

FILE

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.)

PUCO

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MEMORANDUM CONTRA DUKE'S MOTION FOR WAIVER
BY
THE OFFICE OF THE OHIO CONSUMERS' COUNSEL

I. INTRODUCTION

Duke has applied for approval of an Accelerated Service Line Replacement Program ("ASRP") under which it would charge customers hundreds of millions of dollars for the replacement and repair of natural gas service lines in Duke's service territory. Duke has estimated that this proposed program would cost its customers at least \$320 million.¹ Despite the magnitude of the proposed program,² Duke seeks to forego filing certain basic information that parties and the PUCO need to analyze the merits of Duke's proposal. In this regard, Duke has asked that it not have to file testimony supporting its Application. Duke believes that its Application "is one that can be approved without a hearing and the commensurate need for witness testimony."³ The Office of the Ohio Consumers' Counsel ("OCC") files this Memorandum Contra the

¹ Duke Application at 9.

² Duke's proposal in this case -- at least \$320 million is more than seven times greater than the revenue increase requested by Duke in its most recent natural gas distribution rate case. *See In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, Opinion and Order at 3 (November 13, 2013).

³ See March 3, 2015 Correspondence of Ms. Spiller to Mr. Donolan at 2 (docketed on March 3, 2015).

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Motion of Duke Energy Ohio, Inc., (“Duke” or “the Utility”) to waive filing supporting testimony. OCC, which has authority under law to represent the interests of all 382,000 residential gas customers of Duke,⁴ opposes Duke’s Motion for Waiver.

Given the magnitude of Duke’s Application, OCC requests the Public Utilities Commission of Ohio (“PUCO”) to order Duke to file supporting testimony. OCC also requests that the PUCO establish a procedural schedule, which includes ample discovery rights and an evidentiary hearing.

II. PROCEDURAL HISTORY

On January 20, 2015, Duke filed an Application for approval of an alternative rate plan, under R.C. 4929.05. The Application was for authority to implement an ASRP in its service territory. Duke claims the ASRP is necessary to comply with federal regulations promulgated by the Pipeline and Hazardous Material Safety Administration including the Distribution Integrity Management Program. Duke also alleges the ASRP is necessary to enhance safety through the identification of and reduction in pipeline integrity risks.⁵ However, in making this claim Duke fails to cite to any specific rule or regulation that requires the wholesale replacement or repair of thousands of service lines. Rather, Duke merely references the federal regulations in a general manner.⁶

Duke states that it started the process of replacing its outdated natural gas infrastructure throughout Ohio in 2001, through its Accelerated Main Replacement

⁴ *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of an Alternative Rate Plan Pursuant to Section 4929.05, Revised Code, for an Accelerated Service Line Replacement Program*, Case No. 14-1622-GA-ALT, OCC Motion to Intervene (March 4, 2015).

⁵ Duke Application at 3.

⁶ *Id.*

Program (“AMRP”).⁷ The AMRP was focused around the replacement of higher pressure distribution and transmission lines, but also replaced certain service lines that were connected to distribution lines that were replaced. The AMRP will conclude on December 31, 2015. Duke states that upon conclusion of the AMRP it will not have replaced all service lines that pose a potential risk, thus, it now seeks authorization to replace further service lines, on an accelerated timeline, in its ASRP.⁸

Duke states that the ASRP will: (1) cost approximately \$320 million; (2) result in the replacement of approximately 14 percent of Duke’s existing service lines; (3) eliminate the potential for most, if not all, risks on its system; and (4) result in a reduction of 25 percent of the total current service leaks on the system.⁹ However, Duke states that its knowledge about service lines is not comprehensive and it will need to identify and determine the condition of approximately 28,000 more curb-to-meter service lines before having complete information.¹⁰ Then, based on the condition of these service lines, Duke may need to replace even more lines, which will undoubtedly make the ASRP even more expensive for customers. Duke states that once it has a more comprehensive understanding about the condition of all service lines it will “provide the results and proposed next steps to the Commission.”¹¹

In connection with the ASRP, Duke is seeking PUCO approval of Rider ASRP, which will allow Duke to recover the costs of the ASRP from its customers on an accelerated basis. Duke proposes to set the rate of Rider ASRP at zero and then establish

⁷ Duke Application at 1.

⁸ Id. at 5.

⁹ Id. at 7, 9.

¹⁰ Duke Application at 7.

¹¹ Duke Motion for Waiver at 7.

an initial rate through a filing on December 1, 2015.¹² Duke states that its ASRP and Rider ASRP will have a “financial impact, which will predominantly affect residential customers....”¹³ To “lessen the overall rate impact” Duke proposes a residential cap applicable to Rider ASRP in the amount of \$1 per month, per bill.¹⁴ However, there is no assurance in Duke’s Application that this cap will not increase -- perhaps significantly -- in the future

Despite a claim that the ASRP would reduce the number of current service leaks by 25%,¹⁵ the Utility has not discussed, let alone proposed, to include accelerated Operation and Maintenance cost savings as a credit to customers. In addition, Duke has submitted no documentation or supporting materials to support its claim that there is a safety concern with the 24,000 service lines it wants to replace.

On February 17, 2015, Duke filed a Motion for a Waiver, under Ohio Admin. Code 4901:1-19-02(D) and 4901:1-19-06(C), from certain filing requirements¹⁶ contained in Ohio Admin. Code 4901:1-19-06. Specifically, Duke seeks to waive the requirement, under Ohio Admin. Code 4901:1-19-06(B)(1), that all testimony supporting an application for an alternative rate plan must be filed with the Application.¹⁷ To date Duke has not filed any testimony, and has not indicated that it plans to file testimony in this

¹² Duke Application at 10.

¹³ Duke Motion for Waiver at 11.

¹⁴ Id.

¹⁵ Duke Application at 7.

¹⁶ Duke also seeks to waive the requirement, under Ohio Admin. Code 4901:1-19-06(C)(6), that it include a list of witnesses supporting any exhibits to its application. Here, Duke’s Application does contain an exhibit, and, thus, it requires a list that identifies a witness who supports the exhibit. Duke did not include such a list. Duke also requests a waiver of Ohio Admin. Code 4901:1-19-06(B)(2), which requires Duke to provide a copy of its Application to the OCC and to the parties to its last natural gas base rate case. Duke states that it failed to abide by this requirement “through inadvertence.”

¹⁷ Duke Motion for Waiver at 2-3.

case in the future. The absence of testimony makes the Application deficient. According to the PUCO Staff, Duke's failure to provide testimony is one of the reasons that the Staff has deemed the Application to not be in technical compliance with the Ohio Administrative rules.¹⁸

By its waiver, Duke seeks to deny the PUCO and any intervenors the opportunity for the full review and transparency that accompanies the filing requirements. Additionally, Duke appears to be arguing that no hearing is necessary in a case that could impose a \$320 million rate increase primarily affecting residential customers.

III. ARGUMENT

Duke's Application is to approve an alternative rate plan. Alternative rate plans are governed by, *inter alia*, R.C. 4929.05. Under that statute the PUCO may authorize an alternative rate plan after investigation "which may include a hearing at the discretion of the public utilities commission." The PUCO may authorize the plan if the PUCO finds that the applicant:

is substantial compliance with the policy of this state specified in section 4929.02 of the Revised Code;

(2) The natural gas company is expected 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;

(3) **the alternative rate plan is just and reasonable.**¹⁹

Subsection (B) of the statute places the burden of proof on the applicant. While a hearing is at the discretion of the PUCO, an investigation must be conducted and the PUCO (with or without a hearing) must determine, *inter alia*, that the rate plan is just and reasonable.

¹⁸ See February 20, 2015 Correspondence of Patrick Donlon to Ms. Spiller (docketed on February 20, 2015).

¹⁹ R.C. 4905.02 (Emphasis added).

Duke filed its Application a little over one month ago. That Application seeks to collect at least \$320 million from customers. Duke apparently believes that the Application on its face is just and reasonable and needs no supporting testimony. However, without any accompanying testimony, the PUCO is left with only an unsupported 17-page Application to determine the reasonableness of a ten year \$320 million program.²⁰ It is unreasonable and inconsistent with the PUCO's statutory duty to determine that the rate plan is just and reasonable on the bare bones presented here. Duke has not shown that its Application is just and reasonable. Duke has not provided all of the necessary information for the PUCO to evaluate its Application. Duke has not provided sufficient information for the Staff to conduct its investigation.

Although 4901:1-19-02 does not specifically require good cause for waiver of filing requirements, good cause is the standard relied on by the PUCO as noted in 4901-1-38(A). More importantly good cause is a standard routinely relied on by the PUCO for numerous natural gas matters.²¹ Ohio Admin. Code 4901:1-19-02(C) places the burden of proving the reasonableness of the alternative rate plan on the applicant. In this case, Duke has not demonstrated that good cause exists to waive the requirement for testimony. In fact, in its three and half page Motion for Waiver, Duke does not give a single example of good cause for waiving the testimony requirement in this proceeding. Instead, Duke's entire Motion for Waiver rests on the premise that a waiver should be granted because: (1) a hearing is in the Commission's discretion and is unnecessary in Duke's opinion; (2)

²⁰ Duke's proposal in this case -- at least \$320 million is more than seven times greater than the revenue increase requested by Duke in its most recent natural gas distribution rate case. *See In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in its Natural Gas Distribution Rates*, Case No. 12-1685-GA-AIR, Opinion and Order at 3 (November 13, 2013).

²¹ For example, see: 4901:1-13-2(C), 4901:1-14-2(B), 4901:1-16-02(E), 4901:1-24-02(C), 4901:1-27-02(C), and 4901:1-29-02(C).

Duke claims it has met all the requirements for approval of an alternative rate plan, under R.C. 4929.05; and (3) Duke has requested a waiver. This does not constitute good cause and the PUCO should deny the Motions for Waiver.

In fact, Duke itself admits that its Application is deficient. It states:

the Company is aware that **available data is not comprehensive**, due to the fact that it does not currently own all service lines in its service territory. Therefore, as part of the ASRP, the Company will seek to identify the age and material of approximately 28,000 curb-to-meter service lines for which available data may be unreliable or incomplete. This reconnaissance effort will involve an initial records review and then, as necessary, physical visits to expose service lines and confirm their composition. **Once the analysis has been completed, Duke Energy Ohio will provide the results and proposed next steps to the Commission.**²²

Thus, Duke does not even have a complete plan in place. More importantly, Duke has not even estimated a time when it will have a complete plan in place. Rather, Duke's proposal would have the PUCO approve the program, and customers begin to pay the charges associated with the program long before the total program is known. The Utility wants the PUCO to prematurely declare that its Application is just and reasonable. And Duke wishes for the PUCO to do so without the benefit of testimony, or an evidentiary hearing. This is an unreasonable request.

It is vitally important that the PUCO and intervenors be given the reasonable opportunity to review a complete proposal prior to the PUCO making a determination that the proposal is just and reasonable. Additionally it is patently unreasonable for customers to be charged \$320 million based on a bare bones application that is shielded from discovery and/or an evidentiary hearing.

²² Duke Application at 7 (emphasis added).

Without testimony the Application does not specify the benefits that the ASRP will allegedly bestow upon Duke's customers. The OCC recognizes that maintaining the safety and reliability of Duke's infrastructure is of utmost importance. However, in its Application Duke did not explain the alleged the magnitude of the safety issue associated with the low pressure service lines compared to the higher pressure distribution and transmission lines that were at issue in Duke's AMRP program. Duke has provided no information on the safety problems that have been associated with these service lines. Thus, it is not possible to tell whether Duke's ASRP is a just and reasonable plan for customers who will be paying hundreds of millions of dollars. A complete filing with supporting testimony, followed by ample discovery, a complete investigation and an evidentiary hearing are necessary to make this determination.

There is a sufficient amount of time to hold a hearing in this case. Scheduling an evidentiary hearing, preceded by ample discovery, will not unduly delay the proceeding or prejudice Duke. As Duke states in its Application, the current AMRP does not conclude until December 31, 2015, consistent with prior PUCO authorizations.²³ Therefore, any rates instituted through Duke's ASRP and Rider ASRP would not go into effect until January 1, 2016 at the earliest, leaving approximately ten months for discovery and an evidentiary hearing to occur, followed by a PUCO order. Accordingly, there is ample time for a hearing in this proceeding and Duke's Motion for Waiver should be denied.

Lastly, this is not the first time Duke has sought approval of an ASRP. Duke first proposed an ASRP in its last rate case (12-1685-GA-AIR, et al). On April 2, 2013, a

²³ See, e.g., *In the Matter of the Application of Duke Energy Ohio, Inc., for an Adjustment to Rider AMRP Rates to Recover Costs Incurred in 2010*, Case No. 10-2788-GA-RDR, et al., Opinion and Order at 10-11 (May 4, 2011).

stipulation and recommendation was filed in that case, in which Duke agreed to withdraw its request for approval of the ASRP. In that case prior to withdrawing the ASRP, Duke did not file a motion for waiver of hearing in the case. Thus, had the ASRP been addressed in the rate case, interested parties would have had the opportunity to review testimony, conduct discovery and be heard at a hearing. Without any justification from Duke to the contrary, there is no rational reason why the same process and protections should not take place now. Thus, Duke's Motion for Waiver should be denied.

IV. CONCLUSION

Lack of testimony and a hearing in this proceeding would be an unjust and unreasonable result. Duke has not provided good cause for its waiver requests. The Application is not just and reasonable. The potential magnitude of, and current uncertainty in Duke's Application demands a complete filing, ample discovery, investigation, testimony and an evidentiary hearing. Accordingly, the OCC respectfully requests that the Commission deny Duke's Motions for Waiver and issue a procedural schedule providing for ample discovery and an evidentiary hearing in this proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of this *Memo Contra* was served on the persons stated below *via* electronic transmission, this 4th day of March 2015.



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