

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

**IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR AN
ADJUSTMENT TO RIDER MGP RATES.**

CASE NO. 19-174-GA-RDR

**IN THE MATTER OF THE APPLICATION OF
DUKE ENERGY OHIO, INC. FOR TARIFF
APPROVAL.**

CASE NO. 19-175-GA-ATA

ENTRY

Entered in the Journal on August 13, 2019

{¶ 1} Duke Energy Ohio, Inc. (Duke or the Company) is a natural gas company, as defined by R.C. 4905.03, and a public utility, as defined by R.C. 4905.02, and, as such, is subject to the jurisdiction of this Commission, pursuant to R.C. 4905.04, 4905.05, and 4905.06.

{¶ 2} On November 12, 2009, the Commission authorized Duke to defer environmental investigation and remediation costs related to two former manufactured gas plant (MGP) sites in Ohio for potential recovery of reasonable and prudent costs in a future base rate proceeding. *In re Duke Energy Ohio, Inc.*, Case No. 09-712-GA-AAM, Finding and Order (Nov. 12, 2009) at 4.

{¶ 3} On November 13, 2013, the Commission authorized the recovery of such environmental investigation and remediation costs as had been incurred by the Company between 2008 and 2012. The Commission authorized Duke to recover and continue deferring environmental investigation and remediation costs, indicating further that the Company would be able to recover those costs which were prudently incurred through Rider MGP. *In re Duke Energy Ohio, Inc.*, Case No. 12-1685-GA-AIR, et al. (*Duke Rate Case*), Opinion and Order (Nov. 13, 2013) at 70-74.¹

{¶ 4} On March 31, 2014, Duke filed an application in Case Nos. 14-375-GA-RDR and 14-376-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2013 for environmental investigation and remediation of the MGP sites pursuant to

¹ The Supreme Court of Ohio affirmed the Commission's decision authorizing Duke to recover and continue deferring environmental investigation and remediation costs associated with the MGP sites. *In re Application of Duke Energy Ohio, Inc.*, 150 Ohio St.3d 437, 2017-Ohio-5536, 82 N.E.3d 1148.

Ohio and federal environmental laws, amounting to \$8,346,698 (*2013 Rider MGP Adjustment*).

{¶ 5} On March 31, 2015, Duke filed an application in Case Nos. 15-452-GA-RDR and 15-453-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2014 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to \$686,031 (*2014 Rider MGP Adjustment*).

{¶ 6} On March 31, 2016, Duke filed an application in Case Nos. 16-542-GA-RDR and 16-543-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2015 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to \$1,061,056 (*2015 Rider MGP Adjustment*).

{¶ 7} On March 31, 2017, Duke filed an application in Case Nos. 17-596-GA-RDR and 17-597-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2016 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to \$1,296,160 (*2016 Rider MGP Adjustment*).

{¶ 8} On March 28, 2018, Duke filed an application in Case Nos. 18-283-GA-RDR and 18-284-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2017 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to \$14,652,068 (*2017 Rider MGP Adjustment*). On that same date, Duke also filed a motion to consolidate the *2013-2017 Rider MGP Adjustments*.

{¶ 9} By Entry issued on June 28, 2018, the attorney examiner granted the motion to consolidate the *2013-2017 Rider MGP Adjustments* and set a comment period that required initial and reply comments to be filed by September 28, 2018, and October 26, 2018, respectively. The deadline for reply comments was later extended to October 30, 2018.

Several parties timely filed comments, including Staff, Duke, the Ohio Consumers' Counsel (OCC), the Ohio Manufacturers' Association Energy Group (OMAEG), and The Kroger Co. (Kroger).

{¶ 10} Staff, as directed by the June 28, 2018 Entry, filed its review and recommendations in relation to the *2013-2017 Rider MGP Adjustments* on September 28, 2018. Among other recommendations, Staff ultimately proposes the following adjustments to the Company's requested recovery amounts:

Year	Company Filing	Total Staff Recommended Adjustments	Total Costs Recommended for Recovery
2013	\$ 8,346,697.00	\$ (296,777.00)	\$ 8,049,920.00
2014	\$ 686,031.00	\$ (463,679.00)	\$ 222,352.00
2015	\$ 1,061,056.00	\$ (320,508.00)	\$ 740,548.00
2016	\$ 1,296,160.00	\$ (561,999.00)	\$ 734,161.00
2017	\$ 14,652,068.00	\$ (10,224,936.00)	\$ 4,427,132.00
Total	\$ 26,042,012.00	\$ (11,867,900.00)	\$ 14,174,112.00

{¶ 11} On March 29, 2019, Duke filed an application in Case Nos. 19-174-GA-RDR and 19-175-GA-ATA, seeking approval to adjust its Rider MGP to recover costs incurred during 2018 for environmental investigation and remediation of the MGP sites pursuant to Ohio and federal environmental laws, amounting to \$19,804,031² (*2018 Rider MGP Adjustment*).

{¶ 12} Thereafter, on May 10, 2019, Duke filed, in the *2013-2017 Rider MGP Adjustments*, a motion to continue the recovery of Rider MGP costs at the current rate, which is \$1.62 per month for residential customers, on an interim basis during the pendency of the rate adjustment cases. In support of its motion, Duke notes that the Commission authorized Duke to begin recovery of approximately \$55.5 million in investigation and remediation

² The 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.

expenses, equating to Duke recovering approximately \$1 million per month in remediation expense through Rider MGP. *Duke Rate Case*, Opinion and Order (Nov. 13, 2013) at 74. Duke avers that, despite making its annual filings to update Rider MGP, the rider has remained unadjusted since going into effect in early 2014, representing a total of approximately \$26 million in incremental remediation expenses incurred for the periods ending December 31 of calendar years 2013, 2014, 2015, 2016, and 2017. Duke further claims that it will fully recover \$55.5 million in investigation and remediation expense incurred, as approved by the Commission, by early third quarter of 2019. Absent further action by the Commission, Duke asserts the Company's Rider MGP will be reset to \$0 until the Commission approves recovery of the remediation expenses incurred over the last six years.³ Duke claims that an ongoing rider is necessary to avoid financial harm for the Company and to avoid customer confusion. Finally, Duke notes that such a continuation would be similar to its third electric security plan (ESP), which the Commission approved to continue while parties litigated Duke's fourth ESP. *In re Duke Energy Ohio, Inc.*, Case No. 14-841-EL-SSO, Entry (May 30, 2018).

{¶ 13} On July 12, 2019, Staff filed its review and recommendations in the *2018 Rider MGP Adjustment*, as well as its response to Duke's motion to continue to recover Rider MGP at the current levels during the pendency of the rate adjustment cases. Staff initially concludes that, while the Company is requesting a total of \$19,804,031 for ongoing recovery of Rider MGP expenses during 2018, it is appropriate to remove \$11,366,243 of that amount and allow a recovery amount of \$8,437,788. Staff asserts this allowable recovery amount is consistent with the directives of the Commission's orders in the *Duke Rate Case* and limits the recovery to only environmental remediation expenses incurred in the acceptable boundaries. Staff further notes that it will continue to monitor the Company's efforts regarding the collection of any insurance proceeds, as directed in the *Duke Rate Case*,

³ On July 23, 2019, Duke filed a revised tariff for Rider MGP setting the rider to zero effective with August cycle 1 bills, or July 31, 2019 meter reads, in the *Duke Rate Case* and Case No. 89-8002-GA-TRF.

ultimately recommending that Duke's continued recovery of ongoing MGP costs should be directly tied to or netted against the insurance proceeds collected by the Company.

{¶ 14} Staff further requests that Duke's motion to continue recovering Rider MGP be denied. Staff emphasizes that it is recommending a significant adjustment which would lower the overall collection required under the ongoing rider, adding that, before the Company is permitted to collect additional funds, the Commission should first determine how much is permissible to be collected. Staff also notes that its recommended disallowances should be netted against the insurance proceeds, as discussed above and consistent with the directives set forth in the *Duke Rate Case*. *Duke Rate Case*, Opinion and Order (Nov. 13, 2013) at 67. Once the Commission has issued its ruling on the pending rider adjustment cases, Staff asserts it would then be appropriate to reestablish a rider rate that has been fully considered and approved for recovery.

{¶ 15} Similarly, in their memoranda contra submitted on May 28, 2019, OMAEG, OCC, and Kroger reiterate Staff's concerns regarding Duke's motion to continue recovery of Rider MGP at its current rate, namely arguing that Duke cannot be permitted to charge customers for the 2013-2017 remediation costs without the Commission first determining the prudence of those costs, pursuant to R.C. 4909.154, or the justness or reasonableness of those charges, pursuant to R.C. 4905.22. OCC further asserts that there is no precedent supporting Duke's request for the Commission to simply ignore ratemaking laws and principles, and such a request sets bad public policy and insufficient protections for consumers. These parties also contend that Duke is misleading when it suggests that there is little dispute regarding the prudence of its remediation efforts, noting Staff has recommended at least half of the requested recoverable amount be disallowed, while OCC suggests that the entire \$26 million amount covering the 2013-2017 timeframe be denied. Additionally, OCC asserts that Duke's claim that it has lost \$4.7 million over time is unfounded as Duke has provided no supporting calculations for this number and the *Duke Rate Case* specifically found that Duke could not charge customers for carrying costs. *Duke*

Rate Case, Opinion and Order (Nov. 13, 2013) at 59, 71. Finally, OCC agrees with Staff that Rider MGP should be set at \$0 until such time as the Commission issues a decision regarding the appropriate level of future recovery. Instead, these parties suggest that the Commission schedule an evidentiary hearing and allow parties an opportunity to provide evidence on the prudence of Duke's MGP remediation efforts.

{¶ 16} Duke filed its reply on June 4, 2019, initially noting that several of the arguments raised by intervenors were issues addressed and dismissed by the Supreme Court of Ohio when it affirmed the Commission's orders in the *Duke Rate Case*. Specifically, Duke notes that the Court agreed that remediation costs were service-related and recoverable through rates under R.C. 4909.15(A)(4) and, therefore, not subject to the used and useful standard set forth under R.C. 4909.15(A)(1). *In re Application of Duke Energy Ohio, Inc.*, 150 Ohio St.3d 437, 2017-Ohio-5536, 82 N.E.3d 1148. Moreover, Duke suggests that the Court and the Commission have both determined that Duke has both a legal and societal obligation to remediate the MGP-related contamination. Duke notes that it continues to follow the same management practices, decisions, and activities in the remediation process as those previously found by Staff to be appropriate and prudent, such as collaborating with environmental consulting firms experienced in these remediation efforts and working under the oversight of the Ohio Environmental Protection Agency. *Duke Rate Case*, Opinion and Order (Nov. 13, 2013) at 60-65. As such, Duke argues that the Commission has already thoroughly examined the Company's remediation efforts and practices and found them to be reasonable and prudent. Further, Duke contends that allowing Rider MGP to continue at its current levels does not deny due process; rather, Duke notes that the Commission "routinely approves adjustments to riders without holding an evidentiary hearing," specifically noting the Commission's approval of Duke's application to establish a new rider to implement the impacts of the Tax Cuts and Jobs Act of 2017. *In re Duke Energy Ohio, Inc.*, Case No. 18-1185-EL-UNC, et al., Finding and Order (Feb. 20, 2019). Finally, Duke asserts that it is premature to address the issue of crediting insurance proceeds until these recovery issues are resolved.

{¶ 17} On August 12, 2019, Duke filed comments in response to Staff's July 12, 2019 Staff Report. Duke, however, did not include a response to Staff's position on the Company's request to continue to recover Rider MGP costs under the May 2019 rate.

{¶ 18} As an initial matter, the attorney examiner finds that Case Nos. 19-174-GA-RDR and 19-175-GA-ATA should be consolidated, sua sponte, with the other above-captioned proceedings in the spirit of administrative efficiency. Similar to the reasoning provided in the June 28, 2018 Entry for consolidating the other ten rate adjustment cases, the *2018 Rider MGP Adjustment* concerns the adjustment of rates charged through Duke's Rider MGP and the recovery of environmental investigation and remediation costs incurred subsequent to the Commission's approval of the rider. Furthermore, consolidation will not prejudice any party as the attorney examiner has not, up until this point, issued a hearing schedule for these proceedings.

{¶ 19} Additionally, the attorney examiner denies Duke's May 10, 2019 request to continue the recovery of Rider MGP costs at their current levels during the pendency of rate adjustment proceedings. Duke has offered no persuasive authority or precedent that would support or allow the Commission to grant its request. Further, the attorney examiner notes that, simply because Duke's activities and management decisions regarding its remediation efforts were determined to be reasonable and prudent for costs incurred before December 31, 2012, does not, in itself, mean that that will continue to be the case, especially noting the Commission's diligent review of thousands of pages of testimony and transcripts that took place prior to that determination of prudence. Consistent with the decision in the *Duke Rate Case*, the Commission will continue to evaluate the evidence as provided to ensure the expenses to be collected under Rider MGP are not imprudent. *Duke Rate Case*, Opinion and Order (Nov. 13, 2013) at 63-65. Until such time as the Commission issues its decision in these proceedings regarding the prudence and reasonableness, and therefore, recoverability, of the remediation expenses incurred after December 31, 2012, the attorney

examiner agrees with Staff and intervenors that it will be appropriate for Rider MGP to be set to zero.

{¶ 20} Upon review of the submitted comments and the Staff Report, the attorney examiner finds that the Company's applications submitted in the *2013 Rider MGP Adjustment*, *2014 Rider MGP Adjustment*, *2015 Rider MGP Adjustment*, *2016 Rider MGP Adjustment*, *2017 Rider MGP Adjustment*, and *2018 Rider MGP Adjustment* cases may be unjust or unreasonable and, therefore, should be set for hearing, pursuant to R.C. 4909.18. Accordingly, parties should adhere to the following procedural schedule:

- a. Motions to intervene in the *2018 Rider MGP Adjustment* shall be filed by September 13, 2019.
- b. Discovery requests (except as to notices of deposition) shall be permitted until September 27, 2019. Additionally, the attorney examiner finds an expedited discovery response time is appropriate for these proceedings. As such, the response time for discovery requests should be limited to ten days.
- c. Intervenors should file testimony by October 8, 2019.
- d. Staff should file its testimony by October 16, 2019.
- e. A prehearing conference shall be scheduled for October 23, 2019, at 2:30 p.m., at the offices of the Commission, 180 East Broad Street, Hearing Room 11-A, Columbus, Ohio 43215.
- f. The evidentiary hearing shall convene on October 30, 2019, at 10:00 a.m., at the offices of the Commission, 180

East Broad Street, Hearing Room 11-A, Columbus, Ohio
43215.

{¶ 21} The attorney examiner also instructs parties attending the prehearing conference scheduled for October 23, 2019, to be prepared to discuss any pending procedural matters, including the scheduling of witnesses for the evidentiary hearing.

{¶ 22} Furthermore, Duke is directed to publish legal notice of the scheduled evidentiary hearing in a newspaper of general circulation in each county in Duke's service territory, in accordance with R.C. 4909.18. Publication of the notice should be completed by September 9, 2019. The hearing notice should not appear in the legal notices section of the newspaper. The notice should read as follows:

LEGAL NOTICE

The Public Utilities Commission of Ohio (PUCO) has scheduled a hearing in Case Nos. 14-375-GA-RDR, 14-376-GA-ATA, 15-452-GA-RDR, 15-453-GA-ATA, 16-542-GA-RDR, 16-543-GA-ATA, 17-596-GA-RDR, 17-597-GA-ATA, 18-283-GA-RDR, 18-284-GA-ATA, 19-174-GA-RDR, and 19-175-GA-ATA, *In the Matter of the Applications of Duke Energy Ohio, Inc. for Adjustments to Rider MGP Rates and Tariff Approval*. The company is seeking approval to recover manufactured gas plant cleanup costs incurred after December 31, 2012. The PUCO has scheduled a hearing to consider the matters raised in the applications. The hearing will commence on October 30, 2019, at 10:00 a.m., at the offices of the PUCO, 180 E. Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio 43215-3793.

Further information may be obtained by contacting the PUCO, 180 E. Broad Street, Columbus, Ohio 43215-3793; by calling the PUCO hotline at 1-800-686-7826; or by going to the PUCO website at www.puco.ohio.gov, selecting DIS, and inserting the case numbers referenced above.

{¶ 23} It is, therefore,

{¶ 24} ORDERED, That Case Nos. 19-174-GA-RDR and 19-175-GA-ATA be consolidated with the other above-captioned proceedings. It is, further,

{¶ 25} ORDERED, That Duke's motion to continue to recover Rider MGP at its May 2019 levels during the pendency of the rate adjustment cases be denied. It is, further,

{¶ 26} ORDERED, That parties adhere to the procedural schedule set forth in Paragraph 20. It is, further,

{¶ 27} ORDERED, That Duke comply with the legal notice requirements set forth in Paragraph 22. It is, further,

{¶ 28} ORDERED, That a copy of this Entry be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/Megan J. Addison

By: Megan J. Addison
Attorney Examiner

JRJ/hac

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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: Attorney Examiner Entry consolidating case numbers, denying Dukes' motion to continue to recover Rider MGP, ordering parties to adhere to procedural schedule, and ordering Duke to comply with legal notice requirements electronically filed by Heather A Chilcote on behalf of Megan Addison, Attorney Examiner, Public Utilities Commission