

SUPREME COURT OF OHIO

In re Application of Duke Energy Ohio, Inc., for an Increase in Its
Natural Gas Rates

2026-Ohio-2064 · No. 2024-1505 · Decided June 5, 2026

SUMMARY

The Supreme Court of Ohio affirmed the Public Utilities Commission of Ohio’s order allowing Duke Energy Ohio, Inc. to recover through natural-gas distribution rates costs associated with retiring its propane caverns. The court held that the deferred costs could be treated as costs of rendering public-utility service under R.C. 4909.15(A)(4), rather than being subject to the used-and-useful standard in R.C. 4909.15(A)(1).

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Brunner, J.; Kennedy, C.J.; Fischer, J.; DeWine, J.; Hanni, J.; Hawkins, J.; Shanahan, J.
JURISDICTION	Supreme Court of Ohio
DECIDED	June 5, 2026
DOCKET	2024-1505
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Office of the Ohio Consumers’ Counsel appealed the Public Utilities Commission of Ohio’s order allowing Duke Energy Ohio, Inc. to recover through natural-gas distribution rates deferred costs associated with retiring propane caverns.
STANDARD OF REVIEW	Under R.C. 4903.13, the court reverses, vacates, or modifies a commission order only when the order is unlawful or unreasonable. The appellant bears the burden of demonstrating unlawfulness or unreasonableness. The court independently reviews questions of law, does not reweigh evidence or second-guess factual determinations, and reviews the commission’s implementation of broad statutory criteria for reasonableness.
PRECEDENTIAL VALUE	Published and precedential

PARTIES

Office of the Ohio Consumers' Counsel v. Public Utilities Commission of Ohio

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QUESTIONS PRESENTED

1. Whether the commission unlawfully or unreasonably permitted Duke Energy to recover the deferred retirement-related costs under R.C. 4909.15(A)(4), rather than applying the used-and-useful standard in R.C. 4909.15(A)(1).
2. Whether the commission's alternative finding that the propane caverns were used and useful was against the manifest weight of the evidence.
3. Whether the commission abused its discretion by declining to make the challenged rates subject to refund while the appeal was pending.

HOLDINGS

1. The commission did not err by refusing to apply R.C. 4909.15(A)(1)'s used-and-useful standard because the deferred amount had been removed from Duke Energy's plant account and treated as an expense rather than as a capital investment in rate-base property.
2. The commission reasonably and lawfully determined that the entire deferred amount associated with retiring the propane caverns was a cost to Duke Energy of rendering public-utility service under R.C. 4909.15(A)(4).
3. The court did not decide the OCC's challenge to the commission's alternative used-and-useful finding because that issue was moot, and it rejected the refund argument because the OCC could not show harm or prejudice.

KEY QUOTATIONS

"The valuation of a public utility's used-and-useful property (i.e., rate base) under R.C. 4909.15(A)(1) and its costs of providing service under R.C. 4909.15(A)(4) are two separate components of the rate-setting process." (¶ 21)

"We acknowledged the statement in Consumers' Counsel that R.C. 4909.15(A)(4) was "'designed to take into account the normal, recurring expenses incurred by utilities,'" but we found the statement to be "dictum and not part of the holding." (¶ 41)

"Utility companies will inevitably retire outdated facilities to ensure safe and reliable service." (¶ 42)

FACTUAL BACKGROUND

Duke Energy used propane caverns for more than 60 years as a seasonal source of natural-gas supply and to support system pressures. After constructing and placing a replacement natural-gas pipeline into service, Duke Energy disconnected and retired the caverns and began decommissioning them. The commission approved deferral of the remaining net book value, decommissioning costs, and propane-inventory costs, and later allowed Duke Energy to recover approximately \$29 million in deferred costs through customer rates.

PROCEDURAL HISTORY

Duke Energy obtained commission approval to abandon its propane caverns and defer specified retirement-related costs. In Duke Energy's subsequent distribution base-rate case, the commission permitted recovery of approximately \$29 million in deferred costs under R.C. 4909.15(A)(4), and denied the OCC's rehearing applications. The OCC appealed to the Supreme Court of Ohio, which affirmed the commission's order and dismissed as moot the challenge to the commission's alternative used-and-useful finding.

DISPOSITION

affirmed

CASES CITED

- In re Application of Duke Energy Ohio, Inc., for a Certificate of Environmental Compatibility & Public Need for the C314V Cent. Corridor Pipeline Extension Project, Power Siting Bd. No. 16-253-GA-BTX
- In re Application of Duke Energy Ohio, Inc., 2021-Ohio-3301
- In re Application of Duke Energy Ohio, Inc., for Authority to Change Accounting Methods and to Abandon Certain Propane-Air Facilities, PUCO Nos. 21-1035-GA-AAM and 21-986-GA-ABN, 2022 WL 7431401
- In re Application of Ohio Edison Co., In re Application of Ohio Edison Co., 2019-Ohio-4196, ¶ 4
- Entergy Texas, Inc. v. Pub. Util. Comm. of Texas, 490 S.W.3d 224, 229 n.2 (Tex. Ct. App. 2016)
- Office of Consumer Counsel v. Dept. of Pub. Util. Control, 279 Conn. 584, 594 (2006)
- Constellation NewEnergy, Inc. v. Pub. Util. Comm., 2004-Ohio-6767, ¶ 50
- AT&T Communications of Ohio, Inc. v. Pub. Util. Comm., 51 Ohio St.3d 150, 154 (1990)
- In re Application of Firelands Wind, L.L.C., 2023-Ohio-2555, ¶¶ 12, 14-16
- Ohio Edison Co. v. Pub. Util. Comm., 1997-Ohio-196, ¶ 16
- In re Complaints of Lycourt-Donovan v. Columbia Gas of Ohio, Inc., 2017-Ohio-7566, ¶ 35
- Monongahela Power Co. v. Pub. Util. Comm., 2004-Ohio-6896, ¶ 29
- In re Application of Duke Energy Ohio, Inc., 2017-Ohio-5536, ¶¶ 19, 28-30
- State v. Bertram, 2023-Ohio-1456, ¶ 13
- Office of Consumers' Counsel v. Pub. Util. Comm., 67 Ohio St.2d 153, 161-164 (1981)
- Ohio Water Serv. Co. v. Pub. Util. Comm., 61 Ohio St.2d 308, 310 (1980)
- In re Review of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co., 2018-Ohio-229, ¶ 22
- In re Application of Columbus S. Power Co., 2014-Ohio-462, ¶ 39
- In re Application of Ohio Power Co., 2020-Ohio-143, ¶ 34

- In re Application of Ohio Power Co., 2018-Ohio-4697, ¶ 9
- In re Complaint of Cameron Creek Apts. v. Columbia Gas of Ohio, Inc., 2013-Ohio-3705, ¶ 33
- State ex rel. Elyria Foundry Co. v. Indus. Comm., 1998-Ohio-366, ¶ 8
- In re Application of Alamo Solar I, L.L.C., 2023-Ohio-3778, ¶ 16
- 2025-Ohio-2082

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