

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc., for an Adjustment to Rider) Case No. 14-375-GA-RDR
MGP Rates.)

In the Matter of the Application of Duke) Case No. 14-376-GA-RDR
Energy Ohio, Inc., for Tariff Approval.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for an Adjustment to Rider) Case No. 15-452-GA-RDR
MGP Rates.)

In the Matter of the Application of Duke) Case No.15-453-GA-RDR
Energy Ohio, Inc., for Tariff Approval.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for an Adjustment to Rider) Case No. 16-542-GA-RDR
MGP Rates.)

In the Matter of the Application of Duke) Case No. 16-543-GA-RDR
Energy Ohio, Inc., for Tariff Approval.)

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

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

In the Matter of the Application of Duke)
Energy Ohio, Inc., for an Adjustment to Rider) Case No.18-283-GA-RDR
MGP Rates.)

In the Matter of the Application of Duke) Case No.18-284-GA-RDR
Energy Ohio, Inc., for Tariff Approval.)

**MOTION OF DUKE ENERGY OHIO, INC.,
TO CONTINUE RIDER MGP RECOVERY OF COSTS INCURRED SINCE 2014
AND MEMORANDUM IN SUPPORT**

Comes now Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) and hereby respectfully moves the Public Utilities Commission of Ohio (Commission) for an order permitting the Company to begin recovery of remediation costs that it has incurred since January 1, 2013, and has included in annual adjustment filings for the Company's Manufactured Gas Plant Rider (Rider MGP) that to date, remain pending before the Commission.

In its Opinion and Order dated November 13, 2013, in Case No. 12-1685-GA-AIR, *et al.*, (Gas Base Rate Case) the Commission authorized Duke Energy Ohio to begin recovery of approximately \$55.5 million in investigation and remediation expenses related to operation of its two former manufactured gas plant (MGP) incurred through December 31, 2012 (Gas Base Rate Case Order).¹ Additionally, the Commission's Gas Base Rate Case Order directed Duke Energy Ohio to make subsequent applications for remediation expense recovery beginning March 31, 2014, and each subsequent year on or before March 31st thereafter, by updating its Rider MGP based upon the unrecovered balance, excluding any carrying charges, as of the prior December 31st.²

In accordance with the Commission's Gas Base Rate Case Order, the Company has made annual filings to update its Rider MGP each March since 2014. As of the date of this Motion in these consolidated cases, the Company has pending before the Commission five separate Rider MGP filings, representing a total of approximately \$26 million in

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 (November 13, 2013).

² *Id.* at 74.

incremental remediation expenses incurred for the periods ending December 31, of calendar years; 2013, 2014, 2015, 2016, and 2017 (Review Periods).³

On September 28, 2018, the Staff of the Commission issued a report on the Company's Rider MGP annual filings for the Review Periods (Staff Report).⁴ This Staff Report represents the first action taken toward resolution of the annual MGP rider filings since the Company made its respective applications. The Staff Report recommends recovery of a substantial portion of the Company's MGP remediation expense incurred during the Review Periods, notwithstanding issues on which Staff and the Company do not agree.⁵ Recently, on March 29, 2019, Duke Energy Ohio submitted its next annual application for recovery of approximately \$19.8 million in additional MGP remediation expenses incurred for the period ending December 31, 2018.⁶ To date, the Commission has not ruled upon *any* of the Company's applications.

The Commission's Gas Base Rate Case Order establishing the initial level of Rider MGP equated to Duke Energy Ohio recovering approximately \$1 million per month in remediation expense through its Rider MGP. This rider has remained unadjusted since it went into effect in early 2014⁷. Now, absent further Commission action, Duke Energy Ohio

³ See e.g. *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates* Case No. Case No. 14-0375-GA-RDR, et al., Application (March 31, 2014); *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates* Case No. 15-0452-GA-RDR, et al., Application (March 31, 2015); *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates* Case No. 16-0542-GA-RDR, et al., Application (March 31, 2016); *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates* Case No.17-596-GA-RDR, et al., Application (March 31, 2017); and *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates* Case No. 18-283-GA-RDR Application (March 28, 2018)

⁴ See Staff Report, September 28, 2018.

⁵ See Comments of Duke Energy Ohio, Inc. October 30, 2018. Although Duke Energy Ohio disputes the Staff Report's recommendation regarding disallowing recovery of some MGP remediation costs that Staff incorrectly believes are outside the boundaries of the original MGP sites, nonetheless, Staff recommends recovery of a substantial portion of those MGP costs incurred through December 2017.

⁶ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates* Case No.19-174-GA-RDR Application (March 29, 2019).

⁷ Except for a brief period when the rider was stayed by the Ohio Supreme court while the case under appeal.

will fully recover \$55.5 million in investigation and remediation expense incurred through December 31, 2012, as approved in the Gas Base Rate Case Order via Rider MGP by early third quarter of 2019. Absent further action by the Commission, the Company's Rider MGP will thus be reset to \$0 until the Commission approves recovery of the remediation expenses incurred over the last six years.

There is no dispute that as part of the Commission's Gas Base Rate Case Order, the Commission created a process and mechanism to enable Duke Energy Ohio to recover its prudently incurred MGP remediation expense on an annual basis.⁸ There is also no dispute that Duke Energy Ohio has indeed incurred such remediation costs and has made annual filings detailing such costs in accordance with the Commission's Gas Base Rate Case Order. It is also undeniable that the Commission has not yet issued an order on any of the Company's annual applications despite the Supreme Court of Ohio having upheld the Commission's decision regarding recoverability of MGP remediation.⁹ And it cannot be refuted that the Commission's delay, coupled with the inability to accrue carrying costs on the deferred balance of the remediation expense, has already resulted in financial harm to Duke Energy Ohio.¹⁰ While the Staff Report recommendation regarding disallowance of some amount of remediation expense is in dispute, it is indisputable that most of remediation expense incurred through December 31, 2017, if not all, of such expense incurred during said period, is indeed recoverable.¹¹

⁸ *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 72 (November 13, 2013).

⁹ *In re Application of Duke Energy Ohio, Inc.*, Slip Opinion No. 2017-Ohio-5536, p. 14.

¹⁰ *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 71 (November 13, 2013).

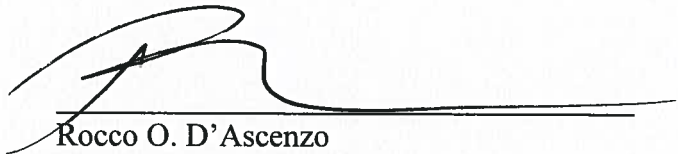
¹¹ See Staff Report, September 28, 2018 at p. 7, recommending recovery of approximately \$14,174,112 of the total \$26,042,012 of remediation expense.

Rider MGP was approved to enable the timely recovery of prudently incurred remediation expenses. The rider mechanism benefits customers in that it mitigates against the volatility in rates that would otherwise result from base rate adjustments. Rider MGP further yields a fair and appropriate benefit to the Company by mitigating against the financial impact associated with our inability to recover carrying costs on the undisputed legal obligation to remediate MGP sites that were previously confirmed to be a cost of providing utility service. Maintaining Rider MGP at current levels is equitable insofar as it prevents further harm to the Company and avoids customer confusion by having Rider MGP switch off and on again and facing potentially larger rate adjustments.

Additionally, allowing the Company to continue Rider MGP at the current levels will help mitigate the ongoing loss in the time value of money due to the Commission disallowing recovery of carrying costs on the deferred MGP costs. Continued delay of recovery harms the Company and its shareholders by eroding the ability to fully recover its costs as there is a cost to the shareholder of financing these remediation expenses in the form of carrying charges, that are not being recovered from customers.

Duke Energy Ohio respectfully requests that the Commission allow the Company to continue its Rider MGP at existing levels, until the Commission issues its decision on the pending six years of annual Rider MGP applications or until the Company recovers the portion of the costs included in its rider applications for calendar years 2013-2017 that are recommended for recovery by the Commission Staff in its Staff Report dated September 28, 2018. This will allow sufficient time for the Commission, the Company, Staff, and any other interested party, to address the disputed items in the Staff Report.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

I. Background:

Duke Energy Ohio is an Ohio corporation engaged in the business of providing natural gas service to customers in southwest Ohio and, as such, is a public utility as defined by R.C. 4905.02 and R.C. 4905.03. On November 12, 2009, the Public Utilities Commission of Ohio (Commission) authorized Duke Energy Ohio to defer environmental investigation and remediation costs related to two former manufactured gas plant (MGP) sites in Ohio, referred to as the East End site and West End site¹², for recovery in a future base rate proceeding.¹³ In 2012, Duke Energy Ohio submitted its Gas Base Rate Case application seeking an increase in base rates for providing natural gas service to customers in southwest Ohio, including to recover the deferred remediation expenses as of the date certain of the case, March 31, 2012.¹⁴ The Gas Base Rate Case was settled by a stipulation that resolved all of the rate-related elements of the Company's application with one exception. The parties did not reach agreement on Duke Energy Ohio's ability to recover MGP remediation expenses, but agreed to the establishment of a separate rider, Rider MGP, for the recovery of any Commission-approved costs associated with investigation and remediation related to former MGP operations.¹⁵

¹² The designation of East End site and West End site are used solely for the purpose of identification. The legal obligation to remediate MGP contamination at either site is independent of whether the land at the sites is owned by Duke Energy Ohio or whether the area being remediated is associated with used and useful property.

¹³ *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 09-712-GA-AAM, Finding and Order, at p. 4 (November 12, 2009).

¹⁴ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1865-GA-AIR, *et al.*, Application (July 9, 2012).

¹⁵ *Id.* Stipulation and Recommendation, at p. 8 (April 2, 2013).

An evidentiary hearing was held on that one remaining issue. The Commission ultimately and appropriately approved the Company's recovery of the MGP remediation costs incurred through December 31, 2012, via Rider MGP finding that "it is undisputed on the record that [Duke Energy Ohio] has the societal obligation to clean up these [MGP] sites for the safety and prosperity of the communities in those areas therefore, these costs are a current cost of doing business."¹⁶ Through this Order, the Commission also authorized Duke Energy Ohio to continue deferring environmental investigation and remediation costs incurred after December 31, 2012, and further directed the Company to file annual updates to Rider MGP through separate applications to recover costs incurred during the previous year.¹⁷

Several parties sought rehearing of the Commission's decision and eventually appealed the issue to the Ohio Supreme Court. Ultimately, the Ohio Supreme Court upheld the Commission's decision allowing for recovery of remediation costs as a present cost of providing utility service.¹⁸ The Court acknowledged, "[a]s the current owner or operator of facilities from which there is a release or threatened release of hazardous material, [Duke Energy Ohio] is liable for remediation of the MGP sites under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)."¹⁹ The Company's liability is strict²⁰ and is not limited to only the contamination on its owned property or to property that is being used to provide utility service. Furthermore, the Court confirmed that such legally mandated costs incurred in providing service are recoverable.²¹

¹⁶ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No.12-1865-GA-AIR, *et al.*, Opinion and Order p. 59, (November 13, 2013).

¹⁷ *Id.*, p. 71-72.

¹⁸ *In re Application of Duke Energy Ohio, Inc.*, Slip Opinion No. 2017-Ohio-5536, p. 10-14.

¹⁹ *Id.*, p. 3; *citing* 42 U.S.C. 9601, *et seq.*

²⁰ *Id.*

²¹ *Id.* at 9.

Importantly, the court confirmed that, because Duke Energy Ohio is under a statutory mandate to remediate the former MGP residuals from the East End and West End sites, R.C. 4909.15(A)(1) and the used and useful standard is not applicable to its review and consideration of whether the Company may recover the costs associated with the investigation and remediation of the MGP sites.²² In approving Duke Energy Ohio's recovery of the MGP remediation costs, the Commission made clear that there was no nexus between whether the property being remediated is or was utility-owned property or considered to be in service finding that "it is not necessary for the Commission to determine if the MGP sites would be considered used and useful under R.C. 4909.15."²³ The Ohio Supreme Court upheld this Commission's finding stating that "...under Ohio's ratemaking statutes, operating expenses are recoverable if they were incurred in rendering service during the test period and are prudent. In short, because Duke is seeking to recover costs and not its capital investment in the MGP property and facilities, the commission correctly refused to apply the used-and-useful standard under R.C. 4909.15(A)(1)."²⁴

Pursuant to the Commission's Gas Base Rate Case Order, beginning with the Review Period ending December 31, 2013, and in each subsequent year through December 31, 2018, Duke Energy Ohio has submitted annual filings to adjust its Rider MGP to recover MGP investigation and remediation expenses for the prior calendar year. Because the Commission denied Duke Energy Ohio the ability to accrue carrying costs on these

²² *Id.* p. 7-9.

²³ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No.12-1865-GA-AIR, *et al.*, Opinion and Order p. 54, (November 13, 2013).

²⁴ *In re Application of Duke Energy Ohio, Inc.*, Slip Opinion No. 2017-Ohio-5536, p. 8; citing R.C. 4909.15(A)(4), 4909.151, and 4904.154.

deferrals, the delay in addressing these applications has itself, harmed the Company due to the loss in the time value of money.

II. Argument:

The recoverability of MGP investigation and remediation costs has been upheld by the Ohio Supreme Court.²⁵ There is no dispute that Duke Energy Ohio is legally permitted to recover its prudently incurred remediation costs and both the Commission and the Court made abundantly clear that there is no requirement that the remediation be related to used and useful utility property. Continuation of Rider MGP at its existing level is supportable under principles of equity and both public policy and Commission precedent. The Commission's Gas Base Rate Case Order authorized initial recovery of approximately \$55.5 million in investigation and remediation expense through Rider MGP, representing investigation and remediation costs incurred through December 31, 2012. The Commission's Gas Base Rate Case Order further created a mechanism to enable ongoing recovery of prudently incurred investigation and remediation costs. The approved rate design allocations equated to the Company recovering approximately \$1 million per month from customers through the rider. Investigation and remediation work continues today.

As evidenced by the caption to these consolidated proceedings, Duke Energy Ohio has followed the Commission's directive and has filed annual applications to adjust its Rider MGP for remediation costs incurred each year.²⁶ On June 28, 2018, the Commission

²⁵ Id.

²⁶ See e.g. *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates* Case No. 14-375-GA-RDR, *et al.*, Application (March 31 2014); *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates* Case No. 15-452-GA-RDR, *et al.*, Application (March 31, 2015); *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates* Case No. 16-542-GA-RDR, *et al.*, Application (March 31, 2016); *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates* Case No. 17-596-GA-RDR, *et al.*, Application (March 31, 2017); and *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates* Case No. 18-283-GA-RDR, *et al.*, Application (March 28 2018).

consolidated the Company's annual Rider MGP applications for the Review Periods of 2013 through 2017 and issued a partial procedural schedule that provided opportunities for comments and reply comments.²⁷ Between the January 1, 2013, and December 31, 2017, Duke Energy Ohio has incurred approximately \$26 million in incremental MGP remediation expenses. Recently, on March 29, 2019, Duke Energy Ohio filed its application in Case No. 19-174-GA-UNC, *et al.*, requesting approval for collection of approximately \$19.8 million in MGP remediation expenses incurred for the twelve-month period ending December 31, 2018.²⁸ As a result, Duke Energy Ohio presently has approximately \$46 million in additional remediation costs pending Commission review. And, given that Duke Energy Ohio's current deferral authority for MGP remediation expenses lasts through December 31, 2019, the Company anticipates that it will file another annual adjustment to Rider MGP by March 31, 2020.

On September 28, 2018, Staff of the Commission issued its Staff Report covering the Review Periods through December 31, 2017.²⁹ In its Staff Report, albeit partial, Staff nonetheless recommends the Company be permitted to recover substantial additional MGP remediation expenses (approx. \$14.2 million). While intervening parties, as well as the Company, challenged Staff Report conclusions regarding the amount the Company should be able to recovery through Rider MGP, it is nonetheless indisputable that:

- 1) the Company has, in fact, incurred annual incremental investigation and remediation costs since December 31, 2012, associated with its legal obligation to remediate contamination from the former MGP operations;

²⁷ *Entry*, June 28, 2018.

²⁸ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates* Case No. 19-174-GA-UNC, *et al.*, Application (March 29, 2019)

²⁹ *See* Staff Report, September 28, 2018.

- 2) the Commission's Gas Base Rate Case Order expressly authorized ongoing deferral authority and created a mechanism for recovery of prudently incurred annual investigation and remediation costs related to MGP;
- 3) recoverability of such prudently incurred MGP investigation and remediation costs is not subject to a finding that impacted property is used and useful; and
- 4) recoverability of investigation and remediation costs has been upheld by the Ohio Supreme Court as a cost of providing utility service.

Yet, to date, the Commission has not ruled upon any of the Company's annual Rider MGP update filings, the earliest of which was filed more than five years ago. Moreover, the Commission has not determined that an evidentiary hearing is necessary for it to rule on the Company's annual Rider MGP update filings, let alone established a procedural schedule for such a hearing to resolve these long dormant proceedings. As such, a clear path to resolution does not currently exist. Although there may be a disagreement regarding the total amount of remediation costs that are recoverable in the Review Periods, it cannot be denied that some amount of ongoing investigation and remediation cost recovery is recoverable. Even the Staff of the Commission recommends recovery of the majority of the additional investigation and remediation expenses incurred from January 1, 2013, through December 31, 2017.

Duke Energy Ohio estimates that Rider MGP will fully recover the previously authorized MGP investigation and remediation expense by early third quarter 2019. Unless the Commission issues an order in the Company's now consolidated Rider MGP filings

before that time, Rider MGP will be reset to \$0 until the Commission rules on these six outstanding applications.

Consistent with the intent of the creation of Rider MGP and in the interests of equity and mitigating further financial harm to the Company, not to mention avoiding the likely customer confusion that will occur with Rider MGP essentially “turning off and back on,” Duke Energy Ohio requests that the Commission authorize Rider MGP to continue at its existing rates until the Commission issues its decision on these annual rider filings. Maintaining Rider MGP at its current rates, provides benefits to both customers and the Company.

The intent of a rate recovery mechanism like Rider MGP, is to allow the utility the timely recovery of costs and to separately account for remediation expense from natural gas base rates. The Commission itself directed the Company to make annual Rider MGP filings. Although there may have been some question regarding the recoverability of MGP remediation costs during the pendency of the appeal of the Commission’s Gas Base Rate Case Order at the Ohio Supreme Court, that ambiguity was resolved in the Commission’s (and the Company’s) favor on June 29, 2017. Despite the Court’s affirmation nearly two years ago, the nearly six years of dormancy for the Company’s annual rider filings has resulted in significant regulatory lag and significant loss in the time value of money for the Company. Resetting Rider MGP to zero will only serve to exacerbate the financial impact to Duke Energy Ohio by the delays experienced in receiving any Commission approval of Rider MGP costs since its Gas Base Rate Case Order.

Continuing Rider MGP at its current levels is consistent with the intent of Rider MGP as established in the Gas Base Rate Case Order. Moreover, allowing Rider MGP to

continue at its existing level will mitigate further financial harm that the Company has experienced due to the inability to accrue carrying costs on its MGP deferral balance. Although the Commission initially authorized the Company to accrue carrying costs on the deferral in its Entry in Case No. 09-712-GA-AAM³⁰, the Commission's reversed that decision in the Gas Base Rate Case Order denying the Company recovery of all carrying costs it had accrued on the deferral through December 31, 2012. This decision resulted in an immediate charge of over \$5 million to Duke Energy Ohio related to the carrying costs that had already accrued through December 31, 2012. And because the Company was not permitted to continue accruing carrying costs on the ongoing annual MGP investigation and remediation deferral balance, coupled with the nearly six-year delay in receiving any decision on MGP recovery for the Review Periods, the Company has been harmed by an additional \$4.7 million in lost time-value of money³¹ through December 31, 2018.

Resetting Rider MGP to zero, only to have to reestablish the charge to collect additional investigation and remediation dollars will not only harm the Company, but will also negatively impact customers. Such a reset and re-establishment would likely cause significant customer confusion. Moreover, depending upon the length of time the Commission takes to issue an order in these underlying annual MGP cases, going from a "zero" charge to an increase that includes six or more years' worth of MGP investigation and remediation expense could result in a material rate adjustment and volatility for customers who are not prepared for such rate volatility. Keeping the rider at the existing

³⁰ The Company's application in Case No. 09-712-GA-AAM, mirrored a similar application by Columbia Gas of Ohio, in Case No. 08-606-GA-AAM. In both cases, the utilities sought and received similar deferral authority for MGP investigation and remediation costs, including the authority to accrue carrying costs.

³¹ Assuming the deferred balance of costs incurred from January 1, 2013, through December 31, 2018, accrued carrying charges at the Company's long-term debt rate approved in Case No. 12-1685-GA-AIR, *et al.*

level, that customers have grown accustomed to paying for the last six years, will avoid any such confusion and will streamline rate impacts for customers.

In addition, allowing the Rider MGP to continue at its current level is consistent with the Commission's principle of gradualism. Keeping Rider MGP at the existing level mitigates the rate volatility that would occur by resetting Rider MGP to zero only to have it revert to a higher charge at a later date once the Commission issues its decision. Also, allowing the rate to continue at current levels will mitigate any rate increases that could occur depending upon when the Commission issues its decision on the annual Rider MGP cases. For example, if the Commission's order in the underlying Review Periods and the recently filed adjustment for costs for the twelve-month period ending December 31, 2018, and future adjustments for periods thereafter, results in approval of a new Rider MGP rate higher than the current rate, allowing Rider MGP to continue will serve to reduce the total of new incremental investigation and remediation expense to be recovered. Similarly, if the Commission were to approve something less than 100 percent of the Company's MGP remediation costs included in its rider, the monthly Rider MGP charge could be lower because customers would have continued paying at the current rates than had Rider MGP not continued. In short, customers will not be harmed as any over or under collections that could occur could easily be corrected through the Commission's decisions in the subsequent Rider MGP annual review cases.

Recent Commission precedent supports continuation of Rider MGP at existing levels until the Commission rules upon the underlying annual adjustment cases. The Commission has recently authorized continuation of discrete rider mechanisms in similar situations where ceasing the rider would interfere with the utility's operations or result in

financial harm to the utility. In its May 30, 2018, Entry in Case No. 14-841-EL-SSO, *et al.*, the Commission granted an extension of Duke Energy Ohio's Electric Security Plan (ESP) including its Distribution Capital Investment Rider (Rider DCI) that was set to expire on May 31, 2018, when the Commission had not yet approved the Company's next ESP pending in Case No. 17-1263-EL-SSO, *et al.* The Commission allowed the ESP to continue so to maintain essential electric service and proactive investment in the electric grid.³² The Commission permitted Duke Energy Ohio, among other things, to continue its Rider DCI subject to the existing caps for an additional three months. Then, by Entry dated July 28, 2018, having not yet issued an order approving a new ESP for Duke Energy Ohio, and facing another potential expiration for Rider DCI, the Commission authorized continuation of the rider until the Commission approves a new ESP for Duke Energy Ohio and allowed the revenue caps to continue, albeit at a slightly reduced level.³³

Rider MGP, is essential for Duke Energy Ohio to continue to providing utility service, namely investigation and remediation of MGP contamination in compliance with federal and state law.³⁴ The Company has experienced delays in receiving recovery of its investigation and remediation expenditures while the annual Rider MGP filings have been pending without resolution. Continued cost recovery of these costs is important for the Company to maintain adequate cash flows for other essential utility services. Allowing Rider MGP to persist at its existing levels will assure the Company some measure of

³² *In the Matter of the Application of Duke Energy Ohio, Inc., for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan, Accounting Modifications, and Tariffs for Generation Service*, Case No. 14-841-EL-SSO, *et al.*, Entry at p. 8 (May 31, 2018).

³³ *Id.* Second Entry on Rehearing at 8.

³⁴ *In re Application of Duke Energy Ohio, Inc.*, Slip Opinion No. 2017-Ohio-5536, p. 3; *See also, In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No.12-1865-GA-AIR, *et al.*, Opinion and Order p. 46-47, (November 13, 2013).

continued recovery of these necessary costs consistent with what has been agreed upon in settlement, ordered by the Commission previously, and upheld by the Ohio Supreme Court.

III. Conclusion

For the foregoing reasons, the Commission should allow Rider MGP to continue at its current level until it issues a decision in the Company's annual Rider MGP filings. Allowing Rider MGP to continue at existing levels until the Commission has the opportunity to review and issue a decision in the Company's annual rider filings for the calendar years 2013 through 2018 will ensure that neither customers nor the Company will be harmed and allows interested parties to have the opportunity to address their concerns in the Staff Report.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion was served via electronic mail or ordinary mail on the following parties this 10th day of May 2019.



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Summary: Motion Motion of Duke Energy Ohio, Inc., to Continue Rider MGP Recovery of Costs Incurred Since 2014 and Memorandum in Support electronically filed by Mrs. Debbie L Gates on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco O. Mr. and Watts, Elizabeth H and Kingery, Jeanne W