

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., for an Adjustment to) Case No. 17-596-GA-RDR
Rider MGP Rates.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Tariff Approval.) Case No. 17-597-GA-ATA

DIRECT TESTIMONY OF

KEITH BONE

ON BEHALF OF

DUKE ENERGY OHIO, INC.

March 31, 2017

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I. INTRODUCTION AND PURPOSE

1 **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2 A. My name is Keith Bone, and my business address is 550 South Tryon Street,
3 Charlotte, North Carolina 28202.

4 **Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5 A. I am employed by Duke Energy Business Services LLC (DEBS) as Director of
6 Insurance & Claims for the Duke Energy Corporation (Duke Energy) enterprise.
7 DEBS provides various administrative and other services to Duke Energy's
8 affiliated companies. I am responsible for directing and managing the worldwide
9 insurance operations, claims, and captive insurance company operations for Duke
10 Energy and its affiliated companies, including Duke Energy Ohio, Inc., formerly
11 known as The Cincinnati Gas & Electric Company, Inc. (Duke Energy Ohio or
12 Company).

13 **Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
14 **PROFESSIONAL EXPERIENCE.**

15 A. I earned a Bachelor of Science degree in Engineering Operations from North
16 Carolina State University in 1979. I joined Duke Power in 1979 as a buyer for
17 Duke Power's hydroelectric facilities and electric transmission department. Since
18 then, I have assumed positions of increasing responsibility. In 1987, I became
19 Manager of Procurement, and in 1995, I was appointed Manager of Acquisitions
20 and Sales in Duke Power's real estate division. In November 2000, I became
21 Director of Claims, and I assumed my current position in July of 2006.

1 **Q. PLEASE SUMMARIZE YOUR RESPONSIBILITIES AS DIRECTOR OF**
2 **INSURANCE & CLAIMS.**

3 A. As Director of Insurance & Claims, I have been involved in all aspects of
4 insurance procurement and management of insurable risks for Duke Energy since
5 2006. In this regard, I have procured numerous types of policies, including
6 comprehensive general liability, umbrella/excess liability, and all-risk property
7 damage and a myriad of other types of policies typically obtained by utility
8 companies.

9 With regard to the two manufactured gas plant (MGP) sites that are at
10 issue in these proceedings, I am one of the people responsible for supervising
11 efforts to obtain insurance recovery for the liabilities at those sites.

12 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC**
13 **UTILITIES COMMISSION OF OHIO?**

14 A. I have not provided oral testimony before the Public Utilities Commission of Ohio
15 (Commission). However, I have submitted written testimony in Case No. 14-
16 0375-GA-RDR, *et al.* Case No. 15-0452-GA-RDR, *et al.* and Case No. 16-0542-
17 GA-RDR.

18 **Q. WHAT IS THE PURPOSE OF YOUR DIRECT TESTIMONY IN THESE**
19 **PROCEEDINGS?**

20 A. My direct testimony will describe the steps that Duke Energy Ohio took in 2016
21 to comply with the Opinion and Order¹ issued November 13, 2013, to actively
22 pursue insurance coverage for its investigation and remediation costs at the two

¹ *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, *et al.*, Opinion and Order, at pg. 67 (November 13, 2013).

1 MGP sites. I have previously testified about the historical insurance policies that
2 are potentially available to provide coverage for Duke Energy Ohio's liability for
3 environmental property damage at and around the former MGP sites known as the
4 East End and West End MGPs located in Cincinnati, Ohio. I have also previously
5 discussed Duke Energy Ohio's efforts to locate and analyze the potentially
6 applicable coverage and some of the challenges that Duke Energy Ohio must
7 overcome to secure coverage. I will discuss the efforts undertaken by Duke
8 Energy Ohio in 2016 to obtain recovery under available insurance coverage.

II. DISCUSSION

9 **Q. PLEASE DISCUSS THE EFFORTS UNDERTAKEN BY DUKE ENERGY**
10 **OHIO IN 2016 TO OBTAIN INSURANCE RECOVERY FOR THESE**
11 **SITES.**

12 **A.** Duke Energy Ohio took the following steps during 2016 to obtain insurance
13 recovery for the losses at these sites.

14 First, through the middle of July 2016, Duke Energy Ohio continued its
15 ongoing efforts to reach settlement with the insurers. In this regard, Duke Energy
16 Ohio:

- 17 ▪ responded to information requests from the insurers up through
18 July 2016;
- 19 ▪ participated with the insurers in three in-person mediation sessions
20 (on February 5, 2016, May 31, 2016 and July 14, 2016) and
21 multiple telephonic settlement negotiations through, and with the

1 help of, a mediator, Timothy Gallagher, whom Duke Energy Ohio
2 and the insurers retained in 2015; and

- 3 ■ continued individual settlement negotiations with one insurer that
4 had made a reasonable starting settlement offer in 2015 in response
5 to Duke Energy Ohio's 2014 individual settlement demands to
6 each insurer.

7 Unfortunately, by July 2016, it was apparent that most of the insurers
8 would not offer an acceptable amount to settle their respective liabilities regarding
9 the two MGP sites. Consequently, on July 18, 2016, Duke Energy Ohio filed a
10 lawsuit in the Common Pleas Court of Hamilton County, Ohio against sixteen of
11 its historical insurers or insurer groups, alleging breach of contract and seeking a
12 declaration that those insurers are liable for Duke Energy Ohio's investigation and
13 remediation costs (subject to the attachment points and limits of each of the
14 insurers' respective policies) incurred at the two MGP sites. Upon initiating the
15 cover action, Duke Energy Ohio has engaged in efforts to prosecute its formal
16 claims. The court scheduled the trial of this matter for July 16, 2018.

17 **Q. HAS THE COMPANY ENTERED INTO ANY OTHER AGREEMENTS**
18 **RELATIVE TO POSSIBLE INSURANCE COVERAGE CLAIMS?**

19 A. Duke Energy Ohio was an insured, or policyholder, under policies issued by two
20 English insurance companies that had previously entered into the English
21 equivalent of an insolvency proceeding, known as a "Scheme of Administration".
22 These two insurers are not named defendants in the Ohio insurance coverage
23 action that I also discuss in my testimony. In the context of the controlling legal

1 processes for these foreign insurers, a date for policyholder coverage claims to be
2 submitted or be forever barred was established. That bar date was September 12,
3 2016. So as not to waive any and all coverage claims Duke Energy Ohio may
4 have had with these two insurers, Duke Energy Ohio submitted a claim to, and
5 ultimately reached a confidential agreement with, the Scheme Administrator for
6 the insurers in exchange for a release of all present and future, known and
7 unknown, coverage obligations under the two insurers' policies.

III. CONCLUSION

8 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

9 **A. Yes.**

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Summary: Testimony Direct Testimony of Keith Bone on behalf of Duke Energy Ohio, Inc. electronically filed by Mrs. Adele M. Frisch on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B and Watts, Elizabeth H