VERIFICATION

STATE OF OHIO)
) **SS:**
COUNTY OF HAMILTON)

The undersigned, Jim Ziolkowski, Director Rates & Regulatory Planning, being duly sworn, deposes and says that he has personal knowledge of the matters set forth in the foregoing data requests, and that the answers contained therein are true and correct to the best of her knowledge, information and belief.

Jim Ziolkowski, Affiant

Subscribed and sworn to before me by Jim Ziolkowski on this 10TH day of OCTOBER, 2016.

NOTARY PUBLIC

ADELE M. FRISCH
Notary Public, State of Ohio
My Commission Expires 01-05-2019

My Commission Expires: 1/5/2019

VERIFICATION

STATE OF OHIO)
) **SS:**
COUNTY OF HAMILTON)

The undersigned, Mike Brumback, Interim Assignment, being duly sworn, deposes and says that he has personal knowledge of the matters set forth in the foregoing data requests, and that the answers contained therein are true and correct to the best of his knowledge, information and belief.

Mike Brumback., Affiant

Subscribed and sworn to before me by Mike Brumback on this 5TH day of OCTOBER, 2016.

ADELE M. FRISCH
Notary Public, State of Ohio
My Commission Expires 01-05-2019

NOTARY PUBLIC

My Commission Expires: 1/5/2019

VERIFICATION

STATE OF OHIO)
) **SS:**
COUNTY OF HAMILTON)

The undersigned, Chad Lynch, Manager Gas Op Engineering, being duly sworn, deposes and says that he has personal knowledge of the matters set forth in the foregoing data requests, and that the answers contained therein are true and correct to the best of his knowledge, information and belief.

Chad Lynch

Chad Lynch., Affiant

Subscribed and sworn to before me by Chad Lynch on this 7 day of October, 2016.

Adele M. Frisch

NOTARY PUBLIC

ADELE M. FRISCH
Notary Public, State of Ohio
My Commission Expires 01-05-2019

My Commission Expires: 1/5/2019

VERIFICATION

STATE OF OHIO)
) **SS:**
COUNTY OF HAMILTON)

The undersigned, William Don Wathen Jr., Director of Rates & Regulatory Strategy – Ohio and Kentucky, being duly sworn, deposes and says that he has personal knowledge of the matters set forth in the foregoing data requests, and that the answers contained therein are true and correct to the best of his knowledge, information and belief.

William Don Wathen Jr., Affiant

Subscribed and sworn to before me by William Don Wathen Jr. on this 10TH day of OCTOBER, 2016.

NOTARY PUBLIC

ADELE M. FRISCH
Notary Public, State of Ohio
My Commission Expires 01-05-2019

My Commission Expires: 1/5/2019

KYPSC CASE NO. 2016-00298
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Duke Energy Kentucky
Case No. 2016-00298
Staff First Set of Data Request
Date Received: October 4, 2016

STAFF-DR-01-001

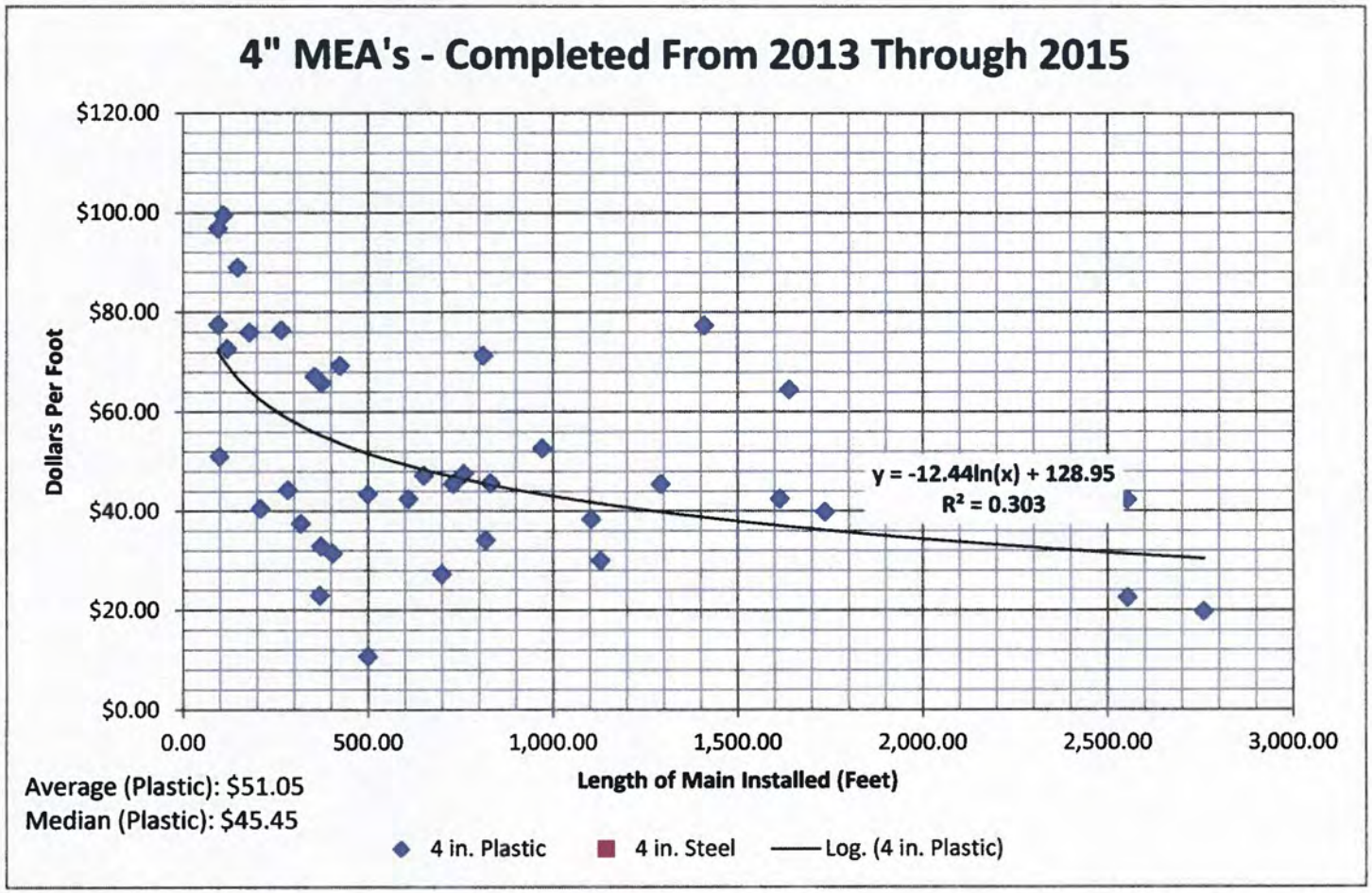
REQUEST:

Refer to the Application, page 3, paragraph 6, which explains Duke Kentucky's gas main extension policy pursuant to the current Rider X, Main Extension Policy ("Rider X") tariff. Explain in detail the components of the main extension costs in excess of 100 feet as they are currently calculated and priced to the applicant for main extension. The explanation should include, at a minimum, whether the costs are the actual current costs of labor, materials, etc., or it they are based on the embedded cost of Duke Kentucky's distribution system.

RESPONSE:

The components of the main extension costs in excess of 100 feet are based on the fully loaded, actual labor, material, equipment, and general conditions such as permitting and surveys. The per foot costs used in estimating are a three year average of costs of similar types of projects (size and kind) and updated yearly. Please see STAFF-DR-01-001 Attachment, showing the Cost-Per-Foot Data Graph depicting extensions for a four inch main.

PERSON RESPONSIBLE: Chad Lynch


4" MEA's - Completed From 2013 Through 2015
$120.00
$100.00
$80.00
$60.00
$40.00
$20.00
$0.00
Dollars Per Foot
0.00
500.00
1,000.00
1,500.00
2,000.00
2,500.00
3,000.00
Length of Main Installed (Feet)
y = -12.44ln(x) + 128.95
R² = 0.303
Average (Plastic): $51.05
Median (Plastic): $45.45
4 in. Plastic
4 in. Steel
Log. (4 in. Plastic)

Duke Energy Kentucky
Case No. 2016-00298
Staff First Set of Data Request
Date Received: October 4, 2016

STAFF-DR-01-002

REQUEST:

Refer to the Application, pages 3-6, paragraph 7-9, which explain the proposed amended gas main extension policy, and Exhibit 1, the proposed Rider X tariff revisions.

a. Compare and contrast the current components included in the calculation of the excess gas main extension, as described in the response to Item 1 of this request, with the cost components that would be included in the proposed Net Present Value ("NPV") analysis tool. The explanation should include whether the NPV cost components will be based on the most current, expected, or embedded costs of Duke Kentucky's distribution system.

b. Explain how the NPV tool provides a "standard and transparent process" for a potential customer wishing to connect, as described in paragraph 7, considering that the proposed Rider X tariff revision states that Duke Kentucky "at its sole discretion *may*" perform a NPV analysis, not that it *will* perform a NPV analysis. The explanation should include all the factors that Duke Kentucky will consider in making a decision to perform a NPV analysis for an applicant for gas main extensions in excess of 100 feet, and a description of known circumstances that would make an applicant ineligible for the NPV analysis.

c. Compare and contrast how refunds will be calculated under the provisions of Exhibit 1, page 1, Rider X, Extension Plan, 2.(ii) and (iii).

d. Explain why the proposed additional language in Exhibit 1, page 1, Rider X, Extension Plan, 2.(iii), provides that the NPV analysis will be "based upon the *total* construction costs for the entire length of the extension, and *not* just the costs of the extension in excess of 100 feet," and state why the analysis is not proposed to include only the cost of extensions over 100 feet.

e. State whether the proposed NPV analysis would include Accelerated Service Line Replacement Program and Demand Side Management charge revenues in its calculation of base distribution revenues and fixed monthly charge revenues.

f. Explain why the proposed additional language in Exhibit 1, page 2, Rider X, Extension Plan, 2.(iii), states that the NPV analysis will assume a term of no less than ten consecutive years, instead of specifying the period of time on which the analysis will be based.

g. Provide the main extension contract referenced in Exhibit 1, page 2, Rider X, Extension Plan, 2.(iii).

h. Explain in detail the process Duke Kentucky proposes to use in its NPV analysis to estimate revenues from current and future customers. The explanation should include, but not be limited to, whether or to what extent it will use a standard formula, or if it will review the particular circumstances of individual applicants including (1) the specific number of potential connections between the applicant and the existing main, (2) the existing energy sources of those potential connections and how that will be determined, (3) whether the estimated energy use of potential connections will be based on similarly sized Duke Kentucky

customers or if class averages will be used, and (4) how estimated customer conversion rates for main extensions will be determined.

i. State whether the estimated revenues from the NPV analysis will include revenue from potential customers beyond the point of connection with the applicant as well as revenue from potential customers between the applicant and the existing main.

j. If the projected future service connections along a gas main extension in excess of 100 feet do not occur as anticipated in the NPV analysis, explain whether a customer who was charged a reduced contribution, or no contribution, can later be charged a portion of the cost for an uneconomic gas main extension.

RESPONSE:

a. See the response to STAFF-DR-01-001. The cost components used in the current methodology and the proposed NPV methodology are identical.

b. The Company's intent is that the NPV analysis will be utilized for all main extensions in excess of 100 feet and less than 2,000 feet. If the NPV is $0 or positive then the main installation will be installed at no cost to the potential customer. Should the analysis provide a negative NPV the customer will know their contribution upfront and the conversion percentages utilized to calculate the NPV. Under the existing policy, a customer is responsible for costs of installation in excess of 100 feet before the project starts and has no idea if they will recover any costs they paid upfront because it is dependent on others connecting to the main extension within the 10 year time frame of the refund policy.

For inquiries of main extensions greater than 2,000 feet, the Company desires flexibility as to the applicability of the NPV tool. Experience indicates that

additional analysis is necessary for such larger installation lengths based upon the number of potential conversions and customer classes along the route. For example, there may be situations where minimum use agreements with commercial customers would be necessary to assist with the economics of the extension and minimize overall rate payer risk. For such larger installations, the Company would work with additional potential conversion customers along the proposed route to gather commitments and re-evaluate the NPV analysis.

In all cases, should the NPV analysis indicate that the customer's installation has a negative result and the customer is not willing pay for their contribution, the Company would not install the main extension.

c. Paragraph 2.(ii) applies to situations where a subsequent *main extension* ties into the original main extension. In this situation, a cost/revenue methodology is used instead of the "100 foot" methodology as described in paragraph 2.(i) to calculate a refund associated with this subsequent extension. Under paragraph 2.(ii), the Company performs an NPV analysis of the subsequent extension, and refunds the NPV amount to the original requester.

Paragraph 2.(iii) applies to calculations of refunds associated with the connection of additional customers where the main extension was justified using the NPV methodology. Instead of using the "100 foot" methodology as described in paragraph 2.(i), the original requesting customer receives a refund only when the load that was assumed in the NPV calculation actually connects to the main extension. This is because the requesting customer has already received implicit credit for the future load on the main extension. If there is a customer contribution

required under the NPV analysis tool, because the customer receives credit for future connections "up-front" as part of the cost justification for the initial connection, the customer will only receive a refund for any incremental connections that occur beyond what was assumed under the NPV calculation.

d. The total costs of the project is utilized for estimating the entire project, however the 100 feet installed without charge to prospective customer is factored into the NPV calculation. The NPV analysis for the first 100 feet or less will be $0.

e. The Company proposes to include Rider ASRP in the NPV analysis, but exclude other riders. Rider ASRP will eventually be included in the Company's base rates and including that Rider in the calculation will assist in the economics of the connection for the customer and the expectation of revenues with the new connection.

f. The language proposed was utilized to mirror the language in the Ohio Rider X Extension Policy for ease of administration and to create equal opportunities for both Ohio and Kentucky customers. The Ohio NPV Tool utilizes a term of 20 years and the Kentucky NPV Tool will also utilize a term of 20 years. The Company is willing to specifically state twenty years.

g. Please see Attachment Staff-DR-00-002 for the main extension contract that is currently being used in Ohio for its main extension program, upon which the Kentucky filing was based. If the Company's application in this proceeding is approved, for ease of administration, Duke Energy Kentucky proposes to utilize the same essential terms and conditions as are in the Ohio agreement with

appropriate distinctions and references for Kentucky and as deemed necessary by the Commission.

h.

1) The Company proposes to use one consistent formula for all customers, but to use the individual circumstances of each extension (e.g. length, volumes, number of potential connections, etc.,).
2) The existing fuel sources will be determined by asking customers interested in the main extension and along the proposed route and the presence of propane and oil tanks on site.
3) For residential customers, the Company proposes using class averages. For business customers, the Company proposes to utilize the average from Duke customers with the same Standard Industrial Classification (SIC) code, or North American Industry Classification System (NAICS) code as it replaces the SIC code. This will average the usage for a much more defined sub-group, thus it will be much more accurate than will an overall business class average.
4) Duke Energy Kentucky does not have historical records for conversions because there was no reason to track it in the past. With the implementation of the tool in Ohio in 2015, Duke Energy gas operations put into place a tracking method, and plan to assess results after three years, and make adjustments accordingly. Duke Energy does not yet have results, but we have adjusted some conversion expectations downward to reflect limited experience to date.

i. The NPV analysis is between the customer and the existing main, not beyond.

j. Under this scenario, the customer will not later be charged a portion of the cost of the extension.

PERSON RESPONSIBLE:

a. James E. Ziolkowski
b. Chad Lynch
c. James E. Ziolkowski
d. Chad Lynch
e. James E. Ziolkowski
f. Chad Lynch
g. Mike Brumback
h. Mike Brumback
i. James E. Ziolkowski
j. James E. Ziolkowski

Duke Energy Kentucky
Case No. 2016-00298
Staff First Set of Data Request
Date Received: October 4, 2016

STAFF-DR-01-003

REQUEST:

Refer to the Application, page 6, paragraph 11. Explain how the minimum customer usage commitment period of six years was determined.

RESPONSE:

The minimum customer usage commitment period is *up to* six years. If the customer's expected usage, at a level with which they are comfortable committing, is less than six years, the Company will use that lower level and shorter time. The six year period was selected to match that of the Duke Energy Ohio program. The Company's intent is simply to provide the same offer to potential new customers wishing to locate in either the greater Cincinnati or Northern Kentucky area so to provide comparable opportunities to potential customers as well as ease of administration of the programs for the Company.

The six year term in Ohio was derived from a desire to simplify billings for both the Company and customers. Duke Energy Ohio's main extension tariff prior to approval of the NPV methodology, utilized a minimum usage billing provision of one and one-half (1.5%) of the cost of the main extension over a period of five years, six and two-thirds months. This was not a practicable way to bill, and unnecessarily complicated the explanation of the provision in discussions with customers. To simply the provision, as part of its NPV methodology approved in its last natural gas rate case, Duke Energy Ohio simply rounded this fraction to a whole year number. In other words, Duke Energy Ohio

is providing the minimum usage option to customers by rounding up to six years, rather than arbitrarily excluding some customers by rounding down to five years. This was approved for main extensions offered to Ohio customers.

PERSON RESPONSIBLE: Mike Brumback

REQUEST:

Refer to the Application, page 6, paragraph 12 and footnote 2.

a. Provide the Duke Energy Ohio ("Duke Ohio") gas main extension tariff as approved by the Public Utility Commission of Ohio ("PUCO"), and the portion of the final order in the proceeding referenced in footnote 2 of the Application which discusses and approves the Duke Ohio NPV tool and gas main extension policy.

b. Footnote 2 of the Application indicates that Duke Ohio received PUCO approved of its NPV analysis tool nearly three years ago. Identify and describe all factors contributing to Duke Kentucky's not make the instant filing in 2014 or 2015.

c. For the period since Duke Ohio implemented the NPV analysis tool:

   (1) Provide the number of main extension requests reviewed under its NPV tool and the number reviewed without using its NPV tool.

   (2) Provide (to the extent the information is available to Duke Kentucky) how many customers of each customer class have been approved annually for gas main extensions as a result of the NPV tool; the annual average required contribution per customer class; the annual average cost of gas main extension per customer class; and the average amount of refund, if any, per customer class.

RESPONSE:

a. Please see STAFF-DR-01-004 Attachment 1.

b. Duke Energy Ohio received approval for the framework of the NPV Tool, but took time to create, develop and test the NPV analysis prior to requesting approval in Kentucky. The NPV tool has been in service in Ohio since July 2015.

c. Please see STAFF-DR-01-004 Attachment 2.

(1) For the period since the NPV analysis tool has been in service in Ohio there have been approximately 85 main extensions (greater than 100 feet) reviewed and installed using the NPV tool. There have been approximately 70 main extensions that have been installed under the Main Extension Policy of 100 feet or less. The company also reviewed 4 customer requests for main extension utilizing minimum customer usage agreement. In 2014 prior to the NPV tool there were approximately 38 main extensions installed.

(2) There have been approximately 415 residential customers and approximately 40 commercial customers added in Ohio utilizing the NPV tool. There have been approximately 10 customer contributions required and the average amount of the contribution was about $3,000 after NPV analysis. The average cost for the majority of the main extensions was about $31,000. There were two longer main extensions where the average cost was about $1,100,000. The intent of the NPV tool is for the upfront credits (refunds) be utilized so the main extension is either cost justified or the customer would not have to pay a significant amount of upfront costs and potentially receive refunds at a later date. There have not been any

refunds issued yet where NPV analysis was utilized due to the majority of main extensions have been cost justified.

PERSON RESPONSIBLE: Chad Lynch

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

P.U.C.O. Gas No. 18
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Page 1 of 2

RIDER X

MAIN EXTENSION POLICY

APPLICABILITY

Applicable to gas service supplied in accordance with provisions of the appropriate rate currently in effect, from the nearest available distribution main when, in the opinion of the Company, it is necessary to extend such main.

EXTENSION PLAN

1. One-Hundred Feet or Less.
   An extension of one hundred (100) feet or less shall per service installation shall be made by the Company to an existing distribution main without charge to a prospective customer or customers who shall each apply for and contract to use service for one (1) year or more.

2. Excess of One Hundred Feet.
   (a) Individual Service Installation.
   The Company, at its sole discretion, may perform a net present value (NPV) analysis based upon total construction costs for the entire length of the extension, and not just the costs of the extension in excess of 100 feet. The NPV analysis will take into account all volumetric base distribution revenues and fixed monthly charge revenues to be received from the customer. The NPV analysis will use 5.32% as the discount rate and, for residential customers, it will assume a term of no less than ten (10) years. If the NPV calculation is positive, the customer will not be charged for the construction costs. If the NPV calculation is negative, the customer must deposit with the Company an amount equal to the results of the NPV calculation prior to construction taking place. Any such deposit shall be eligible for a refund consistent with the terms and conditions of the main extension contract entered into between the Company and customer. Further, the customer must continue to receive gas service from the Company at the same service installation or premises in order to be eligible for a refund. Refunds shall not exceed the amount of the deposit and shall be limited to a period of ten (10) consecutive years following the effective date of the main extension contract.

   For large commercial and industrial customers with process load, Duke Energy Ohio may require a minimum customer usage commitment for a defined period of time not to exceed six (6) years.

   (b) Multiple Service Installations.
   (i) Existing Subdivisions, New Non-Joint Trench Subdivisions, and Existing Non-Subdivision.
   When an extension of the Company's main to serve an applicant amounts to more than one hundred (100) feet per service installation, the Company may require total cost of the footage in excess of 100 feet per customer to be deposited with the Company by the applicant based upon the estimated cost per foot for main extensions. Additionally, the Company, at its sole discretion, may perform a net present value (NPV) analysis based upon total construction costs for the entire length of the extension, and not just the costs of the extension in excess of 100 feet. The NPV analysis will take into account include all volumetric base distribution revenues and fixed monthly charge revenues to be received

Filed pursuant to an Order dated November 13, 2013 in Case No. 12-1685-GA-AIR before the Public Utilities Commission of Ohio.

Duke Energy Ohio
139 East Fourth Street
Cincinnati, Ohio 45202

P.U.C.O. Gas No. 18
Sheet No. 62.4
Cancels and Supersedes
Sheet No. 62.3
Page 2 of 2

EXTENSION PLAN (Contd.)

from the customers to be connected. The NPV analysis will use 5.32% as the discount rate and, for residential customers, it will assume a term of no less than ten (10) years. If the NPV calculation is positive, the applicant will not be charged for the construction costs. If the NPV calculation is negative, the applicant must deposit with the Company an amount equal to the results of the NPV calculation prior to construction taking place. Any such deposit shall be eligible for a refund consistent with the terms and conditions of the main extension contract entered into between the Company and applicant. Further, where the applicant is the customer, the customer must continue to receive gas service from the Company at the same service installation or premises in order to be eligible for a refund. Refunds shall not exceed the amount of the deposit and shall be limited to a period of ten (10) consecutive years following the effective date of the main extension contract.

(ii) New Joint Trench Subdivisions.
When an extension of the Company's approach and/or internal mains is necessary to serve a new subdivision, the Company will perform a net present value (NPV) analysis of total construction costs and the revenue to be received from each customer to be connected to the new mains. For purposes of the NPV calculation, the Company will assume that a complete build-out of the subdivision will occur in five (5) years. If the NPV calculation is positive, no deposit will be required for the new subdivision and the NPV results will be credited toward the calculation of the deposit requirement for any approach main that may be required. If the NPV calculation is negative, the amount of the NPV results must be deposited with the Company prior to the construction of the mains to serve the new subdivision. Any deposit made when the NPV calculation is negative is eligible for a refund due to subsequent connections or extensions consistent with the terms and conditions of the main extension contract entered into between the Company and applicant. Refunds shall not exceed the amount of the deposit and shall be limited to a period of ten (10) consecutive years following the effective date of the main extension contract.

3. Nothing contained herein shall be construed to prohibit the Company from making extensions under different arrangements provided such arrangements have been approved by the Public Utilities Commission of Ohio.

4. Nothing contained herein shall be construed as to prohibit the Company from making, at its expense, greater extensions than herein prescribed, should its judgment so dictate, provided like free extensions are made to other customers under similar conditions.

SERVICE REGULATIONS

The supplying of, and billing for, service and all conditions applying thereto, are subject to the jurisdiction of The Public Utilities Commission of Ohio, and to Company's Service Regulations currently in effect, as filed with The Public Utilities Commission of Ohio, as provided by law.

Filed pursuant to an Order dated November 13, 2013 in Case No. 12-1685-GA-AIR before the Public Utilities Commission of Ohio.

Issued: November 22, 2013

Effective: December 2, 2013

Issued by James P. Henning, President

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates.	)))	Case No. 12-1685-GA-AIR
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-ALT
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)))	Case No. 12-1688-GA-AAM

OPINION AND ORDER

The Commission, considering the above-entitled applications, the Stipulation and Recommendation, and the record in these proceedings, hereby issues its Opinion and Order in these matters.

APPEARANCES:

Amy B. Spiller, Elizabeth H. Watts, Rocco D'Ascenzo, and Jeanne W. Kingery, 139 East Fourth Street, Cincinnati, Ohio 45202, Ice Miller LLP, by Christopher L. Miller, 250 West Street, Columbus, Ohio 43215 and Kay Pashos, One American Square, Suite 2900, Indianapolis, Indiana 46282, and Frost Brown Todd LLC, by Kevin N. McMurray, 3300 Great American Tower, 301 East Fourth Street, Cincinnati, Ohio 45202, on behalf of Duke Energy Ohio, Inc.

Mike DeWine, Ohio Attorney General, by John H. Jones, Assistant Section Chief, Thomas W. McNamee and Devin D. Parram, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of Staff of the Commission.

Bruce J. Weston, Ohio Consumers' Counsel, by Joseph P. Serio, Larry S. Sauer, and Edmund J. Berger, Assistant Consumers' Counsel, 10 West Broad Street, Suite 1800, Columbus, Ohio 43215, on behalf of the residential utility customers of Duke Energy Ohio, Inc.

Colleen L. Mooney, 231 West Lima Street, Findlay, Ohio 45839, on behalf of Ohio Partners for Affordable Energy.

Carpenter Lipps & Leland LLP, by Kimberly W. Bojko and Mallory M. Mohler, 280 North High Street, Suite 1300, Columbus, Ohio 43215, on behalf of The Kroger Company.

Douglas E. Hart, 441 Vine Street, Suite 4192, Cincinnati, Ohio 45202, on behalf of The Greater Cincinnati Health Council.

Bricker & Eckler, LLP, by Thomas J. O'Brien, 100 South Third Street, Columbus, Ohio 43215, on behalf of the city of Cincinnati.

Vorys, Sater, Seymour & Pease, LLP, by M. Howard Petricoff, Stephen M. Howard, and Gretchen Petrucci, 52 East Gay Street, Columbus, Ohio 43216, and Vincent Parisi and Matthew White, Interstate Gas Supply, 6100 Emerald Parkway, Dublin, Ohio 43016, on behalf of Interstate Gas Supply, Inc.

Douglas E. Hart, 441 Vine Street, Suite 4192, Cincinnati, Ohio 45202, on behalf of Cincinnati Bell Telephone Company LLC.

Robert A. Brundrett, 33 North High Street, Columbus, Ohio 43215, on behalf of Ohio Manufacturers' Association.

Kegler, Brown, Hill & Ritter, LPA, by Andrew J. Sonderman, Capitol Square, Suite 1800, 65 East State Street, Columbus, Ohio 43215, on behalf of People Working Cooperatively, Inc.

Joseph M. Clark, 21 East State Street, Suite 1900, Columbus, Ohio 43215, on behalf of Direct Energy Services, LLC, and Direct Energy Business, LLC.

McIntosh & McIntosh, by A. Brian McIntosh, 1136 Saint Gregory Street, Suite 100, Cincinnati, Ohio 45202, on behalf of Stand Energy Corporation.

OPINION:

I. HISTORY OF THE PROCEEDINGS

Duke Energy Ohio, Inc. (Duke, Applicant, or 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. Duke currently supplies natural gas service to approximately 426,000 customers in eight counties in southwestern Ohio (Staff Ex. 1 at 1).

On June 7, 2012, Duke filed a notice of intent to file an application for approval of an increase in its natural gas rates and related applications for tariff approval, an alternative rate plan, and to change accounting methods. In its notice of intent, Duke also requested a waiver of certain standard filing requirements relating to the Applicant's electric utility operations and certain payroll analysis. By Entry issued July 2, 2012, the Commission denied the request for waiver as it relates to the Applicant's electric utility operations and granted the remaining waiver request. By this same Entry, the Commission approved a date certain of March 31, 2012, and a test-year period of January 1, 2012 through December 31, 2012.

Duke filed its application to increase rates, along with the requisite standard filing requirements, on July 9, 2012. In its application, Duke sought a revenue increase of $44,607,929, or approximately 18.09 percent over current revenue. On July 20, 2012, Duke filed its supporting testimony. On November 28, 2012, Duke filed proof of publication of its notice of the application, in accordance with R.C. 4909.19 (Duke Ex. 3).

By Entry issued August 29, 2012, the Commission accepted the application for filing as of July 9, 2012, and ordered the Applicant to publish notice of the application, pursuant to R.C. 4909.19. By Entry issued January 18, 2013, motions to intervene filed by the following entities were granted: Ohio Consumers' Counsel (OCC); Stand Energy Corporation (Stand); Interstate Gas Supply, Inc. (IGS); The Kroger Company (Kroger); city of Cincinnati (Cincinnati); Ohio Partners for Affordable Energy (OPAE); Cincinnati Bell Telephone Company, LLC (CBT); The Greater Cincinnati Health Council (GCHC); People Working Cooperatively, Inc. (PWC); Ohio Manufacturers' Association (OMA); and Direct Energy Business, LLC, and Direct Energy Services, LLC (jointly, Direct Energy). Further, the motion for admission pro hac vice of Edmund J. Berger, on behalf of OCC, was granted by Entry issued December 21, 2012, and the motion for admission pro hac vice of Kay Pashos, on behalf of Duke, was granted at the hearing on April 29, 2013.

Pursuant to R.C. 4909.19, the Commission's Staff (Staff) conducted an investigation of the application and filed its report (Staff Report) on January 4, 2013 (Staff Ex. 1). Copies of the Staff Report were served upon the mayor of each affected municipal corporation and other persons the Commission deemed interested, in accordance with the requirements of R.C. 4909.19. In the Staff Report, Staff recommends a revenue decrease from current revenue of between $10,725,809 and $3,358,775, or a decrease from current revenue of between 2.80 percent and 0.88 percent (Staff Ex. 1 at Sch. A-1). Objections to the Staff Report were filed by Duke, IGS, CBT, PWC, GCHC, OCC, Kroger, Direct Energy, and OPAE on February 4, 2013. Motions to strike Duke's objections related to the recommendations in the Staff Report regarding Duke's cost recovery for the investigation and remediation of the Applicant's manufactured gas plants (MGPs) were filed by Staff

and OCC on February 7, 2013, and February 19, 2013, respectively. On February 26, 2013, Duke filed its memorandum contra the motions to strike filed by Staff and OCC.

By Entry issued January 18, 2013, the evidentiary hearing was scheduled to commence one business day after the conclusion of Duke's electric rate cases filed in *In re Duke Energy Ohio, Inc.*, Case No. 12-1682-EL-AIR, et al. (*Duke Electric Rate Case*), which was scheduled to commence on March 25, 2013. In addition, a separate Entry issued on January 18, 2013, scheduled the local public hearings for February 19, 2013, in Hamilton, Ohio; February 20, 2013, in Union Township, Cincinnati, Ohio; February 25, 2013, in Middletown, Ohio; and February 28, 2013, in Cincinnati, Ohio. Notice of the local public hearings was published in accordance with R.C. 4903.083 and proof of such publication was filed on February 19, 2013, and March 12, 2013 (Duke Exs. 4-5).

On April 2, 2013, as corrected on April 24, 2013, a Stipulation and Recommendation (Stipulation) was filed by some of the parties to these cases. As part of that Stipulation, the parties agreed to litigate the issues related to the Applicant's recovery of the MGP remediation costs at the evidentiary hearing in these cases. By Entry issued April 4, 2013, the evidentiary hearing was rescheduled to April 29, 2013. The evidentiary hearing commenced, as rescheduled, on April 29, 2013, and concluded on May 2, 2013. Initial briefs were filed on June 6, 2013, by Duke, Staff, Kroger, jointly by GCHC and CBT (GCHC/CBT), and jointly by OCC and OPAE (OCC/OPAE). Reply briefs were filed by Duke, OCC/OPAE, Kroger, GCHC/CBT, and OMA on June 20, 2013.

Columbia Gas of Ohio, Inc. (Columbia) filed an amicus curiae brief and an amicus curiae reply brief, on June 6, 2013, and June 20, 2013, respectively. On June 6, 2013, Columbia filed a motion for leave to file its amicus briefs in these matters. On June 21, 2013, OCC filed a memorandum contra Columbia's motion for leave to file amicus briefs.

On June 6, 2013, OCC filed a motion requesting the Commission take administrative notice of two documents from Duke's website regarding the MGP issue. On June 11, 2013, Duke filed a memorandum contra OCC's motion to take administrative notice, along with a motion to strike reference to the documents in the brief and reply brief filed by OCC/OPAE. OCC replied to Duke's memorandum contra the motion to take administrative notice and filed a memorandum contra Duke's motion to strike on June 18, 2013, and June 26, 2013, respectively. Duke replied to OCC's memorandum contra the motion to strike on June 28, 2103.

II. PENDING MOTIONS AND REQUESTS FOR REVIEW

A. Columbia's Motion For Leave to File Amicus Curiae Briefs

Columbia requests leave to file amicus briefs in order to support Duke's request to recover deferred environmental investigation and remediation costs associated with former MGP sites. In support of its motion, Columbia notes that, by Entry issued September 24, 2008, in *In re Columbia Gas of Ohio, Inc.*, Case No. 08-606-GA-AAM (*Columbia Deferral Case*), the Commission approved an application by Columbia to defer its environmental investigation and remediation costs incurred after January 1, 2008. Pursuant to the Commission's Entry in the *Columbia Deferral Case*, Columbia's recovery of the deferred costs would be addressed in Columbia's next base rate case. According to Columbia, its future ability to recover those deferred costs is now threatened by extraordinary and erroneous legal positions taken by Staff in the instant proceedings.

In support of its motion, Columbia points out that the Commission has granted interested parties leave to file briefs as amici curiae in several cases where full intervention is not necessary or warranted, citing various Commission cases, including *In re Columbia Gas of Ohio, Inc.*, Case No. 94-987-GA-AIR, Entry (Aug. 4, 1994) and *In re FirstEnergy Corp.*, Case No. 99-1212-EL-ETP, et al., Entry (Mar. 23, 2000). Columbia notes that Staff acknowledges in the instant cases that the question of whether Duke can recover the MGP costs, even if MGPs were not used and useful in rendering natural gas distribution service at a date certain, is "essentially a legal issue" (*citing* Staff Ex. 6 at 4). Therefore, Columbia asserts that its submission of amicus briefs on this limited legal issue, at the post-hearing stage of these proceedings, will not prejudice any party. Moreover, Columbia states that it will contribute to the full development and equitable resolution of the MGP issue in these proceedings.

In its memorandum contra Columbia's motion, OCC notes that Columbia's motion was filed 122 days after the deadline for the filing of motions to intervene in these cases. OCC argues that, through its amicus briefs, Columbia is attempting to influence the Commission's decision in these cases, which involves a different utility and different customers. According to OCC, Columbia is attempting to interject itself into the Duke cases because of what Columbia perceives as the potential precedent that the current Duke cases could have on a future Columbia rate case. OCC states that Columbia has offered nothing new or different in its briefs than the argument made by Duke. OCC cites to Commission precedent to support its position that the claimed interest of protecting against the setting of precedent was not sufficient grounds for granting intervention. *See In re Vectren Delivery of Ohio, Inc.*, Case No. 08-220-GA-GCR, Entry on Rehearing (Aug. 10, 2005) (*Vectren GCR Case*); *In re Ohio Edison, et al.*, Case No. 09-906-EL-SSO, Entry (Dec. 11, 2009). Furthermore, OCC argues that, if Columbia's motion is granted, other parties in these cases would be prejudiced, because Columbia would be allowed to participate in the

proceedings without being subject to the same scrutiny as other parties, *e.g.*, discovery. Finally, OCC asserts that, if amicus briefs were to be allowed, the amicus process should have been noticed to all stakeholders interested in this issue. Likewise, Kroger asserts that Columbia's motion to file amicus briefs, at this late stage of the proceedings, is in violation of the Commission's rules and would be prejudicial to the intervenors, because they have not had a chance to question or challenge the statements asserted by Columbia (Kroger Reply Br. at 3).

The Commission finds that the determination as to whether it is appropriate to permit the filing of amicus briefs in a proceeding must be made based on the individual case bar and the issues proposed to be addressed by the movant. OCC, in its opposition memorandum, mischaracterizes previous rulings by the Commission in its attempt to draw a comparison between the rulings in those cases and the instant cases. For example, the request for leave to file an amicus memorandum in support of an application for rehearing in the *Vectren GCR Case* obviously came at the rehearing stage of the case, well beyond the briefing stage of the proceeding, and the issues raised in the amicus filing in the *Vectren GCR Case* were primarily policy-oriented. Conversely, Columbia's motion for leave to file amicus briefs in the instant cases came at the briefing stage of these cases and Columbia's briefs are solely focused on the legal matters pertaining to the MGP cost recovery. In addition, the Commission believes that permitting Columbia to file its amicus briefs will not prejudice any party to these proceedings and will, in fact, assist with the consideration of the legal issues briefed in these matters. Accordingly, the Commission finds that Columbia's motion for leave to file amicus briefs is reasonable and should be granted.

B. OCC's Motion for Administrative Notice

On June 6, 2013, OCC filed a motion requesting the Commission take administrative notice of the two documents from Duke's website which contain frequently asked questions and answers about the West End and East End MGP sites that are at issue in these cases (website documents). OCC submits that the documents contain information relevant and important to the upcoming decision regarding Duke's recovery of the MGP costs associated with the remediation of these sites that OCC only recently became aware of. According to OCC, the documents include facts and admissions by Duke and, therefore, they should be administratively noticed. OCC notes that it has incorporated this information into its post-hearing brief.

In support of its motion, OCC states that these website documents equate to admissions by Duke that contradict some of the claims made by Duke at the hearing in these cases. OCC cites to Ohio Evid.R. 201(F) for the position that judicial notice of any adjudicative fact that is not subject to reasonable dispute may be taken at any stage of a proceeding, stating that this rule allows courts to fill gaps in the record. OCC

acknowledges that the Supreme Court of Ohio (Supreme Court) has held that, while there is no absolute right for the taking of administrative notice, there is no prohibition against the Commission taking such notice of facts outside of the record in a case. *See Canton Storage and Transfer Co., et al., v. Pub. Util. Comm.*, 72 Ohio St.3d 1, N.E.2d 136 (1995), *citing Allen d.b.a. J&M Trucking, et al., v. Pub. Util. Comm.*, 40 Ohio St.3d 184, 532 N.E.2d 1307 (1988). OCC points out several cases where the Commission has taken administrative notice of facts, cases, entries, expert opinion testimony, briefs, and entire records from other proceedings. According to OCC, Duke would not be prejudiced by a taking of administrative notice because the website documents were posted by Duke on its website; therefore, it is Duke's own admission, not hearsay, that OCC seeks to notice and Duke can not claim that it did not have prior knowledge of the information. In addition, OCC states that, since Duke will have an opportunity to respond to the information contained in the website documents, through its reply brief, Duke will not be prejudiced.

Duke opposes OCC's motion for administrative notice, pointing out that the website documents in question have been available on Duke's website since the time the application was filed in these cases and, in fact, the information was referenced in Duke witness Bednarcik's testimony, as well as Staff data requests that were served on OCC (Duke Ex. 21 at 11, 16). In fact, the information, which Duke asserts is not contrary to any information presented on the record in these cases, has been on the Applicant's website since 2009 and 2010 for the East and West End sites, respectively. Moreover, Duke states that the attorney examiner closed the record in these cases, with no objection from any party, and OCC has failed to file a motion to reopen the record in these cases. Duke maintains that, had OCC offered this evidence at hearing, Duke may have offered rebuttal testimony; however, since it no longer has this option, Duke would be unfairly prejudiced by the admission of this evidence at this late date.

Duke notes that, while the Supreme Court has affirmed the Commission's ability to take administrative notice of matters outside the record, such notice has consisted of the Commission's own records. *See Schuster v. Pub. Util. Comm.*, 139 Ohio St. 458 at 461, 40 N.E.2d 930 (1942); *Canton v. Pub. Util. Comm.*, 63 Ohio St.2d 76 at footnote 1, 407 N.E.2d 930 (1980). However, Duke states that the Supreme Court has also held that the Commission may not take administrative notice of matters outside of the record, in particular, where the matter sought to be admitted in not the Commission's own record. *See Forest Hills v. Pub. Util. Comm.*, 39 Ohio St.2d 1, 313 N.E.2d 801 (1974). Duke offers that, in *Forest Hills*, the court found that the evidence must be introduced at hearing or brought to the attention of the parties prior to the decision, with an opportunity to explain and rebut. Duke points out that none of the cases cited by OCC in support of its motion involve matters not otherwise within the Commission's own record. Moreover, none of OCC's cited cases involve the admission of evidence one month after the hearing is closed and involve information that was publicly available during the pendency of the case.

Finally, Duke states that OCC seeks to misuse Ohio Evid.R. 201, which only allows judicial notice of an adjudicative fact that is not subject to reasonable dispute. Duke asserts that the evidence OCC seeks to have admitted goes to the heart of the MGP dispute in theses cases and, thus, the admission of such evidence would be contrary to Ohio Evid.R. 201 and should not be admitted.

Upon consideration of OCC's motion for administrative notice and the responsive pleadings, the Commission finds that it should be denied. As pointed out by Duke, the website documents are not new documents recently posted by Duke on its website; rather, they have been on Duke's website for at least three years and, in fact, the website has been referenced in discovery and testimony in these cases. For OCC to now attempt to utilize this information to discredit the sworn testimony of witnesses that OCC had ample opportunity to depose and cross-examine, at this late date, is inappropriate. OCC's argument that Duke's due process rights are protected by merely affording Duke the opportunity to respond to the late-filed website documents in its reply brief is weak, at best. As noted by Duke, the issue OCC is attempting to address through these documents affects a large part of the Commission's final decision in these cases. Thus, absent well-substantiated arguments to reopen these proceedings in order to provide Duke the opportunity to respond, which, as Duke notes, OCC did not request, the information can not be admitted into the record. Accordingly, OCC's motion for administrative notice should be denied.

Finally, Duke moves to have any references to the late-offered information stricken from the initial and reply briefs filed by OCC/OPAE. OCC opposes Duke's motion to strike stating that Duke has failed to conform to the Commission's rules, because Duke did not include, as part of its motion, a memorandum in support of its motion, in accordance with Ohio Adm.Code 4901-1-12. In reply, Duke argues that OCC's argument regarding Ohio Adm.Code 4901-1-12 elevates form over substance, in that, if the Commission denies OCC's motion for administrative notice, any references in the briefs to the website documents must be ignored. The Commission agrees that, even absent Duke's stated request to strike references to the website documents, since we denied OCC's motion for administrative notice in the proceeding paragraph, it is necessary to strike any references in the brief and reply brief filed by OCC/OPAE to the website documents. Therefore, we find that Duke's motion to strike should be granted, and any such references should be stricken from the brief and reply brief filed by OCC/OPAE and disregarded.

C. Motions for Protective Orders

At the hearing in these cases, Duke moved for the issuance of a protective order regarding certain information contained within the testimony and exhibits of OCC witnesses Campbell, OCC Ex. 15.1, and Gould, OCC Ex. 17.1, as well as OCC Ex. 6.1. In support of its motions, Duke asserts that certain information contained in these exhibits

refers to sensitive infrastructure that is considered confidential by the Department of Homeland Security; therefore, Duke requests the information not be made public. In addition, Duke requests that certain information concerning the bid prices be treated as confidential trade secret information. At the hearing, no one objected to Duke's motions for protective order and the attorney examiner found that the motions were reasonable and should be granted.

Ohio Adm.Code 4901-1-24, provides that, unless otherwise ordered, protective orders issued pursuant to this rule, automatically expire after 18 months. However, given that the exhibits contain sensitive utility infrastructure, consistent with previous rulings on such critical energy infrastructure information, the Commission finds that it would be appropriate to grant protective treatment indefinitely, until the Commission orders otherwise. Therefore, until the Commission orders otherwise, the docketing division should maintain, under seal, the information filed confidentially on February 25, 2013, and May 14 and 15, 2013.

If the Commission believes the information should no longer be provided protective treatment, prior to the release of the information, the parties will be notified and given an opportunity, in accordance with Ohio Adm.Code 4901-1-24(F), to file motions to extend a protective order.

D. Motion for Interlocutory Appeal filed by OCC/OPAE on Brief

By Entry issued April 4, 2013, the attorney examiner, inter alia, granted the motion to extend the hearing date in these cases filed by Duke, OCC, OPAE, GCHC, Kroger, Direct Energy, OMA, IGS, PWC, CBT, Cincinnati, and Staff. In that Entry, it was noted that, on April 2, 2013, the Stipulation was filed by some of the parties to these cases and, as part of the Stipulation, the parties agreed to litigate the MGP-related issues at the evidentiary hearing. Therefore, the attorney examiner established April 22, 2013, as the deadline for: each party that filed an objection to the Staff Report to file a statement identifying which objections pertain to the issues that are not part of the Stipulation and will be litigated at the evidentiary hearing; each party that previously prefiled testimony to file a statement as to whether their witnesses will appear at the evidentiary hearing and, if so, the party shall identify which portions of the witnesses' testimony address the issues that will be litigated at the hearing; and Staff and all parties shall file any additional expert testimony. On April 22, 2013, testimony was filed by Duke, Staff, OCC, and Kroger.

On April 24, 2013, OCC/OPAE filed a joint motion to strike the additional testimony filed by Duke on April 22, 2013. OCC/OPAE note that Duke's additional testimony filed on April 22, 2013, was filed nine months past the deadline for direct testimony and two months past the deadline for supplemental direct testimony. According to OCC/OPAE, the April 4, 2013 Entry was not an invitation to provide for the filing of this direct testimony on the MGP issue, but was intended only to allow parties to

address the impact, if any, of the Stipulation on the issues for hearing. Furthermore, OCC/OPAE state that the testimony filed by Duke on April 22, 2013, was, in fact, rebuttal testimony. In support of their motion, OCC/OPAE argue that Ohio Adm.Code 4901-7-01, App. A and 4901-1-29 require utilities to file their testimony in rate cases on a specific schedule to allow intervenors to prepare for the hearing and file their testimony with knowledge of the utility's direct testimony. The exceptions for allowing the filing of supplemental testimony set forth in the rule are not applicable here, according to OCC/OPAE. While OCC/OPAE acknowledge that the rules may be waived for good cause shown, they believe that, since the rules do not provide any other opportunity to file additional direct testimony in a rate proceeding, Duke's testimony should be stricken. Absent the opportunity to conduct discovery and prepare for cross-examination, OCC/OPAE assert that Duke's testimony, filed on April 22, 2013, is highly prejudicial to OCC, OPAE, and other parties.

On April 26, 2013, Duke filed its memorandum contra to the motion to strike filed by OCC/OPAE. Duke states that the April 4, 2013 Entry clearly invited additional testimony on MGP issues and the Commission's rules and procedures allow for such filing. While the Commission's rules generally prescribe the timing and type of testimony to be filed, Duke notes that Ohio Adm.Code 4901-1-38(B) provides that the Commission may waive such rules for good cause shown. Duke argues the testimony filed on April 22, 2013, is not improper rebuttal testimony and that other parties are not prejudiced by the filing of this testimony. Finally, Duke states that the Commission will be well served by allowing this additional testimony on these important policy issues.

At the hearing in these matters, on April 29, 2013, the attorney examiner denied the motion to strike filed by OCC/OPAE on April 24, 2013, stating that, "the attorney examiners' April 4, 2013, Entry clearly invited the filing of additional testimony by staff and the parties" (Tr. I at 15).

In their brief, OCC/OPAE filed an interlocutory appeal of the attorney examiner's April 29, 2013 ruling, in accordance with Ohio Adm.Code 4901-1-15(F) (*sic*). In support of their interlocutory appeal, OCC/OPAE reiterate the arguments set forth in their April 24, 2013 motion, namely that the Commission's rules do not provide for the late-filed testimony submitted by Duke on April 22, 2013, and the testimony was highly prejudicial to OCC, OPAE, and other parties. They restate that the extenuating circumstances provided for in the rules for the filing of supplemental testimony do not apply in these cases to Duke's testimony. Therefore, OCC/OPAE urge that Duke's April 22, 2013 testimony be stricken. (OCC/OPAE Br. at 101-107.)

In response, Duke states that OCC/OPAE were not prejudiced by the additional testimony filed on April 22, 2013, stating that OCC/OPAE had ample opportunity to file additional testimony and chose not to. Moreover, OCC/OPAE and other parties had the

opportunity to depose Duke's witnesses and to cross-examine such witnesses. (Duke Reply Br. at 38.)

Upon consideration of the April 24, 2013 interlocutory appeal filed, on brief, by OCC/OPAE and Duke's reply, and upon review of the record in these cases, the Commission finds that the appeal is without merit and should be denied. It is evident both by a review of the April 4, 2013 Entry and the statement by the attorney examiner at the April 29, 2013 hearing, that all parties, including Duke, were invited to file additional testimony. While OCC/OPAE claim that they have been prejudiced by the filing of Duke's testimony, we fail to see how such is the case when there were other avenues available to them which would allow them to fully respond and address any issues brought up in Duke's testimony. For example, OCC and/or OPAE, if they found the need to rebut any issues raised by Duke, could have requested to submit rebuttal testimony; however, no such request was made. Moreover, the record reflects that all parties, including OCC and OPAE, were given every opportunity in cross-examination to question Duke's witnesses, as attested to by the four days of hearing that concluded with over 1,000 pages of transcript. Therefore, the Commission concludes the motion for interlocutory appeal of the attorney examiner's April 29, 2013 ruling denying the April 24, 2013 motion to strike Duke's April 22, 2013 testimony, which was filed by OCC/OPAE, should be denied, and the attorney examiner's ruling should be affirmed.

E. OCC's Motion to Strike Two of Duke's Objections to the Staff Report

On February 19, 2013, OCC filed a motion to strike objections (6) and (15) filed by Duke on February 4, 2013, regarding the proposed MGP deferral and the facilities relocation tariff. In support of its motion to strike, OCC states that the objections lack specificity in violation to Ohio Adm.Code 4901-1-28(B). Upon consideration of OCC's motion to strike these two objections to the Staff Report, the Commission finds that it is without merit and should be denied.

III. SUMMARY OF THE EVIDENCE AND DISCUSSION

A. Overview

As stated previously, a Stipulation was filed by some of the parties to these cases and, as part of that Stipulation, the parties agreed to litigate the issues related to the Applicant's recovery of costs associated with investigation and remediation of Duke's two MGP sites, the East and West End sites, at the evidentiary hearing. Therefore, in this Order, the Commission will first address the uncontested portion of these cases in its review and consideration of the Stipulation. Upon our consideration, we conclude that the Stipulation should be approved and adopted. Thereafter, we consider the contested issue regarding Duke's request to recover the deferred environmental investigation and

remediation costs associated with former MGP sites. After a thorough review of the legal issues and the record in these matters, the Commission concludes that Duke's request to recover MGP investigation and remediation costs for the period from January 1, 2008 through December 31, 2012, should be approved to the extent set forth below in this Order.

B. Summary of the Local Public Hearings

The Commission received significant public correspondence related to these cases. In addition, each of the local public hearings was well attended: 25 witnesses testified at the Hamilton hearing, 28 witnesses testified at the hearing held in Union Township, eight witnesses testified at the Middletown hearing, and 14 witnesses testified at the hearing held in Cincinnati. Most of the testimony received at the local public hearings expressed a general opposition to any increase in Duke's natural gas rates. Witnesses also expressed concern with the compensation received by Duke executives and they asserted that Duke did not pay sufficient taxes.

C. Stipulation

1. Summary of the Stipulation

A Stipulation, signed by Duke, Staff, OCC, OPAE, GCHC, CBT, Kroger, Direct Energy, and PWC, was filed on April 2, 2013, as corrected on April 24, 2013 (Jt. Ex. 1). The Stipulation was intended by the signatory parties to resolve all outstanding issues in these proceedings, with the exception of Duke's request for cost recovery associated with remediation of the former MGP sites. On April 8, 2013, Cincinnati filed a letter in support of the Stipulation. On April 22, 2013, IGS filed a letter stating that it elected not to become a signatory party to the Stipulation, noting that the Stipulation does not address its objections in the cases, but that there are means, other than the Stipulation, by which its concerns can be addressed. In support of the Stipulation, Duke filed the testimony of William Don Wathen (Duke Ex. 19B), OCC filed the testimony of Beth E. Hixon (OCC Ex. 1), and Staff filed the testimony of William Ross Willis (Staff Ex. 2).

The following is a summary of the provisions agreed to by the stipulating parties and is not intended to replace or supersede the Stipulation:

(1) Revenue Requirement - Duke's revenue requirement is $241,326,770, which reflects a $0 increase in the sum of annualized revenues from current base rates. The $241,326,770 excludes gas costs and includes the annualized revenues from the accelerated main replacement program rider (Rider AMRP) and the advance utility rider (Rider AU) effective at the time of

the filing. Upon approval of the new rates in these proceedings, Rider AMRP and Rider AU will be reset to recognize recovery of investment through the date certain, March 31, 2012, in base rates.

(2) Return on Equity - Duke's actual capital structure of 53.3 percent equity and 46.7 percent debt, and a return on equity (ROE) of 9.84 percent, shall be established. The ROE shall not be used as precedent in any future gas proceeding, except for the purpose of determining the revenue requirement for collection from customers in proceedings addressing Duke's SmartGrid rider, currently known as Rider AU, and Rider AMRP. Duke shall use 5.32 percent as its cost of debt for determining carrying charges for future gas deferral requests until the cost of debt is reset as part of the resolution of Duke's next gas distribution rate case. Duke shall bear the burden of proof with respect to any future ROE request not otherwise provided for in this Stipulation.

(3) Depreciation - Duke shall use the depreciation rates as reflected in the Staff Report.

(4) AMRP - The incremental increase to the AMRP for residential customers will be capped at $1.00 annually on a cumulative basis. When rates become effective as a result of these cases, the AMRP rates shall be capped at $1.00 per customer per month, as supported in *In re Duke Energy Ohio, Inc.*, Case No. 12-3028-GA-RDR, et al. The cap for recovery from residential customers beginning in 2014, 2015, and 2016 shall be $2.00, $3.00, and $4.00 per customer per month, respectively. The Rider AMRP revenue requirement calculation will include amortization of Duke's deferred camera work expense, approved in *In re Duke Energy Ohio, Inc.*, Case No. 09-1097-GA-AAM, over a five-year period and will also include expenses related to ongoing camera work related to the AMRP activity during the period 2001 through 2006. Duke may seek recovery from customers of the unamortized balance of the deferred camera work, via an existing or newly proposed rider, prior to, but not after, the expiration of the five-year amortization period.

Except as modified in the Stipulation, the revenue requirement calculation and procedural timelines for Rider AMRP will be

the same as was approved in prior proceedings; however, the cost of capital shall be calculated using the debt and equity established in the Stipulation.

(5) Rider AU - Duke will continue recovering costs associated with deployment of SmartGrid for its gas distribution business. To the extent practicable, Duke will file Rider AU contemporaneous with its annual filings for the electric Rider Distribution Reliability – Infrastructure Modernization (Rider DR-IM). Duke will include in its Rider AU revenue requirement, and not in base rates, amounts related to recover deferred grid modernization, operation and maintenance (O&M) expense and carrying costs, incremental O&M savings and gas furnace program incentive payments and administrative expenses.

(6) MGP - Duke may establish a rider (Rider MGP), subject to the terms of this Stipulation and subject to Commission authorization after hearing from the parties in litigation, for recovery of any Commission-approved costs associated with Duke's environmental remediation of MGP. The parties agree to litigate their positions at the evidentiary hearing in the above-captioned proceedings, for resolution by the Commission in its Order in these cases. Staff agrees to litigate its positions as stated in the Staff Report on the MGP issues, subject to the usual caveat to allow for correction of errors, if any, or updated information. Any recovery of costs from customers for environmental remediation of Duke's MGP shall be allocated among classes as follows:

Residential Service (RS)/Residential Firm Transportation Service (RFT)/Residential Service Low Income Pilot (RSLI)	68.26 percent
General Service (GS)/Firm Transportation Service (FT) Small	7.76 percent
GS/FT Large	21.68 percent
Interruptible Transportation Service (IT)	2.30 percent

(7) Residential Rate Design – Duke will submit a cost of service study in its next natural gas general base rate proceeding that

separates its residential class into a heating class and a nonheating class.

(8) Reconnection Charge - Duke will withdraw its request for approval of a change to its Reconnection Tariff, meaning that the reconnection charge will remain at the current amount.

(9) Accelerated Service Replacement Program (ASRP) - Duke will withdraw its request for approval of an ASRP. If Duke proposes an ASRP or a similar program in the future, its proposal shall ensure that rates for such a program will not go into effect before January 1, 2016.

(10) Facilities Relocation - The mass transportation rider (Rider FRT) will not be approved in these proceedings.

(11) Line Extension Rider (Rider X) - Duke's proposed changes to Rider X, to use a net present value (NPV) analysis to determine whether the customer will contribute to the costs of construction or will receive the facility extension free of charge, shall be approved. In addition, Duke will include all volumetric base distribution revenues and fixed monthly charge revenues in the determination of whether the customer will contribute to the cost of construction or will receive the facility free of charge. For purposes of applying its NPV analysis, Duke will use 5.32 percent as the discount rate and, for residential customers, it will assume a term of no less than 10 years.

(12) Right-of-way Tariff Language - Duke shall modify its proposed right-of-way tariff to read as follows:

> The customer, without reimbursement, shall furnish all necessary rights-of-way upon or across property owned or controlled by the customer for any and all of the Company's facilities that are necessary or incidental to the supplying of service to the customer, or to continue service to the customer.
>
> The customer, without reimbursement, will make or procure conveyance to the Company, all necessary rights-of-way upon or across property owned or controlled by the customer along

dedicated streets and roads, satisfactory to the Company, for the Company's lines or extensions thereof necessary or maintenance incidental to the supplying of service to customers beyond the customer's property, in the form of Grant or instrument customarily used by the Company for these facilities.

Where the Company seeks access to the customer's property not along dedicated streets and roads for the purpose of supplying or maintaining service to customers beyond the customer's property, the Company will endeavor to negotiate such right-of-way through an agreement that is acceptable to both the Company and the customer, including with compensation to the customer. Notwithstanding the foregoing, the Company and its customers maintain all their rights under the law with respect to the Company acquiring necessary rights-of-way in the provision of service to its customers.

(13) PWC Weatherization Funding - Duke will provide PWC $350,000 per year through shareholder contributions to be used for low-income weatherization in Duke's service territory. The funds will be made available to PWC as agreed in either these proceedings or in settlement of the *Duke Electric Rate Case*, but not in both. PWC may elect, at its discretion, to use the funds, in whole or in part, for either electric or natural gas weatherization programs. This annual shareholder funding is in addition to the $1,795,000 that is currently being collected and that will continue to be collected from customers through Duke's base gas distribution rates for PWC's weatherization program and all such collections from customers and funding of PWC shall remain in place until the effective date of the rates in Duke's next gas distribution base rate case.

(14) OPAE Energy Fuel Fund - The parties recommend and seek the Commission's approval in continuing the waiver of Ohio Adm.Code 4901:1-14 granted to Duke, in *In re Duke Energy Ohio, Inc.*, Case No. 08-1285-GA-WVR, Entry (Dec. 19, 2008) (*Duke Waiver Case*), to allow distribution of fuel fund dollars as requested in that waiver application, so long as the refund

dollars are available. In seeking approval of the continuation of that waiver, the parties also recommend that the eligibility requirements be changed from 175 percent to 200 percent of the poverty level to from 0 percent to 200 percent of the poverty level for pipeline refund dollars.

(15) Economic Development - Duke shall withdraw its request for authorization of ratepayer funding for an economic development fund via the proposed economic development rider (Rider ED).

(16) Supplier Rate Codes - Duke shall make available to competitive retail natural gas suppliers (suppliers) up to 80 rate codes per supplier to be provided under Duke's current fee structure as set forth in Duke Rate Retail Natural Gas Supplier and Aggregator Charges (SAC), PUCO Gas No. 18, Sheet No. 45.2, meaning that 25 rate codes will be provided at no charge and any rate codes above 25 used by a supplier will be provided at a cost of $30 per rate code per month. Duke shall make these additional rate codes, up to 80, available to suppliers within 60 calendar days of the Order in these cases.

Duke shall enter into good faith negotiations with suppliers to: (1) determine ways in which the supplier could help streamline rate code processing to lessen or avoid costs associated with additional incremental rate codes above 80; and (2) to the extent necessary, establish a supplier paid fee structure to compensate Duke for its incremental costs for processing additional incremental rate codes above 80. Duke shall not charge, through distribution rates or any other recovery mechanism, the incremental cost of making additional rate codes available to suppliers to Duke's customers. Duke shall work with suppliers to complete, within 12 months of the date of the Order in these proceedings, a plan for a permanent billing system modification to replace the current rate code per month fee structure, if such permanent billing system modifications are more economical than long-term continuation of the per rate code per month structure. Upon mutual agreement that permanent billing system modifications are more economical, Duke and suppliers shall work in good faith to agree upon the details of implementing, and suppliers paying for, the permanent billing system modification, including a reasonable time frame for completion. Duke shall

not charge, through distribution rates or any other recovery mechanism, the cost of any such billing system modification to Duke's customers. These provisions do not, and are not intended to, inhibit or preclude suppliers from recovering such costs from their customers through the suppliers' rates and have no effect on Duke's collection of such charges on behalf of suppliers or the purchase of receivables from suppliers.

(17) Tariffs - Duke shall file applicable compliance tariffs within 14 days of the submission of the Stipulation. The compliance tariffs shall include the tariff language filed with the application, as amended by the Staff Report and the Stipulation. All work papers supporting the tariffs shall be provided to interested parties upon request. Interested parties will review and comment within 10 days of receipt of the proposed tariffs.

(18) Waiver of Standard Filing Requirements - Duke does not need to provide a comparison of 12 months actual income statement to the partially forecasted income statement as required by Ohio Adm.Code 4901-7, at Appendix A, Chapter II(A)(5)(d), page 11.

(19) Natural Gas Vehicle (NGV) Tariff and Rate Gas Generation Interruptible Transportation (GGIT) - Duke's proposed tariffs Rate NGV and GGIT shall be filed for approval. Both shall be administered in a competitively neutral manner.

(20) Staff Report Resolves Other Issues - The Staff Report resolves the remaining issues not addressed in the Stipulation, with the exception that Duke will not submit a facilities-based cost of service study in its next gas distribution base rate case.

(Jt. Ex. 1 at 5-14.)

2. Rate Base

The following information presents the value of Duke's property used and useful in the rendition of natural gas distribution services as of the March 31, 2012 date certain, as stipulated by the parties (Staff Ex. 2 at Sch. B-1):

Plant-in-Service	$1,623,220,034
Depreciation Reserve	(447,052,644)
Net Plant in Service	$1,176,167,390
Customer Advances for Construction	$ (3,597,473)
Customer Service Deposits	(8,521,562)
Post Retirement Benefits	(14,645,755)
Investment Tax Credits	(6,554)
Deferred Income Taxes	(282,950,314)
Other Rate Base Adjustments	15,796,710
Rate Base	$882,242,442

The Commission finds the rate base stipulated by the parties to be reasonable and proper and adopts the valuation of $882,242,442 as the rate base for purposes of these proceedings.

3. Operating Income

The following information reflects Duke's operating revenue, operating expenses, and net operating income for the 12 months ended December 31, 2012 (Staff Ex. 2 at Sch. C-1):

Operating Revenue	
Total operating revenue	$384,015,062
Operating Expenses	
O&M	$221,071,618
Depreciation	44,082,034
Taxes, other	24,898,498
Federal income taxes	25,765,571
Total Operating Expenses	$315,817,721
Net Operating Income	$68,197,341

The Commission finds the determination of Duke's operating revenue, operating expenses, and net operating income, pursuant to the Stipulation, to be reasonable and proper. The Commission will, therefore, adopt these figures for purposes of these proceedings.

4. Rate of Return and Authorized Increase

As stipulated by the parties, Duke has a net operating income of $68,197,341 under its present rates. Applying Duke's current net operating income to the rate base of $882,242,442 results in a rate of return of 7.73 percent. Such a rate of return is sufficient to provide Duke with reasonable compensation for the service it renders to its customers.

The parties have agreed to a recommended rate of return of 7.73 percent on a stipulated rate base of $884,242,442, requiring a net operating income of $68,197,341. The revenue requirement agreed to by the stipulating parties is $384,015,062, including gas costs, which results in a zero percent increase in the sum of annualized revenues from current base rates. (Staff Ex. 2, Sch. A-1 and C-1.)

5. Stipulation Evaluation and Conclusion

Ohio Adm.Code 4901-1-30, authorizes parties to Commission proceedings to enter into stipulations. Although not binding on the Commission, the terms of such an agreement are accorded substantial weight. *See Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155, 157, 378 N.E.2d 480 (1978). This concept is particularly valid where the stipulation is unopposed by any party and resolves almost all issues presented in the proceeding in which it is offered.

The standard of review for considering the reasonableness of a stipulation has been discussed in a number of prior Commission proceedings. *See, e.g., In re Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (Apr. 14, 1994); *In re Western Reserve Telephone Co.*, Case No. 93-230-TP-ALT (Mar. 30, 1994); *In re Ohio Edison Co.*, Case No. 91-698-EL-FOR, et al. (Dec. 30, 1993); *In re Cleveland Electric Illum. Co.*, Case No. 88-170-EL-AIR (Jan. 31, 1989); *In re Restatement of Accounts and Records (Zimmer Plant)*, Case No. 84-1187-EL-UNC (Nov. 26, 1985). The ultimate issue for our consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?

The Supreme Court has endorsed the Commission's analysis using these criteria to resolve issues in a manner economical to ratepayers and public utilities. *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559, 561, 629 N.E.2d 423 (1994), *citing Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 126, 592 N.E.2d 1370 (1992). Additionally, the Supreme Court stated that the Commission may place substantial weight on the terms of a stipulation, even though the stipulation does not bind the Commission. *Consumers' Counsel* at 126.

Duke witness Wathen, Staff witness Willis, and OCC witness Hixon testify that the Stipulation is a product of serious bargaining among capable, knowledgeable parties. The witnesses state that the stipulating parties regularly participate in rate proceedings before the Commission, are knowledgeable in regulatory matters, and were represented by experienced, competent counsel. (Duke Ex. 19B at 3; Staff Ex. 2 at 3; OCC Ex. 1 at 4.) Specifically, Mr. Wathen notes that the parties to the Stipulation represent all stakeholders' interests, including both residential and nonresidential customers, as well as low-income customers. According to Mr. Wathen, negotiations in these proceedings occurred via in-person meetings, telephone conferences, and email exchanges, with all parties being invited to attend these meetings and all issues raised by the parties being addressed in reaching the Stipulation. (Duke Ex. 19B at 3-4.) Therefore, upon review of the terms of the Stipulation, based on our three-prong standard of review, the Commission finds that the first criterion, that the process involved serious bargaining by knowledgeable, capable parties, is met.

With regard to the second criterion, Duke witness Wathen, Staff witness Willis, and OCC witness Hixon assert that the Stipulation benefits ratepayers and the public interest (Duke Ex. 19B at 5; Staff Ex. 2 at 3; OCC Ex. 1 at 4). Mr. Wathen explains that the Stipulation addresses the recommendations contained in the Staff Report and benefits all customer classes, as customers will experience a substantially lower base rate increase than that which Duke proposed in its application. Moreover, Mr. Wathen explains the Stipulation provides for many benefits through the agreed-upon rate design and provides a direct benefit for low-income customers through shareholder-funded contributions to support weatherization initiatives and other programs. (Duke Ex. 19B at 5-6.) In addition, Mr. Willis points out the Stipulation: avoids the cost of litigation; results in a $0 increase in base gas retail rates; caps the increase to Rider AMRP for residential customers at $1.00 annually on a cumulative basis; saves $317 million in rates over a 9- to 10-year period, because Duke withdraws its request for an ASRP; maintains the reconnection charge at the current level; provides that Rider FRT will not be approved; establishes a rate of return of 7.73 percent based on an ROE of 9.84 percent and a cost of debt at 5.32 percent; and provides for shareholder-funded low-income weatherization programs and a low-income fuel fund (Staff Ex. 2 at 3-4). Ms. Hixon adds that the Stipulation: provides for a cost of service study separating the residential customers into heating and nonheating classes for the next rate case; recommends changes to Rider X to use the NPV analysis to determine if

a customer will contribute to the costs of construction; changes the right-of-way tariff language; and withdraws Duke's request for Rider ED (OCC Ex. 1 at 5-9). Upon review of the Stipulation, we find that, as a package, it satisfies the second criterion as it benefits ratepayers by avoiding the cost of litigation and is in the public interest.

Duke witness Wathen, Staff witness Willis, and OCC witness Hixon also testify that the Stipulation does not violate any important regulatory principle or practice (Duke Ex. 19B at 6; Staff Ex. 2 at 5; OCC Ex. 1 at 10). The Commission finds that there is no evidence that the Stipulation violates any important regulatory principle or practice and, therefore, the Stipulation meets the third criterion.

Accordingly, we find that the Stipulation entered into by the parties is reasonable and should be adopted.

6. Effective Date and Tariffs in Compliance with Stipulation

As part of its investigation in these matters, Staff reviewed the various rates, charges, and provisions governing terms and conditions of service contained in Duke's proposed tariffs. On April 15, 2013, Duke filed compliance tariffs in these proceedings in accordance with the provisions of the Stipulation. No comments were received regarding Duke's compliance tariffs. Upon review, the Commission finds the proposed revised tariffs filed on April 15, 2013, to be reasonable and in accordance with the Stipulation; therefore, such tariffs should be approved. Consequently, Duke shall file final tariffs reflecting the revisions approved in conformance with the Stipulation in these cases. The new tariffs will become effective on a date not earlier than the date upon which complete final tariff pages are filed with the Commission.

D. Litigated MGP Issue

The remainder of this Order is devoted to the Commission's consideration of Duke's request for recovery of MGP-related costs and our ultimate conclusions on the legal issues. Initially, we review the history of MGPs and Duke's Ohio MGP sites specifically. We then overview the costs Duke is requesting to recover and the parties' responses. Next, we provide a detailed description of the East and West End sites and the investigation and remediation actions, as set forth by Duke and the parties on the record in these cases. Thereafter, we consider the legal arguments regarding: Duke's remediation obligations; the used and useful requirement set forth in R.C. 4909.15(A)(1), as it applies to Duke's proposal; the requirement for recovering costs for rendering public utility service set forth in R.C. 4909.15(A)(4), as it applies to Duke's proposal; and whether the costs sought to be recovered by Duke were prudently incurred, in accordance with R.C. 4909.154. Ultimately, we determine that Duke should be authorized to recover $62.8 million, minus the amount requested for the purchased parcel on the East End site, the

2008 costs for the West End site, and all carrying charges, on a per bill basis, over a five-year amortization period.

1. MGP and the Stipulation

Although the Stipulation settled most of the issues in these proceedings, the stipulating parties agreed to litigate the recoverability of costs incurred by Duke for the environmental investigation and remediation associated with two former MGP sites that were owned and operated by Duke's predecessor companies. These sites are referred to throughout this Order as the East and West End sites and, as explained later in this Order, each site is divided into parcels. There is no provision in the Stipulation for the recovery of the MGP costs in base rates; rather, the Stipulation provides that Duke may establish a rider for recovery of any Commission-approved costs associated with Duke's environmental remediation of the MGPs. Furthermore, the Stipulation establishes how the MGP remediation costs would be allocated among customer classes, in the event recovery is authorized. (Jt. Ex. 1 at 8-9; Duke Ex. 19B at 2; Staff Ex. 1 at 31.)

At the hearing, in regard to the litigated MGP issue, Duke presented the following witnesses: Jessica L. Bednarcik, Manager of Remediation and Decommissioning, Senior Engineer with Duke Energy Business Services, LLC (DEBS); Shawn S. Fiore, Vice President of Haley & Alrich, a certified professional (CP) under Ohio Environmental Protection Agency's (EPA) Voluntary Action Program (VAP); Andrew C. Middleton, President of Corporate Environmental Solutions, LLC; Kevin D. Margolis, partner in the law firm of Benesch, Friedlander, Coplan & Aronoff LLP; William Don Wathen, Director of Rates and Regulatory Strategy for DEBS; and Gary J. Hebbler, General Manager, Gas Field and Systems Operations for Duke. Staff presented Kerry J. Adkins, Public Administrator 2, Accounting and Electricity Division. OCC presented: Kathy L. Hagans, Principle Regulatory Analyst with OCC, adopting the testimony of David J. Effron, a certified public accountant and a utility regulatory consultant; Bruce M. Hayes, Principle Regulatory Analyst with OCC; and James R. Campbell, President of Engineering Management, Inc. Kroger presented Neal Townsend, Director, Energy Strategies, LLC.

2. History of MGPs and Duke's MGP Sites

Duke states that the East and West End sites have waste products and contaminants that are considered hazardous substances, as defined by the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9601, et seq.) (CERCLA). According to Duke, environmental remediation is primarily governed in Ohio by the Ohio EPA under R.C. Chapter 3746 and Ohio Adm.Code 3745-300-01 through 3745-300-14. Duke is cleaning up both MGP sites under the direction of an Ohio EPA CP employed by an environmental consulting firm. (Duke Ex. 21 at 7.) Duke opines it is acting prudently and in a reasonable and responsible manner in conducting

these activities under the VAP rules promulgated under R.C. Chapter 3746, which, in Ohio, is the statutory framework most commonly and reasonably utilized for the remediation of sites with historic contamination. (Duke Ex. 23 at 6; Tr. I at 141.)

Between 1816 and the mid-1960s, MGPs were used for the production of commercial grade gas from the combustion of coal, oil, and other fossil fuels, for use with lighting, heating, and cooking. During this era, three types of gas-making processes generally dominated the manufacture of gas: coal gas; carbureted water gas; and oil gas. (Duke Ex. 20 at 4-5; Staff Ex. 1 at 30.) Residuals resulting from the manufacture of gas included: tar and some form of sulfur removal residual from all three forms of processes; some form of ammonia residual from the coal gas process; and, at some plants, other residuals like light oil or naphthalene. Duke witness Middleton states that, if there was no market or economic use for the residuals produced, the residuals became wastes for disposal by the means customary at the time, which included onsite disposal at the MGP site. (Duke Ex. 20 at 14, 21.)

Duke witness Bednarcik explains that the East and West End sites have been used by Duke and its predecessor companies for gas transmission, production, and other utility services since the mid-1800s. Ms. Bednarcik details the facilities and structures associated with the MGP facilities and gas operations that, through the years, have been located on the East and West End sites. She submits that, while the two sites have undergone changes in operations and equipment over the years, they currently house a number of critical infrastructures that are necessary for the provision of utility services. (Duke Ex. 21A at 2, 7-16, Att. JLB 1-3.) Duke emphasizes that, while the remediation necessitated referencing the sites in geographic delineation used by the Ohio EPA, Duke views both the East and West End sites as single operating facilities used to provide utility services to customers (Duke Ex. 22C at 2).

MGPs were taken out of service for reasons including: the plant had reached the end of its useful life; it was more economical to provide gas from a larger plant; and because the introduction of natural gas made them obsolete. (Duke Ex. 20 at 21.) Even after natural gas became prevalent, some MGPs were used for peak shaving (Staff Ex. 1 at 30). Duke witness Middleton explains that the typical operating, disposal, and dismantling practice during the MGP era at former MGP sites resulted in environmental contamination of soil and groundwater. According to the witness, today's definition of contamination, as opposed to the definition during the MGP era, often requires remediation under state or federal laws. Dr. Middleton notes that, beginning in 1970, the United States (U.S.) Congress enacted a series of laws revolutionizing the approach to environmental regulation. He explains that the application of the site remediation process for MGP sites generally began in the 1980s. (Duke Ex. 20 at 24.)

Dr. Middleton explains that, when an area or site contains chemicals of environmental interest, a site assessment and remediation process will be implemented. Generally, this process entails the following steps: preliminary assessment; investigation and analysis of the data collected, sometimes concluding with a quantitative risk assessment; remedial action development; approval of the proposed remedial action; engineering design; construction contracting; construction; O&M and monitoring; and site closure. (Duke Ex. 20 at 32-35.)

The two MGP sites at issue in these cases are the West End site, which began operations in 1843 and is located on the west side of downtown Cincinnati, and the East End site, which began operations in 1884 and is located four miles east of downtown Cincinnati. Manufactured gas production stopped in 1909 at these sites, after natural gas arrived in Cincinnati, but was reinstated in 1918 at the West End and in 1925 at the East End, because the amount of natural gas delivered to the city could not adequately supply customers. Subsequently, manufactured gas operations ended at the West End plant in 1928 and at the East End plant in 1963. After the plants closed, the above-ground equipment and most of the associated structures were removed. However, several below-ground structures and related residuals remained, including: remnants of gas holders, oil tanks, tar wells or ponds, purifiers, retorts, coal storage bins, and generator houses, as well as associated residuals such as coal tar, scrubber waste, and other chemicals. (Duke Ex. 21 at 5-6; Duke Ex. 20A at 2-3; Staff Ex. 1 at 31; Tr. I at 183.) Duke witness Middleton asserts that the management of the residuals at the East and West End sites appear to have followed the common industry practices at the time of operations (Duke Ex. 20A at 2).

Duke witness Bednarcik is the manager of the remediation and decommissioning team for Duke. She explains that Duke, currently, is working on 48 MGP sites in Indiana, North Carolina, South Carolina, and Florida, in addition to the two MGP sites in Ohio for which Duke believes it has liability. Ms. Bednarcik states that the two sites in Ohio are the largest footprint in Duke's portfolio, and some of the largest MGPs in the country. (Tr. I at 189, 191; Tr. II at 284.)

Ms. Bednarcik argues that it is undeniable that the contamination on these two sites was due to the existence and operations of MGPs used in the provision of gas service to customers (Duke Ex. 21A at 2). Duke witness Middleton explains that the following types of residuals are found at the East and/or West End sites: coal gas, carbureted water gas, and boiler ash at both the East and West End sites; producer gas only at the West End site; and oil gas and propane gas only at the East End site (Duke Ex. 20A at 8-9).

Ms. Bednarcik states that MGP-related obligations at the two sites have been anticipated by Duke since 1988, when Duke began its MGP-related program. However, prior to 2006 and 2009 on the East and West End sites, respectively, these sites were considered lower priorities because they were owned by Duke and had limited access, the

groundwater was not used as a source of drinking water at the sites or by surrounding properties, and contact was limited because the sites were essentially capped by asphalt, concrete, or soil. (Duke Ex. 21A at 17, 19.) According to Duke witness Bednarcik, the environmental investigation and remediation was initiated at the East and West End sites in 2007 and 2010, respectively, due to changing conditions at the sites that could have led to new exposure pathways (Duke Ex. 21 at 8-9).

Ms. Bednarcik explains that, at any MGP or environmentally impacted site, the extent of liability is unknown prior to the performance of environmental investigation activities. According to the witness, once the existence of impacted material was confirmed during the initial subsurface investigation at the East and West End sites in 2007 and 2010, Duke moved prudently to address the impacts, based on the current and future use of the sites, and discussions with the Ohio EPA CPs. (Duke Ex. 21A at 20.)

In 2009, once the environmental investigations began at the East and West End sites, Duke filed an application seeking Commission approval to defer cleanup costs at the sites in *In re Duke Energy Ohio, Inc.*, Case No. 09-712-GA-AAM (*Duke Deferral Case*) (Duke Ex. 21 at 9). By Order issued November 12, 2009, in the *Duke Deferral Case*, the Commission approved Duke's application to modify its accounting procedures to defer the environmental investigation and remediation costs for potential recovery in a future base rate case (Staff Ex. 1 at 30). In its January 7, 2010 Entry on Rehearing in the *Duke Deferral Case*, the Commission stated that it will make the necessary determinations regarding recovery of the deferred costs at such time as Duke files a request for recovery (Staff Ex. 1 at 32).

3. Overview of Duke's MGP Cost Recovery Proposal and Parties' Positions

In its application, Duke requests recovery of: approximately $45.3 million for deferred remediation costs incurred from January 1, 2008 through March 31, 2012; $15 million in projected costs for the period April 1, 2012 through December 31, 2012; and approximately $5 million in carrying charges (Staff Ex. 1 at 35; Duke Ex. 2, Vol. 7, Tab 1 at Sch. C-3.2b). Subsequently, Duke updated the requested MGP recovery amount to include the actual deferred costs incurred from April 1, 2012 through December 31, 2012, which reduced the amount requested in the application by approximately $3 million. According to Duke witness Wathen, Duke now requests authorization to recover $62.8 million in actual MGP costs over a three-year amortization period for the two former MGP sites, which equates to approximately $20.9 million annually. Mr. Wathen explains that the proposed $62.8 million represents the actual costs, including carrying costs, that were incurred by Duke as of December 31, 2012. (Duke Ex. 19C at 3; Staff Ex. 1 at 30-31; Tr. III at 784.)

Duke witness Bednarcik explains that the variables that affect the costs for the clean up of the MGP sites include: the regulatory agency's standards related to source-like material; the number of years the plant operated; the amount of gas produced at the sites; the types of processes used to manufacture the gas; disposal options; current and future site use; whether the utility owns the property; physical barriers or obstructions at, or close to, the site; the depth of the subsurface confining layer; groundwater flow rate and depth; the time when remediation occurred; and the site area. Ms. Bednarcik notes that, since the East and West End sites have a long history of operation, were large gas producers, have on-site barriers, *i.e.*, sensitive underground utilities and a bridge, and have impacts at depths greater than 20 feet, it would be expected that the remediation costs would be higher than a site that only operated for a few years with contamination only a few feet deep. (Duke Ex. 21A at 30-31.) Specifically, on the sites at issue in theses cases, the costs incurred by Duke include:

(a) Environmental consultants that: investigate the soil and groundwater impacts; perform perimeter air monitoring during remedial actions; and provide detailed remedial design, oversight, and construction management, and who subcontract with construction firms to carry out the remedial actions;

(b) Site security;

(c) External analytical laboratories that analyze soil, groundwater, and ambient samples;

(d) An environmental contractor to assist in the management and review of reports on the sites;

(e) An engineering consulting firm to provide vibration monitoring;

(f) Fuel for on-site construction equipment;

(g) Landfill disposal;

(h) Miscellaneous external costs include: electricity, communications support, utility clearing services, street flaggers, personal protective and air monitoring equipment;

(i) Expenses for Duke employees working on the project who are located in North Carolina, *e.g.*, air travel, rental cars, and hotels;

(j) Oversight by Duke of the: analytical laboratory in North Carolina, which perform audits of the analytical laboratories and perform quality control and review of analytical data; and power delivery and gas operations personnel while working in close proximity to sensitive electrical and/or gas utilities;

(k) Duke's internal survey support, as well as project management oversight, salary, and benefits.

(Duke Ex. 2, Vol. 7, Tab 1 at Sch. C-3.2b; Duke Ex. 21 at 19-20; Duke Ex. 21A at 35-40.) Duke asserts that the processes and personnel employed by the Company in implementing its investigation and remediation activities are designed to achieve the desired results in a cost-effective manner (Duke Br. at 35).

Staff states that its determination of the reasonableness of the MGP-related expenses was limited to verification and eligibility of the expenses for recovery from natural gas distribution rates. Staff did not investigate or make any finding or recommendations regarding necessity or scope of the remediation work performed by Duke. (Staff Ex. 1 at 40.) Staff witness Adkins notes that Staff finds it reasonable to accept the opinion of Duke's Ohio EPA CP on these issues, because Staff currently has limited expertise in the area of verifying the adequacy of environmental remediation efforts under applicable legal standards (Staff Ex. 6 at 25). OCC believes that Staff should have addressed the scope and necessity of the remediation activities to determine the prudency of the MGP-related costs (OCC Ex. 14 at 27).

Staff recommends Duke be permitted to recover $6,367,724 in remediation costs through Rider MGP. According to Staff, the record reflects that the majority of the remediation costs are not associated with facilities that are used and useful as required by R.C. 4909.15. In summary, Staff recommends that: for the West End site, none of the expenses incurred be recoverable, because none of the remediation was done in the section of the site used for gas distribution; for the central parcel of the East End site, all of the expenses are recoverable because this parcel is currently used for gas operations; and for the eastern and western parcels of the East End site, since Duke was unable to breakdown the annual costs, only costs for remediating land within a 50-foot buffer zone around the pipelines on the eastern parcel of East End site and costs associated with the northeastern corner of the western parcel of the East End site that falls within a 50-foot setback from an existing vaporizer building should be recoverable. (Staff Ex. 1 at 45-46; Tr. IV at 914; Staff

Br. at 13, 19, 24.) OMA urges the adoption of Staff's recommendations, stating that they are in compliance with R.C. 4909.15 and achieve the balance between investor and consumer interests (OMA Reply Br. at 4).

Kroger asserts that the Commission should reject Duke's proposal to recover the deferred remediation costs; however, if some recovery is permitted, Kroger states that it should be limited to those costs that are just and reasonable and currently used and useful, or a maximum of $6,367,724, as recommended by Staff. Kroger believes Staff's recommendation appropriately limits the recovery to portions of the former MGP sites that are currently used and useful. However, Kroger asserts that an investigation into the prudency of the costs incurred by Duke is necessary and appropriate to determine the proper recovery of remediation expenses and Staff's recommended recovery should be reduced by the amount of costs that were imprudently incurred by Duke. (Kroger Br. at 10-12.)

OCC witness Hayes offers that Duke should not be permitted to recover the MGP-related costs from customers, arguing that the shareholders should be responsible for these costs. OCC argues that the costs associated with the two former MGP sites were previously recovered from customers in past rates. In OCC's view, Duke's shareholders have been aware of the risks associated with the MGP-related remediation concerns and have not addressed these concerns; instead, shareholders have benefited from the Company's rate of return, which Duke's customers have previously and continuously paid. (OCC Ex. 14 at 18, 35.) OCC/OPAE recommend that, if recovery is approved in theses cases, the permitted level of costs be borne equally by Duke's shareholders and its customers, net of any amounts recovered from insurance and third-party liability claims. Along with sharing the responsibility between customers and shareholders, OCC/OPAE believe that, since Duke has not been the sole owner of the MGPs dating back to the 1800's, *e.g.*, Columbia owned Duke's gas operations from 1909 to about 1946, a ratio of Duke's nonownership of the total MGP operational period should be applied to the amount Duke is permitted to recover. Likewise, OCC/OPAE argue that the same ratio approach should be applied to the purchased property that Duke did not own during the period of contamination. In addition, they contend that there should be a ratio developed to exclude costs related to time periods of MGP operations that predated the Commission's regulation of Duke, *i.e.*, prior to 1911. (OCC/OPAE Br. at 4, 92-93).

If Staff's proposal for limiting recovery to the used and useful portions of the property is adopted, OCC recommends Duke only be permitted to recover $1,164,144, which includes carrying costs, for the investigation and remediation. This amount is configured using OCC witness Campbell's estimates of what costs should be permitted as follows: $698,724 for the eastern and western parcels at the East End site; and $465,420 for the property at the East End site that contains sensitive infrastructure. For the West End site, Dr. Campbell asserts that no investigation and remediation costs should be

recoverable. (OCC Ex. 15 at 30-32, 38; OCC/OPAE Br. at 87-88.) OCC/OPAE state that, if Duke is permitted to collect investigation and remediation costs from customers, Duke should not be authorized to collect carrying costs (OCC/OPAE Reply Br. at 71).

Alternatively, if the Commission rejects Staff's proposal and determines that the entire East and West End sites are used and useful, OCC witness Campbell recommends Duke only be permitted to recover $8,027,399, which includes carrying costs, for the investigation and remediation at both the East and West End sites. This amount provides for recovery of $4,372,574 for the East End site and $3,654,825 for the West End site. (OCC Ex. 15 at 38-39; OCC/OPAE Br. at 88-89.)

4. Specific Investigation and Remediation Actions

a. Ohio EPA's Voluntary Action Program (VAP)

Duke witness Margolis states that Duke is acting prudently and in a reasonable and responsible manner in conducting these activities under the Ohio EPA's VAP rules. Mr. Margolis believes the VAP enables a party to have more control over the cleanup process, save time and money, and be able to expeditiously and efficiently conduct a site investigation and remediation. (Duke Ex. 23 at 6, 9; Tr. I at 141.)

The VAP, which is prescribed in R.C. Chapter 3746, is a set of rules, regulations, guidance, and other directives from the Ohio EPA that establish a process by which contaminated sites may be investigated and remediated to Ohio EPA standards (Duke Ex. 23 at 5; Duke Ex. 26 at 2, 5). According to Duke witness Fiore, a licensed professional geologist and an Ohio EPA CP for the remediation of Duke's East End site, the VAP is a voluntary program that was created in 1994 for the purpose of providing remediating parties with a process to investigate and remediate contamination, and then receive either a no further action (NFA) determination from a CP or a covenant not to sue (CNS) from the state of Ohio that no more remediation activities were required. If the remediating party opts to proceed with remedial activities without a CP, the party may not obtain an NFA letter or a CNS from the state. CPs act as agents of the state, within the VAP, and the VAP contains a comprehensive program regulating CPs, regarding items such as education, experience, initial and ongoing training, professional competence, and conduct, as further delineated in Ohio Adm.Code 3745-300-05. CPs are responsible for verifying that properties are investigated and cleaned up to the levels required by the VAP rules. Mr. Fiore explains the Ohio EPA: administers the VAP and Urban Setting Designations (USD); provides user-paid technical assistance to assist remediating parties regarding the VAP; is responsible for monitoring the performance of the CPs; and is required by law to conduct audits of 25 percent of the properties taken through the VAP to ensure that the sites have been properly addressed and that CPs and laboratories have performed work properly. (Duke Ex. 26 at 5-9; Tr. II at 549; Tr. III at 629.)

Mr. Fiore states that the VAP does not require a specific type of remediation and does not address cost analysis (Tr. II at 553-554). Duke witness Fiore states that a feasibility study, which is an exhaustive evaluation of potential remedial alternatives is required under the federal CERCLA, but it is not required under the VAP. However, he points out that the remediation at the East and West End sites is being done pursuant to the VAP and not under CERCLA; therefore, a feasibility study is not required. Duke did, however, evaluate different remedial alternatives to come up with its current plan, *i.e.*, excavation and in-situ solidification (ISS) at the East End site. According to the witness, there are other more expensive alternatives that Duke could have elected, *e.g.*, removal of all the impacted material down to the bedrock and putting in a containment structure. Mr. Fiore emphasizes that the excavation and ISS techniques are presumptive remedies, that remove the source material at the lowest cost for that material. These remedies are so presumptive the Ohio EPA allows landfills to provide discounts if a party is working under the VAP and disposes of the material in a landfill; thus, there is a financial benefit to exaction and disposing of the material under the VAP that is not present under CERCLA. (Tr. III at 640-644.)

According to Mr. Fiore, under the VAP rules, an NFA letter is very desirable because it is confirmation that a site has been appropriately investigated and remediated and that there are no unacceptable risks to current and reasonably anticipated future land users. In addition, an NFA letter is required to obtain liability relief in the form of a CNS. Also, the Ohio EPA, generally, will not issue an enforcement order on properties on which work is being undertaken in conformance with the VAP. (Duke Ex. 26 at 22.) Mr. Fiore states that, not only does the remediating party benefit from receiving an NFA letter and CNS, because it knows that all applicable standards have been met and there are no unacceptable risks to current or reasonably anticipated land users, but, often, third parties to a transactional-type process, such as buying and selling, require the NFA letters and CNS (Tr. III at 590).

b. Overview of the Investigation and Remediation on East and West End Sites

i. General - Remediation Technologies

The environmental work at the East and West End sites has been conducted following the guidelines of the Ohio EPA's VAP, under the direction of a VAP CP. For both the East and West End sites, VAP phase I and phase II assessments were conducted. The VAP phase I property assessments for the two sites determined that there was reason to believe that releases of hazardous substance or petroleum have or may have occurred on, underlying, or are emanating from the sites. The purpose of the VAP phase II property assessment was to determine whether all applicable standards are met or to determine that

remedial activities conducted in accordance with the VAP at the property meet, or will achieve, applicable standards. As a result of the VAP assessments, remediation action plans for portions of the sites, were prepared and, in some instance, implemented. (Duke Ex. 21A at 21-24.)

Ms. Bednarcik explains that the technologies typically considered for MGP remediation include: monitoring natural attenuation, excavation, solidification, in-situ chemical oxidation, thermal heating, containment, engineering controls, and institutional controls. In determining the remedial actions at the impacted sites, Duke worked with environmental consultants and took into consideration factors typically analyzed in a U.S. EPA feasibility study, including: whether remedial action is protective of human health and the environment; its effectiveness, both short-term and long-term; the ability to implement a particular action; and its cost. Duke also took into consideration the current and future use of the site, and the short-term and long-term liability of the site, based on the chosen remedial action. Risk assessments are performed, looking at the current risk to a number of potential groups of people that may be present or exposed to the site. Another factor considered is the state's regulatory cleanup program as it relates to the presence of source material on the site. For example, she notes that, based on discussions with the VAP CP, Duke proceeded with removal and/or in-situ treatment of source material, such as oil-like material (OLM) and/or tar-like material (TLM) in the subsurface, because the VAP requires the removal or treatment of such material to the extent technically feasible. In making the decisions on the recommended approach, Duke involved its in-house environmental professionals, its environmental consultants, including CPs, its legal advisors, and the Company's environmental and operations management. (Duke Ex. 21A at 24-25; Tr. I at 207-209; Duke Br. at 35-36.)

Mr. Fiore opines that a CP would not be able to issue an NFA to the East and West End sites based solely on the remedies of either implementation of engineering controls, such as asphalt or concrete, or on institutional controls, such as land use restrictions, because such controls, would not meet all applicable VAP standards. To meet the VAP criteria at these sites, removal or stabilization of the coal tar is necessary. According to the witness, other, less expensive activities, such as environmental covenants or surface capping, would allow the site to meet some standards, but not all applicable standards and would not be as protective of human health and the environment. (Duke Ex. 26 at 20-21, 23; Tr. III at 645.)

OCC/OPAE assert Duke produced no evidence that institutional and engineering controls would not have been adequate to control human exposure to chemicals of concern (OCC/OPAE Br. at 72-73). OCC witness Campbell asserts that Duke's expenditures were excessive and imprudent for MGP remediation. Dr. Campbell observes Duke's approach to remediation does not appear to have considered cost as a relevant factor. Dr. Campbell notes that, since the two sites were already capped with asphalt, concrete, or soil layers,

which limited human contact with potential residuals, the scope of the remediation should have been limited. He believes it would have been prudent for Duke to have developed remedial action plans incorporating cost-effective, protective measures for the MGP sites, instead of the much more expensive excavation and disposal approach employed by Duke. Dr. Campbell contends the Ohio EPA's VAP rules provide for protective remedial alternatives that are far less costly than those chosen by Duke, include engineering controls and institutional controls. For example, he states that, by applying institutional controls and adopting commonly used risk mitigation measures, soil remediation at the sites could have been accomplished without significant excavation, by construction of soil cover to prevent human exposure to contaminated soil. He explains that, with institutional controls, the point of compliance is from the ground surface to a minimum depth of two feet, and at depths greater than two feet when it is reasonably anticipated that exposure to soil will occur through excavation, grading, or maintenance. He further offers that one less expensive alternative to the approach taken by Duke is to control direct contact exposure to contaminated soils by constructing engineering controls, such as covers or asphalts. Institutional controls can then be established to limit future use of the site or prohibit excavation of the contaminated soil without protective equipment and soil handling requirements. (OCC Ex. 15 at 5, 8-12, 15; OCC/OPAE Br. at 62.)

Duke points out that OCC witness Campbell is not a VAP CP, does not possess any environmental certifications in Ohio, has never been involved in cleaning up an MGP, or any other site, under the VAP, and has no experience with and has not performed any work under the VAP. Thus, while Dr. Campbell offers opinions and other approaches that he believes would be appropriate for remediation on the sites, such approaches would not meet the applicable VAP standards. (Duke Reply Br. at 21-22.)

ii. Groundwater and Free Product

Duke witness Fiore explains that a USD under the VAP allows a remediating party to exclude potable groundwater use as an exposure pathway from further consideration. USD is a recognition by the Ohio EPA that groundwater in certain urbanized areas, serviced by community water systems, is not used for potable purposes and that chemicals from past industrial activities that may be present in such groundwater pose no perceptible risk to consumption by the community, because the groundwater is not being used and will not be used for drinking water purposes in the foreseeable future. Mr. Fiore points out that there are stringent regulatory criteria in Ohio Adm.Code 3745-300-10 for obtaining a USD and, based on these criteria, there would be complications obtaining a USD for the two MGP sites being considered in these cases. (Duke Ex. 26 at 14-17.)

Mr. Fiore notes that there is significant free product, which is defined as a separate liquid hydrocarbon phase that has a measureable thickness of greater than one one-hundredth of a foot, at the East and West End sites, in the form of liquid mobile coal tar.

He states that the VAP assumes that properties with free product exceed applicable standards for unrestricted potable use of groundwater. However, the Ohio EPA generally requires that free product, regardless of source, be removed, or mitigated to the extent practical, prior to issuance of an NFA under the VAP. Mr. Fiore offers that, while NFA letters have been issued to sites with free product, in limited instances in which free product did not impact groundwater and was stable, and where the director of the Ohio EPA granted a variance from the standards, no NFA has been issued to MGP sites in Ohio where free product remains. He states that the free product at Duke's sites will impact groundwater in excess of the standards and it is not stable; therefore, issuance of an NFA letter is impossible. In addition, the mobile free product could migrate from the two sites at issue to the Ohio River which is adjacent to the sites; thus, making the issuance of an NFA letter impossible. Moreover, the free product on the sites has migrated onto the ground surface, causing exposure to land users. For these reasons, Mr. Fiore contends that VAP requirements for migration of free product at the sites includes the removal of the free product. (Duke Ex. 26 at 17-19.) OPAE/OCC state that Duke witness Fiore's discussion of free product is in error and does not rebut Dr. Campbell's position that limited remediation of free product is necessary (OCC/OPAE Br. at 38).

OCC/OPAE state that, for groundwater, there are several considerations for protection under the VAP. First, groundwater can be protected by preventing chemicals of concern from reaching groundwater; however, this exposure pathway can only be protected if groundwater is not already contaminated and Duke determined that the exposure pathway could not be protected as groundwater was already contaminated. The second protection exposure pathway for groundwater under the VAP is soil saturation; however, this protection is not applicable because of the types of contamination at Duke's MGP sites. (OCC/OPAE Br. at 63; OCC. Ex. 15 at 15.)

According to OCC witness Campbell, for critical zone groundwater, such as at these MGP sites, the VAP rules call for use of institutional controls, USDs, and variances, to affect how and where groundwater standards are applied. Dr. Campbell asserts that the points of compliance for groundwater are the property or USD area. He states that remediation is only required to the extent needed to meet applicable Unrestricted Potable Use Standards (UPUS), found in Ohio Adm.Code 3745-300-08, at the boundaries. He believes that groundwater standards may not be exceeded at the property boundaries and would not be exceeded at the appropriate USD boundaries. Therefore, at the MGP sites, remediation beyond engineering and institutional controls is not required to meet UPUS inside those boundaries. He also states that Duke could have applied for a variance suspending or modifying UPUS within the boundaries or beyond the boundaries. He believes Duke's soil excavation below 20 feet and solidification of shallow and deeper soil to address groundwater is not required by the VAP rules; therefore, Duke exceeded reasonable VAP requirements. He states that, while Duke correctly concluded that potable use of groundwater at the MGP sites is not a complete exposure pathway, Duke