Interoffice - Memorandum

To: Judith C. Boyko, Township Administrator

From: Tim Franck, Community Services Director

Date: October 18, 2013

RE: **STATUTORY RESOLUTION: MOTION TO APPROVE STATUTORY RESOLUTION No. 19-2013 GRANTING A PERPETUAL, NON-EXCLUSIVE EASEMENT TO DUKE ENERGY OHIO, INC. FOR ELECTRIC PURPOSES ON TOWNSHIP PROPERTY LOCATED AT 9100 RIALTO ROAD AND AUTHORIZING THE TOWNSHIP ADMINISTRATOR TO MAKE NON-SUBSTANTIVE CHANGES WITH LAW DIRECTOR APPROVAL, TO EXECUTE SAID EASEMENT AND ALL NECESSARY DOCUMENTS, AND TO TAKE OTHER ACTIONS AS NECESSARY TO CARRY OUT THIS RESOLUTION**

In consideration of the sum of one dollar ($1.00), Duke Energy Ohio, Inc. is hereby requesting a perpetual, non-exclusive easement at Township property, 9100 Rialto Road, for its successors and assigns to construct, reconstruct, operate, patrol, maintain, repair, replace, relocate, add to, modify and remove electric and/or telecommunication overhead line or lines, including but not limited to, all necessary and convenient supporting structures (such as poles), wires, cables, guy wires with anchors, grounding systems, counterpoises, and all other appurtenances, fixtures and equipment for the transmission and distribution of electrical energy, and for technological purposes (including but not limited to telecommunications), in, upon, over, along, under, through and across easement on Township property located at 9100 Rialto Road.

This easement will grant Duke Energy Ohio, Inc. the necessary right to enter to install and maintain the electric facilities being proposed. The Community Services Department recommends that the Township Trustees approve the easement request and authorize the Township Administrator to execute all necessary documents.

If you have questions, please contact me at Ext. 7300. Thank you.

STATUTORY RESOLUTION NO. 19 - 2013

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RESOLUTION GRANTING A PERPETUAL, NON-EXCLUSIVE EASEMENT TO DUKE ENERGY OHIO, INC FOR ELECTRIC PURPOSES ON TOWNSHIP PROPERTY LOCATED AT 9100 RIALTO ROAD AND AUTHORIZING THE TOWNSHIP ADMINISTRATOR TO EXECUTE ALL NECESSARY DOCUMENTS

WHEREAS, Duke Energy Ohio, Inc. is responsible to supply electric to the public; and,

WHEREAS, to accomplish this, utility easements are provided so electric utility lines and poles can be accessed, repaired, replaced, and maintained; and,

WHEREAS, from time to time Duke Energy Ohio, Inc. needs to access the infrastructure to repair, replace, and upgrade and to perform such improvements and maintenance there of; and,

WHEREAS, in consideration of the sum of one dollar ($1.00), Duke Energy Ohio, Inc. is hereby requesting a perpetual, non-exclusive easement at Township property, 9100 Rialto Road, for its successors and assigns to construct, reconstruct, operate, patrol, maintain, repair, replace, relocate, add to, modify and remove electric and/or telecommunication overhead line or lines, including but not limited to, all necessary and convenient supporting structures (such as poles), wires, cables, guy wires with anchors, grounding systems, counterpoises, and all other appurtenances, fixtures and equipment for the transmission and distribution of electrical energy, and for technological purposes (including but not limited to telecommunications), in, upon, over, along, under, through and across easement on Township property located at 9100 Rialto Road.

NOW THEREFORE, BE IT RESOLVED, pursuant to Ohio Revised Code § 505.10(A)(6), the West Chester Township Board of Trustees does hereby agree to:

SECTION 1. Grant a perpetual, non-exclusive easement for the above purposes to Duke Energy Ohio, Inc. for Township owned property located at 9100 Rialto Road.

SECTION 2. Authorize the Township Administrator to make non-substantive changes with Law Director approval and to execute said easement and all necessary documents and to take other actions as necessary to carry out this Resolution.

Adopted this 22nd day of October, 2013.

Lee Wong, President	Yes / No
Catherine Stoker, Vice President	Yes / No
George Lang, Trustee	Yes / No

PROPOSED

ATTEST:

_____

Bruce Jones, Township Fiscal Officer

APPROVED AS TO FORM:

_____

Donald L. Crain, Law Director

PROPOSED

GRANT OF EASEMENT

Pt. Parcel # M5610002000054

In consideration of the sum of One Dollar ($1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, **BOARD OF TRUSTEES OF WEST CHESTER TOWNSHIP, a political subdivision of the State of Ohio** (hereinafter referred to as "Grantor"), hereby grant(s) unto **DUKE ENERGY OHIO, INC.**, an Ohio corporation, with a mailing address of 139 East Fourth Street, Cincinnati, OH 45202 and its successors and assigns (hereinafter referred to as "Grantee"), a perpetual, non-exclusive easement, to construct, reconstruct, operate, patrol, maintain, repair, replace, relocate, add to, modify and remove electric and/or telecommunication overhead line or lines, including but not limited to, all necessary and convenient supporting structures (such as poles), wires, cables, guy wires with anchors, grounding systems, counterpoises, and all other appurtenances, fixtures and equipment (hereinafter referred to as the "Facilities") for the transmission and distribution of electrical energy, and for technological purposes (including but not limited to telecommunications), in, upon, over, along, under, through and across the following described real estate:

Proposed

> Situate in Section 3, Town 2, Range 2, West Chester Township, Butler County, State of Ohio and being part of a 47.272 acre tract of land as conveyed to **BOARD OF TRUSTEES OF WEST CHESTER TOWNSHIP** from Frank E. Minges, Jr., Beverly Sue Minges, Suzanne Gayle Vauthier, Anthony Francis Vauthier, Melissa Minges, and Frank E. Minges, III by deed dated May 31, 2013 and recorded in **Official Record Book 8452, Page 2356**, Butler County, Ohio Recorder's Office (hereinafter referred to as "Grantor's Property").
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> Said easement being that area indicated, relative to landmarks and property lines, show on a drawing marked "Exhibit A" attached hereto and hereby made a part hereof (hereinafter referred to as "Easement Area").

This easement grant shall include, but not be limited to, the following respective rights and duties of Grantor and Grantee:

1. Grantee shall have the right of ingress and egress over the Easement Area, and over the adjoining land of Grantor's Property (using lanes, driveways, and adjoining public roads where practical as determined by Grantee).

2. Grantee shall have the right to cut down, clear, trim, remove, and otherwise control any trees, shrubs, overhanging branches, and/or other vegetation upon or over the Easement Area. Grantee shall also have the right to cut down, clear, trim, remove, and otherwise control any trees, shrubs, overhanging branches, and/or other vegetation which are adjacent to the Easement Area but only to the extent such vegetation may endanger, as reasonably determined by Grantee, the safe or reliable operation of the Facilities, or where such vegetation is trimmed consistent with generally accepted arboricultural practices.

3. Grantee shall have the right to allow third parties to attach equipment to Grantee's Facilities, and any such equipment shall include but not be limited to, wires, cables, and other fixtures; provided, that Grantor shall pursue any claim with the third party and not Grantee, if any such claim arises out of any third party's attachment.

4. To the best of Grantor's knowledge, the Easement Area and the adjoining land of Grantor's Property have never been used to release, discharge, generate or store any toxic, hazardous, corrosive, radioactive or otherwise harmful substance or material.

5. Grantor shall not place, or permit the placement of, any obstructions which may interfere with the exercise of the rights granted herein to Grantee. Grantee shall have the right to remove any such obstruction.

6. Grantee shall have the right to pile dirt and other material and to operate equipment upon the surface of the Easement Area and the adjoining land of Grantor's Property, *but only* during those times when Grantee is constructing, reconstructing, maintaining, repairing, replacing, relocating, adding to, modifying, or removing the Facilities.

Proposed

7. Excluding the removal of vegetation and obstructions as provided herein, any physical damage to the surface area of the Easement Area and the adjoining land of Grantor's Property resulting from the exercise of the rights granted herein to Grantee, shall be promptly paid by Grantee, or repaired or restored by Grantee to a condition which is reasonably close to the condition it was in prior to the damage, all to the extent such damage is caused by Grantee or its contractors or employees. In the event that Grantee does not, in the opinion of Grantor, satisfactorily repair any damage, Grantor must, within ninety (90) days after such damage occurs, file a claim for such damage with Grantee at (a) 139 East Fourth Street, Cincinnati, OH 45202, Attn: Right of Way Services, or (b) by contacting an authorized Right of Way Services representative of Grantee.

8. Grantor shall have the right to use the Easement Area and the adjoining land of Grantor's Property in any manner which is consistent with the rights granted herein to Grantee, and shall comply with all applicable codes when making use of the land near the Facilities.

9. Notwithstanding anything to the contrary contained herein, Grantor shall not without the prior written consent of Grantee (a) construct or install, or permit the construction or installation of any building, house, or other above-ground structure, or portion thereof, upon the Easement Area; or (b) excavate or place, or permit the excavation or placement of any dirt or other material upon or below the Easement Area; or (c) cause, by excavation or placement of material, either on or off the Easement Area, a pond, lake, or similar containment vehicle that would result in the retention of water in any manner within the Easement Area.

10. Grantor warrants that it has the necessary authority and title to Grantor's Property to grant this easement to Grantee, and shall defend and hold Grantee harmless from the claim of any third party that Grantor does not have such authority or title.

11. The respective rights and duties herein of Grantor and Grantee shall inure to the benefit of, and shall be binding upon the respective successors, assigns, heirs, personal representatives, lessees, licensees, and/or tenants of Grantor and Grantee. Easement, Grantor and Grantee, as used herein, shall be deemed to be plural, when required to be so. The exercise of any or all of the rights and privileges of Grantee set forth herein, shall be at the sole discretion of Grantee.

Proposed

Signature page follows.

IN WITNESS WHEREOF, Grantor has caused this Grant of Easement to be signed by its duly authorized representative(s), effective the _____ day of _____, 2013.

BOARD OF TRUSTEES OF WEST CHESTER TOWNSHIP,
Grantor

By: _____ By: _____

Printed Name: _____ Printed Name: _____

Printed Title: _____ Printed Title: _____

STATE OF _____)
) SS:
COUNTY OF _____)

Personally appeared before me this day _____,_____, (a) duly authorized representative(s) of Grantor and acknowledged the signing of this Grant of Easement by _____ to be a voluntary act and deed for and on behalf of Grantor, and having been duly sworn/affirmed, state(s) that any representations contained therein are true to the best of _____ personal knowledge.

WITNESS my hand and notarial seal, this _____ day of _____, 2013.

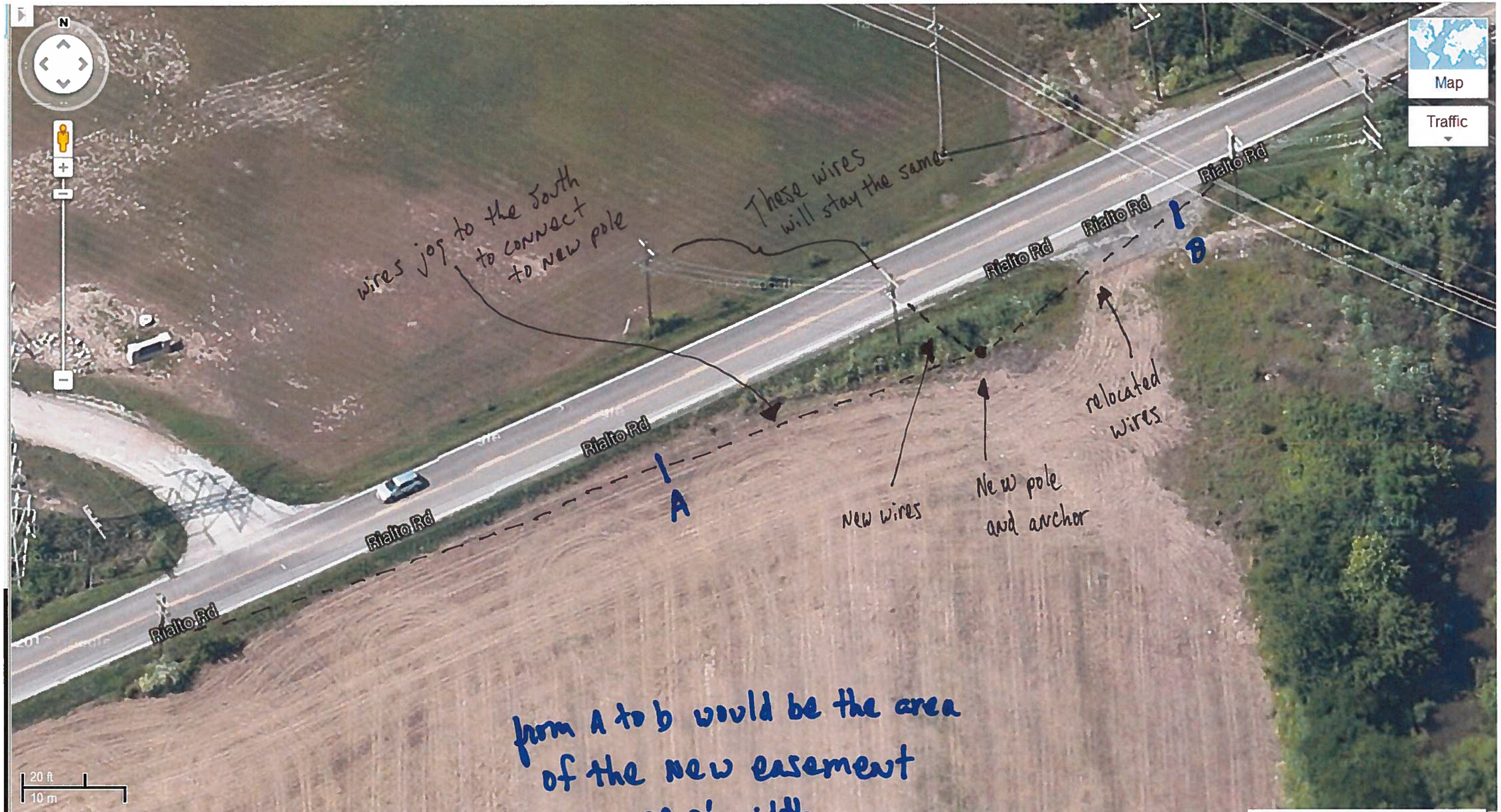
Proposed

My Commission Expires: _____ Signed Name: _____

My County of Residence: _____ Printed Name: _____

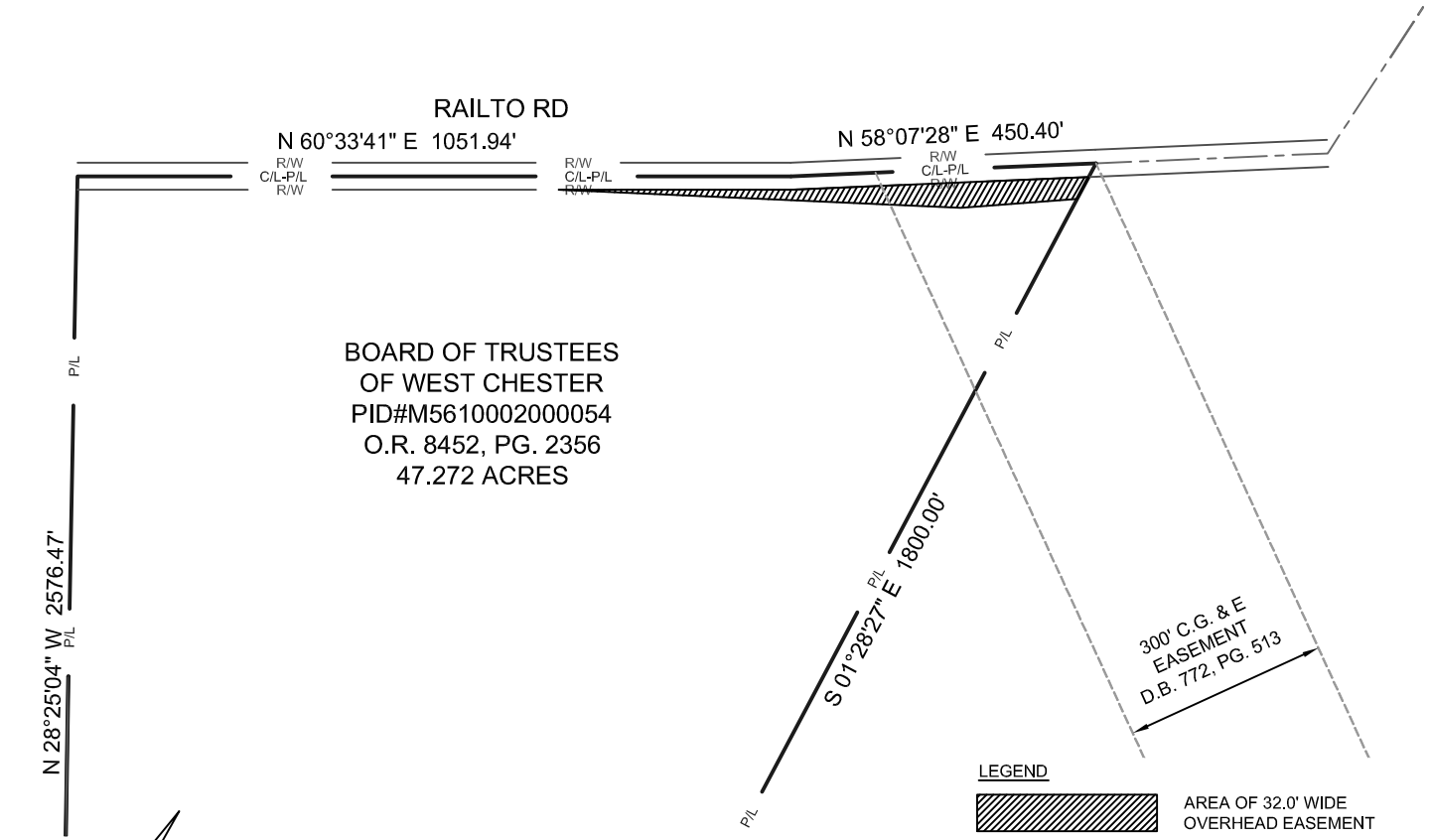
This Instrument Prepared by Janice L. Walker, Attorney-at-Law, 139 E. Fourth St., Cincinnati, OH 45202.

For Grantee's Internal Use:
Job Control #E4091444
LU#_____
Prep/Chk:atg/_____ Exec/Rec:_____
Dwg/Fac Ref.:bto-13915
Prepared Date:10/11/2013



from A to B would be the area of the new easement
a 32.0' width
16' on each side from the centerline of the wires.

THIS IS NOT A SURVEY. LOCATIONS SHOWN ARE APPROXIMATE.



SAFETY EXPECTATIONS FOR THIS JOB ARE THAT YOU

- REDUCE RISK
- REMOVE EXPOSURE TO HAZARDS
- REINFORCE SAFE BEHAVIOR

ILLNESS ZERO INJURY

DUKE ENERGY OHIO, INC. - EXHIBIT "A"

PROPERTY OWNER:
BOARD OF TRUSTEES OF WEST CHESTER

LOCATION:
9100 RAILTO RD , SEC 3, T-2, R-2
WEST CHESTER TWP,, BUTLER CO, STATE OF OHIO

DATE: 10/11/13	DRAWN BY: DES	CHECKED BY:
REVISION DATE:	REVISED BY:	

DUKE ENERGY®

139 E. FOURTH STREET
CINCINNATI, OHIO 45202

eMax # E4091444