

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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| In the Matter of the Application of Duke |) | |
| Energy Ohio, Inc., for Authority to Defer |) | Case No. 19-1085-GA-AAM |
| Environmental Investigation and |) | |
| Remediation Costs. |) | |

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| In the Matter of the Application of Duke |) | Case No. 19-1086-GA-UNC |
| Energy Ohio, Inc., for Tariff Approval. |) | |

**APPLICATION OF DUKE ENERGY OHIO, INC.,
FOR AUTHORITY TO CONTINUE DEFERRAL OF ENVIRONMENTAL
INVESTIGATION AND REMEDIATION COSTS AND FOR APPROVAL TO AMEND
RIDER MGP**

I. Introduction and History

1. Duke Energy Ohio, Inc., (Duke Energy Ohio or the Company) is an Ohio corporation engaged in the business of providing natural gas service to approximately 431,000 customers in southwest Ohio and, as such, is a public utility as defined by R.C. 4905.02 and R.C. 4905.03.

2. Pursuant to R.C. 4905.22, Duke Energy Ohio has an obligation to furnish “necessary and adequate services and facilities” to its natural gas customers in southwest Ohio. In addition, the Company must adhere to the Public Utility Commission of Ohio’s (Commission) Mission, which mandates “the availability of adequate, safe and reliable utility service to *all* consumers.”¹

¹<http://www.puco.ohio.gov/puco/index.cfm/how-the-puco-works-for-you/mission-and-commitments/#sthash.a85ToSkO.dpbs>. Emphasis added.

3. On November 12, 2009, the Commission authorized Duke Energy Ohio to defer environmental investigation and remediation costs related to the operation of two former manufactured gas plants (MGP) in Ohio, referred to as the East End and West End sites, for potential recovery in a future base rate proceeding.² The East End site was segregated into different areas, referred to as “parcels,” in order to facilitate an efficient remediation process. For ease of identification, these various areas that required investigation and remediation at the East End site were designated as the East Parcel, Middle Parcel, West Parcel, and the Area West of the West Parcel.³

4. On November 13, 2013, in Case No. 12-1685-GA-AIR, *et al.*, the Commission authorized the recovery of environmental investigation and remediation costs that had been incurred by the Company between 2008 and 2012, and further establishing the mechanism pursuant to which subsequently incurred investigation and remediation costs would be recovered (Order).⁴ The Commission’s Order made it very clear 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.”⁵ Through that Order, the Commission authorized Duke Energy Ohio to recover prudently incurred costs and to continue deferring environmental investigation and remediation costs.⁶

² *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, pg. 4 (November 12, 2009).

³ The “parcel” designation is not intended to refer to actual property boundaries, but rather were assigned based upon a methodic plan for prioritizing and performing remediation investigation in areas at the East End site either known or suspected of MGP contamination impacts.

⁴ *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 pp. 70-74 (November 13, 2013) (hereinafter the Commission’s Order).

⁵ Commission’s Order, pg. 59 (November 13, 2013).

⁶ *Id.* pp. 78-79

5. On June 29, 2017, the Supreme Court of Ohio affirmed the Commission's Order determining remediation costs to be service-related and recoverable through rates under R.C. 4909.15(A)(4).⁷ 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 is liable for remediation of the MGP sites under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)."⁸ The Company's liability is strict⁹ and is not limited to only the contamination on its owned property. Furthermore, the Court confirmed that such legally mandated costs incurred in providing service are recoverable.¹⁰

6. In approving the Company's recovery of reasonable and prudent costs incurred in the provision of public utility service, the Commission's Order initially established dates by which such deferral authority would end based upon a Commission-established ten-year period from the date that Duke Energy Ohio "became aware of the changing of the conditions" at the East End and West End sites, which it determined to be 2006 and 2009, respectively.¹¹ Thus, the Commission initially limited the period for which the Company could continue to defer and recover remediation costs incurred to December 31, 2016, for the East End site and December 31, 2019, for the West End site.¹² However, recognizing that exigent circumstances could render such ten-year period unreasonable, the Commission expressly provided Duke Energy Ohio with the right to seek an extension of the deferral and the related recovery period.¹³

⁷ *In re Application of Duke Energy Ohio, Inc.*, 150 Ohio St. 3d 437, pp. 441-443 (June 29, 2017).

⁸ *Id.*, pg. 438; citing 42 U.S.C. 9601, *et seq.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Commission Order, pg. 72 (November 13, 2013).

¹² *Id.* pg. 74.

¹³ *Id.* pg. 72 *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.*, Entry on Rehearing, pg. 4 (January 8, 2014).

7. On May 16, 2016, Duke Energy Ohio filed its application in Case No. 16-1106-GA-AAM, *et al.*, requesting an extension of its deferral authority for expenses incurred in investigating and remediating the East End MGP site (Extension Case).¹⁴ The Company explained that such an extension was necessary due to exigent circumstances that were beyond the Company's control.¹⁵ These circumstances included, but were not limited to, the following:

- a. Extensive regulatory oversight and limitations on remediation activity in areas that have substantial and still operating natural gas delivery infrastructure. The operating natural gas infrastructure at the East End site is vital to satisfying the Company's obligation to provide customers with safe, reliable service. The infrastructure includes, but is not limited to, propane air peak shaving plant, sensitive utility infrastructure, underground natural gas pipelines, compressors and a measurement station (Utility Facilities).¹⁶
- b. Safety and reliability concerns with performing remediation activities on and around Utility Facilities that are sensitive to vibration, or else risk serious damage to such facilities as well as the public health and safety.¹⁷
- c. The presence of other utility's infrastructure that if damaged due to vibrations, could result in impacts to the public health.¹⁸
- d. Weather events that limited the ability to perform remediation activities.¹⁹

8. On December 21, 2016, the Commission issued its Finding and Order in the Extension Case, granting the Company a three-year extension, lasting until December 31, 2019,

¹⁴ *In re: Application of Duke Energy Ohio, Inc for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 16-1106-GA-AAM, *et al.*, Application (May 16, 2016).

¹⁵ *Id.* pp. 6-12.

¹⁶ *Id.* pg. 4.

¹⁷ *Id.* pp. 9-10.

¹⁸ *Id.* pg. 8.

¹⁹ *Id.* pp. 9-10.

for continued deferral authority for environmental investigation and remediation costs (Extension Order) at the East End site.²⁰ In granting this extension, the Commission found that the Company had demonstrated exigent circumstances existed at the East End site that supported such an extension, including the following:

- a. The composition of the Middle Parcel that includes sensitive underground infrastructure complicated the Company's efforts to undertake the necessary environmental investigation and to identify the appropriate remediation techniques for the Middle Parcel *and the Area West of the West Parcel*;²¹
- b. The Company was unable to accurately confirm the level of contamination for the Middle Parcel and the Area West of the West Parcel or the specific portions that required remediation until site assessments were initially completed in 2014;²² and
- c. There are unique complexities present in these areas that will require further investigation and remediation.²³

9. In approving the Company's Extension Request, the Commission noted that a timeframe was intended to protect the public interest and ensure that remediation efforts were carried out expeditiously, *but also responsibly*.²⁴ Thus, the Commission acknowledged that it has authority to extend the period of deferral and that it will consider a balance between the utility acting both expeditious and responsible in its remediation efforts. The Commission's Extension

²⁰ *In re: Application of Duke Energy Ohio, Inc for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 16-1106-GA-AAM, *et al.*, Finding and Order, pg. 1 (December 21, 2016).

²¹ *Id.* pp. 13-14; the Commission specifically acknowledged the composition of the Area West of the West complicated environmental investigation and justified an extension of remediation deferral authority thereby expressly recognizing this area as deferrable under the Commission's prior decisions.

²² *Id.*

²³ *Id.*

²⁴ *Id.* pg. 13. Emphasis added.

Order affirmed its utilization of “a *broad definition* of what constitutes an exigent circumstance” in order to “afford flexibility” due to circumstances falling outside the Company’s control.²⁵ Finally, the Commission, once again, acknowledged that circumstances beyond the Company’s control would support additional time for MGP investigation and remediation and provided the Company an opportunity to seek additional extensions of such deferral authority as warranted.²⁶

II. Remediation Activities to Date

10. Duke Energy Ohio has continued to work diligently and responsibly to investigate and remediate the two MGP sites. Indeed, the Company anticipates that it will complete remediation of all *accessible upland* areas at both the East End and West End sites by December 31, 2019. In responsibly performing the necessary environmental work at the East End and West End sites, Duke Energy Ohio continues to engage environmental consulting firms experienced in MGP site remediation and Ohio Environmental Protection Agency (Ohio EPA) Voluntary Action Program (VAP) Certified Professionals (CPs), whose role is to ensure activities are compliant with Ohio EPA’s VAP regulations. The Ohio EPA VAP CPs and environmental consultants hired to perform activities at the two sites continue to work with the Company to ensure that remediation and investigation activity complies with the VAP and meets all applicable local, state, and federal standards, as well as to ensure that the environmental conditions at the sites are protective of human health and the environment, both short term and long term.

11. As previously described by the Company in filings, and recognized by the Commission, the Company has continued to investigate and remediate both sites following an iterative process that is customary for this type of work.

²⁵ Id. Emphasis added.

²⁶ Id. pg. 14.

12. At the East End site, the Company will have completed all remediation of the upland areas, except for certain areas of the Middle Parcel that are currently inaccessible for purposes of completing remediation work due to the presence of sensitive and critical infrastructure that includes above ground and underground propane delivery facilities, namely propane peaking plant, pipelines, and a man-made subterranean propane storage cavern (Critical Natural Gas Infrastructure). Importantly, the presence of operational underground propane storage caverns directly below areas that must be remediated makes this area inaccessible for completing remediation necessary remediation until the area becomes accessible.

13. The East End Middle Parcel continues to be used in the provision of natural gas service, and will continue as such even after the propane-related Critical Natural Gas Infrastructure located in the Middle Parcel can be safely and responsibly retired. However, such retirement can only occur in a manner that does not compromise Duke Energy Ohio's ability to provide safe, adequate, reliable, reasonable and affordable service to its customers. The propane facilities at the East End site are integral to meeting customer demand and system integrity, especially in terms of maintaining adequate system pressure during the winter heating season. As further explained below, the continued operation of the Critical Natural Gas Infrastructure and necessary reliance upon these facilities to meet the natural gas needs of customers precludes the Company from completing remediation in specific areas of the East End site. Similarly, due to the iterative nature of the MGP remediation process, investigation remains ongoing so to determine if remediation will eventually be required in and along the Ohio River at the East End and West End sites.

14. Due to the significant risks inherent in performing any remediation work in the East End Middle Parcel areas around the Critical Natural Gas Infrastructure, the sensitive nature of those facilities and the resulting and compelling interest in maintaining public safety, system

integrity and reliability, it is not possible to complete the investigation and remediation of these currently inaccessible areas in a manner that meets the Commission's stated goals of protecting the public interest and ensuring that remediation efforts are carried out both "expeditiously and responsibly" while under the current timeline as established by the Commission's Extension Order²⁷

15. While remediation in the currently inaccessible area in the Middle Parcel is necessary and planned at the present, Duke Energy Ohio is prevented from performing any remediation work that could place the integrity of the Critical Natural Gas infrastructure at risk of disruption, especially to the extent it involves significant excavation that must occur directly over and around the underground propane storage caverns. If these storage facilities were compromised due to such remediation activity, the Company would have to immediately and permanently close the storage facilities thereby compromising the Company's ability to provide safe, reliable natural gas service to customers.

16. There is no remedy or repair for a geological failure of the subterranean propane cavern. Similar, third-party owned and operated underground propane storage caverns located in southwestern Ohio, of a comparable age to Duke Energy Ohio's own storage caverns, have been forced into retirement due to geological failure and unrepairable leaks.²⁸ The Commission previously acknowledged impacts of geological failure of similar propane caverns and the related concern of risk for geological failure at the Company's East End propane facility.²⁹ As it relates to remediation that will eventually be required in the East End Middle Parcel, while the subterranean

²⁷ *In re: Application of Duke Energy Ohio, Inc., for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 16-1106-GA-AAM, *et al.*, Finding and Order, pg. 13 (December 21, 2016).

²⁸ <https://www.dispatch.com/article/20130311/NEWS/303119807>; Last visited May 10, 2019.

²⁹ *In the Matter of the Regulation of the Purchased Gas Adjustment Clause Contained in the Rate Schedules of Duke Energy Ohio, Inc., and Related Matters*, Case No. 15-218-GA-GCR, *et al.*, Opinion and Order, pp. 7-8 (September 7, 2016).

propane facilities and caverns located therein are currently considered safe, necessary, and used for the provision of reliable natural gas service to customers, it has been acknowledged and confirmed by the Staff that the Company's propane facilities are reaching the end of their service life and that if such facilities would become unavailable, "the loss of supply from these plants on a high demand day could result in widespread service outages."³⁰ Accordingly, it is undeniable that the intrusive nature of such remediation work, if performed while the caverns are still operational, presents a real and imprudent risk to the integrity of such facilities and the Company's ability to adequately serve its customers. Thus, there is relevant and observable evidence demonstrating and supporting the link between propane cavern integrity failure and immediate closure that today restricts Duke Energy Ohio's ability to complete investigation and remediation activities, especially excavation over or around Duke Energy Ohio's East End Middle Parcel's subterranean propane cavern, until such time as the cavern can be responsibly and safely decommissioned and retired.

17. Similarly, Duke Energy Ohio has been unable to complete its investigation as it relates to the Ohio River. As acknowledged by the Commission, the investigation and remediation of the sites is being conducted in a step-wise approach.³¹ There is a logical and necessary sequence to environmental remediation, largely influenced by the fact that the MGP contaminants are mobile. Optimally, when situated near a body of water, uplands are first sufficiently remediated to control the source of contamination and thereby eliminate potential pathways for downgradient

³⁰ *In re: Application of Duke Energy Ohio, Inc., for a Certificate of Environmental Compatibility and Public Need for the C314V Central Corridor Pipeline Extension Project*, Case No. 16-253-GA-BTX, Amended Staff Report, pg. 26 (March 5, 2019).

³¹ See Commission's Order, pp. 41-46, 64, (November 13, 2013); discussing the various phases of remediation work at the MGP sites.

contamination/recontamination by the MGP products along banks of, and sediments within, bodies of water.

18. Accordingly, at the end of 2017, as the next iteration of its ongoing MGP investigation, Duke Energy Ohio engaged Anchor QEA, LLC (Anchor QEA) to begin initial investigations of whether there are any impacts to the Ohio River banks and sediments from the former MGP operations at the East End and West End sites and, if so, the nature and extent of any impacts. As previously explained, to responsibly mitigate the risk of further contamination due to the mobility of the MGP products, the remediation could not begin until the upland areas were sufficiently remediated and controlled. The investigation and assessment of the Ohio River sediments and river bank at the East End site and West End site consequently has been constrained and continues today. It is possible that the investigation and assessment work could extend beyond December 31, 2019, and into 2020. The iterative nature of MGP investigation and remediation, and substantial interest in preventing further contamination due to the mobility of the MGP product, particularly as it relates to areas adjacent to the river, necessitates completion of upland areas before performing any necessary remediation in or along the river. Waiting until after the retirement and decommissioning of the propane-related Critical Natural Gas Infrastructure at the East End site, and the completion of the remediation of the contamination in the upland areas both assures the safe, reliable, and adequate provision of natural gas service, and reduces the potential for recontamination of the riverbank and sediments.

19. Although applicable environmental laws mandate investigation, Duke Energy Ohio does not presently know whether any actual remediation work in the Ohio River banks or sediments will be necessary. Only when the extent of the impacts is reasonably and accurately

confirmed can the Company determine if remediation is needed and, if so, thereafter develop an appropriate remediation plan in consultation with its CP and all applicable regulatory agencies.

20. Despite Duke Energy Ohio's best efforts to expeditiously and responsibly satisfy its obligations under CERCLA, the Company's ability to remediate the remaining inaccessible areas of the East End site and complete its investigation along banks and within sediments of the Ohio River is restricted for reasons beyond its control. Such restrictions are due: i) to the continued reliance upon the Critical Natural Gas Infrastructure; ii) need to follow proper sequencing of work so as to not risk additional contamination; and iii) the overall inability to perform such remediation work until it can be performed in a safe and responsible manner. As further explained below, Duke Energy Ohio's ability to complete this remediation is delayed by the substantial public interest in protecting health, safety, and ensuring the reliability and integrity of the natural gas delivery system.

21. Duke Energy Ohio has proactively attempted to address and resolve the aforementioned restrictions that prohibit completing remediation in the inaccessible areas. Since 2016, Duke Energy Ohio has pursued natural gas delivery system enhancements that if approved, would facilitate the decommissioning and retirement of these propane facilities that are near the end of their useful life.³² However, to date and due to reasons beyond its control, the Company has not received necessary regulatory approval to begin such system enhancements. In 2016, the Company petitioned for construction approval of the Central Corridor Pipeline Extension Project (Central Corridor Pipeline) which will enable the shutdown and eventual retirement of a significant portion of this Critical Natural Gas Infrastructure, specifically, the underground propane storage

³² *In re: Application of Duke Energy Ohio, Inc., for a Certificate of Environmental Compatibility and Public Need for the C314V Central Corridor Pipeline Extension Project*, Case No. 16-253-GA-BTX, Application (September 13, 2016).

and associated delivery facilities. Once the Central Corridor Pipeline is approved, constructed, and in service, these currently inaccessible areas are expected to become accessible. And, once the propane storage and pipeline facilities are able to be safely retired and decommissioned, Duke Energy Ohio will be able to complete the remediation as it is obligated by environmental laws.

III. Exigent Circumstances Support Continued Deferral Authority at the East End Site

A. Summary of Exigent Circumstances

22. Duke Energy Ohio submits that exigent circumstances exist, beyond the Company's control, to justify continuation of its deferral authority, beyond December 31, 2019, for the East End site. Like the exigent circumstances that justified an extension in 2016, exigent circumstances beyond Duke Energy Ohio's control have arisen since the Commission's Extension Order justifying continued deferral of remediation expense. In total, these circumstances prevent the Company from completing environmental remediation efforts at the East End site within the current timeline established by the Commission, and thus further support a continuation of its deferral authority and extension beyond December 31, 2019. In summary, the exigent circumstances that necessitate an extension of the current deferral authority include the following:

- a. Safety and reliability concerns coupled with extensive regulatory oversight with performing remediation activities on and around Critical Natural Gas Infrastructure, especially to underground propane storage facilities that are sensitive to vibration, create necessary constraints on remediation activity, or else risk the public health and safety.
- b. The presence of, and need to continue operating, the Critical Natural Gas Infrastructure located in the East End Middle Parcel makes contaminated areas over, around, and underneath the Critical Natural Gas Infrastructure currently

inaccessible to perform active remediation safely and in compliance with federal and state regulatory obligations.

- c. Duke Energy Ohio has a legal obligation to provide safe and adequate service to its customers, which today, cannot be ensured without continued operation of the Critical Natural Gas Infrastructure. The unanticipated delays experienced with the Company's Application for a Certificate of Environmental Compatibility and Public Need for the Central Corridor Pipeline before the Ohio Power Siting Board (Siting Board) have prevented the Company from moving forward with retiring and decommissioning propane-related Critical Natural Gas Infrastructure, and accordingly, from performing and completing remediation in these otherwise inaccessible areas.³³
- d. Unique complexities associated with investigation along bodies of water such as the Ohio River necessitate proper sequencing of remediation activities and environmental investigation and thus restricts completion of all remediation, including the sediments and riverbank until completion of the upland areas.

These circumstances, which are described in greater detail herein, form the bases for the Company's request for continued authority to defer costs incurred by it in remediating the remaining affected and currently inaccessible areas related to the East End site and investigation along the Ohio River consistent with its legal obligations and for extension of the rider arrangement with respect to such costs as described in the Commission's Order as affirmed by the Court, and the Extension Case.

³³ *In re: Application of Duke Energy Ohio, Inc., for a Certificate of Environmental Compatibility and Public Need for the C314V Central Corridor Pipeline Extension Project*, Case No. 16-253-GA-BTX, Application (September 13, 2016).

B. Safety and Reliability Concerns Coupled with Extensive Regulatory Oversight Create Exigent Circumstances Beyond the Company's Control Justifying Deferral Extension

23. The exigent circumstances giving rise to the Company's Application herein, in large part, continue to be a function of the heavily regulated natural gas business in which Duke Energy Ohio engages. It is undeniable that the business of transporting and delivering natural gas is subject to stringent regulation, at both the federal and state levels. These regulations, which have at their core the purpose of protecting public and employee safety and enabling reliable service, govern Duke Energy Ohio's gas operations business and function to establish the minimum parameters pursuant to which it must operate. These parameters are incorporated into Duke Energy Ohio's corporate policies for protecting the safety of its employees and the community and allowing adequate and reliable service to the Company's customers. The environmental investigation and remediation work at the East End site cannot be performed in contravention of these regulatory and corporate obligations, as the Company is required to perform its work in a manner that ensures adequate, safe, and reliable natural gas service.

24. Federal and state regulations set forth safety requirements for the operation of natural gas facilities and pipelines. At the federal level, the prevailing regulations are those established by the Pipeline and Hazardous Materials Safety Administration (PHMSA), which was created by the Department of Transportation. Within PHMSA, the Office of Pipeline Safety "ensures safety in the design, construction, operation and maintenance, and spill response planning of America's 2.6 million miles of natural gas and hazardous liquid transportation pipelines."³⁴ These comprehensive regulations, codified in Title 49 CFR Parts 190-199, extend to Duke Energy Ohio's natural gas operations. Additional operational oversight is provided through the National

³⁴ www.phmsa.dot.gov/regulations

Fire Protection Association (NFPA), an entity that develops codes and standards intended to minimize the risks of fire and explosion, including those risks existing in respect of natural gas.

25. At the state level, both Ohio law and Commission regulation provide a framework within which Duke Energy Ohio must operate its natural gas business. The foundation for the Commission's regulatory framework came from the General Assembly, which authorized the Commission to establish rules and enforcement procedures necessary to protect public safety.³⁵ In response thereto, the Commission promulgated O.A.C. 4901:1-13, which establishes minimum safety standards for local distribution companies, including Duke Energy Ohio. Among other obligations, Duke Energy Ohio must adhere to the Commission's pipeline safety code, as set forth in O.A.C. 4901:1-16.³⁶ The Company has incorporated such standards into its Commission-approved tariffs.³⁷

26. In connection with its oversight of natural gas operations under its jurisdiction, the Commission has also made provision for accessing utility records and such other information as necessary to determine compliance with its regulations.³⁸ Pursuant thereto, the Commission's Office of Pipeline Safety routinely reviews Company procedures and actual operational activities so as to ensure adherence to federal and state natural gas pipeline safety code.

27. Federal and state regulation preclude Duke Energy Ohio from engaging in activities that could threaten the safe operation of its natural gas infrastructure, expose its employees and contractors or the general public to unreasonable risk or danger, or compromise its obligation to make available to all consumers safe, adequate, and reliable service. As described in the 2016 Extension Application, the Company proceeded with its efforts to responsibly and expeditiously

³⁵ R.C. 4905.91.

³⁶ O.A.C. 4901:1-13-02(G)(1).

³⁷ See Duke Energy Ohio Gas Service Regulations, Section I – Service Agreements, P.U.C.O. Gas No. 18, Sheet 20.3.

³⁸ O.A.C. 4901:1-13-03.

remediate the impacts at the East End site, while implementing programs to ensure the safety of the community and its employees in observation of the significant risks associated with remediating in the vicinity of the Critical Natural Gas Infrastructure. As a result of those efforts, the Company will have completed all of the remediation in the upland areas of the West End site and the accessible upland areas at the East End site by December 31, 2019.

28. However, as it relates to the East End Middle Parcel, due to the presence and current operation of Critical Natural Gas Infrastructure located on a portion of both the upland area and extending into the Ohio River³⁹, certain areas are determined currently inaccessible, preventing completion of remediation work until said areas are determined to be accessible and once the Company is able to complete retirement and decommissioning of the propane facilities.

29. As the Company explained in its 2016 Extension Application, the operation of Utility Facilities limited the Company's ability to complete, through consultation with its VAP CP, the necessary remediation for the Middle Parcel.⁴⁰ Based on the investigations conducted to date, remediation is required in the currently inaccessible upland areas in the Middle Parcel similar to what has been required in other areas of the East End site. However, there is significant risk for excessive vibrations from required remediation activities to damage the integrity of Critical Natural Gas Infrastructure present on site, including the sensitive underground propane storage and pipeline structures, which could present natural gas system reliability risks and potential safety risks to the general public and Company employees, thereby precluding commencement of remedial work until those structures are safely taken out of service.

³⁹ See discussion in Section C below; Due to the construction of the Markland Dam, the Ohio River is at a higher level than when the former MGP plants were in existence and operating.

⁴⁰ *In re: Application of Duke Energy Ohio, Inc for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 16-1106-GA-AAM, *et al.*, Application, pg. 7 (May 16, 2016).

30. Excessive vibrations from invasive investigation and remediation activities risk damaging the integrity of Critical Natural Gas Infrastructure and, specifically, the sensitive underground propane storage and operations structures, used to maintain natural gas system pressures during winter heating seasons. Moreover, significant structural damage stemming from excavation and drilling presents a serious risk that these facilities would be unavailable to meet system peak demands during the winter heating season. Absent a suitable and ready replacement for these facilities, the natural gas delivery system would be unable to sustain necessary pressures during the winter heating season that if occurred, would cause widespread customer outages. The compelling public interests of safety and maintaining natural gas system integrity and reliability dictate that no remediation should occur in these areas until the Company no longer needs to rely upon these facilities to satisfy its customer demand and to maintain its natural gas delivery system pressure. Duke Energy Ohio cannot remediate areas directly over and adjacent to this Critical Natural Gas Infrastructure until such facilities can be safely and responsibly retired and decommissioned. Performing any of the aforementioned remediation techniques over the propane storage cavern while it is still in operation not only risks structural damage to the Critical Natural Gas Infrastructure making them unusable to meet system requirements during winter heating seasons, but also heightens the potential risks that large quantities of propane gas could be released. The Company cannot, as a reasonable and prudent operator, expose its employees, contractors or the public to potential harm caused by compromising or otherwise interfering with the active gas storage cavern, pipelines and associated equipment. Such regulation and circumstances constitutes exigent circumstances that limit the Company's ability to complete remediation in parts of the Middle Paracel under the current timeframe.

C. Without Approval of the Central Corridor Pipeline by the Ohio Power Siting Board, the Company Cannot Reasonably and Prudently Complete Remediation at the East End Middle Parcel.

31. Extensive regulatory oversight also applies to the Company's remediation activities at the East End site that contains operating utility infrastructure, including, but not limited to propane air peak shaving and underground storage facilities. The Company operates an extensive network of pipelines and physical structures, all of which are vital to its obligation to provide customers with safe, reliable service.⁴¹ All of the natural gas operations performed at the East End site (and throughout the entire Duke Energy Ohio natural gas delivery system) including maintaining this infrastructure are conducted pursuant to applicable regulation, codes, and standards. The propane storage capability at the East End site equates to approximately ten percent of Duke Energy Ohio's natural gas supply during the peak hours in the winter and are also used to maintain system pressures.

32. Duke Energy Ohio is obligated by law to provide necessary and adequate service to its customers.⁴² Inherent in such provision of necessary and adequate service, is a requirement that in performing its business, that it furnish such "instrumentalities and facilities, as are adequate and in all respects just and reasonable."⁴³ As such, Duke Energy Ohio must act reasonably, not only in its provision of service, but also in accordance with numerous regulations in maintaining and ensuring its facilities remain reasonably and adequately available for the provision of natural gas service. Due to the potential risks and hazards associated with performing remediation in areas located directly over the Critical Natural Gas Infrastructure, and the physical inability to remediate

⁴¹ Located primarily on the Middle Parcel, these facilities are substantial and integral to the provision of natural gas service and include above and below ground structures, such as a propane air peak shaving plant, storage, sensitive utility infrastructure, underground natural gas pipelines, and physical structures that house, among other things, various compressors and a measurement station.

⁴² R.C. 4905.22.

⁴³ Id.

underneath the natural gas operations center buildings, the Company cannot complete remediation activities in the currently inaccessible areas until the retirement and decommissioning of the propane facilities at East End. Absent a suitable and ready replacement for these facilities, the natural gas delivery system would be unable to sustain necessary pressures and capacity during the winter heating season causing the system to fail and customers without natural gas for heating. Thus, remediation of the currently inaccessible areas cannot occur without the construction of the Central Corridor Pipeline as the Company would be unable to ensure safe, reliable and adequate provision of natural gas service to its customers.

33. Duke Energy Ohio's ability to access and remediate the currently inaccessible areas of the East End Middle Parcel is dependent upon the Company's ability to complete and place in service its Central Corridor Pipeline so it can then retire and decommission its propane facilities. The need to complete this Central Corridor Pipeline to enable the retirement of the East End Middle Parcel propane facilities is well established and has been recognized by both Staff and the Commission previously.⁴⁴ Staff has recently affirmed that the Company's propane-air and propane storage facilities "are now reaching the end of their useful lives," and if these facilities would become unavailable, "the loss of supply from these plants on a high demand day could result in widespread service outages."⁴⁵ Duke Energy Ohio is unable to commence construction of major utility infrastructure, like the Central Corridor Pipeline unless and until it receives authorization from the Power Siting Board.

⁴⁴ *In re: Application of Duke Energy Ohio, Inc for Authority to Defer Environmental Investigation and Remediation Costs*, Case No. 16-1106-GA-AAM, *et al.*, Finding and Order, pg. 10, (December 21, 2016); citing Staff Comments. See also; *In re: Application of Duke Energy Ohio, Inc., for a Certificate of Environmental Compatibility and Public Need for the C314V Central Corridor Pipeline Extension Project*, Case No. 16-253-GA-BTX, Amended Staff Report, pg. 26, (March 5, 2019).

⁴⁵ *In re: Application of Duke Energy Ohio, Inc., for a Certificate of Environmental Compatibility and Public Need for the C314V Central Corridor Pipeline Extension Project*, Case No. 16-253-GA-BTX, Amended Staff Report pg. 26, (March 6, 2019).

34. The Power Siting Board's authority was established through R.C. 4906 *et seq.* and its regulations are set forth in O.A.C. 4906, and more specifically, O.A.C. 4906-5 as it relates to requirements for applications for constructing natural gas pipelines. Additionally, the Siting Board regulates the Company's construction of major utility infrastructure, and includes its own set of procedural rules and regulations before the Company can conduct natural gas (and electric) utility infrastructure system improvements. Uncontrollable and unanticipated delays experienced at the Siting Board have prevented the Company from commencing construction of the Central Corridor Pipeline and thus enabling the eventual retirement of the East End site's underground propane facilities. These delays were all outside the control of the Company and thus amount to exigent circumstances supporting the continuation of the MGP remediation deferral authority.

35. On September 13, 2016, Duke Energy Ohio filed its application in Case No. 16-253-GA-BTX seeking a Certificate of Environmental Compatibility and Public Need for its Central Corridor Pipeline (CCP Application).⁴⁶ As described in the Company's CCP Application before the Siting Board, the project is "integral to the Company's long-term plan to retire propane-air plants and balance system supply from north to south."⁴⁷ The propane-air plants referenced in this Siting Board CCP Application include the same propane storage facilities located on the East End Middle Parcel that are presently inaccessible for purposes of completing remediation.

36. The Company's CCP Application explained and supported the need to retire these propane facilities because they were "based on old technology that is expensive to maintain and impractical to repair in a permanent fashion,"⁴⁸ and "reaching the end of their useful life."⁴⁹ The

⁴⁶ *In re: Application of Duke Energy Ohio, Inc., for a Certificate of Environmental Compatibility and Public Need for the C314V Central Corridor Pipeline Extension Project*, Case No. 16-253-GA-BTX, Application (September 13, 2016).

⁴⁷ *Id.* Application, pg. 2-1.

⁴⁸ *Id.* Application, pg. 2-2.

⁴⁹ *Id.*

Company explained that the loss of supply from the propane facilities on a high-demand day would result in widespread service outages, as some customers can not currently be served from feeds from the north.⁵⁰ The Company thus concluded that the cost to maintain this outdated technology and the impracticability of permanent repairs supported removal of the propane-air plants from the system and the construction of the Central Corridor Pipeline.⁵¹ The retirement of the propane-air peaking plant is not possible without the completion of the Central Corridor Pipeline to provide additional natural gas supply.⁵²

37. On January 20, 2017, Duke Energy Ohio filed its Amended Application in Case No. 16-253-GA-BTX (Amended CCP Application) providing route adjustments to improve constructability and mitigated impacts and disruptions.⁵³ On March 3, 2017, the Siting Board notified the Company that its Amended CCP Application had been certified as complete and to serve appropriate governmental officials and public agencies with copies of the completed Amended CCP Application.⁵⁴

38. On April 13, 2017, the Administrative Law Judge (ALJ) established a procedural schedule that included dates for filing of testimony for Parties to the proceeding with an adjudicatory hearing beginning July 12, 2017.⁵⁵

39. On May 31, 2017, Staff of the Siting Board filed its report in the Central Corridor Pipeline proceeding that, among other things, recommended approval of the Alternative Route and

⁵⁰ Id.

⁵¹ Id. Additionally, the Company explained that the with these plants in operation, there is the potential for a propane-air mixture to reach approximately half of the distribution system in the central Hamilton County area. This has had the effect of inhibiting growth, as certain customer operations are propane intolerant, including Natural Gas Vehicle (NGV) facilities.

⁵² Id. at 3-12.

⁵³ Id. Amended Application, January 20, 2017.

⁵⁴ *In re: Application of Duke Energy Ohio, Inc., for a Certificate of Environmental Compatibility and Public Need for the C314V Central Corridor Pipeline Extension Project*, Case No. 16-253-GA-BTX, Letter (March 3, 2017).

⁵⁵ Id. Entry pg. 4, (April 13, 2017).

that the Siting Board find that the basis of need for the Central Corridor Pipeline project has been demonstrated.⁵⁶ Among the many reasons cited by the Staff of the Siting Board in its Basis of Need analysis were the propane air plant and storage facilities that are “now reaching the end of their useful lives,” and that “[i]f propane air peaking plants would become unavailable, the loss of supply from these plants on a high demand day could result in widespread service outages.”⁵⁷ The Siting Board Staff further cited to a prior Commission proceeding whereby the risk to the Company’s gas delivery system from the potential loss of these propane facilities was observed by the Commission’s independent auditor and as a result, Duke Energy Ohio agreed to evaluate availability of alternative pipeline capacity.⁵⁸

40. On June 12 and June 13, 2017, numerous intervening parties in the case filed motions for a continuance of the July 12, 2017, adjudicatory hearing.⁵⁹ On June 21, 2017 the ALJ granted these requests for continuance over the objection of Duke Energy Ohio and ordered that the hearing be delayed until September 11, 2017.⁶⁰

41. On August 23, 2017, Duke Energy Ohio informed the Siting Board that the Company became aware of “potential concerns with engaging in construction activities in the vicinity of property on which environmental remediation has occurred” along the alternative route selected by the Siting Board Staff.⁶¹ The Company explained that further investigation was

⁵⁶ *Id.* Staff Report of Investigation pg. 28, (May 31, 2017).

⁵⁷ *Id.* at pp. 25-26.

⁵⁸ *Id.* citing; *In re: Purchased Gas Adjustment Clause of Duke Energy Ohio, Inc.*, Case No. 15-218-GA-GCR, *et al.*, Management and Performance Audit Report, pg. 10 (December 9, 2015).

⁵⁹ *Id.* *Joint Motion for Continuance of the Adjudicatory Hearing and Request for an Expedited Ruling on behalf of City of Cincinnati, Amberley Village, the City of Blue Ash, the Board of Commissioners of Hamilton County, the City of Deer Park, the City of Madeira, the City of Reading, Columbia Township, Sycamore Township, the Village of Evendale and the Village of Golf Manner*, (June 13, 2017); *Motion for Continuance and Request for an Expedited Ruling on behalf of NOPE-Neighbors Opposed to Pipeline Extension LLC* (June 14, 2017).

⁶⁰ *Id.* Entry, (June 21, 2017).

⁶¹ *Id.* *Motion for Suspension of Procedural Schedule by Duke Energy Ohio, Inc., and Request for Expedited Treatment*, (August 23, 2017).

warranted potentially from entities not participating in the proceeding and requested a suspension of the procedural schedule.⁶²

42. On April 13, 2018, having completed this additional investigation, the Company filed its Supplemental Information along with a Motion by Duke Energy Ohio, Inc., for Reestablishment of Procedural Schedule and Request for Expedited Treatment (Motion to Reestablish Procedural Schedule).⁶³ The Company explained that it had confirmed the lack of pre-existing environmental issues of concern along the Alternative Route and verified such with the United States Environmental Protection Agency.⁶⁴

43. The Central Corridor Pipeline case then sat dormant until December 18, 2018, when the ALJ established a new procedural schedule setting the matter for an adjudicatory hearing to commence on April 9, 2019.⁶⁵ As such, the Company's application has been pending before the Siting Board for nearly two and a half years and the evidentiary hearing has only just concluded. An Order is not expected for several months. As a result, assuming approval, actual construction activities will not commence until after the upcoming 2019/2020 winter heating season, meaning additional delays. These delays and uncertainty constitute significant exigent circumstances that are beyond the Company's control and directly impact and restrict the Company's ability to complete MGP remediation within the currently inaccessible areas in the East End Middle Parcel surrounding the Critical Natural Gas Infrastructure.

44. As it stands, Duke Energy Ohio must continue to rely upon the Critical Natural Gas Infrastructure, specifically the propane peaking and underground storage facilities, to serve its

⁶² Id.

⁶³ Id. Supplemental Information, (April 13, 2018).

⁶⁴ Id. Motion to Reestablish Procedural Schedule. pg. 2 (April 13, 2018); the Supplemental Information also made several adjustments to the Alternative Route to reflect improvements in constructability and to accommodate specific concerns of impacted property owners; Id. pp. 1-9.

⁶⁵ Id. Entry (April 9, 2019).

customers for an indeterminant future. It also means that the contaminated areas surrounding these facilities cannot be remediated until it is possible to begin to retire these underground propane facilities and perform necessary remediation in a safe, and responsible manner that does not threaten the health of the general public, Company employees, or reliability of the natural gas delivery system.

45. The procedural delays and uncertainty as to when construction of the Central Corridor Pipeline may commence, without which retirement and decommissioning of the Critical Natural Gas Infrastructure cannot occur, also constitute significant exigent circumstances that are beyond the Company's control and directly impact and prevent the Company from completing MGP remediation within the currently inaccessible areas of the East End Middle Parcel. These exigent circumstances support the continuation of the MGP remediation deferral authority.

46. Duke Energy Ohio has performed initial engineering and anticipates having a completed, and fully engineered remediation plan for the currently inaccessible upland areas of the East End Middle Parcel by December 31, 2019. The Company estimates the cost of remediation of the currently inaccessible upland portion of the East End Middle Parcel to be approximately \$15 million, based upon 2019 dollars.⁶⁶ Because Duke Energy Ohio has not received approval of the Central Corridor Pipeline project, it cannot predict when the Company could commence and complete construction of the Central Corridor Pipeline. Because of the uncertainty with approval and timing of construction, the Company does not know for certain when the Central Corridor Pipeline will be placed into service. As such, Duke Energy Ohio cannot accurately predict when it will be safe and responsible to begin retirement and decommissioning of the propane storage and delivery facilities, and in turn, commence actual remediation activities over these facilities.

⁶⁶ The estimated \$15 million only relates to the inaccessible portions of the Middle Parcel, and does not include any river assessment/investigation that may be necessary beyond December 31, 2019.

Therefore, additional delays caused by the Central Corridor Pipeline Project, including approval itself, could cause these estimates to increase over time. And, as a consequence of these exigent circumstances, the Company continues to be hampered in the pace it can address its legal obligation to remediate the MGP impacts.

D. Unique complexities present in areas along the Ohio River require proper sequencing and thus further investigation to determine if remediation is necessary.

47. As the Company explained in its Reply Comments filed in Case No. 18-283-GA-RDR, *et al.*, due to the construction of the Markland Dam in the 1960s, the elevation of the Ohio River near the remediation sites is much higher today than it was during the operation of the MGPs at the East End and West End sites decades ago. Prior to the change in the depth of Ohio River at these sites, the original southern boundaries of the upland portions of the East End (and West End) sites were located more than two hundred feet farther into what is now within the Ohio River. The Company's investigation work within the Ohio River, as required under applicable law, is to evaluate impacts associated with the former MGP operations to the Ohio River.

48. It has been previously established that environmental investigation and remediation efforts must be properly sequenced so that they can be performed in an efficient manner that does not pose an unreasonable threat to human health and safety or the environment or imprudently increase costs. The appropriate sequencing of work also weighs against hastening the pace of work for the sole purpose of accelerating the completion date.

49. Duke Energy Ohio has acted responsibly and prudently in conducting its MGP investigation of the “facilities” as that term is defined by CERCLA.⁶⁷ Through this deliberate sequencing approach for work, the Company has prudently managed costs so to perform only work in areas that are determined necessary for investigation and eventually remediation. As a result of the sequencing of investigation activities the Company has been led to areas along the bank of the Ohio River and in sediments at the East End and West End sites.

50. The Company’s work within the Ohio River, as required under applicable law, includes to evaluate potential impacts to the Ohio River associated with the former MGP operations at the East End and West End sites. To date, this investigation work is ongoing and the Company has not determined to what extent, if any, remediation activity must occur within the river. Due to the mobile nature of MGP products, the industry accepted process for investigation of MGPs along waterways is, to the extent possible, first complete upland remediation to control the source of contamination and thereby eliminate potential pathways for downgradient contamination/recontamination by the MGP products. Additionally, the Company is limited insofar as timing in performing investigations due to river conditions and seasonal flooding levels. Finally, even if impacts are discovered in such river bank soils and sediments, any decision regarding whether, and to what extent, if any, remediation is necessary or required in the Ohio River must be done in consultation with applicable regulatory agencies. Until these river assessments are completed and discussions with the applicable regulatory agencies occur, remediation plans, if needed, cannot be evaluated, determined, engineered, or executed. These

⁶⁷ The definition of “Facility” as defined by CERCLA includes any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or has otherwise come to be located. 40 C.F.R. 300.5. *See, e.g., Kalamazoo River Study Group v. Rockwell Intl. Corp., et al.*, 171 F.3d 1965, 1068 (6th Cir. 1999) (CERCLA liability exists if plaintiff can establish a causal connection between a defendant’s release of hazardous substances at one site and response costs incurred in cleaning them up at the second site).

constraints (mobility of MGP product, risk of additional contamination/recontamination/exposure, seasonal flooding, need for consultation with multiple regulatory authorities, *etc.*.) constitute further exigent circumstances as they relate to completing river-related investigation that are outside the control of Duke Energy Ohio and support continued deferral authority.

51. While the extent of remediation activities in the river will be dependent on the results of the additional investigation in the river at the West End and East End sites, the East End Middle Parcel is further constrained due to the previously discussed currently inaccessible areas, particularly along the riverbank. Portions of the Critical Natural Gas Facilities located on the Middle Parcel extend into the Ohio River, making those areas also currently inaccessible for purposes of completing investigation and, if necessary, remediation. Thus, if remediation is determined to be needed at the East End site's river banks or sediments, it would be imprudent to begin such remediation activity until the completion of the remediation of the upland areas especially the currently inaccessible areas surrounding the Critical Natural Gas Infrastructure in the East End Middle Parcel.

52. As was the case in the 2016 Extension Request, for which the Commission found adequate basis to extend the period for deferral, the composition and extent of any contamination of the Ohio River and the riverbank cannot be determined until the completion of Duke Energy Ohio's investigations. Moreover, the Company has a responsibility to its customers to investigate and remediate the MGP impacts in an efficient and prudent manner without incurring unnecessary additional expense, which precludes the Company from constructing a remedy for the river sediments and riverbanks until it has evaluated the potential for recontamination that could migrate from the upland areas or the currently inaccessible areas that have not been remediated. If remediation is ultimately necessary along the riverbank and within sediments, the Ohio EPA and

other regulatory agencies will need to be involved with any remediation plan development and engineering, which will take additional time. Thus, Duke Energy Ohio will continue to incur remediation investigation-related expenses as it investigates along the Ohio River bank and sediments at the East End and West End sites even before it is able to determine any remediation requirements in consultation with the Ohio EPA and any other applicable regulatory agencies. Such investigation expenses may continue to be incurred beyond December 31, 2019, for the reasons set forth above.

IV. Prayer for Relief and Conclusion

53. The Supreme Court of Ohio has affirmed that the Company's MGP remediation costs are service-related costs and recoverable through rates under R.C. 4909.15(A)(4).⁶⁸ As the current owner and operator of the facilities from which there is a release or threatened release of hazardous material, Duke Energy Ohio is "strictly" liable for remediation of these areas under CERCLA.⁶⁹ The Court has confirmed that such legally-mandated costs incurred in providing service are recoverable.⁷⁰

54. Since the time the Court affirmed the Commission's decision in Case No. 12-1685-GA-AIR, *et al.*, that these MGP remediation costs are recoverable as a cost of providing service, the Commission has not addressed the Company's pending annual applications for recovery of remediation costs under Rider MGP.⁷¹

⁶⁸ *In re Application of Duke Energy Ohio, Inc.*, 150 Ohio St. 3d 437, pp 441-443 (June 29, 2017).

⁶⁹ *Id.* pg. 438

⁷⁰ *Id.*

⁷¹ The first such filing for calendar year 2013 costs was made on March 31, 2014, in Case Nos. 14-0375-GA-RDR, *et al.* The second such filing for calendar year 2014 costs was made on March 31, 2015, in Case Nos. 15-0452-GA-RDR, *et al.* The third such filing for calendar year 2015 costs was made on March 31, 2016, in Case Nos. 16-0542-GA-RDR, *et al.* The fourth such filing for calendar year 2016 costs was made on March 31, 2017, in Case Nos. 17-596-GA-RDR, *et al.* The fifth such filing for calendar year 2017 costs was made on March 28, 2018 in Case Nos. 18-283-GA-RDR, *et al.* The sixth such filing for calendar year 2018 costs was made on March 29, 2019 in Case Nos 19-174-GA-RDR, *et al.*

55. Duke Energy Ohio respectfully requests that the Commission authorize it: (i) to continue deferring the actual costs incurred for environmental investigation and remediation work related to the currently inaccessible East End Middle Parcel until the Company is able to safely retire and decommission the underground propane facilities and these areas become accessible for commencing and completing the necessary remediation work; (ii) to continue deferring the actual costs of environmental *investigation/assessment* work beyond December 31, 2019 that may be necessary in areas along the Ohio River's banks and sediments at the East End and West End sites; (iii) to seek recovery of such costs via Rider MGP in the same manner as provided for its November 13, 2013, Opinion and Order.

56. In this regard, Duke Energy Ohio currently estimates that once the proposed Central Corridor Pipeline is completed and in service, the Company will then be able to safely retire and decommission the propane storage and delivery facilities. Once safely retired and decommissioned, the Company will then be able to safely commence and complete the remediation work at the East End Middle Parcel within approximately eighteen months, absent exigent circumstances. The current estimation of the cost for remediation in the currently inaccessible area on the upland Middle Parcel is approximately \$15 million in 2019 dollars (*i.e.*, due to inflation, costs may be greater when the work is finally performed). The Company estimates that full retirement and decommissioning of the propane cavern will take approximately two and one-half years once it is determined the propane-related facilities may be removed from service following the completion of the Central Corridor Pipeline.

57. Given the uncertainty regarding when (and if) Duke Energy Ohio will receive approval of the Central Corridor Pipeline project and be able to complete its construction, and thus commence and complete retirement and decommissioning of the propane facilities, a strictly

defined time limitation is not reasonable. As such, Duke Energy Ohio seeks continuation of its MGP deferral authority so to complete the investigation and remediation of the currently inaccessible areas at the East End site, which is estimated to be approximately eighteen months following the retirement and decommissioning of the propane peaking and underground storage facilities located at the Middle Parcel.

58. Due to the uncertainty with respect to whether or not any remediation will ultimately be required with respect to the Ohio River bank and its sediments at the East End and West End, and the need to coordinate with applicable regulatory agencies on any remediation plan that may be required, Duke Energy Ohio also proposes to address any Ohio River remediation activities that may be deemed necessary in a separate proceeding if and when it is determined, in concert with the Ohio EPA and other applicable regulatory agencies, that such remediation must occur. If it is ultimately determined that remediation is necessary as it relates to the Ohio River, Duke Energy Ohio will file an application for Commission consideration seeking: 1) further deferral and 2) cost recovery.

59. As such, at this time, the Company seeks only continued deferral authority with respect to the inaccessible areas of the East End Middle Parcel and River investigations /assessments with continuation of the Rider MGP recovery mechanism due to the exigent circumstances described herein. Duke Energy Ohio is not proposing any revision to the manner in which such mechanism, as approved by the Commission on November 13, 2013, in Case No. 12-1685-GA-AIR, *et al.*, operates. As such, the Company will continue to make annual filings for the Commission's review and consideration prior to any recovery through Rider MGP.

60. R.C. 4905.13 authorizes the Commission to establish systems of accounts to be kept by public utilities and to prescribe the manner in which these accounts shall be kept. The Federal

Energy Regulatory Commission has established a Uniform System of Accounts for gas utilities. This system of accounts is applicable to Ohio's regulated gas utilities only to the extent it has been adopted by the Commission, such adoption which results from O.A.C. 4901:1-13-01.

61. Duke Energy Ohio requests that the Commission authorize Duke Energy Ohio to extend its current accounting procedures and permit Duke Energy Ohio to defer income statement recognition of environmental investigation and remediation costs for the currently inaccessible areas at the East End Middle Parcel and Ohio River investigations/assessments. The recovery of the deferred amount will be addressed consistent with the process established in Case No. 12-1685-GA-AIR, *et al.* Duke Energy Ohio proposes to record all costs as a regulatory asset on its balance sheet in Account 182.3, Other Regulatory Assets.

62. The requested change in accounting procedure does not result in any increase in any rate or charge and the Commission can therefore approve this Application without a hearing.

Respectfully submitted,



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Case No(s). 19-1085-GA-AAM, 19-1086-GA-UNC

Summary: Application Application of Duke Energy Ohio, Inc., for Authority to Continue Deferral of Environmental Investigation and Remediation Costs and for Approval to Amend Rider MGP 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