

**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. :

STAFF'S REPLY BRIEF
SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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TABLE OF CONTENTS

Page

INTRODUCTION	1
ARGUMENT	2
A. Federal and state law do not mandate the replacement of non-leaking service lines.	2
B. The proposed ASRP is not a prudent approach to risk reduction and improving customer benefits.	4
CONCLUSION	10
PROOF OF SERVICE.....	11

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INTRODUCTION

In accordance with the procedural schedule established by the Attorney Examiner, the Commission Staff, Duke Energy of Ohio, Inc. (“Duke”), the Office of the Ohio Consumers’ Counsel (OCC), and Ohio Partners for Affordable Energy (OPAE) filed initial briefs on December 9, 2015. In this reply brief, Staff responds to arguments made by Duke in its initial brief.

The essence of Duke’s argument is that any program that leads to distribution system improvements and potentially increases safety must be approved, regardless of its cost or even its effectiveness in reducing risk. As will be shown below, this reasoning is fundamentally flawed and should be rejected.

ARGUMENT

A. Federal and state law do not mandate the replacement of non-leaking service lines.

Duke first points to regulations of the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) as supporting its application to replace at least 58,000 pre-1971 service lines under an Accelerated Service Line Replacement Program (ASRP) to be funded by customers through a special rider. As Staff showed in its initial brief, however, PHMSA does not mandate specific steps that a distribution system operator must take in order to ensure system safety. As Duke's own witnesses acknowledged, PHMSA's rules are not prescriptive.¹ Operators are only required to have Distribution Integrity Management Plans (DIMP) in order to identify and mitigate known risks.²

Nothing in the PHMSA regulations requires or even encourages an operator such as Duke to replace all of its pre-1971 metallic service lines regardless of whether they are leaking. Certainly there is nothing in the regulations that requires accelerated cost recovery for an operator that undertakes service line replacement.

Duke's interpretation of PHMSA's regulations appears to be unique as it identified no other gas distribution utility in Ohio, or even in the entire United States, that has an approved program comparable to the proposed ASRP (Duke has a similar application pending in Kentucky). Duke witness Edward McGee testified that he was not aware of

¹ Tr. Vol. I at 36 (Whitlock); Tr. Vol. I at 67 (Hill).

² 49 C.F.R. §192.1007.

any other distribution company that had a stand-alone accelerated service line replacement program.³ Further, Duke could comply with the PHMSA rules through a number of other less costly measures.⁴

Duke also cites a “Call to Action” and accompanying White Paper by a former Secretary of Transportation as supporting its proposal.⁵ As Duke notes in its brief, the Call to Action was issued following incidents involving gas transmission lines and mains, not service lines. Moreover, nothing in the Call to Action can be construed as legally binding on operators, much less on state commissions. As OCC witness James Williams testified, “Calls to Action” are frequently issued by agencies and other organizations and it would be impossible to adhere to each one.⁶ Any proposal to invest ratepayer funds, even one allegedly prompted by a federal Call to Action, must be evaluated carefully to ensure it is in the public interest.

Duke also points to Ohio law and Commission precedent as placing a high value on safety. Significantly, Duke does not, and cannot, identify any statute, rule, or Commission order *requiring* implementation of a program such as the ASRP. Rather, Duke points to Commission approval of its Accelerated Main Replacement Program

³ Tr. Vol. II at 221-222 (McGee).

⁴ Adkins Direct Test. at 13-15.

⁵ Duke Ex. 10.

⁶ Tr. Vol. III at 487 (Williams).

(AMRP),⁷ as well as similar main replacement programs authorized for other gas distribution companies. None of these programs is focused, however, on replacement of service lines, except for service lines connected to main lines already being replaced and service lines only when they leak. As will be explained *infra*, service lines present a significantly lower risk than main lines. There is thus good reason to distinguish between mains and service lines in regulatory treatment. Certainly, the approval of one type of program does not require approval of a different type of program aimed at a different level of risk.

B. The proposed ASRP is not a prudent approach to risk reduction and improving customer benefits.

Duke argues that its proposed ASRP is in the public interest because it will eliminate known risk in an efficient and cost-effective manner. To the contrary, Duke's proposal is not a prudent use of ratepayer funds. The ASRP would provide only minimal safety gains in exchange for a hefty price tag that would burden customers. Moreover, Duke overlooked alternatives that would promote safety at a much lower cost.

Through the ASRP, Duke proposes to replace at least 58,000 service lines that were installed prior to 1971, even though these lines have not been identified as leaking. Importantly, Duke already replaces *leaking* service lines in the normal course of its

⁷ *In the Matter of the Application of the Cincinnati Gas & Electric Co. for an Increase in Rates*, Case No. 01-1228-GA-AIR (Opinion and Order at 4) (May 30, 2002).

business.⁸ Duke's witnesses also confirmed that its system is currently safe.⁹ Duke, however, asserts the need to replace non-leaking lines because they may leak in the future and pose a safety hazard.

Duke attempted to use fear-mongering to cover up the weaknesses in its case. For example, Duke pointed to incidents that involved high-pressure transmission lines or mains, not service lines like those under consideration here. Duke also introduced samples of badly deteriorated pipe that is not representative of the condition of the service lines in Duke's system in general or the non-leaking service lines that will be replaced under the ASRP in particular and were specifically selected as dramatic visual aids.¹⁰ The Commission should not be swayed by such ploys.

As Staff witness Kerry Adkins explained, all measures intended to improve distribution safety "should be evaluated in terms of quantifiable safety improvement gained in exchange for the costs," especially where customers will bear the costs.¹¹ It is impossible to eliminate all risk from a system that moves combustible gas through populated areas.¹² Thus, any effort to improve the system should be evaluated in terms of its expected benefits compared to its costs. Duke's proposal cannot pass this test.

⁸ Hill Direct Test. at 6.

⁹ Tr. Vol. I at 13 (Whitlock); Tr. Vol. I at 69 (Hill); Tr. Vol. I at 151 (Hebbeler).

¹⁰ Tr. Vol. I at 182 (Hebbeler).

¹¹ Adkins Direct Test. at 10.

¹² *Id.* at 13.

To this point in the proceeding, Duke has provided no evidence of quantifiable benefits to be provided by the ASRP. Duke's application contained no information on quantifiable benefits.¹³ At the hearing, Duke's witnesses could only speak in general terms about improved safety. For example, Duke's pipeline expert, when asked if he had quantified the risks, responded only that certain materials were considered high-risk by PHMSA.¹⁴

Duke stresses the importance of reducing its leak rate, which it fears will increase with the conclusion of the AMRP. The lines Duke proposes to replace, however, are not currently leaking. Even if they were, service line leaks do not necessarily pose a safety hazard. They are significantly different from leaks on larger-diameter gas mains that may release larger volumes of gas. OCC witness Bruce Hayes explained that service line leaks caused by corrosion generally are pin-rick sized holes that allow a minimal amount of gas to escape.¹⁵ Duke witness Hebbeler admitted under cross examination that even the deteriorated pipe that Duke introduced for dramatic effect did not cause a safety incident.¹⁶

The main consequence of a leaking service line is likely to be a patch of dead grass.¹⁷ Therefore, as Mr. Hayes explained, "[d]ecaying steel service lines are generally not an

¹³ Duke Ex. 1.

¹⁴ Tr. Vol. II at 268 (McGee).

¹⁵ Hayes Direct Test. at 11.

¹⁶ Tr. Vol. I at 179-1880 (Hebbeler).

¹⁷ Hayes Direct Test. at 11.

immediate safety threat.”¹⁸ These leaks can be addressed through a regular inspection program. There is no need for the wholesale replacement of service lines that Duke proposes.

As described in Staff’s initial brief, potentially hazardous leaks resulting from corrosion on service lines are extremely rare. Staff found no incidents in Duke’s territory over an eleven-year period, and only 62 in the entire country.¹⁹ In terms of odds, there is only a one in 11.9 million chance of an incident attributed to corrosion, materials, or natural forces occurring.²⁰ Those are the three causes that the ASRP is intended to address. Duke, then, is preparing to spend \$320 million (to be recovered from customers) with little demonstrable improvement in safety.

Particularly troubling is the fact that no part of this \$320 million investment will be used to address the greatest threat to the integrity of Duke’s system. Duke witness McGee identified excavation damage as the cause of 34 percent of hazardous leaks on Duke’s system from 2010 through 2014.²¹ Likewise, Duke Witness John A. Hill acknowledged that excavation damage was the Company’s biggest threat every year from 2002 through 2014.²² Yet, Duke’s ASRP is not intended to address this number one threat. In contrast,

¹⁸ *Id.* at 12.

¹⁹ Staff Report at 7.

²⁰ *Id.*

²¹ McGee Direct Test. at 24, Fig. EAM-7.

²² Tr. Vol. I at 65 (Hill).

Columbia Gas of Ohio has taken steps to raise public awareness of excavation hazards and to improve its locating and marking capabilities.²³ The price tag for these investments, approximately \$7 million, is a small fraction of the cost of the ASRP but will nevertheless produce important benefits.

Duke's application also must be rejected because the Company failed to even consider alternatives to the ASRP that could improve system safety at a much lower cost. The application makes no reference to alternatives, nor does the Company's direct testimony. Duke witnesses also confirmed at the hearing that they had not considered any alternatives.²⁴ It appears that Duke simply leaped to the mostly costly option, one that will increase the Company's rate base to the benefits of shareholders.²⁵ Yet there are several alternatives that could achieve significant safety gains at much lower costs. Potential alternatives are described in the Staff Report²⁶ and were discussed in Staff's Initial Brief. The alternatives listed by the Staff are not intended to be exhaustive.²⁷ Rather, Staff's point is that there are reasonable and less costly alternatives to the ASRP. Duke should be required to identify and evaluate alternatives that could mitigate safety risks associated

²³ *In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval to Change Accounting Methods*, Case No. 14-1615-GA-AAM (Finding and Order) (December 17, 2014).

²⁴ Tr. Vol. I at 83 (Hill); Tr. Vol. I at 161 (Hebbeler); Tr. Vol. II at 267 (McGee).

²⁵ Tr. Vol. I at 120 (Laub).

²⁶ Staff Ex. 1 at 6-7.

²⁷ Adkins Direct Test. at 11.

with older service lines. Only if these alternatives are shown to be ineffective should the ASRP be considered.

Duke also raises the threat of filing frequent rate cases if it is not permitted to recover line replacement costs through a rider. Duke asserts that this will lead to abrupt rate increases. Rate cases, however, permit the Commission to examine all of a utility's revenues and expenses. They offer a view of the "big picture," unlike special riders that focus on a narrow piece of a company's business. Importantly, rate cases do not necessarily lead to rate increases. In Duke's last distribution rate case, for example, the Commission adopted a stipulation that provided for *no* revenue increase.²⁸ Duke's threat rings hollow and should not sway the Commission.

In sum, Duke has failed to meet its burden to show that its proposed ASRP is just and reasonable. The ASRP is not a prudent investment because it will do little to improve safety while burdening customers with a hefty price tag.

²⁸ *In the Matter of the Application of Duke Energy Ohio Inc. for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR (Opinion and Order at 13) (November 13, 2013).

CONCLUSION

Duke's ASRP application is not supported by the law or the facts. The Commission should deny the application and require Duke to explore more cost-effective alternatives.

Respectfully submitted,

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following Parties of Record, this 23rd day of December, 2015.

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