

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval of an)
Alternative Rate Plan Pursuant to Section) Case No. 14-1622-GA-ALT
4929.05, Revised Code, for an Accelerated)
Service Line Replacement Program.)

**MOTION OF DUKE ENERGY OHIO, INC.,
FOR A WAIVER**

Comes now Duke Energy Ohio, Inc. (Duke Energy Ohio or Company), by and through counsel, and, as the Applicant for approval of an alternative rate plan for an accelerated service line replacement program (ASRP), respectfully moves that the Public Utilities Commission of Ohio (Commission) grant Duke Energy Ohio a waiver, pursuant to O.A.C. 4901:1-19-02(D) and 4901:1-19-06(C), from certain filing requirements contained in O.A.C. 4901:1-19-06.

The grounds for this motion are set forth in the accompanying memorandum.

Respectfully submitted,
DUKE ENERGY OHIO, INC.



Amy B. Spiller (0047277) (Counsel of Record)

Deputy General Counsel

Jeanne W. Kingery (0012172)

Associate General Counsel

Duke Energy Business Services LLC

139 E. Fourth Street, 1303-Main

P.O. Box 961

Cincinnati, Ohio 45201-0960

(513) 287-4359 (telephone)

(513) 287-4385 (facsimile)

Amy.Spiller@duke-energy.com

Jeanne.Kingery@duke-energy.com

Attorneys for Duke Energy Ohio, Inc.

MEMORANDUM IN SUPPORT

Rule 4901:1-19-06 of the Ohio Administrative Code (O.A.C.) sets forth the Commission's filing requirements for an application for an alternative rate plan under R.C. 4929.05. But these filing requirements may be waived. Specifically, O.A.C. 4901:1-19-02(D) provides that "the Commission may, upon application or a motion filed by a party, waive any requirement of this chapter, other than a requirement mandated by statute." Significantly, the Commission did not impose upon an applicant the obligation to demonstrate that good cause exists for such a waiver. However, as demonstrated herein, good cause does exist to waive the Company's compliance with certain of the Commission's regulations applicable to a request for an alternative rate plan.

O.A.C. 4901:1-19-06(B)(1)

O.A.C. 4901:1-19-06(B)(1) requires all testimony supporting an application for an alternative rate plan to be filed with that application. However, the controlling statute, R.C. 4929.05, requires the submission of an application that the Commission may approve if the applicant demonstrates compliance with the conditions set forth in R.C. 4928.05(A)(1)-(3).¹ There is no statutory requirement that the Commission's review and approval of an application for an alternative rate plan include a hearing, with the submission of both pre-filed and oral testimony.² Rather, Ohio law and Commission regulation provide the Commission with discretion to ascertain whether an application, and the requests therein, can be thoroughly

¹ The Commission may authorize an alternative rate plan where the (1) natural gas company is in compliance with R.C. 4905.35 and in substantial compliance with R.C. 4929.02; (2) natural gas company is expected to continue to be in substantial compliance with R.C. 4929.05 after implementation of the plan; and (3) alternative rate plan is just and reasonable.

² The Commission's discretion to approve an application under R.C. 4929.05, without a hearing, is consistent with its authority to approve proposals under R.C. 4909.18 without a hearing.

examined without a hearing. Indeed, O.A.C. 4901:1-19-07(D) expressly provides that the Commission “may require a hearing to consider the application.”

Through its Application, Duke Energy Ohio has demonstrated that, upon implementation of its alternative rate plan, it will have satisfied the statutory requirements set forth in R.C. 4929.05 and, as such, the proposed alternative rate plan should not be deemed to require a hearing. Consequently, testimony should not have been necessary, at the time the Application was filed, to support the filing’s compliance with R.C. 4929.05 or to enable the Commission’s or its Staff’s review. The Company thus seeks a waiver from the technical requirement of this rule, pending any finding by the Commission that a hearing will be necessary. In such event, the Company would file supporting testimony.

O.A.C. 4901:1-19-06(C)(6)

O.A.C. 4901:1-19-06(C)(6) requires an applicant to include a list of witnesses supporting any exhibits to an application. Here, the only exhibit to the Company’s Application is the proposed Rider ASRP through which the Company would recover costs associated with its proposed ASRP. For the reasons set forth above, the production of witnesses may not be necessary, as a hearing is not required for approval of the Company’s Application. And absent a hearing, there will be no need for a witness to support the proposed Rider ASRP. The Company seeks a waiver from the technical requirement of this rule. In the event that a hearing is required by the Commission, the Company submits that Peggy A. Laub will be the witness supporting the proposed Rider ASRP. The Company would also note that, in the event a hearing proceeds, it would likely also submit testimony of other witnesses to address issues other than the tariff. Such testimony would be submitted consistent with any procedural schedule issued in this proceeding.

O.A.C. 4901:1-19-06(B)(2)

This rule requires an applicant to provide a copy of its application for an alternative rate plan to the consumers' counsel and to the parties to its last natural gas base rate case. The Company, through inadvertence, did not provide such copies at the time the Application was filed. It has, however, provided the copies as required, as of February 16, 2015, and asks for a waiver of the rule to the extent it requires service at the time the application is filed. The delay in service will not result in any prejudice to the parties to the Company's last base rate, should they seek and be granted intervention in this proceeding.

WHEREFORE, for the reasons set forth herein, Duke Energy Ohio respectfully requests that the Commission grant the motion for waiver.

Respectfully submitted,
DUKE ENERGY OHIO, INC.



Amy B. Spiller (0047277) (Counsel of Record)

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Duke Energy Business Services LLC

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Cincinnati, Ohio 45201-0960

(513) 287-4359 (telephone)

(513) 287-4385 (facsimile)

Amy.Spiller@duke-energy.com

Jeanne.Kingery@duke-energy.com

Attorneys for Duke Energy Ohio, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 17th day of February 2015, to the party listed below.


Amy B. Spiller

William L. Wright
Section Chief
Public Utilities Section
180 East Broad Street, 6th Floor
Columbus, Ohio 43215
William.Wright@puc.state.oh.us

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Summary: Motion Motion of Duke Energy Ohio, Inc. For a Waiver electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Kingery, Jeanne W.