

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**COMMENTS
OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

Ohio Partners for Affordable Energy (“OPAE”) respectfully submits to the Public Utilities Commission of Ohio (“Commission”) these comments on the application filed by Duke Energy Ohio, Inc., (“Duke”) for approval of an alternative rate plan pursuant to Section 4929.05, Revised Code (“R.C.”), for an accelerated service line replacement program and cost recovery rider. These comments are filed in accordance with the Attorney Examiner’s Entry dated March 18, 2015.

The application filed by Duke is inadequate for the Commission to determine if the alternative rate plan meets the requirements of R.C. 4929.05. Under the statute, the Commission may authorize a rate plan only if the Commission finds that the application is in substantial compliance with the policy of the State of Ohio specified in R.C. 4929.02 and the alternative rate plan is just and reasonable. Under R.C. 4929.10, the Commission was to adopt rules to carry out the alternative rate plan statute. The filing requirements for alternative

rate plans are set forth in Rule 4901:1-19-06, O.A.C. The procedures are set forth in Rule 4901:1-19-07, O.A.C.

Duke's application requests approval of its plan without regard to the statute or the rules. As a result, Duke gives the Commission no basis on which it can determine if the plan is in substantial compliance with R.C. 4929.02 and is just and reasonable. As the Office of the Ohio Consumers' Counsel ("OCC") pointed out in its March 4, 2015 memorandum contra Duke's request for a waiver of the Commission rules in this case, Duke apparently believes that its application is just and reasonable on its face and needs none of the required filings, supporting testimony, or evidentiary hearing. OCC Memorandum Contra Duke's Motion for a Waiver (March 4, 2015) at 6. Based on this false assumption, Duke has not provided the necessary information for the Commission to determine whether its ten-year \$320 million rate plan is just and reasonable.

Rule 4901:1-19-06, O.A.C., makes Duke's current distribution rates an issue in this alternative rate plan proceeding. Under the Rule at (C), an infrastructure investment program is considered an increase in rates. Applicants are to submit exhibits described in divisions (A) to (D) of R.C. 4909.18. The applicant's most recent rate case is specifically an issue. The Staff Report in Duke's last rate case, Case No. 12-1685-GA-AIR, found that Duke's distribution rates should be reduced. Staff Report at Schedule A-1. Duke's current rates resulted in Duke over-earning its revenue requirement. *Id.* The Stipulation and

Recommendation filed in the rate case on April 2, 2013 provided for no revenue increase, but no revenue decrease either.

The rate case is now on appeal to the Ohio Supreme Court. Supreme Court Case No. 14-328. The appellants, including OPAE, have alleged to the Court that the recovery of costs approved by the Commission associated with Duke's manufactured gas plants ("MGP") violates Ohio law. In spite of all efforts to stay this MGP cost recovery through the Commission-approved MGP rider pending the appeal, Duke continues to collect costs associated with its MGP through its MGP rider. If the appellants prevail in their appeal, ratepayers will need substantial refunds in order to be made whole. Yet the MGP rider is only one example of Duke's ability to over-earn its revenue requirement under current rates. As the Staff Report in the last base rate case demonstrated, Duke is already over-earning its revenue requirement for gas distribution service.

It is impossible to imagine that Duke's current rates for gas distribution service are not already unlawful, excessive, unjust and unreasonable. An alternative rate plan cannot be just and reasonable if the underlying base rates and other gas cost recovery riders are not just and reasonable.

In addition to these very substantial problems with Duke's alternative rate plan application, Duke has provided no information on the safety problems that have been associated with the service lines it seeks to replace. Duke describes safety problems associated with service lines in a vague and general way without any evidence to support its contention that this accelerated infrastructure investment program is necessary for safety. Duke has also not justified the costs

associated with the rate plan. Duke has not explained why extraordinary and accelerated cost recovery through an alternative rate plan and another rider is necessary and why cost recovery cannot be accomplished through base rates.

OPAE is concerned that Duke seeks to forego filing basic information that the parties and the Staff of the Commission need to analyze the application, including whether or not Duke is currently over recovering its costs as evidenced in the last base rate case and as a result of the last base rate case. The Commission must order that Duke file all the required information and testimony in support of its application. An evidentiary hearing is necessary before the Commission can determine whether the application complies with state policy under R.C. 4929.02 and is just and reasonable under R.C. 4929.05 and 4909.18 and O.A.C. Rule 4901:1-19-06. Duke has not shown by the mere filing of an application that the pleading meets the statutory criteria. The request for a waiver of the Commission's rules should be denied and a procedural schedule providing for discovery and an evidentiary hearing should be issued.

The Commission has already declined to approve the plan without any process. By Entry dated April 14, 2015, the Commission ordered that a Staff Report of Investigation be filed in this case on June 5, 2015 and objections to the Staff Report be filed on July 6, 2015. With the issuance of the Staff Report and the filing of objections to the Staff Report, Duke should be ordered to file testimony in support of its application. Interested parties should be able to review Duke's testimony, conduct discovery, and file their own testimony. The Commission should schedule a hearing to consider Duke's evidence to meet its

burden of proof that the alternative rate plan complies with Ohio law, is just and reasonable, and does not result in even more over-recovery of costs for gas distribution service by Duke.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments was served electronically upon the following parties identified below in this case on this 24th day of April 2015.

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Summary: Comments of Ohio Partners for Affordable Energy electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy