

PUCO Decision on Duke Request for MGP Remediation

The Commission authorized Duke to recover, amortized over 5 years, a majority of the \$62.8 million it requested from customers, less the \$2,331,580 for the purchased parcel, less the 2008 costs for the West End Site, and less the approximate \$5 million in carrying costs. The Order states that it was appropriate for Duke to act in a proactive manner in addressing its obligations to remediate under CERCLA and the Ohio EPA rules.

The Commission found that the used and useful standard does not apply to the remediation of MGP sites because Duke is under a statutory mandate to remediate the former MGP sites and therefore did not make a determination as to whether the sites were used and useful in the provision of utility service. The Commission further found that remediation costs are a necessary cost of doing business in response to CERCLA. Duke was authorized to recover costs for the East End Site from January 1, 2008 and for the West End Site from January 1, 2009 (these limitations were determined by the date that Duke became aware of potential liability at the sites).

The Commission found some weight in the intervenors' arguments that Duke's shareholders should be responsible for the remediation costs since the contamination at the sites has been prevalent for many years, and disallowed the recovery of carrying costs. The Commission also denied the recovery of the premium paid over the fair market value for the purchased property because Duke did not present evidence sufficient to prove that the property was, or ever had been, used for the provision of manufactured gas or utility service for Duke customers.

The Commission did find that Duke must use every effort to collect all remediation costs available to it under its insurance policies or from responsible third-parties. These proceeds are to be used to repay the ratepayers and they are to be net of costs used to achieve those proceeds. However, there will not be an interest rate added to any credits that customers might receive.

Commissioners Lesser and Haque issued a dissenting opinion stating that remediation is not a "cost to the utility of rendering public utility service" as being incurred during the test year. They also found that remediation costs are not normal recurring costs and that there is no nexus between remediation expenses and distribution service.

Unfortunately, the determination by the PUCO that the used and useful standard does not apply to the remediation of MGP sites, the Commission's finding that Duke has an "obligation" under CERCLA and the Ohio EPA rules to remediate, the participation of Columbia Gas in the case, and the manner in which the Order is drafted will open the door for all of the other utilities that have MGP sites to request similar cost recovery from customers.