

**BEFORE****THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 14-375-GA-RDR
	)	
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 14-376-GA-ATA
	)	
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 15-452-GA-RDR
	)	
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No.15-453-GA-ATA
	)	
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No. 16-542-GA-RDR
	)	
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No. 16-543-GA-ATA
	)	
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No.17-596-GA-RDR
	)	
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No.17-597-GA-ATA
	)	
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider MGP Rates.	)	Case No.18-283-GA-RDR
	)	
	)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Tariff Approval.	)	Case No.18-284-GA-ATA
	)	

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

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for Tariff Approval. ) Case No. 19-175-GA-ATA

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**SUPPLEMENTAL TESTIMONY OF**  
**KEITH G. BUTLER**  
**ON BEHALF OF**  
**DUKE ENERGY OHIO, INC.**

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_____	Management policies, practices, and organization
_____	Operating income
_____	Rate Base
_____	Allocations
_____	Rate of return
_____	Rates and tariffs
<u>  X  </u>	Other: Insurance

October 4, 2019

## TABLE OF CONTENTS

	<u>PAGE</u>
I. INTRODUCTION AND PURPOSE .....	1
II. DISCUSSION .....	2
A. ADOPTION OF TESTIMONY .....	2
B. INSURANCE UPDATE .....	3
C. DISTRIBUTION OF SETTLEMENT PROCEEDS .....	7
III. CONCLUSION .....	8

**I. INTRODUCTION AND PURPOSE**

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

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

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

5   A.   I am employed by Duke Energy Business Services LLC (DEBS) as Senior Vice  
6       President, Global Risk Management and Insurance and Chief Risk Officer on  
7       behalf of Duke Energy Corporation (Duke Energy). DEBS provides various  
8       administrative and other services to Duke Energy Ohio, Inc. (Duke Energy Ohio  
9       or Company) and other affiliated companies of Duke Energy.

10  **Q.   ARE YOU THE SAME KEITH G. BUTLER THAT FILED DIRECT**  
11  **TESTIMONY IN THESE PROCEEDINGS?**

12  A.   Yes.

13  **Q.   WHAT IS THE PURPOSE OF YOUR SUPPLEMENTAL TESTIMONY IN**  
14  **THESE PROCEEDINGS?**

15  A.   The purpose of my direct testimony is threefold. First, I adopt the testimony  
16       previously submitted by Keith Bone in these consolidated proceedings. Mr. Bone  
17       is no longer with the Company. Second, I provide an update to the Company's  
18       pursuit of insurance coverage from insurers related to the two-manufactured gas  
19       plant (MGP) sites.

20               Finally, I discuss the issues surrounding the appropriate treatment of the  
21       insurance proceeds, as well as the need for the Commission to fairly balance the

1 allocation of costs of ongoing MGP remediation work with the benefits of the  
2 insurance proceeds.

## II. DISCUSSION

### A. ADOPTION OF TESTIMONY

3 **Q. PLEASE IDENTIFY THE TESTIMONY YOU ARE ADOPTING IN**  
4 **THESE CONSOLIDATED PROCEEDINGS.**

5 **A.** I am adopting the testimony submitted by Duke Energy Ohio Witness Keith Bone  
6 in these consolidated proceedings. Mr. Bone retired from Duke Energy and is no  
7 longer employed by Duke Energy.

8 **Q. ARE YOU FAMILIAR WITH THE TESTIMONY SUBMITTED BY MR.**  
9 **KEITH BONE IN THE COMPANY'S PRIOR ANNUAL RIDER MGP**  
10 **UPDATED PROCEEDINGS THAT HAVE BEEN CONSOLIDATED?**

11 **A.** Yes.

12 **Q. DO YOU HAVE ANY CHANGES, OR CORRECTIONS TO THAT**  
13 **INFORMATION?**

14 **A.** No.

15 **Q. AS SENIOR VICE PRESIDENT GLOBAL RISK MANAGEMENT AND**  
16 **INSURANCE AND CHIEF RISK OFFICER, DO YOU HEREBY ADOPT**  
17 **THE DIRECT TESTIMONY OF MR. BONE FILED IN THESE**  
18 **CONSOLIDATED PROCEEDINGS AS YOUR OWN?**

19 **A.** Yes.

## **B. INSURANCE UPDATE**

1 **Q. PLEASE DISCUSS THE EFFORTS UNDERTAKEN BY DUKE ENERGY**  
2 **OHIO TO OBTAIN INSURANCE RECOVERY FOR THESE SITES**  
3 **SINCE YOU SUBMITTED DIRECT TESTIMONY.**

4 A. In my prior Direct Testimony, I described the steps taken during 2018 to obtain  
5 insurance recovery under historical insurance policies that are potentially  
6 available to provide coverage for Duke Energy Ohio's liability for environmental  
7 property damage at and around the former East End and West End manufactured  
8 gas plants located in Cincinnati, Ohio. As stated in my Direct Testimony, the only  
9 one of its historical insurers with which Duke Energy Ohio had not reached a  
10 settlement at the time I filed that testimony was Safety National Casualty  
11 Corporation (Safety National). Duke Energy Ohio has now reached a settlement  
12 with Safety National. A settlement agreement has been signed and settlement  
13 proceeds have been paid to Duke Energy Ohio as a result of the settlement.

14 **Q. PLEASE DISCUSS THE RESULTS OF THE SAFETY NATIONAL**  
15 **SETTLEMENT.**

16 A. As the result of settlement with Safety National, as well as settlements with other  
17 liability insurers, Duke Energy Ohio has received insurance recovery for its  
18 liabilities and obligations for MGP contaminant investigation and remediation at  
19 the East End MGP Site and the West End MGP Site. As discussed in the  
20 testimony of Michael J. Lynch, "East End MGP Site" and "West End MGP Site"  
21 refers not just to the properties owned by Duke Energy Ohio on which  
22 manufactured gas plant operations took place, but also to those areas underneath

1 and surrounding those properties to which contamination has allegedly spread and  
2 which are the subject of the environmental investigations and remediations at  
3 issue here.

4 **Q. PLEASE EXPLAIN THE SCOPE OF THE SETTLEMENT WITH**  
5 **SAFETY NATIONAL AS IT RELATES TO MGP INVESTIGATION AND**  
6 **REMEDATION.**

7 A. It is my understanding that, as set forth in the previously filed direct testimony of  
8 Michael Lynch, the settlement and underlying insurance policies were not  
9 directed at any particular parcel or limited to the presence of contamination only  
10 where the original MGP operations took place. The scope of settlement with  
11 Safety National, like the other settlements achieved, relates to coverage for all  
12 MGP contamination related to and/or stemming from MGP operations at the East  
13 End MGP Site and the West End MGP Site. This is relevant because the Staff of  
14 the Commission has recommended that only the MGP investigation and  
15 remediation costs incurred on a property where original MGP operations  
16 historically occurred, and not beyond those property boundaries where  
17 contamination has spread, be recoverable under the Company's Rider MGP.<sup>1</sup>

18 If the Commission upholds Staff's recommendation to limit recoverable  
19 costs to MGP investigation and remediation costs incurred only within certain  
20 property boundaries, it would be flatly inconsistent to credit *all* of the insurance  
21 proceeds—which were paid to cover a much broader range and area of MGP costs  
22 —to ratepayers. If remediation cost recovery is somehow limited and should be

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<sup>1</sup> Staff Report, p. 3 (July 12, 2019).

1       apportioned based upon some geographic metes and bounds of real property, then  
2       the insurance proceeds must be allocated in a similar manner, or in some other  
3       reasonable manner, once remediation is complete and the final costs are  
4       determined. In other words, to the extent that recovery of remediation costs is  
5       limited to customers based upon a belief that there is a timing or geographic  
6       apportionment of remediation expense between customers and the Company, so  
7       too should there be a corresponding apportionment of insurance proceeds.

8               Denying full cost recovery of MGP remediation expense based only upon  
9       Staff's allocation of the legal obligation to incur necessary MGP remediation  
10      costs by establishment of an arbitrary property boundary line, especially one that  
11      is unrelated to the actual physical presence of contamination, is, on its own, both  
12      unsupportable and unreasonably punitive. Doing so without allocating a portion  
13      of the insurance proceeds that were acquired to resolve total MGP liability at the  
14      East End MGP Site and the West End MGP Site from insurance carriers, would  
15      even further over penalize the Company for its efforts to comply with federal law  
16      and for incurring costs that were already determined by the Ohio Supreme Court  
17      as a necessary expense of providing utility service. As set forth in Michael  
18      Lynch's testimony, the amount and value of insurance settlement proceeds were  
19      achieved based upon completely resolving the MGP remediation liability at the  
20      East End MGP Site and the West End MGP Site under the policies. As Staff itself  
21      contemplated, ratepayers should only be reimbursed in proportion to the share of  
22      MGP investigation and remediation costs which they paid.<sup>2</sup>

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<sup>2</sup> Staff Report, p. 7 (July 12, 2019); "Staff's recommended disallowances should be netted against the insurance proceeds discussed above." Id.



1     **Q.     WHY DID DUKE ENERGY OHIO SETTLE WITH SAFETY NATIONAL?**

2     A.     Safety National, like the other insurers, contended, among other things, that it had  
3           no obligation to provide coverage for the investigation and remediation costs at  
4           the East End MGP site and the West End MGP site. Safety National based this  
5           contention on certain language in its policies and on its proposed interpretation of  
6           Ohio insurance coverage law. Through diligent negotiations, the Company  
7           achieved a settlement while mitigating legal costs and balancing the risk of  
8           potential adverse outcomes of a final arbitration hearing. The insurance coverage  
9           issues in the case were complex, and the arbitral panel could have reached  
10          decisions regarding the key legal and factual disputes that were averse to Duke  
11          Energy Ohio's positions. The achievement of settlements with Safety National, as  
12          well as with the other insurer-defendants, was neither easy nor a foregone  
13          conclusion.

14    **Q.     DO YOU BELIEVE THE INSURANCE SETTLEMENTS ACHIEVED ARE**  
15           **REASONABLE AND IN THE BEST INTERESTS OF CUSTOMERS AND**  
16           **THE COMPANY?**

17    A.     Yes. The Company has rigorously pursued recovery of investigation and  
18           remediation costs from its historical insurance policies, with a careful balancing  
19           of the relative risks of litigation and litigation costs. The results were a fair  
20           resolution given the complexity of the issues and parties involved.

21    **Q.     ARE THERE ANY REMAINING INSURANCE CARRIERS THAT**  
22           **COULD POTENTIALLY PROVIDE SETTLEMENT FUNDS?**

23    A.     No.

### **C. DISTRIBUTION OF SETTLEMENT PROCEEDS**

1 **Q. WHEN SHOULD SETTLEMENT PROCEEDS BE DISTRIBUTED?**

2 A. The Company believes it is not yet appropriate to begin disbursing the insurance  
3 proceeds for several reasons.

4 As explained in the Direct Testimony of Michael Lynch, the insurance  
5 proceeds at issue were paid to resolve all remediation liabilities relating to the  
6 East End MGP Site and the West End MGP Site under the policies that were the  
7 subject of the insurance coverage lawsuit that Duke Energy Ohio filed. The  
8 insurance policies were not tied to a specific year, a specific boundary of real  
9 property, location of contamination, or type of contamination. The settlements  
10 were to resolve *all* claims related to the presence of contaminants stemming from  
11 MGP operations at the East End MGP Site and the West End MGP Site, wherever  
12 these contaminants might be located.

13 In addition, the Company continues to conduct remediation assessments.  
14 While the Company has endeavored to complete the necessary investigation and  
15 remediation activities in an expeditious and responsible manner, due to exigent  
16 circumstances beyond the Company's control, the Company is not able to  
17 complete all necessary remediation by December 31, 2019. Much of the Middle  
18 Parcel at the East End Site is considered inaccessible at present due to the  
19 operation of sensitive natural gas infrastructure consisting of subterranean  
20 propane storage and delivery facilities.

1           Until MGP investigation and remediation is complete and the amounts to  
2           be recovered by the Company through Rider MGP are finalized, the Company  
3           will not be able to begin to determine the appropriate amounts to be disbursed.

4   **Q.   WHAT PORTION OF INSURANCE PROCEEDS SHOULD BE**  
5   **DISBURSED TO RATEPAYERS, IF ANY?**

6   A.   If the Company does not recover all MGP investigation and remediation costs, it  
7           will be necessary to allocate the insurance proceeds proportionally, in accordance  
8           with the shares of such costs that were borne by ratepayers and borne by  
9           shareholders. The Company has requested additional time for the deferral of  
10          remediation and investigative costs as part of a separate proceeding. However, if  
11          the Company is denied such an extension, or if the Commission upholds Staff's  
12          position regarding cost recovery of remediation costs being limited to property  
13          boundaries, this will place a significant portion of the costs of investigation and  
14          remediation upon the Company and its shareholders. Accordingly, a proportional  
15          share of the insurance proceeds should also then be allocated to the Company to  
16          cover those expenses. This is because the insurance proceeds negotiated and  
17          settlements achieved from such were in contemplation of coverage for all  
18          necessary investigative and remediation activities at all contaminated areas at and  
19          surrounding the boundaries of the East End and West End MGP sites.

### **III.   CONCLUSION**

20   **Q.   DOES THIS CONCLUDE YOUR PRE-FILED SUPPLEMENTAL DIRECT**  
21   **TESTIMONY?**

22   A.   Yes.

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Summary: Testimony Supplemental Testimony of Keith G. Butler on behalf of Duke Energy Ohio, Inc. electronically filed by Mrs. Adele M. Frisch on behalf of Duke Energy Ohio, Inc. and D'Ascenzo, Rocco O and Kingery, Jeanne W and Watts, Elizabeth H