

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval to) Case No. 13-2417-GA-UNC
Implement a Capital Expenditure Program.)

In the Matter of the Application of Duke)
Energy Ohio, Inc., for Approval to Change) Case No. 13-2418-GA-AAM
Accounting Methods.)

**DUKE ENERGY OHIO'S REPLY
TO MEMORANDUM CONTRA MOTION FOR CLARIFICATION**

Duke Energy Ohio, Inc. (Duke Energy Ohio or Company), pursuant to O.A.C. 4901-1-24(A), hereby files with the Public Utilities Commission of Ohio (Commission) its reply to the memorandum contra the Company's motion for clarification, as filed by Staff of the Commission (Staff).

Background

Duke Energy Ohio has current authority from the Commission for a Capital Expenditure Program (CEP), under the terms of R.C. 4909.18, 4929.05, 4929.11, and 4929.111. The CEP, as approved by the Commission, includes all of the permitted components under R.C. 4929.111, including "infrastructure expansion, infrastructure improvement, or infrastructure replacement programs." On October 12, 2017, the Company filed a motion to clarify the terms of the existing CEP in two regards: First, although Duke Energy Ohio believes that the current terms of CEP broadly cover infrastructure replacements, the Company seeks to confirm that deferrals under the existing CEP may include certain, identified replacements of service lines. Second, the Company seeks confirmation that it is authorized to take ownership of the service lines so replaced.

Staff has filed a memorandum contra the Company's motion for clarification, criticizing the timing of the motion and questioning whether the motion is properly filed in the proceedings that gave rise to the existing CEP. Staff is wrong on both counts.

Timing of the Motion

The second sentence of Staff's memorandum contra includes an assertion that the motion is "untimely." However, Staff does not support that accusation with any reference to applicable rules or law. Neither does it support its accusation with any further discussion.

As the Commission is well aware, there are no requirements relating to the timing of a motion for clarification. If an entity under the Commission's jurisdiction seeks confirmation about the meaning, scope, or intent of a Commission order, that entity may certainly seek to have the order clarified – no matter when the lack of clarity arises. Indeed, in a recent proceeding, the Commission issued a clarification entry pursuant to a motion filed more than two years after the final order in the case.¹

The Company's motion is not untimely and should not be denied.

Appropriateness of Filing in CEP Proceedings

Even though the subject of the Company's motion relates directly and only to deferrals under its existing CEP, Staff suggests that these proceedings are an inappropriate setting for the Commission's consideration of the issue.

Staff first proposes that the issue be moved to a case in which the Commission determined that the Company should not undertake an accelerated service line replacement program (ASRP), modelled after its extremely successful accelerated main replacement

¹ *In the Matter of the Commission's Review of its Rules for Competitive Retail Electric Service Contained in Chapters 4901:1-21 and 4901:1-24 of the Ohio Administrative Code*, Case No. 12-1924-EL-ORD, Entry (May 18, 2016).

program.² Staff states, misleadingly, that the ASRP proceeding was one in which the Commission decided that “non-leaking service lines in Duke’s service territory do not warrant accelerated replacement and recovery.”³ This view of the ASRP decision leads Staff to the incorrect conclusion that the request in the current Motion for Clarification must be denied. However, the actual Commission decision in the ASRP case was quite different. After reviewing all of the evidence relating to the Company’s proposal to replace specifically identified service lines – only those constructed of cast iron or bare steel – on an accelerated basis, the Commission concluded that the “risks associated with the Company’s service lines are significantly outweighed by the marginal cost attributed to the accelerated replacement of these subject service lines.”⁴ The Commission’s decision was as narrowly focused as was the Company’s proposal. The Commission most certainly did not decide, as claimed by Staff, that no non-leaking service lines warrant accelerated replacement and ultimate recovery.

It is critical to understand that the instant request relates only to two, narrowly circumscribed categories of service lines: (1) those that are leaking and (2) those that are metallic and not cathodically protected, where the project is being done in coordination with a municipal street improvement project. This issue is not what was considered or decided in the ASRP proceeding. Recovery for such replacements through the CEP was also not any part of the ASRP proceeding. Thus, the subject of the Company’s motion would not have been appropriate in the context of the ASRP case.

² *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.

³ Staff Memorandum Contra, at pg. 2.

⁴ ASRP Case, Opinion and Order, at pg. 33 (Oct. 26, 2016).

Staff's second suggestion is that the motion should have been made in the context of its 2007 base rate case.⁵ Staff's concern here is with the Company's request for confirmation that it would be authorized to take ownership of the service lines replaced under the CEP. Staff notes, correctly, that the stipulation approved in the 2007 Rate Case "included a term on ownership of curb-to-meter service."⁶ However, Staff then asserts that the "history" of that provision of the stipulation relates only to leaking service lines.⁷ It provides no proof of that statement. Nor does Staff include the actual language of the approved stipulation in the 2007 Rate Case:

The Parties agree that DE-Ohio shall take over ownership of the curb-to-meter service, including riser, whenever a new service line or riser is installed or whenever an existing curb-to-meter service or riser is replaced.⁸

Staff may talk about "history" if it likes, but the words of parties say no such thing and the Commission approved the Stipulation in its entirety.⁹ The issues raised in the 2007 Rate Case were resolved and there is no reasonable basis to re-engage all of the litigants in that proceeding to address a noncontroversial issue that is pertinent only to the Company's current efforts to safely and efficiently maintain its natural gas delivery system and enable consistency with regard to customers' obligations relative to the service lines incorporated into that system.¹⁰ Clarification in that case is unneeded and inappropriate.

Conclusion

For these reasons and the reasons more fully set forth in the original motion, Duke Energy Ohio respectfully requests that the Commission grant its motion for clarification.

⁵ Staff Memorandum Contra, at pp. 2-3, citing *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Gas Rates*, Case No. 07-589-GA-AIR, *et al* (2007 Rate Case).

⁶ Staff Memorandum Contra, at pg. 2.

⁷ Staff Memorandum Contra, at pp. 2-3.

⁸ 2007 Rate Case, Stipulation, at pg. 14 (Feb. 28, 2008).

⁹ 2007 Rate Case, Opinion and Order, at pg. 25 (May 28, 2008).

¹⁰ *Id* at pg. 16.

Respectfully submitted,

/s/ Jeanne W. Kingery

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on the following parties this 6th day of November, 2017, by regular U. S. Mail, overnight delivery, or electronic delivery.

/s/ Jeanne W. Kingery

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Summary: Reply of Duke Energy Ohio to Staff's Memorandum Contra Motion for Clarification electronically filed by Ms. Emily Olive on behalf of Duke Energy Ohio and Spiller, Amy B. Ms. and Kingery, Jeanne W. Ms.