

**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.     )

---

**REPLY BRIEF  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

Bruce J. Weston (0016973)  
OHIO CONSUMERS' COUNSEL

Kevin F. Moore (0089228)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**  
10 W. Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Telephone [Moore]: 614-466-2965  
[kevin.moore@occ.ohio.gov](mailto:kevin.moore@occ.ohio.gov)  
(will accept service via email)

December 23, 2015

## **TABLE OF CONTENTS**

	<b>PAGE</b>
I. INTRODUCTION .....	1
II. ARGUMENT .....	2
A. Duke’s ASRP is inconsistent with state law and policy to the detriment of consumers. ....	2
B. Duke’s ASRP is inconsistent with Federal law and policy to the detriment of consumers. ....	3
C. The ASRP’s costs to consumers do not outweigh the benefits to consumers. ....	6
D. Duke’s ASRP will not protect consumers from any safety threat, because there is virtually no threat to consumers posed by these service lines. ....	7
E. Duke’s ASRP is not just and reasonable because Duke is already minimizing any risk to consumers. ....	13
F. Duke’s assertion that absent approval of the ASRP more frequent rate cases will be filed is factually incorrect. ....	15
G. Duke’s assertion that absent approval of the ASRP, customers will experience abrupt and recurrent rate changes is factually incorrect. ....	16
III. CONCLUSION .....	18

**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.     )

---

**REPLY BRIEF  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

---

**I. INTRODUCTION**

In this case, Duke Energy Ohio, Inc., (“Duke” or “Utility”) is seeking approval of an alternative rate plan<sup>1</sup> for an Accelerated Service Line Replacement Program (“ASRP”), which would cost Ohio consumers \$320 million to replace 58,000 service lines that are not a threat to public safety. The Public Utilities Commission of Ohio (“PUCO” or “Commission”) has the ability in this proceeding to protect Ohioans from this large utility bill increase that provides little to no benefit to consumers, by denying Duke’s application. In doing so, the PUCO would send the message that it will not approve a utility’s alternative rate plan unless the benefits to consumers outweigh the costs. Approving the application would send the opposite message and set dangerous legal and policy precedent.

Under R.C. 4929.05, the PUCO may authorize an alternative rate plan only if the PUCO finds that the application is in substantial compliance with the policy of the State of Ohio specified in R.C. 4929.02 and the alternative rate plan is just and reasonable.

---

<sup>1</sup> R.C. 4929.05.

Under R.C. 4929.02, the PUCO must promote, among other things, the availability of adequate, reliable, and reasonably priced natural gas services and goods. In an alternative rate plan proceeding, the burden of proof is on the applicant.

Duke has not demonstrated that its application for an alternative rate plan is in substantial compliance with the policies in R.C. 4929.02 or is just and reasonable. Duke has not fulfilled its burden of proof that the ASRP is necessary or in the public interest. Duke has also not shown that the ASRP's benefits outweigh its costs. Accordingly, on behalf of the 400,000 natural gas customers of Duke, the Office of the Ohio Consumers' Counsel ("OCC") requests that Duke's alternative rate plan be denied.

## **II. ARGUMENT**

### **A. Duke's ASRP is inconsistent with state law and policy to the detriment of consumers.**

Duke states that under R.C. 4929.05 the rates it will charge customers for its ASRP do not have to be just and reasonable.<sup>2</sup> That is not true. In addition to complying with R.C. 4929.05, Duke must also comply with all other state policies and regulations. In fact, R.C. 4929.05 explicitly states that "the natural gas company is expected to continue 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."<sup>3</sup> R.C. 4929.02(A)(1) requires the state to promote "reasonably priced natural gas services."<sup>4</sup> Duke notably omits an analysis of this provision in its Initial Brief. Therefore,

---

<sup>2</sup> See Duke Initial Brief at 9.

<sup>3</sup> R.C. 4929.05(A)(2).

<sup>4</sup> See R.C. 4929.02(A)(1).

R.C. 4929.05 did not give Duke the liberty to charge customers whatever price it desires for natural gas service. Its prices must be reasonable.

Curiously, in what seems to be a defense of its proposed rates, Duke reaffirms that its Rider ASRP rates will be capped at \$1 per month, per bill.<sup>5</sup> What it does not reiterate is that the cap will be increased by \$1 every year until customers are paying \$10 per month, per customer in the last year of the program. This would be approximately \$120 per year per customer. Duke then states that “no party in this proceeding opposed the caps offered by the Company.”<sup>6</sup> That is not true. In fact, OCC witness Williams explicitly opposed the ASRP’s cost, including the cap amounts, in his pre-filed direct testimony.<sup>7</sup> Mr. Williams stated that the amount that each customer would pay under Duke’s proposed cap would result in unjust and unreasonably priced natural gas service for Duke’s customers.<sup>8</sup> Therefore, Duke’s ASRP is inconsistent with state law and policy because, among other things, it will not promote reasonably priced natural gas services.

**B. Duke’s ASRP is inconsistent with Federal law and policy to the detriment of consumers.**

Duke states that the federal government has directed it to propose the ASRP.<sup>9</sup> That is not true. First, it is important to note that if the federal government had wanted Duke or any other natural gas system operator to replace steel and unprotected metallic service lines it would have ordered them to do so 45 years ago. As Duke states, in 1971

---

<sup>5</sup> See Duke Initial Brief at 20, 26.

<sup>6</sup> Duke Initial Brief at 21.

<sup>7</sup> See OCC Ex. 12 at 24-29 (Williams Direct).

<sup>8</sup> See OCC Ex. 12 at 24-29 (Williams Direct).

<sup>9</sup> Duke Initial Brief at 3-4 (It is important to note that in attempting to justify the U.S. DOT’s implementation of the DIMP regulations and issuance of the “Call to Action” Duke identified three gas pipeline leaks. However, none of these incidents occurred in Ohio and none even occurred on a service line).

the United States Department of Transportation (“U.S. DOT”) adopted regulations removing cast iron from its list of approved materials for new pipe construction.<sup>10</sup> It did so because it recognized that non-cathodically protected steel pipe could be susceptible to corrosion. Notably, Duke does not state that the U.S. DOT required replacement of all steel and unprotected metallic service lines in 1971.<sup>11</sup> It required that new buried metallic pipe have a cathodic protection coating to safeguard against corrosion. In the 45 years since those regulations were implemented the U.S. DOT has never affirmatively or explicitly required the replacement of steel or unprotected metallic service lines.

Duke states that it is now seeking such authorization because the Pipeline and Hazardous Materials Safety Administration’s (“PHMSA”) Distribution Integrity Management Program (“DIMP”) regulations have directed it to do so. That is not true. As Staff<sup>12</sup> and OPAE<sup>13</sup> agree, the DIMP regulations do not require a natural gas operator to replace service lines.<sup>14</sup> In fact, after an operator has identified and evaluated potential risks to its system it is only required to do the following: “Determine and implement measures designed to reduce the risks from failure of its gas distribution pipeline. These measures must include an effective leak management program (unless all leaks are repaired when found).”<sup>15</sup> Accordingly, the operator could comply with these regulations by implementing a variety of different actions. Yet, Duke admitted that it did not consider

---

<sup>10</sup> Duke Initial Brief at 10; Duke Ex. 6 at 4:3-5 (Hebbeler Direct).

<sup>11</sup> See, e.g., Duke Ex. 6 at 4:3-5 (Hebbeler Direct).

<sup>12</sup> See Staff Initial Brief at 4-5, 8 (“As noted above, PHMSA’s regulations do not require distribution system operators to replace non-leaking services lines on an accelerated basis. Operators are merely required to develop and implement plans to mitigate known risks.”).

<sup>13</sup> OPAE Initial Brief at 11-12, 15 (“No law requires or supports an alternative rate plan for accelerated cost recovery for non-leaking, non-hazardous customer-owned service lines.”).

<sup>14</sup> See OCC Ex. 2 (49 C.F.R. § 192 Subpart P).

<sup>15</sup> OCC Ex. 2 at 3 (49 C.F.R. § 192 Subpart P).

any other alternatives to the replacing of 58,000 non-leaking service lines at a cost of \$320 million to consumers.<sup>16</sup> This is not just and reasonable for consumers.

Duke also states that its ASRP should be approved because the U.S. DOT issued a “Call to Action” urging utilities and regulators to improve the country’s distribution infrastructure.<sup>17</sup> This “Call to Action” should not and cannot be the basis to collect \$320 million from customers for the accelerated replacement of non-leaking service lines. As OCC mentioned in its Initial Brief, a “Call to Action” is not law and the PUCO is not required to comply.<sup>18</sup> Indeed, Duke does not state in its Initial Brief that the “Call to Action” actually requires a utility to implement an ASRP.<sup>19</sup> Instead, Duke acknowledges that the “Call to Action” is merely a “**request**” by the U.S. DOT to “**step up efforts** to identify high-risk pipelines and ensure that they are repaired or replaced.”<sup>20</sup> Therefore, this “Call to Action” is not law and, as explained below, Ohio and Duke are already complying with the “request” by proactively and reactively repairing and replacing pipelines. Duke’s ASRP is surplus to requirement.. 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>21</sup> The PUCO should not base its decision to charge customers \$320 million on this U.S. DOT “request”.

---

<sup>16</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>17</sup> Duke Initial Brief at 3-6.

<sup>18</sup> See OCC Initial Brief at 15-16.

<sup>19</sup> See Duke Initial Brief 5-6.

<sup>20</sup> See Duke Initial Brief at 5 citing Duke Ex. 10 at 35 (emphasis added).

<sup>21</sup> See Tr. Vol. II at 221-222 (McGee).

**C. The ASRP's costs to consumers do not outweigh the benefits to consumers.**

Duke states that the possibility that bare steel or cast iron will corrode over time is real.<sup>22</sup> In fact, as Duke points out, even plastic pipe is susceptible to premature failure.<sup>23</sup> No party contests these points. The world is not perfect. And it never will be, no matter how much money is spent to make it so. Managing the risks inherent in such imperfections is what Duke and, ultimately, the PUCO is burdened with. In deciding which imperfections to manage and how to manage them, the costs and benefits of any proposed solution must be evaluated. In this case, as PUCO Staff<sup>24</sup> (“Staff”) and Ohio Partners for Affordable Energy (“OPAE”)<sup>25</sup> agree, the costs far outweigh any benefit that is provided.

Duke’s ASRP would replace 58,000 non-leaking service lines that are currently fit for service<sup>26</sup> and have shown no signs of becoming unfit for service. And it would do so in 10 years at a cost to customers of \$320 million.<sup>27</sup> By the last year of the program, Ohio residential customers would be paying \$10 per month, per customer (or \$120 annually) for Duke’s ASRP.<sup>28</sup>

---

<sup>22</sup> See Duke Initial Brief at 12.

<sup>23</sup> Duke Initial Brief at 6.

<sup>24</sup> See Staff Initial Brief at 9-12; See Staff Ex. 3 at 14 (Adkins Direct) (“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>25</sup> See OPAE Initial Brief at 4-11.

<sup>26</sup> Tr. Vol. I at 69:22-70:3, 99:2-100:4 (Hill).

<sup>27</sup> Duke Initial Brief at 16.

<sup>28</sup> OCC Initial Brief at 36-37.



While, the staggering costs in this proceeding are well-documented, the benefits are not. Duke's main purported benefit from the ASRP is an alleged reduction in risk that will result in an increase in safety.<sup>29</sup> However, Duke has not quantified that reduction in risk in order to weigh it against the known and quantified cost of \$320 million.<sup>30</sup> In fact, as Staff noted, Duke admitted at the hearing that it did not even attempt to quantify the benefits of the ASRP.<sup>31</sup> As Staff and OPAA state, Duke should, at the very minimum, be required to conduct a comprehensive cost-benefit analysis detailing and quantifying the ASRP's costs and benefits and further demonstrating that the benefits exceed the costs before it is authorized to charge Ohioans \$320 million.<sup>32</sup>

**D. Duke's ASRP will not protect consumers from any safety threat, because there is virtually no threat to consumers posed by these service lines.**

Duke states that public safety demands that its service lines be replaced.<sup>33</sup> Specifically, Duke states that the ASRP will "protect Duke Energy Ohio's customers and employees and the public at large from a known threat."<sup>34</sup> This is simply not true. This proceeding has confirmed that Duke's service lines have not harmed customers or employees in the past. Indeed, Duke admitted that it was not aware of a single Duke

---

<sup>29</sup> Duke Initial Brief at 2-25.

<sup>30</sup> Tr. Vol. III at 506 (Williams), Tr. Vol. I at 20, 23 (Whitlock), Tr. Vol. III at 542 (Adkins).

<sup>31</sup> Staff Initial Brief at 6 citing Tr. Vol. I at 21-22, 80-81 (Whitlock).

<sup>32</sup> See OPAA Initial Brief at 6-7; Staff Initial Brief at 9-11.

<sup>33</sup> Duke Initial Brief at 2.

<sup>34</sup> Duke Initial Brief at 25.

employee that had been harmed by a service line incident.<sup>35</sup> In addition, Duke admitted that it was only aware of one customer-related service line incident in its history.<sup>36</sup>

Staff states that it investigated Duke's admission that its service lines have not actually resulted in harm to persons or property. In doing so it searched the PHMSA database of "reportable incidents"<sup>37</sup> for the years 2004 to 2014.<sup>38</sup> It discovered that, throughout the entire United States during that 11-year period, only 62 reportable incidents occurred on service lines that were attributable to corrosion, materials/welds, and natural forces – the three risks that the ASRP is designed to address.<sup>39</sup> There are 67 million service lines nationwide, which means that there is a one in more than 11.9 million chance of a service line incident occurring anywhere in the country in a given

---

<sup>35</sup> Tr. Vol I at 92:9-12 (Hill).

<sup>36</sup> Staff DR-02-001 (This incident occurred in 1998 and reportedly resulted in an overnight stay at a hospital for a resident).

<sup>37</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.

(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>38</sup> Staff Initial Brief at 6.

<sup>39</sup> Staff Initial Brief at 6.

year as a result of one of the three causes that the ASRP is designed to address.<sup>40</sup> In other words, the chances that a service line will cause harm to persons or property due to corrosion, materials/welds, or natural forces, is infinitesimally small.

The OCC performed similar research in this proceeding and came to similar conclusions.<sup>41</sup> Specifically, OCC found that the chance that a service line will experience a corrosion-related incident in Ohio is likely less than 0.0018 percent (or a 0.000018 probability)<sup>42</sup> and nationwide the chances are likely less than 0.0021 percent (or a 0.000021 probability).<sup>43</sup> Yet, Duke wants to spend \$320 million of consumer monies to decrease this risk even more. Such a program is not just and reasonable because the benefit for consumers of reducing a 0.0018 percent chance does not outweigh the cost of \$320 million.

In attempt to shift the focus from the fact that the ASRP will not protect consumers from a real threat, Duke also states that the fact that a service line leak “has not recently culminated in a catastrophic incident is irrelevant” because ““waiting for an

---

<sup>40</sup> Staff Initial Brief at 6-7.

<sup>41</sup> See OCC Initial Brief at 24-26.

<sup>42</sup> OCC Initial Brief at 25 citing U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration, Gas Distribution Integrity Management Program: Resources (Accessed on 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) (OCC’s research discovered that in Ohio from 2005 to 2014 there were 217,336 corrosion-related distribution pipeline (main or service line) leaks, but only 4 incidents. Therefore, the probability of an incident is:  $4 / 217,336 = 0.000018$  or 0.0018%).

<sup>43</sup> OCC Initial Brief at 26 citing U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration, Gas Distribution Integrity Management Program: Resources, Gas Distribution Leaks by Cause and Type (Accessed on April 20, 2015) <https://hip.phmsa.dot.gov/analyticsSOAP/saw.dll?PortalPages> (OCC’s research discovered that nationwide from 2005 to 2014 there were 1,330,393 corrosion-related distribution pipeline (main or service lines) leaks, but only 28 incidents. Therefore, the probability of an incident is:  $28 / 1,330,393 = 0.000021$  or 0.0021 %).

imminent safety threat’ is not advisable.”<sup>44</sup> However, Duke’s logic is flawed. The evidence shows that likelihood of harm to persons or property from a service line incident is basically non-existent. If catastrophic incidents do not occur, then harm to the public, by definition, will not occur. And, if harm to the public will not occur, then replacing service lines on an accelerated basis at a cost of \$320 million should not occur either. Duke’s ASRP is a solution in search of a problem. But in this case, that problem does not exist.

Even though the facts show that ASRP-related service line leaks do not cause serious incidents, Duke states that the rate of leaks of any type in its system is indicia of a problem or threat that must be solved.<sup>45</sup> In support of this claim, Duke states that “as the uncontroverted evidence in this proceeding confirms, leaks in the Duke Energy Ohio service territory are increasing on the curb-to-meter segments of service lines, which is the segment closest to structures.”<sup>46</sup> This claim is misleading at best.

In its pre-filed direct testimony, Duke did produce bar graphs that provide data of the leaks on the curb-to-meter and main-to-curb portions of service lines.<sup>47</sup> However, Duke did not provide the actual number of leaks for each segment (i.e., main-to-curb and curb-to-meter) of service lines. Only a rudimentary bar graph was provided. Additionally, the bar graph compiled the curb-to-meter and main-to-curb portion on top of each other

---

<sup>44</sup> Duke Initial Brief at 25 citing Duke Ex. 10 at 2 (McGee Direct Addendum); *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of an Alternative Rate Plan for Continuation of its Distribution Investment Rider*, Case No. 13-151-GA-ALT, Opinion and Order, at 16 (February 19, 2014).

<sup>45</sup> See Duke Initial Brief at 13.

<sup>46</sup> Duke Initial Brief at 13 (citing Duke Ex. 9 at 5 (McGee Direct); See also Duke Ex. 4 (Duke responses to OCC INT Nos. 65, 66, 67, 68)).

<sup>47</sup> See Duke Ex. 9 (McGee Direct).

making it near impossible to interpret the data to any reasonable degree of accuracy.<sup>48</sup>

Moreover, Duke's ASRP is not proposed to only replace the curb-to-meter portion of the service lines. It is meant to replace the entire service line. Therefore, it is misleading and irrelevant to consider the amount of leaks to just the curb-to-meter portion of the service line.

Accordingly, OCC directly disputed or denied the truth or validity of the evidence that Duke put forward to support its claim that service line leaks in its territory are increasing. The pre-filed direct testimony OCC witness Williams explicitly disputed this claim by analyzing the small amount of data that Duke provided in its direct testimony.<sup>49</sup> Mr. Williams came to the conclusion that "the number of repaired leaks on service lines across Duke's service territory has dropped substantially...."<sup>50</sup> In addition, Mr. Williams concluded that Duke's data was misleading because Duke classifies grade-three leaks, which are non-hazardous (by pipeline safety standards) and not required to be repaired, as grade-two leaks, which are non-hazardous and may require repair based on the severity and/or location of the leak.<sup>51</sup> This would unnecessarily inflate the amount of repairs that Duke performs in a given year. Therefore, Duke's claim was not uncontroverted.

To further the claim that leak rates on its service lines are increasing, Duke cites to Duke Ex. No. 4, which consists of Duke responses to OCC-INT Nos. 65, 66, 67, and 68.<sup>52</sup> However, contrary to Duke's claim, Duke Ex. No. 4 explicitly shows that the leak

---

<sup>48</sup> See e.g., Duke Ex. 10 at EAM-2 pg. 21 of 45 (McGee Direct) (showing a bar graph with the curb-to-meter and main-to-curb data compiled together).

<sup>49</sup> See OCC Ex. 12 at 13-19 (Williams Direct).

<sup>50</sup> OCC Ex. 12 at 14:19-15:1 (Williams Direct).

<sup>51</sup> See OCC Ex. 12 at 15:7-10 (Williams Direct) citing Duke Ex. 9 at EAM-2 pg., 20 of 45 (McGee Direct).

<sup>52</sup> Duke Initial Brief at 13 n.50.

rate is decreasing, not increasing as Duke states.<sup>53</sup> Specifically, OCC INT. No. 68 shows that in the years 2012, 2013, and 2014 the number of grade-two leaks that were listed by cause as corrosion, natural forces and material/welds were, in total, 1,992, 1,526, and 1,400, respectively.<sup>54</sup> Therefore, the amount of leaks declined each year. OCC INT. No. 67 shows that in the years 2012, 2013, and 2014 the number of total grade-two leaks were 3,036, 3,031, and 2,398, respectively.<sup>55</sup> Therefore, the amount of leaks declined each year. OCC INT. No. 66 shows that in the years 2012, 2013, and 2014 the number of grade-one leaks that were listed by cause as corrosion, natural forces and material/welds were, in total, 444, 304, 315, respectively.<sup>56</sup> Therefore, the amount of leaks declined each year except the last year. Finally, OCC INT. No. 68 shows that in the years 2012, 2013, and 2014 the number of total grade-one leaks, of any kind, were 1,473, 2,241, and 1,776, respectively.<sup>57</sup> Therefore, the amount of leaks declined in the first year, but not last year. However, as OCC stated in its Initial Brief, 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>58</sup> In addition, the 4,174<sup>59</sup> grade-one 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>60</sup>

---

<sup>53</sup> See Duke Ex. 4 (Duke Response to OCC INT. Nos. 65, 66, 67, 68).

<sup>54</sup> See Duke Ex. 4 (Duke Response to OCC INT. Nos. 65, 66, 67, 68).

<sup>55</sup> See Duke Ex. 4 (Duke Response to OCC INT. Nos. 65, 66, 67, 68).

<sup>56</sup> See Duke Ex. 4 (Duke Response to OCC INT. Nos. 65, 66, 67, 68).

<sup>57</sup> See Duke Ex. 4 (Duke Response to OCC INT. Nos. 65, 66, 67, 68).

<sup>58</sup> 2012:  $101/1473=0.0685$ ; 2013:  $172/2241=0.0767$ ; 2014:  $209/1776=0.1176$ .

<sup>59</sup>  $1,776+2,398=4,174$  (total amount of service line leaks in 2014).

<sup>60</sup> See Duke Ex. 9 at EMA-3 at 9 of 45 (McGee Direct).

Therefore, Duke's ASRP will not stem or minimize a safety issue on Duke's system. As the evidence shows, there is no safety issue on Duke's system.

**E. Duke's ASRP is not just and reasonable because Duke is already minimizing any risk to consumers.**

Duke states that its current leak management practice will not minimize risk or satisfy state and federal regulators expectations.<sup>61</sup> Duke's current practice is, generally, to replace or repair leaks on a reactive basis (i.e., after they have discovered the leak) as opposed to a proactive basis (i.e., before they have discovered a leak or, as requested in this Application, before a service line has actually begun to leak). In support of this claim, Duke states that the PUCO has acknowledged that, "minimization of unnecessary risk by providing for a proactive and systematic replacement of a known safety threat is preferred to waiting for an imminent safety threat."<sup>62</sup> Duke is wrong as the ASRP is not necessary to comply with this policy. Duke is already managing any "risk" through a proactive and systematic repair and replacement of service lines.

Duke claims that between 2012 and 2014, it proactively replaced 200 service lines per year using its traditional capital budget process.<sup>63</sup> Duke also claims that it replaces steel and unprotected metallic service lines after a leak is discovered.<sup>64</sup> Between 2012 and 2014, Duke reactively replaced over 8,400 such service lines (or on average 2,800 annually).<sup>65</sup> Using Duke's replacement rate of 3,000<sup>66</sup> service lines per year between

---

<sup>61</sup> See Duke Initial Brief at 13-14.

<sup>62</sup> See Duke Initial Brief at 8 citing *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc., for Approval of an Alternative Rate Plan for Continuation of its Distribution Replacement Rider*, Case No. 13-1571-GA-ALT, Opinion and Order at 16 (February 19, 2014).

<sup>63</sup> See Duke Initial Brief at 13; Duke Ex. 1 at 6 (Application).

<sup>64</sup> See Duke Initial Brief at 13.

<sup>65</sup> Duke Ex. 4 (Duke response to OCC INT No. 67).

<sup>66</sup> 2,800 (reactive) + 200 (proactive) = 3,000 (total amount of service lines replaced per year).

2012 and 2014, the 58,000 service lines would be replaced on a routine basis in approximately 19 years -- not 200 years as claimed by Duke in its Application.<sup>67</sup>

At the evidentiary hearing, Duke stated that even though the Application filed on January 20, 2015 claims 200 service lines are being replaced annually on a proactive basis, the Company decided in August 2014 to increase the number of service lines being replaced to 1,000 annually.<sup>68</sup> At the current replacement rate of 3,800 service lines per year (i.e., 2,800 reactive and 1,000 proactive) all of the service lines can be replaced on a routine basis in approximately 15 years - - not 200 years as claimed by Duke.

Furthermore, Duke affirmed that it will attempt to increase its service line replacements to 5,000 per year whether the ASRP is approved or not.<sup>69</sup> At that rate the 58,000 service lines would be replaced in approximately 11.5 years.<sup>70</sup> If Duke continues to replace leaking services line in a reactive fashion then the 58,000 lines would be replaced even quicker.

Second, the state already has standards and practices in place that address distribution pipeline risks.<sup>71</sup> Specifically, the PUCO minimum gas pipeline standards require all natural gas pipeline operators, including Duke, to classify and address risks on service lines.<sup>72</sup> Duke has confirmed that it is currently addressing the threats and thereby complying with the PUCO minimum gas pipeline standards.<sup>73</sup> In fact, OCC witness Williams testified that Duke's policy is to replace all leaking service lines regardless of

---

<sup>67</sup> Duke Ex. 1 at 6 (Application).

<sup>68</sup> Duke Initial Brief at 13.

<sup>69</sup> Duke Initial Brief at 14.

<sup>70</sup>  $58,000/5,000=11.6$ .

<sup>71</sup> See OCC Ex. 3 (Ohio Adm. Code 4901:1-16-04).

<sup>72</sup> See OCC Ex. 3 (Ohio Adm. Code 4901:1-16-04).

<sup>73</sup> Tr. Vol. I at 71:2-8 (Hill).



the severity of the leak.<sup>74</sup> This policy greatly exceeds the minimum pipeline safety requirements of the PUCO because non-hazardous grade-three leaking service lines are replaced even though the state doesn't mandate a repair or replacement of these minor leaking service lines.<sup>75</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 policies, regulations, or "Calls to Action."<sup>76</sup> Duke has already committed to minimize any "risk" that the ASRP is proposed to address. If Duke believes that it must replace these service lines to provide safe and reliable natural gas service then it may do so and file a base rate case to collect the costs that it can show are prudently incurred in the test year.

**F. Duke's assertion that absent approval of the ASRP more frequent rate cases will be filed is factually incorrect.**

Duke claims that if the PUCO does not approve the ASRP, Duke will be required to file more frequent rate cases.<sup>77</sup> Duke further claims there is an administrative and financial burden associated with annual rate cases,<sup>78</sup> but Duke provided no evidence supporting the need for annual rate cases or the need for increasing the amount of time between rate cases. In fact, over the last two decades Duke has filed four rate cases

---

<sup>74</sup> OCC Ex. 12 at 9 (Williams Direct).

<sup>75</sup> OCC Ex. 12 at 9 (Williams Direct).

<sup>76</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>77</sup> See Duke Initial Brief at 14.

<sup>78</sup> See Duke Initial Brief at 19.

staggered roughly five years apart.<sup>79</sup> Given that Duke is currently replacing approximately 3,800 service lines annually, the replacement of these service lines could occur within 15 years without the need for accelerated cost recovery or modifying the frequency in which Duke historically has filed base rate cases. In fact, the operational costs associated with repairing service lines might actually decrease and therefore, there may instead be an increase in the amount of time between rate cases.

**G. Duke's assertion that absent approval of the ASRP, customers will experience abrupt and recurrent rate changes is factually incorrect.**

Duke makes multiple claims that rate cases will result in negative consequences for customers. For example, Duke claims that rate changes associated with successive base rate cases will be abrupt and recurrent.<sup>80</sup> Elsewhere, Duke claims that ASRP avoids the inevitable rate shock associated with rate cases.<sup>81</sup> Duke is wrong on both counts.

First, rate shock for residential consumers should be a major consideration of the PUCO in rejecting the ASRP considering that Duke's natural gas bills are already 30 percent higher than the average natural gas bill of customers served by other Ohio local distribution companies.<sup>82</sup> Moreover, Duke is factually incorrect when it asserts that rate cases will result in customers experiencing rate shock. In fact, in Duke's last base rate

---

<sup>79</sup> *In the Matter of the Application of The Cincinnati Gas & Electric Company to Restructure and Unbundle Gas Rates, and for an Increase in Gas Rates in its Service Territory*, Case 95-0656-GA-AIR, Application (July 17, 1995); *In the Matter of the Application of The Cincinnati Gas & Electric Company to Restructure and Unbundle Gas Rates, and for an Increase in Gas Rates in its Service Territory*, Case No. 01-1228-GA-AIR, Application (May 23, 2001); *In the Matter of the Application of Duke Energy Ohio Inc. for an Increase in Gas Rates.*, Case No. 07-0589-GA-AIR, Application (May 15, 2007); *In the matter of the application of Duke Energy Ohio, Inc. for an Increase in Gas Rates.*, Case No. 12-1685-GA-AIR, Application (June 7, 2012).

<sup>80</sup> See Duke Initial Brief at 14.

<sup>81</sup> See Duke Initial Brief at 26.

<sup>82</sup> OCC Ex. 12 at 28 (Williams Direct).

case, customer rates did not increase as there was no increase in the Utility revenue requirement.<sup>83</sup>

Additionally, the Utility's filing of periodic base rate cases are not necessarily negative as Duke states. Base rate proceedings provide the opportunity for a comprehensive review of total revenues and expenses during an established test year.<sup>84</sup> Because all of the Company financial records are examined in detail, there is an opportunity to identify cost savings measures and revenues that can help offset any additional costs the Utility claims are incurred. Through this process, a determination can be made about the just and reasonableness of rates as required by Ohio law.<sup>85</sup> PUCO Staff appreciates this view, having recently concluded:

Staff believes that a holistic, periodic review of each company's finances is necessary to ensure that all costs are being appropriately incurred and recovered. A rate case permits the overall earnings of the Companies to be reviewed along with all of its revenues and expenses. As such, Staff believes it is a prudent regulatory practice to gain a holistic understanding of the regulated distribution company on a regular basis.<sup>86</sup>

However, Duke's overly aggressive ASRP provides Duke with an opportunity to increase revenues without considering offsetting decreasing operating costs.<sup>87</sup> The ASRP also enables Duke to earn a return on these investment costs much sooner than would be

---

<sup>83</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for an Increase in Gas Rates.*, Case No. 12-1685-GA-AIR, Opinion and Order at 12 (November 13, 2013).

<sup>84</sup> OCC Ex. 12 at 4 (Williams Direct).

<sup>85</sup> R.C. 4909.15.

<sup>86</sup> *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297-EL-SSO, Pre-filed Direct Testimony of Doris McCarter at 13:8-14 (September 18, 2015) (Staff witness McCarter recommending that the PUCO require Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company to file a rate case no later than 12 months before expiration of its proposed Electric Security Plan IV).

<sup>87</sup> See OCC Ex. 12 at 9-10 (Williams Direct).

supported in their current capital recovery program - - meaning customers just get stuck with the \$320 million bill.<sup>88</sup>

The ASRP as proposed by Duke results in customers paying successive rate changes that are both abrupt and recurrent. For example, customers would be required to pay an initial capped amount of \$1.00 per month for the first year of the program.<sup>89</sup> However, for each successive year, the cap amount increases by \$1.00 per month. Therefore, by the tenth year of the proposed ASRP, customers will pay an additional \$10.00 per month (or \$120.00 annually). This is a shocking 27.5 percent increase in monthly natural gas bills.<sup>90</sup> As explained by OCC witness Williams, by the tenth year of the ASRP Duke customers would be paying at least \$45.00 per month in fixed charges.<sup>91</sup> Base rate cases would likely result in an outcome that is less costly for customers.

### **III. CONCLUSION**

Duke's proposed \$320 million ASRP is a bad deal for Ohio and Duke's 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, adequate and reasonably priced service to its customers. The PUCO should not approve the program.

---

<sup>88</sup> See OCC Ex. 12 (Williams Direct).

<sup>89</sup> See OCC Ex. 12 at 24 (Williams Direct).

<sup>90</sup> See OCC Ex. 12 at 25 (Williams Direct).

<sup>91</sup> See OCC Ex. 12 at 25 (Williams Direct).

Respectfully submitted,

Bruce J. Weston (0016973)  
OHIO CONSUMERS' COUNSEL

/s/ Kevin F. Moore

Kevin F. Moore (0089228)  
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

10 W. Broad Street, Suite 1800  
Columbus, Ohio 43215-3485  
Telephone [Moore]: 614-466-2965  
[kevin.moore@occ.ohio.gov](mailto:kevin.moore@occ.ohio.gov)  
(will accept service via email)

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Reply Brief was served on the persons stated below via electronic transmission, this 23<sup>rd</sup> day of December 2015.

/s/ Kevin F. Moore  
Kevin F. Moore  
Assistant Consumers' Counsel

## **SERVICE LIST**

[Thomas.lindgren@puc.state.oh.us](mailto:Thomas.lindgren@puc.state.oh.us)  
[cmooney@ohiopartners.org](mailto:cmooney@ohiopartners.org)

[Amy.Spiller@duke-energy.com](mailto:Amy.Spiller@duke-energy.com)  
[Jeanne.Kingery@duke-energy.com](mailto:Jeanne.Kingery@duke-energy.com)

Attorney Examiner:

[Megan.addison@puc.state.oh.us](mailto:Megan.addison@puc.state.oh.us)

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

**Commission of Ohio Docketing Information System on**

**12/23/2015 3:20:08 PM**

**in**

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

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