

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**REPLY BRIEF
OF
OHIO PARTNERS FOR AFFORDABLE ENERGY**

I. Introduction

Ohio Partners for Affordable Energy (“OPAE”) submits to the Public Utilities Commission of Ohio (“Commission”) this reply brief in the proceeding which considers the application filed by Duke Energy Ohio, Inc., (“Duke”) for approval of an alternative rate plan pursuant to Section 4929.05, Revised Code (“R.C.”), to implement an accelerated service line replacement program (“ASRP”) and cost recovery rider for said program. Duke’s brief presents no basis on which the Commission can find that the ASRP is in substantial compliance with the policy of the state of Ohio set forth at R.C. 4929.02 and is just and reasonable. Therefore, Duke’s application for an alternative rate plan should be denied.

II. The 2011 Call to Action of Then-U.S. Secretary of Transportation Ray LaHood Does Not Make the ASRP Just and Reasonable or in Substantial Compliance with the Policy Set Forth at R.C. 4929.02.

Duke’s current Accelerated Main Replacement Program (“AMRP”) will terminate at the end of 2015. OCC Ex. 11 at 6-7. With the end of Duke’s AMRP, Duke has turned its attention to service lines, both company-owned and

customer-owned, that have not already been replaced under the AMRP. By proposing a new alternative rate plan to replace service lines, Duke is seeking to continue the accelerated cost recovery commenced with the AMRP Rider through an ASRP Rider. Duke's desire to replace one cost recovery rider with another is not a basis for an alternative rate plan under Ohio law.

Duke desires the ASRP because it will enable the accelerated removal of "high-risk service lines" and "near-commensurate cost recovery". Duke Merit Brief at 15. Duke attempts to justify its desire for yet another near-commensurate cost recovery rider by arguing that a 2011 Call to Action by then-U.S. Secretary of Transportation Ray LaHood has something to do with Duke's desire for the ASRP and its Rider. *Id.* at 5-6. Duke claims that service lines are included in the Call to Action definition of "high-risk pipe." *Id.* at 6. However, there was nothing urgent in 2011 about the Call to Action or the definition of service lines as "high-risk pipe". Calls to Action and high-risk pipe designations are standard occurrences. *Tr. III* at 436-438

Even if service lines are leaking, they do not pose a great safety threat. Metallic service lines decay slowly and produce slow and diffused leaks. These leaks can be repaired or replaced in the normal course of business. Decaying steel service lines are generally not an imminent safety threat. There can be pin-prick-size holes with slow leaks. When a small-diameter, curb-to-meter steel service line develops a leak through corrosion, a minimal amount of gas escapes through the pin-prick-sized hole into a diffused area below ground. *OCC Ex. 11* at 11. There may be no smell of gas or buildup of gas in the area. Leak inspection crews look for

leaks at least every three years, and if a leak is found, in most cases the gas is not immediately shut off, and the repair can be made at the convenience of the repair crew. These slow, small leaks are not similar to leaks in large diameter high-pressure transmission and distribution lines, which must be repaired immediately. OCC Ex. 11 at 12.

Duke already replaces leaking service lines that may pose a safety hazard in the normal course of its business. Duke replaces service lines when a significant leak occurs. In addition to replacement of leaking service lines, under Duke's current practice, about 200 to 1,000 non-leaking service lines are replaced each year outside of the AMRP. Under the ASRP, Duke would replace up to 86,000 non-leaking service lines over a ten-year period, and charge customers at least \$320 million. *Id.* at 8. There is no need to replace these service lines in an accelerated manner that would impose such significant costs on Duke's customers. *Id.* at 13.

All measures designed to improve the safety of a distribution system, especially where the costs for implementing the measure will be passed on to customers, should be evaluated in terms of quantifiable safety improvement gained in exchange for the costs. Staff Ex. 3 at 10. It is impossible for a system comprised of a combustible gas being moved under pressure through a man-made piping system to be perfectly safe. *Id.* at 13. Improvements to safety should be evaluated in terms of how much the safety gains cost. There are reasonable and less costly alternatives to the ASRP that should be explored before Duke is authorized to spend \$320 million over ten years. *Id.* at 11. Simply increasing leak surveillance activities in order to find and fix service line leaks more quickly is an alternative that could be

implemented almost immediately, whereas the ASRP will be implemented over a ten-year period. *Id.* Such alternatives are likely to be much less costly than the ASRP on an annual basis.

Duke did not provide adequate support for its alternative rate plan. *Tr. III* at 537-538. Duke did not meet even the minimal requirements to support its application. *Id.* at 539. The application asks customers to reimburse Duke for \$320 million in expenditures over ten years. Duke has not examined any alternatives. Duke did not provide any cost benefit analysis. Duke did not provide information on the benefits to customers. *Id.* at 542. Duke provided no data on the quantifiable safety improvement it expects to achieve through the ASRP.

Duke argues that the second highest relative risk to its distribution system is corrosion leaks with the majority of those leaks on service lines. *Duke Brief* at 11. However, even if the ASRP eliminates virtually all service line leaks caused by corrosion, natural forces, and materials and welding deficiencies, this would be only a 25% reduction in service line leaks. Excavation damage by third parties is the number one threat to Duke's distribution system and accounts for 34% of all hazardous service line leaks. It is obvious that the ASRP will not address the number one threat. Excavation leaks were nearly all hazardous, while leaks from corrosion, materials and welds, and natural forces are not usually hazardous. Duke could garner greater safety improvements at much less cost by addressing the risks to its system caused by excavation damage. *Staff Ex. 1* at 5. Any marginal safety gain as a result of the ASRP should be considered in light of the

\$320 million cost over the ten years of the ASRP. The ASRP's purported benefits do not outweigh its costs. Staff Ex. 3 at 14. Finding leaks and replacing them as they are found on an annual basis is likely to cost considerably less than the ASRP. Tr. III at 591-596.

Duke failed to demonstrate why it cannot continue to replace pre-1971 steel and unprotected metallic service lines at the current pace of approximately 200 to 1,000 per year as part of its standard capital replacement program. OCC Ex. 12 at 21; Tr. III at 429. Duke is not prohibited from replacing any service lines that it determines need to be replaced to provide safe and reliable natural gas service. In the unlikely event that a higher number of service lines need to be replaced, Duke may do so and may also file a base rate case to recover costs that are prudently incurred for replacing service lines in the test year. OCC Ex. 12 at 22. Duke's current funding for its repair and replacement of service lines in distribution base rates is sufficient for Duke to continue providing safe and reliable service while complying with state and federal mandates without any additional charges to customers. Id. at 23.

Duke can replace its services lines as Duke determines a need to replace them; it already has the resources in its base rates. Duke has not proven the need for the ASRP or proven that standard ratemaking is not sufficient. Tr. II at 383. With the ASRP, Duke is trying to overbuild its system and overcharge ratepayers accordingly. The last bit of safety, which might be called "gold-plating" the system or over-building to eliminate a final bit of risk, may well be overkill. Tr. II at 391.

III. Federal and State Law do not support the ASRP.

Duke argues that its ASRP meets the requirements of R.C. 4929.05 by quoting the statute and claiming compliance with the statute. Duke Brief at 21. Duke also argues that it complies with R.C. 4905.35, which prohibits discrimination. Id. at 22. Duke claims that its ASRP complies with the policy of the state set forth at R.C. 4929.02. Id. at 23. Duke claims that its ASRP is just and reasonable. Id. at 24. In making these claims, Duke ignores the issues raised in this case.

The Staff Report of Investigation found that the ASRP is not just and reasonable and would not result in just and reasonable rates. It is Ohio's policy at R.C. 4929.02 to promote adequate, reliable, and reasonably priced natural gas services and goods, but the policy does not refer to upgrading natural gas distribution systems or service lines. Staff Ex. 1 at 4. Given that there is no state policy on upgrading distribution service lines, the only legal basis for the ASRP as an alternative rate plan under R.C. 4929.05 is that it must promote adequate, reliable, and reasonably priced natural gas services and goods and be just and reasonable. Because the ASRP is too costly for the minimal safety improvement it is intended to produce, Duke has not proven that the ASRP will result in just and reasonable rates.

Duke claims that its focus on pipeline safety is commensurate with that of the Pipeline and Hazardous Materials Safety Administration's ("PHMSA") Distribution Integrity Management Program ("DIMP"). Duke Brief at 9. The DIMP does not require distribution utilities to replace non-leaking service lines on an

accelerated basis as proposed under the ASRP. Nowhere in the DIMP regulations are utilities required to address mere potential risks to the distribution system. Utilities are only required to develop and implement measures to address known risks. Accelerated replacement is not required, nor is replacement the only method to address risks. Materials can be rehabilitated, repaired, or replaced. PHMSA does not even require that rehabilitation, replacement, or repair take place. PHMSA merely suggests that utilities review their distribution systems to identify what actions need to be taken. Tr. II at 370, 380; III at 447; Tr. III at 531-532, 590.

Duke should be required to explore alternative to the ASRP. Prior to considering the ASRP, the Commission should first require that Duke investigate measures to reduce risk to its system caused by excavation damage and leaking service lines from corrosion. Staff Ex. 1 at 6-7. The Commission should only consider the ASRP if Duke can show empirically that other alternatives do not comply with DIMP regulations, are ineffective, and/or more costly on an annual basis than an ASRP. *Id.* at 7. The ASRP is too costly considering the marginal safety gains that it might garner and considering that there are other less costly alternatives that could be pursued that might provide similar or even greater safety enhancements. Prior to even considering the ASRP, Duke should be required to investigate, implement, and measure the effectiveness of other measures to mitigate the safety concerns that the ASRP is designed to address. *Id.* at 7-8.

The DIMP does not require Duke to replace the 58,000 pre-1971 steel and other unprotected metallic service lines. OCC Ex. 12 at 11. The DIMP requires an effective leak management program, which takes into account the costs and the impact the program would have on customer bills. The DIMP rules require an analysis of the distribution system and the identification of ways to address threats. But there is nothing within PHMSA and DIMP that creates a sense of urgency for replacement of pre-1971 services lines. Tr. III at 448. Duke's current leak management program already complies with all state and federal standards and rules. Duke's current leak management program will continue to be compliant with state and federal mandates without burdening customers with a \$320 million bill. OCC Ex. 12 at 12.

Given the high cost of this unnecessary program, Duke's ASRP does not result in reasonably-priced natural gas service as required by R.C. 4929.02. Duke's proposal to replace service lines that are not leaking and not hazardous is not reasonable. The ASRP will lead to excessive charges to customers and unreasonably-priced distribution service for ten years.

IV. Conclusion

Duke has the burden of proving that its ASRP conforms to R.C. 4929.05, which requires that the alternative rate plan meets the state's policy goals at R.C. 4929.02 and results in just and reasonable rates. Duke has not demonstrated that its ASRP meets the state's policy goals or results in just and reasonable rates.

There is no need for an alternative rate plan for Duke to expedite replacement or cost recovery for replacing pre-1971 service lines. These lines are not hazardous and can continue to be replaced as they are replaced currently in the normal course of Duke's natural gas distribution business.

Duke provided no information on safety problems associated with the service lines it seeks to replace. Duke provided no evidence to support its contention that this accelerated rate plan is necessary for safety or will even improve safety. Duke did not explain why accelerated cost recovery through yet another rider is necessary and why cost recovery for replacing service lines cannot be accomplished as it is now through base rates.

No law or regulation, federal or state, requires or supports an alternative rate plan for accelerated cost recovery for non-leaking, non-hazardous customer-owned service lines. Therefore, Duke's application for an alternative rate plan for approval of the proposed ASRP should be denied.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Brief was served electronically upon the following parties identified below in this case on this 23rd day of December 2015.

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