

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

	)	Case No. 14-375-GA-RDR
	)	Case No. 15-452-GA-RDR
In the Matters of the Applications of Duke	)	Case No. 16-542-GA-RDR
Energy Ohio, Inc., for Adjustments to Rider	)	Case No. 17-596-GA-RDR
MGP Rates.	)	Case No. 18-283-GA-RDR
	)	Case No. 19-174-GA-RDR

	)	Case No. 14-376-GA-ATA
	)	Case No. 15-453-GA-ATA
In the Matters of the Applications of Duke	)	Case No. 16-543-GA-ATA
Energy Ohio, Inc. for Tariff Approval.	)	Case No. 17-597-GA-ATA
	)	Case No. 18-284-GA-ATA
	)	Case No. 19-175-GA-ATA

PUBLIC VERSION

**DIRECT TESTIMONY
OF
KERRY J. ADKINS**

**On Behalf of
The Office of the Ohio Consumers' Counsel**
*65 East State Street, 7th Floor
Columbus, Ohio 43215*

October 8, 2019

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ATTACHMENTS

Attachment KJA-01	List of Previous Testimony Filed at the PUCO by Kerry Adkins
Attachment KJA-02	Pages 1 and 5-7 and Exhibit KA-1 from the Direct Testimony of Kerry J. Adkins on Behalf of the Staff of the Public Utilities Commission of Ohio in Case No. 12-1685-GA-AIR, April 22, 2013.
Attachment KJA-03	Exhibit JLB-5 from the Direct Testimony of Jessica L. Bednarcik on Behalf of Duke Energy Ohio in Case No. 12-1685-GA-AIR, July 20, 2012.
Attachment KJA-04 – CONFIDENTIAL	Duke’s Responses to OCC Discovery Responses Regarding Insurance Proceeds and Costs

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Direct Testimony of Kerry J. Adkins
On Behalf of the Office of the Ohio Consumers' Counsel
PUCO Case No. 19-0174-GA-RDR, et al.

1 **I. INTRODUCTION**

2

3 ***Q1. PLEASE STATE YOUR NAME, BUSINESS ADDRESS, AND POSITION.***

4 ***A1.*** My name is Kerry J. Adkins. My business address is 65 East State Street, 7th
5 Floor, Columbus, Ohio 43215. I am employed by the Office of the Ohio
6 Consumers' Counsel ("OCC") as a Senior Regulatory Analyst.

7

8 ***Q2. PLEASE SUMMARIZE YOUR EDUCATION AND PROFESSIONAL***
9 ***EXPERIENCE.***

10 ***A2.*** I earned a Bachelor of Arts degree in History with a pre-law option from Ohio
11 Northern University in 1983. In 1988, I earned a Master of Public Administration
12 degree with specializations in Regulatory Policy and Fiscal Administration from
13 The Ohio State University. In addition, I have attended various utility regulatory
14 seminars and training programs sponsored by the Public Utilities Commission of
15 Ohio ("PUCO") and OCC.

16

17 My professional experience in the utility regulation field began when I was hired
18 by the PUCO in August 1989 as a Researcher II in the Nuclear Division of what
19 was then the Consumer Services Department. In that capacity, I monitored the
20 financial and operating performance of utility-owned and operated nuclear power
21 plants and made policy and recommendations regarding nuclear power issues in
22 rate proceedings. In addition, I served as staff to the Utility Radiological Safety
23 Board of Ohio ("URSB") and liaison to the URSB's Citizens Advisory Council.

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1 Around 1995, my career transitioned towards deregulation and the development
2 of competitive options for formerly utility-supplied services. I was a PUCO Staff
3 representative to various committees and working groups that oversaw the
4 development of customer choice (“Choice”) pilot programs, and I analyzed and
5 made recommendations concerning the pilot programs as they progressed. Later,
6 as the pilot programs matured into legislatively-sponsored restructuring programs,
7 I worked with the General Assembly’s Legislative Service Commission on draft
8 bill language concerning the consumer protection provisions in Senate Bill 3,
9 which restructured the electric industry in Ohio, and Amended House Bill 9,
10 which restructured the natural gas industry.

11
12 After the restructuring laws were enacted, I managed PUCO Staff teams that were
13 responsible for drafting and enforcing the PUCO’s rules governing certification of
14 competitive energy suppliers and the competitive suppliers’ interactions with
15 Ohio consumers. In 2008, I transferred to what was then the PUCO’s Utilities
16 Department (now the Rates and Analysis Department) where I supervised Staff
17 teams responsible for analyzing and making recommendations regarding utility
18 rate filings, primarily related to the natural gas industry. I retired from the PUCO
19 in September 2018. I began my current employment at OCC in November 2018.
20 At OCC, I review and analyze utility filings at the PUCO and other regulatory
21 agencies and make recommendations to protect the interests of residential
22 customers.

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1 ***Q3. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY OR TESTIFIED***
2 ***BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO?***

3 ***A3.*** Yes. The cases in which I have submitted testimony or have testified before the
4 PUCO can be found in Attachment KJA-1.

5

6 **II. PURPOSE/BACKGROUND**

7

8 ***Q4. WHAT IS THE PURPOSE OF YOUR TESTIMONY?***

9 ***A4.*** For the protection of the approximate 400,000 residential natural gas consumers
10 in Duke's natural gas service area, the purpose of my testimony is twofold.

11

12 First, consistent with the PUCO's November 13, 2013 Opinion and Order in Case
13 No. 12-1685-GA-AIR ("Rate Case Order" in the "2012 Rate Case"), I
14 recommend that the PUCO deny Duke recovery of any Manufactured Gas Plant
15 ("MGP") remediation costs incurred outside of the boundaries of the two MGP
16 sites known as the West End and East End.

17

18 Second, also consistent with the Rate Case Order, I recommend that the PUCO
19 order Duke to immediately distribute to Duke's consumers all net proceeds from
20 Duke's insurance policies covering the MGP sites.

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1 ***Q5. ARE YOU FAMILIAR WITH DUKE'S MGP REMEDIATION ACTIVITIES,***
2 ***THE 2012 RATE CASE, AND DUKE'S SUBSEQUENT MGP RIDER AND***
3 ***DEFERRAL APPLICATIONS?***

4 ***A5.*** Yes. I have been working on cases regarding Duke's MGP remediation for nearly
5 a decade. While still employed at the PUCO, I oversaw the Staff team in the 2012
6 Rate Case that investigated Duke's initial proposal to charge customers for MGP
7 remediation costs. I drafted the sections in the Staff Report concerning the MGPs
8 that was filed in that case on January 4, 2013 ("Rate Case Staff Report"). In
9 addition, I filed written direct testimony in the case on April 22, 2013 and
10 provided oral testimony on May 2, 2013 in support of the Rate Case Staff Report.
11 Subsequently, I managed the Staff teams that reviewed Duke's annual
12 applications to increase Rider MGP for the 2014 through 2017 cases. I supervised
13 part of the Staff investigation that led to the Staff Report that was filed on
14 September 28, 2018 in Case No. 18-283-GA-RDR, but I had retired from the
15 PUCO prior to the Staff Report being filed in that case. In addition, I was
16 responsible for the Staff investigation and recommendations in Case No. 16-1106-
17 GA-AAM, where the PUCO authorized Duke to continue to defer remediation
18 costs at the East End former MGP site through the end of 2019 after previously
19 ordering Duke to complete remediation of the East End by 2016.

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1 **Q6. CAN YOU PROVIDE A BRIEF BACKGROUND FOR THE CASES IN THIS**
2 **PROCEEDING?**

3 **A6.** Yes. In Case No. 09-712-GA-AAM, the PUCO authorized Duke to begin
4 deferring environmental investigation and cleanup costs at the East End and West
5 End former MGP sites for potential future recovery. Thereafter, in the 2012 Rate
6 Case, Duke sought to charge customers approximately \$65 million in remediation
7 expenses it had incurred between January 1, 2008 and December 31, 2012.¹ Most
8 of the parties in the 2012 Rate Case joined a Stipulation and Recommendation
9 that settled all matters raised in the case except for MGP-related matters.² The
10 PUCO held an evidentiary hearing in the Rate Case, and the PUCO issued the
11 Rate Case Order. Among other things, the PUCO determined that Duke could
12 collect approximately \$55.5 million in deferred 2008-2012 MGP remediation
13 expenses in customer rates over a five-year period through a newly created “Rider
14 MGP.” The PUCO also determined that Duke could not collect costs for what was
15 termed the “Purchased Parcel” (an area of land outside the geographic bounds of
16 the East End former MGP site) or carrying costs on past or future remediation
17 expenses. In addition, the PUCO ruled that Duke could continue to defer future
18 costs to clean up the East End and West End MGP sites and file annual recovery
19 applications to modify Rider MGP. The PUCO also set deadlines for completion
20 of MGP remediation: December 31, 2016 for the East End and December 31,
21 2019 for the West End.

¹ Rate Case Staff Report at 30.

² Case No. 12-1685-GA-AIR, Opinion & Order at 4 (Nov. 13, 2013) (the “Rate Case Order”).

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1 In the cases captioned above, Duke annually filed applications to recover MGP
2 remediation costs incurred in the prior year. The PUCO Staff filed a Staff Report
3 on September 28, 2018 (“2018 Staff Report”) regarding 2013 to 2017 costs. In the
4 2018 Staff Report, Staff recommended substantial reductions in the amounts that
5 Duke proposed to charge customers. Duke’s proposal was for about \$26 million
6 in charges for 2013 to 2017, but Staff proposed charges of less than \$14.2 million.
7 The PUCO Staff filed a second report in Case No. 19-174-GA-RDR (the “2019
8 Staff Report”). Again, the Staff recommended substantial downward adjustments
9 to Duke’s proposed costs. Duke proposed \$19.8 million in charges to customers
10 for 2018, whereas Staff recommended \$8.4 million. All told from 2013 to 2018,
11 Duke wants to charge customers \$45.8 million, and Staff recommends less than
12 half that, \$22.6 million.

13
14 Separately, on May 10, 2019 in Case No. 19-1085-GA-AAM Duke filed an
15 application for authority to continue to defer MGP remediation costs beyond the
16 timeframes previously established by the PUCO. Duke wants to continue
17 remediating the East End and West End sites indefinitely and to continue charging
18 customers indefinitely.

19
20 ***Q7. CAN YOU PROVIDE A BRIEF OVERVIEW OF WHAT DUKE IS***
21 ***PROPOSING IN THESE CONSOLIDATED CASES?***

22 ***A7.*** Yes. In its Application and supporting testimony in Case No. 19-174-GA-RDR,
23 Duke claims that, for the 2013 through 2018 period, it spent a total of

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1 \$45,781,966 on remediation of the former MGP sites.³ Duke's calculation of the
2 annual remediation costs is shown in Table KA-1 below:

3 **Table KA-1**
4

Year	Reported Remediation Costs
2013	\$8,282,890
2014	\$686,031
2015	\$1,061,056
2016	\$1,296,160
2017	\$14,651,798
2018	\$19,804,031
Total	\$45,781,966

5 Duke is proposing to amortize collection of the total 2013-2018 remediation costs
6 over a four-year period, which, when converted to rates, will result in a \$1.62 per
7 month Rider MGP rate for Duke's residential customers.⁴ Duke maintains that
8 although the MGP costs approved by the PUCO in the Rate Case Order were
9 amortized over a five-year period, a four-year period is appropriate for the 2013-
10 2018 costs because the \$1.62 per month rate for residential customers is the same
11 rate that the residential customers were paying for the original approved
12 remediation costs incurred from 2008 to 2012. Duke also claims that the four-year
13 amortization period is necessary because it is not receiving carrying costs on the
14 remediation expenses.⁵
15

³ Direct Testimony of Sarah E. Lawler, Attachment SEL-2 (Mar. 29, 2019). The 2019 Staff Report shows slightly different numbers for 2013 and 2017, resulting in a total of \$45,846,043.

⁴ Direct Testimony of Sarah E. Lawler, Attachment SEL-2 (Mar. 29, 2019).

⁵ *Id.* at 8-9.

1 **III. ANALYSIS AND RECOMMENDATIONS**

2

3 ***Q8. WHAT DO YOU RECOMMEND REGARDING DUKE'S APPLICATION TO***
4 ***COLLECT 2013 THROUGH 2018 MGP REMEDIATION COSTS FROM***
5 ***CUSTOMERS VIA RIDER MGP?***

6 ***A8.*** I recommend that the PUCO deny Duke recovery of any MGP environmental
7 investigation or remediation costs incurred in the area known as the "Purchased
8 Parcel" at the East End site (including the segment known as the "area West of
9 the West" or "WOW"), the Ohio River, or any other area outside the geographic
10 bounds of the East End and West End MGP sites themselves.

11

12 ***Q9. WHY SHOULD DUKE BE PROHIBITED FROM CHARGING CUSTOMERS***
13 ***FOR REMEDIATION OF THE PURCHASED PARCEL, OHIO RIVER, AND***
14 ***OTHER AREAS OUTSIDE THE GEOGRAPHIC BOUNDS OF THE EAST***
15 ***END AND WEST END MGP SITES?***

16 ***A9.*** This issue was already resolved in the 2012 Rate Case. First, in these current rider
17 cases, Duke is seeking to collect from customers costs that it has deferred from
18 2013 to 2018. The Rate Case Order explicitly stated that those deferrals were
19 limited to the East and West End sites, not the surrounding areas or the Ohio
20 River:

21

22 Duke requests authority to continue to defer costs related to the
23 MGP remediation after December 31, 2012. ... [T]he environmental

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1 investigation and remediation costs associated with the East and
2 West End MGP sites are business costs incurred by Duke in
3 compliance with Ohio regulations and federal statutes. Therefore,
4 we find Duke's request for authority to continue to modify its
5 accounting procedures and to defer costs related to the
6 environmental investigation and remediation cost beyond December
7 31, 2012, is reasonable and should be approved. *Such deferral*
8 *authority should be limited to the East and West End sites* and for a
9 period as set forth below.⁶

10
11 Second, the Rate Case Order explicitly ruled that Duke could not charge
12 customers for remediation expenses incurred in areas that were not connected to
13 current or past utility service. In the Rate Case Order, the PUCO stated:

14
15 With regard to the purchased parcel located to the west of the
16 western parcel of the East end site, ... Duke failed to prove on the
17 record, what, if any, of this purchased parcel was, or ever had been,
18 used for the provision of manufactured gas or utility service for the
19 customers of Duke or its predecessors. Rather the record indicates
20 that, while the nine-acre purchased parcel may have been impacted
21 by the former MGP operations, only a small portion of the parcel

⁶ Rate Case Order at 71.

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1 may have been associated with the actual MGP property originally
2 owned by Duke and its predecessors. Duke has failed to provide
3 sufficient evidence on the record to distinguish the portion of the
4 parcel that had been MGP-related from the portion that had never
5 been related to the MGPs. *[W]e are not willing to entertain Duke's*
6 *unsubstantiated request for recovery of costs related to property*
7 *that has not been shown on the record in these cases to provide,*
8 *either in the past or in the present" utility services that caused the*
9 *statutorily mandated environmental remediation.*⁷

10
11 The PUCO's determination was clear and unambiguous. Duke cannot recover
12 from customers costs to remediate any part of the of the Purchased Parcel at the
13 East End site. The PUCO was unwilling to extend the provisions of R.C.
14 4909.15(A)(4) (which provide that utilities may collect from customers costs for
15 rendering public utility service) to permit Duke to collect from customers the
16 remediation costs for areas that had no connection to the provision of current
17 utility service or past MGP operations.

18
19 The PUCO's determination and reasoning also applies to the Ohio River and any
20 other offsite areas at the East End and West End former MGP sites. Like the
21 Purchased Parcel, the Ohio River and other offsite areas are not currently used to

⁷ Rate Case Order at 60 (emphasis added).

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1 provide utility service and were never “used for the provision of manufactured gas
2 or utility service for the customers of Duke or its predecessors.” Therefore,
3 consistent with its determination in the Rate Case Order, the PUCO should deny
4 Duke recovery of any environmental investigation or remediation costs incurred
5 in any part of the Purchased Parcel (including the WOW parcel) at the East End
6 site, the Ohio River, and any other areas outside the geographic bounds of the
7 East and West End sites.

8
9 ***Q10. WHAT DID THE PUCO STAFF CONCLUDE AND RECOMMEND IN THE***
10 ***STAFF REPORTS REGARDING DUKE’S APPLICATION TO COLLECT***
11 ***2013 THROUGH 2018 MGP REMEDIATION COSTS FROM CUSTOMERS***
12 ***VIA RIDER MGP?***

13 ***A10.*** In the 2018 and 2019 Staff Reports, Staff concluded that customers should not be
14 charged for any cleanup Duke performed outside the bounds of the East End and
15 West End former MGP sites. Staff found that Duke was incurring remediation
16 costs on the Purchased Parcel/WOW parcel, the Ohio River, and potentially other
17 areas outside the bounds of the East End and West End sites themselves.
18 In support of its position, Staff referenced the Rate Case Order, which according
19 to Staff, “made it clear that Duke’s recovery from customers was limited to any
20 investigation or remediation costs incurred within the two original MGP site
21 footprints.”⁸ Staff further stated its understanding that the PUCO’s Rate Case

⁸ 2019 Staff Report at 5.

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1 Order approving recovery of remediation costs at the East End and West End sites
2 applied to the current plant boundaries ending at the Ohio River and not extending
3 to the Ohio/Kentucky border in the river or at any historic boundary when water
4 levels in the Ohio River were different than today.⁹

5
6 In some instances, Staff was able to identify specific costs associated with
7 remediation of the Purchased Parcel, Ohio River, or other areas outside the East
8 End and West End sites. Based on its determinations regarding the PUCO's Rate
9 Case Order, Staff adjusted Duke's proposed MGP remediation costs to remove
10 any expenses identified on contractor or other invoices as being incurred within
11 the WOW/Purchased Parcel at East End, in the Ohio River at either location, or
12 any other locations outside the bounds of the East and West End sites.

13
14 In other instances, it was impossible for Staff to determine whether a particular
15 remediation expense incurred by Duke was for cleanup of the MGP sites or not.
16 Staff attempted to get this information from Duke, but Duke replied that it was
17 "impractical to segregate costs out by parcel" at the former MGP sites.¹⁰ With
18 respect to these costs, therefore, Staff exercised its judgment to allocate them
19 among costs remediating the East or West End (which would, in Staff's opinion,
20 be recoverable) and costs remediating other properties (which would not). Staff
21 utilized Duke's descriptions of work activities included in the annual MGP Rider

⁹ *Id.*

¹⁰ 2018 Staff Report at 3.

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1 applications and related testimony to estimate the percentage of remediation work
2 that occurred inside and outside of the authorized site boundaries. Staff removed
3 from Duke's annual costs the percentage of costs determined to have occurred
4 outside of the plant boundaries. Staff removed 50% of costs incurred in 2013-
5 2016 and 2018 that Duke had requested for recovery. And Staff removed 70% of
6 costs incurred in 2017 because it determined that the record in Case No. 18-283-
7 GA-RDR demonstrated that more remediation work was done in the
8 WOW/Purchased Parcel than in other areas of the East End or West End sites.

9
10 Based on its determinations Staff adjusted Duke's total proposed MGP
11 remediation recovery as follows:

Year	Duke Request	Staff Adjustments	Recommended 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

12
13 ***Q11. DO YOU AGREE WITH STAFF'S APPROACH?***

14 ***A11.*** OCC has concerns regarding prudence of the costs Duke incurred to remediate the
15 East and West End former MGP sites that were not specifically raised in the
16 Staff's reports in these cases. OCC's concerns are detailed and supported in the
17 testimony of OCC witness Dr. James Campbell. However, in regard to Staff's
18 conclusions and recommendations relating to Duke collecting offsite remediation
19 costs from customers, I agree with Staff. The 2018 Staff Report cites numerous

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1 instances where Staff requested that Duke identify costs incurred at the East End
2 and West End sites by parcel so that Staff could precisely determine the amount
3 of remediation costs eligible for recovery.¹¹ However, as indicated in the 2018
4 Staff Report, Duke was unable or unwilling to segregate the remediation costs by
5 parcel.¹² As a result, Staff was left with no choice but to use its best judgment to
6 allocate Duke's proposed remediations costs between permissible onsite costs and
7 non-permissible offsite costs.

8
9 I agree with the PUCO Staff that the PUCO Rate Case Order does not permit
10 Duke to recover any investigation or remediation costs incurred on the Purchased
11 Property (including the WOW segment), Ohio River, or any other offsite areas. I
12 also agree with Staff's methodology of adjusting Duke's proposed remediation
13 cost recovery to remove all expenses identified as incurred on the Purchased
14 Property, WOW parcel, Ohio River, or any other offsite areas and then removing
15 a percentage of the remaining costs where evidence in the record indicates that
16 remediation costs proposed for recovery were incurred in the Purchased Property,
17 WOW parcel, Ohio River, or other offsite areas. I also agree with Staff's other
18 adjustments noted in the 2018 and 2019 Staff Reports to remove costs associated
19 with construction of a new electric substation at the West End site and disposal of
20 previously solidified soil, nitrogen tanks for the electrical substation at West End,

¹¹ 2018 Staff Report at footnote 11.

¹² *Id.* at 3.

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1 and construction of a new metal staircase at an existing structure at the West End
2 site. Lastly, I agree with the Staff's calculations for its recommended adjustments.

3
4 Duke should not be permitted to benefit from its failure to track costs by parcel
5 despite knowing the PUCO's determination in the Rate Case Order regarding
6 recovery of costs incurred in the Purchased Parcel. Similarly, Staff issued
7 multiple data requests during its annual investigations of Duke's Rider MGP
8 applications seeking details for costs incurred on certain land parcels to no avail.
9 Duke could have required its contractors to identify on invoices which areas of
10 the former MGP sites costs were incurred on. And more general costs such as
11 environmental testing, air monitoring, etc. could have been allocated based on the
12 percentage of total direct dollars spent on each parcel. The PUCO should not
13 reward Duke for its inability to segregate costs based on whether they were
14 incurred at the MGP sites or not. At the very least, going forward, the PUCO
15 should direct Duke to record, track, and report all remediation dollars spent at the
16 East End and West End sites by parcel.

17
18 ***Q12. WHAT DOES DUKE SAY ABOUT CHARGES TO CUSTOMERS FOR***
19 ***REMEDATION COSTS OUTSIDE THE GEOGRAPHIC BOUNDS OF THE***
20 ***EAST END AND WEST END FORMER MGP SITES?***

21 ***A12.*** In comments filed in these cases on August 12, 2019 ("2019 Duke Comments"),
22 Duke argued that the PUCO Staff's interpretation of the PUCO's Rate Case Order
23 is wrong. Duke maintains that the Rate Case Order found that because the "used

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1 and useful” standard under R.C. 4909.15(A)(1) does not apply, there are no
2 geographic limitations whatsoever on Duke’s ability to charge customers for
3 MGP cleanup costs. According to Duke, because the PUCO determined that the
4 2008 to 2012 MGP remediation expenses were current costs of providing utility
5 service under R.C. 4909.15(A)(4),¹³ the property divisions at the MGP sites are
6 irrelevant in determining whether remediation costs are recoverable from
7 customers.¹⁴

8
9 Duke further asserts that the property divisions at the former MGP sites such as
10 the Central Parcel, West Parcel, etc. are internal nomenclature that were only
11 created to assist in managing the remediation projects at the sites.¹⁵ Duke argues
12 that even if the property divisions at the MGP sites were relevant, the area known
13 as West of the West or WOW parcel that it repurchased in 2011 was formerly
14 owned by Duke and its predecessor companies and was impacted by the MGP
15 operations at the East End site.¹⁶ Additionally, Duke states that part of the WOW
16 parcel housed an iron tar tank during the time that the MGP was in operation.¹⁷

¹³ 2019 Duke Comments at 4.

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 8.

¹⁶ *Id.* at 24.

¹⁷ *Id.* at 12.

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1 ***Q13. HOW DO YOU RESPOND TO DUKE'S CLAIMS?***

2 ***A13.*** Duke is wrong in all of its contentions regarding collection of remediation costs in
3 the Purchased/WOW Parcel and other offsite areas. First, Duke's argument
4 suggesting that Staff (and by extension OCC) is relying on the property divisions
5 to claim that Duke cannot recover remediation costs because the properties are not
6 used and useful under R.C. 4909.15(A)(1) is simply a strawman argument that
7 should be summarily rejected. Neither Staff, OCC, nor anyone else is making any
8 claims about the used or usefulness of the sites. Rather, Staff and OCC are
9 pointing to the PUCO's own Rate Case Order where the PUCO stated plainly that
10 (i) it was unwilling to interpret R.C. 4909.15(A)(4) to permit Duke to recover
11 remediation expenses incurred in areas that were not connected to current or past
12 utility service, and (ii) the deferral of 2013 to 2018 MGP remediation costs was
13 limited to the East End and West End sites themselves, not the surrounding areas.

14

15 Second, the property divisions are material, as the PUCO itself recognized. In its
16 Rate Case Order, the PUCO determined that remediation costs incurred on the
17 purchased Parcel (including the West of the West segment) despite being
18 impacted by MGP residuals were not shown to have a current connection to the
19 provision of utility service or a past connection to MGP operations that led to the
20 environmental contamination. Therefore, the remediation costs on the parcel
21 could not be recovered as a current cost of providing utility service to customers
22 under R.C. 4909.15(A)(4). Additionally, although Duke may have used the
23 property divisions at the former MGP sites to help manage the remediation efforts

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1 at the sites, the divisions themselves pre-dated Duke's remediation projects. At
2 the West End site, Mehring Way serves as a natural north-south divider between
3 the two property divisions that existed long before the property divisions were
4 labeled as "Identified Areas" during the environmental investigation and
5 remediation of the sites. Similarly, as I testified in the 2012 Rate Case, Staff in
6 that case had reviewed aerial photographs of the East End site from several
7 sources going back to 1993 that showed the property divisions with fences that
8 were essentially the same as used during the remediation. I have attached as
9 Exhibit KJA-2 the portion of my testimony in the 2012 Rate Case that discussed
10 the property divisions at the East End site and the accompanying exhibit that
11 pictorially supported my testimony.

12
13 Third, concerning Duke's claims that the WOW segment of the Purchased
14 Property was part of the historical footprint of the East End site and was formerly
15 owned by Duke and its predecessors during the time that the MGP was operating,
16 this point is not new. As quoted above, the PUCO expressly acknowledged in the
17 Rate Case Order that part of the Purchased Property that is now known as the
18 WOW segment was formerly owned by Duke and was impacted by MGP residual
19 contamination. Despite knowing and acknowledging this, however, the PUCO
20 made its ruling that Duke could not collect from customers remediation costs
21 incurred on the entire Purchased Parcel (including the WOW segment) because
22 the Parcel was not shown to have a current connection to the provision of utility

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1 service or a past connection to MGP operations that led to the environmental
2 contamination as required to be a recoverable expense under R.C. 4909.15(A)(4).

3
4 Fourth, regarding Duke's assertion that that WOW housed an iron tar tank when
5 the MGP was operating, testimony by Duke's own expert witness on the MGP
6 facilities in the 2012 Rate Case proceeding shows otherwise. I have attached as
7 Exhibit KJA-3 an exhibit that was attached to Duke witness Jessica L.
8 Bednarcik's initial Direct Testimony in the 2012 Rate Case. Ms. Bednarcik's
9 Exhibit JLB-5 is an aerial photograph of the East End site with an overlay
10 showing where the former MGP facilities were situated on the site. The
11 photograph in Exhibit JLB-5 clearly shows that the tar tank is within the bounds
12 of the East End site—not in the WOW segment of the Purchased Parcel.

13
14 Now, however, *after* Staff recommended no recovery of costs to remediate the
15 WOW parcel in the 2018 Staff Report, Duke filed a new map where a small part
16 of the tar tank is suddenly located in the WOW parcel.¹⁸ The PUCO should
17 disregard this new map. Any after the fact moving of the tank and production of a
18 new map should be disregarded. The PUCO should reject Duke's attempt to back
19 fill the record in this case to suit its needs.

¹⁸ See Attachment 2 to 2019 Duke Comments, filed in these cases on Aug. 14, 2019.

1 ***Q14. IN ACCORDANCE WITH THE 2013 RATE CASE ORDER, HAS DUKE***
2 ***COLLECTED PROCEEDS FROM INSURANCE POLICIES THAT***
3 ***COVERED ENVIRONMENTAL LIABILITY AT THE FORMER MGP***
4 ***SITES?***

5 ***A14.*** Yes. The March 29, 2019 direct testimony of Duke witness Michael J. Lynch
6 states that Duke sued certain policy-holders of insurance policies covering
7 environmental liability at the former MGP sites and was able to reach settlements
8 with all of the historical insurers that it sued.¹⁹ He also indicated that the insurers
9 that Duke sued have made payments to Duke for MGP remediation.²⁰ Mr. Lynch
10 further testified that Duke is still negotiating with one insurer.²¹ Subsequent to his
11 testimony being filed, Duke revealed through discovery that it has reached a
12 settlement agreement with this last insurer. Thus, Duke has completed its pursuit
13 of insurance proceeds.

14

15 ***Q15. WHAT DO YOU RECOMMEND REGARDING DISPOSITION OF THE***
16 ***INSURANCE PROCEEDS THAT DUKE HAS COLLECTED?***

17 ***A15.*** In accordance with the Rate Case Order, I recommend that all net insurance
18 proceeds (insurance proceeds minus reasonable costs of procuring them) that
19 Duke has collected to date be returned to Duke's customers. The PUCO stated
20 plainly in the Rate Case Order that:

¹⁹ Direct Testimony of Michael J. Lynch at 3-6 (Mar. 29, 2019) ("Lynch Direct Testimony").

²⁰ *Id.* at 6.

²¹ *Id.* at 8.

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1 The Commission agrees that Duke should continue to use every
2 effort to collect all remediation costs available under its insurance
3 policies, and Duke should continue to pursue recovery of costs from
4 any third parties who may be statutorily responsible for the
5 remediation of the MGP sites. *We find that any proceeds paid by*
6 *insurers or third parties for MGP investigation and remediation*
7 *should be used to reimburse the ratepayers.* The Commission also
8 concludes that any proceeds returned to ratepayers should be net of
9 the costs to achieve those proceeds, *e.g.*, litigation costs. In crediting
10 any proceeds back to the ratepayers, the Commission finds that no
11 interest rate should be added to the credit. Finally, we agree that, to
12 the extent the proceeds collected from insurers and/or third parties
13 exceed the amount recoverable from ratepayers, Duke should be
14 permitted to retain such amount.²²

15
16 Customers to date have already paid more than \$55.5 million to Duke for MGP
17 remediation.²³

²² Rate Case Order at 67 (emphasis added).

²³ In the 2013 Rate Case Order, the PUCO authorized Duke to collect approximately \$55.5 million from customers for environmental investigation and remediation expenses incurred at the East End and West End former MGP sites from 2007 through 2012. On July 23, 2019 in Case No. 12-1685-GA-AIR, Duke filed a notice informing the PUCO that was resetting Rider MGP beginning Aug. 1, 2019 (because it had fully collected the original \$55.5 million in remediation costs).

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1 Through its insurance recovery efforts, Duke has recovered more than \$56 million
2 in insurance proceeds.²⁴ Duke spent about \$5.7 million in costs (legal fees, etc.)
3 pursuing these insurance proceeds.²⁵ Thus, Duke is currently holding around
4 \$50.5 million in net insurance proceeds, which is less than that the total amount
5 that Duke has already collected from customers. Therefore, the PUCO should
6 order Duke to pass on to customers the entire \$50.5 million. It is high time that
7 customers benefit from the insurance proceeds that have been collected. And there
8 is no reason for further delay.

9

10 ***Q16. HAS THE PUCO STAFF MADE ANY RECOMMENDATIONS***
11 ***CONCERNING THE INSURANCE PROCEEDS THAT DUKE HAS***
12 ***COLLECTED?***

13 ***A16.*** Yes. In the 2019 Staff Report, Staff notes that Duke has successfully collected a
14 significant amount of insurance proceeds from multiple insurers and states that it
15 will continue to monitor Duke's collection efforts.²⁶ Staff points out that the
16 insurance proceeds collected have not been distributed to customers and it
17 recommends that any discussion relating to Duke's recovery of ongoing MGP

²⁴ See Attachment KJA-4 - CONFIDENTIAL. Duke provided information about the insurance proceeds to OCC in a confidential discovery response but subsequently agreed that OCC could publicly state the aggregate amount of insurance proceeds collected (\$56,231,987).

²⁵ See Attachment KJA-4 – CONFIDENTIAL. Duke provided information about these costs to OCC in a confidential discovery response but subsequently agreed that OCC could publicly state the aggregate amount of such costs (\$5,702,751).

²⁶ 2019 Staff Report at 6.

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1 costs should be directly tied to or netted against the insurance proceeds already
2 collected.²⁷

3

4 ***Q17. DO YOU AGREE WITH STAFF'S RECOMMENDATIONS CONCERNING***
5 ***THE INSURANCE PROCEEDS?***

6 ***A17.*** No. Customers should get all of the net insurance proceeds now. It should not be
7 tied to future recoveries under Rider MGP. Duke has completed its pursuit of
8 insurance proceeds. Customers are entitled to all net insurance proceeds because
9 the net proceeds are less than the amounts customers have already paid. There is
10 no reason to delay this issue any further.

11

12 ***Q18. WHAT DOES DUKE SAY ABOUT THE INSURANCE PROCEEDS THAT IT***
13 ***HAS COLLECTED TO DATE?***

14 ***A18.*** Duke maintains that insurance proceeds that it has collected should be distributed
15 based on a separate future proceeding after remediation of the MGP sites is
16 complete.²⁸ Duke further claims that the insurance proceeds are not tied to any
17 particular parcel at either of the MGPs sites or subject to any time limits.²⁹ And it
18 states that the insurance proceeds are intended to cover all liability for all MGP

²⁷ *Id.*

²⁸ 2019 Duke Comments at 18-19.

²⁹ *Id.* at 19.

1 contamination, whether onsite or offsite.³⁰ Therefore, Duke argues that its
2 shareholders should receive a portion of the proceeds.³¹

3

4 ***Q19. HOW DO YOU RESPOND TO DUKE'S POSITIONS ON THE INSURANCE***
5 ***PROCEEDS?***

6 ***A19.*** Duke is wrong. The PUCO already decided in the Rate Case Order how the
7 insurance proceeds collected from insurers of the former MGP sites will allocated.
8 As quoted above, the PUCO decided that customers will receive all insurance
9 proceeds until they are fully reimbursed. Duke has completed its pursuit of
10 insurance proceeds. And the amount that it collected was less than the amount that
11 customers have already paid to Duke. Therefore, the insurance collected will
12 never fully reimburse customers, so there are no excess proceeds available for
13 Duke's shareholders. And Duke's shareholders are not entitled to any of the
14 proceeds. The only open question is when customers should receive the proceeds.
15 And as I discussed above, customers should get the benefit of the proceeds now.

16

17 **IV. CONCLUSION**

18

19 ***Q20. DOES THIS CONCLUDE YOUR TESTIMONY?***

20 ***A20.*** Yes. However, I reserve the right to incorporate new information that may
21 subsequently become available through outstanding discovery or otherwise, or to

³⁰ *Id.*

³¹ *Id.* at 19-20.

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- 1 supplement my testimony if the PUCO Staff modifies any of the positions taken
- 2 in the Staff Report.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Direct Testimony of Kerry J. Adkins on Behalf of the Office of the Ohio Consumers' Counsel, Public Version* was served via electronic transmission to the persons listed below on this 8th day of October 2019.

/s/ Christopher Healey
Christopher Healey
Assistant Consumers' Counsel

The PUCO's e-filing system will electronically serve notice of the filing of this document on the following parties:

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**Testimony of Kerry J. Adkins
Filed at the Public Utilities Commission of Ohio**

1. *In the Matter of the Complaint and Appeal of the Cleveland Electric Illuminating Company from Ordinance 21-1994 of the Council of the City of Garfield Heights, Ohio Passed March 10, 1994, entitled "An Emergency Ordinance to Establish and Fix a Schedule of Rates, Terms and Conditions for Electric Service Being Provided by the Cleveland Electric Illuminating Company to its Electric Customers in the City of Garfield Heights, Ohio, Case No. 94-578-EL-CMR (March 20, 1995).*
2. *In the Matter of the Application of The Toledo Edison Company for Authority to Amend and Increase Certain of Its Rates and Charges for Electric Service, Case No. 95-299-EL-AIR (January 22, 1996).*
3. *In the Matter of the Application of The Cleveland Electric Illuminating Company for Authority to Amend and Increase Certain of Its Rates and Charges for Electric Service, Case No. 95-300-EL-AIR (January 22, 1996)*
4. *In the Matter of the Conjunctive Electric Guidelines Proposed by Participants of the Commission Roundtable on Competition in the Electric Industry, Case No. 96-406-EL-COI (February 10, 1998).*
5. *In the Matter of the Application Not for an Increase in Rates of The Dayton Power and Light Company for Approval to Modify Its Existing Alternative Generation Supplier (AGS) Tariff Sheet No. G8., Case No. 03-2341-EL-ATA (September 22, 2004)*
6. *In the Matter of the Commission Staff's Investigation into the Alleged MTSS Violations of Buzz Telecom., Case No. 06-1443-TP-UNC (February 7, 2007).*
7. *In the Matter of the Application of The East Ohio Gas Company dba Dominion East Ohio to Adjust Its Pipeline Infrastructure Replacement (PIR) Cost Recovery Charge and Related Matters, Case No. 09-458-GA-UNC (October 14, 2009)*
8. *In the Matter of the Application of Vectren Energy Delivery of, Inc. for Authority to Adjust its Distribution Replacement Rider Charges, Case No. 11-2776-GA-RDR (August 10, 2011).*
9. *In the Matter of Application of The East Ohio Gas Company d/b/a Dominion East Ohio for Approval of Tariffs to Adjust its Automated Meter Reading Cost Recovery Charge and Related Matters., Case No. 11-5843-GA-RDR (April 27,2012)*
10. *In the Matter of the Application of Vectren Energy Delivery of, Inc. for Authority to Adjust its Distribution Replacement Rider Charges, Case No. 12-1423-GA-RDR (August 28, 2012).*

11. In the Matter of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates, Case No. 12-1682-EL-AIR (March 20, 2013).
12. *In the Matter of Duke Energy Ohio, Inc., for an Increase in Gas Rates.*, Case No. 12-1685-GA-AIR (April 22, 2013).
13. *In the Matter of the Application of Duke Energy Ohio Inc., for Approval of an Alternate Rate Plan Pursuant to Section 4929.05, Revised Code, for an Accelerated Service Line Replacement Program*, Case No. 14-1622-GA-ALT (November 6, 2015).
14. *In the Matter of the Application of Northeast Natural Gas Corp. for an Increase in Gas Distribution Rates*, Case No. 18-1720-GA-AIR (July 25, 2019).
15. *In the Matter of the Application of Duke Energy Ohio, Inc. for Implementation of the Tax Cuts and Jobs Act of 2017*, Case No. 18-1830-GA-UNC (July 31, 2019).
16. *In the Matter of the Commission's Investigation into PALMco Power OH, LLC d/b/a Indra Energy's Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-957-GE-COI (September 4, 2019).
17. *In the Matter of the Application of The East Ohio Gas Company d/b/a Dominion Energy Ohio re: Implementation of the Tax Cuts and Jobs Act of 2017*, Case No. 18-1908-GA-UNC (September 10, 2019).

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio Inc., for an Increase in Gas Rates.	:	Case No. 12-1685-GA-AIR
	:	
In the Matter of the Application of Duke Energy Ohio Inc., for Tariff Approval	:	Case No. 12-1686-GA-ATA
	:	
In the Matter of the Application of Duke Energy Ohio Inc., for Approval of an Alternative Rate Plan for Gas Distribution Service.	:	Case No. 12-1687-GA-ATA
	:	
In the Matter of the Application of Duke Energy Ohio Inc., for Approval to Change Accounting Methods	:	Case No. 12-1688-GA-AAM
	:	

PREPARED DIRECT TESTIMONY
OF
KERRY J. ADKINS
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO
UTILITIES DEPARTMENT
ACCOUNTING AND ELECTRICITY DIVISION

STAFF EX. ____

April 22, 2013

1 such properties and facilities are currently used and useful in providing
2 natural gas distribution service. If Staff determined certain structures or
3 facilities that are presently used and useful in providing natural gas
4 distribution gas service are located on specific parcels of the sites that were
5 remediated, then the Staff recommended recovery of the deferred MGP
6 remediation expenses associated with these parcels. If, on the other hand,
7 the remediated property was not presently used and useful in rendering
8 natural gas distribution service, then the Staff recommended that the
9 deferred MGP expenses should not be recovered in natural gas rates.

10 **8. Q. The other broad claim in Company Objection 6 is that the Staff**
11 **arbitrarily divided the former MGP sites and then erroneously**
12 **determined that several of the segments were not used and useful.**
13 **How do you respond to this claim?**

14 A. The property divisions described in the Staff Report are not arbitrary.
15 Staff's property divisions are based upon property divisions previously
16 established by the Company long before environmental remediation efforts
17 began at the properties. The Staff reviewed historical aerial photographs
18 from several sources going back to 1993. Some of these photographs are
19 attached to my testimony as Exhibit KA-1. The first page of Exhibit KA-1
20 shows a 2006 aerial view of the East End Site that predates the remediation

1 effort at the site.¹ This aerial image shows the fences around each of the
2 property divisions described in the Staff Report. The remaining pages of
3 Exhibit KA-1 (pages 2-4) are screen captures from Google Map's Street
4 View feature that show the fences separating the Eastern and Western
5 Parcels from the Central Parcel from street level. These pictures were taken
6 in 2009. When I visited the East End Site on October 10, 2012, personally
7 observed the placement of these fences. The photographs contained in
8 Exhibit KA-1 accurately reflect where I observed the fences dividing the
9 East End Site and accurately reflect where these fences are currently
10 located. The top part of the image on each page shows the fences in place
11 in August 2009, while the bottom part of each image shows the street
12 location and orientation of the top image. Staff implemented the same
13 process to subdivide the West End Site, using historical photographs, site
14 inspections, site drawings provided by the Company, and the Company's
15 descriptions of remediation work performed at the site.

16 Furthermore, the divisions used by Staff are the same divisions used by the
17 Company during environmental investigations and remediation. Duke
18 witness Bednarcik described how the East End and West End Sites were
19 segregated into multiple "Identified Areas" or "IAs" during the

¹ The intent of the photograph is to show the pre-existing fences separating the Eastern, Central, and Western Parcels. As a result, not the entire parcel labeled as the "Purchased Property" is shown in the zoomed view.

1 environmental investigations.² She states that the “decision was made to
2 separate the East End Site into three smaller, more manageable IAs”: the
3 “Eastern”, the “Western”, and “Central” portions. She also explained that
4 the West End Site was parceled into multiple IAs. The Company divided
5 the West End Site into two IAs: the area north of Mehring Way and the
6 area south of Mehring Way.

7 **9. Q. In Objection 6, the Company generally objects to your determination**
8 **regarding whether certain portions of the East End and West End Sites**
9 **were used and useful in the provision of gas service. Please describe**
10 **how you determined whether or not certain portions of the properties**
11 **were used and useful in the provision of gas service and whether**
12 **certain portions of the property should be assigned any remediation**
13 **costs.**

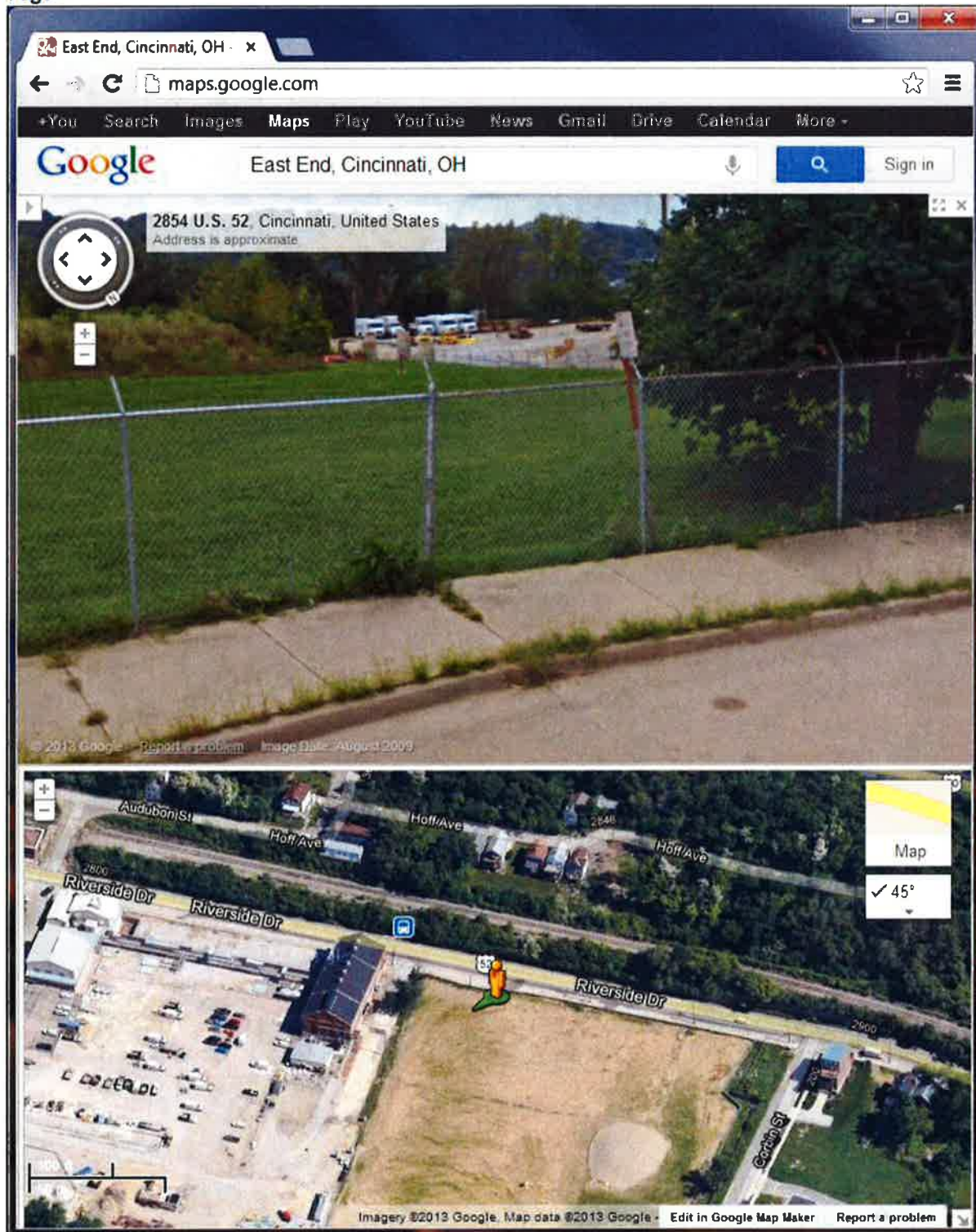
14 **A.** Staff used a three-step process to determine whether certain portions of the
15 property should be assigned any remediation costs. First, Staff reviewed
16 the sites to identify the site boundaries and identify all facilities and
17 structures located at each site. Second, Staff determined whether the
18 identified structures and facilities and their associated property segments
19 were actually used and useful in rendering gas distribution service for

² Initial Direct Testimony of Jessica L. Bednarcik on Behalf of Duke Energy Ohio, Inc. *In the Matter of the Application of Duke Energy Ohio Inc., for an Increase in Gas Rates*, Case No. 12-1685-GA-AIR, et.al. (July 20, 2012), at 9-10, and 15 (Initial Direct Testimony of Bednarcik).

Exhibit KA-1
Page 1



Exhibit KA-1
Page 2



Page 3

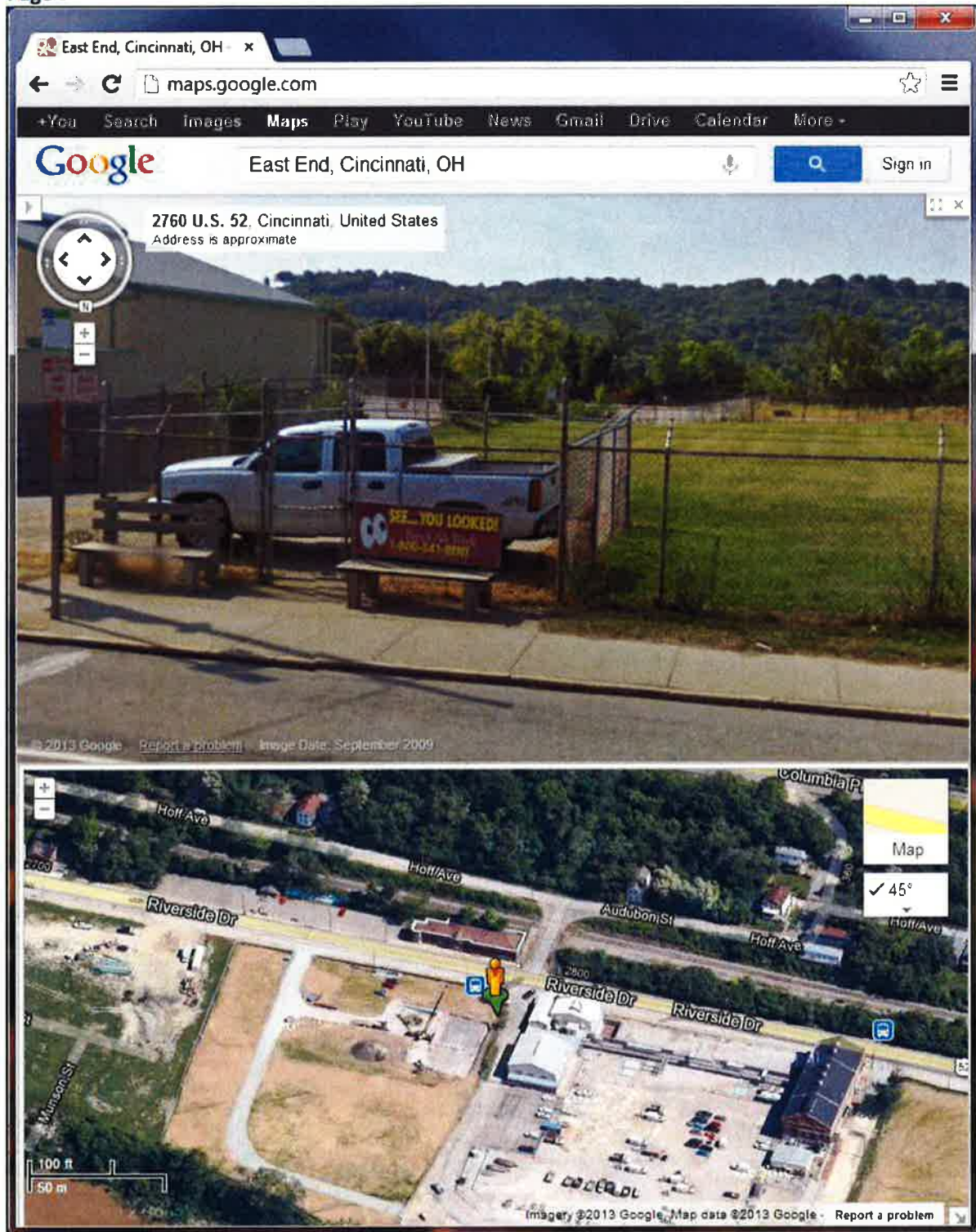


Exhibit KA-1 Page 4



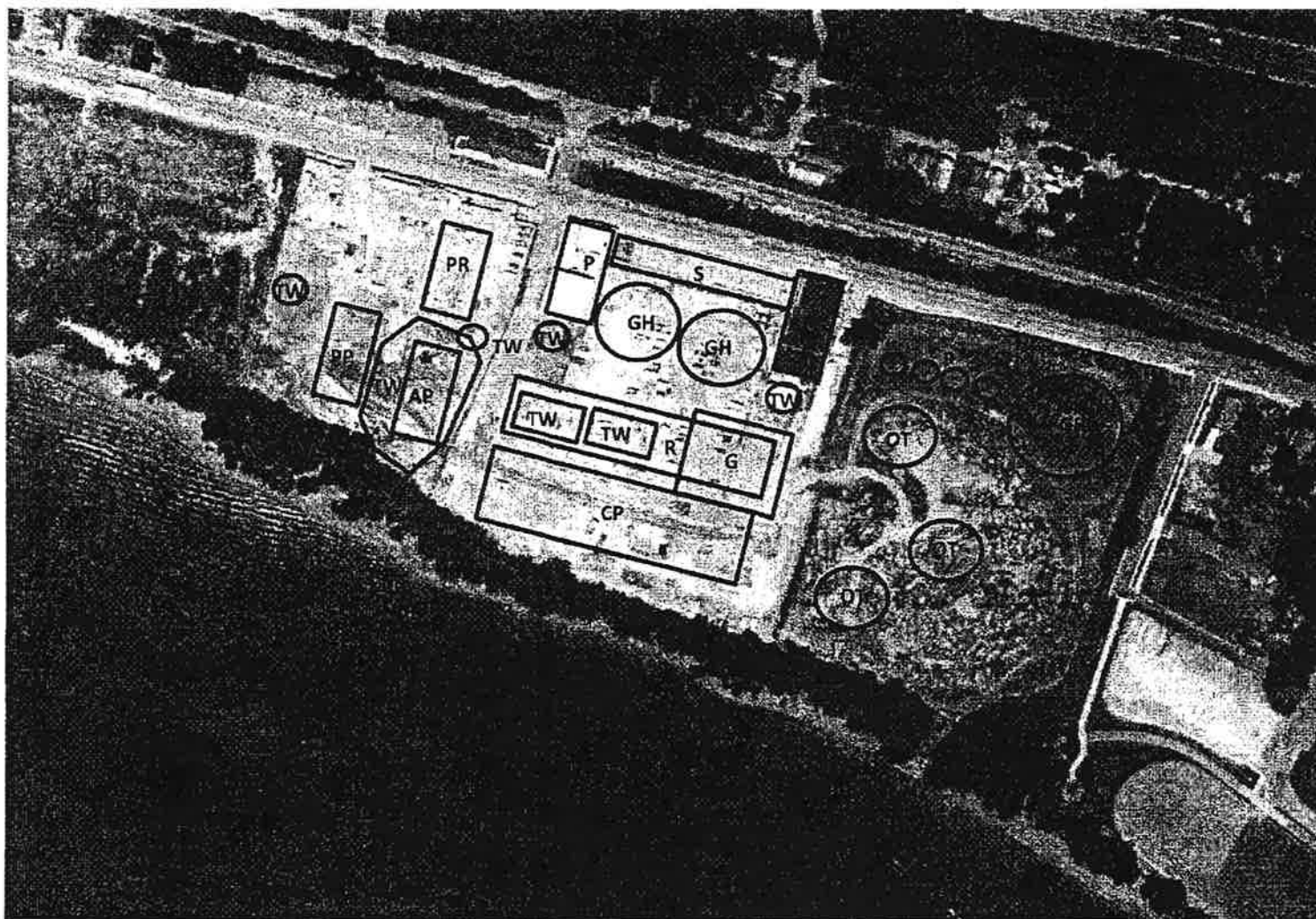


Image from Google Earth©

Locations and size of historic equipment are generalized.

All historic equipment may not be shown.

Key

GH = Gasholder

P = Purifiers

PR = Propane Tanks

CP = Coal Piles

S = Scrubbers

R = Retorts

G = Generator House

OT = Oil Tank

PP = Potash Plant

AP = Ammonia Plant

TW = Tar Wells/Tanks/Lagoon

DUKE'S RESPONSES TO OCC DISCOVERY RESPONSES
REGARDING INSURANCE PROCEEDS AND COSTS

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Case No(s). 14-0375-GA-RDR, 15-0452-GA-RDR, 16-0542-GA-RDR, 17-0596-GA-RDR, 18-0283-GA-RD

Summary: Testimony Direct Testimony of Kerry J. Adkins on Behalf of The Office of The Ohio Consumers' Counsel - Public Version electronically filed by Mrs. Tracy J Greene on behalf of Healey, Christopher