

**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.)	

**OHIO PARTNERS FOR AFFORDABLE ENERGY'S
MEMORANDUM CONTRA
DUKE ENERGY OHIO'S APPLICATION FOR REHEARING**

Ohio Partners for Affordable Energy ("OPAE") herein submits to the Public Utilities Commission of Ohio ("Commission") this memorandum contra the application for rehearing filed by Duke Energy Ohio, Inc., ("Duke") in this proceeding in which Duke sought 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 the program. Duke's application for rehearing presents no basis upon which the Commission should grant rehearing of its October 26, 2016 Opinion and Order denying Duke's application for an alternative rate plan for Duke's ASRP.

For its legal grounds for rehearing, Duke contends that its application was not for an increase in rates so that the Commission should not have considered the costs or the need for an analysis of the costs and benefits of the ASRP. Duke Application for Rehearing at 4-8. Duke also complains about the Commission's finding that Duke had not considered alternatives to the ASRP when there is no statutory requirement that an application consider alternatives. *Id.* at 10. Similarly, Duke complains that the Commission erred in rejecting its ASRP on the basis that it

was the first service line replacement program in Ohio when the statute does not address such issues. *Id.* at 21.

These statutory issues are moot because the Commission found that the application was not for an increase in rates, that Duke was in compliance with R. C. 4905.35, and that Duke was in substantial compliance with the policy of the state specified in R. C. 4929.02. *Opinion and Order* at 32. The Commission found that Duke had satisfied these statutory tests. However, having found that these tests were satisfied, the Commission still needed to determine, based on the evidence and pursuant to the statute, if the alternative rate plan was just and reasonable. The Commission found that a strict limitation on its review authority would deprive it of the broad discretion the Commission is afforded when balancing interests in these types of proceedings. *Id.* at 34. Given that the Commission must make the just and reasonable determination and that the statute does not explicitly limit the Commission's authority to use its discretion in making the determination, it was reasonable for the Commission to consider the costs and benefits of the ASRP and whether there were alternatives to the ASRP. The Commission was well within its statutory authority in making its determination, based on the evidence of record, that Duke had not shown the ASRP to be just and reasonable.

For its evidentiary grounds for rehearing, Duke complains that it did consider alternatives to the ASRP but rejected them. *Id.* at 12. Duke also complains that the Commission wrongly rejected federal pipeline safety directives. *Id.* at 14. Duke complains that the Commission ignored the "actual, corroded service lines" that were presented into evidence at the hearing. *Id.* at 18. Duke complains that the

Commission disregarded the level of risk associated with obsolete natural gas service lines. *Id.* at 18. Duke claims that it is “undeniable that these leaks, and the threat created thereby, will continue to increase.” *Id.* at 19. Duke claims it presented evidence that the service lines fail due to their age or composition. *Id.* at 20.

None of these evidentiary matters present grounds to grant Duke’s application for rehearing. The Commission did not accept Duke’s argument that the ASRP was the “safest, most efficient, and most cost-effective way to respond to these identified risks and to protect customers.” Opinion and Order at 34. The Commission noted that Duke considered its Accelerated Main Replacement Program (“AMRP”), which ended in 2015, to have been a success, but the Commission also found that there was no guarantee that another accelerated recovery program would achieve comparable improvements in pipeline safety, especially since the ASRP was meant “to mitigate a wholly separate and distinct risk.” *Id.* at 35. Therefore, the Commission rightly found that some consideration of alternative solutions should have occurred prior to Duke’s filing of the application. *Id.*

Duke’s claim that it considered and rejected alternative solutions was not supported on the record. When the AMRP ended, Duke turned its attention to service lines that had not already been replaced under the AMRP. By proposing a new alternative rate plan to replace service lines, Duke was seeking to continue the accelerated cost recovery commenced with the AMRP Rider through an ASRP Rider. Duke simply wanted to replace one cost recovery rider with another. The Commission was correct to find that the ASRP was a “novel program” and that Duke should have focused its efforts on proving the justness and reasonableness of the

program as it applied to the risks of corrosion on service lines and relied less on its AMRP or incidents involving mains as justification for the new program. Opinion and Order at 44.

The Commission's Opinion and Order agrees with the evidence that 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. With the ASRP, Duke was 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, was determined to be overkill. Tr. II at 391.

There were reasonable and less costly alternatives to the ASRP that should have been explored before Duke could be authorized to spend \$320 million over ten years. Staff Ex. 3 at 11. Simply increasing leak surveillance activities in order to find and fix service line leaks more quickly was an alternative that could have been implemented almost immediately, whereas the ASRP would have been implemented over a ten-year period. Id. Such alternatives are likely to be much less costly than the ASRP on an annual basis.

Excavation damage by third parties was shown to be the number one threat to Duke's distribution system and accounted for 34% of all hazardous service line

leaks. The ASRP would not address the number one threat. Excavation leaks are 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 did 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.

The Commission also found that Duke's arguments based on documents published by the federal Pipeline and Hazardous Materials Safety Administration ("PHMSA"), including the PHMSA's Call to Action, did not carry the same directive authority as a federal regulation, which would obligate Duke to act. Moreover, PHMSA's guidance did not mean accelerated replacement of service lines or accelerated cost recovery. Opinion and Order at 35. The evidence of record showed that there was nothing urgent 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. There is nothing within PHMSA that creates a sense of urgency for replacement of pre-1971 services lines. Tr. III at 448. 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.

The Commission's Opinion and Order finds that Duke did not show that the projected harm associated with corrosion on service lines was sufficient to support a finding that the ASRP was reasonable. Opinion and Order at 38. Duke failed to provide evidence that the targeted service lines exhibited a high risk of leak or failure due to their age or material. Id. at 41. There was evidence on the record that the number of leaks on service lines have been declining overall. Id. at 42. The Commission did not believe that service lines contain the same "unnecessary risk" as main lines, and Duke presented little evidence to the contrary. Id. at 43. The Commission found that the record reflects that the current projected likelihood associated with a reportable incident caused by a corroded service line in Duke's service territory does not warrant accelerated replacement and recovery of costs. Id. at 37-38.

The evidence shows that 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 failed to demonstrate why it could not 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's current leak management program already complies with all state and federal standards and rules.

The Commission also found that the Commission itself has acted to ensure the safety of gas pipelines and has the processes in place to evaluate pipeline safety. Opinion and Order at 36. The Commission also found that Duke has already developed effective mitigation measures for service line incidents. Id. at 39.

Based on the evidence the Commission rightly found that Duke had failed to meet its burden to show that the proposed ASRP was just and reasonable. The Commission could not find, based on the evidence, that the risks associated with service lines were significantly outweighed by the marginal costs attributed to the

accelerated replacement of the service lines or that alternatives had been considered. This was the correct decision based on the record. Therefore, Duke's application for rehearing should be denied in its entirety.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Memorandum Contra was served electronically upon the following parties identified below in this case on this 5th day of December 2016.

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Summary: Memorandum Contra electronically filed by Colleen L Mooney on behalf of Ohio Partners for Affordable Energy