

**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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**MEMORANDUM CONTRA  
DUKE ENERGY OHIO'S APPLICATION FOR REHEARING  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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## I. INTRODUCTION

In response to advocacy by the Office of the Ohio Consumers' Counsel ("OCC") and others, the Public Utilities Commission of Ohio ("PUCO") issued an Order denying Duke Energy Ohio, Inc.'s ("Duke" or "Utility") proposed Accelerated Service Line Replacement Program ("ASLRP").<sup>1</sup> The PUCO's ruling protected Duke's 400,000 natural gas customers from being charged at least \$320 million to replace service lines that the record evidence shows: (1) have no history of failing, (2) are not currently failing, (3) are not at an imminent risk of failing in the future, and (4) are already being systematically addressed through current risk mitigation measures.

<sup>1</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., For Approval of an Alternative Rate Plan Pursuant to R.C. 4929.05 For An Accelerated Service Line Replacement Program*, Case No. 14-1622-GA-ALT, Opinion and Order (October 26, 2016) (“Order”).

In fact, the PUCO's ruling saved Duke's Ohio natural gas customers from needlessly paying at least \$659 per customer over the next ten years.<sup>2</sup> The PUCO's ruling was reasonable and lawful, and vitally important to Duke's 400,000 customers.<sup>3</sup>

Nevertheless, Duke now asks the PUCO to reconsider its well-reasoned ruling and allow it to forge ahead with its unjust and unreasonable proposal.<sup>4</sup> But, Duke's application for rehearing falls short in demonstrating that the PUCO Order, which protected Ohio consumers, was unjust and unreasonable. Duke's ASLRP is not a just and reasonable proposal for consumers. The PUCO should deny Duke's application for rehearing.

## II. RECOMMENDATIONS

### A. **It was reasonable and lawful for the PUCO to consider the costs and benefits to Ohio consumers associated with Duke's accelerated service line replacement program.**

Under R.C. 4929.05 and Ohio Adm. Code 4901:1-19-06, the PUCO may only approve an alternative rate plan if the PUCO finds that the plan is "just and reasonable."<sup>5</sup> The utility has the burden of proof in the proceeding.<sup>6</sup> This standard of review is for both alternative rate plans for an increase in rates and alternative rate plans not for an increase

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<sup>2</sup> The rate caps were proposed to increase by one dollar per year until the rate reaches \$10 per customer per month in the final year of the program. Thus, residential customers would have pay \$12 annually in year one, \$24 in year two, and up to \$120 per customer in year ten. The grand total for each customer over the ten year life of the program would have been as follows:  $\$12 + 24 + 36 + 48 + 60 + 72 + 84 + 96 + 108 + 120 = \$659$ .

<sup>3</sup> See OCC Initial Brief at 37-38 ("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. Duke customers are paying an average natural gas bill of \$97.41, as of September 2015. The average natural gas bill for the remaining major cities in Ohio is \$68.34.202 Thus, Duke's customers have natural gas bills that are 30 percent higher than the average natural gas bills of other Ohioans.") (citations omitted).

<sup>4</sup> Duke Application for Rehearing (November 23, 2016) ("Duke AFR").

<sup>5</sup> See R.C. 4929.05 and Ohio Adm. Code 4901:1-19-06.

<sup>6</sup> See R.C. 4929.05 (B).

in rates.<sup>7</sup> In addition, the PUCO is afforded broad discretion when balancing interests in these types of proceedings.<sup>8</sup>

The Order held that the costs and benefits of a proposed alternative rate plan are clearly and fairly within the PUCO's discretion to consider in determining whether the plan is just and reasonable.<sup>9</sup> To that end, the Order stated that, "a cost-benefit analysis should be considered and the record reflects that Duke did not adequately consider the quantitative costs or benefits of the ASRP for the Commission's consideration."<sup>10</sup>

In assignment of error A, Duke states that the PUCO Order is unlawful and unreasonable because the PUCO based its decision on the cost and/or benefits of the ASLRP. Specifically, Duke claims that because its application is not for an increase in rates under Ohio Adm. Code 4901:1-19, it need not submit evidence as to resulting rates.<sup>11</sup> And, if evidence on resulting rates is not required, the PUCO is not allowed to consider the costs of the program.<sup>12</sup> Similarly, Duke claims that the lack of an express cost-benefit provision in Ohio Adm. Code 4901:1-19 means that the PUCO cannot consider the programs benefits.<sup>13</sup> Duke claims that the PUCO's consideration of the

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<sup>7</sup> See R.C. 4929.05(A) ("A natural gas company may request approval of an alternative rate plan by filing an application under section 4909.18 of the Revised Code, regardless of whether the application is for an increase in rates."); see also O.A.C. 4901:1-19-06(C)(1) ("For alternative rate plan applications that are for an increase in rates, as well as alternative rate plan applications that are not for an increase in rates, the applicant shall provide the following information.... Finally, the applicant shall demonstrate that the alternative rate plan is just and reasonable.").

<sup>8</sup> Order at 34 citing *City of Columbus v. Pub. Util. Comm.*, 10 Ohio St.3d 23, 24, 460 N.E.2d 1117 (1984).

<sup>9</sup> See Order at 34 citing *In re Review of the Alternative Rate Plan and Exemption Rules*, Case No. 11-5590-GA-ORD, Entry on Rehearing (Feb. 27, 2013); R.C. 4929.01(A).

<sup>10</sup> Order at 41.

<sup>11</sup> See Duke AFR at 5.

<sup>12</sup> See Duke AFR at 5.

<sup>13</sup> See Duke AFR at 9.

program's cost and benefits are evidentiary standards and filing requirements that are not required by law. Duke's Assignment of Error A lacks merit and should be denied.

First, the PUCO has a history of considering the costs and benefits of an alternative rate plan when determining whether the plan is just and reasonable. For example, in the Dominion<sup>14</sup> PIR<sup>15</sup> alternative rate plan proceeding, OCC stated that Columbia's alternative rate plan, as modified by the Stipulation, does not comply with applicable statutes, as it is not just and reasonable.<sup>16</sup> Specifically, OCC claimed that the program represents a drastic increase in costs for consumers and is not in the public interest.<sup>17</sup> The PUCO then analyzed the costs and benefits of Dominion's proposed PIR in reaching its determination of whether the program was just and reasonable. The PUCO has done the same here.

Second, Duke has misinterpreted the law. Duke interprets the lack of a specific administrative "filing requirement" pertaining to costs and benefits as limiting the exercise of the PUCO's authority to determine whether an alternative rate plan is "just and reasonable." This is simply not correct. Administrative filing requirements for alternative rate plan applications do not circumscribe the PUCO's standard of review, which is established by statute. Duke fails to identify any provision in the statute that limits what the PUCO may consider while undertaking its review. There is none. On the contrary, the PUCO has broad discretion in determining whether an application is just

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<sup>14</sup> Dominion stands for "Dominion East Ohio."

<sup>15</sup> PIR stands for "Pipeline Infrastructure Replacement."

<sup>16</sup> See *In the Application of the East Ohio Gas Company d/b/a Dominion East Ohio For Approval of An Alternative form of Regulation to Extend and Increase its Pipeline Infrastructure Replacement Program*, Opinion and Order at P52, Case No. 15-362-GA-ALT (Sept. 14, 2016).

<sup>17</sup> See *In the Application of the East Ohio Gas Company d/b/a Dominion East Ohio For Approval of An Alternative form of Regulation to Extend and Increase its Pipeline Infrastructure Replacement Program*, Opinion and Order at P31, Case No. 15-362-GA-ALT (Sept. 14, 2016).

and reasonable under R.C. 4929.05.<sup>18</sup> The PUCO looked at the record evidence on the cost of the ASLRP and the lack of record evidence on the benefits of the ASLRP. It concluded that these were relevant factors in determining whether the program is just and reasonable. Duke then is challenging the PUCO's discretion. But, Duke has failed to show that the PUCO has abused its discretion.

Therefore, it was not unlawful for the PUCO to consider the cost and benefits of the alternative rate plan in making its determination of whether the plan is just and reasonable. Any other statutory interpretation would not produce a just and reasonable result for consumers. And, “[w]e must presume that the General Assembly intended a just and reasonable result in enacting a statute.”<sup>19</sup> Duke’s application for rehearing should be denied.

**B. The PUCO reasonably concluded that Duke should have considered alternative solutions to charging customers \$320 million for its service line replacement program.**

In its Order, the PUCO stated that another factor it believes is useful in determining whether a program is “just and unreasonable” under R.C. 4929.05 is to compare feasible options or alternatives.<sup>20</sup> However, the PUCO found that the record evidence showed that Duke did not evaluate any alternatives to the ASLRP.<sup>21</sup>

In Assignment of Error B, Duke claims that the PUCO erred by concluding that the ASLRP is not a just and reasonable alternative rate plan because Duke failed to

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<sup>18</sup> See Order at 34.

<sup>19</sup> *Disc. Cellular, Inc. v. PUC*, 112 Ohio St. 3d 360, 367 (2007); See R.C. 1.47(c).

<sup>20</sup> See Order at 35.

<sup>21</sup> Order at 34-35.

evaluate other alternatives.<sup>22</sup> However, as stated above, the lack of a standard filing requirements pertaining to the evaluation of alternative options does not control the standard of review or requirement in this proceeding. Under the law an alternative rate plan must be just and reasonable.<sup>23</sup> Again, the PUCO is afforded broad discretion in determining what is just and reasonable. And, it has determined here that one way to determine reasonableness is to compare feasible options. Duke failed to do so. This is simply one factor, among others, that contributed to the PUCO's final conclusion that the ASLRP, as a whole, is not just and reasonable. To question this decision is, once again, challenging a judgment call by the PUCO. But, Duke did not show that the PUCO has abused this discretion here.

Duke next contends that, contrary to the PUCO's conclusion, it did in fact consider alternative solutions to the ASLRP. Duke states that the alternative solution to the ASLRP that it considered was doing nothing and maintaining the status quo.<sup>24</sup> Duke then claims that the Order is in violation of R.C. 4903.09 because the Order failed to explicitly cite doing nothing as an alternative to the ASLRP.

This argument is unsound. Duke alleged that there is a risk on its system that needs to be mitigated. Duke proposed the ASLRP, and only the ASLRP, to mitigate this alleged risk. The PUCO reasoned that Duke should have compared and contrasted other feasible ways of mitigating this risk before making its proposal. Duke now claims that doing nothing – and maintaining the status quo – was one of the feasible alternative

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<sup>22</sup> See Duke AFR at 10-13.

<sup>23</sup> See R.C. 4929.05.

<sup>24</sup> Duke AFR at 11.



solutions that it considered.<sup>25</sup> Therefore, Duke seems to be admitting that the status quo is a feasible solution to the alleged risk to its system. Consequently, the ASLRP is not necessary.

Second, the alternative solutions that the PUCO desired were alternative service line replacement programs that could be compared and contrasted to the proposed ASLRP. As the Order directly stated, “[w]e do not expect that every possible solution will be considered; however, one way to determine reasonableness is to compare feasible options.”<sup>26</sup> Nevertheless, Duke only produced one solution – the ASLRP – and the PUCO determined that it was not just and reasonable. Therefore, Duke’s application for rehearing should be denied.

**C. The PUCO was correct in concluding that Duke's service line replacement program is not required by the Pipeline and Hazardous Material Safety Administration (“PHMSA”).**

Duke has consistently stated throughout this proceeding that the ASLRP is required under PHMSA’s Distribution Integrity Management Plan (“DIMP”) regulations and an associated “Call to Action.”<sup>27</sup> Contrary to that position, the Order concluded that Duke’s ASLRP is not required under these federal regulations.<sup>28</sup> Moreover, the Order held that it was not persuaded that PHMSA’s guidelines specifically recommended accelerated replacement of service lines or accelerated cost recovery.<sup>29</sup> Additionally, the

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<sup>25</sup> See Duke AFR at 11 (“Notwithstanding the Commission’s circuitous rationale, the record confirms that Duke Energy Ohio did consider alternatives. As described in the Application, the Company compared its proposed ASRP to its current practice of responding to service line failures and replacing a small number of obsolete service lines on an annual basis.”).

<sup>26</sup> Order at 35.

<sup>27</sup> See Order at 35 citing Co. Ex 1 at 6; Co. Br. at 25.

<sup>28</sup> See Order at 35-36.

<sup>29</sup> See Order at 35-36.

PUCO determined that, in any event, Ohio has complied and is positioned to continue complying with any and all objectives of federal guidelines.<sup>30</sup>

In Assignment of Error C, Duke claims that the PUCO is responsible for enforcing PHMSA's regulations.<sup>31</sup> However, Duke seems to soften its stance that the PHMSA DIMP regulations require the ASLRP's implementation. Instead, Duke now contends that the PHMSA DIMP rules require Duke to mitigate known risks to its natural gas distribution system and that Duke has identified the ASLRP as its mitigation measure of choice.<sup>32</sup>

Duke's assignment or error is wrong. It is undisputed that Duke has identified an alleged risk on its distribution system. It is also undisputed that Duke has identified the ASLRP as the measure it would like to implement to mitigate this alleged risk. However, the PUCO is not obligated to approve any and every alleged distribution risk mitigation program that Duke proposes. Instead, "any alternative rate plan proposed to the PUCO under R.C. 4929.05 is nonetheless required to be just and reasonable. Based on the record of this proceeding, the Commission finds that Duke has failed to demonstrate that its alternative rate plan, as proposed, is just and reasonable."<sup>33</sup>

In its application for rehearing, Duke also claims that the Order ignores the evidentiary record and the directives of a federal agency whose objectives it has been entrusted to enforce.<sup>34</sup> Duke is wrong. That the PUCO deemed the ASLRP not "just and reasonable," does not mean that the PUCO ignored or failed to appreciate the PHMSA

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<sup>30</sup> See Order at 35-36.

<sup>31</sup> See Duke AFR at 14-16.

<sup>32</sup> See Duke at 15.

<sup>33</sup> Order at 33.

<sup>34</sup> See Duke AFR at 14-16.

DIMP guidelines and/or record evidence as Duke claims.<sup>35</sup> As the PUCO stated: “our decision today does not find that that risk of potential incidents involving service lines is not a concern of this Commission; rather, we are not persuaded by the evidence of record that Duke is warranted to charge customers an estimated \$320 million over ten years to mitigate risks.” In addition, the Order spoke at length about distribution safety and the measures that Ohio and Duke already have in place to satisfy any pipeline safety risk.<sup>36</sup> Duke failed in its application, testimony, and briefs to demonstrate how these existing measures are insufficient to mitigate the current alleged risk. And, it has now failed to do so in its application for rehearing as well. Therefore, Duke’s application for rehearing should be denied.

**D. It was just and reasonable for the PUCO to conclude a de minimus chance of a service line failure due to corrosion, is insufficient to charge customers for a \$320 million program.**

In its testimony, Duke claims that the risk of a service line failure due to corrosion is one in twenty-nine.<sup>37</sup> As the Order notes, Duke limited its analysis to that of Duke’s own service territory.<sup>38</sup> The PUCO Staff testified that the risk of a service line failure due to corrosion equates to a one in 11.9 million chance.<sup>39</sup>

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<sup>35</sup> Duke AFR at 14-15.

<sup>36</sup> Order at 35-36, 39-41.

<sup>37</sup> Order at 37.

<sup>38</sup> Order at 37.

<sup>39</sup> Order at 37.

The Order found Staff's data to be more reliable.<sup>40</sup>

In Assignment of Error D, Duke argues that Staff's data is flawed and unreliable because it does not consider information specific to Duke's Ohio service territory.<sup>41</sup> This claim lacks merit. Staff did not include Duke-specific information because service line failures due to corrosion have happened so infrequently on Duke's service lines.<sup>42</sup> In fact, none of the service line incidents reported to PHMSA from 2004 to 2014 were reported by Duke.<sup>43</sup> And, no Duke witness was able to identify a single incident resulting from natural gas escaping a corroded service line and entering an occupied area of building, in its service territory or otherwise.<sup>44</sup>

As the Order so aptly summarized:

We note that Staff utilized data that was based on actual incidents due to corrosion on service lines, although it was not specifically applicable to Duke's service territory. However, such specific data was unavailable due to the limited occurrence of these incidents in the Company's service territory. The non-occurrence of incidents, as defined by PHMSA, on service lines within Duke's service territory indicates that this risk is substantially limited. Company witness McGee acknowledged that the history of pipeline failures was key to the consideration of the types of integrity risks facing Duke's distribution system. Therefore, the record reflects that the current projected likelihood associated with a reportable incident caused by a corroded service line in Duke's service territory does not warrant accelerated replacement and recovery of these service lines. Additionally, Duke is undertaking certain procedures that would help alleviate some of the risk noted in Staff's observations from the PHMSA data, reducing the probability of an incident even greater than Staff's estimation<sup>45</sup>

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<sup>40</sup> See Order at 37-39.

<sup>41</sup> Duke AFR at 16-17.

<sup>42</sup> See Order at 37.

<sup>43</sup> Order at 24.

<sup>44</sup> Order at 24.

<sup>45</sup> Order at 37 (citations omitted).

Duke argued that the PUCO ignored Duke's projected risk of a service line failure.<sup>46</sup> This is not true. As noted above, the PUCO explicitly cited Duke's projected risk evidence. The PUCO then determined that its Staff's evidence was more credible and persuasive. Therefore, the PUCO Order was indeed based on credible evidence and Duke's application for rehearing should be denied.

**E. The PUCO did not err by stating that Duke already has effective service line risk mitigation measures in place to protect consumers.**

The Order stated that another reason for denying the ASLRP was because "the record reflects that Duke has effective mitigation measures in place that are already achieving the desired results of the proposed ASRP."<sup>47</sup>

Duke argued that the ASLRP was designed to *proactively* mitigate risk consistent with federal regulations.<sup>48</sup> And, therefore, the PUCO Order is unlawful under R.C. 4903.09 because it does not "explain how reacting to a leaking service line in any way mitigates the risk associated with those likely to fail" in the future.<sup>49</sup> Duke is wrong.

First, by denying the ASLRP, the PUCO is not solely relying on reactive measures to mitigate any potential risk on Duke's service lines. "[T]he record reflects that Duke has effective mitigation measures in place that are already achieving the desired results of the proposed ASRP."<sup>50</sup> These measures are proactive and reactive. Indeed, Duke's current practices of replacing unprotected metallic service lines on a reactive and

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<sup>46</sup> See Duke Application for Rehearing at 16.

<sup>47</sup> Order at 39.

<sup>48</sup> See Duke AFR at 17.

<sup>49</sup> Duke AFR at 17.

<sup>50</sup> Order at 39.

**proactive** basis have resulted in an overall decline in service line leaks.<sup>51</sup> Furthermore, the Order explains that this practice is scheduled to continue:

Further, OCC and OPAE note that, during the evidentiary hearing, Duke stated that it would increase the number of service lines to be replaced annually on a proactive basis to 1,000 beginning in 2015, rather than the 200 referenced in its initial application. Duke also affirmed that it will attempt to increase its service line replacements to 5,000 per year, regardless of whether the ASRP is approved.<sup>52</sup>

Moreover, as the Order notes, Duke “testified to the fact that Duke’s natural gas distribution system is safe today and will continue to be safe in the future, even in the event the proposed ASRP is not implemented.”<sup>53</sup> Therefore, the Order did not fail to explain how this alleged risk is already being mitigated. Duke’s argument has no merit, and as such, the rehearing request should be denied.

**F. The PUCO reasonably and lawfully concluded that the record evidence on the number of service line leaks in Duke’s Ohio service territory do not warrant charging customers \$320 million for service line replacement.**

Duke’s Assignment of Error E claims that the PUCO Order is unlawful because it failed to consider evidence that the number of leaks associated with corrosion on service lines, and the threat created thereby, is increasing.<sup>54</sup> And, that these risks and threats will continue without the ASLRP.<sup>55</sup>

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<sup>51</sup> Order at 25-26 (emphasis added).

<sup>52</sup> Order at 26.

<sup>53</sup> Order at 39.

<sup>54</sup> Duke AFR at 18-19.

<sup>55</sup> Duke AFR at 19.

Once again, Duke is wrong. The PUCO did recognize the arguments made and evidence put on by Duke.<sup>56</sup> The PUCO just concluded that Duke's evidence either lacked merit or was unpersuasive in comparison to competing evidence. This does not render the Order unlawful or unreasonable. Specifically, Duke argues that Duke Ex. 4 demonstrates that leak rates on its service lines are increasing. However, as OCC explained in its Reply Brief, Duke Ex. 4 shows that the leak rate is decreasing, not increasing.<sup>57</sup> Indeed the Order explicitly states, "[t]here is evidence on the record that shows the number of leaks on service line segments have been declining overall, especially when evaluating the main-to-curb portion of the service line. Additionally, Duke stated that grade-one hazardous leaks have declined in number over that time, as well."<sup>58</sup> Accordingly, Duke has failed to demonstrate how the PUCO Order is unlawful or unreasonable and its application for rehearing should be denied.

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<sup>56</sup> See Order at 19-21, 37-38 (e.g., "Duke argues the evidence in this proceeding shows significant increases in the amount of leaks attributable to service lines, and namely in the curb-to-meter segments of those lines, amounting to significant risks to those residing nearby." Order at 20 (citations omitted)).

<sup>57</sup> See OCC Reply Brief at 11-12 ("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. However, contrary to Duke's claim, Duke Ex. No. 4 explicitly shows that the leak rate is decreasing, not increasing as Duke states. 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. 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. 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. 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. 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. In addition, the 4,174 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." (footnotes omitted)).

<sup>58</sup> Order at 42 (citations omitted).

**G. The PUCO did not err in holding that Duke's Lummus Report failed to provide evidence of the risks presented by natural gas service lines that consumers face.**

Duke Assignment of Error F claims that the PUCO erred when it determined that Duke failed to provide evidence that its service lines are “high risk pipe” because they exhibit a high risk of leak or failure due to their age or material.<sup>59</sup> Duke states that the PUCO wrongly reached this conclusion by determining that “Company witness McGee ‘failed to provide any detailed information as to the number of leaks, or their severity, that have occurred on the 58,000 pre-1971 metallic and non-protected service lines that Duke proposes to replace under the ASLRP.’”<sup>60</sup> Duke states that the ASLRP is not intended to replace currently leaking service lines, but service lines that are susceptible to failure in the future.<sup>61</sup> Therefore, Duke claims the PUCO must be confused because the PUCO only analyzed the 58,000 service lines Duke proposed to replace under the ASLRP.

This is simply not true. The record evidence demonstrated, and the PUCO considered, whether service lines inside and outside of Duke's Ohio service territory exhibit a high risk of leak or failure, **in the future**, due to their age or material.<sup>62</sup> There is little to no evidence that demonstrates that the service lines were, are, or ever will be at a high risk of failure. Therefore, as the Order states, “Duke failed to provide evidence that these targeted service lines exhibit a high risk of leak or failure due to their age or

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<sup>59</sup> Duke AFR at 20.

<sup>60</sup> See Duke AFR at 20 citing Order at 42.

<sup>61</sup> Duke AFR at 21.

<sup>62</sup> See Order at 19-27, 37-43; See also Co. Ex. 4; Co. Ex. 5; Staff Ex. 2(A); OCC Ex. 12 (Williams Direct); OCC Ex. 12(A).



material.”<sup>63</sup> And, “[a]s Duke has argued in this case, and as verified by the Lummus Report, the number of leaks is indicative of the integrity of the distribution system and whether accelerated replacement is warranted.”<sup>64</sup> Therefore, the Order did analyze the important question of whether Duke’s service lines are “high risk pipe” and/or are susceptible to leaking in the future. The answer was decidedly “no.”

Essentially, Duke is, once again, arguing that because PHMSA defines pre-1971 metallic pipe as “high risk” that the PUCO must approve any program that proposes to replace such pipe. That would allow Duke to charge Ohioans \$320 million to replace service lines that are not currently failing, have no history of failing, are not at an imminent risk of failing, and are already being systematically addressed through current mitigation measures. As discussed above, and fortunately for Ohio consumers, such is not the case. The utility must show and the PUCO must find that the proposal is just and unreasonable under R.C. 4929.05. Here, the PUCO found that it was not. The PUCO was correct. Rehearing should be denied.

**H. The PUCO was correct in determining that the lack of any other similar program in Ohio further demonstrates the lack of urgency for Duke's accelerated service line replacement program.**

In Assignment of Error G, Duke states that the Order is unreasonable because the PUCO concluded that the ASLRP is not just and reasonable because it is the first such proposal in Ohio.<sup>65</sup> Duke states that rejecting a proposal solely because it is novel would quell all improvements in safety measures. Relatedly, Duke claims that the Order is

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<sup>63</sup> Order at 41.

<sup>64</sup> Order at 42 citing Co. Ex. 9 at 18, Att. EAM-2 at 10; Co. Ex. 10 at 5-6; Tr. Vol. II at 291, 298.

<sup>65</sup> Duke AFR at 21-22; Order at 42.

unlawful under R.C. 4903.09 because it fails to specifically explain how the PUCO will take into account whether or not a program is the first of its kind. Duke's claims lack any merit. Nowhere in the Order does it state that the PUCO is rejecting the ASLRP on the sole basis that it is the first ASLRP in Ohio. It is clear that to be approved the ASLRP must be adjudged by the PUCO to be "just and reasonable." In making that determination, the PUCO has broad discretion to consider a wide variety of factors. The PUCO simply used the ASLRP's originality as another factor in making its determination of whether the ASLRP is just and reasonable.

Additionally, Duke argues that the PUCO erred in denying Duke's ASLRP because other LDC's are currently replacing service lines through accelerated service line replacement programs.<sup>66</sup> However, the cases cited by Duke are not analogous to Duke's program. Dominion East Ohio's ("Dominion") pipeline infrastructure replacement program ("PIR"), Columbia Gas of Ohio, Inc.'s ("Columbia") infrastructure replacement program ("IRP") and, Vectren Energy Delivery of Ohio's ("Vectren") distribution replacement rider ("DRR") are first, and foremost, main line replacement programs. As the Order explicitly notes, "the *Vectren DRR Case*, a case upon which Duke advances many of its safety related arguments, was simply a continuation of the infrastructure **main** replacement program, which has been previously authorized by the Commission."<sup>67</sup> These programs are analogous to Duke's now expired AMRP, not its newly proposed ASLRP. And, as the Order explicitly explained, other LDC's main line replacement programs were approved "based upon the facts and circumstances, including the parties' stipulations, as well as the record evidence, in those cases, which are distinct from the

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<sup>66</sup> Duke AFR at 22.

<sup>67</sup> Order at 43 (emphasis added).

record evidence in this particular case.”<sup>68</sup> It is not appropriate to approve Duke’s ASLRP based on the evidence in other cases and Duke’s application for rehearing should be denied.

### **III. CONCLUSION**

Duke’s Application for Rehearing should be rejected as explained above. Denying the Application for Rehearing will continue to allow consumers to be protected from paying hundreds of millions of dollars for programs the PUCO has determined to be unjust and unreasonable.

Respectfully submitted,

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<sup>68</sup> Order at 42.

## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memo Contra Application for Rehearing by the Office of the Ohio Consumers' Counsel was served via electronic transmission, to the persons listed below, on this 5th day of December 2016.

/s/ Kevin F. Moore

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