

**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
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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
)	
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In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval.)	Case No. 18-0284-GA-ATA
)	
)	
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

**PREFILED TESTIMONY
OF
NICCI CROCKER
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO
RATES AND ANALYSIS DEPARTMENT
REGULATORY SERVICES DIVISION**

STAFF EX. ____

October 16, 2019

1 1. Q. Please state your name and business address.

2 A. My name is Nicci Crocker. My business address is 180 East Broad Street,
3 Columbus, Ohio 43215.
4

5 2. Q. By whom are you employed?

6 A. I am employed by the Public Utilities Commission of Ohio (PUCO or
7 Commission).
8

9 3. Q. What is your current position with the PUCO?

10 A. My current position is Utility Specialist in the Regulatory Services Division of the
11 Rates and Analysis Department.
12

13 4. Q. Would you briefly state your professional and educational background?

14 A. I earned a Bachelor of Arts degree from Wittenberg University, a Master of
15 Business Administration degree from The Ohio State University, and a Certificate
16 of Accounting from Columbus State Community College. I have worked for the
17 PUCO for over sixteen years, serving in my current position since 2010.
18

19 5. Q. What are your responsibilities in this proceeding?

20 A. I am responsible for investigating and reviewing Duke Energy Ohio, Inc.'s (Duke
21 or Company) proposed increases to Rider MGP for expenditures made in each
22 annual filing from 2014-2019.

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6. Q. What is the purpose of your testimony?

A. The purpose of my testimony is to describe the investigation undertaken by the PUCO staff (Staff) and to support the recommendations made in the Staff Reports filed in 2018 and 2019.

7. Q. How was the investigation conducted?

A. Staff reviewed the Company’s testimony, vendor contracts, and all invoices for investigation and remediation activities at the East End and West End sites to ensure that costs to perform the work were reasonable. Staff also reviewed expenditures to ensure that ratepayers were not charged for costs associated with investigation and remediation of areas outside the boundaries of the East End and West End sites based on the Commission’s Opinion and Order in Case No. 12-1685-GA-AIR (Rate Case Order).

8. Q. Please provide a description of the East End site.

A. During the 2012 Duke Gas Rate Case (Rate Case),¹ a Duke witness explained: “Because the applicable Ohio EPA regulations permit the segregation of land into multiple ‘Identified Areas,’ or IAs, the decision was made to separate the East End property into three smaller, more manageable IAs: the middle portion, where

¹ *Duke Energy Ohio Inc, Case No.12-1685-GA-AIR (Rate Case).*

1 investigation began in July 2012, and the eastern and western portions.”² The
2 witness also refers to the nine acres of purchased property.³ This parcel
3 encompasses the portion known as “the area west of the west” parcel or WOW.
4 Staff adopted the Company’s nomenclature in the Rate Case Staff Report, using
5 the terms the eastern parcel, the western parcel, the central parcel (also referred to
6 as the middle parcel) and the purchased parcel.⁴ The Rate Case Order also
7 referred to these parcels. The Company continues to use these parcel designations
8 as they pertain to MGP remediation in testimony and with vendors. To be
9 consistent, Staff used these designations in both the 2018 and 2019 Staff Reports
10 docketed in these cases. In this testimony, the East End site purchased parcel and
11 the area west of the western parcel are referred to as WOW.

12
13 As stated in the 2019 Staff Report, the sites are defined by property boundaries
14 provide by the Company during the Rate Case, also called 2012 Duke property
15 boundaries. Staff relied on maps provided by the Company to verify property
16 lines and parcel boundaries.⁵

17
18 When Duke refers to “off-site” activities in testimony and in response to data
19 requests, the Company refers to activities that take place outside property lines

² Rate Case, Bednarcik Testimony at 10.

³ *Id.* at 14.

⁴ Rate Case, Staff Report.

⁵ Case No. 16-542-GA-RDR, Confidential Staff DR 25.

1 and outside the parcel boundaries as the Company currently defines them, and not
2 as the property lines and parcel boundaries were defined in the Rate Case.

3
4 9. Q. Please provide a description of the kinds of remediation activities that were
5 submitted each year.

6 A. Each year the Company submitted costs categorized as investigation, air
7 monitoring, analytical laboratory, contract support, construction management and
8 detailed design, vibration monitoring, sediment investigation, soil disposal and
9 landfill, Duke internal expenses, Duke laboratory labor, and Duke MGP PM and
10 construction oversight.

11
12 10. Q. What were the results of the investigation for the East End site?

13 A. In the annual filings in 2014 and 2015, Duke removed certain costs that were
14 identified on the invoices as costs for activities associated with the WOW, in
15 compliance with the Rate Case Order. However, the Company did not remove all
16 costs pertaining to WOW in 2014 and 2015. And in its annual filing in years
17 2016 through 2019, the Company did not remove any costs associated with the
18 WOW.

19
20 Staff asked the Company through data requests to provide a breakdown of costs
21 associated with the WOW in each year of the review in order to accurately
22 remove costs for the WOW. In response to Staff data requests, the Company

1 indicated that it was “impractical to segregate costs out by parcel.”⁶ Staff then
2 reviewed each invoice and removed all costs that were associated with the WOW
3 in each year. Staff also reviewed vendor contracts, engineering maps and
4 timelines for construction provided by vendors. In many cases, these documents
5 described activities that were specific in nature to a parcel or an activity whereby
6 it was clear that the cost either pertained to the WOW or it did not. In the Staff
7 report, these costs are referred to as “direct costs”. In most cases, however,
8 invoices described activities that appeared to pertain to multiple parcels or the site
9 in general. Or in some cases, the activities included several functions that Staff
10 could not specifically classify for a single parcel or the invoice described general
11 activities. Examples include mowing, construction management and design,
12 professional fees, laboratory analysis, etc. In the Staff report, these costs are
13 referred to as “indirect costs”.

14
15 For each year of the investigation, Staff also requested a breakdown of costs
16 associated with activities “located outside the boundaries of the East End and
17 West End sites as identified in Case No. 12-1685-GA-AIR.”⁷ The Company
18 responded, “There are no costs included in this filing associated with monitoring

⁶ See, e.g., *In the Matter of the Application of Duke Energy, Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 15-0452-GA-RDR, *et al.*, Company Response to Staff Data Request No. 2 (“2015 MGP Rider Case”), *In the Matter of the Application of Duke Energy, Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 16-0542-GA-RDR, *et al.*, Company Response to Staff Data Request No. 23 (“2016 MGP Rider Case”), and *In the Matter of the Application of Duke Energy, Ohio, Inc., for an Adjustment to Rider MGP Rates*, Case No. 18-0283-GA-RDR, *et al.*, Company Response to Staff Data Request No. 4 (“2018 MGP Rider Case”).

⁷ Case No. 15-452-GA-RDR, Staff DR 12; Case No. 16-542-GA-RDR, Staff DR 31; Case No. 17-596-GA-RDR, Staff DR 8.

1 and/or clean-up activities located outside the boundaries of the East End and West
2 End sites.”⁸ However, in various years, Company testimony referred to activity
3 that took place in the Ohio River and “off-site” and vendor invoices confirmed
4 this activity. Staff removed all costs that appeared to have a direct connection to
5 the Ohio River or “off-site” activity for the East End site.

6
7 According to the Rate Case Order, “Duke shall bear the burden of proof to show
8 that the costs incurred ... were prudent.”⁹ As a result of the Company’s failure to
9 delineate expenses that were within acceptable boundaries, Staff removed all
10 costs directly associated with the WOW, the Ohio River or “off-site” activity in
11 each year. And Staff removed a portion of all remaining costs that could be tied to
12 multiple parcels of land and the Ohio River at the East End site. Staff removed
13 these indirect costs in order to fairly apportion costs that may have been
14 associated with the WOW and the Ohio River.¹⁰

15
16 11. Q. What were the results of the investigation for the West End site?

17 A. Staff reviewed the Company’s filed testimony and invoices for investigation and
18 remediation activities at the West End site for each annual filing in years 2014

⁸ *Id.*

⁹ Rate Case, Opinion and Order at 72 (Nov. 13, 2013).

¹⁰ *Duke Energy Ohio, Inc.*, Case No. 14-375-GA-RDR *et al.* (MGP Case), 2018 Staff Report at 3-4 (Sept. 28, 2018); 2019 Staff Report at 5-6 (July 12, 2019) (for costs incurred 2013 through 2016, Staff removed 50 percent of remaining costs because at least half of the costs were equitably assigned to each WOW parcel. For costs incurred in 2017, Staff removed 70 percent of costs because Company testimony and discussions with Staff indicated Duke’s increased spending attributed to the WOW parcel aligned with this apportionment level).

1 through 2019. Staff recommends removal of certain costs that did not appear to be
2 remediation costs, costs that appeared to be re-remediation costs, and costs
3 associated with remediation work that was performed outside of the West End site
4 boundaries.¹¹ Similar to the East End site, in some cases, the Company refers to
5 “off-site” remediation activities. These activities take place outside Duke property
6 lines. In most cases, the work appears to all be in the Ohio River. Staff also
7 removed indirect costs for the West End site in the years when there was off-site
8 activity.

9
10 12. Q. Does Staff have any changes or corrections to make to the adjustments presented
11 in the Staff Reports from 2018 and 2019?

12 A. Yes, Staff identified two corrections. First, in 2018, Staff should have removed all
13 costs pertaining to a specific vendor at the West End site since according to
14 Company testimony¹², all of the activities by this vendor take place in the Ohio
15 River, or “off-site”. Second, in 2019, Staff incorrectly removed all soil disposal
16 for the East End site. These costs should not have been removed since according
17 to the Company¹³ no soil was removed from the WOW.

18
19 13. Q. Do these changes result in a change to the overall recommended Staff
20 adjustment?

¹¹ MGP Case, 2018 Staff Report at 5-6; 2019 Staff Report at 7-8.

¹² Case No. 18-283-GA-RDR, Direct Testimony of Todd L. Bachand at 11.

¹³ Case No. 19-174-GA-RDR, Staff DR 4.

1 A. Yes, it does. The updated Staff recommended adjustment is \$22,972,872. This is
2 a change of \$261,271 in the Company's favor.

3
4 14. Q. Can you summarize Staff's recommended adjustments for East End and West
5 End sites?

6 A. Yes, attached to my testimony are tables that summarize Staff's adjustments.
7 Overall, for the period of 2013 through 2018, the Company submitted invoices for
8 \$45.8 million. Staff recommends disallowing \$22.9 million and allowing the
9 Company to recovery \$22.8 million. Please see Attachment SNC-1.

10
11 The disallowances are comprised of several adjustments. For the East End site,
12 indirect costs disallowances include \$16,765,782 and direct cost disallowances
13 include \$3,376,341. For the West End site, indirect costs disallowances include
14 \$141,263 and direct cost disallowances include \$2,689,486. Indirect costs include
15 activities such as construction management, contractor support, analytical
16 laboratory, investigation, Duke internal expenses, Duke laboratory labor, Duke
17 PM/construction oversight, and portions of other activities/vendor. Direct cost
18 adjustments include specific vendor costs associated with WOW (East End site
19 only), the Ohio River (both East End and West End sites), and non-remediation
20 costs.

21
22 15. Q. Can you explain the basis Staff used to justify making these disallowances?

1 A. Yes. The Rate Case Order, when granting authority for the deferral, applied several
2 limits. Staff applied the geographic limitations while auditing the rider in each year.

3
4 16. Q. Please explain the Commission’s limit to geography.

5 A. The Rate Case Order stated that deferral of costs for remediation activities should
6 be “limited to the East and West End sites”.¹⁴ Therefore, remediation activities that
7 take place and are deemed prudent within the East End site (consisting only of the
8 eastern parcel, the western parcel, and the central parcel) and West End site would
9 be acceptable for recovery. However, investigation and remediation efforts outside
10 these property lines would not be acceptable. During the six years of annual
11 investigations, as noted above, Staff reviewed invoices related to work taking place
12 in the WOW on the East End site and in the Ohio River for both the East and West
13 End sites, which are the basis for most disallowances.

14
15 Pertaining to the East End site, the Rate Case Order draws a distinction between
16 the WOW and the rest of the East End site (eastern, western and central parcels).
17 The Commission states, when specifically referring to the purchased parcel, that
18 the Company “failed to provide sufficient evidence on the record to distinguish
19 the portion of the parcel that had been MGP-related from the portion that had
20 never been related to the MGPs. Thus, when applying the requirement for

¹⁴ Rate Case, Opinion and Order at 71.

1 recovery set forth in R.C. 4909.15(A)(4), Staff is not willing to entertain Duke's
2 unsubstantiated request for recovery of cost related to property [that] has not been
3 shown on the record in these cases to provide, either in the past or in the present,
4 utility services that caused the statutorily mandated environmental remediation.”¹⁵
5 The Commission further specifically denied Duke recovery of costs related to the
6 purchased parcel.¹⁶ This is a limit not only to the known and measurable premium
7 paid for the purchased parcel at the time, but also to any future, unknown and
8 unquantified costs for environmental investigation and remediation.

9
10 In compliance with the Rate Case Order, for the first two years of the audit, the
11 Company marked various invoices with notations to remove costs associated with
12 the WOW in compliance with the Rate Case Order. Staff also accepts the
13 confines of the Rate Case Order for this rider and has made recommendations
14 consistent with the same.

15
16 17. Q. What does the Rate Case Order say regarding other limitations?

17 A. The Rate Case Order clearly intends to limit the timeframe for cleanup, “recovery
18 of incurred costs should be limited to a reasonable timeframe ... We believe that
19 such determination of said timeframe is essential and in the public interest, and
20 will provide certainty that remediation will be carried out in a responsible and

¹⁵ *Id.* at 60.

¹⁶ *Id.* at 73.

1 expeditious manner by the Company and its shareholders, so that recovery
2 through Rider MGP will be finite.”¹⁷

3
4 And later the Commission repeats, “recovery of incurred costs should be limited
5 to a reasonable timeframe...ending at a point in time where remediation efforts
6 should reasonably be concluded.”¹⁸ The Commission went further to say that it
7 believed that “the imposition of such a time frame is, in accordance with R.C.,
8 Title 49, reasonable and in the public interest, and will ensure that the remediation
9 will be carried out in a responsible and expeditious manner, so that that recovery
10 through Rider MGP will be finite.”¹⁹

11
12 It is clear that the Commission intended the cleanup and costs to be limited in
13 order to “protect the public interest and ensure the Company and its shareholders
14 are held accountable.”²⁰

15
16 18. Q. What is Staff’s recommendation pertaining to the insurance proceeds?

17 A. The Rate Case Order states, “... any proceeds paid by insurers ... for MGP
18 investigation and remediation should be used to reimburse the ratepayers...
19 [which] should be net of the costs litigation and attorney fees should be

¹⁷ *Id.* at 59.

¹⁸ *Id.* at 72.

¹⁹ *Id.*

²⁰ *Id.*

1 reimbursed to customers. The insurance proceeds should not be allocated based
2 on any disallowances.”²¹

3
4 Staff’s recommendation is that any proceeds paid by insurers for MGP
5 investigation and remediation, net of litigation costs and attorney fees, should be
6 reimbursed to ratepayers. The proceeds should also not be held by Duke until all
7 investigation and remediation is complete. This could be an infinite or unknown
8 amount of time. As of July 2019, ratepayers have paid all the required Rate Case
9 deferral of \$55.5 million. And as of September 2019, Duke reports that they have
10 collected over \$50 million in insurance proceeds, net of legal fees.²² Staff
11 recommends that the Commission net the refund granted in these cases against
12 any allowances permitted in this proceeding.

13
14 19. Q. Have you reviewed the attachments, maps invoice information, etc., attached to
15 Duke company witness testimony?

16 A. No. The Company filed testimony and attachments one week prior to the due date
17 for Staff’s testimony. Many of the attachments were not provided during the six
18 years of Staff investigation. Staff did not have adequate opportunity to review and
19 investigate this information prior to filing testimony.

20

21 *Id.* at 67.

22 Case No. 19-174-GA-RDR, Confidential Staff DR 10.

1 20. Q. Does this conclude your testimony?

2 A. Yes, it does. However, I reserve the right to submit supplemental testimony as
3 new information subsequently becomes available or in response to positions taken
4 by other parties.

Table 1 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	(\$8,913,856)*	\$8,109,120
Total	\$33,022,597	(\$20,142,123)	\$12,880,474

Table 2 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	\$175,758
2017	\$826,106	(\$382,298)*	\$443,808
2018	\$2,781,055	(\$1,999,967)	\$781,088
Total	\$12,823,446	(\$2,830,748)	\$9,992,698

Table 3 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	(\$10,416,085)	\$4,235,983
2018	\$19,804,031	(\$10,913,823)	\$8,890,208
Total	\$45,846,043	(\$22,972,871)	\$22,873,172

*Corrections, addressed in testimony.

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Pre-filed Testimony of Nicci Crocker submitted on behalf of the Staff of the Public Utilities Commission of Ohio via electronic mail upon the following parties of record, this 16th day of October, 2019.

/s/ Thomas W. McNamee

Thomas W. McNamee

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Summary: Testimony of Nicci Crocker electronically filed by Mrs. Tonnetta Y Scott on behalf of
PUCO