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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Application	)	
of Duke Energy Ohio for an	)	Case No. 09-1849-GA-UNC
Adjustment to Rider AMRP Rates.	)	
In the Matter of the Application of	)	
Duke Energy Ohio for Tariff	)	Case No. 09-1850-GA-ATA
Approval.	)	

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**COMMENTS ON DUKE ENERGY OHIO'S APPLICATION  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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April 2, 2010

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**I. INTRODUCTION**

The Office of the Ohio Consumers' Counsel ("OCC"), an intervenor in the above-captioned proceeding, hereby files these comments ("Comments") to the Application of Duke Energy Ohio, Inc. ("Duke" or "Company") For An Increase In Gas Rates And For Approval To Change Accounting Methods filed on February 26, 2010 ("Application"), in regards to Duke's Accelerated Main Replacement Program ("AMRP") and Riser Replacement Program ("RRP"). Pursuant to the Stipulation and Recommendation ("Stipulation") filed on February 28, 2008, in Case No. 07-589-GA-AIR et al., and the Public Utilities Commission of Ohio's ("Commission" or "PUCO") Opinion and Order dated May 28, 2008, the AMRP rider rates are subject to increases in each of the years 2008 through 2018.

Duke's proposed rate increases relate to Duke's recovery of costs associated with the accelerated replacement of cast iron and bare steel mains and service lines for natural gas and the replacement of service head adapter style risers that have a propensity for

leaks. Duke has approximately 383,000 residential customers that would be asked to pay the rate increases requested in Duke's Application.

On November 27, 2009, Duke gave a pre-filing notice of its intent to file an application for approval of an increase in its AMRP rider rates. On February 26, 2010, Duke filed its Application for an Adjustment to Rider AMRP Rates. OCC filed its Motion to Intervene in these cases on December 21, 2009. On March 12, 2010, OCC filed a Motion to Continue the Evidentiary Hearing and Modify the Procedural Schedule ("Motion"). OCC's Motion was granted by the Attorney Examiner in an Entry on March 19, 2010 ("March 19 Entry").

## **II. RESERVATION OF RIGHTS**

At this time, OCC's Comments on the Application are preliminary in nature. OCC reserves the right to file additional comments and to file expert testimony on any matters not resolved by the Company by April 7, 2010, in the procedural schedule set forth in the Attorney Examiner's Entry.<sup>1</sup>

## **III. BURDEN OF PROOF**

The burden of proof regarding the Application rests upon Duke. In a hearing regarding a proposal that involves an increase in rates, R.C. 4909.19<sup>2</sup> provides that, "[a]t any hearing involving rates or charges sought to be increased, the burden of proof to show that the increased rates or charges are just and reasonable shall be on the public utility." Inasmuch as the current case arose from Duke's rate case, and is requesting an

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<sup>1</sup> March 19 Entry at 2.

<sup>2</sup> See also R.C. 4909.18.

increase in rates, Duke in this case bears the burden of proof. Therefore, neither OCC nor any other intervenor bears any burden of proof in this case.

#### IV. COMMENTS

##### A. Maintenance Expense Savings

OCC objects to the Company's Application which reflects no maintenance savings for 2009.<sup>3</sup> One attribute of the AMRP program is that historically, the AMRP Rider rate has been reduced by the amount of maintenance savings that resulted from reductions in the level of maintenance expenses realized because of the replacement of Duke's cast iron and bare steel mains.

It is problematic that Duke's AMRP program is generating no O&M savings. In 2007 Duke Rate Case pleadings, the Company stated: "[Duke] commits to customers that maintenance savings relating to its gas distribution system *will continue during the remaining AMRP and that [Duke] will pass these savings on to customers on an annual basis* through adjustments in Rider AMRP."<sup>4</sup> In addition, Duke's Direct Witness Sandra Meyer quantified the anticipated savings by stating: "To date, the AMRP has resulted in \$8.5 million in maintenance savings, which the Company has passed along to customers through Rider AMRP. The remaining projected maintenance savings are estimated at \$6.6 Million \* \* \*."<sup>5</sup> Unfortunately, over the past two years, in the AMRP, Duke has proposed no maintenance savings to pass back to consumers.

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<sup>3</sup> Application at Schedule 1 and Schedule 21 (February 26, 2009).

<sup>4</sup> *In re Duke Rate Case*, Case No. 07-589-GA-AIR, et al., Direct Testimony of Sandra P. Meyer at 21 (August 1, 2007). (Emphasis added).

<sup>5</sup> *Id.* at 22. (Emphasis added).

The Commission addressed this issue in the recent Dominion East Ohio pipeline infrastructure case, stating:

In evaluating the arguments of the parties, the Commission is mindful of the goal, articulated in the DEO Distribution Rate Case, of using the O&M baseline savings to reduce the fiscal year-end regulatory assets, which allows customers a more immediate benefit of the cost reductions achieved as a result of the PIR program (Staff Ex. 2 at 5). Moreover, the Commission agrees that, if O&M baseline savings are calculated using the methodology suggested by the company, it is possible that consumers will not realize any immediate savings as the result of the PIR program and could incur additional expenses.<sup>6</sup>

Duke alone has made the decision regarding how much and what pipeline should be replaced and the order of that replacement. Having made those decisions, Duke's management should now be held accountable before residential customers are required to pay even higher rates without the benefits that were promised.

Ohio law authorizes the Commission to consider utility management policies and practices when determining just and reasonable rates. R.C. 4909.154 states:

In fixing the just, reasonable, and compensatory rates, joint rates, tolls, classifications, charges, or rentals to be observed and charged for service by any public utility, the public utilities commission shall consider the management policies, practices, and organization of the public utility. The commission shall require such public utility to supply information regarding its management policies, practices, and organization. If the commission finds after a hearing that the management policies, practices, or organization of the public utility are inadequate, inefficient, or improper, the commission may recommend management policies, management practices, or an organizational structure to the public utility. In any event, the public utilities commission shall not allow such operating and maintenance expenses of a public utility as are incurred by the utility through management policies or administrative practices that the commission considers imprudent.

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<sup>6</sup> *In re DEO PIR Case*, Case No. 09-458-GA-RDR, Opinion and Order at 11 (December 16, 2009).

Having made those decisions regarding how much and what pipeline should be replaced and the order of that replacement, Duke's management should now be held accountable before residential consumers are required to pay even higher rates without the benefits that were promised.

Historically, the Company has had responsibility for undertaking its capital projects and replacing facilities as necessary in order to provide safe and reliable service for its customers and to recover only prudently incurred costs through the rate case process.<sup>7</sup> In approving the Stipulation that authorized the AMRP implementation for Duke, the Commission has given the Company this very generous program that provides for an opportunity to accelerate the replacement of its aging infrastructure, and, through the AMRP Cost Recovery Rider, provides for Duke's accelerated collection of costs from customers. Duke has been given the benefit, under the alternative regulation statute, of a ratemaking process that substantially removes the regulatory lag present under traditional ratemaking.<sup>8</sup> Certainly, accelerated cost recovery was an integral part of the AMRP program for Duke, but in exchange there was a contemplated quid pro quo for consumers. It was contemplated that Duke's customers would benefit from lower maintenance expenses.

The Company's Application showed an increase in maintenance expenses of \$1,113,147. This number was derived by adding the year-end totals of the three maintenance accounts together to arrive at \$5,667,902 and then netting that amount from the total baseline of \$4,554,755. The Company did not reflect any savings for Account 885, Maintenance Supervision & Engineering or Account 892, Maintenance of Services.

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<sup>7</sup> R.C. 4909.18 and R.C. 4909.19.

<sup>8</sup> R.C. 4929.11.

The Commission should establish a minimum level of maintenance expense savings that Duke should be required to pass back to consumers. The minimum level of maintenance expense savings should be based on Duke's own projected savings over the remaining years of the program, \$8.1 million.<sup>9</sup> If the methodology for determining maintenance expense savings described below does not yield more than the minimum level of savings, then the established minimum level of maintenance expense savings resulting from the AMRP should be passed back to consumers, given that the agreement to go forward with the AMRP was premised in part on Duke's representation of the savings.

Consistent with the Commission's decision in the recent Dominion East Ohio pipeline infrastructure replacement case, the Company should have calculated savings on an individual account-by-account basis. By doing so, Account 885, Maintenance of Mains, would have shown savings of \$161,140 and Account 892, Maintenance of Services, would have shown savings of \$155,791. Account 887 would have shown an expense increase of \$1,430,078, thus, zero savings would be reflected for that Account. That methodology yields a total of \$316,931 in maintenance expense savings from Accounts 885 and 892. However, because this methodology does not yield savings in excess of the 2009 minimum level of \$409,600, the minimum level of maintenance expense, should be used to lower the AMRP revenue requirement in this case. With this adjustment, the AMRP revenue requirement allocated to the residential class would be reduced from \$15,285,457 to \$15,060,177. Hence, the Company's proposed monthly

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<sup>9</sup> *In re Duke Rate Case*, Case No. 07-589-GA-AIR, et al., Stipulation at Exhibit 4 page 1 of 3 (February 28, 2008).



charge per residential customer would be reduced from \$3.69 to \$3.65 which represents a decrease of \$0.04 per month.

**B. Integrity Management Program Costs**

According to Company testimony, the Integrity Management Program ("IMP") was developed to address regulations issued by the U.S. Department of Transportation Office of Pipeline Safety.<sup>10</sup> Company witness Hebbeler states specifically that

These regulations require operators of hazardous liquid pipelines and natural gas transmission pipelines to provide enhanced pipeline safety inspection and testing activities for their facilities. The regulations also require the hazardous liquid pipeline and natural gas transmission pipeline operators to develop a program to identify all heavily populated areas traversed by their pipelines, develop a baseline assessment plan, conduct periodic risk assessments, and implement certain maintenance procedures.<sup>11</sup>

The Company includes IMP expenses in Account 887, Maintenance of Mains, for the 2009 test year \$350,272.96, as well as, \$276,515.49 for the 2007 baseline year.<sup>12</sup> In response to OCC discovery, the Company explained that, of the \$350,272.96 in total IMP expenses, \$333,503.46 is related to the transmission pipeline system and the remaining \$16,769.50 is related to the hazardous liquid pipeline system.<sup>13</sup> There were no IMP costs related to the distribution system. These costs are clearly not related to the Accelerated Main Replacement Program as they do not relate to the replacement of distribution lines or services.

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<sup>10</sup> *In the Matter of the Annual Application of Duke Energy Ohio For an Adjustment To Rider AMRP Rates, Case No. 09-1849-GA-RDR*, ("Duke AMRP Case") Direct Testimony of Gary J. Hebbeler (February 26, 2010) at 9.

<sup>11</sup> *Id.*

<sup>12</sup> Company Response to OCC Interrogatory No. 27. See also Application Schedule 21.

<sup>13</sup> Company Response to OCC Interrogatory No. 28.

In Duke's 2007 AMRP case (that involved the 2006 test year), the Company stated that it had removed IMP expenses from the gas maintenance expenses of that case.<sup>14</sup> Company witness William Don Wathen, Jr. filed testimony in that case stating:

Integrity Management Program expense has been removed from the gas maintenance expenses. The Integrity Management Program started after base rates were set in this proceeding, and is **unrelated to the AMRP program**. Removing the Integrity Management Program expense provides a better measure of DE-Ohio's actual maintenance savings attributable to the AMRP program.<sup>15</sup>

It is inexplicable why the Company has re-inserted IMP-related expenses into its AMRP Application.

OCC proposes to remove IMP expenses of \$276,515 from the 2007 baseline and remove \$350,273 in IMP expenses from the 2009 test year. This adjustment would not impact the O&M expense savings calculation proposed above; however, OCC's proposal to remove IMP-related expenses for the AMRP rate calculation could have the potential for greater maintenance expense savings in future test years. In addition, because the IMP is unrelated to distribution activity, by removing IMP-related expenses from the mains maintenance account, any resultant savings from mains maintenance would be more attributable to work performed under the AMRP.

### **C. AMRP Funding**

The Commission required Duke to document its efforts to obtain stimulus funding. The Commission Order stated:

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<sup>14</sup> *In The Matter of the Application of Duke Energy Ohio for an Increase in Gas Rates*, Case No. 01-1228-GA-AIR, Direct Testimony of William Don Wathen, Jr. (February 15, 2007) at 6.

<sup>15</sup> *Id.* (Emphasis added).

In its next AMRP filing, Duke will demonstrate and document its efforts to determine whether the AMRP and RRP projects may qualify under the American Recovery and Reinvestment Act of 2009 and, thus, whether stimulus funding is available for those projects.<sup>16</sup>

Any failure on the part of Duke to apply for stimulus funding for which the Company qualifies should result in a reduction to the AMRP Rider rate by treating all potential unapplied for stimulus dollars as a reduction to the current year's maintenance expense.

## **V. CONCLUSION**

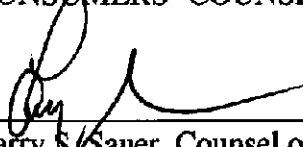
The Office of the Ohio Consumers' Counsel respectfully files these objections to the Application in conformance with the Stipulation. OCC's recommendations are directed toward producing for Duke's approximately 383,000 residential consumers the lowest reasonable rate available and fairness in this process that allows the utility to obtain accelerated collection of costs from customers. Specifically, OCC proposes the Commission establish a minimum savings level based upon Duke's own projection of expected savings over the remaining years of the AMRP program. OCC has recommended a modified maintenance expense savings level consistent with the recent Commission Order in the DEO PIR case; however, if that methodology does not yield more maintenance expense savings than the established minimum, then the minimum maintenance expense savings level should be passed back to consumers. Finally, OCC requests the "integrity management" expenses that were included in the 2007 baseline and the 2009 test year be excluded from the AMRP rate calculation and excluded from what customers would now have to pay.

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<sup>16</sup> *In re Duke 2008 AMRP Case*, Case No. 08-1250-GA-UNC, Opinion and Order at 6 (April 29, 2009).

Respectfully submitted,

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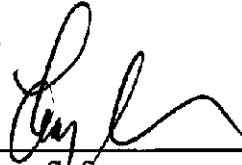
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the Office of the Ohio Consumers' Counsel's Objections to the Application was served via electronic mail to the parties of record identified below, on this 2nd day of April 2010.



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