

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

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

- _____ Management policies, practices, and organization
- _____ Operating income
- _____ Rate Base
- _____ Allocations
- _____ Rate of return
- _____ Rates and tariffs
- X 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 **REMEDICATION.**

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.¹

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

¹ 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.²

² 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.

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/4/2019 4:20:45 PM

in

Case No(s). 14-0375-GA-RDR, 14-0376-GA-ATA, 15-0452-GA-RDR, 15-0453-GA-ATA, 16-0542-GA-RD

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