

**FILE**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Annual Application )  
of Duke Energy Ohio for an )  
Adjustment to Rider AMRP Rates. )

Case No. 10-2788-GA-RDR

In the Matter of the Application of )  
Duke Energy Ohio for Tariff )  
Approval. )

Case No. 10-2789-GA-ATA

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**COMMENTS ON DUKE ENERGY OHIO'S APPLICATION  
BY  
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL**

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March 28, 2011

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**I. INTRODUCTION**

The Office of the Ohio Consumers' Counsel ("OCC"), an intervenor in the above-captioned proceedings, hereby files these comments ("Comments") regarding the Application of Duke Energy Ohio, Inc. ("Duke" or "Company"). The Application involves Duke's Accelerated Main Replacement Program ("AMRP") and Riser Replacement Program ("RRP"). These programs provide:

[Duke] is replacing cast iron and bare steel gas mains and service lines and risers on an accelerated basis, in order to improve the safety and reliability of its distribution system. Under the RRP, Duke Energy Ohio is replacing certain gas service risers through as accelerated program, in order to improve the safety and reliability of its distribution system.<sup>1</sup>

In addition, Duke is also provided accelerated cost recovery and consumers are provided accelerated operation and maintenance ("O&M") cost savings.

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<sup>1</sup> Application at Attachment A (February 28, 2011).

Duke's proposed rate increases relate to Duke's recovery of costs associated with the accelerated replacement of cast iron and bare steel mains and service lines for natural gas and the replacement of service head adapter style risers that have a propensity for leaks. Duke has approximately 383,000 residential customers that would be required to pay the rate increases requested in Duke's Application.

On November 30, 2010, Duke gave a pre-filing notice of its intent to file an Application for approval of an increase in its AMRP rider rates. On February 28, 2011, Duke filed its Application for an Adjustment to Rider AMRP Rates. OCC filed its Motion to Intervene in these cases on December 20, 2010.

On March 3, 2011, the PUCO issued an Entry that granted OCC's intervention and established a procedural schedule that, *inter alia*, determined a Comment filing date of March 28, 2011.<sup>2</sup> OCC hereby files its Comments in accordance with that Entry.

## **II. RESERVATION OF RIGHTS**

OCC reserves the right to file additional comments and to file expert testimony on April 4, 2011 in support of any matters not resolved with the Company by April 1, 2011.<sup>3</sup>

## **III. BURDEN OF PROOF**

The burden of proof regarding the Application rests upon Duke. In a hearing regarding a proposal that involves an increase in rates, R.C. 4909.19<sup>4</sup> provides that, "[a]t any hearing involving rates or charges sought to be increased, the burden of proof to

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<sup>2</sup> Entry at 2.

<sup>3</sup> Id.

<sup>4</sup> See also R.C. 4909.18.

show that the increased rates or charges are just and reasonable shall be on the public utility.” Inasmuch as the current cases arose from Duke’s rate case, and is requesting an increase in rates, Duke bears the burden of proof in these cases. Therefore, neither OCC nor any other intervenor bears any burden of proof in these cases.

#### **IV. COMMENTS**

##### **A. Duke Has Failed To Demonstrate A Need To Expand The AMRP Program.**

As part of its Application, Duke is proposing to modify the AMRP program by adding an additional 33 miles of pipeline to be replaced on an accelerated basis. Duke witness Hebbeler stated:

There is a relatively small amount of cast iron and bare steel present in the larger diameters. However, in the past few years, Duke Energy Ohio's leaks on certain larger diameter cast iron and bare steel pipes have escalated to an unacceptable rate. Therefore, Duke Energy Ohio is requesting to include under the AMRP the replacement of certain large diameter cast iron and bares (sic) steel pipes and the associated metallic services.<sup>5</sup>

Despite these general claims, in his testimony Mr. Hebbeler did not provide any supporting leak rate data. In addition, Mr. Hebbeler failed to quantify the cost of adding this additional pipeline to the AMRP program and he did not provide a schedule as to the timing by which the Company would replace the additional 33 miles of pipeline. To the extent that Duke is proposing to modify the AMRP program and the AMRP Stipulation, at a minimum, Duke needed to demonstrate or provide additional information regarding the leak rates for the additional pipeline. Such information must be considered a prerequisite to discussing let alone agreeing to modify the AMRP program to include accelerated replacement of the additional pipeline. Without this data, Duke has not met

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<sup>5</sup> Direct Testimony of Gary J. Hebbeler at 11 (February 28, 2011).

its burden of proving that the AMRP should be modified and expanded to include the additional 33 miles of pipeline. Moreover, Mr. Hebbler has not explained why Duke is unable to address the cost of repairing any leaks or replacing the infrastructure associated with the 33 additional miles of pipeline without it being added to the AMRP program as previously contemplated.

In fact, in Duke's most recent rate case, Mr. Hebbeler described how the Company planned to deal with the very same larger-than-12-inch diameter bare steel and cast iron pipeline that the Company is now proposing to add to the AMRP Program. Mr. Hebbeler stated:

The AMRP is designed to replace the cast iron and bare steel in the system that is 12 inches in diameter or smaller. For larger diameters, the pipe is either coated, protected steel or contains only a small amount of cast iron and bare steel. The hubs on most of the larger diameter cast iron pipe have been repaired and the pipe is in acceptable condition. **These pipes will be monitored and replaced if necessary in conjunction with other improvement projects.**<sup>6</sup>

Duke failed to propose expansion of the AMRP Program as part of the rate case. Duke should not now be permitted to back away from its stated intention to replace this larger-than-12-inch diameter pipeline (and the associated metallic services outside) under traditional rate-making instead of the AMRP. Also, the section of the Stipulation which addresses the components and methodology of Rider AMRP makes no mention of including for recovery costs related to cast iron and bare steel main larger than 12 inches and the associated metallic services.<sup>7</sup>

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<sup>6</sup> *In re Duke Rate Case*, Case No. 07-589-GA-AIR, et al., Direct Testimony of Gary J. Hebbeler at 6 (August 1, 2007) (emphasis added).

<sup>7</sup> *In re Duke Rate Case*, Case No. 07-589-GA-AIR, et al., Stipulation and Recommendation at 9-11 (February 28, 2008).

Similarly Duke's response to OCC discovery on the subject did not provide adequate explanation for the need to include this pipeline within the AMRP.<sup>8</sup> In addition, Duke has failed to discuss the estimated cost of including the larger diameter pipe and associated metallic services in the AMRP, or the time line for replacement. In light of Mr. Hebbeler's rate case testimony, and the omission of sufficient relevant information pertaining to Duke's proposal (i.e. total estimated cost, recovery timeframe, leak severity, etc.), the Company has failed to meet its burden of proof to demonstrate to what extent -- if at all -- the larger-than-12-inch diameter pipe should be replaced on an accelerated basis as a part of the AMRP and included for recovery in Duke's AMRP Rider.

**B. The Commission Should Consider A Systematic And Orderly AMRP Wind-Down.**

Pursuant to the Stipulation and Recommendation ("Stipulation") filed on February 28, 2008, in Case No. 07-589-GA-AIR et al., and the Public Utilities Commission of Ohio's ("Commission" or "PUCO") Opinion and Order dated May 28, 2008, the AMRP rider rates are subject to increases in each of the years 2008 through 2018. The Stipulation stated:

[Duke] will substantially complete the AMRP Program by the end of 2019 and will complete the riser replacement program by the end of 2012. If DE-Ohio fails to substantially complete the AMRP by the end of 2019, DE-Ohio will file an application with the Commission requesting continuation of this program.

In as much as the Company has attempted to expand its AMRP Program and Stipulation to include the larger-than-12-inch diameter bare steel and cast iron pipeline, so too the Company should be required to provide a plan describing how it plans to eventually wind

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<sup>8</sup> Duke Response to OCC Interrogatory No. 03-060 (See Attachment 1).

down the AMRP program. The plan should include the potential for a scaled back or non-accelerated replacement -- such as a pre-AMRP Program-type of replacement schedule -- of remaining pipeline that does not pose a safety and/or reliability issue with more traditional/non-accelerated cost recovery.

In the 2007 Rate Case, Mr. Hebbeler testified that: "Duke adopted the AMRP in 2000, with construction beginning in 2001, to accelerate its replacement schedule for cast iron and bare steel mains and associated service lines, in order to improve the safety and reliability of Duke's natural gas distribution system."<sup>9</sup> Furthermore, "when [Duke] adopted this program, its cast iron pipe in service dated back to 1873 and its bare steel pipe in service dated back to 1884."<sup>10</sup> Since the inception of the program and through the current state of the program, Duke is well on its way to addressing these concerns that formed the basis for an exception from traditional regulation.

Therefore, to the extent that Duke is proposing to expand and modify the AMRP program and Stipulation, the OCC recommends that the Commission require Duke to submit an analysis with its next AMRP Application that evaluates the status of the AMRP to date, and analyzes the costs-benefits of continuing the program on an accelerated basis through Year 2018 rather than returning to traditional ratemaking as a tool for replacing the remaining bare steel and cast iron pipelines and services. Under the AMRP as currently defined in the Stipulation in Case No. 07-589-GA-AIR, the analysis should include, but not be limited to, the miles of cast iron and bare steel main replaced and projected to be replaced by year; the number of metallic services replaced and projected

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<sup>9</sup> *In re Duke Rate Case*, Case No. 07-589-GA-AIR, et al., Direct Testimony of Gary J. Hebbeler at 3 (August 1, 2007).

<sup>10</sup> *Id.*



to be replaced by year; and, by level of severity and by year, the number of known leaks that had been scheduled for repair or elimination. Such an analysis should also consider the customer interests in winding the AMRP down in an orderly and systematic manner to assure Duke does not keep its AMRP Rider in place longer than otherwise necessary because according to the Stipulation, these customers could be asked to pay upwards of \$12.20 per month for the AMRP program in 2018.<sup>11</sup>

**1. Remaining Cast Iron And Bare Steel To Be Replaced.**

In 2001, at the inception of the program, Duke had approximately 1,161 miles of bare steel and cast iron pipe to be replaced on an accelerated basis.<sup>12</sup> Between 2001 through 2006, DE-Ohio replaced approximately 559 miles of that cast iron and bare steel pipeline.

In these cases, Mr. Hebbeler stated that the significant bare steel and cast iron mains have already been replaced. Mr. Hebbeler stated:

From 2011 through 2016, [Duke] plans to replace 303 miles of cast iron and bare steel mains, main-to-curb services and curb-to-meter services, at an estimated cost of \$305 million. A recent analysis of the map mileage reveals we have approximately 255 miles of twelve inch and less of cast iron and bare steel mains to replace.<sup>13</sup>

Over the last four years, Duke has replaced an average of slightly more than 76 miles per year.<sup>14</sup> At this rate, Duke should complete the program in four years or less. Therefore,

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<sup>11</sup> *In re Duke Rate Case*, Case No. 07-589-GA-AIR, et al., Stipulation and Recommendation, page 3 of Exhibit 4 (February 28, 2008).

<sup>12</sup> *Id.* at 5.

<sup>13</sup> Direct Testimony of Gary J. Hebbeler at 12 (February 28, 2011). (It appears from Mr. Hebbeler's testimony that there is a 48 mile difference between Duke's accounting records (303 miles) and the map records of remaining pipeline facilities (255 miles). The remaining miles to be replaced per the mapping system is deemed more reliable.)

<sup>14</sup> *Id.* at 5 (The miles replaced in the chart for 2007-2010 are:  $80 + 76 + 80 + 70 = 303 \div 4 = 76.5$  miles /year.

the Commission should take into consideration a systematic and orderly wind-down of the AMRP in advance of the 2018 date that Duke had projected.

## **2. The Vintage Of Cast Iron And Bare Steel To Be Replaced.**

As stated earlier, Duke entered this program having bare steel and/or cast iron pipeline in service as part of its distribution system dating back to 1873. During the past ten years all, or nearly all, of this very old pipeline has been, or should have been, replaced. Inasmuch as this pipe has been shown to last as long as 125-plus years, it begs the question if pipe that is substantially younger (only 40-50 years old) should continue to be replaced on an accelerated basis.

The Commission should establish an orderly wind-down of the AMRP in order to give Duke, for example, a two-year time period to replace any very old or extremely leaky pipe that is remaining on its system, and then continue to replace all remaining cast iron and bare steel pipeline subject to traditional ratemaking.

## **3. Duke's Pipeline Replacement Prioritization Is Changing.**

In 2005, Duke's Pipeline replacement through module work comprised 84 percent of Duke's AMRP activities.<sup>15</sup> At that time, the Company attributed two principal benefits to using the modular approach. These benefits were stated as: "First, [the Company] is able to replace the cast iron and bare steel mains in a systematic manner where the specific types of main with the highest propensity for breaks and leaks are replaced at the earliest point in time. Second, this approach tends to keep costs low by capturing economies of scale \* \* \*."

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<sup>15</sup> *In the Matter of the Application of the Cincinnati Gas & Electric Company for an Increase in Rates*, Case No. 01-1228-GA-AIR, Direct Testimony of Gary J. Hebbeler at 3-5 (February 8, 2005). ((\*\*\*\*\* CG&E uses these replacement priorities to design a "module" which is a grouping of cast iron or bare steel main between two and five miles in length, and located within the same geographic location.)).

However, in these cases, OCC discovery demonstrates Duke's prioritization for pipeline replacement has changed. When specifically asked if "It is the intent of the module approach under the AMRP to replace the cast iron and bare steel mains with the highest propensity for breaks and leaks are replaced at the earliest point in time?"<sup>16</sup> Mr. Hebbeler answered "No."<sup>17</sup> Such a dramatic shift in the Company's prioritization supports a review by the Commission to determine if the AMRP should be wound down in an orderly and systematic manner sooner than what is provided for in the Stipulation.

Given that Duke was the first local distribution company to implement an accelerated main replacement program, and will complete its program first, it is important for the Commission to consider the most reasonable expedient and balanced means of winding down Duke's AMRP. Once the over-arching safety and reliability concerns that were the justifications for the program are well controlled, the Commission must evaluate the need for accelerated replacement of the younger less leaky pipe weighed against the cost to customers to accelerate such replacements. Winding down the program before Year 2018 is very important to residential customers as, according to the Stipulation, these customers could be asked to pay upwards of \$12.20 per month for the AMRP program in 2018.<sup>18</sup>

## V. CONCLUSION

The Office of the Ohio Consumers' Counsel respectfully files these Comments to the Application, in conformance with the Stipulation. OCC's recommendations are

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<sup>16</sup> OCC Interrogatory No. 04-077 (See Attachment 2).

<sup>17</sup> Id.

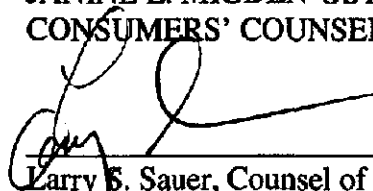
<sup>18</sup> *In re Duke Rate Case*, Case No. 07-589-GA-AIR, et al., Stipulation and Recommendation, page 3 of Exhibit 4 (February 28, 2008).

directed toward producing for Duke's approximately 383,000 residential consumers the lowest reasonable rate available and fairness in this process that allows the utility to obtain accelerated collection of costs from customers.

Specifically, OCC recommends that Duke's request for modification and expansion of the AMRP program and Stipulation to include greater-than-12-inch diameter cast iron and/or bare steel mains and the associated metallic services be rejected at this time because Duke has failed to meet its burden of proof to demonstrate this proposed expansion to the AMRP should be recovered from customers through the AMRP Rider. Furthermore, the Commission should consider a systematic and orderly wind-down of the AMRP to assure that Duke is not receiving accelerated recovery for pipeline replacement that should be more appropriately replaced under traditional rate-making.

Respectfully submitted,

JANINE L. MIGDEN-OSTRANDER  
CONSUMERS' COUNSEL



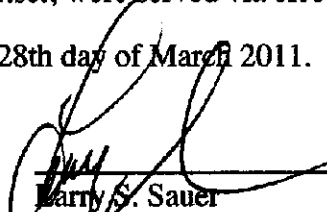
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## **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the *Comments on Duke Energy Ohio's Application* by the Office of the Ohio Consumers' Counsel, were served via electronic mail to the parties of record identified below, on this 28th day of March 2011.

  
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**Duke Energy Ohio, Inc.  
Case No. 10-2788-GA-RDR (AMRP)  
OCC Third Set of Interrogatories  
Date Received: March 9, 2011**

**OCC-INT-03-060**

**REQUEST:**

Referring to line 4 on page 11 of the testimony of Company witness Gary J. Hebbeler filed February 28, 2011, upon what basis does the Company determine that leaks on certain larger diameter cast iron and bare steel pipes have escalated to "an unacceptable rate"?

**RESPONSE:**

The basis the company used to determine that leaks on certain larger diameter cast iron and bare steel pipes have escalated to an unacceptable rate was leaks per mile. In addition, considerations were made for additional replacement if the large diameter pipe was in a class four location and did not meet the leaks per mile criteria.

**PERSON RESPONSIBLE:** Gary J. Hebbeler

**Duke Energy Ohio, Inc.**  
**Case No. 10-2788-GA-RDR (AMRP)**  
**OCC Fourth Set of Interrogatories**  
**Date Received: March 11, 2011**

**OCC-INT-04-077**

**REQUEST:**

Is the intent of the module approach under the AMRP to replace the cast iron and bare steel main with the highest propensity for breaks and leaks at the earliest point in time?

**RESPONSE:**

No.

**PERSON RESPONSIBLE:** Gary J. Hebbeler