the Company is permitted to collect additional funds, the Commission should determine how much is permissible to be collected.

Second, Staff's recommended disallowances should be netted against the insurance proceeds discussed above. For example, depending on the Commission's order in the Rider MGP cases, it is possible that once insurance proceeds are netted against Staff's adjustments, the amount ratepayers would owe may be significantly reduced. In the Rate Case Order, the Company was required to pursue historic insurance funds to offset costs associated with remediation.¹⁴ As of December 2018, the Company has collected a significant amount of insurance proceeds, net of legal fees, from insurance claims.¹⁵ For the same period, ratepayers have paid \$48.8 million through Rider MGP as authorized in the Rate Case Order.¹⁶ And, through Case Nos. 19-0174-GA-RDR, 14-0375-GA-RDR, *et al.*, ratepayers are being asked to pay an additional \$45.8 million in ongoing remediation costs.

Duke's request should be denied. Staff recommends that, once the Commission has ruled on the ongoing rider cases (Case Nos. 14-0375-GA-RDR, *et al.* and 19-0174-GA-RDR), then the rider rate can be reestablished with dollars that have been fully considered and approved for recovery by the Commission.

Application for Continued Deferral Authority, Case No. 19-1085-GA-AAM

On May 10, 2019, Duke filed a motion for authority to continue deferral of environmental and remediation costs. In Case No. 09-0712-GA-AAM, Duke received Commission authorization to defer environmental investigation and remediation costs related to two former MGP sites in Ohio for potential recovery of reasonable and prudent costs in a future base rate proceeding. In the Rate Case Order, the Commission authorized Duke to continue to defer ongoing costs for a finite period. The original end dates were as follows: East End site through December 31, 2016; West End site through December 31, 2019.¹⁷ In Case No. 16-1106-GA-AAM, Duke received Commission authorization to extend the deferral period for the East End site through December 31, 2019. In Case No. 19-1085-GA-AAM, the Company requests more time due to the iterative nature of the remediation effort (East and West End sites pertaining to ongoing cleanup

¹³ *In the Matter of the Application of Duke Energy Ohio, Inc. for an Adjustment to Rider MGP Rates*, Case No. 14-0375, Motion at 4 (May 10, 2019).

¹⁴ Rate Case Order at 67.

¹⁵ Case No. 19-0174-GA-RDR, Staff DR 10 and Staff DR 9. (Confidential).

¹⁶ Case No. 19-0174-GA-RDR, Staff DR 8.

¹⁷ Rate Case Order at 72.

along and in the Ohio River) and the sensitive and critical infrastructure located at the Middle Parcel (East End site).¹⁸

Staff recommends that the Commission deny the Company's request for an extension of its deferral authority for additional remediation. Staff believes that, in the Rate Case Order, the Commission intended for remediation to be concluded in a finite period. The remediation was given an initial finite period and then, for the East End site, it was extended. There is now no new information which supports an open-ended extension.

Staff believes it is unreasonable to ask ratepayers to pay for ongoing cost with an infinite timeframe and no spending cap. According to the Company, there is no known, projected or measurable end date for remediation, and the Company has not offered an estimate of remaining costs associated with clean up. Costs for cleanup in the future appear to be escalating, and they appear to be focused on areas that Staff believes were not permitted by the original Rate Case Order. Staff recommends a finite timetable be maintained and that insurance proceeds should be netted against these costs.

Duke claims that it cannot remediate areas directly over and adjacent to the critical infrastructure "until such facilities can be safely and responsibly retired and decommissioned."¹⁹ And the Company indicates that it can not complete remediation until the Central Corridor Pipeline is approved by the Ohio Power Siting Board.²⁰ The deferral authority attached to the existing Rider MGP should not be tied to the decommissioning of the critical infrastructure and the resolution of the pipeline extension case as both timelines are unknown.

SUMMARY OF COSTS AND STAFF ADJUSTMENTS 2013-2018

Staff has fully investigated Duke's MGP costs for 2018. Below are several tables which summarize total costs for the period 2013 - 2018, Staff adjustments, and costs that Staff recommends for recovery.

Table 1 Summary of Costs 2013-2018

Year	Costs	Time Period	Case Number
2014	\$8,346,698	January 1, 2013 through December 31, 2013	14-0375-GA-RDR
2015	\$686,031	January 1, 2014 through December 31, 2014	15-0452-GA-RDR
2016	\$1,061,056	January 1, 2015 through December 31, 2015	16-0542-GA-RDR
2017	\$1,296,160	January 1, 2016 through December 31, 2016	17-0596-GA-RDR
2018	\$14,652,068	January 1, 2017 through December 31, 2017	18-0283-GA-RDR
2019	\$19,804,031	January 1, 2018 through December 31, 2018	19-0174-GA-RDR
Total	\$45,846,043	January 1, 2013 through December 31, 2018	

¹⁸ *In the Matter of the Application of Duke Energy Ohio, Inc. for Authority to Continue Deferral of Environmental Investigation and Remediation Costs*, Case No. 19-1085-GA-AAM, Application at 6-7 (May 10, 2019).

¹⁹ *Id.* at 17.

²⁰ *See In the Matter of the Application of Duke Energy Ohio, Inc. for a Certificate of Environmental Compatibility and Public Need for the C314V Central Corridor Pipeline Extension Project*, Case No. 16-0253-GA-BTX.

Table 2 East End Site Adjustments

Year	Company Filing	Staff Recommended Adjustments	Recommended for Recovery
2013	\$482,455	(\$274,321)	\$208,134
2014	\$240,810	(\$135,380)	\$105,430
2015	\$329,992	(\$222,780)	\$107,212
2016	\$1,120,402	(\$561,999)	\$558,403
2017	\$13,825,962	(\$10,033,787)	\$3,792,175
2018	\$17,022,976	(\$9,366,276)	\$7,656,700
Total	\$33,022,597	(\$20,594,543)	\$12,428,054

Table 3 West End Site Adjustments

Year	Company Filing	Staff Recommended Adjustments	Recommended for Recovery
2013	\$7,864,242	(\$22,456)	\$7,841,786
2014	\$445,221	(\$328,299)	\$116,922
2015	\$731,064	(\$97,728)	\$633,336
2016	\$175,758	\$0.00	\$175,758
2017	\$826,106	(\$191,149)	\$634,957
2018	\$2,781,055	(\$1,999,967)	\$781,088
Total	\$12,823,446	(\$2,639,599)	\$10,183,847

Table 4 Total Staff Adjustments 2013-2018

Year	Company Filing	Total Staff Recommended Adjustments	Total Costs Recommended for Recovery
2013	\$8,346,697	(\$296,777)	\$8,049,920
2014	\$686,031	(\$463,679)	\$222,352
2015	\$1,061,056	(\$320,508)	\$740,548
2016	\$1,296,160	(\$561,999)	\$734,161
2017	\$14,652,068	(\$10,224,936)	\$4,427,132
2018	\$19,804,031	(\$11,366,243)	\$8,437,788
Total	\$45,846,043	(\$23,234,142)	\$22,611,901