

**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 OF DUKE ENERGY OHIO, INC.,
TO MEMORANDUM CONTRA ITS MOTION FOR A WAIVER**

Duke Energy Ohio, Inc., (Duke Energy Ohio or Company) filed an application (Application) on January 20, 2015, seeking approval of an Accelerated Service Line Replacement Program (ASRP) that would allow it, among other things, to minimize the risk of leaks on natural gas service lines more quickly than it otherwise could, while recovering associated costs with minimal time lag or regulatory burden. This is a positive proposal for customers, the Public Utilities Commission of Ohio (Commission), and the Company.

In order to ensure that the Application would be in complete, technical compliance with all Commission filing requirements, the Company filed a motion to waive, among other things, the technical requirement that testimony be filed at the same time as an application. Importantly, the requested waiver only relates to timing. The Company is not asking for a waiver of a requirement to file testimony or for a waiver of a hearing, should the Commission, in its discretion, determine them to be appropriate.¹

¹ The Company notes that, on March 10, 2015, Ohio Partners for Affordable Energy (OPAE) filed a motion to intervene in this proceeding. In its supporting memorandum, OPAE attempted not only to justify its own intervention but, also, argued in favor of OCC's Memorandum Contra. In addition to the clear procedural flaw, OPAE appears to believe that the Company's motion seeks a waiver of a requirement to file testimony and hold a hearing. On the contrary, the Company does not dispute the need to prefile testimony in the event a hearing is to be held. Furthermore, the motion does not address whether a hearing is appropriate.

On March 4, 2015, the Office of the Ohio Consumers' Counsel (OCC) filed a motion to intervene and a memorandum opposing the Company's request for a waiver of the requirement that testimony be filed concurrently with the Application. The OCC makes several arguments, all of which are incorrect and should be disregarded.

The Commission Can Evaluate the ASRP on the Basis of the Application.

The OCC asserts, contrary to established Ohio law, that the Commission cannot determine whether an application is just and reasonable without the benefit of testimony, calling such an effort "unreasonable and inconsistent with the [Commission's] statutory duty . . ."² In making this assertion, the OCC misstates the law and the facts.

R.C. 4929.05, which governs the approval of alternative rate plans, clearly states that an application therefor may be filed under R.C. 4909.18 and that it may be an application requesting an increase in rates or one that requests no increase in rates. Duke Energy Ohio's Application in this proceeding was filed under, among other provisions, R.C. 4909.18, which provides the mechanism for establishing or changing rates. Significantly, R.C. 4909.18 sets forth two separate procedures – one applicable to rate increase requests and one applicable to requests that do not include a rate increase. Under the latter situation, as in the present case, a hearing is not mandatory. Indeed, the Commission is authorized to set the matter for hearing only "[i]f it appears to the [C]ommission that the proposals in the application may be unjust or unreasonable."³ The Ohio General Assembly certainly believed that the Commission could make a determination

² Memorandum Contra Duke's Motion for Waiver by the Office of the Ohio Consumers' Counsel (OCC Memorandum Contra), pg. 6.

³ R.C. 4909.18.

as to the justness and reasonableness of an application **without** holding a hearing. Indeed, there are countless examples of the Commission making exactly that determination.⁴

Furthermore, it is important to note that the Application filed by the Company was verified, as to its truth and accuracy, by both the President and the Treasurer of Duke Energy Ohio. The statements therein can therefore be relied upon by the Commission in its analysis. In contrast, prefiled testimony of witnesses is – when filed – always unverified. It is only when the witness appears at the hearing, promises to tell the truth, and adopts the prefiled document as the witness’s direct testimony that the content is verified as true. Certainly the verified information in the Application, discussed in more detail below, is substantially more useful than prefiled, unverified testimony that might or might not subsequently be adopted and sworn to.

All Information Needed for the Commission’s Evaluation Is Included in the Application.

The OCC complains that the Company “has not provided all of the necessary information for the PUCO to evaluate its Application.”⁵ R.C. 4929.05 provides that the Commission shall authorize an alternative rate plan if it finds that three conditions are met:

- (1) The natural gas company is in compliance with section 4905.35 of the Revised Code [prohibiting discrimination] and is in 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 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.
- (3) The alternative rate plan is just and reasonable.

⁴ See, e.g., *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating company and The Toledo Edison Company for Approval of a Tariff Revision*, Case No. 14-2037-EL-ATA, Finding and Order (Feb. 25, 2015); and *In the Matter of the Application of Vectren Energy Delivery of Ohio, Inc. for Approval of a Revision to its Unaccounted for Gas Percentage in Tariff Sheet No. 54*, Case No. 14-242-GA-ATA.

⁵ OCC Memorandum Contra, pg. 6.

In spite of this clear requirement and the information in the Application addressing these issues, the OCC attempts to support its assertion by pointing to two categories of allegedly missing information.

- First, it contends that the benefits of the ASRP are not explained.⁶
 - The Application does explain numerous benefits, such as:
 - The ASRP will allow replacement efforts to be accelerated,⁷ at a time when leaks rates on service lines are likely to increase.⁸
 - The federal government has engaged in a number of safety initiatives, resulting from a series of catastrophic events.⁹
 - The construction materials used in older service lines are more prone to develop leaks than materials used in newer lines.¹⁰
 - As compared to addressing leaks when they occur, the ASRP will be more efficient, thereby costing customers less.¹¹
 - The ASRP will also provide an opportunity for the Company to obtain data on an additional 28,000 curb-to-meter service lines for which reliable information does not exist.¹²
 - Also covered by the proposed ASRP, the Company would relocate meters that are currently indoors and are connected to a service line being addressed.¹³

⁶ *Id.*, pg. 8. “AMRP” refers to the Company’s Accelerated Main Replacement Program.

⁷ Application, pg. 2

⁸ *Id.*, pg. 8.

⁹ *Id.*, pg. 3.

¹⁰ *Id.*, pg. 4.

¹¹ *Id.*, pp. 4-5.

¹² *Id.*, pg. 7.

¹³ *Id.*, pp. 8-9.

- Second, the OCC claims that the Application does not “explain the alleged the [sic] 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” and that the Company “has provided no information on the safety problems that have been associated with these service lines.”¹⁴
 - OCC’s assertion ignores the fact that some service lines are currently being replaced under the existing AMRP.
 - OCC also disregards the Company’s statement, in the Application, that service lines generally operate at the same pressure as the mains.¹⁵
 - This claim also overlooks federal regulations, as referenced in the Application, and is predicated on the faulty assumption that the Company should wait for catastrophic events before taking action.¹⁶
 - Finally, OCC fails to mention that the Commission has already concluded that leaks in service lines present “significant safety hazards.”¹⁷

The OCC identified no other category of information that it deemed to be missing from the Application. And, as just discussed, the information it did identify was fully addressed in the Application. The verified Application addresses the matters that must be considered by the Commission in approving an alternative rate plan under Ohio law.

¹⁴ OCC Memorandum Contra, pg. 8.

¹⁵ Application, pg. 4.

¹⁶ Application, pp. 1, 3.

¹⁷ *Id.*

The Company's Motion for a Waiver Clearly Sets Forth Good Cause for such Waiver.

Although it claims that the Company did not demonstrate any good cause to waive the requirement that testimony be filed at the same time as an application, the OCC does appear to understand that a hearing in this case is entirely discretionary. Prefiled testimony would not offer any additional facts on which the Commission could rely in evaluating the Application. The most such documents could do is to provide a general sense of what a person's final testimony might address, when that person appears and has been sworn to tell the truth, at an actual hearing. Thus, it is not necessary for the Company to prepare such testimony until and unless the Commission determines – as set forth in R.C. 4909.18 – that an application may be unjust or unreasonable and that it will therefore require a hearing to be held.

The useless filing of testimony that may never be adopted by a witness at a hearing would unnecessarily burden the Commission and waste its valuable resources. The Commission should therefore conclude that there is good cause to waive the requirement that testimony be filed at the same time as the Application.

The OCC Incorrectly Portrays the ASRP Application as Deficient.

Although logically unconnected with its opposition to the Company's motion for a waiver, the OCC claims that the Company itself admitted that the Application is deficient. In making this claim, the OCC merely reveals its own misreading of the Application.

As the Commission is aware, until recently natural gas companies in Ohio did not have any ownership interest in the curb-to-meter portion of service lines. Consequently, unless Duke Energy Ohio has actually worked on a given curb-to-meter service line, it may not have any first-hand knowledge regarding the age or composition of that line. To remedy the lack of data, the Company proposed that it would perform reconnaissance work to identify the material of

approximately 28,000 curb-to-meter service lines. Without that information, the Company has not made, and cannot make, any determination regarding additional steps that may or may not be needed. Consequently, replacement of those lines is not a part of the ASRP. The only action included in the ASRP relating to those 28,000 lines is reconnaissance.

The Company's plan is not, as described by the OCC, incomplete. The complete plan includes information gathering on the lines in question. Although the OCC may want to pretend that the plan cannot be complete without defining the scope of remedial action that may eventually be required, the Company is not presently asking for authority to perform any such work.

Cost is Irrelevant to Whether Testimony Had To Be Filed with the Application.

In yet another futile argument, the OCC asserts that the total projected cost of the ASRP is too high for the Application to be considered without testimony and a hearing.¹⁸ But the OCC has not pointed to any law or rule that takes the cost of a program into account when setting forth the procedure that the Commission must follow. R.C. 4929.05 does not impose a monetary threshold. Similarly, R.C. 4909.18 does not have separate requirements for inexpensive and expensive proposals. For an application that is not for an increase in rates, as is the case here, either the application, on its face, is just and reasonable and therefore should be approved without a hearing or, alternatively, the application, on its face, may be unjust or unreasonable and therefore requires a hearing. This is the procedure that the legislature established. It did not include a cap on the cost of a program that can be approved without a hearing.

¹⁸ OCC Memorandum Contra, pp. 2, 6, 7, and 9.

WHEREFORE, for the reasons set forth herein, Duke Energy Ohio respectfully requests that the Commission grant the motion for waiver.

Respectfully submitted,
DUKE ENERGY OHIO, INC.



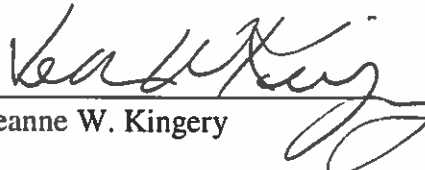
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery on this the 11th day of March, 2015, to the parties listed below.


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Summary: Reply of Duke Energy Ohio, Inc., to Memorandum Contra Its Motion for a Waiver electronically filed by Carys Cochern on behalf of Kingery, Jeanne W Ms.