**BEFORE**
**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| 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 |

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# INITIAL POST-HEARING BRIEF

SUBMITTED ON BEHALF OF THE STAFF OF
THE PUBLIC UTILITIES COMMISSION OF OHIO

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## INTRODUCTION

Duke Energy Ohio (Duke or Company) seeks Commission approval of a new program called the Accelerated Service Line Replacement Program (ASRP), to replace approximately 58,000 customer-owned service lines that are not currently leaking over a 10-year period. The ASRP would follow closely on the heels of Duke's Accelerated Main Replacement Program that is nearing completion. The costs of the new ASRP, estimated at $320 million, would be borne by customers through a new rider. Duke's justification for this program is that it would enhance the safety of its distribution system. Duke, however, failed to show that the program will significantly improve safety at a level commensurate with its cost. Moreover, Duke did not even consider any alternative that could improve safety at a lower cost. Duke's position seems to be that any program that does anything for safety must be approved, regardless of cost. Neither Ohio law nor sound regulatory principles support such a position. The Commission should reject the Company's application.

## PROCEDURAL HISTORY

On September 17, 2014, Duke filed a notice of intent to file an application for approval of an alternative rate plan under R.C. 4929.05. Duke then filed its application on January 20, 2015. On February 17, 2015, Duke filed a motion for waiver of certain filing requirements for alternative rate plans, including the filing of supporting testimony. On March 18, 2015, the Attorney Examiner then assigned to the case issued an Entry granting the motion for waiver, and establishing a procedural schedule. In a subsequent Entry dated April 14, 2015, the Attorney Examiner established a deadline of June 5, 2015 for the filing of the Staff Report and required objections to the report to be filed by July 6, 2015.

The Staff Report was filed on June 5, 2015. Duke, the Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE) subsequently filed objections to the Staff Reports. By Entry dated August 28, 2015, the Attorney Examiner established a further procedural schedule. Pursuant to that schedule, the parties filed testimony and the hearing began on November 16, 2015. Duke presented the testimony of six witnesses and OCC offered three witnesses. Staff offered the testimony of one witness, Kerry Adkins, who supported the Staff Report. The Staff Report was admitted into evidence as

Staff Exhibit 1. At the conclusion of the hearing, the Attorney Examiner established a briefing schedule. This initial post-hearing brief is timely submitted on behalf of the Commission Staff.

## BACKGROUND

In its Application, Duke proposes to replace approximately 58,000 unprotected steel and other metallic service lines (both main-to-curb and curb to meter) over a ten-year period. In addition, Duke proposes to perform a systematic search of available records and conduct field tests to determine the age and material composition of an additional 28,000 service lines for which it lacks complete records. Duke also proposes to move customer meters currently located inside structures to locations outside the structures when it replaces the associated service line under the ASRP.

Duke estimates the cost of its proposed ASRP as approximately $320 million in 2015 dollars. The Company requests recovery of these costs through a new rider (Rider ASRP) that will be added to customer bills. Duke proposes that the new rider will be initially set at zero and that, in December 2015, it will file a notice detailing actual costs incurred through October 2015 and estimated costs through the remainder of the year.

The Company will then file an application by March 1, 2015 with actual cost data and proposed initial rider rates. The Company proposes a $1.00 per customer per month cap on the initial rider rate and subsequent annual increases. In addition, the Company commits that it will file at least one base rate case during the term of the ASRP.

## ARGUMENT

### A. Neither federal nor state law mandates replacement of non-leaking service lines.

The Company maintains that the proposed ASRP is necessary for it to comply with its obligation to ensure system safety. Such is not the case. As noted by Duke in its application, it is state policy to "promote the availability to consumers of adequate, reliable, and reasonably priced natural gas goods and services."[1] Yet nothing in this statute calls for upgrading a gas distribution system.

Duke also points to regulations promulgated by the federal Pipeline and Hazardous Materials Safety Administration (PHMSA) as mandating the replacement of service lines through the ASRP. Again, the regulations do not support Duke's arguments. Gas distribution operators are required by PHMSA regulations to have integrity management plan to address risks.[2]

Each plan must contain the following elements:

1. Demonstration that the operator has knowledge and understanding of its distribution system, including identification of the characteristics of its pipeline's design and operating characteristics and environmental factors in order to identify and assess risks to its pipeline system;
2. Identification of potential threats to the integrity of its distribution system;
3. Evaluation and ranking of identified risks;

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[1] Ohio Rev. Code §4902.02 (A)(1).

[2] 49 C.F.R. §192.1005.

4. Identification and implementation of measures to address risks, including an effective leak management program;
5. Development and ongoing monitoring of performance measures to determine the effectiveness of measures designed to address system risks;
6. Periodic re-evaluation of potential risks to its system at least every five years; and,
7. Provide an annual report on its performance measures to PHMSA and the state safety authority that has jurisdiction over its pipeline system.[3]

Significantly, nowhere in these regulations does PHMSA prescribe the specific measures that a distribution system operator such as Duke must implement to address potential risks to its distribution system. Operators are required to take steps to reduce known risks but PHMSA does not specify what these steps must be. Duke witnesses acknowledged at the hearing that PHMSA's requirements are not prescriptive.[4] Federal regulations, then, do not mandate the massive upgrade sought by Duke through its proposed ASRP.

### B. Duke has failed to meet its burden to show that the proposed ASRP is just and reasonable.

A natural gas company seeking approval of an alternative rate plan must show that "[t]he alternative rate plan is just and reasonable," among other requirements.[5] The burden of proof to make this showing is on the applicant.[6] In this case, Duke has failed

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[3] 49 C.F.R. §192.1007.

[4] Tr. at 36, 67, 267.

[5] Ohio Rev. Code §4929.05 (A)(3).

[6] Ohio Rev. Code §4929.05 (B).

to show that the proposed ASRP is just and reasonable. Specifically, Duke has not shown that the benefits to public safety are commensurate with its substantial costs.

Duke's application did not offer any quantification of benefits. Rather, it simply discusses a general enhancement of safety. Likewise, Duke witnesses admitted at the hearing that they had not attempted to quantify the benefits of the ASRP.[7]

Duke maintains that the proposed ASRP will enhance the safety of its system. However, the safety gains from replacing non-leaking metallic service lines on an accelerated basis are marginal at best. PHMSA regulations require that system operators such as Duke report all incidents involving a release of gas that results in death, injury to a person that requires hospitalization, property damage of $50,000 or more, or an unintentional estimated loss of three million cubic feet or more of gas.[8] During the investigation, Staff searched PHMSA's database of "reportable incidents" for the period 2004 through 2014, focusing on incidents attributed to corrosion, materials and welds, and natural forces (e.g., ground movement).[9] These three factors are the potential causes of service line leaks that the ASRP is intended to address. Staff determined that nationwide over an eleven-year period there were a total of 62 reportable incidents attributed to these three causes. As Staff reported, this means that there are fewer than six incidents per year over the more than 67 million service lines across the nation due to

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[7] Tr. at 21-22, 80-81.

[8] 49 C.F.R. §191.3

[9] Staff Report at 7.

the causes that the ASRP is intended to address. Reduced to odds, Staff determined that there is only a 1 in more than 11.9 million chance of a service line incident occurring anywhere in the country in a given year due to one of the causes that the ASRP is intended to address. It is also significant to note that none of the incidents reported to PHMSA during the eleven year reviewed by Staff were reported by Duke. Likewise, Duke's witnesses were unable to identify a single incident in the Company's territory.[10]

Duke, then, is proposing to spend $320 million over ten years in an attempt to avoid incidents where the chances of such an incident actually occurring are extremely low. In the Staff's opinion, the proposed ASRP is considerable more than is necessary to address the safety concerns associated with the service lines that will be replaced. Stated simply, the ASRP will vastly over-fix the potential concerns.

Moreover, the ASRP is not even designed to address the top risk to Duke's distribution system. The number one threat to Duke's distribution system is excavation damage by third parties. According to a pie chart provided by Duke witness John A. Hill, excavation damage accounted for approximately 63 percent of the total risk to Duke's system. Mr. Hill further testified on cross examination that "excavation damage is the biggest threat every year from 2002 through 2014."[11] Yet Duke's proposal contains nothing to address this number one threat. Prior to considering the ASRP, the

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[10] Tr. at 79, 219.

[11] Hill Direct Test. at 8.

Commission should first require Duke to take measures to reduce risks to its system from excavation damage.

### C. Duke has not provided any evidence that it considered any alternatives to the ASRP.

Duke provided no evidence that it even considered any alternatives to the wholesale and accelerated replacement of non-leaking service lines through the proposed ASRP. Duke witnesses confirmed at the hearing that they had not considered any alternatives. For example, Duke witness Hill testified that rather than considering options, the Company simply looked at the success of the AMRP in reducing leaks.[12] Simply, Duke witness Hebbeler testified that no alternatives were considered because the Company relied on the success of the main replacement program.[13] Similarly, Duke witness McGee testified that he was never asked to consider any alternatives.[14]

As noted above, PHMSA's regulations do not require distribution system operators to replace non-leaking service lines on an accelerated basis. Operators are merely required to develop and implement plans to mitigate known risks. Duke could have, and should have, considered less costly alternatives to address the potential safety concerns associated with aging metallic service lines. As noted in the Staff Report, one alternative would be for the Company to continue replacing leaking service lines as leaks

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[12] Tr. at 83.

[13] Tr. at 161.

[14] Tr. at 267.

are discovered.[15] Another option is for the Company to increase the frequency of its leak surveillance activities in order to discover leaks, and replace leaking lines, more quickly.[16] As explained by Staff witness Adkins, these alternatives are not intended to be exhaustive.[17] Rather, Staff offered these examples to show that there are reasonable and less costly alternatives to the massive and expensive program proposed by Duke.

Before the Commission considers approving the ASRP, Duke should first be required to identify and evaluate alternatives to address safety risks associated with older service lines. The Commission should only consider the ASRP if Duke can show empirically that the alternatives would be ineffective in mitigating risks to its system.

### D. Duke failed to demonstrate that the benefits of the proposed ASRP will exceed the Program's projected costs.

As noted previously, the burden is on alternative rate plan applicants to demonstrate that their plans are just and reasonable.[18] In Staff's opinion, part of the determination that an alternative rate plan is indeed just and reasonable is a showing that the plan's benefits exceed its anticipated costs. In this case, Duke failed to make such a showing or that it even attempted to do so. As discussed earlier, the Company's witnesses consistently stated that they did not consider any alternatives to the ASRP that would potentially enhance

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15 Staff Report at 6.

16 *Id.*

17 Adkins Test. at 11.

18 Ohio Rev. Code §4929.05 (A)(3).

system safety at less cost than the ASRP and did not attempt to quantify any ASRP benefits.[19]

At this point in the proceeding, the Company filed testimony of six witnesses nine months after its Application and nearly five months after the Staff Report and participated in a fully litigated hearing, but there is still no meaningful identification, and especially no quantification, of the ASRP's benefits. The Company discussed in vague terms enhanced system safety resulting from implementation of the ASRP, but it did not quantify these purported safety enhancements, and Staff showed that the safety improvements are marginal at best. The Company also posits that there are benefits from moving inside meters outside under the ASRP in the form of avoided inspection costs and customer inconvenience resulting from having to schedule inside inspections. However, as Staff witness Adkins testified, the benefit of avoiding the inside inspection costs accrue only to Duke, as costs of the inspections which are currently being borne by the Company as in-between rate case test-year expenses would be transferred to customers in the form of rider increases to reimburse the Company for the meter relocation costs.[20] Additionally, Adkins pointed out that Duke failed to provide any sort of evidence, such as customer survey responses, that customers would prefer to have their natural gas bills increase by as much

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19 Tr. at 83, 161, 267.

20 Adkins Test. at 15-17.

as $10.00 per month (in the tenth year of the ASRP) in order to avoid the inconvenience of scheduling inside meter inspections.[21]

In Staff's opinion, prior to considering the ASRP, the Commission should require Duke to perform a comprehensive cost/benefit analysis detailing and quantifying the ASRP's costs and benefits, specifically demonstrating that the benefits of the Program exceed its costs, and demonstrating that the Company has considered alternatives to the Program and that the ASRP is the most effective approach for improving system safety relative to service lines.

## CONCLUSION

Duke has failed to meet its burden of proof to show that the ASRP is just and reasonable. The evidence shows that the Company did not consider any alternatives to the ASRP. The Company also failed to perform any sort of cost benefit analysis that could justify the project's price tag.

Before the Commission considers approval of the ASRP, Duke should first be required to: (a) Implement steps to address excavation damage and report back on the effectiveness of such measures in terms of improving system safety; (b) Identify alternatives to the ASRP that would contribute to improving system safety relative to service lines and ascertain and quantify the costs, benefits, and potential effectiveness of such alternatives; And, (c) Perform a comprehensive cost/benefit analysis of the ASRP

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21 *Id.*

detailing and quantifying the ASRP's costs and benefits, demonstrating that the benefits of the Program exceed its costs, and empirically showing that the ASRP is more effective and more cost effective than the alternatives.

Respectfully submitted,

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## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Initial Post-Hearing Brief** submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served by regular U.S. mail, postage prepaid, or hand-delivered, upon the following Parties of Record, this 9th day of December, 2015.

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