

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for an Adjustment to ) Case No. 20-0053-GA-RDR  
Rider MGP Rates. )

In the Matter of the Application of Duke )  
Energy Ohio, Inc., for Tariff Approval. ) Case No. 20-0053-GA-ATA

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**DIRECT 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  
  X   Other: Insurance

March 31, 2020

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**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. PLEASE BRIEFLY SUMMARIZE YOUR EDUCATIONAL**  
11 **BACKGROUND AND PROFESSIONAL EXPERIENCE.**

12 A. I have a Bachelor of Science degree in Business Administration, with a  
13 concentration in accounting, from the University of North Carolina at Chapel Hill.  
14 I am a Certified Public Accountant in the state of North Carolina, a member of the  
15 American Institute of Certified Public Accountants, a member of the North  
16 Carolina Association of Certified Public Accountants, Advisory Board of the  
17 Enterprise Risk Management Initiative at NC State's Poole School of Management,  
18 a member of the Strategic Risk Council of the Conference Board and a member of  
19 the Financial Executive International's Strategic Risk Committee.

20 I joined Duke Energy in January 1984, in the Controller's Department, and  
21 have worked in various leadership positions in accounting, finance, independent  
22 power development, and energy services. I was appointed to the position of Vice

1 President & Corporate Controller in August 2001 and was responsible for the  
2 accounting functions of Duke Energy. In June 2005, I was appointed to the position  
3 of Vice President, Corporate Tax. I was appointed Senior Vice President, Tax in  
4 January 1, 2007. As Senior Vice President, Tax, I had overall responsibility for  
5 corporate tax compliance, tax planning, and tax accounting for Duke Energy. I  
6 oversaw Duke Energy's Tax Department, which among other things, prepares and  
7 files federal, state, and local income, sales and use, excise, and property tax returns  
8 for Duke Energy and its affiliated companies as well as manages audits with the  
9 Internal Revenue Service and state and local tax authorities.

10 In February 2016, I was appointed to my current position as Senior Vice  
11 President Global Risk Management and Insurance and Chief Risk Officer.

12 **Q. PLEASE SUMMARIZE YOUR RESPONSIBILITIES AS SENIOR VICE**  
13 **PRESIDENT GLOBAL RISK MANAGEMENT AND INSURANCE AND**  
14 **CHIEF RISK OFFICER.**

15 A. As Senior Vice President Global Risk Management and Insurance and Chief Risk  
16 Officer, I have responsibility for overall risk management of Duke Energy, with  
17 particular focus on the corporation's market, credit, operational and strategic risks.  
18 In addition, I manage Duke Energy's insurance programs.

19 With regard to the former manufactured gas plant (MGP) operational sites  
20 and areas requiring remediation that are at issue in these proceedings, I am one of  
21 the people responsible for overseeing the efforts to obtain insurance recovery for  
22 the liabilities associated with those sites.

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC UTILITIES**  
2 **COMMISSION OF OHIO?**

3 A. Yes. Most recently, I provided testimony in support of Duke Energy Ohio's  
4 application to adjust its Manufactured Gas Plant Rider (Rider MGP) in consolidated  
5 Case No. 14-375-GA-RDR *et. al.*

6 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THESE**  
7 **PROCEEDINGS?**

8 A. The purpose of my direct testimony is to provide an update to the Company's  
9 pursuit of insurance coverage from insurers related to the two MGP sites.

10 Finally, I discuss the issues surrounding the appropriate treatment of the  
11 insurance proceeds, as well as the need for the Commission to fairly balance the  
12 allocation of costs of ongoing MGP remediation work with the benefits of the  
13 insurance proceeds.

## II. DISCUSSION

### A. Efforts to Obtain Insurance Recovery

14 **Q. PLEASE DISCUSS THE COMPANY'S EFFORTS TO OBTAIN**  
15 **INSURANCE RECOVERY FOR THESE SITES.**

16 A. Since 2014, Duke Energy Ohio has diligently pursued recovery of insurance  
17 proceed recovery under historical insurance policies that are potentially available  
18 to provide coverage for Duke Energy Ohio's liability for environmental property  
19 damage at and around the former East End and West End manufactured gas plants  
20 located in Cincinnati, Ohio. Duke Energy Ohio actively litigated against the  
21 insurer-defendants. It exchanged expert reports with the insurer defendants and

1           took and defended multiple expert depositions. It also filed and won a motion to  
2           compel against one of the insurer-defendants. In addition to its litigation efforts,  
3           Duke Energy Ohio engaged in settlement negotiations both directly and through a  
4           mediator with all of the remaining insurer-defendants. These settlement  
5           negotiations were ultimately successful, with Duke Energy Ohio reaching written  
6           settlement agreements with all insurer-defendants who were solvent and  
7           maintained coverage.

8   **Q.   PLEASE SUMMARIZE THE FINAL INSURANCE SETTLEMENT**  
9   **PROCEEDS.**

10  A.   In sum, the Company was able to achieve insurance proceeds, net of legal fees from  
11       all solvent insurers. As of February 29, 2020, the Company has received payments  
12       totaling \$50,562,476 from these carriers, net of legal fees.

13  **Q.   PLEASE EXPLAIN THE SCOPE OF THE SETTLEMENTS AS IT**  
14  **RELATES TO MGP INVESTIGATION AND REMEDIATION.**

15  A.   As the Company explained in prior Rider MGP proceedings, the settlement and  
16       underlying insurance policies were not directed at any particular parcel or limited  
17       to the presence of contamination only where the original MGP operations took  
18       place. The scope of settlements achieved, relates to coverage for all MGP  
19       contamination related to and/or stemming from the former MGP operations, no  
20       matter where that impact is located.

1 **Q. WHY ARE BOTH THE SCOPE OF THE INSURANCE POLICIES AND**  
2 **THE SCOPE OF THE SETTLEMENTS RELEVANT?**

3 A. If the Commission limits recoverable costs under Rider MGP to MGP investigation  
4 and remediation costs that were incurred only within certain property boundaries,  
5 it would be flatly inconsistent to credit *all* of the insurance proceeds—which were  
6 paid to cover a much broader range and area of MGP costs —to ratepayers. If  
7 remediation cost recovery is somehow limited or apportioned based upon  
8 geographic metes and bounds of real property, then the insurance proceeds should  
9 also be allocated in a similar manner, or in some other reasonable manner, once  
10 remediation is complete and the final costs are determined. In other words, to the  
11 extent that recovery of remediation costs is limited to customers based upon a belief  
12 that there is a timing or geographic apportionment of remediation expense between  
13 customers and the Company, so too should there be a corresponding apportionment  
14 of insurance proceeds.

15 Denying full cost recovery of MGP remediation expense based only upon  
16 Staff’s allocation of the legal obligation to incur necessary MGP remediation costs  
17 by establishment of an arbitrary property boundary line, especially one that is  
18 unrelated to the actual physical presence of contamination, is, on its own, both  
19 unsupportable and unreasonably punitive. Doing so without allocating a portion of  
20 the insurance proceeds that were acquired to resolve total MGP liability at the East  
21 End MGP Site and the West End MGP Site from insurance carriers, would even  
22 further over penalize the Company for its efforts to comply with federal law and  
23 for incurring costs that were already determined by the Ohio Supreme Court as a

1 necessary expense of providing utility service. As I explained in previous  
2 testimony, the amount and value of insurance settlement proceeds were achieved  
3 based upon completely resolving the MGP remediation liability at the East End  
4 MGP Site and the West End MGP Site under the policies.

5 **Q. WHY DID DUKE ENERGY OHIO SETTLE WITH THESE INSURANCE**  
6 **CARRIERS?**

7 A. The insurance carriers contended, among other things, that they had no obligation  
8 to provide coverage for the investigation and remediation costs at the East End  
9 MGP site and the West End MGP site. The insurance carriers based this contention  
10 on certain language in their policies and on their proposed interpretation of Ohio  
11 insurance coverage law. Through aggressive litigation, service of interrogatories  
12 and document requests, depositions of the insurers' respective company  
13 representatives, retention of highly qualified experts to dispute the insurers' claims,  
14 depositions of the insurers' experts communication to the insurers of Duke Energy  
15 Ohio's own interpretation of Ohio insurance coverage law, and diligent direct  
16 negotiations and through mediations, the Company achieved settlements while  
17 mitigating legal costs and balancing the risk of potential adverse outcomes of a trial.  
18 The insurance coverage issues in the case were complex, and the court and/or jury  
19 could have reached decisions regarding the key legal and factual disputes that  
20 would have been averse to Duke Energy Ohio's positions. The achievement of  
21 settlements with the insurer-defendants was neither easy nor a foregone conclusion.



1 **Q. DO YOU BELIEVE THE INSURANCE SETTLEMENTS ACHIEVED ARE**  
2 **REASONABLE AND IN THE BEST INTERESTS OF CUSTOMERS AND**  
3 **THE COMPANY?**

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

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

10 A. No.

**B. Distribution of Settlement Proceeds**

11 **Q. PLEASE EXPLAIN THE COMPANY'S POSITION REGARDING THE**  
12 **DISTRIBUTION OF SETTLEMENT PROCEEDS.**

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

15 First, as was directed by the Commission in Case No. 12-1685-GA-AIR,  
16 the Company has sought timely recovery of its MGP remediation expenses by  
17 making annual filings since 2014. Although pending decision, to date, the  
18 Commission has not ruled on any of these filings. Therefore, the Company has not  
19 been permitted timely recovery of any incurred and incremental remediation costs.  
20 While the Commission's order in Case No. 12-1685-GA-AIR did state that the  
21 Company was not to accrue carrying costs on its MGP deferral, and the Company  
22 did not challenge that decision at the time, it was unforeseeable and indeed

1           incomprehensible that the Commission would not timely issue any decisions in the  
2           annual recovery filings and that the Company's applications would remain  
3           unresolved for more than six years. The stated rationale for the Commission's  
4           decision to exclude carrying costs from the deferral was, in part, to encourage the  
5           Company to seek timely recovery of its MGP remediation costs. It is unreasonable  
6           for the Commission to direct insurance proceeds to begin to flow back to customers  
7           when the Commission has yet to authorize recovery of MGP remediation costs for  
8           calendar years 2013, 2014, 2015, 2016, 2017, 2018, and now 2019.

9           Second, as previously explained by Duke Energy Ohio in consolidated Case  
10          No. Case No. 14-375-GA-RDR *et. al.*, the insurance proceeds at issue were to  
11          resolve all remediation liabilities relating to the East End MGP Site and the West  
12          End MGP Site under the policies that were the subject of the insurance coverage  
13          lawsuit that Duke Energy Ohio filed. The insurance policies were not tied to a  
14          specific year, a specific boundary of real property, the location of contamination or  
15          the type of contamination. The settlements were to resolve all claims related to the  
16          presence of contaminants at the East End MGP Site and the West End MGP Site,  
17          wherever these might be located, including within and along the Ohio River.

18          In addition, the Company continues to conduct remediation assessments. As  
19          was recognized by the Commission's November 13, 2013, Gas Rate Case Opinion  
20          and Order, the Company has a legal obligation to remediate MGP contamination at  
21          the East End MGP Site and the West End MGP Site, regardless of any geographic  
22          border, arbitrary or otherwise. As Duke Energy Ohio witnesses Shawn Fiore, and  
23          Todd Bachand explain in their direct testimony, the MGP investigation is an

1 iterative process that takes time to complete. This process is ongoing. Indeed, the  
2 Company is unable to perform necessary remediation in areas of the East End parcel  
3 until it is able to safely retire underground propane storage caverns directly below  
4 contaminated areas. Until the issues regarding scope of remediation and allocation  
5 of MGP remediation expense between customers and the Company is resolved, no  
6 insurance proceeds should be distributed.

7 **Q. WHY ARE THE SCOPE OF THE SETTLEMENTS AND THE SCOPE OF**  
8 **INSURANCE COVERAGE UNDER THE POLICIES RELEVANT TO THE**  
9 **ISSUE OF TREATMENT OF THE INSURANCE PROCEEDS?**

10 A. Based upon my years of experience in managing risk and managing the team of  
11 experts that reviewed the underlying policies and my direct involvement in the  
12 settlement negotiations at issue, it is my understanding that the settlements and  
13 underlying insurance policies were not directed at any particular parcel, or limited  
14 to the presence of contamination at only where the original MGP operations took  
15 place. The scope of settlement for all MGP contamination at the East End MGP  
16 Site and the West End MGP Site is relevant because parties to prior Rider MGP  
17 adjustment proceedings, including the Staff of the Commission, take the position  
18 that only MGP contamination that was on a property where original MGP  
19 operations occurred is recoverable under the Company's Rider MGP.  
20 Notwithstanding the Staff's interpretation of the Ohio Supreme Court's decision, it  
21 is irreconcilable to say on one hand that remediation cost recovery is somehow  
22 limited and should be apportioned based upon some geographic metes and bounds  
23 of real property and to also not allocate the insurance proceeds in a similar manner,

1 or in some other reasonable manner, once remediation is complete and the final  
2 costs can be determined. In other words, to the extent that the apportionment of  
3 remediation costs are limited to customers based upon a belief that there is a timing  
4 or geographic apportionment of remediation expense between customers and the  
5 Company, so too should there be a corresponding apportionment of insurance  
6 proceeds. Again, the amount and value of insurance settlement proceeds were  
7 achieved based upon resolving the entirety of MGP remediation liability at the East  
8 End MGP Site and the West End MGP Site under the policies. Denying full  
9 recovery of MGP remediation expense without any finding of imprudence and  
10 based only upon an arbitrary allocation of the legal obligation to incur necessary  
11 MGP remediation costs by establishment of an arbitrary property boundary line,  
12 especially one that is unrelated to the actual physical presence of contamination, is  
13 both unsupportable and unreasonably punitive. Moreover, doing so without also  
14 allocating a pro rata share of the insurance proceeds that were achieved to resolve  
15 the total MGP liability at the East End MGP Site and the West End MGP Site from  
16 insurance carriers would effectively double penalize the Company for its efforts to  
17 comply with federal law and for incurring costs that were already determined by  
18 the Ohio Supreme Court as a necessary expense of providing utility service.

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

21 A. If the Company does not recover all MGP investigation and remediation costs, it  
22 will be necessary to allocate the insurance proceeds proportionally, in accordance  
23 with the portion of such costs that were borne by ratepayers and borne by

1           shareholders. The Company has requested additional time for the deferral of  
2           remediation and investigative costs as part of a separate proceeding that is currently  
3           still pending before the Commission. However, if the Company is denied such an  
4           extension, or if the Commission upholds Staff’s position regarding cost recovery of  
5           remediation costs being limited to property boundaries, this will place a significant  
6           portion of the costs of investigation and remediation upon the Company and its  
7           shareholders. Accordingly, a proportional share of the insurance proceeds should  
8           also then be allocated to the Company to cover those costs. This is because the  
9           insurance proceeds negotiated and settlements achieved from such were in  
10          contemplation of coverage for all necessary investigative and remediation activities  
11          at all contaminated areas within and outside the boundaries and associated with the  
12          East End and West End MGP sites.

13   **Q.   WHAT IS YOUR RECOMMENDATION WITH RESPECT TO**  
14   **INSURANCE PROCEEDS?**

15   A.   I recommend that to the extent the Commission denies recovery of any remediation  
16          and investigation costs or does not approve the Company’s request to continue  
17          deferring investigation and remediation costs that the Company incurred in  
18          response to its legal and societal obligation to address MGP impacts, that the  
19          Commission also apportion the insurance settlement proceeds in a fair and equitable  
20          manner between customers and the Company. The Commission should delay  
21          disbursement of all insurance proceeds until the full extent of the remediation is  
22          known, including areas within the Ohio River, the risk of which was contemplated  
23          by the parties in achieving the magnitude of settlement proceeds

**III. CONCLUSION**

1 Q. DOES THIS CONCLUDE YOUR PRE-FILED DIRECT TESTIMONY?

2 A. Yes.

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Summary: Testimony Direct Testimony Keith Butler electronically filed by Mrs. Debbie L Gates on behalf of Duke Energy Ohio Inc. and D'Ascenzo, Rocco O. Mr. and Kingery, Jeanne W and Vaysman, Larisa