

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Duke Energy Ohio, Inc. for an Adjustment) Case No. 12-3028-GA-RDR
to Rider AMRP Rates to Recover Costs)
Incurred in 2012.)

In the Matter of the Application of)
Duke Energy Ohio, Inc. for Tariff) Case No. 12-3029-GA-ATA
Approval.)

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

I. INTRODUCTION

The Office of the Ohio Consumers' Counsel ("OCC"), an intervenor in the above-captioned proceeding, hereby files these Comments on the Application of Duke Energy Ohio ("Duke" or "the Company") to increase the rates it charges customers for systematic repair and/or replacement of its pipeline infrastructure distribution facilities. The increase would be collected from customers via the Accelerated Mains Replacement Program ("AMRP") or the Riser Replacement Program ("RRP"), per the Application that Duke filed on February 27, 2013.

Pursuant to the Stipulation and Recommendation ("Stipulation") filed on February 28, 2008, in Case No. 07-589-GA-AIR et al., and the Opinion and Order of the Public Utilities Commission of Ohio ("PUCO" or "the Commission") dated May 28,

2008, the AMRP and RRP Cost Recovery Charge rates are subject to annual increases, up to a cap, in each year from 2008 through 2019.¹

On May 4, 2011, in Case No. 10-2788-GA-RDR, the Commission approved a Stipulation modifying various aspects of the AMRP and RRP and associated Charges. Pursuant to the Stipulation and Opinion and Order in that case, these modifications took effect with Duke's filing in this case for the fiscal period beginning January 1, 2011.

Duke filed its Application in this case on November 30, 2012 and the OCC filed its Motion to Intervene on January 16, 2013. In a March 1, 2013 Entry, the Attorney Examiner established March 25, 2013 as the deadline for Comments on the Duke Application. OCC is filing these Comments pursuant to the March 1, 2013 Entry.

II. BURDEN OF PROOF

The burden of proof regarding the Application rests upon Duke. Indeed, R.C. 4909.19 provides that, “[a]t any hearing involving rates or charges sought to be increased, the burden of proof to show that the increased rates or charges are just and reasonable shall be on the public utility.” Similarly, Duke in this case bears the burden of proof. Therefore, OCC does not bear any burden of proof in this case.

¹ *In re Duke Rate Case*, Case No. 07-589-GA-AIR, et al., Opinion and Order (May 28, 2008).

III. COMMENTS

A. Cumulative Residential Rate Caps

On Schedule 24 of the Application, filed on February 27, 2013 in these cases, Duke is proposing to charge residential customers \$1.20 per month through the AMRP Rider. However, the \$1.20 AMRP Rider charge proposed by Duke exceeds the annual cap that Duke agreed to in Case No. 10-2788-DA-RDR.

The Stipulation in Case No. 10-2788-GA-RDR filed April 8, 2011 and approved by the Commission May 4, 2011, altered the terms of the Stipulation regarding the AMRP and the AMRP Rider set in Case No. 07-589-GA-AIR. Specifically, the Stipulation in Case No. 10-2788-GA-RDR included provisions that augmented the AMRP for inclusion of the replacement of large diameter cast iron and bare steel pipe; stated that Duke shall wind down and terminate the AMRP as of December 31, 2015; and, established annual caps for the remaining term of the AMRP.² The latter stipulation provision agreed to continue the incremental and cumulative rate caps as set forth in Stipulation Exhibit 4, page 3 of 3 filed February 28, 2008 in Case No. 07-589-GA-AIR.

The cumulative residential rate caps stated in the 10-2788-GA-RDR Stipulation are the same as those shown on Exhibit 4 of the 07-589-GA-AIR Stipulation: \$6.20 for 2012, \$7.20 for 2013, \$8.20 for 2014, \$9.20 for 2015 and \$10.20 for 2016. As one can see, there is the potential for Duke to increase the incremental cap of up to \$1.00 per year. These incremental rate caps match those that are shown on Exhibit 4 of the 07-589-GA-AIR Stipulation for the years 2010 through 2016.

² *In the Matter of the Annual Application of Duke Energy Ohio for an Adjustment to Rider AMRP Rates et al.*, Case No. 10-2788-GA-RDR, Stipulation and Recommendation at 6-7 (April 8, 2011).

In terms of the cumulative rate caps, in compliance with the Stipulation in Case No. 10-2788-GA-RDR, Duke is permitted to defer any costs which exceed the yearly rate cap for inclusion in the subsequent year so long as the recovery does not exceed the cumulative residential rate cap.³ For example, in Year 1, any additional costs that result in the cumulative residential rate cap being more than \$1.00 can be deferred for collection in the subsequent year (Year 2) as long as the cumulative residential rate cap for Year 2 of \$2.00 is not exceeded.

In response to OCC Interrogatory No. 12 in this case, Duke states that the reason it is proposing to eliminate the residential rate cap of \$1.00 per year is that the caps are arbitrary and imposing them would require an unnecessary delay in completing the AMRP by December 31, 2015. It should be noted that, in the 10-2788-GA-RDR Stipulation, Duke agreed to wind down the AMRP by December 31, 2015, expand its AMRP to include 12 inch and greater diameter pipe and continue to keep the \$1.00 per year residential cap that was provided for in the Stipulation in Case No. 07-589-GA-AIR.

Duke's pending rate case (Case No. 12-1685-GA-AIR) uses a date certain of March 31, 2012. All AMRP investment up to this point in time is reflected in the proposed base rates in that case. The test year for the current AMRP case is April 1, 2012 through December 31, 2012. Since all AMRP investment is being rolled into base rates as of March 31, 2012, the AMRP rider should be reset to zero and the \$1.00 per year cumulative cap as stated in the 2010 stipulation should be applied. Hence, the \$1.20 per month requested by Duke exceeds the \$1.00 maximum for the 2012 test year. Therefore, OCC recommends reducing the amount collected from residential customers from \$1.20 per month to \$1.00 per month.

³ Case No. 10-2788-GA-RDR, Stipulation and Recommendation at 7 (April 8, 2011).

In terms of the cumulative residential rate caps going forward, OCC recommends that the AMRP rate for 2013 be no higher than \$2.00, the AMRP rate for 2014 should be no higher than \$3.00, and the AMRP rate for 2015 be no higher than \$4.00.

B. Guaranteed Mains Maintenance Savings

The issue of guaranteed mains maintenance savings first arose in the Duke AMRP Case No. 09-1849-GA-RDR. As established in that case, guaranteed mains maintenance savings is determined by comparing the total of accounts 885000 - Maintenance Supervision and Engineering, 887000 - Maintenance of Mains and 892000 – Maintenance of Services for the AMRP test year to the total of these accounts included in base rates.⁴ The guaranteed savings levels for 2009 - 2011 were set forth in Exhibit 2 of the Stipulation and Recommendation filed in that case. This stipulation also provided that if the actual maintenance savings for a program year exceed the minimum savings levels set forth in Stipulation Exhibit 2, customers shall receive the benefit of the higher, actual savings in that year.⁵ The Stipulation in Case No. 10-2788-GA-RDR modified that maintenance savings calculation to include any additional savings associated with the replacement of larger than 12 inch diameter pipe.⁶

A late filed exhibit set forth the methodology of calculating the additional maintenance savings related to the replacement of larger than 12 inch diameter cast iron and bare steel pipe, along with the savings related to small diameter pipe previously

⁴ *In the Matter of the Annual Application of Duke Energy Ohio for an Adjustment to Rider AMRP Rates et al.*, Case No. 09-1849-GA-RDR, Supplemental Direct Testimony of Robert M. Parsons at 3 (April 16, 2010).

⁵ Case No. 09-1849-GA-RDR Stipulation and Recommendation at 4-5 (April 16, 2010).

⁶ *In the Matter of the Annual Application of Duke Energy Ohio for an Adjustment to Rider AMRP Rates et al.*, Case No. 10-2788-GA-RDR, Stipulation and Recommendation at 6 (April 8, 2011).

determined in Case No. 09-1849-GA-RDR, for the period 2011 – 2015.⁷ The Duke AMRP Application in Case No. 11-5809-GA-RDR reflected in the 2011 test year this modified method of calculating guaranteed mains maintenance savings.⁸

On July 9, 2012, Duke filed an Application for an increase in gas base rates in Case No. 12-1685-GA-AIR. This case proposes a level of gas mains maintenance expense for the 2012 test year for Accounts 885000, 887000 and 892000 of \$3,661,108 which is net of Integrity Management Program costs.⁹ Subtracting the \$3,661,108 from the \$4,278,240 level for these accounts in Duke’s last base rate case yields a reduction of \$617,138 in mains maintenance costs which is an ongoing benefit for consumers.¹⁰

In its current AMRP case, Duke states that there is \$2,435 in savings recognized on Schedule 21 of its AMRP Application.¹¹ Duke explains in testimony that this is the difference between its “\$617,138 of savings” included in its pending rate case and the \$619,573 guaranteed level of savings stipulated to in Case No. 10-2788-GA-RDR.¹² OCC would agree that the determination of mains maintenance savings by Duke in the current AMRP case is correct.

However, in this case, Duke did not propose annual guaranteed mains maintenance savings going forward for the remainder of the AMRP. In a response to an OCC data request (OCC Attachment 1), Duke indicated that the guaranteed savings for

⁷ Case No. 10-2788-GA-RDR, Submission of Late-Filed Exhibit by Duke Energy Ohio, Inc. at 2 (August 12, 2011).

⁸ *In the Matter of the Annual Application of Duke Energy Ohio for an Adjustment to Rider AMRP Rates et al.*, Case No. 11-5809-GA-RDR, Direct Testimony of Peggy A. Laub at 5-6 (February 28, 2012).

⁹ Duke response to Staff Data Request 10-001, Attachment 1.

¹⁰ *Id.*

¹¹ *In the Matter of the Annual Application of Duke Energy Ohio for an Adjustment to Rider AMRP Rates et al.*, Case No. 12-3028-GA-RDR, Direct Testimony of Peggy A. Laub at 6 (February 27, 2013).

¹² *Id.*

the 2013, 2014 and 2015 AMRP test years be \$70,647, \$170,053 and \$310,097 respectively.¹³ These numbers were derived using the same methodology as determined in Case No. 10-2788-GA-RDR.¹⁴

OCC recommends that \$70,647, \$170,053 and \$310,097 should be the guaranteed mains maintenance savings for 2013, 2014 and 2015, respectively. OCC also recommends that the mains maintenance savings reflected in Duke's AMRP Applications for these three years should reflect the greater of the actual maintenance savings for the test year or the guaranteed mains maintenance savings as stated above for that same year.

Respectfully submitted,

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¹³ Duke response to OCC Request to Produce No. 1.

¹⁴ Case No. 10-2788-GA-RDR, Submission of Late-Filed Exhibit by Duke Energy Ohio, Inc. at Attachment (August 12, 2011).

CERTIFICATE OF SERVICE

I hereby certify that a copy of the *Comments* was served via electronic service to the parties of record identified below, on this 25th day of March 2013.

/s/ Michael J. Schuler _____

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This foregoing document was electronically filed with the Public Utilities

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3/25/2013 4:37:42 PM

in

Case No(s). 12-3028-GA-RDR, 12-3029-GA-ATA

Summary: Comments Comments on the Application of Duke Energy Ohio by the Office of the Ohio Consumers' Counsel electronically filed by Patti Mallarnee on behalf of Schuler, Michael Mr.