

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for an Adjustment to Rider) Case No. 14-375-GA-RDR
MGP Rates.)

In the Matter of the Application of Duke) Case No. 14-376-GA-RDR
Energy Ohio, Inc., for Tariff Approval.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for an Adjustment to Rider) Case No. 15-452-GA-RDR
MGP Rates.)

In the Matter of the Application of Duke) Case No.15-453-GA-RDR
Energy Ohio, Inc., for Tariff Approval.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for an Adjustment to Rider) Case No. 16-542-GA-RDR
MGP Rates.)

In the Matter of the Application of Duke) Case No. 16-543-GA-RDR
Energy Ohio, Inc., for Tariff Approval.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for an Adjustment to Rider) Case No.17-596-GA-RDR
MGP Rates.)

In the Matter of the Application of Duke) Case No.17-597-GA-RDR
Energy Ohio, Inc., for Tariff Approval.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for an Adjustment to Rider) Case No.18-283-GA-RDR
MGP Rates.)

In the Matter of the Application of Duke) Case No.18-284-GA-RDR
Energy Ohio, Inc., for Tariff Approval.)

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

In the Matter of the Application of Duke) Case No.19-0175-GA-ATA
Energy Ohio, Inc., for Tariff Approval.)

**MOTION OF DUKE ENERGY OHIO, INC.
FOR A CHANGE TO THE PROCEDURAL SCHEDULE**

Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) hereby moves the Public Utilities Commission of Ohio (Commission), in accordance with Rule 4901-1-12, Ohio Administrative Code (O.A.C.), for a change to the procedural schedule established by the Attorney Examiner's Entry of August 13, 2019 to afford the Company an opportunity to file supplemental testimony in response to the two Staff Reports of Investigation, to amend the hearing date to accommodate witness availability, and to change the date of publication of notice.

The recently issued schedule establishes timelines for intervention, discovery, the filing of both intervenor and staff testimony, and an evidentiary hearing. However, the schedule did not afford the Company an opportunity to respond, with testimony, to the two Staff Reports of Investigation that have been filed in these consolidated proceedings. This procedural schedule represents the first opportunity for resolution of these cases since the Company started filing its annual applications more than six years ago. The Staff of the Commission, for the first time, issued an opinion on the Company's manufactured gas plant (MGP) investigation and remediation in September 2018 (Staff Report I), with a subsequent Staff report issued recently in July 2019 (Staff Report II). The recently issued procedural affords intervenors the opportunity to respond to these Staff Reports and consider Staff's recommendations through testimony on the record, but does not afford the Company the same opportunity. In the interest of affording all parties an opportunity for due process and an ability to respond to Staff's recommendations that effectively disallow recovery of significant costs of remediation and investigation that Duke Energy Ohio has incurred since 2013, the procedural schedule should be amended to allow Duke Energy Ohio the ability to respond to the Staff's recommendations. Duke Energy Ohio simply requests an opportunity to

respond to these Staff Recommendations as other Intervening Parties now have been provided through the procedural schedule. As such, the Company proposes to file its testimony in response to the Staff Reports by October 4, 2019.

Additionally, the Current evidentiary hearing, set for October 30, 2019 presents conflicts for several of the Company's witnesses. With so many witnesses traveling from out of town, and the likelihood of a multi-day hearing, unavoidable conflicts exist with the hearing the week of October 30. As such, Duke Energy Ohio respectfully requests that the Commission grant a brief continuance of the evidentiary hearing by approximately two weeks to commence on November 11, 2019. The reasons for this motion are more fully set forth in the accompanying Memorandum in Support. The Company also requests relief of the Commission's Order to publish notice of the evidentiary hearing by September 9, 2019, so to afford more time to complete the notice, particularly in light of the Company's request to continue the hearing by approximately two weeks to accommodate witness conflicts.

Respectfully submitted,
DUKE ENERGY OHIO, INC.

/s/ Elizabeth H. Watts

Rocco O. D'Ascenzo (Counsel of Record)

Deputy General Counsel

Elizabeth H. Watts

Associate General Counsel

Jeanne W. Kingery

Associate General Counsel

139 E. Fourth Street, 1303-Main

Cincinnati, Ohio 45202

(513) 287-4320 (telephone)

(513) 287-4385 (facsimile)

Rocco.D'Ascenzo@duke-energy.com

Elizabeth.Watts@duke-energy.com

Jeanne.Kingery@duke-energy.com

MEMORANDUM IN SUPPORT

These proceedings involve applications for recovery of costs for environmental investigation and remediation at two MGP sites for the period beginning calendar year 2013 and continuing through 2018. As was provided for by the Public Utilities Commission of Ohio's (Commission) November 13, 2013, Opinion and Order in Case No. 12-1965-GA-AIR, *et al.*,¹ (Gas Rate Case) Duke Energy Ohio was authorized to continue its deferral of environmental investigation and remediation costs associated with two former MGP operations and submit annual applications to recover such costs.²

The first application was submitted to the Commission on March 31, 2014. The Company then submitted annual applications on March 31, 2015, March 31, 2016, March 31, 2017, March 28, 2018, and March 29, 2019. On September 28, 2018, four years and six months after the Company's first annual update application for cost recovery of MGP remediation was filed, Staff submitted its first Staff Report in these consolidated cases making recommendations regarding the Company's investigation and remediation efforts for the annual review periods of January 1, 2013, through December 31, 2017.³ On July 12, 2019, the Staff issued its second Staff Report, this time covering the years 2013 through December 31, 2018. Through these two reports, Staff is recommending significant disallowances. These recommendations will become a central issue in the upcoming evidentiary hearing.

On August 13, 2019, the Attorney Examiner issued an Entry that establishes the first procedural schedule leading towards an evidentiary hearing in these consolidated proceedings. The Entry directs, *inter alia*, that discovery be permitted until September 27, 2019, and that

¹ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No.12-1865-GA-AIR, *et al.*

² *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No.12-1865-GA-AIR, *et al.*, Opinion and Order (November 13, 2013).

³ Staff Report (September 28, 2018).

discovery be expedited. The Entry further directed Intervenors to file testimony on October 8, 2019, and Staff to file testimony on October 16, 2019. A prehearing was scheduled for October 23, 2019, and a hearing was set for October 30, 2019. Additionally, the Company was directed to publish notice of the evidentiary hearing by September 9, 2019.

The current procedural schedule does not provide the Company an opportunity to file testimony in response to the two staff reports. Intervening parties have the benefit of Staff's recommendations in the preparation of their own testimony, but Duke Energy Ohio is without an opportunity to provide any testimonial evidence to address or respond to Staff's recommendations. While the Company and other interested parties have filed comments to the two Staff Reports, only intervenor are afforded the opportunity to address these Staff recommendations in the record through testimony in these cases.

All parties are routinely given the opportunity to respond to Staff Report recommendations in rate proceedings before the Commission. Indeed, O.A.C. 4901-1-28(E) supports the position that, in proceedings where a Staff Report is issued, it is to be admitted into evidence upon filing and that interested parties be given an opportunity to present testimony.⁴ Duke Energy Ohio is such an interested party. In the interests of judicial economy, fairness, and achieving due process for all interested parties, the Company should be afforded a similar opportunity to respond to the Staff Reports through testimony submitted on the record. Such submittal will expedite the evidentiary hearing and will ensure the Commission has all relevant facts before it as it considers the Company's applications in these proceedings. Accordingly, the Commission should amend the procedural schedule to permit the Company the opportunity to file supplemental testimony in response to the Staff Report on October 4, 2019. This is the most fair and expedient way to address

⁴ O.A.C. 4901-1-28(E)

the new issues raised and by permitting supplemental testimony, all parties will then have an opportunity to address issues at hearing.

Additionally, the Company respectfully requests a brief delay in the start of the evidentiary hearing due to multiple witness conflicts with the current hearing on October 30, 2019. The Company anticipates the evidentiary hearing in these consolidated proceedings to last multiple days. The Company's witnesses are traveling from out of town and, due to existing commitments, vacations, and other conflicts, several of the Company's witnesses are unable to appear the week of October 30, 2019. Therefore, the Company respectfully proposes that the hearing that is presently scheduled for October 30, 2019, be rescheduled to commence November 11, 2019. The Company requests this additional time due to scheduling conflicts with expert witnesses and Company witnesses, many of whom are not available in October. Thus, for the reasons stated, Duke Energy Ohio respectfully requests that the Attorney Examiner amend the existing procedural schedule to permit Duke Energy Ohio to submit supplemental testimony on October 4, 2019 and for the hearing to be held on November 11, 2019.

Finally, considering the request for a short continuance of the evidentiary hearing date, Duke Energy Ohio respectfully requests relief from the current order to publish notice of the evidentiary hearing by September 9, 2019. The Company will publish notice of the hearing as required, but requests the Commission amend the publication date to accommodate the establishment of a new evidentiary hearing date.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Elizabeth H. Watts

Rocco O. D'Ascenzo

Deputy General Counsel

Elizabeth H. Watts

Associate General Counsel

Jeanne W. Kingery

Associate General Counsel

Duke Energy Business Services LLC

139 East Fourth Street

1303-Main

Cincinnati Ohio 45202

513-287-4320 (telephone)

513-287-4385 (facsimile)

Rocco.DAscenzo@duke-energy.com

Elizabeth.Watts@duke-energy.com

Jeanne.Kingery@duke-energy.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 26th day of August 2019, by U.S. mail, postage prepaid, or by electronic mail upon the parties listed below.

/s/ Elizabeth H. Watts

Elizabeth H. Watts

Thomas McNamee
Robert A. Eubanks
Assistant Attorneys General
Public Utilities Section
30 East Broad St., 16th Floor
Columbus, Ohio 43215
Robert.eubanks@ohioattorneygeneral.gov
Thomas.McNamee@ohioattorneygeneral.gov

Counsel for Staff of the Public Utilities
Commission of Ohio

Angela Paul Whitfield
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
paul@carpenterlipps.com

Counsel for The Kroger Co.

Kimberly W. Bojko
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
Bojko@carpenterlipps.com

Counsel for The Ohio Manufacturers'
Association Energy Group

Christopher M. Healey
Assistant Consumers' Counsel
Office of the Ohio Consumers'
Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
Christopher.healey@occ.ohio.gov

Counsel for Office of the Ohio
Consumers' Counsel

Colleen L. Mooney
P.O. Box 12451
Columbus, Ohio 43212
cmooney@ohiopartners.org

Counsel for Ohio Partners for
Affordable Energy

David F. Boehm
Michael L. Kurtz
Jody Kyler Cohn
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, Ohio 45202
dboehm@BKLawfirm.com
mkurtz@BKLawfirm.com
jkylercohn@BKLawfirm.com

Counsel for Ohio Energy Group

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

8/26/2019 12:07:00 PM

in

Case No(s). 14-0375-GA-RDR, 14-0376-GA-ATA, 15-0452-GA-RDR, 15-0453-GA-ATA, 16-0542-GA-RD

Summary: Motion Motion of Duke Energy Ohio, Inc., for a Change to the Procedural Schedule electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Rocco D'Ascenzo and Kingery, Jeanne W. and Watts, Elizabeth H.