

**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.     )

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**INITIAL POST-HEARING BRIEF  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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December 9, 2015

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**I. INTRODUCTION**

Duke Energy Ohio, Inc.'s ("Duke") 400,000 natural gas customers pay the highest natural gas rates in the state, and if Duke gets its way, those rates will be even higher. In this case, Duke has suddenly determined that its service lines present a severe safety and reliability threat. To solve the problem, Duke has proposed an Accelerated Service Replacement Program ("ASRP"). Under the program, at least 58,000 pre-1971 metallic and non-protected service lines -- pipes that have not been identified as currently leaking -- will be replaced at a cost of at least \$320 million to Ohio consumers.

However, the safety of Duke's distribution service lines is not at risk. And, as recognized by PUCO Staff ("Staff") witness Adkins, the \$320 million cost to upgrade Duke's system is too high for the very minimal benefits that Ohioans will receive:

Again, if measures to improve Duke's overall system safety can be thought of as adding measureable increments of safety, then, in Staff's opinion, Duke's proposed ASRP will not move the safety needle very much. Moreover, the marginal safety gain as a result of the ASRP should also be considered in light of its \$320 million

over ten years price tag. In Staff's opinion, the ASRP's purported benefits do not outweigh the costs.<sup>1</sup>

This case is not about the safety and reliability of Duke's natural gas distribution system. This case is not about any imminent safety threat to customers. Rather, this case is about Duke through unnecessary capital expenditures seeking customer funding of additional profits for shareholders. Duke's ASRP is a bad deal for consumers that will have the corollary effect of unnecessarily enriching the shareholders of Duke's parent, Duke Energy, Inc. The Public Utilities Commission of Ohio ("PUCO" or "Commission") should deny Duke's application.

## **II. BACKGROUND**

### **A. Duke's Accelerated Main Replacement Program.**

In 2001, the PUCO approved Duke's request to accelerate the replacement of natural gas distribution main lines on its system as part of Duke's Accelerated Main Replacement Program ("AMRP").<sup>2</sup> The AMRP's goal was to replace all 12 inch and smaller cast iron and bare steel natural gas mains over the following fifteen years.<sup>3</sup> As part of the AMRP, Duke also replaced any pre-1971 metallic or non-protected service lines that were connected to a cast iron or bare steel main being replaced under the AMRP.<sup>4</sup> Duke explicitly states that it was not able to replace all the pre-1971 metallic and non-protected service lines under the

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<sup>1</sup> Staff Ex. 3 at 14 (Adkins Direct).

<sup>2</sup> See, e.g., *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in its Gas Rates in its Service Territory*, PUCO Case No. 01-1228-GA-AIR at al., Opinion and Order at 12 (May 30, 2002).

<sup>3</sup> Id.

<sup>4</sup> Duke Ex. 1 at 5 (Application).

AMRP program.<sup>5</sup> Installation of additional pipeline through Duke's AMRP is set to conclude at the end of 2015.<sup>6</sup> However, customers will continue to fund the AMRP until Duke's next distribution rate case.<sup>7</sup> Now, in addition to those costs, customers will be burdened with costs from the proposed ASRP, which Duke would begin in 2016, if approved by the PUCO.<sup>8</sup>

### III. BURDEN OF PROOF

Duke's application is to approve an alternative rate plan. Alternative rate plans are governed by, inter alia, R.C. 4929.05. Under that statute, the PUCO may authorize an alternative rate plan after investigation "which may include a hearing at the discretion of the public utilities commission."<sup>9</sup> An alternative rate plan is not mandatory; rather it is at the discretion of the PUCO. Before an application is approved the PUCO must find that the applicant:

[i]s in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code;

- (2) The natural gas company is expected to be in substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code after implementation of the alternative rate plan;
- (3) The alternative rate plan is **just and reasonable**.<sup>10</sup>

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<sup>5</sup> Duke Ex. 1 at 5-6 (Application).

<sup>6</sup> Duke Ex. 1 at 5 (Application); *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Adjustment to Rider AMRP Rates to Recover Costs Incurred in 2010*, PUCO Case No. 10-2788-GA-RDR, Opinion and Order at pp. 10-11 (May 4, 2011).

<sup>7</sup> OCC Ex. 10 at 19-20 (Duann Direct) citing *In the Matter of the Annual Application of Duke Energy Ohio for an Adjustment to Rider AMRP Rates*, PUCO Case No. 10-2788-GA-RDR, Opinion and Order at 8 and 10 (May 4, 2011) (PUCO Opinion and Order allowing Duke to recover costs for allowable capital additions under AMRP past December 31, 2015).

<sup>8</sup> Tr. Vol. III at 496:1-17.

<sup>9</sup> R.C. 4929.05.

<sup>10</sup> R.C. 4929.05 (emphasis added).

Subsection (B) of the statute places the burden of proof on the applicant.

Further, R.C. 4905.22 requires that every public utility furnish necessary and adequate service and facilities, and that all charges for any service must be just and reasonable.<sup>11</sup> Of course, Duke as the applicant bears the burden of proof.<sup>12</sup>

Additionally, Duke must obtain authority to replace non-leaking service lines that are currently owned by its customers. Duke does not own the majority of non-leaking service lines that it proposes to replace on an accelerated basis through the ASRP. Rather, Duke's customers own most of the service lines until repair or replacement of these service lines occurs by Duke.<sup>13</sup> Duke acknowledged that it has been replacing, and thus taking ownership of, hundreds of non-leaking, customer-owned service lines per year.<sup>14</sup> While the PUCO authorized Duke to take ownership of leaking lines it repaired, the Commission did not rule that Duke could do so with non-leaking lines. And Duke did not cite to any PUCO order in its Application, Reply Comments, or Objections to the Staff Report that gives it the authority to take ownership of a customer-owned service line that is not leaking.<sup>15</sup> Similarly, no Duke witness was able to point to any PUCO Order where the PUCO granted Duke the authority to take ownership of a customer-owned service line

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<sup>11</sup> See R.C. 4905.22.

<sup>12</sup> See, e.g., R.C. 4928.143(C)(1); *In the Matter of the Application of The Ohio Bell Telephone Company for Authority to Amend Certain of its Intrastate Tariffs to Increase and Adjust its Rates and Charges and to Change its Regulations*, 1985 Ohio PUC Lexis 7, 91 (PUCO Case No. 84-1435-TP-AIR); *In the Matter of the Application of the Ottoville Mutual Telephone Company for Authority to Increase its Rates and Charges and to Revise its Tariffs on an Emergency and Temporary Basis Pursuant to Section 4909.16 Revised Code*, 1973 Ohio PUC Lexis 3, 4 (PUCO Case No. 73-356-Y) ("Although the applicant must shoulder the burden of proof in every application proceeding before the Commission, this burden takes on an added dimension in the context of an emergency rate case.").

<sup>13</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Rates*, Case No. 07-589-GA-AIR et al., Stipulation and Recommendation at 14 (February 20, 2008); Tr. Vol. I at 38:16-18 (Whitlock).

<sup>14</sup> Tr. Vol. I at 39:5-16 (Whitlock); Tr. Vol. I at 139:19-22 (Hebbeler).

<sup>15</sup> See Duke Ex. 1 (Application); Tr. Vol. I at 140 (Whitlock).



that was not leaking.<sup>16</sup> Therefore, Duke must obtain authority to replace non-leaking service lines that it does not currently own.<sup>17</sup>

#### **IV. EVIDENTIARY RULINGS**

**A. Duke Ex. Nos. 7 and 8 should be excluded from the record because they are not relevant evidence.**

Under Ohio Administrative Code § 4901-1-14(F):

Any party that is adversely affected by a ruling issued under rule 4901-1-14 of the Administrative Code or any oral ruling issued during a public hearing or prehearing conference and that (1) elects not to take an interlocutory appeal from the ruling or (2) files an interlocutory appeal that is not certified by the attorney examiner may still raise the propriety of that ruling as an issue for the commission's consideration by discussing the matter as a distinct issue in its initial brief or in any other appropriate filing prior to the issuance of the commission's opinion and order or finding and order in the case.<sup>18</sup>

At the hearing, objects alleged to be service lines removed from Duke's Ohio service territory were marked as Duke Ex. Nos. 7 and 8 against the objections of OCC, the Ohio Partners for Affordable Energy ("OPAE"), and Staff.<sup>19</sup> The next day photographs of these alleged objects were moved into evidence as Duke Ex. Nos. 7 and 8, again, against the objections of OCC, OPAE, and Staff.<sup>20</sup> The Attorney Examiner erred in admitting Duke Ex. Nos. 7 and 8 into the record. OCC elected not to take an interlocutory appeal from the oral ruling issued during the hearing in lieu of raising the issue in its initial brief.

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<sup>16</sup> See Tr. Vol. I at 96:3-7 (Hill); Tr. Vol. I at 139:19-140:25 (Hebbeler); Tr. Vol. I at 39:17-20 (Whitlock).

<sup>17</sup> See Duke Ex. 2 at 9 (Whitlock); see also Tr. Vol. I at 39:17-20 (Whitlock); Tr. Vol. II at 139:10-140:25 (Hebbeler).

<sup>18</sup> Ohio. Adm. Code 4901-1-14(F).

<sup>19</sup> Tr. Vol. I at 164:6-17 (Hebbeler).

<sup>20</sup> Tr. Vol. II at 195:25-203:21 (Objections of OCC, OPAE, and Staff).

Evidence is not relevant, and therefore inadmissible,<sup>21</sup> unless it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.<sup>22</sup> In other words, if the evidence does not tend to prove a fact assisting in the determination of an issue it has no function.<sup>23</sup> In addition, generally, real evidence may not be relevant unless its condition at the time of trial is similar to its condition at the time of the incident in question.<sup>24</sup> In such cases, the party offering the evidence must also introduce evidence sufficient to support a finding that the condition is similar.<sup>25</sup>

The alleged service lines and, consequently, photographs are not relevant. It appears that Duke intended for Duke Ex. Nos. 7 and 8 to be viewed as evidence of the typical condition of the 58,000 service lines set to be replaced under the ASRP.<sup>26</sup> However, Duke did not provide evidence to support this connection.

First, there is no evidence showing these service lines are a fair and adequate representation of the 58,000 service lines that Duke plans on replacing under the ASRP. In fact, quite to the contrary, Duke admitted that it was specifically seeking out a particularly deteriorated piece of pipe to use as a visual aid.<sup>27</sup> Accordingly, it is logical to

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<sup>21</sup> See Ohio Rule of Evidence 401.

<sup>22</sup> See Ohio Rule of Evidence 401(Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence).

<sup>23</sup> See *McCluskey v. Burroughs*, 4 Ohio App. 3d 182, 446 N.E.2d 1143, 4 Ohio B. 284, 1982 Ohio App. LEXIS 10980 (1982); See also Ohio Rule of Evidence 401.

<sup>24</sup> See *State v. Zukor*, 1976 Ohio App. LEXIS 7357, 1976 WL 189504 (Ohio Ct. App., Hamilton County Feb. 9, 1976).

<sup>25</sup> See *Id.*

<sup>26</sup> See Tr. Vol. I at 162-163 (Hebbeler).

<sup>27</sup> Tr. Vol. I at 182:2-20 (Duke witness Hebbeler testifying: “I was looking for a deteriorated pipe. That’s what I asked for”).

infer that Duke Ex. Nos. 7 and 8 are atypical and therefore not representative of the rest of Duke's service lines.

Alternatively, in order to provide relevant evidence Duke should have produced a variety of full-length service lines from a variety of areas in its Ohio service territory. This would have at least produced a somewhat fair and adequate illustration of the condition of Duke's service lines. Instead, Duke sought and introduced two five foot pieces<sup>28</sup> of the worst examples of pipe from two spots<sup>29</sup> in its service territory. Such a practice can only produce biased and irrelevant evidence.

Moreover, the Duke witness (Mr. Hebbeler) presented to testify to the alleged service lines (1) was not present when the objects were allegedly removed from the ground;<sup>30</sup> (2) did not produce any documentation verifying when or where the alleged pipes were removed from the ground;<sup>31</sup> (3) did not provide the names of the people who allegedly removed the objects from the ground;<sup>32</sup> (4) could not verify how the objects were removed from the ground, either by machine or by hand;<sup>33</sup> (5) could not verify how the objects were treated while in the custody of the initial owners;<sup>34</sup> (6) did not produce any documentation verifying when or where possession of the objects was passed to the witness; (7) did not produce any evidence verifying what condition the objects were in when possession of the objects was passed to the witness; (8) testified that he kept the

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<sup>28</sup> Tr. Vol. I at 174:21-175:2 (Hebbeler) (Duke testifying that while Duke Ex. Nos. 7 and 8 are approximately five feet long, a typical service lines is approximately 65 feet long).

<sup>29</sup> See Tr. Vol. I at 169-170 (Hebbeler).

<sup>30</sup> See Tr. Vol. II at 173:25-174:2 (Hebbeler) (Testifying that he was not present when the pipe was excavated).

<sup>31</sup> See Tr. Vol. II at 175:7-13 (Hebbeler).

<sup>32</sup> See Tr. Vol. II at 178:24-25 (Hebbeler).

<sup>33</sup> Tr. Vol. II at 175:4-6 (Hebbeler).

<sup>34</sup> Tr. Vol. II at 179:8-10 (Hebbeler).

objects in an uncontrolled environment;<sup>35</sup> and (9) did not testify as to how the objects were transported to the evidentiary hearing. In fact, the witness could not even verify that the objects had not been sitting in salt water before being presented to him.<sup>36</sup>

Therefore, Duke cannot not verify that the condition of the objects at the time of the hearing was the same or similar to the condition at the time that they were allegedly unearthed.<sup>37</sup> Additionally, it is not possible or even probable to be sure that the condition of Duke Ex. Nos. 7 and 8 are the result of corrosion. If the current condition of the pipes is not due to corrosion then they have no logical connection to the ASRP and are not relevant or admissible.

**B. The PUCO is indeed bound by the law.**

While, it is true that the PUCO is not strictly bound by the Rules of Evidence,<sup>38</sup> an administrative agency, “being vested with the power to make decisions and order upon issues vital to applicants... should not act upon evidence which is not admissible, competent or probative of the facts which it is to determine.”<sup>39</sup> In addition, the PUCO has expressly stated that while it has leeway to apply evidentiary rules, the rules are certainly instructive and that following the rules, in certain situations, will result in the most

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<sup>35</sup> Tr. Vol. II at 174:10-16 (Hebbeler).

<sup>36</sup> Tr. Vol. I at 179:11-18 (Hebbeler).

<sup>37</sup> See Tr. Vol. I at 178:18-179:18 (Hebbeler).

<sup>38</sup> *Day Lay Egg Farm v. Union County Bd. of Revision*, 62 Ohio App. 3d 555, 577 N.E.2d 84, 1989 Ohio App. LEXIS 1412 (Ohio Ct. App., Union County (1989)) citing *Provident Sav. Bank & Trust Co. v. Tax Commission* (1931), 10 O.O. 469 [474, 26 Ohio Law Abs. 175, 181].

<sup>39</sup> *Eastern Ohio Distributing Co. v. Bd. of Liquor Control* (1950), 59 Ohio Law Abs. 188 [190, 98 N.E.2d 330, 332].

equitable outcome to disputes between parties.<sup>40</sup> Furthermore, the Supreme Court has expressly stated that in reviewing PUCO decisions the court will examine the entire record to determine whether such order is based upon sufficient evidence, received under the established and recognized rules for the production of evidence.<sup>41</sup>

Here, as shown above, Duke Ex. Nos. 7 and 8 were admitted into evidence in violation of the rules of evidence and against the objections of all Intervenors. Even though the PUCO is not strictly bound by the rules of evidence, Duke Ex. Nos. 7 and 8 are so far outside the bounds of any credible application of the rules of evidence that they must be rejected. It is not proper for the PUCO to allow such evidence under the guise that it has discretion to liberally apply the rules. All legal bodies must ensure that they align themselves as closely as possible with the rules of evidence. To allow anything otherwise is bad legal precedent and public policy.

## **V. ARGUMENT**

### **A. Duke did not prove that the Accelerated Service Replacement Program will be a just and reasonable program for consumers.**

In this proceeding Duke has the burden of proving that its proposal is just and reasonable. Duke has failed to carry its burden because, among other things, it did not show that its ASRP is in all respects just and reasonable. Additionally, Duke failed to show that the ASRP is needed to provide customers with necessary and adequate facilities.

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<sup>40</sup> 2006 Ohio PUC LEXIS 270 (“The S.G. Foods complainants argue that, since the Commission is not required to apply the rules of evidence, it should not do so. We decline to accept this invitation. While it is true that the Commission has the leeway to apply evidentiary rules as we think appropriate, the rules are certainly instructive. In this situation, we deem it appropriate to follow the Ohio rules of evidence. By following the Ohio rules in this situation, we find that we can most equitably decide the dispute among the parties.”).

<sup>41</sup> *Lykins v. Public Utilities Commission*, 115 Ohio St. 376 (154 N.E. 249) (1926).

**1. There is no legal requirement or justification for Duke's proposed ASRP.**

**a. State law does not support the need or reasonableness for Duke's proposed ASRP.**

Duke asserted in its Application<sup>42</sup> and pre-filed Direct Testimony<sup>43</sup> that state regulations do not just allow, but encourage, approval of Duke's ASRP. Duke is mistaken.

**i. Duke's proposed ASRP does not satisfy R.C. 4929.02(A)(10).**

R.C. 4929.02(A)(10) states that it is state policy to "facilitate the state competitiveness in the global economy."<sup>44</sup> Duke states that the ASRP satisfies this policy objective by allowing for the efficient upgrading of the distribution system.<sup>45</sup> That is, Duke seems to believe that upgrading its system will facilitate the states competitiveness in the global economy.<sup>46</sup> However, in R.C. 4929.02(A)(10) there is no mention, reference or insinuation that upgrading of the distribution system relating to service lines is required by the State of Ohio.<sup>47</sup> Any assertion to the contrary is incorrect and misleading. In addition, Duke provides no analysis or precedent to support its position that replacing some of its older service lines will facilitate Ohio's competitiveness in the global

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<sup>42</sup> Duke Ex. 1 at 2-3 (Application).

<sup>43</sup> Duke Ex. 3 at 2:19-3:5 (Hill Direct).

<sup>44</sup> R.C. 4929.02(A)(10).

<sup>45</sup> Duke Ex. 1 at 2, 14 (Application) ("The policy objective of R.C. 4929.02(A)(10) is advanced through the ASRP in that the program will provide Duke Energy Ohio with the ability to upgrade its distribution system in an efficient manner, thereby yielding safer and more reliable service to customers.").

<sup>46</sup> Duke Ex. 1 at 14 (Application).

<sup>47</sup> See R.C. 4929.02(A)(10).; See Staff Ex. 1 at 4 (Staff Report) ("However, Duke's assertion that the state policy as set forth in R.C. 4929.02 calls for upgrading distribution systems is not correct....No part of the Section mentions or makes reference to upgrading natural gas distribution services. The Commission should not infer from Duke's description of the state's policies in the Application that state policy set forth in R.C. 4929.02 somehow mandates or calls for upgrades to natural gas distribution systems as advocated under the ASRP.").

economy. Duke's claim here is meritless and should not be seen as a rationale to approve an unjust and unreasonable \$320 million program. In fact, PUCO authorization of a \$320 million program charged to Duke's consumers, will directly harm Ohio's competitiveness in the global economy.<sup>48</sup>

**ii. Duke's proposed ASRP is not obligated or encouraged by Ohio Amended Sub. House Bill 95.**

Additionally, Duke's Application states that the Ohio Legislature, in an effort to effectuate the policies in R.C. 4929.02, has passed legislation that allows for the approval of alternative rate plans for the purpose of implementing, among other things, infrastructure improvement.<sup>49</sup> Amended Sub. House Bill 95 ("H.B. 95") did permit a natural gas utility to **apply** to the PUCO for approval to implement a capital expenditure program for infrastructure expansion, upgrade, or replacement.<sup>50</sup> However, it also maintained that all alternative rate plans must be just and reasonable.<sup>51</sup> In addition, all utilities must continue to provide adequate, reliable, and reasonably priced natural gas services and goods.<sup>52</sup>

H.B. 95 does not require, or even encourage, Duke to replace 58,000 non-leaking service lines on an accelerated basis at a cost of \$320 million.<sup>53</sup> On the contrary, H.B. 95 simply allows a utility to apply for such a program, which Duke has done.<sup>54</sup> Interpreting the Ohio Legislature's passage of H.B. 95 as obligating or encouraging Duke to propose

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<sup>48</sup> See OCC Ex. 12 (Williams Direct).

<sup>49</sup> Duke Ex. 1 at 2-3 (Application) (citing Ohio Amend. Sub. House Bill 95).

<sup>50</sup> See Ohio Amend. Sub. H.B. 95, 129<sup>th</sup> General Assembly (emphasis added).

<sup>51</sup> See Ohio Amend. Sub. H.B. 95, 129<sup>th</sup> General Assembly.

<sup>52</sup> See R.C. 4905.35, 4929.02, and 4929.05.

<sup>53</sup> See Ohio Amend. Sub. H.B. 95, 129<sup>th</sup> General Assembly.

<sup>54</sup> See Ohio Amend. Sub. H.B. 95, 129<sup>th</sup> General Assembly.

the ASRP is simply incorrect. Therefore, Duke's references to state law that allows or encourages approval of Duke's ASRP are misplaced at best and misleading at worst.

**b. Federal law does not support the need or reasonableness for Duke's proposed ASRP.**

Duke asserts in its Application and pre-filed Direct Testimony that current federal regulations encourage or require accelerated service lines replacement programs.<sup>55</sup> Duke is mistaken.

**i. The DIMP Regulations do not require or encourage an accelerated service line replacement program.**

Duke asserts that the Pipeline and Hazardous Material Safety Administration's ("PHMSA") Distribution Integrity Management Program ("DIMP") regulations compelled it to seek approval of the ASRP.<sup>56</sup> Duke's assertion is overstated.

The DIMP regulations require operators to develop, write, and implement a distribution integrity management program with the following elements:

- Demonstration that the operator has knowledge and understanding of its distribution system, including identification of the characteristics of its pipeline's design and operating characteristics and environmental factors in order to identify and assess risks to its pipeline system;
- Identification of potential threats to the integrity of its distribution system;
- Evaluation and ranking of identified risks;
- **Identification and implementation of measures to address risks**, including an effective leak management program;
- Development and ongoing monitoring of performance measures to determine the effectiveness of measures designed to address system risks;

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<sup>55</sup> See Duke Ex. 1 at 1, 6, and 14 (Application); Duke Ex. 6 at 10:15-22 (Hebbeler Direct); Duke Ex. 3 at 3:6-4:15 (Hill Direct).

<sup>56</sup> See Duke Ex. 1 at 1 (Application).



- Periodic re-evaluation of potential risks to its system at least every five years; and,
- Provide an annual report on its performance measures to PHMSA and the state safety authority that has jurisdiction over its pipeline system.<sup>57</sup>

First, PHMSA's DIMP Regulations require a distribution system operator to create a written integrity management plan.<sup>58</sup> Duke did not include its written DIMP plan in this proceeding for the PUCO to analyze.<sup>59</sup> Therefore, the federal DIMP regulations are the only evidence of what is required of an operator.

In short, the DIMP rules require an operator to perform an analysis to identify and address threats to its distribution system.<sup>60</sup> Notably, the DIMP Regulations do not specify which threats must be addressed.<sup>61</sup> Nor, as Duke admits, do they prescribe the specific measures that a utility should implement to address an identified threat to its distribution system.<sup>62</sup> The DIMP regulations only require the operator to “determine and implement measures designed to reduce the risks from failure of its gas distribution pipeline.”<sup>63</sup> The DIMP Regulations do not explicitly state what those measures must be.<sup>64</sup> Furthermore, as Duke admits, nowhere in the DIMP Regulations does it require, or even encourage, accelerated cost recovery for an operator who expends capital while implementing its integrity management program.<sup>65</sup>

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<sup>57</sup> Staff Ex. 1 at 4-5 (emphasis added).

<sup>58</sup> See OCC Ex. 2 at 1 (49 C.F.R. § 192, Subpart P).

<sup>59</sup> Tr. Vol. I at 60:21-61:1 (Hill).

<sup>60</sup> See OCC Ex. 2 (49 C.F.R. § 192, Subpart P).

<sup>61</sup> See OCC Ex. 2 (49 C.F.R. § 192, Subpart P).

<sup>62</sup> See OCC Ex. 2 (49 C.F.R. § 192, Subpart P); Tr. Vol I at 67:4-7 (Hill).

<sup>63</sup> OCC Ex. 2 at 3 (49 C.F.R. § 192, Subpart P).

<sup>64</sup> See OCC Ex. 2 (49 C.F.R. § 192, Subpart P).

<sup>65</sup> See Tr. Vol. I at 67:25-68:5 (Hill).

Nothing in the DIMP Regulations imposes an obligation on or even encourages a gas pipeline operator, such as Duke, to replace all the pre-1971 metallic and non-protected service lines on its distribution system.<sup>66</sup> In fact, there is not a single local distribution company in the United States (other than Duke and its Kentucky affiliate) that has or has had a stand-alone service line replacement program comparable to the one Duke is proposing in this proceeding.<sup>67</sup>

Further, Duke could comply with the DIMP requirement of “addressing” known system risks by implementing a myriad of other less costly measures.<sup>68</sup> Yet, Duke admitted that it did not analyze any alternatives to the ASRP.<sup>69</sup> Instead, on the eve of AMRP’s conclusion, Duke has chosen to apply for authorization to implement the most costly approach to complying with the DIMP requirements.<sup>70</sup> Such a decision is not just and reasonable. Duke is not required under federal regulations to implement a program that seeks to replace all pre-1971 service lines in its territory at a cost to consumers of approximately \$320 million.

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<sup>66</sup> See OCC Ex. 2 (49 C.F.R. § 192, Subpart P); Tr. Vol. I at 66:20-68:5 (Hill).

<sup>67</sup> See Tr. Vol. II at 221-222 (McGee).

<sup>68</sup> Staff Ex. 3 at 13-15 (Adkins Direct); Tr. Vol. I at 161:10-13 (Hebbeler).

<sup>69</sup> Tr. Vol. I at 161:10-13 (Hebbeler) (Duke witness Hebbeler testifying that Duke did not consider any other alternatives to the ASRP that would both contribute to improving system safety and comply with the DIMP regulations).

<sup>70</sup> Staff Ex. 3 at 13-15 (Adkins Direct).

**ii. The U.S. DOT's Letter, White Paper, and "Call to Action" are not legal binding, carry no legal precedent and do not require an accelerated service line replacement program.**

Duke asserts that the U.S. DOT's December 2011 letter, White Paper, and "Call to Action" concerning state pipeline infrastructure replacement programs should persuade the PUCO to approve its \$320 million ASRP.<sup>71</sup> Duke's position is, again, meritless.

The letter, "White Paper," and "Call to Action" prepared by the U.S. DOT as identified in Duke Ex. No. 10 are not legally binding documents. Rather, "White Papers" and "Calls to Action" are disseminated from government agencies on an almost daily basis on a variety of topics.<sup>72</sup> Staff for the PUCO, the intended audience for this particular "Call to Action," stated that prior to this proceeding it was not even aware of the letter, White Paper or "Call to Action."<sup>73</sup> In fact, Staff stated that it was not even aware that PHMSA had made a determination regarding certain pipes being "high-risk."<sup>74</sup> In addition, as part of his normal course of business, OCC witness Williams testified that he received numerous "Calls to Action" on a weekly basis and added that it would not be possible for the government to abide by every call to action that was circulated.<sup>75</sup> Instead of being a directive to engage in a \$320 million program, "White Papers" and "Call to

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<sup>71</sup> Duke Ex. 1 at 1 (Application); Duke Ex. 10 (McGee Addendum).

<sup>72</sup> See e.g., U.S. Department of Health and Human Services. Step It Up! The Surgeon General's Call to Action to Promote Walking and Walkable Communities. Washington, DC: U.S. Dept. of Health and Human Services, Office of the Surgeon General; 2015  
<http://www.surgeongeneral.gov/library/calls/walking-and-walkable-communities/call-to-action-walking-and-walkable-communities.pdf> (The U.S. Department of Health and Human Services issued a "Call to Action" in 2015 to urge communities to support walking, which it hopes would lead to improved health for American citizens).

<sup>73</sup> Tr. Vol. III at 530:8-23 (Adkins).

<sup>74</sup> Tr. Vol. III at 530:8-23 (Adkins).

<sup>75</sup> Tr. Vol III at 497:6-10 (Williams) (As OCC witness James Williams testifies on re-direct examination, if every call to action resulted in an Ohio utility spending \$320 million, rate would be unaffordable and we would all be bankrupt).

Action” notices are meant to spread awareness and inform the public about a topic that the particular agency has determined to be of value. It is common knowledge that such documents are not binding legal precedent.

Furthermore, even if the letter, White Paper and “Call to Action” did require the replacement of service lines, it does not require or encourage states to authorize accelerated cost recovery for such programs. In fact, Duke stated that it could not recall whether the White Paper explicitly encouraged accelerate rate recovery.<sup>76</sup>

Therefore, the PUCO should lend no weight to the letter, White Paper, and “Call to Action.” Instead the PUCO should determine if Duke has carried its burden of showing that the ASRP is just and reasonable and necessary to provide customers with adequate and reliable service and facilities.

**iii. Ohio’s current minimum gas pipeline safety leak repair standards satisfy the DIMP regulations and protect Ohio consumers.**

The PUCO minimum gas pipeline standards concerning leak repairs are contained in Ohio Adm. Code 4901:1-16-04(H). These safety standards require all natural gas pipeline operators, including Duke, to classify and address leaks based on the severity of the leak.<sup>77</sup> Under these regulations, a grade-one leak -- the most severe leak -- is considered “hazardous” and must be addressed immediately.<sup>78</sup> Grade-two and grade-three leaks are both classified as non-hazardous leaks. A grade-two must be repaired no later than 15 months from the time the leak is discovered, unless the pipeline containing the leak is scheduled for replacement within twenty-four months from the date the leak is

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<sup>76</sup> Tr. Vol. II at 288:13-18 (McGee).

<sup>77</sup> See OCC Ex. 3 (Ohio Adm. Code 4901:1-16-04).

<sup>78</sup> See OCC Ex. 3 (Ohio Adm. Code 4901:1-16-04).

discovered.<sup>79</sup> A grade-three leak has no specific standards for repair as it is not expected to become hazardous.<sup>80</sup>

Duke has confirmed that it is currently addressing the threat that leaks pose by complying with the PUCO minimum gas pipeline standards.<sup>81</sup> In fact, as noted by OCC witness Williams, Duke is currently exceeding the PUCO gas minimum pipeline standards because the utility treats all grade three leaks as grade two leaks.<sup>82</sup> Therefore, Ohio has already implemented and Duke is already abiding by rules and procedures that satisfy and exceed its alleged obligation under the DIMP Regulations to “identify and implement measures to address risks” caused by older service lines. Thus, the ASRP is not needed in order to comply with any federal regulations or “Calls to Action.”<sup>83</sup>

**2. Duke’s pre-1971 metallic and non-protected service lines do not need to be replaced under an accelerated cost recovery program funded by customers.**

Duke has a legal obligation to provide quality, safe, and reliable natural gas service.<sup>84</sup> In addition, Duke is required to charge its consumers a just and reasonable rate.

<sup>85</sup> Duke confirmed that its natural gas distribution system is already safe and reliable

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<sup>79</sup> See OCC Ex. 3 (Ohio Adm. Code 4901:1-16-04).

<sup>80</sup> See OCC Ex. 3 (Ohio Adm. Code 4901:1-16-04).

<sup>81</sup> Tr. Vol. I at 71:2-8 (Hill).

<sup>82</sup> OCC Ex. 12 at 9:1-10:5 (Williams Direct).

<sup>83</sup> See Staff Ex. 1 at 6-7 (Staff Report) (Staff states that continuing with and devoting additional resources towards increasing frequency of Duke’s leak surveys and repairing identified Grade 2 leaks on service lines more quickly would address the identified risks from the pre-1971 metallic service lines pursuant to Duke’s DIMP plan at considerably less cost per year than the ASRP).

<sup>84</sup> See R.C. 4929.22(E).

<sup>85</sup> See R.C. 4905.22 (“Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.”).

today, without the proposed ASRP.<sup>86</sup> And, Duke committed to ensure that its natural gas distribution system will continue to be safe and reliable in the future, without the proposed ASRP.<sup>87</sup>

Duke asserts that the material composition of a number of its natural gas service lines are considered high-risk materials and, consequently, it must replace all of these lines on an accelerated basis at a cost to consumers of \$320 million.<sup>88</sup> This is simply not necessary. The evidence in this proceeding showed that Duke's natural gas distribution system service lines are safe and reliable today, do not pose an imminent safety threat, do not have a high leak or failure rate, and are currently being repaired when necessary under a more than adequate pipeline management system. Therefore, an accelerated \$320 million cost recovery program funded by customers to replace Duke's service lines is not necessary.

**a. Service lines are generally not hazardous to consumers.**

OCC Witness Bruce Hayes testified that the vast majority of natural gas service line corrosion leaks do not pose a safety risk to the public.<sup>89</sup> This is due, in part, to the fact that main and service lines operate at much lower pressure than transmission lines.<sup>90</sup> A transmission line is a high pressure line than has pressures from 60 pounds per square gauge ("psig") up to just over 1,000 psig.<sup>91</sup> A main or service line generally operates at

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<sup>86</sup> Tr. Vol. I at 13 (Whitlock); Tr. Vol. I at 69 (Hill); Tr. Vol. I at 151 (Hebbeler); Tr. Vol. II at 218 (McGee).

<sup>87</sup> Tr. Vol. I at 13 (Whitlock); Tr. Vol. I at 69 (Hill); Tr. Vol. I at 151 (Hebbeler); Tr. Vol. II at 218 (McGee).

<sup>88</sup> Duke Ex. 6 at 6:8-15 (Hebbeler Direct).

<sup>89</sup> See OCC Ex. No. 12:3 (Hayes Direct).

<sup>90</sup> OCC Ex. 11 at 9:16-22 (Hayes Direct).

<sup>91</sup> OCC Ex. 11 at 9:16-17 (Hayes Direct).

pressures between 5 and 35 psig, which is an efficient pressure to move gas through the lines while limiting the safety exposure from leaks.<sup>92</sup>

OCC witness Bruce Hayes also testified that the lower operating pressure in service lines makes it much less volatile than a transmission line.<sup>93</sup> In general, when a lower pressure service line leaks it develops very tiny holes in the line from which nominal amounts of natural gas slowly seeps out.<sup>94</sup> This seeping natural gas then typically dissipates into the dirt and soil above and surrounding the service line.<sup>95</sup> Generally, the effects of such a leak range from nonexistent to killing off a patch of the grass above the leak.<sup>96</sup> OCC witness Hayes testified that these types of leaks pose very little safety threat to the public and are routinely repaired by or under the direction of natural gas pipeline operators.<sup>97</sup> In fact, it is worth noting that the alleged pipeline presented by Duke as Duke Ex. Nos. 7 and 8 did not even result in any type of reported leak<sup>98</sup> or incident.<sup>99</sup>

In contrast to a service line, a leak in a high pressure transmission line can be a potential safety threat.<sup>100</sup> A transmission line leak caused by corrosion, weld failure, or excavation damage would generally result in a much louder sound accompanied by

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<sup>92</sup> OCC Ex. 11 at 9:19-22 (Hayes Direct).

<sup>93</sup> See OCC Ex. No. 12:8-11 (Hayes Direct).

<sup>94</sup> OCC Ex. 11 at 11:13-15 (Hayes Direct).

<sup>95</sup> OCC Ex. 11 at 11:13:15 (Hayes Direct).

<sup>96</sup> See OCC Ex. 11 at 11:18-19 (Hayes Direct).

<sup>97</sup> OCC Ex. 11 at 12:3-6 (Hayes Direct).

<sup>98</sup> OCC Ex. 11 at 180:8-23 (Hebbeler).

<sup>99</sup> Tr. Vol. I at 174:17-20 (Hebbeler).

<sup>100</sup> OCC Ex. 11 at 10:6-13. (Hayes Direct).

ground debris being blown from the area due to the higher pressure in the line.<sup>101</sup> Static electricity from the flowing gas could even ignite and cause an explosion or fire.<sup>102</sup>

Therefore, a natural gas distribution service line is, by nature, not generally a hazardous pipeline. Despite these differences, Duke repeatedly used examples of incidents or explosions on mains to transmission lines to attempt to justify its service lines program.<sup>103</sup>

**b. Duke's service lines do not have a high risk of leak or failure that would harm customers .**

Duke asserts in its Application and pre-filed Direct Testimony that it “proposes to implement the ASRP to replace certain of its customers’ services lines that have been statistically demonstrated to have a high risk of leak or failure, due to their age or material.”<sup>104</sup> Duke’s claim is not true and it failed to provide evidence to support it.

**c. Duke failed to provide sufficient or adequate data to support its claim that its service lines have a high risk of leak or failure that would harm customers.**

Duke did not provide sufficient data to support its allegation that its service lines are an imminent safety threat or that they have a high leak rate that would harm customers. As part of its initial AMRP Application Duke produced the Stone & Webster Report, which was an independent review of the necessity of Duke’s proposed AMRP program.<sup>105</sup> The report provided a comprehensive review of the condition and

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<sup>101</sup> OCC Ex. 11 at 10:6-11. (Hayes Direct).

<sup>102</sup> OCC Ex. 11 at 10:10-13. (Hayes Direct).

<sup>103</sup> See e.g., Duke Ex. 10 at 5-6 (McGee Addendum).

<sup>104</sup> Duke Ex. 6 at 6:8-10 (Hebbeler Direct).

<sup>105</sup> See *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in its Gas Rates in its Service Territory*, PUCO Case No. 01-1228-GA-AIR, et al., Application, Volume 6, Stone & Webster Report (July 31, 2001).



performance of Duke's natural gas distribution system.<sup>106</sup> Specifically, the report meticulously presented data that showed the amount of leaks and breaks per mile for each and every size and type of pipe in Duke's system.<sup>107</sup>

In its ASRP Application Duke did not provide a report comparable to the one it provided in the AMRP proceeding.<sup>108</sup> In fact, Duke did not provide any data, study or reports with its Application, Reply Comments, or Objections to the Staff Report. Instead, Duke filed a bare minimal Application with no expert testimony, data, independent study, or financial analysis of the costs and benefits of its proposed program.<sup>109</sup> In other words, Duke provided no support for its \$320 million program.

When Duke did finally produce the Lummus Report, as part of its Direct Testimony, it was a mere three weeks before the evidentiary hearing.<sup>110</sup> However, in contrast to the Stone & Webster Report, the Lummus Report lacked a comprehensive examination and presentation of the essential data needed to determine whether Duke's proposal was just and reasonable.<sup>111</sup> Among other things, the report did not provide any information specific to the actual number of leaks (or severity of leaks based on the grade classification of leaks) that have occurred on the 58,000 pre-1971 metallic and non-protected service lines that Duke proposes to replace under the ASRP or the additional

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<sup>106</sup> See *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in its Gas Rates in its Service Territory*, PUCO Case No. 01-1228-GA-AIR, et al., Application, Volume 6, Stone & Webster Report (July 31, 2001).

<sup>107</sup> See *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in its Gas Rates in its Service Territory*, PUCO Case No. 01-1228-GA-AIR, et al., Application, Volume 6, Stone & Webster Report (July 31, 2001).

<sup>108</sup> See Duke Ex. 1 (Application).

<sup>109</sup> See Duke Ex. 1 (Application).

<sup>110</sup> See Duke Ex. 9 (McGee Direct).

<sup>111</sup> See Duke Ex. 9 (McGee Direct).

21,000<sup>112</sup> service lines that may need to be replaced after reconnaissance efforts are conducted. Duke simply provided information for all its service lines, which could give a distorted or misleading view of Duke's current state of affairs. Without specific data that demonstrates the past leak rate and leak intensity of the lines that Duke wants to charge Ohioans \$320 million to replace, Duke's proposal is not just and reasonable.

As a result, not only did Duke, the party with the burden in this proceeding, fail to present ample support for its proposal, but it also limited the ability of Intervenors, Staff, and the PUCO, to review the proposal, weigh the costs and benefits, and ultimately decide whether it was a just and reasonable proposal.<sup>113</sup>

**d. Duke did not show that its service lines have a high risk of leak or failure that would harm customers.**

The brief and simple set of statistics that Duke provided in the Lummus Report did not demonstrate that Duke's service lines have a high risk of leak or failure. In fact, Duke acknowledged that "leaks on service line segments are seen to be declining overall, but possibly not quite as fast as one might anticipate, given the extensive AMRP program that has taken place."<sup>114</sup> In support of this statement, a Duke witness presented data

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<sup>112</sup> Tr. Vol. I at p. 9:5-9 (Whitlock) (Duke witness changing amount of service lines that Duke proposes to do reconnaissance on from 28,000 to 21,000).

<sup>113</sup> Tr. Vol. III at 537-538 (Adkins) (Staff witness Adkins testifying that "It's an alternative to a base rate proceeding. In a base rate proceeding, the company has the burden of proof. The company provides boxes and boxes of data, schedules, et cetera, that support its position. In this case the company provided a 23-page application, no testimony, nothing. So I'm not sure the staff is in a position to -- I don't believe it's appropriate for the staff to have to try to figure out everything that the company relied on. We asked the company what was relied on, and then the company didn't provide everything that was relied on. Unless it's exclusively relied on the Lummus report, because that's what was provided in response to our data request, I don't think appropriate for the staff to have to chase down everything that the company may or may not have relied on or doubt the company didn't answer the question properly.").

<sup>114</sup> Duke Ex. 9 at 21 of 45 (McGee Direct).

showing a steady decline in repaired leaks on services from 2002 to 2014.<sup>115</sup> That data showed that Duke repaired over 3,000 service leaks in 2002 compared to approximately 1,800 in 2014.<sup>116</sup> In addition, the data showed that Duke's leak repair rate declined even though it had approximately 375,000 total service lines in 2003 compared to over 400,000 in 2014. In other words, Duke had a 0.8 percent<sup>117</sup> service line leak repair rate in 2003 compared to a 0.45 percent<sup>118</sup> service line leak repair rate in 2014. In other words, Duke's repair rate in 2014 was almost half of what it was in 2003.

Duke states that in the years 2012, 2013, and 2014 the number of leaks on its service lines that it classified as hazardous or grade-one leaks were 1,473, 2,241, and 1,776, respectively.<sup>119</sup> Duke states that in the year 2012, 2013 and 2014 the number of leaks on its service lines that it classified as non-hazardous or grade-two or grade-three leaks were 3,036, 3,031, and 2,398, respectively.<sup>120</sup> This means the 4,174<sup>121</sup> service line leaks that Duke reported in 2014 was less than the amount of service line leaks that Duke reported in 2006, 2007, 2008, 2009, 2010, 2011, 2012, or 2013.<sup>122</sup> Therefore, the amount of leaks on Duke's service lines is in fact decreasing.

In addition, the amount of grade-one hazardous leaks on Duke's system in recent years that were caused by the three threats the ASRP is designed to combat -- corrosion, natural forces, and material & welds -- are few and have been decreasing. Specifically,

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<sup>115</sup> Duke Ex. 9 at EAM-3, p. 10 of 24 (McGee Direct).

<sup>116</sup> Duke Ex. 9 at EAM-3, p. 10 of 24 (McGee Direct).

<sup>117</sup> 3,000 leaks /375,000 service lines=0.008.

<sup>118</sup> 1,750 leaks/375,000 service lines=0.0045.

<sup>119</sup> Duke Ex. 4 (Duke Response to OCC Interrogatory Nos. 65, 66, 67, 68).

<sup>120</sup> Duke Ex. 4 (Duke Response to OCC Interrogatory Nos. 65, 66, 67, 68).

<sup>121</sup> 1,776+2,398=4,174 (total amount of service line leaks in 2014).

<sup>122</sup> See Duke Ex. 9 at EMA-3 at 9 of 45 (McGee Direct).

the number of grade-one leaks that were caused by corrosion, natural forces, or material & welds combined in years 2012 through 2014 were 444, 304, and 315, respectively.<sup>123</sup>

As shown in the table below, the percentage of grade-one hazardous leaks on Duke service lines caused by corrosion, natural forces, or material & welds in the years 2012, 2013, and 2014, were 30.2 percent, 13.4 percent, and 17.7 percent, respectively.<sup>124</sup>

Leaks by Cause (2012 – 2014)

	Total Grade-one Leaks	Corrosion	Natural Forces	Material/Weld	Total	Percentage of Total Leaks (Grade-one)
2012	1472	101	196	147	444	30.2%
2013	2271	172	36	96	304	13.4%
2014	1776	209	62	44	315	17.7%

These data prove that these types of leaks are a very small percentage of grade-one leaks in Duke’s system and declining in occurrence.

**e. Of the service line leaks that do occur, the likelihood that of an “incident” that would harm customers is almost non-existent.**

While service lines are generally not hazardous and the leak rate on Duke’s service lines is decreasing, it is possible for an incident<sup>125</sup> to occur as a result of corrosion

<sup>123</sup> Duke Ex. 4 at 2 (Duke Response to OCC Interrogatory Nos. 65, 66, 67, 68).

<sup>124</sup> 2012: 101/1473=0.0685; 2013: 172/2241=0.0767; 2014: 209/1776=0.1176.

<sup>125</sup> See OCC Ex. 5 (49 C.F.R. § 193) (*Incident* means any of the following events:

(1) An event that involves a release of gas from a pipeline, or of liquefied natural gas, liquefied petroleum gas, refrigerant gas, or gas from an LNG facility, and that results in one or more of the following consequences:

- (i) A death, or personal injury necessitating in-patient hospitalization;
- (ii) Estimated property damage of \$50,000 or more, including loss to the operator and others, or both, but excluding cost of gas lost;
- (iii) Unintentional estimated gas loss of three million cubic feet or more;

(2) An event that results in an emergency shutdown of an LNG facility. Activation of an emergency shutdown system for reasons other than an actual emergency does not constitute an incident.

on a service line. Fortunately, incidents are extremely rare. In fact, in its history, Duke could only cite to one corrosion-related service line incident in Ohio!<sup>126</sup> This statistic is not an anomaly as it was corroborated by data collected by Staff.<sup>127</sup>

Data from the U.S. DOT show that during the 10 years from 2005 to 2014 there were only 217,336<sup>128</sup> corrosion-related “leaks” of any kind on Ohio gas distribution lines.<sup>129</sup> However, only four of those leaks resulted in corrosion-related natural gas line “incidents,” of any type.<sup>130</sup> Thus, statistically, for every corrosion-related leak on an Ohio gas distribution line there is only a 0.0018 percent<sup>131</sup> chance that that leak will result in an “incident.” Moreover, not one of the four incidents occurred on Duke’s system. And, there is no documentation that any of the four incidents were related to corrosion issues on service lines. This means that the amount of corrosion-related incidents on service lines in Ohio from 2004 to 2014 is likely less than four percent and the likelihood that a corrosion-related leak on a service line will result in an incident is likely less than 0.0018 percent.

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(3) An event that is significant in the judgment of the operator, even though it did not meet the criteria of paragraphs (1) or (2) of this definition.).

<sup>126</sup> Tr. Vol. I at 149:2-25–150:1-3 (Hebbeler) (Duke witness testifying that to his knowledge there has only been one incident, in 1998, on a service line that was caused by corrosion).

<sup>127</sup> See Staff Ex. 1 at 4 (Application).

<sup>128</sup>  $15,066 + 14,568 + 14,822 + 19,787 + 31,920 + 33,348 + 26,625 + 23,943 + 19,552 + 17,705 = 217,336$ .

<sup>129</sup> OCC Ex. 12 at Attach. 4 (Williams Direct) (U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration, Gas Distribution Integrity Management Program: Resources, Gas Distribution Leaks by Cause and Type (April 20, 2015), <https://hip.phmsa.dot.gov/analyticsSOAP/saw.dll?PortalPages>).

<sup>130</sup> OCC Ex. 12 (Williams Direct); U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration, Gas Distribution Integrity Management Program: Resources (April 11, 2015), [https://hip.phmsa.dot.gov/analyticsSOAP/saw.dll?PortalPages&NQUser=PDM\\_WEB\\_USER&NQPassword=Public\\_Web\\_User1&PortalPath=/shared/PDM%20Public%20Website/\\_portal/GD%20IM%20Perf](https://hip.phmsa.dot.gov/analyticsSOAP/saw.dll?PortalPages&NQUser=PDM_WEB_USER&NQPassword=Public_Web_User1&PortalPath=/shared/PDM%20Public%20Website/_portal/GD%20IM%20Perf).

<sup>131</sup>  $4/217,336=0.000018$ .

The rarity of an incident resulting from service line corrosion continues when data from the entire country is examined. As OCC witness Williams stated, from 2005 to 2014 there were only 28 incidents caused by corrosion on gas distribution lines in all of the United States.<sup>132</sup> Yet, the PHMSA data states that there were 1,330,393<sup>133</sup> corrosion-related “leaks” on gas distribution pipes recorded in the United States during the same time period.<sup>134</sup> That means from 2005 to 2014, only 0.0021 percent of the time did a corrosion-related leak on a gas distribution line result in an “incident.”<sup>135</sup> Notably, the U.S. DOT data does not specify what type of gas distribution line -- main or service -- the incident occurred on. Consequently, the number of corrosion-related incidents across the United States from 2004 to 2014 that occurred on *service lines* is likely lower than 28. This would result in the likelihood of corrosion-related service line incidents in the United States between 2004 and 2014 being less than 0.0021 percent.

Therefore, the chance that a service line will experience a corrosion-related incident in Ohio is likely less than 0.0018 percent and nationwide the chances are likely less than 0.0021 percent. Yet, Duke wants to spend \$320 million to try and make that probability even smaller. This is not a just and reasonable proposal for consumers.

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<sup>132</sup> OCC Ex. 12 at Attach. 2 (Williams Direct) (U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration, Gas Distribution Integrity Management Program: Resources, Gas Distribution Leaks by Cause and Type (April 20, 2015) <https://hip.phmsa.dot.gov/analyticsSOAP/saw.dll?PortalPages>).

<sup>133</sup>  $139,236 + 133,751 + 127,810 + 128,420 + 147,484 + 140,522 + 132,412 + 133,129 + 122,806 + 124,823 = 1,330,393$ .

<sup>134</sup> OCC Ex. 12 at Attach. 3 (Williams Direct) (U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration, Gas Distribution Integrity Management Program: Resources, Gas Distribution Leaks By Cause (April 20, 2015) <https://hip.phmsa.dot.gov/analyticsSOAP/saw.dll?PortalPages>).

<sup>135</sup>  $28/1,330,393=0.000021$ .

**f. Current regulations and procedures are more than adequate to manage Duke's service line leaks and protect consumers.**

To the extent that one of Duke's 58,000 pre-1971 metallic or non-protected service lines does develop a leak there are already adequate regulations and procedures in place to manage and address the situation. Consequently, the service lines are not an imminent threat because any leak or safety concern must already be addressed by Duke in accordance with the Ohio Administrative Code.

As stated earlier, PUCO regulations require all natural gas pipeline operators to classify and address leaks based on the severity of the leak.<sup>136</sup> Under these regulations, a grade-one leak is considered "hazardous" and the operator must immediately and continuously take action until such time as the leak is no longer hazardous.<sup>137</sup> However, even a grade-one hazardous leak, the most severe grade of leaks, does not necessarily require replacement of the affected pipe.<sup>138</sup> The PUCO regulations explicitly state that repairs can be performed on the affected pipe and the leak grade can be reclassified provided that a reevaluation is performed within 30 days of the repair.<sup>139</sup>

A grade-two or non-hazardous, leak must be repaired no later than fifteen months from the time the leak is discovered, unless the pipeline containing the leak is scheduled for replacement within twenty-four months from the date the leak is discovered.<sup>140</sup> The leak must then be reevaluated every six months until the leak is cleared.<sup>141</sup> The fact that

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<sup>136</sup> See OCC Ex. 3 (Ohio Adm. Code 4901:1-16-04); OCC Ex. 12 at 6-10 (Williams Direct).

<sup>137</sup> See OCC Ex. 3 (Ohio Adm. Code 4901:1-16-04) ; OCC Ex. 12 at 6-10 (Williams Direct).

<sup>138</sup> See OCC Ex. 3 (Ohio Adm. Code 4901:1-16-04) ; OCC Ex. 12 at 6-10 (Williams Direct).

<sup>139</sup> See OCC Ex. 3 (Ohio Adm. Code 4901:1-16-04) ; OCC Ex. 12 at 6-10 (Williams Direct).

<sup>140</sup> See OCC Ex. 3 (Ohio Adm. Code 4901:1-16-04) ; OCC Ex. 12 at 6-10 (Williams Direct).

<sup>141</sup> See OCC Ex. 3 (Ohio Adm. Code 4901:1-16-04) ; OCC Ex. 12 at 6-10 (Williams Direct).

PUCO regulations classify these types of leaks as “non-hazardous” and allow operators to wait 15 to 24 months to repair the leak shows that they are not an imminent safety threat. Furthermore, Duke produced no evidence to show that it has ever had a grade-two leak become a safety threat or result in a reportable incident.

Finally, a grade-three or non-hazardous leak has no specific standards for repair. Instead, an evaluation is required during the next scheduled survey or within 15 months until the leak is cleared, classified or replaced.<sup>142</sup> Grade-three leaks are not expected to become hazardous and they do not even have to be repaired!<sup>143</sup> Therefore, by definition no grade-three leak should be seen as an imminent threat.

Additionally, the PHMSA took a similar stance when it established the DIMP. Under the PHMSA’s DIMP regulations, a gas line operator who discovers a threat to a line due to corrosion is not required to repair or replace the line. Instead, the operator may simply order more frequent leak surveys to be performed on the line.<sup>144</sup> This is further evidence that service lines, which are candidates for corrosion-related issues, are not necessarily a safety risk. And, furthermore, that even if a corrosion-afflicted line exists, it does not necessarily need to be replaced. There are other less costly and less burdensome alternatives. However, Duke admitted that it did not consider any alternatives to the ASRP.<sup>145</sup>

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<sup>142</sup> See OCC Ex. 3 (Ohio Adm. Code 4901:1-16-04) ; OCC Ex. 12 at 6-10 (Williams Direct).

<sup>143</sup> See OCC Ex. 3 (Ohio Adm. Code 4901:1-16-04) ; OCC Ex. 12 at 6-10 (Williams Direct).

<sup>144</sup> PHMSA’s DIMP State-Federal Implementation Team Pilot Inspection Findings, at 24 (April 20, 2015) [https://primis.phmsa.dot.gov/dimp/docs/DIMP\\_MEA\\_Conerence\\_080411.pdf](https://primis.phmsa.dot.gov/dimp/docs/DIMP_MEA_Conerence_080411.pdf).

<sup>145</sup> Tr. Vol. 1 at 161:10-13 (Hebbeler) (Duke witness Hebbeler testifying that Duke did not consider any other alternatives to the ASRP that would both contribute to improving system safety and comply with the DIMP regulations).



These regulations show that while it is possible, under certain circumstances, that a service line leak could present a safety hazard, a vast majority of the time service line leaks are harmless. And, moreover, even if a service line does develop a “hazardous” leak there are already procedures in place that require the operator to immediately address the problem.<sup>146</sup> Therefore, a new program that calls for the replacement of all pre-1971 metallic and non-protected service lines at a cost of \$320 million is not just and reasonable.<sup>147</sup>

**g. Customer funding of a \$320 million ASRP is not necessary because it does not address the greatest cause of leaks on Duke’s service lines.**

Duke admits that leaks due to corrosion, material & welds, and natural forces are not individually or even collectively the greatest threat to its system.<sup>148</sup> According to Duke, excavation damage accounted for 63.9 percent of the total risk by cause to its distribution system between the years 2010 and 2014.<sup>149</sup> In fact, excavation damage has accounted for the highest risk by cause every year from 2002 to 2014.<sup>150</sup> Furthermore, according to U.S. DOT statistics the vast majority of natural gas distribution pipeline incidents in Ohio and nationwide were caused by damage to natural gas lines from construction or excavation activities, incorrect operation, or some other unidentified cause.<sup>151</sup> In fact, from 2005 to 2014, excavation damage and other outside forces

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<sup>146</sup> See OCC Ex. 3 (Ohio Adm. Code 4901:1-16-04) ; OCC Ex. 12 at 6-10 (Williams Direct).

<sup>147</sup> See Staff Ex. 1 at 6-7 (Staff Report) (Staff states that continuing with and devoting additional resources towards increasing frequency of Duke’s leak surveys and repairing identified Grade 2 leaks on service lines more quickly would address the identified risks from the pre-1971 metallic service lines pursuant to Duke’s DIMP plan at considerably less cost per year than the ASRP).

<sup>148</sup> Duke Ex. 3 at 8 (Hill Direct).

<sup>149</sup> Duke Ex. 3 at 8 (Hill Direct).

<sup>150</sup> Duke Ex. 3 at 7 (Hill Direct).

<sup>151</sup> OCC Ex. 12A (PHMSA Incident Report); OCC Ex. 12 at Attach. JDW-6, p. 1 of 2 (Williams Direct).

accounted for 822 of the 1,311 gas distribution incidents in the United States.<sup>152</sup> As stated earlier, during the same time period there were only 28 distribution line corrosion-related incidents across the whole country.<sup>153</sup> From 2010 to 2014, excavation damage was the cause of 34 percent of all hazardous leaks on Duke's distribution system -- more than corrosion, material & welds, and natural forces combined.<sup>154</sup> It is not just and reasonable for Duke to charge customers \$320 million to address risks that are not even the greatest threat to its system.

Duke has stated that it has already started to take steps to address the risk that excavation damage poses on its system.<sup>155</sup> However, Duke has provided very little information concerning how much these steps have cost, what their effectiveness has been, or how such steps will benefit consumers. And even if it had, the problem remains that excavation damage is the biggest threat to Duke's system and the ASRP does not address excavation damage at all.<sup>156</sup> Duke should be required to address the biggest threat to its system before it seeks to spend another \$320 million of customer money in the name of system improvements. Accordingly, the ASRP is not necessary and Duke's Application should be denied as unwarranted, unjust, and unreasonable.

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<sup>152</sup> OCC Ex. 12A (PHMSA Incident Report) (381+343=822).

<sup>153</sup> OCC Ex. 12A (PHMSA Incident Report).

<sup>154</sup> Duke Ex. 9 at 24, Figure EAM-7 (McGee Direct).

<sup>155</sup> Duke Ex. 3 at 13-15:1-3 (Hill Direct) (Duke states that it has, among other things,: (1) tried to increase public awareness; (2) investigated excavation damage occurrences; (3) educated individual contractors of excavation damage risk; (4) promoted April as National Safe Digging Month; and (5) been an active participant in the Ohio Underground Damage Prevention Coalition).

<sup>156</sup> Tr. Vol. I at 45:3-19 (Whitlock); Tr. Vol. I at 64-65:19 (Hill).

**B. Duke failed to prove the need for and reasonableness of the ASRP by not conducting a cost benefit analysis of the \$320 million ASRP, and by not quantifying any of the alleged claimed benefits for customers.**

Although Duke eventually filed the testimony of four in-house experts and two consultants,<sup>157</sup> the Utility did not include a basic cost-benefit analysis comparing the \$320 million price tag for the ASRP to the claimed benefits from the program for customers.<sup>158</sup> In fact, Duke did not even quantify the alleged customer benefits from the ASRP.<sup>159</sup> Despite the fact that Duke claimed in its pre-filed testimony to “outline the [ASRP] program’s benefits to our customers and employees,”<sup>160</sup> no Duke witness provided any quantification of these alleged benefits.<sup>161</sup> In failing to quantify the alleged benefits, Duke essentially ignored the statutory requirement of R. C. 4929.02 that its alternative rate plan must be “just and reasonable.”

Duke also failed to provide this germane and relevant information when it filed its Reply Comments<sup>162</sup> and Objections to the Staff Report.<sup>163</sup> Duke provided no quantification of any alleged or potential Operation and Maintenance (“O&M”) cost savings,<sup>164</sup> and no quantification of any leak reductions.<sup>165</sup> In fact, Duke did not even

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<sup>157</sup> See Duke Ex. 2 (Whitlock Direct), Duke Ex. 3 (Hill Direct), Duke Ex. 4 (Laub Direct), Duke Ex. 6 (Hebbeler Direct), Duke Ex. 9 (McGee Direct) and Duke Ex. 11 (Morin Direct) (October 23, 2015).

<sup>158</sup> Tr. Vol. I at 20, 23 (Whitlock), Tr. Vol. III at 542 (Adkins).

<sup>159</sup> Tr. Vol. III at 506 (Williams), Tr. Vol. III at 542 (Adkins).

<sup>160</sup> Duke Ex. 2 at 3 (Whitlock Direct).

<sup>161</sup> Tr. Vol. I at 19 (Whitlock).

<sup>162</sup> See Duke Energy Ohio, Inc.’s Reply Comments, PUCO Case No. 14-1622-GA-ALT (May 8, 2015).

<sup>163</sup> See Objections of Duke Energy Ohio, Inc. to the Staff Report of Investigation, PUCO Case No. 14-1622-GA-ALT (July 6, 2015).

<sup>164</sup> Tr. Vol. I at 117 (Whitlock).

<sup>165</sup> Tr. Vol. I at 125 (Whitlock).

attempt to quantify the cost impact of the ASRP on customers through the proposed ten year term.<sup>166</sup>

Duke claimed that the ASRP would make its natural gas distribution system safer for customers, and employees.<sup>167</sup> In an attempt to support this claim, Duke relied on unrelated anecdotal stories rather than any empirical data. For example, Duke cited incidents that occurred in Texas,<sup>168</sup> California<sup>169</sup> and Pennsylvania,<sup>170</sup> or in theory.<sup>171</sup> Yet, the fact remains that the California<sup>172</sup> and Pennsylvania incidents did not involve service lines.<sup>173</sup> Moreover, Duke Witness Dr. McGee admitted that he did no analysis to determine if the conditions surrounding the Texas incidents were similar to the conditions that exist in Duke's service territory.<sup>174</sup> Finally, Mr. McGee acknowledged that he was **not** aware of **ANY** incidents resulting from natural gas escaping a corroded service line and entering an occupied area or building and resulting in an incident.<sup>175</sup>

Duke's failure to actually quantify any of the alleged customer benefits also makes it very difficult, if not impossible for the PUCO to evaluate the prudence of the proposed \$320 million in spending. Without any quantification of the alleged benefits the PUCO cannot evaluate how much benefit customers are getting for their money. In fact, Staff witness Adkins emphasized this very point:

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<sup>166</sup> Tr. Vol. I at 126 (Whitlock).

<sup>167</sup> Duke Ex. 2 at 3 (Whitlock).

<sup>168</sup> Duke Ex. 9 at 18 (McGee Direct).

<sup>169</sup> Duke Ex. 10 at 5 (McGee Addendum).

<sup>170</sup> Duke Ex. 10 at 6 (McGee Addendum).

<sup>171</sup> Duke Ex. 9 at EAM-2, p. 10 of 45 (McGee Direct).

<sup>172</sup> Tr. Vol. II at 298 (McGee).

<sup>173</sup> Duke Ex. 10 at 5 (McGee).

<sup>174</sup> Tr. Vol. II at 220 (McGee).

<sup>175</sup> Tr. Vol. 254 at 254:12-19 (McGee).

I think the more central point that we're making is that **the company hasn't proven that it's needed**. In our opinion as staff, the company did not examine any alternatives. **The company has failed to do any sort of cost benefit analysis.**

**We have an idea of the costs, but not necessarily any idea of the benefits, especially those benefits accrued to customers.** There's some benefits accrued to the company, but, again, there's no quantification of those benefits.<sup>176</sup>

The lack of any quantification of benefits means that the PUCO must base prudence on whether a distribution system that is already safe and reliable<sup>177</sup> and that currently exceeds minimum natural gas service standards<sup>178</sup> is made safer enough to warrant the \$320 million price tag. In fact, Duke's witnesses testified that not only was Duke's distribution system, including service lines safe and reliable today, but that it would remain so in the future, even if the PUCO were to reject the ASRP.<sup>179</sup> Staff Witness Adkins correctly summed up the problem stating:

In my mind, safety is a relative term. Safety has to be considered in terms of its cost as well as its benefit. I think I pointed out in my testimony that Duke's system or any other system in the country cannot be made 100 percent safe. That's not humanly possible. There will always be some risk. The question is how much safer can the system be made, and in our minds, the company could have and should have quantified that. In terms of safer, one of my colleagues said it best, it seems like we're saferererer. It's getting very expensive getting those last few ers. The increments in safety are getting very expensive.<sup>180</sup>

In my mind, the safety of the company's system, it cannot be made 100 percent safe. Therefore, safety -- in order to get safer, there's costs associated with getting safer, and in the staff's opinion, the

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<sup>176</sup> Tr. Vol. III at 542 (Adkins) (emphasis added).

<sup>177</sup> Tr. Vol. I at 13 (Whitlock); Tr. Vol. I at 69 (Hill); Tr. Vol. I at 151 (Hebbeler); Tr. Vol. II at 218 (McGee).

<sup>178</sup> OCC Ex. 12 at 9 (Williams Direct).

<sup>179</sup> Tr. Vol. II at 223 (McGee).

<sup>180</sup> Tr. Vol. III at 595 (Adkins).

company should have looked at and the Commission should look at the amount of safety gained in exchange for the cost. I don't believe that's been adequately done so in this case.<sup>181</sup>

OCC Witness Hayes also noted that any reduction in risk was only incremental and that at a price of \$320 million it was too costly.<sup>182</sup>

Thus, the issue for the PUCO is not whether the replacement of old equipment (pre-1971 service lines that are not currently leaking but are at a risk to leak in the future) by new equipment/service lines will improve the service being provided. Rather the issue is whether the \$320 million in cost delivers an improvement in safety and reliability that warrants the spending. Duke has the burden of proving the reasonableness of this spending. Duke has failed to prove this need. Therefore, the proposal is not just and reasonable and should not be approved.

Additionally, despite the fact that Duke did not quantify the benefits of the ASRP and its current level of service and reliability exceeds PUCO minimum standards, Duke failed to solicit customer input regarding the ASRP. That is, Duke did not survey customers to determine if they would be willing to spend \$320 million or almost \$893 per customer over a ten-year period<sup>183</sup> for a “safer” and “more reliable” system. Duke failed to take this reasonable step despite the fact that its management is familiar with the concept of surveying its customers to get feedback on customers' willingness to spend money to get improved service reliability.<sup>184</sup>

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<sup>181</sup> Tr. Vol. III at 596 (Adkins).

<sup>182</sup> Tr. Vol. II at 388 (Hayes).

<sup>183</sup> Tr. III at 501:25-502:11 (Williams).

<sup>184</sup> Tr. Vol. I at 23 (Whitlock).

Duke's failure to quantify any alleged customer benefits and failure to conduct any cost-benefit analysis is compounded by the Utility's failure to even consider any alternatives to the \$320 million ASRP.<sup>185</sup> Instead, as Staff Witness Adkins concluded, the Utility merely settled for the most costly option.<sup>186</sup> The most costly option that Duke selected is also an option that will result in the greatest growth to the utility's rate base, providing higher profits for shareholders.<sup>187</sup>

At the evidentiary hearing, in what can only be seen as last ditch effort to rehabilitate its proposal, Duke witnesses provided substantive modifications to its Application. For example, the Utility now claims that it currently is replacing 1,000 service lines per year through the normal routine capital budget process as opposed to 200 stated in the Application.<sup>188</sup> The decision to increase the number of service lines being replaced was made in August 2014 - - four months before the Utility filed its Application.<sup>189</sup> Yet, Duke did not know why it did not include such changes in its Application.<sup>190</sup> Duke also modified its estimate of the number of service lines where it was uncertain about the characteristics of the pipe from 28,000 to 21,000.<sup>191</sup> Such inconsistency between the Application, the pre-filed testimony of Duke's witnesses, and the evidentiary record continue to demonstrate the unreasonableness of Duke's very expensive ASRP program.

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<sup>185</sup> Tr. Vol. I at 94 (Whitlock); Tr. Vol. I at 161 (Hebbeler). Tr. Vol. II at 267 (McGee)..

<sup>186</sup> Staff Ex. 3 at 14 (Adkins Direct).

<sup>187</sup> Tr. Vol. III at 495:20-25 (Williams); Tr. Vol. I at 20:3-7 (Whitlock); Tr. Vol. I at 120:2-6 (Laub).

<sup>188</sup> Tr. Vol. I at 8:21-9:3. (Whitlock) (Duke witness changing amount of service lines that Duke will replace on a proactive basis from 200 to 1,000).

<sup>189</sup> Tr. Vol. I at 50:13-19 (Whitlock).

<sup>190</sup> Tr. Vol. I at 91:21-92:8. (Hill).

<sup>191</sup> Tr. Vol. I at p. 9:5-9 (Whitlock) (Duke witness changing amount of service lines that Duke proposes to do reconnaissance on from 28,000 to 21,000).

**C. The proposed ASRP will not result in just and reasonable rates for customers.**

- 1. The ASRP will cost all Duke customers at least \$320 million dollars, and individual customers over \$892 each, for the 58,000 service lines. The cost could increase significantly based on the status of the other 21,000 service lines.**

Duke's proposal to replace service lines that are not leaking and are not hazardous is not just and reasonable. Under R.C. 4929.02 the PUCO is obligated to deny an Alternative Rate Plan if it does not promote reasonably priced natural gas service to consumers. If Duke is authorized to implement its ASRP, consumers would be exposed to an unreasonable increase in price for natural gas service and, thus, the ASRP, if approved, would be in violation of R.C. 4929.02.

Duke requests PUCO authorization to charge Ohio consumers \$320 million,<sup>192</sup> an amount almost eight times greater than Duke requested in its most recent rate case,<sup>193</sup> in order to implement its ASRP. Due to this expense, Duke has proposed initial rate caps of one dollar per customer per month.<sup>194</sup> But, the ASRP is proposed to last for ten years.<sup>195</sup> The rate caps will increase by one dollar per year until the rate reaches \$10 per customer per month in the final year of the program.<sup>196</sup> Thus, residential customers would pay \$12 annually in year one, \$24 in year 2, and up to \$120 per customer in year ten. A \$320

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<sup>192</sup> Duke Ex. 1 at 9 (Application).

<sup>193</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case Nos. 12-1685-GA-ALT et al., Opinion and Order at 3 (November 13, 2013).

<sup>194</sup> Duke Ex. 1 at 11 (Application).

<sup>195</sup> Duke Ex. 1 at 9 (Application).

<sup>196</sup> OCC Ex. 12 at 25:2-3 (Williams Direct).



million program divided among Duke's 382,000 residential customers comes to a cost of almost \$838 per customer.<sup>197</sup>

However, things could get even worse if Duke were to determine that the remaining 21,000 service lines also need to be replaced. Based upon the current fixed delivery charge of \$33.03 and related usage based charges (assuming 10 MCF per month), the proposed ASRP in the tenth year would increase residential customer bills by an additional 36 percent.<sup>198</sup> That means before using any natural gas, Duke's customers would be paying at least \$45.03 per month in fixed charges. The OCC believes that this is not a just and reasonable rate.<sup>199</sup>

**2. For Duke's customers, natural gas bills are already 30% higher than other Ohio LDCS.**

Duke's natural gas customers are already paying natural gas charges that are considerably higher than any of the other large LDC's in Ohio.<sup>200</sup> Duke customers are paying an average natural gas bill of \$97.41, as of September 2015.<sup>201</sup> The average natural gas bill for the remaining major cities in Ohio is \$68.34.<sup>202</sup> Thus, Duke's customers have natural gas bills that are 30 percent higher than the average natural gas bills of other Ohioans.<sup>203</sup> Moreover, over a third of the population of Hamilton County as a whole has household incomes below 200 percent of the federal poverty level.<sup>204</sup> Many

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<sup>197</sup> \$320 million / 382,000 residential customers = \$837.70 per customer.

<sup>198</sup> OCC Ex. 12 at 25:5-8 (Williams Direct).

<sup>199</sup> OCC Ex. 12 at 25:8-10 (Williams Direct).

<sup>200</sup> OCC Ex. 12 at 27, Table 1 (Williams Direct).

<sup>201</sup> OCC Ex. 12 at 27, Table 1 (Williams Direct).

<sup>202</sup> OCC Ex. 12 at 27, Table 1 (Williams Direct) (Cities include Cincinnati, Columbus, Toledo, Dayton, Canton, Akron, Youngstown, and Cleveland).

<sup>203</sup> OCC Ex. 12 at 27 (Williams Direct).

<sup>204</sup> OCC Ex. 12 at 27 (Williams Direct).

of these families do not qualify for federal or state energy assistance. Now Duke wants to charge customer's an additional \$320 million, which could increase customers' bills by \$120 per year in the final year of the program. Such a proposal is not just and reasonable and does not promote reasonably priced natural gas service as is required by state law.

**D. Duke's proposed ROE for Rider ASRP is not just and reasonable for consumers to fund**

Duke witness Roger A. Morin, Ph.D. provided a direct testimony in this proceeding recommending that customers fund a Return on Equity ("ROE") of 9.84 percent. But that ROE would require customers to fund too much profit for the Utility and would not be just and reasonable.

**1. Duke's proposed ROE of 9.84 percent is too high because it was calculated using a forecasted interest rate.**

The determination of ROE is important because it directly impacts the rates that customers are asked to pay. Duke's use of a 4.5 percent forecasted interest rate as a proxy for risk-free return in estimating the ROE in this proceeding is not justified given the current market prices of credit with different risk levels.<sup>205</sup> The 4.5 percent significantly overstates the return on risk-free investments used in the Capital Asset Pricing Model ("CAPM") and the Risk Premium Method.<sup>206</sup>

For example, in the 2012 Duke Rate Case, Duke used a risk-free rate proxy of 4.7 percent, which was based largely on the forecasts of long-term Treasury interest rates in 2013, 2014, and 2015.<sup>207</sup> These forecasts for interest rates from 2013 to 2015 used by Duke in the 2012 Duke Rate Case ranged from 4.1 percent to 5.3 percent and they turned

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<sup>205</sup> OCC Ex. 10 at 21:5-8 (Duann Direct).

<sup>206</sup> OCC Ex. 10 at 21:8-9 (Duann Direct).

<sup>207</sup> OCC Ex. 10 at 21:9-11 (Duann Direct).

out to be significantly higher than the actual long-term government bond yield of 3.67 percent in 2013 and 2.40 percent in 2014.<sup>208</sup> This shows that the forecasted interest rates of long-term government bonds are quite subjective and may not be a reliable proxy of the current return of risk-free investments used in the CAPM and Risk Premium Method.<sup>209</sup>

The use of forecasted interest rates also ignores the fact that the current market prices have already fully reflected the expectation and available information to the buyer and sellers of long-term government bonds.<sup>210</sup> The current market prices of long-term government bonds are readily available and observable.<sup>211</sup> There is no need to use the forecasted interest rates of long-term government bonds as the proxy for the return of risk-free investments in estimating the return on equity.

**2. Duke's proposed ROE of 9.84 percent is distorted because it was calculated with a high market risk premium.**

Duke used a high market risk premium of 7.1 percent in calculating the ROE for Rider ASRP.<sup>212</sup> As Duke witness Dr. Morin acknowledge, the use of a high market risk premium of 7.1 percent is certainly on the high end of the range of market risk premium.<sup>213</sup> For example, in the Ibbotson SBBi 2015 Classic Yearbook, the market risk premium as measured by difference between the annualized total return (from 1926 to 2014) of Large-Cap Stocks (12.1%) and the annualized total return of Long-term

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<sup>208</sup> OCC Ex. 10 at 21:12-15 (Duann Direct).

<sup>209</sup> OCC Ex. 10 at 21:15-18 (Duann Direct).

<sup>210</sup> OCC Ex. 10 at 21:20-22:1 (Duann Direct).

<sup>211</sup> OCC Ex. 10 at 22:2-5 (Duann Direct).

<sup>212</sup> OCC Ex. 10 at 22:9 (Duann Direct).

<sup>213</sup> OCC Ex. 10 at 22:10-13 (Duann Direct) citing Duke Ex. 11 at 43 (Morin Direct).

Government Bonds (6.1 percent) is 6 percent if the arithmetic mean of total return is used.<sup>214</sup> If a geometric mean of yearly total return is used, the market risk premium is 4.4 percent.<sup>215</sup> The estimated ROE for Duke will be lower if a lower market risk premium that is more consistent with those found in financial publications is used in this proceeding.<sup>216</sup>

**E. If the PUCO were to approve the ASRP over the objections of all of the Intervenor and its customers, then the PUCO should modify the program.**

If the PUCO approves the ASRP and Rider ASRP, over the objections of the OCC to protect consumers, then it modify the rider and reduce its costs to customers.

**1. It is premature and unnecessary to set the Return on Equity for Rider ASRP because Duke will not incur ASRP capital expenditures until 2016.**

First, the PUCO should set Rider ASRP to \$0 until May 2017. According to Duke, in order to calculate Rider ASRP, on or before December 1 of each calendar year, Duke will submit a pre-filing notice. Duke indicates it intends to file its first pre-filing notice on or before December 1, 2015.<sup>217</sup> This notice will include a revenue requirement calculation based on ten months of actual data and two months of projected data for that calendar year.<sup>218</sup> On or before March 1 of the subsequent year, Duke will file an actual application based on the twelve-month actual costs.<sup>219</sup> Duke also proposes that Rider ASRP be effective the first billing cycle in May following the close of the calendar

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<sup>214</sup> OCC E. 10 at 22:13-17 (Duann Direct) citing See 2015 Ibbotson Stocks, Bonds, Bills, and Inflation (SBBI) Classic Yearbook at 91, Table 6-7.

<sup>215</sup> OCC Ex. 10. at 22:17-18 (Duann Direct).

<sup>216</sup> OCC Ex. 10 at 22:19-21 (Duann Direct).

<sup>217</sup> Duke Ex. 5 at 5:9-10 (Laub Direct).

<sup>218</sup> Duke Ex. 5 at 5:8-12 (Laub Direct).

<sup>219</sup> Duke Ex. 5 at 3:4-6 (Laub Direct).

year.<sup>220</sup> Duke expects Rider ASRP to be effective upon approval and initially set at zero.<sup>221</sup>

Duke cannot make any ASRP capital investments until the ASRP is authorized by the PUCO. Given that reply briefs are not due in this proceeding until December 23, 2015, any decision by the PUCO regarding Duke's Application will most likely be issued in early 2016. Consequently, a decision on Duke's Application will most likely not come in 2015. Absent any significant amount of ASRP-related capital investments made and put into service in 2015, there is no need for Duke to file an actual ASRP application on or before March 1, 2016. The purpose of a 2016 Rider ASRP filing by Duke would be to update its collection of the return on and of capital investment and operating expenses incurred in 2015. Such a filing would be unnecessary because the 2015 ASRP- related return on investment and O&M expenses should be equal to \$0. Assuming that the proposed ASRP and Rider ASRP is approved by the PUCO, and Duke does incur substantial amounts of ASRP-related capital investments and expenses in 2016, Duke can file an application in 2017 to update Rider ASRP. The purpose of the 2017 filing is to collect the 2016 ASRP-related investment return and expenses. The earliest date for this first actual Rider ASRP application is on or before March 1, 2017.

**2. It is premature and unnecessary to set the Return on Equity for Rider ASRP at this time because it will not reflect the most current financial information.**

The PUCO should direct Duke to file all relevant financial information when Duke makes its first actual application for Rider ASRP on or before March 1, 2017.<sup>222</sup>

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<sup>220</sup> Duke Ex. 5 at 5:19-21 (Laub Direct).

<sup>221</sup> Duke Ex. 5 at 5:17 (Laub Direct).

<sup>222</sup> OCC Ex. 10 at 9:17-18 (Duann Direct).

The Rate of Return (“ROR”) and ROE used for calculating Rider ASRP should be determined at that time.<sup>223</sup> During the time period between now and March 2017 Duke’s financial condition (i.e., its capital structure, embedded costs of debt, and estimated return on equity) is subject to change due to the fluctuations in the U.S. and global credit and equity market conditions and Duke’s business practices and strategies.<sup>224</sup> The setting of a ROR and a ROE for a regulated utility should reflect the prevailing financial market and economical condition at that time.<sup>225</sup> In other words, it is very important to establish utility rates as close as possible to the time when the proposed rates will become effective.<sup>226</sup> Therefore, it is premature and unreasonable, at this time, to set a ROR or ROE for Rider ASRP that will not be used for setting rates charged to customers until May 2017.<sup>227</sup> The PUCO should establish an ROR or ROE for Rider ASRP when Duke makes its first Rider ASRP application.

**3. Duke’s proposed ROE of 9.84 percent should be reduced to account for several factors.**

If a ROR and ROE is to be set at this time, the PUCO should reduce Duke’s proposed ROE by 100 basis points (1 percent).<sup>228</sup> In other words, the PUCO should authorize a ROE no higher than 8.84% percent (vs. the 9.84 percent proposed by Duke) applicable to Rider ASRP. The resulting pre-tax ROR should be no higher than 9.77

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<sup>223</sup> OCC Ex. 10 at 21:15-18 (Duann Direct).

<sup>224</sup> OCC Ex. 10 at 10:1-5 (Duann Direct).

<sup>225</sup> OCC Ex. 10 at 10:5-7 (Duann Direct).

<sup>226</sup> OCC Ex. 10 at 10:7-10 (Duann Direct).

<sup>227</sup> OCC Ex. 10 at 10:11-12 (Duann Direct).

<sup>228</sup> OCC Ex. 10 at 7:2-3 (Duann Direct).

percent (vs. the 10.60 percent proposed by Duke) and the after-tax ROE should be no higher than 7.20 percent.<sup>229</sup>

- a. Duke's proposed ROE of 9.84 percent should be further reduced by 25 basis points to reflect the recent changes in the U.S. credit and equity markets.**

First, the PUCO should reduce Duke's proposed ROE by 25 basis points due to changing conditions in the U.S. credit and equity markets. There has been a decline in the allowed ROE set by state regulators for regulated utilities in recent years.<sup>230</sup> This decline of average ROE's is due, in part, to the dramatic increase in the availability of credit at very low cost and the substantial appreciation in equity prices following the 2008 global financial crisis.<sup>231</sup> Regulatory agencies generally have slower pace of change for the allowed ROE than the costs of credit and equity.<sup>232</sup> Nevertheless, regulatory agencies have responded to market conditions and gradually set a lower allowed ROE to reflect the decreased cost of credit and equity observed in the financial markets.<sup>233</sup> The PUCO should reduce Duke's proposed ROE by 25 basis points to reflect these changes and fluctuations in the U.S. markets.

- b. Duke's proposed ROE of 9.84 percent should be reduced by an additional 25 basis points to reflect the decrease in regulatory lag and risk associated with Rider ASRP.**

As OCC Witness Duann testified, it is well recognized that an accelerated infrastructure replacement rider mechanism, such as Rider ASRP, can reduce regulatory

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<sup>229</sup> OCC Ex. 10 at 7:3-8 (Duann Direct).

<sup>230</sup> OCC Ex. 10 at 16:7-9 (Duann Direct).

<sup>231</sup> OCC Ex. 10 at 16:13-15 (Duann Direct).

<sup>232</sup> OCC Ex. 10 at 16:15-17 (Duann Direct).

<sup>233</sup> OCC Ex. 10 at 16:18-20 (Duann Direct).

lag and risk for a utility.<sup>234</sup> The OCC recommends an additional 25 basis point reduction to the proposed ROE in this proceeding in order to protect customers from unreasonable rates that Rider ASRP will produce.<sup>235</sup> As stated earlier, the ASRP will eventually cost consumers \$10 per month.<sup>236</sup> The PUCO has recognized this reduction in regulatory risk and regulatory lag and the corresponding financial benefits to a regulated utility as a result of the accelerated infrastructure replacement programs.<sup>237</sup> The PUCO should continue this practice by reducing the ROE in this proceeding.

- c. Duke's proposed ROE of 9.84 percent should be reduced by an additional 50 basis points to provide relief to Duke's residential customers who are currently paying the highest monthly natural gas bills in the state.**

The affordability of utility services should be and is an important consideration for regulatory agencies in setting the rates for utility services. In fact, it is the policy of the state to “Promote the availability to consumer of adequate, reliable, and reasonably priced natural services and goods”<sup>238</sup> and to “facilitate the state’s competitiveness in the global economy.”<sup>239</sup> In compliance with these state policies, the PUCO has previously considered the affordability of services for customers when determining ROR and

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<sup>234</sup> OCC Ex. 10 at 17:5-6 (Duann Direct).

<sup>235</sup> OCC Ex. 10 at 17 (Duann Direct).

<sup>236</sup> See OCC Ex. 12 at 25:1-3 (Williams Direct).

<sup>237</sup> OCC Ex. 10 at 17:11-13 (Duann Direct).

<sup>238</sup> See R.C. 4929.02.

<sup>239</sup> See R.C. 4929.02.



ROE.<sup>240</sup> As stated earlier, Duke's natural gas customers pay the highest natural gas rates in the state.<sup>241</sup> In addition, Duke's customers have been paying for the existing infrastructure replacement program through Rider AMRP since May 31, 2002.<sup>242</sup> This has resulted in customers paying a higher AMRP charge every year through either Rider AMRP or base distribution rates.<sup>243</sup> While, the AMRP is scheduled to end at the end of 2015, customers may still be paying AMRP charges until the filing of Duke's next gas distribution case.<sup>244</sup> Now Duke is asking for another infrastructure replacement program for service line replacement. It is time for the PUCO to provide some relief to Duke's customers. The PUCO can do so rejecting Rider ASRP.

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<sup>240</sup> See *In the Matter of the Application for Ohio American Water Company to Increase its Rates for Water and Sewer Services to its entire Service Area*, PUCO Case No. 09-391-WS-AIR, (May 5, 2010) (In this case the PUCO adopted a 7.73 percent ROR that was at the lower end of the range (7.60 percent to 8.11 percent) recommended by the PUCO Staff. This was a significant departure from the established PUCO practice that typically set the ROR at the mid-point of the range recommended by the PUCO Staff. It was clear that the PUCO was concerned with the affordability of OAW's services and wanted to set a lower ROR to make the water services more affordable for customers. In its Opinion and Order, the PUCO specifically cited a harsh economic condition in OAW's service area and the fact that the rate case was OAW's fourth application for a rate increase in five years as influencing its opinion); See *In the Matter of the Application of the East Ohio Gas Company d/b/a Dominion East Ohio for Authority to Increase Rates for its Gas Distribution Service*, PUCO Case No. 07-829-GA-AIR et al., (October 27, 2015) (In this case the PUCO intended to reduce a stipulated ROE by 20 basis points (from 8.49 percent to 8.29 percent). The PUCO stated that it was ordering the ROE reduction due to the deteriorating economic conditions of customers expressed at local public hearings as well as a decrease of risk assumed by Dominion East Ohio in ordering such a reduction. On rehearing, the PUCO reestablished the original ROE or 8.49 percent as it concluded that, upon review, the stipulation approved by the parties had, in fact, already incorporated a lower ROR to account for the lower risk to Dominion East Ohio.).

<sup>241</sup> OCC Ex. 12 at 26-27 (Williams Direct).

<sup>242</sup> *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in Rates*, PUCO Case No. 01-1228-GA-AIR et al., Opinion and Order at 4 and 8 (May 30, 2002).

<sup>243</sup> OCC Ex. 10 at 19:14-17 (Duann Direct).

<sup>244</sup> OCC Ex. 10 at 19-20 (Duann Direct) citing *In the Matter of the Annual Application of Duke Energy Ohio for an Adjustment to Rider AMRP Rates*, PUCO Case No. 10-2788-GA-RDR, Opinion and Order at 8 and 10 (May 4, 2011) (PUCO Opinion and Order allowing Duke to recover costs for allowable capital additions under AMRP passed December 31, 2015).

#### IV. CONCLUSION

Duke's proposed \$320 million ASRP is a bad deal for Ohio and its consumers. The ASRP seeks to replace service lines that are not an imminent safety threat, delivers very minimal benefit for consumers, and is not required by any law or regulation. Consequently, Duke has not carried its burden of showing that its proposed ASRP is just and reasonable and necessary to provide reliable and adequate service to its customers. The PUCO should not approve the program.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Initial Post Hearing Brief was served on the persons stated below via electronic transmission, this 9<sup>th</sup> day of December 2015.

/s/ Kevin F. Moore

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**This foregoing document was electronically filed with the Public Utilities**

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**Case No(s). 14-1622-GA-ALT**

Summary: Brief Initial Post-Hearing Brief by the Office of the Ohio Consumers' Counsel electronically filed by Ms. Deb J. Bingham on behalf of Moore, Kevin F. Mr.