

## 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 R.C. 4929.05 FOR  
AN ACCELERATED SERVICE LINE  
REPLACEMENT PROGRAM.

CASE NO. 14-1622-GA-ALT

### SECOND ENTRY ON REHEARING

Entered in the Journal on May 17, 2017

#### I. SUMMARY

{¶ 1} The Commission finds that Duke Energy Ohio, Inc.'s application for rehearing of the Commission's Opinion and Order in this proceeding should be denied.

#### II. DISCUSSION

##### A. *Procedural History*

{¶ 2} The applicant, Duke Energy Ohio, Inc. (Duke or the Company), is a natural gas company as defined by R.C. 4905.03, and a public utility as defined by R.C. 4905.02, and, thus, is subject to the jurisdiction of this Commission. Duke provides natural gas distribution service to approximately 426,000 customers in eight southwest Ohio counties (Staff Ex. 1 at 1; Tr. Vol. I at 125; Co. Ex. 1 at 12).

{¶ 3} On January 20, 2015, Duke filed an application, along with supporting exhibits, pursuant to R.C. 4929.05, 4929.051(B), 4929.11, and 4909.18. In its application, Duke states that it seeks approval of an accelerated service line replacement program (ASRP). Duke argues the risks associated with service lines are great, given their close proximity to high population areas, and replacement of these lines could potentially take decades without acceleration. Additionally, Duke asserts that its application should be considered to be not for an increase in rates, in accordance with Ohio Adm.Code 4901:1-19-06(C), as the proposed rates will be based upon the billing determinants and cost

allocation methodology utilized by the Commission in Duke's most recent rate case proceeding.

{¶ 4} On October 26, 2016, the Commission issued its Opinion and Order in this proceeding, denying the application submitted by Duke and noting that the evidence of record failed to establish that the proposed ASRP was just and reasonable pursuant to R.C. 4929.05.

{¶ 5} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 6} On November 23, 2016, Duke filed an application for rehearing of the Commission's Opinion and Order, asserting seven separate assignments of error.

{¶ 7} On December 5, 2016, Ohio Consumers' Counsel (OCC) and Ohio Partners for Affordable Energy (OPAE) filed memoranda contra Duke's application for rehearing.

{¶ 8} By Entry on Rehearing issued December 21, 2016, the Commission granted the application for rehearing filed by Duke for the limited purpose of allowing further consideration of the matters specified in the application for rehearing.

***B. Arguments of the Parties and Commission Conclusions***

{¶ 9} As its first assignment of error, Duke argues that the Commission wrongfully imposed a burden of proof upon Duke that is not provided by Ohio law or Commission regulation and also failed to explain the basis for its decision, as required by R.C. 4903.09. In response to the Commission's statement that, in evaluating the proposed ASRP, the estimated cost of the plan may be considered in determining whether the plan is just and reasonable, Duke initially asserts that resulting rates may only be considered when evaluating an alternative rate plan application for an increase in rates.

Additionally, Duke contends that H.B. 95 changed prior law by deleting the requirement in R.C. 4929.05 that the Commission determine just and reasonable rates, pursuant to R.C. 4909.15, when considering an alternative rate plan application. Duke also argues that the Commission has agreed with this approach and similarly eliminated references to R.C. 4909.15 in its regulations. When this occurred, Duke asserts that the Commission “incorporated into its regulations the General Assembly’s expectation that an alternative rate plan could be considered without a determination of whether the resulting rates would be just and reasonable” (Co. App. for Rehearing at 6). As the Commission noted that the ASRP was submitted as an application not for an increase in rates, Duke asserts that the Commission cannot hold the Company to an arbitrary evidentiary standard that defies the Commission’s own regulations and precedent governing alternative rate plans (Order at 31). Further, Duke notes that the Commission’s reference to R.C. 4929.01(A) does not provide any basis for the inclusion of evidence as to the resulting rates since this is merely a statutory provision that identifies some of the various types of proposals that may be pursued via an alternative rate plan (Order at 34). Duke also requests that the Commission articulate, with reference to the evidentiary record in this proceeding, how it considered the time period between Duke’s last natural gas base rate case and this proceeding when evaluating the application, as required by R.C. 4903.09. Finally, Duke argues that the Commission erred in failing to identify which costs associated with the proposed ASRP it considered in concluding that risks associated with the targeted service lines were outweighed by the cost attributed to their accelerated replacement, in violation of R.C. 4903.09, and failing to recognize the inherent difficulty to accurately approximate the benefits that would be afforded by such a program. Duke notes that the Commission’s requirement for an applicant to provide a quantitative analysis as to the benefit of the proposed alternative rate plan is inappropriate and unlawful as there is no requirement for such evidence in the Commission’s associated filing requirements. Ohio Adm.Code 4901:1-19-06.

{¶ 10} In its memorandum contra, OCC initially argues that the Commission has previously considered costs and benefits of an alternative rate plan in order to determine whether the plan is just and reasonable. *In re The East Ohio Gas Co. d/b/a Dominion East Ohio*, Case No. 15-362-GA-ALT (DEO PIR Extension Case), Opinion and Order (Sept. 14, 2016) at 31. Additionally, OCC contends that Duke misinterprets the law when arguing that the lack of a specific administrative filing requirement pertaining to costs and benefits limits the exercise of the Commission's authority to determine whether an alternative rate plan is just and reasonable. OCC notes that the administrative filing requirements do not set the Commission's standard of review, which is provided by statute, adding that Duke has failed to cite to any provision in R.C. 4929.05 that limits the Commission in its review. Further, OPAE asserts 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. Specifically, OPAE argues that 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. (Order 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, OPAE and OCC assert it was reasonable for the Commission to consider the projected costs of the ASRP. OPAE also agrees with the Commission's determination that costs should be commensurate with the quantifiable safety improvement gained under a proposed program, further noting that the Commission was correct to state that no system can be made perfectly safe (Order at 40-41).

{¶ 11} As to Duke's first assignment of error, the Commission agrees with Duke that an alternative rate plan application not for an increase in rates does not require evidence as to the resulting rates; however, this is not what the Commission asked for or required in its Order. Rather, the Commission looked at the evidence submitted on the record and determined that the estimated cost for implementing the ASRP was not

commensurate with the benefit that would result from the elimination of the potential risks it purported to alleviate. If the evidence had shown that there was, indeed, a substantial safety risk threatening customers in Duke's service territory, the Commission may have come to an entirely different conclusion. However, that was not the case. To contend that the Commission denied the application because the estimated price tag was too high is a mischaracterization of our Order. The Commission never contended that cost alone was the basis for our decision. We continue to find that, based on the evidence submitted in the record, the alleged risks associated with the corrosion of the targeted service lines in Duke's distribution system do not warrant accelerated cost recovery of an estimated \$320 million for the accelerated replacement of those lines (Order at 37-38). It seems Duke is arguing that we could never consider the projected cost of such a plan when determining whether that plan was just and reasonable. However, such an interpretation could potentially compel similar proposed plans with much higher price tags to be approved, even though they are intended to alleviate the same types and level of risk, with no consideration of whether those costs are justified based on the alleviation or mitigation of that risk. As OCC correctly points out that "[w]e must presume that the General Assembly intended a just and reasonable result in enacting a statute," we cannot agree with such an interpretation. *Disc. Cellular, Inc. v. Pub. Util. Comm.*, 112 Ohio St.3d 360, 2007-Ohio-53, 859 N.E.2d 957; R.C. 1.47. Moreover, Duke is quite correct that the statute and our rules do not provide an explicit list of factors to consider whether an alternative rate plan is just and reasonable; rather, Ohio Adm.Code 4901:1-19-06 generally provides that a company submitting an alternative rate plan application that is not for an increase in rates has "the burden of proof to document, justify, and support its plan" and "demonstrate that the alternative rate plan is just and reasonable." Thus, the Commission has broad discretion in authorizing alternative rate plans and determining whether an applicant has met its burden under the statute and Commission rules. *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 05-1444-GA-UNC, Fourth Entry on Rehearing (Feb. 4, 2009) at 4. In fact, OCC is quite correct that we have previously

evaluated the costs and benefits of an alternative rate plan in order to determine whether the plan was just and reasonable. *DEO PIR Extension Case*, Opinion and Order (Sept. 14, 2016) at 31.

{¶ 12} Additionally, we disagree with Duke's argument that the Commission is attempting to mandate the consideration of cost when evaluating an alternative rate plan. As noted in our Order, the Commission may consider the cost of the alternative rate plan as a factor, but it is by no means determinative on its own. In this case, the Commission considered the proposed cost of the ASRP in conjunction with its determination of the insignificant risk of a reportable event to PHMSA due to corrosive service lines. Further, the Commission is not required, as Duke suggests, to articulate how it considered the time period between Duke's last natural gas base rate case and this proceeding when evaluating the application. This is because the Commission gave little, if any, weight to this factor in its determination. Rather, the Commission was merely noting that this may be a factor the Commission considers when evaluating an alternative rate plan. However, the fact we did not consider this factor in our decision in this proceeding by no means indicates that the Commission cannot consider this in future applications for alternative rate plans.

{¶ 13} Finally, Duke asserts that the Commission erred in failing to identify which costs associated with the proposed ASRP were considered when we concluded that risks associated with the targeted service lines were outweighed by the cost attributed to their accelerated replacement, in violation of R.C. 4903.09. However, the Commission again reminds Duke that the burden is upon the Company to show that the alternative rate plan is just and reasonable. As such, the Commission was relatively limited to considering the \$320 million estimated cost of the program due to Duke's failure to provide any other information pertaining to the expected costs of removing the service lines over a more extended period of time, the operating and maintenance costs due to meter relocations, and the associated costs of more frequent base rate cases. Furthermore, the Commission

recognizes that the purported benefits of the ASRP are difficult to quantify. However, the Commission merely indicated that Duke failed to provide any estimated quantification or explanation of such benefits, including the alleged benefit of further reducing the public safety risk associated with these service lines, and rather relied on general assertions of the benefits and the success of the AMRP to warrant a \$320 million program (Order at 40; Staff Ex. 3 at 13-15; Tr. Vol. I at 161). In fact, we stated that, “[w]hile Duke emphasizes the success of the AMRP, we will not speculate as to the benefits of a service line replacement program without the necessary evidence upon which to make that determination” (Order at 40). Thus, for all of the foregoing reasons, Duke’s first assignment of error is hereby denied.

{¶ 14} Duke contends in its second assignment of error that the Commission erred in concluding that Duke’s proposed ASRP is not a just and reasonable alternative rate plan on the ground that the Company failed to evaluate other alternatives. Duke also argues that the Commission failed to provide the basis for its decision, as required by R.C. 4903.09. Duke notes that the Commission has not required in its regulations that a local distribution company must assess other alternatives before filing its application for an alternative rate plan, adding that such a conclusion would be contrary to Commission precedent. Even if Duke accepts the Commission’s determination that other feasible alternatives should have been considered prior to the filing of the ASRP application, Duke contends that it did consider alternatives by comparing the proposed ASRP to its current practice of responding to service line failures and replacing a small number of obsolete service lines on an annual basis, an alternative that Duke determined to be neither reasonable nor cost effective. Instead, Duke asserts the Commission chose to suggest the use of programs aimed at mitigating third-party damage (Order at 35). Finally, Duke argues that the Commission wrongly found that the Company’s accelerated main replacement program (AMRP) dealt with a “wholly separate and distinct risk” from the ASRP, noting that both programs proposed the accelerated replacement of obsolete natural gas infrastructure that creates a safety risk (Order at 35).

{¶ 15} OCC again states that the lack of a standard filing requirement pertaining to the evaluation of alternative options does not control the standard of review as set forth in R.C. 4929.05. Noting that broad discretion is afforded to the Commission, OCC claims that the Commission was well within its authority to consider several factors to make its decision, including comparing feasible options. OCC also disagrees with Duke's argument that it did consider alternative solutions by comparing the ASRP with doing nothing in response to the perceived risk. OCC states that, by arguing that maintaining the status quo would qualify as a feasible alternative solution, Duke is admitting that the ASRP is essentially not necessary. OCC adds that the Commission was clearly discussing alternative service line replacement programs, or their equivalent. OPAE also claims that, as the Commission found that there was no guarantee that another accelerated recovery program would achieve comparable improvements in pipeline safety, especially a program designed "to mitigate a wholly separate and distinct risk," the Commission rightly found that some consideration of alternative solutions should have occurred prior to Duke's filing of its application. OPAE asserts Duke was simply attempting to replace one accelerated cost recovery rider with another without providing sufficient evidence that the continuation of such cost recovery was warranted. Additionally, OPAE notes that the Commission was merely implementing the broad discretion it is afforded when balancing interests in these types of proceedings and such discretion should not be unnecessarily restricted.

{¶ 16} As to Duke's second assignment of error, we find that rehearing should also be denied. As we noted above, the standard filing requirements do not restrict what the Commission may consider in its determination as to whether an alternative rate plan satisfies R.C. 4929.05. Thus, the Commission utilized its broad discretion to determine whether the proposed ASRP was just and reasonable. We also find the evaluation of other options may provide the Commission valuable insight into whether an alternative rate plan is just and reasonable and such a finding is well within our discretion. Moreover, the Commission found Duke witness Hill's statement that the "methodical



replacement of these leak-prone services under the ASRP is the safest, most efficient, and most cost-effective way to respond to these identified risks and to protect customers” to be unpersuasive, given the fact that Duke did not evaluate any alternatives to the ASRP (Order at 34). To make such a statement, Duke should have provided evidence showing that other alternatives were, in fact, considered. However, similar to other aspects of this proceeding, Duke failed to satisfy its burden in this respect. We also note that our decision was clear in that Duke should have made some sort of effort to consider other alternative service line replacement programs, or other equivalent approaches to reducing the alleged risk, before submitting its application in this proceeding (Order at 34-35, 40). Finally, in response to Duke’s argument that the Commission wrongly found the AMRP dealt with a “wholly separate and distinct risk,” based on the fact that both programs proposed the accelerated replacement of natural gas infrastructure that created a safety risk, we entirely disagree. We cannot find that these programs address the same type and level of risk based on this fact alone. As demonstrated in our Order, the risk for which the ASRP was designed to mitigate is much less pronounced in scope than that covered under the AMRP. (Order at 38-39.)

{¶ 17} As its third assignment of error, Duke claims the Commission erred in concluding that the ASRP is not required under regulation issued by the Pipeline and Hazardous Materials Safety Administration (PHMSA), which the Commission is responsible to enforce. In support of this assignment of error, Duke contends that, pursuant to PHMSA regulation, Duke is required to develop and implement a distribution integrity management program (DIMP) in which it confirms knowledge of its system, identifies threats thereto, assesses these threats or risks, and implements measures to reduce them. In denying Duke’s application, the Company asserts the Commission incorrectly interpreted governing law, ignoring Duke’s obligation to mitigate a known risk to its distribution system and PHMSA’s appeal to state regulators for the accelerated replacement of high-risk pipeline. Duke also argues that its identified mitigation measure is the ASRP, a program based on the successful AMRP, which

provided for the safe and efficient replacement of such high-risk pipeline. As alleged by Duke, the Commission has chosen to unlawfully and unreasonably ignore both PHMSA regulation and directives and, instead, encourage natural gas companies to adopt reactive approaches that do not mitigate the risk associated with service line leaks.

{¶ 18} Rather than automatically approving the ASRP once Duke had identified the alleged risk on its distribution system, OCC argues that the Commission was correct to find that Duke still maintained the burden to show that the ASRP was just and reasonable, pursuant to R.C. 4929.05. Moreover, OCC notes that the Commission discussed at length its reliance on the evidentiary record and the measures currently in place to ensure distribution safety in Duke's service territory when making its ultimate decision. For instance, OCC asserts that the Commission relied on Duke's use of proactive and reactive measures to reduce the level of service line leaks, including Duke's testimony that it would attempt to increase its service line replacements to 5,000 per year, regardless of whether the ASRP is approved. (Order at 25-26.) Moreover, OCC also notes that Duke testified that its natural gas distribution system is safe, and would continue to be safe, even in the event that the ASRP was not approved (Order at 39). In its memorandum contra, OPAE also takes issue with Duke's third assignment of error, noting that the Commission was correct to determine that the Call to Action issued by PHMSA was not equivalent to a regulation requiring action on behalf of the Commission or the local distribution companies, including the accelerated replacement of service lines consisting of "high-risk" materials or the accelerated cost recovery of expenses incurred with such replacement (Order at 35). OPAE also agrees with Staff's interpretation that PHMSA merely suggested that utilities review their distribution systems to identify what actions need to be taken (Tr. Vol. II at 370, 380; Tr. Vol. III at 447, 531-32, 590).

{¶ 19} The Commission also finds that Duke's third assignment of error is without merit and should be denied. As we noted in our Order, the Call to Action issued by PHMSA, as well as the other documents contained in Company Exhibit 10, are merely

recommendations for state agencies and local distribution companies to consider, and do not constitute an adequate basis to affirmatively state that Duke's ASRP is required by state or federal mandates, as alleged by Duke. Duke's reliance on these documents is further undermined because they do not encourage the accelerated rate recovery for the replacement of these service lines. (Order at 35-37.) Moreover, to the extent we were to accept these guidelines as more of a directive to our agency, we noted in the Order that we have been complying with them. Duke witness McGee stated in his testimony that "PHMSA's recommendations and guidelines are designed to identify gas integrity risks and address them before a catastrophic event occurs," adding that a history of the integrity of the system should be considered when evaluating these risks (Co. Ex. 9 at 26). PHMSA did not specifically identify any sub-category of infrastructure in its Call to Action. Instead, it limited such an evaluation based purely on the risk facing the distribution system. With such guidance in mind, this Commission approved and implemented various AMRPs for local distribution companies and mitigated the high risk of incidents associated with main pipelines<sup>1</sup> (Order at 35). Duke attempts to state that the fact these service lines are prone to leaks would equate to them being prone to a catastrophic event, or reportable incident, as defined by PHMSA. This is simply not the case. Even assuming the probability of occurrence of a failure that Duke calculated was correct, the magnitude of a failure would not rise to the catastrophic levels identified by PHMSA. Duke has inconsistently used the term "failure" as it aligns with the PHMSA regulations; however, the Commission recognizes the difference between a grade-two and grade-three leak and the type of catastrophic events reportable to PHMSA. Our decision is consistent with the PHMSA guidance and we continue to ensure the safety of Ohio consumers, while promoting the goals proffered in R.C. 4929.02, including safe and reliable natural gas service. We also believe that, in the event circumstances warrant

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<sup>1</sup> The incidents that Duke cites to in support of its application include the Philadelphia incident, which involved a main line, and the San Bruno and Reading incidents, which involved transmission lines. As noted in our Order, none of the incidents cited by Duke were caused by corrosion on a service line.

additional protections for the general public, we are authorized to ensure that appropriate measures are taken by continually evaluating our rules and regulatory requirements and making any necessary modifications thereto. (Order at 36-37.)

{¶ 20} As its fourth assignment of error, Duke argues the Commission erred in concluding that the risks associated with obsolete natural gas service lines are insufficient to warrant their accelerated removal and also failed to explain the basis for its decision, as required by R.C. 4903.09. Duke specifically raises Staff witness Adkins' own admission that he failed to consider information specific to Duke's service territory when developing his risk assessment, noting that, if the Commission were to consider this information, it would arrive at the same conclusion proposed by Duke witness McGee: the risk of a service line failure due to corrosion in the Duke service territory is one in 29, with the same recurring risk year after year. Duke also questions the Commission's reasoning that the mere fact that Duke eliminated the grade-three leak classification from its procedures, and instead classifies such leaks as grade-two leaks, necessitating action within 24 months of discovering the leak, also negates the need or reasonableness of the ASRP. Specifically, Duke asserts that the ASRP was not designed to mitigate the risk associated with service lines that are known to be leaking; rather, the ASRP is meant to proactively remove risk "created by obsolete service lines prone to failure due to their age, composition, and propensity to corrode" (Co. App. for Rehearing at 17). Asserting that the Commission failed to provide its basis for concluding that reacting to a leaking service line mitigates the risk associated with those likely to fail, Duke also contends that the Opinion and Order is in violation of R.C. 4903.09. Finally, Duke argues that the Commission only considered a portion of the evidence presented before it, noting that the Commission ignored the pictures of actual, corroded service lines and failed to explain how such service lines would only result in discolored lawns, once again making its decision unreasonable and in violation of R.C. 4903.09.

{¶ 21} OCC and OPAE disagree with Duke's fourth assignment of error, noting that the Commission was correct to find that the record evidence 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 (Order at 37-38, 41-42). OPAE specifically notes that Duke failed to provide sufficient evidence to demonstrate that the targeted service lines exhibited a high risk of leaking or failure due to their age or material (Order at 41). Further, OCC argues that Staff could not include information specific to Duke's service territory, due to the infrequent reporting of service line failures due to corrosion in the Company's service territory. OCC also contends that the Commission appropriately weighed both submitted risk assessments and found Staff's to be more persuasive, which is not an appropriate ground for rehearing. According to OCC, the evidence only supports the Commission's finding that the leak rates on Duke's service lines have been decreasing over time, especially when evaluating the main-to-curb portion of the service line (Order at 42). OPAE and OCC also state that the Commission correctly found that Duke already had effective mitigation measures in place and, in the unlikely event additional service lines need to be replaced, OPAE contends the Company would have the opportunity to file a base rate case to recover costs that are prudently incurred for replacing service lines in the test year (Order at 24, 37; OCC Ex. 12 at 22-23).

{¶ 22} As an initial matter, the Commission's conclusions are based squarely on the record in this case. The fact that recommendations of certain expert witnesses were not accepted does not mean that the Commission failed to consider their evidence; it means that these recommendations were considered and rejected. Further, Commission decisions often involve the weighing of conflicting expert testimony. Thus, one expert's testimony may be adopted by the Commission, while another witness's testimony may be rejected. This type of alleged error does not constitute sufficient grounds for rehearing, but is, instead, simply a disagreement with the Commission's conclusions.

{¶ 23} If the Commission were to accept Duke witness McGee's risk assessment, we would be required to come to the unreasonable conclusion that Duke's service territory faces a significantly larger risk of service line failure due to corrosion than the national level of risk, as provided by Staff, which is in direct contradiction to testimony provided by Duke witnesses indicating that the service territory is safe, and will continue to be safe, even without the adoption of the ASRP (Order at 39; Tr. Vol. I at 13, 69, 151; Tr. Vol. II at 218).

{¶ 24} Additionally, Duke contends that reacting to an already leaking service line cannot mitigate the risk associated with those likely to fail. However, the Commission noted in its Order that the continued inspection and replacement of such leaking service lines through the Company's regular inspection program will help eliminate the risk such lines would go on to experience a degree of corrosion that may contribute to the occurrence of a reportable incident to PHMSA. (Order at 37-39.) The Commission relied on testimony presented by OCC, stating that these service line leaks due to corrosion amount to a gradual and diffused leak that continues to grow but at a very slow rate of speed, which may be adequately addressed through Duke's regular inspection program (Order at 27, 43). By identifying these leaking service lines and replacing them, in addition to its increased proactive service line replacement objectives, Duke is effectively mitigating the risk it sought to target with the ASRP (Order at 26, 39-40). In its argument, Duke ignores the fact that risk is composed of two elements: the probability of occurrence and the magnitude of the consequences of such an occurrence. Even if we accepted Duke's estimation of the risk of a service line failure, the Commission was persuaded that the magnitude of such an occurrence would be minimal (Order at 27; OCC Ex. 11 at 11-12). Moreover, we were not persuaded that Duke provided sufficient evidence warranting accelerated action, as the Company failed to provide "evidence to show that the targeted lines for replacement are located in areas subject to active corrosion or are otherwise unfit to provide safe and reliable service" (Order at 45). As a final note, Duke alleges that the Commission failed to consider the actual corroded service lines that were

offered and admitted into evidence, which showed the severity of the corrosion on these types of high-risk service lines. Our Order made perfectly clear that the admission of these exhibits was “merely an attempt to provide the Commission a complete record, given that there were already several references to these two pieces of physical evidence in the transcript” (Order at 11-13). We also cited to the transcript reference in which OCC cross-examined Duke witness McGee over the authentication and chain of custody of the service lines, raising concerns over the authenticity of such evidence. Even if we were to assume that these service lines were, in fact, what Duke was purporting them to be, we cannot conclude that these two small portions of corroded service line adequately represent the state of all of Duke’s service lines composed of similar material and of similar age currently in use in its service territory. Moreover, as evidenced by the record, even the degree of degradation to these two portions of service lines would only result in minimal safety concerns for those residing or traversing nearby (Order at 38). Duke failed to provide any evidence to prove otherwise, specifically any evidence of actual incidents occurring from these, or similar, alleged “high-risk” service lines. Thus, Duke’s fourth assignment of error is denied.

{¶ 25} Duke also argues, as its fifth assignment of error, that the Commission erred in concluding that Duke’s ASRP is not just and reasonable because the Company failed to quantify the benefits associated with the program. Despite the success of the AMRP in reducing the overall number of reported service line leaks, Duke contends that leak rates on service lines due to corrosion have remained high and have increased significantly from 2012 to 2014. In fact, based on the evidence in the record, Duke asserts that, in that time period, grade-one leaks due to corrosion increased from 6.9 percent to 11.8 percent and grade-two leaks increased from 24.3 percent to 43.6 percent. Unless proactive action is taken at this time, Duke claims that these types of leaks will continue to increase over time. Duke also questions the Commission’s referencing of another local distribution company’s program to mitigate against third-party excavation damage,

noting this comparison is irrelevant as this type of program would not prevent the risk of service lines failing due to corrosion.

{¶ 26} In its memorandum contra, OCC asserts that the Commission did not solely rely on reactive measures when making its decision that Duke already had mitigation measures in place to combat the alleged risk to its distribution system. Specifically, OCC argues that the Commission relied on Duke's use of both proactive and reactive measures to reduce the level of service line leaks, including Duke's testimony that it would attempt to increase its service line replacements to 5,000 per year, regardless of whether the ASRP is approved. (Order at 25-26.) Moreover, OCC also notes that Duke testified that its natural gas distribution system is safe, and would continue to be safe, even in the event that the ASRP was not approved (Order at 39). OPAE contends that third-party excavation damage was shown to be the number one threat to Duke's distribution system and accounts for 34 percent of all hazardous service line leaks, and yet, Duke failed to consider a program mitigating this risk. OPAE also argues that Duke would be able to garner greater safety improvements at a much lower cost by addressing the risks caused by excavation damage.

{¶ 27} As to Duke's fifth assignment of error, we find that rehearing should be denied. We again note that we cannot speculate as to the benefits of the ASRP without the necessary evidence upon which to make that determination (Order at 39-41, 43). The Commission noted that the Company failed to provide any details as to the alleged benefits surrounding the ASRP, including the lack of a projected risk reduction from Duke's risk assessment following the replacement of these service lines. OCC is also quite correct to note that Duke testified that it would attempt to increase its service line replacements to 5,000 per year, regardless of whether the ASRP is approved (Order at 26; Tr. Vol. I at 14-15, 84-86; Co. Ex. 2 at 12-13). The Commission relied on this testimony regarding proactive measures, in addition to the testimony related to the continued replacement of leaking service lines, to conclude the targeted risk was being sufficiently



mitigated (Order at 25-26, 45). Moreover, the amount of grade-one hazardous leaks occurring on Duke's distribution system resulting from the three threats the ASRP was designed to combat (corrosion, natural forces, and material and welds) have decreased in the time period between 2012 and 2014 (Order at 27; Co. Ex. 4 at 2). Thus, given the commitments and current practices of Duke, the alleged additional risk reduction resulting from the proposed ASRP would be low, based on the limited evidence provided by the Company. Further, by citing Columbia Gas of Ohio, Inc.'s program, the Commission was merely providing an example of an alternative approach that could be successful in addressing corrosion. In no way did we state that such a program should have been implemented by Duke in order to mitigate the risk associated with corrosive service lines. In fact, the Commission noted early in its Order that:

Nothing in R.C. 4929.05 or Ohio Adm.Code Chapter 4901:1-19 prohibits the Commission from evaluating proposed programs if they do not address the greatest risk to the distribution system, nor do such regulations require Duke to establish that the ASRP is the least costly program available to reduce risks to the distribution system. \* \* \* [W]e must also note that R.C. 4929.05 and Ohio Adm.Code Chapter 4901:1-19 do not prescribe an order of priority in which to address such risks. However, any alternative rate plan proposed to the Commission under R.C. 4929.05 is nonetheless required to be just and reasonable.

(Order at 33.) We cannot agree with Duke that our Order was unreasonable, given the lack of information pertaining to the alleged benefits of the ASRP.

{¶ 28} As its sixth assignment of error, Duke asserts the Commission erred in concluding that the Lummus Report failed to provide evidence of the risks presented by obsolete natural gas service lines. Specifically, Duke asserts the Commission's finding that the evidence was deficient because Duke witness McGee "failed to provide any

detailed information as to the number of leaks, or their severity, that have occurred on the 58,000 pre-1971 metallic and non-protected service lines” is misplaced, as no such information could be produced since these targeted service lines were not identified to be leaking (Order at 42). Rather, Duke notes these service lines are targeted due to their composition and age.

{¶ 29} OCC contends that there was little to no record evidence provided by Duke to demonstrate that the service lines are at a high risk of failure, or will be in the near future, due to their age or material. Specifically, OCC notes that the Commission considered the Lummus Report and testimony offered by Duke witnesses before concluding that accelerated replacement and cost recovery were not warranted based on the leak rate information provided (Order at 41-42). Finally, OCC argues that the Commission is not required to approve a program based on the fact that PHMSA has defined the pre-1971 metallic pipe as “high risk,” as the program is required to satisfy R.C. 4929.05. OPAE agrees that the record evidence shows that, even if these targeted service lines are more prone to leaking due to their age and material, they do not pose a great safety hazard to the surrounding communities (OCC Ex. 11 at 11-12).

{¶ 30} In response to Duke’s sixth assignment of error, we find rehearing should also be denied. The Lummus Report, much like the other evidence submitted by Duke, fails to demonstrate that the pipes targeted for the ASRP are more prone to a catastrophic event, or even leaking, based on their age and material, or that the alleged increase in leaks in service lines due to corrosion was related to these “high-risk” pipelines. As we acknowledged in our Order, Duke stated on numerous occasions that the history of line failure was paramount in evaluating the integrity of the distribution system and the risks to which it is subject (Order at 17, 37, 41-42). The Lummus Report only provided that, while leaks due to corrosion have increased, the overall leak rate has decreased. With the overall leak rate decreasing, it makes little sense to the Commission to authorize an accelerated replacement and cost recovery program when the Company could instead

focus its efforts on increasing the frequency of leak surveillance activities to ensure early detection or request recovery of the ongoing costs of replacing confirmed leaking service lines through Rider AMRP, as Staff alternatively proposed (Order at 9-10). OCC is correct that we are not bound to approve a program based on the fact that PHMSA has defined the pre-1971 metallic pipe as “high risk,” and we once again emphasize all alternative rate plans must satisfy the test set forth in R.C. 4929.05.

{¶ 31} Finally, as its seventh assignment of error, Duke contends that the Commission erred in concluding that the ASRP is unlawful and unreasonable because it would be the first such program in Ohio and also failed to explain the basis for its decision, as required by R.C. 4903.09. Duke again notes the success of the AMRP, which was a novel program when it was first proposed, and alleges that, although no other Ohio local distribution companies currently have a comparable program to the ASRP, they are currently undergoing their own infrastructure replacement programs, which were heavily derived from Duke’s ASRP. Duke contends it should not be penalized for the fact that the other local distribution companies have not yet determined a need or proposed their own service line replacement programs. Finally, Duke argues that the Commission failed to explain how it would take into account whether a proposed program is the first of its kind, making it impossible for the Company to meet the evidentiary standard set by the Commission’s unsupported decision, again in violation of R.C. 4903.09.

{¶ 32} OCC disagrees with Duke’s characterization of the Commission’s decision, noting that the Commission did not reject the ASRP merely because it was a novel program; rather, OCC contends that the Commission utilized the broad discretion afforded to it and considered the ASRP’s novelty as another factor in making its determination as to whether the ASRP is just and reasonable under R.C. 4929.05. Further, contrary to the assertions of Duke, OCC notes that other local distribution utilities are not replacing their service lines through accelerated service line replacement programs.

Instead, OCC states the programs utilized by these other utility companies are main line replacement programs, which are more analogous to the AMRP. Moreover, OCC argues that the Commission explicitly rejected Duke's claim by providing that the main line replacement programs of these other utility companies were approved "based upon the facts and circumstances, including the parties' stipulations, as well as the record evidence, in those cases, which are distinct from the record evidence in this particular case" (Order at 42). OPAE also agrees with the Commission that, rather than rely on the success of the AMRP, Duke should have focused its efforts to establish an evidentiary record to demonstrate that the ASRP was reasonable.

{¶ 33} In response to Duke's final assignment of error, this Commission emphasizes that it did not determine that the ASRP was not just and reasonable merely on the basis that the program would be novel in Ohio; rather, the Commission was simply noting that Duke could not possibly rely on evidence from other distribution utilities' programs or Duke's AMRP, which covered an entirely separate category of risk, as these other programs dealt mostly with main lines, in order to prove the alleged benefits that Duke asserted were associated with the ASRP. Instead, Duke was required to provide evidence that such a program was just and reasonable in order to meet its burden under R.C. 4929.05. Additionally, the Commission noted Duke's sense of urgency for the accelerated replacement and cost recovery of these lines was erroneously inflated, as no other distribution utility, or the Commission for that matter, had perceived PHMSA's guidance to require such accelerated action. (Order at 42.) We also find it ironic that Duke questions the Commission's ability to look to other similar programs, if any exist, in order to determine whether an application is just and reasonable, given the fact that Duke's basis for demonstrating that the ASRP was just and reasonable was heavily reliant on its contention that the AMRP was a similar, and highly successful, program. Of course, this Commission always welcomes new efforts and programs to alleviate potential risks on the distribution system. However, any such program must be

considered just and reasonable for this Commission to approve. As such, this final assignment of error should also be denied.

{¶ 34} Duke also made several allegations regarding the Commission's violation of R.C. 4903.09, with which we also disagree. The Commission evaluated all of the record evidence produced in this proceeding and determined that, based on such evidence, Duke failed to demonstrate that the ASRP, as proposed, was just and reasonable. There are numerous citations to the record and the Commission carefully addressed all three components of the test set forth in R.C. 4929.05. Specifically, the Commission devoted 13 pages of its Order to discussing whether the alternative rate plan was just and reasonable and even went as far as including guidelines for future applications requesting approval of a similar program (Order at 33-46). We again note that Duke's general disagreement with our conclusions, or the bases for those conclusions, are not persuasive grounds for rehearing. Thus, to the extent that we have not already disposed of these arguments, rehearing on these issues will also be denied.

{¶ 35} As a final note, the Commission would like to once again state that the ASRP, though determined not to be just and reasonable as proposed in the Company's application, may hold some merit given different circumstances and a more thorough evidentiary record (Order at 45-46). Specifically, the Commission directed that future applications should include "a detailed quantified analysis regarding the costs and benefits associated with such a program, as well as the necessary justifications for accelerated cost recovery treatment considering the effective risk mitigation measures already in place" (Order at 45). The Commission afforded Duke the opportunity to file a future application remedying some of the issues noted in its Order. We would encourage Duke to work with Staff and other interested stakeholders in developing such a program for the Commission's future consideration.

**III. ORDER**

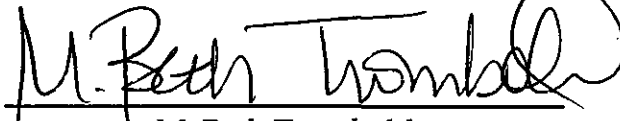
{¶ 36} It is, therefore,

{¶ 37} ORDERED, That the application for rehearing filed by Duke be denied. It is, further,

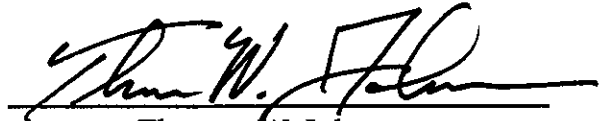
{¶ 38} ORDERED, That a copy of this Second Entry on Rehearing be served upon all parties of record.

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

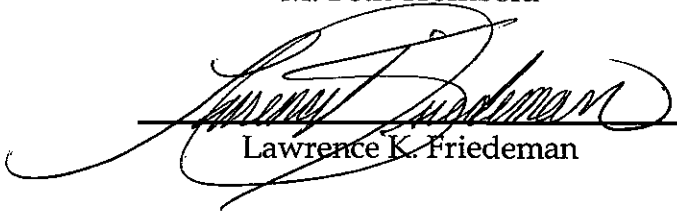
Asim Z. Haque, Chairman



M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman



Daniel R. Conway

MJA/sc

Entered in the Journal

**MAY 17 2017**



Barcy F. McNeal  
Secretary