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PUCO

1 PUBLIC UTILITIES COMMISSION
2 STATE OF OHIO
3 In the Matter of the)
4 Application of Duke)
5 Energy Ohio, Inc. for) Case No. 08-709-EL-AIR
6 an Increase in Electric)
7 Distribution Rates)
8)
9 In the Matter of the)
10 Application of Duke) Case No. 08-710-EL-ATA
11 Energy Ohio, Inc. for)
12 Tariff Approval)
13)
14 In the Matter of the)
15 Application of Duke)
16 Energy Ohio, Inc. for) Case No. 08-711-EL-AAM
17 Approval to Change)
18 Accounting Methods)
19)
20 In the Matter of the)
21 Application of)
22 Cincinnati Gas &) Case No. 06-718-EL-ATA
23 Electric Company for)
24 Approval of its Rider)
25 BDP, Backup Delivery)
Point.)

16 Deposition of Jonathon McGee, a witness
17 herein, called by the Applicant for examination
18 under the statute, taken before me, Linda D.
19 Riffle, Registered Diplomate Reporter, Certified
20 Realtime Reporter and Notary Public in and for the
21 State of Ohio, pursuant to notice and agreement,
22 at the offices of Duke Energy Ohio, Inc., 155 East
23 Broad Street, 21st Floor, Columbus, Ohio, on
24 Monday, February 2, 2009, beginning at 9:36
25 o'clock a.m. and concluding on the same day.

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S T I P U L A T I O N S

- - -

It is stipulated by and among counsel for the respective parties herein that the deposition of Jonathon McGee, a witness herein, called by the Applicant for examination under the statute, may be taken at this time and reduced to writing in stenotype by the Notary, whose notes may thereafter be transcribed out of the presence of the witness; that proof of the official character and qualification of the Notary is waived; that the witness may sign the transcript of his deposition before a Notary other than the Notary taking his deposition; said deposition to have the same force and effect as though the witness had signed the transcript of his deposition before the Notary taking it.

- - -

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11	of Ohio, from Dianne Kuhnell, Duke	
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1 JONATHON MCGEE

2 of lawful age, being by me first duly placed under
3 oath, as prescribed by law, was examined and
4 testified as follows:

5 EXAMINATION

6 BY MS. SPILLER:

7 Q. Mr. McGee, I've been introduced to you
8 this morning. My name is Amy Spiller. And along
9 with my cocounsel, Elizabeth Watts, I am
10 representing Duke Energy Ohio in connection with a
11 matter it has filed before the Public Utilities
12 Commission of Ohio. It is a distribution -- It's
13 a case to increase distribution rates in Duke
14 Energy Ohio's service territory.

15 And I understand that the Ohio Cable
16 Telecommunications Association has intervened in
17 that action, correct?

18 A. Yes.

19 Q. And, sir, I'm here to take your
20 deposition this morning.

21 Have you been deposed before?

22 A. Yes.

23 Q. Okay. How many times?

24 A. Once or twice.

25 Q. Were those in connection with matters

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1 pending before the PUCO?

2 A. No.

3 Q. The framework for this deposition, sir,
4 I'm relatively confident, would be similar to the
5 other deposition formats in that this will be a
6 series of questions and answers this morning.
7 Because your answers are given and being recorded
8 by our Court Reporter here, I would ask for verbal
9 responses.

10 A. Yes.

11 Q. If I pose a question to you that you do
12 not understand, please let me know, and I will
13 rephrase that question for you.

14 I don't anticipate that your deposition
15 will be incredibly long, but if at any time during
16 the morning you need to take a break, please let
17 me know and I will accommodate you. My only
18 caveat being that if there is a question pending,
19 I would ask that you answer that question before
20 we take a break. Okay?

21 Could you state your name for the record,
22 please?

23 A. Sure.

24 MR. GILLESPIE: Let me just note that, of
25 course, if he has a question about whether or not

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1 an answer would be subject to privilege or work
2 product, he may need to speak with me; in other
3 words, take a break, short break, in order to do
4 that.

5 MS. SPILLER: Certainly. And I would
6 certainly expect the objection from counsel.

7 BY MS. SPILLER:

8 Q. Sir, can you state your name for the
9 record, please?

10 A. Jonathon McGee.

11 Q. And what is your business address?

12 A. 50 West Broad Street, Suite 1118,
13 Columbus, Ohio 43215.

14 Q. And can you tell me, sir, what were the
15 two prior cases in which you were deposed? What
16 was the subject matter of those?

17 A. They were civil actions when I was on the
18 State Employment Relations Board.

19 Q. What did you do in preparation for
20 today's deposition?

21 A. Spoke with counsel.

22 Q. Was anyone else present during your
23 meeting with counsel?

24 A. No.

25 Q. Did you review any documents?

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1 A. No.

2 Q. Sir, I'd like to hand you what we will
3 mark as DE Ohio Exhibit 1.

4 - - -

5 Thereupon, DE Ohio Exhibit No. 1 was
6 marked for purposes of identification.

7 - - -

8 BY MS. SPILLER:

9 Q. And for purposes of the record,
10 Mr. McGee, DE Ohio Exhibit 1 is a cover letter to
11 which is attached a Revised Notice of Deposition
12 Duces Tecum for you, correct?

13 A. That's what it appears to be.

14 Q. Have you seen this document before, sir?

15 A. I believe I've seen the -- the Notice of
16 Deposition, but I'm not sure if I've seen the
17 attachment.

18 Q. And the attachment is labeled "Exhibit A"
19 and delineates a total of 13 categories of
20 documents to be produced today?

21 A. Correct.

22 Q. You've not seen that before this morning,
23 sir?

24 A. I don't recall seeing that.

25 Q. Do you have any documents in your

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1 possession here this morning responsive to this
2 Notice of Deposition?

3 A. I have no documents.

4 MR. GILLESPIE: Let me note on the record
5 that there have been a number of pieces of
6 correspondence between the parties with respect to
7 the Notice of Deposition and the document list.
8 And that, as I have indicated to Ms. Spiller, we
9 will be providing some documents in connection
10 with the Kozelek deposition this afternoon. And
11 there are a number of objections that have been
12 submitted by the Ohio Cable Telecommunications
13 Association in connection with the subject matter
14 of these -- the document production request.

15 MS. SPILLER: So, Gardner, the OCTA
16 itself is not producing any documents; the
17 documents are -- will be produced at Mr. Kozelek's
18 deposition?

19 MR. GILLESPIE: That's -- I'm not sure
20 what you mean by "OCTA itself", but the documents
21 will be produced in connection with Mr. Kozelek's
22 deposition, as I told you in correspondence.

23 Mr. McGee did -- does not have any
24 responsive documents as OCTA has agreed to
25 produce.

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1 MS. SPILLER: I'll follow up with the
2 witness in that regard.

3 MR. GILLESPIE: Okay.

4 BY MS. SPILLER:

5 Q. But, sir, to be clear, before today
6 you've not seen these doc- -- this request for
7 documents, correct?

8 A. I've seen the -- I recall seeing the
9 Notice of Deposition Duces Tecum, but I do not
10 recall reading the attachment --

11 Q. So as --

12 A. -- Exhibit A.

13 Q. So as you sit here today, you do not know
14 whether you have any documents in your possession
15 at OCTA that are responsive to this request,
16 correct?

17 A. I don't know what you're requesting as I
18 haven't read it.

19 Q. Okay. So, Mr. McGee, it would also be
20 fair to say you did not undertake any efforts to
21 locate any documents requested in Exhibit A,
22 correct?

23 A. No.

24 MR. GILLESPIE: Let me object to that. I
25 don't know how he can answer that without

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1 reviewing it. I think I would suggest that
2 Mr. McGee go ahead and review the document
3 production request, because whether you have
4 reviewed for certain documents, you need to know
5 what the requests are.

6 MS. SPILLER: But the witness has not
7 seen that request for documents until this
8 morning.

9 MR. GILLESPIE: That doesn't mean that he
10 hasn't reviewed for certain documents.

11 MS. SPILLER: But my question was whether
12 he undertook efforts to locate the documents that
13 were requested in this Notice of Deposition prior
14 to today.

15 MR. GILLESPIE: I'm --

16 MS. SPILLER: And if he had not seen the
17 notice prior to today, that would be a difficult
18 undertaking.

19 MR. GILLESPIE: Not necessarily, because
20 there were other document production requests that
21 were similar to the document production requests
22 that are in this notice that he has produced.

23 MS. SPILLER: Well, the witness has
24 answered the question, so I am inclined just to
25 move on at this point.

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1 MR. GILLESPIE: Okay.

2 BY MS. SPILLER:

3 Q. Mr. McGee, by whom are you employed?

4 A. The Ohio Cable Telecommunications
5 Association.

6 Q. In what capacity, please?

7 A. Executive Director.

8 Q. And how long have you held that position?

9 A. Since July of '06.

10 Q. And what are your duties as the Executive
11 Director of the Ohio Cable Telecommunications
12 Association?

13 A. To provide direction of the association,
14 administrative. We do functions that any other
15 trade association would do, such as have, you
16 know, seminars, meetings regarding topics relevant
17 to the industry. Plus, we also do government
18 affairs work for the industry before both the
19 legislature and the regulatory bodies in Ohio.

20 Q. And who are the members of the OCTA?
21 What is its membership comprised of?

22 A. We have two classifications of members --
23 membership. One is system members, and the other
24 is associate members.

25 Q. And what is the distinction between the

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1 two, please?

2 A. System members are your cable operators.
3 And associate members are member -- it can be
4 anyone, frankly, but they tend -- typically tend
5 to be vendors to the industry, programmers.

6 Q. Prior to becoming the Executive Director
7 of the Ohio Cable Telecommunications Association,
8 did you hold any other positions with that group?

9 A. No.

10 Q. Did you first start your employment with
11 OCTA in July of 2006?

12 A. Correct.

13 Q. And what -- How were you employed before
14 that, sir?

15 A. I was in the private practice of law.

16 Q. Here in Columbus?

17 A. Yes.

18 Q. And what law firm, please?

19 A. Lee Smith.

20 Q. And what was your area of practice?

21 A. Workers' compensation and Constitutional
22 litigation.

23 Q. For purposes of your deposition, can we
24 simply have the understanding, sir, that when I
25 refer to "OCTA", that that is the Ohio Cable

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1 Telecommunications Association?

2 A. Certainly.

3 Q. Thank you.

4 You are aware of an existing pole
5 attachment tariff that Duke Energy Ohio has on
6 file with the PUCO, correct?

7 A. I am aware that there is one on file.

8 Q. And OCTA is not subject to that pole
9 attachment tariff, is it?

10 A. Not to my knowledge.

11 Q. In other words, OCTA does not make
12 attachments to Duke Energy poles, correct?

13 A. That is correct.

14 Q. And, to your knowledge, sir, is there
15 only one member of OCTA that does make attachments
16 to Duke Energy Ohio's poles?

17 A. To my knowledge.

18 Q. And that entity is Time Warner Cable?

19 A. Correct.

20 Q. Do you know Ed Kozelek?

21 A. I do.

22 Q. And how do you know Ed, sir?

23 A. I have known Ed for several years through
24 his work as a lobbyist.

25 Q. And is he a lobbyist for OCTA?

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1 A. Not currently.

2 Q. Has he been?

3 A. Yes.

4 Q. Have you talked with Mr. Kozelek about
5 the changes that Duke Energy Ohio is proposing to
6 its existing pole attachment tariff?

7 A. Not directly in any specifics.

8 Q. You've talked to him indirectly?

9 A. Not -- Not directly about specifics on
10 the case.

11 Q. So you've not talked with Mr. Kozelek at
12 all about the proposed pole attachment tariff for
13 Duke Energy's pending rate case?

14 A. We have talked about it in generalities.

15 Q. Can you tell me about those
16 conversations, please?

17 A. Basically, that they've -- that this is a
18 matter that is, you know, pending before the PUCO,
19 and that the OCTA was going to intervene.

20 MR. GILLESPIE: Let me caution the
21 witness that in responding to questions, that you
22 consider whether the discussions were held with
23 counsel. The fact that you and Mr. Kozelek may
24 have been together or part of a conference call
25 with counsel, those calls may still be subject to

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1 privilege, so I want you to be aware of that.

2 BY MS. SPILLER:

3 Q. So, Mr. McGee, as I understand, you and
4 Mr. Kozelek only indicated that there was a rate
5 case -- that Duke Energy Ohio had filed a rate
6 case, and that the OCTA would be intervening in
7 that action?

8 A. I don't recall the conversations
9 specifically.

10 Q. Was there more than one conversation,
11 sir?

12 A. I -- I can't say for sure, but...

13 Q. Do you have any notes from those
14 conversations with Mr. Kozelek?

15 A. No.

16 Q. When did the conversations occur?

17 A. I don't recall.

18 Q. Before or after OCTA intervened in the
19 rate case?

20 MR. GILLESPIE: Well, I want to object
21 here. To the extent that Mr. McGee has had
22 discussions with counsel where Mr. Kozelek was
23 also present, those discussions would be subject
24 to privilege.

25 MS. SPILLER: I understand.

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1 BY MS. SPILLER:

2 Q. So, sir, with conversations that are not
3 subject --

4 MS. SPILLER: Well, even if they were
5 subject to privilege, I'm certainly entitled to
6 inquire when they occurred. The question is
7 simply whether or not these conversations --

8 MR. GILLESPIE: No, I --

9 MS. SPILLER: -- occurred.

10 MR. GILLESPIE: I don't think you are.

11 BY MS. SPILLER:

12 Q. I'm not asking for the content of the
13 conversation; simply a matter of when it occurred.

14 MR. GILLESPIE: You can go ahead and --
15 go ahead and answer.

16 THE WITNESS: I don't recall specific
17 dates.

18 BY MS. SPILLER:

19 Q. Have you talked with anyone from Time
20 Warner Cable about Duke Energy Ohio's pending rate
21 case?

22 MR. GILLESPIE: Again, subject to the
23 same objection that to the extent that you've had
24 discussions that involve Time Warner Cable and
25 your counsel, those discussions would be subject

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1 to privilege.

2 THE WITNESS: The conversations with
3 Mr. Kozelek.

4 BY MS. SPILLER:

5 Q. To your knowledge, Mr. McGee, has anyone
6 else from OCTA talked with Mr. Kozelek about the
7 changes that Duke Energy Ohio is proposing to its
8 pole attachment tariff?

9 A. Not to my knowledge.

10 Q. Mr. McGee, what is the purpose of OCTA
11 intervening in this rate case?

12 A. To put forward the position of the OCTA.

13 Q. Which is what, please?

14 A. Well, the -- the rate case is asking for
15 a -- numerous changes to your -- your tariff,
16 including an increase in the pole attachment rate,
17 and those were all concerns of the OCTA's.

18 Q. Were there other concerns that OCTA has
19 with Duke Energy Ohio's proposed pole attachment
20 tariff?

21 A. To the extent that there would be any
22 concern that we would have that we haven't brought
23 forward already, we would certainly bring forward
24 in our objections to the Staff Report.

25

- - -

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1 Thereupon, DE Ohio Exhibit No. 2 was
2 marked for purposes of identification.

3 - - -

4 BY MS. SPILLER:

5 Q. Sir, I'll hand you what has been marked
6 as DE Ohio Exhibit No. 2. Can you identify this,
7 please, for the record?

8 A. It's the Motion to Intervene of the Ohio
9 Cable Telecommunications Association in this
10 matter.

11 Q. Did you review this document, sir, prior
12 to its filing on October 17, 2008?

13 A. Yes.

14 Q. And on Page 3 of the Memorandum in
15 Support of the Motion to Intervene, OCTA, in the
16 paragraph midway down, that says, "In the
17 Application...", is this the paragraph in which
18 OCTA expresses its concerns with the proposed pole
19 attachment tariff?

20 MR. GILLESPIE: Well, object to the
21 question. I mean, the document speaks for itself.

22 THE WITNESS: This was a -- a Motion to
23 Intervene. And to the extent that, you know, it
24 does indicate there in the first sentence that --
25 you know, points out that Duke is requesting a --

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1 an increase in the rate from \$4.25 per pole per
2 year to \$14.42 per pole per year; so to that
3 extent, it does point that out.

4 BY MS. SPILLER:

5 Q. But if you continue on in that paragraph,
6 it also -- does this paragraph also delineate the
7 other concerns that OCTA has with Duke Energy
8 Ohio's proposed pole attachment tariff?

9 MR. GILLESPIE: Well, object to the
10 question because I do not think that is an
11 accurate characterization. The document speaks
12 for itself. But it uses the word, for example
13 "Some of the proposed tariff changes include...",
14 and the document indicates what those are.

15 MS. SPILLER: But I'm all --

16 BY MS. SPILLER:

17 Q. Mr. McGee, does this doc- -- Strike that.

18 Other than the changes that are
19 delineated with express reference on Page 3 of
20 this Memorandum in Support of the Motion to
21 Intervene, does OCTA have any other concerns with
22 Duke Energy Ohio's proposed pole attachment
23 tariff?

24 A. Without taking the time to -- to reread
25 this document, the document -- I mean, the purpose

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1 of the document was to intervene in the case, not
2 to set forth all of the reasons that the OCTA may
3 have had to object to this. I mean, we are
4 currently in litigation and the matter is being
5 developed. And as matters are developed, we will
6 certainly put forward all of our objections in
7 the -- the response -- or, the pleading that will
8 be filed with the PUCO in response to the Staff
9 Report.

10 Q. And I understand that. But as we sit
11 here today, does this document delineate fairly at
12 least some of the concerns that OCTA has with Duke
13 Energy Ohio's proposed pole attachment tariff?

14 A. It would certainly delineate some, but
15 most likely not all.

16 - - -

17 Thereupon, DE Ohio Exhibit No. 3 was
18 marked for purposes of identification.

19 - - -

20 BY MS. SPILLER:

21 Q. I'll hand you, Mr. McGee, what has been
22 marked as DE Ohio Exhibit No. 3. Have you seen
23 this document before, sir?

24 A. I don't recall seeing it before.

25 Q. Go ahead and take a moment to look at it.

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1 For the record, I would identify this as
2 the existing Pole Attachment/Occupancy Tariff on
3 file for Duke Energy Ohio with the Public
4 Utilities Commission of Ohio.

5 A. All right.

6 Q. Sir, can you tell me whether, pursuant to
7 this tariff, Duke Energy Ohio allows licensees to
8 overlash the facilities of others onto that
9 licensee's attachments?

10 A. I don't know. I have not read the
11 document.

12 Q. Why don't you go ahead and take a moment
13 to do that.

14 MR. GILLESPIE: I will just note that to
15 the extent that you are asking this -- going to
16 ask this witness to interpret the document, I am
17 going to object.

18 MS. SPILLER: That's fine.

19 MR. GILLESPIE: Okay.

20 (Pause.)

21 MR. GILLESPIE: Are you ready?

22 THE WITNESS: Yes.

23 BY MS. SPILLER:

24 Q. Mr. McGee, before we turn our attention
25 to the existing tariff, have you ever testified

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1 before the PUCO?

2 A. No.

3 Q. Have you ever submitted written --
4 written testimony to the PUCO in a matter pending
5 before it?

6 A. No.

7 Q. Do you know what overlashing is?

8 A. Can you define it?

9 Q. Do you have an understanding of that term
10 used in the -- in your industry?

11 A. I believe so.

12 Q. And what is your understanding, sir?

13 A. It's when -- I believe it is when a cable
14 is wrapped around a guy wire, stretched between
15 the poles, but I may not have a good understanding
16 of that.

17 Q. Do you intend to submit testimony on
18 behalf of OCTA in this matter?

19 A. That would be a matter I'll have to
20 discuss with counsel.

21 Q. Based upon your review of Duke Energy
22 Ohio's existing pole attachment tariff, do you
23 believe that it permits overlashing?

24 MR. GILLESPIE: Objection. I don't think
25 that the interpretation of this document is one

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1 that should be put to this witness. I mean,
2 it's a legal question.

3 MS. SPILLER: He's certainly entitled to
4 offer his lay opinion and understanding of this
5 document.

6 MR. GILLESPIE: Well, he's just read it
7 for the first time this morning. To the extent he
8 can answer it, I will allow it, but I think we all
9 have to recognize that.

10 MS. SPILLER: I understand.

11 BY MS. SPILLER:

12 Q. Go ahead.

13 A. I believe -- On the basis of just the
14 short reading there, I really feel a little
15 uncomfortable answering the question.

16 Q. Fair to say, sir, that you're not in a
17 position to answer it at this time?

18 A. Not at this time, based on just reading
19 this document.

20 Q. Sir, I'll hand you what actually has
21 previously been marked as OCTA Exhibit 7, and for
22 purposes of the record identify this as the
23 original proposed pole attachment tariff filed by
24 Duke Energy Ohio in the context of this pending
25 rate case.

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1 Have you seen this document before, sir?

2 A. I don't recall if I have or not.

3 Q. So although OCTA has intervened in this
4 rate case to contest or challenge the proposals
5 within this tariff, you don't know whether you've
6 reviewed this, Exhibit 7?

7 A. I have looked at the proposed rate, but I
8 don't recall, you know, exactly. I mean, the
9 document you handed to me is at least -- you know,
10 is Pages 32 through 40 of a larger document, so I
11 would be a little remiss to say that I've seen
12 this.

13 Q. Well, why don't you take --

14 A. I don't know for sure.

15 Q. -- take a moment to review it and see if
16 that perhaps refreshes your recollection as to
17 whether you've reviewed it before.

18 A. Okay.

19 Q. Sir, having reviewed what was previously
20 marked as OCTA Exhibit No. 7, Duke Energy Ohio's
21 proposed pole attachment tariff, have you seen
22 this document before?

23 A. I still can't recall even after reviewing
24 it. There are parts of it that are certainly
25 familiar.

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1 Q. Mr. McGee, can you tell me the basis for
2 OCTA's assertion that this proposed pole
3 attachment tariff seeks to preclude the ability to
4 overlash?

5 A. I think that if it's based on -- if
6 you're saying it's based on this document?

7 Q. Yes, sir.

8 A. I would -- you know, as we were
9 developing this case, we will need to take a look
10 at all the information that's developed. And I
11 know we are deposing certain employees of Duke
12 Energy, as well. And we will fully set forth our
13 arguments when we respond to the Staff Report.

14 Q. I understand that.

15 But in moving to intervene, OCTA also
16 identified as a concern that the proposed tariff
17 precludes the ability to overlash, correct?

18 A. We -- We set forth quite a few reasons in
19 there.

20 Q. I understand.

21 A. And you -- you have, in your proposed
22 changes, have set forth many, many changes, as
23 well. And it would be difficult to answer
24 specifically to each one of them.

25 Q. Well, sir, who from OCTA can answer

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1 specifically to the overlashing issue?

2 A. Well, we put the -- together our
3 responses in consultation with our counsel.

4 Q. I am sorry. Can you say that again?

5 A. Yeah, sure. We put together our
6 responses and our motion to intervene in
7 conjunction with -- based on legal counsel.

8 Q. Okay. Well, I'm -- at this moment, sir,
9 I'm interested in your knowledge and what you may
10 know concerning OCTA's contention that the
11 proposed tariff includes provisions to exclude
12 overlashing of facilities. Do you know the basis
13 for OCTA asserting that in its motion to
14 intervene?

15 A. No.

16 Q. Do you know from -- who from OCTA may
17 know the basis for that assertion?

18 A. It would be based on our -- you know, it
19 would be based upon our recommendations from our
20 counsel.

21 Q. If you could, Mr. McGee, refer back to
22 DE Ohio Exhibit 3, the existing pole attachment
23 tariff.

24 Can you identify for me, please, sir, in
25 this document where it specifically provides that

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1 licensees need not obtain approval before
2 attaching to drop poles?

3 MR. GILLESPIE: I want to object. Again,
4 you're asking for a legal interpretation of the
5 tariff. Those are -- Those are legal responses
6 developed by counsel. The witness is testifying
7 as a lay witness, as the Executive Director of the
8 Association.

9 MS. SPILLER: That's fine.

10 BY MS. SPILLER:

11 Q. Sir, in your position as the Executive
12 Director of OCTA, can you tell me where in the
13 existing pole attachment tariff it provides that
14 licensees need not obtain approval before
15 attaching to drop poles?

16 A. Just having been handed this document
17 maybe five minutes ago, I don't have a working
18 knowledge of it and I would not be able to answer
19 that question.

20 Q. Okay. Would you agree with me, sir,
21 under the Applicability section, that the tariff
22 pertains to attachments made to any pole?

23 MR. GILLESPIE: Objection. Same
24 objection.

25 THE WITNESS: The Applicability section,

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1 which is the first paragraph of the document?

2 BY MS. SPILLER:

3 Q. Yes, sir.

4 A. That says, "Applicable to
5 attachments/occupancies by any person or entity
6 other than a public utility to any pole/conduit of
7 the Company with- -- within its entire territory
8 or occupancy by any person or entity of any
9 conduit of the Company by licensee, i.e., a person
10 who enters into an Agreement with the Company."

11 Q. So, sir, it does not distinguish between
12 a distribution pole and a drop pole --

13 MR. GILLESPIE: Objection.

14 BY MS. SPILLER:

15 Q. -- in that provision, does it?

16 MR. GILLESPIE: Same objection.

17 THE WITNESS: I just read into the record
18 what it says, so it speaks for itself.

19 BY MS. SPILLER:

20 Q. Sir, can you tell me OCTA's position for
21 its assertion that Duke Energy Ohio's proposed
22 pole attachment tariff requires prior approval or
23 is -- Strike that.

24 Would you agree with me that the existing
25 pole attachment tariff requires a licensee to

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1 secure permission from Duke Energy Ohio before
2 making any attachment to any pole?

3 MR. GILLESPIE: Same objection.

4 THE WITNESS: Well, again, in my brief
5 reading of this, having not had an opportunity to
6 have this in front of me prior to this deposition,
7 it's a little difficult to say.

8 BY MS. SPILLER:

9 Q. So, Mr. McGee, is it fair to say that, as
10 you sit here today, you do not know whether
11 licensees must obtain prior approval from Duke
12 Energy Ohio under its existing tariff before
13 making any attachment to any pole?

14 A. If you could refer maybe to a specific
15 paragraph in this document, I could take a look at
16 that.

17 Q. Fair enough.

18 Term and Condition Paragraph No. 1.

19 A. Again, that --

20 MR. GILLESPIE: Same objection. You're
21 asking for a legal interpretation of the document.

22 MS. SPILLER: Mr. Gillespie, the witness
23 just asked to be referred to a particular portion
24 of the paragraph -- or, of the tariff. And I'm
25 certainly entitled to understand the extent and

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1 scope of his knowledge.

2 MR. GILLESPIE: Well, you're asking him
3 for legal interpretation and I object to that.

4 MS. SPILLER: Fine. Your objection is
5 noted.

6 BY MS. SPILLER:

7 Q. Go ahead.

8 A. That first paragraph, again, it just --
9 it states that, "Before any attachments/
10 occupancies is made by a licensee, it shall make
11 written application for permission to install
12 attachments/occupancies on any pole/conduit of the
13 Company...", and then this goes on from there.
14 And I would think it would speak for itself.

15 If there are other -- any other
16 provisions in this document that would speak to
17 that, I -- I really don't know. I couldn't tell
18 you that.

19 Q. So you are not able, as you sit here
20 today, to offer an opinion as to whether Duke
21 Energy Ohio's existing pole attachment tariff
22 permits a licensee, such as Time Warner Cable, to
23 make attachments to drop poles without Duke Energy
24 Ohio's prior approval?

25 MR. GILLESPIE: Same objection.

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1 THE WITNESS: And I just reiterate that,
2 you know, that section would seem to speak for
3 itself.

4 BY MS. SPILLER:

5 Q. So the answer is no?

6 A. What was the question?

7 Q. You're not able, as you sit here today,
8 to offer an opinion as to whether the exist --
9 Duke Energy Ohio's existing pole attachment tariff
10 allows licensees, such as Time Warner Cable, to
11 make attachments to drop poles without Duke Energy
12 Ohio's prior approval?

13 MR. GILLESPIE: Let me also note that
14 you're asking this lay witness for an opinion,
15 which I think is also inappropriate.

16 MS. SPILLER: That's fine.

17 BY MS. SPILLER:

18 Q. Go ahead.

19 A. Again, you know, based on having just
20 seen this document today and only having a few
21 minutes to review it, it really would be difficult
22 to -- to answer.

23 Q. And, again, sir, you're not able to do
24 that?

25 A. Not with the knowledge I have today.

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1 Q. Okay. Mr. McGee, again referring to
2 Paragraph 1 under "Terms and Conditions" of
3 DE Ohio Exhibit 3 concerning the request for
4 written application before making attachments, the
5 OCTA, to your knowledge, has never filed a
6 complaint against Duke Energy Ohio, alleging that
7 this existing requirement is unjust, correct?

8 A. Not to my knowledge.

9 Q. And OCTA, to your knowledge, sir, has
10 never filed a complaint against Duke Energy Ohio,
11 alleging that this existing requirement is
12 unreasonable --

13 A. Not to --

14 Q. -- correct?

15 A. -- my knowledge.

16 MR. GILLESPIE: I'm sorry. Objection to
17 the phraseology regarding "existing requirement";
18 but go ahead and answer, if you can.

19 THE WITNESS: Not to my knowledge.

20 BY MS. SPILLER:

21 Q. Mr. McGee, to your knowledge, OCTA has
22 never filed a complaint against Duke Energy Ohio
23 alleging that prior written approval from Duke
24 Energy Ohio, before making attachments to its
25 poles, is discriminatory, correct?

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1 A. Not to my knowledge.

2 Q. And, Mr. McGee, to your knowledge, this
3 requirement for written prior approval from Duke
4 Energy Ohio has not precluded your member, Time
5 Warner Cable, from making thousands of attachments
6 to Duke Energy Ohio's poles, correct?

7 A. Could you rephrase that, please?

8 Q. Sure. To your knowledge, sir, this
9 requirement for prior written approval from Duke
10 Energy Ohio has not prevented your member, Time
11 Warner Cable, from make -- OCTA's member, Time
12 Warner Cable, from making thousands of attachments
13 to Duke Energy Ohio poles, correct?

14 A. I really don't know how to answer that,
15 whether or not --

16 THE WITNESS: Could you read the question
17 back? I'm sorry.

18 MS. SPILLER: That's okay.

19 (Question read back as requested.)

20 THE WITNESS: I guess I do not have
21 information sufficient to form an answer.

22 BY MS. SPILLER:

23 Q. And, Mr. McGee, given that OCTA has never
24 challenged this requirement for prior written
25 approval from Duke Energy Ohio before licensees

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1 make any attachment to any pole, can you -- do you
2 know, sir, what specifically OCTA finds
3 objectionable with this same language in the
4 proposed pole attachment tariff?

5 A. Could you repeat that?

6 Q. Sure.

7 A. You're comparing the current document
8 with what is being proposed?

9 Q. Yes, sir.

10 A. Could you rephrase the question, then?

11 Q. Certainly. I will rephrase that.

12 If this same requirement to
13 pre-written -- prior written approval from Duke
14 Energy Ohio is set forth in the proposed pole
15 attachment tariff, does OCTA have an objection
16 with that requirement now?

17 MR. GILLESPIE: Objection.

18 THE WITNESS: This is -- Again, this
19 matter, as you know, is ongoing discovery. And as
20 facts are gathered, we will put together our
21 formal -- or, our objections to all the provisions
22 of the proposed tariff and file those with the --
23 the Commission.

24 BY MS. SPILLER:

25 Q. I understand. But today, as the

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1 Executive Director of OCTA, which is an entity
2 advocating the interests of its members, one of
3 whom attaches to Duke Energy poles, do -- does
4 OCTA have an objection to this requirement for
5 prior written approval as set forth in Duke Energy
6 Ohio's proposed tariff?

7 MR. GILLESPIE: Objection. Go ahead and
8 answer.

9 THE WITNESS: Again, we certainly are --
10 are filing objections to the -- your whole
11 proposed application, and we are formulating our
12 responses with counsel.

13 BY MS. SPILLER:

14 Q. And understanding that those opinions are
15 being formulated with the assistance of counsel,
16 sir, does OCTA currently have an objection, that
17 you're aware of, to this requirement of prior
18 written approval from Duke Energy Ohio before
19 attachments are made?

20 A. Well, we're -- our objection is -- is
21 based on your proposed document.

22 Q. I understand.

23 A. So I'm -- I'm not sure how our current --
24 you know, our current concerns with the proposed
25 document that is pending at the PUCO would be

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1 related to this document --

2 Q. I'm sorry --

3 A. -- to the current document.

4 Q. Well, sir, I'm trying to get an
5 understanding. OCTA has never before challenged
6 the requirement for prior written approval before
7 making attachments as being unjust, unreasonable,
8 or undiscrim- -- or discriminatory.

9 A. Not to my knowledge, they have not.

10 Q. So if that same requirement is set forth
11 in Duke Energy Ohio's proposed pole attachment
12 tariff, does OCTA now believe that that
13 requirement is unjust?

14 MR. GILLESPIE: Well, objection. The
15 witness has already testified that he's working
16 with counsel to formulate OCTA's position, which
17 will be provided in the objections.

18 MS. SPILLER: I understand. But in
19 moving to intervene, you've also delineated this
20 notion that somehow the new tariff removes -- or,
21 imposes a new requirement of prior approval. And
22 I'm trying to understand the basis for that -- for
23 OCTA asserting that interest in this case.

24 MR. GILLESPIE: Well, the wording --
25 Well, I mean, the wording of the new tariff speaks

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1 for itself.

2 MS. SPILLER: I understand that.

3 MR. GILLESPIE: The wording of the new
4 tariff is different with respect to that issue
5 than the wording of the old tariff, so...

6 MS. SPILLER: Well, I would certainly beg
7 to differ on that.

8 BY MS. SPILLER:

9 Q. Mr. McGee -- And let me just rephrase.

10 If you would look at OCTA's Motion To
11 Intervene, Exhibit -- DE Ohio Exhibit 2, again, on
12 Page 3, the paragraph at the second portion --
13 second half of that page identifies a proposed
14 tariff change as "...the requirement of a prior
15 approval before a cable television operator can
16 attach to a drop pole...." Do you see that, sir?

17 A. Yes, I do.

18 Q. And, to your knowledge, what is the basis
19 for OCTA's position that this is a new requirement
20 of obtaining prior approval before attaching to a
21 pole?

22 A. Well, again, this -- this document was
23 prepared by -- and filed on our behalf by -- by
24 counsel. And in consultation with counsel, we
25 will further set forth our -- the basis for our

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1 arguments in the response to the Staff Report.

2 Q. Absent -- Absent the benefit of your
3 counsel's legal advice, I mean, does OCTA
4 formulate any opinions or is OCTA capable of
5 formulating opinions on public utility companies'
6 tariffs?

7 A. Would you like to rephrase that?

8 Q. Sure. Well, let me see if I understand
9 your testimony here today.

10 Absent recommendations and advice of
11 counsel, you have no opinions, as the Executive
12 Director from OCTA, relative to Duke Energy Ohio's
13 proposed pole attachment tariff?

14 A. I --

15 MR. GILLESPIE: I'll object both to the
16 suggestion that counsel doesn't have a role to
17 play in terms of interpretation of documents, and
18 also to the use of the word "opinion" in your
19 question.

20 MS. SPILLER: That's fine.

21 THE WITNESS: Could you read the question
22 back, please?

23 (Question read back as requested.)

24 THE WITNESS: My opinions in my role as
25 Executive Director would be formulated in

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1 consultation with counsel.

2 BY MS. SPILLER:

3 Q. And do you formulate and consult with
4 counsel on every interpretation of a public
5 utilities tariff?

6 A. Yes, I would.

7 Q. So who, from OCTA, will testify regarding
8 the provisions of Duke Energy Ohio's proposed pole
9 attachment tariff concerning the need for prior
10 approval from the company?

11 A. That's a matter you'll have to discuss
12 with -- with counsel.

13 Q. Certainly, your counsel's not going to be
14 the witness, is he?

15 A. I don't think so.

16 Q. Sir, I'd ask you again, turning to
17 DE Ohio Exhibit 3, the existing pole attachment
18 tariff, the Paragraph No. 1 under "Terms and
19 Conditions", the second-to-last sentence there
20 says, "The company shall have the sole right to
21 determine the availability of such pole/conduit
22 for joint use and shall be under no obligation to
23 grant permission for its use by licensee."

24 Did I read that correctly?

25 A. Yes.

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1 Q. To your knowledge, sir, has the OCTA ever
2 filed a complaint against Duke Energy Ohio,
3 alleging that this requirement is unjust?

4 A. Not to my knowledge.

5 Q. To your knowledge, Mr. McGee, has OCTA
6 ever filed a complaint against Duke Energy Ohio,
7 alleging that this existing requirement is
8 unreasonable?

9 A. Not to my knowledge.

10 Q. Mr. McGee, has OCTA ever filed a
11 complaint against Duke Energy Ohio, alleging that
12 this -- that this existing requirement is
13 discriminatory?

14 A. Not to my knowledge.

15 Q. And, Mr. McGee, this provision has not
16 prevented OCTA's one member, Time Warner Cable,
17 from making thousands of attachments to Duke
18 Energy Ohio poles, correct?

19 A. I'm -- I will -- First of all, I don't
20 know how many poles you would be -- you would be
21 talking about, but I don't have any information
22 sufficient to form an answer to that.

23 Q. And, Mr. McGee, given that OCTA has never
24 complained about this requirement before, can you
25 tell me specifically what it finds objectionable

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1 about -- objectionable about this language now?

2 A. You're referring to the language in
3 Paragraph 1 of DE Ohio 3?

4 Q. Yes, sir.

5 A. Well, again, we will review this
6 following discovery, in consultation with counsel,
7 and file our objections accordingly with the PUCO.

8 Q. But as you sit here, you have no
9 knowledge as to the basis on which OCTA may find
10 this language objectionable now?

11 A. At this point, again, we are continuing
12 with the discovery and analyzing the Staff's
13 Report, and we will -- once that information has
14 been consolidated and we have had an opportunity
15 to formulate the opinion in toto, we will file
16 those -- that objection with the PUCO.

17 Q. So the short answer would be "no"?

18 MR. GILLESPIE: Objection. He's answered
19 the question.

20 MS. SPILLER: I'm allowed to -- Just as
21 you pressed witnesses last week, I'm allowed to
22 obtain a "yes" or "no" answer from the witness.

23 MR. GILLESPIE: Well, he's -- The
24 question has been asked and answered, and he is
25 certainly allowed to explain any answer and give

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1 the best answer that he can give.

2 MS. SPILLER: I understand, but the --

3 MR. GILLESPIE: I believe he's already
4 given that.

5 MS. SPILLER: But the question was a
6 "yes" or "no".

7 BY MS. SPILLER:

8 Q. And so my -- the question is simply, as
9 you sit here today, whether you have a basis, as
10 the Executive Director from OCTA, to articulate
11 its objection with this requirement.

12 MR. GILLESPIE: Objection. Asked and
13 answered.

14 THE WITNESS: Again, I would just
15 reiterate to you what I had answered before, is
16 that we are currently reviewing all the discovery
17 that's coming in --

18 BY MS. SPILLER:

19 Q. Sir, I --

20 A. -- reviewing the Staff Report. And we
21 will put together, in consultation with counsel,
22 our objections and file those with the PUCO.

23 Q. I understand that. But the question,
24 sir -- and you most certainly may explain your
25 answer, but I would appreciate a "yes" or "no" and

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1 then the explanation.

2 A. Well, if a question is incapable of being
3 answered "yes" or "no", I should have an
4 opportunity to elucidate you with -- or, explain
5 to you the basis for my -- my inability to say
6 "yes" or "no".

7 Q. So as you sit here today, you can't say
8 whether you know if OCTA finds this existing --
9 or, this language objectionable?

10 MR. GILLESPIE: Well, that's -- I object.
11 It's been asked and answered and you're harassing
12 the witness.

13 MS. SPILLER: I'm not harassing the
14 witness. I'm entitled, just as you did,
15 Mr. Gillespie, to press for the "yes" or "no" to
16 be followed by the explanation.

17 MR. GILLESPIE: Well, he's already
18 answered the -- that particular question as best
19 he can. He said it's not susceptible to a "yes"
20 or "no" answer the way the question is phrased.

21 BY MS. SPILLER:

22 Q. Well, Mr. McGee, you are not able to tell
23 me -- you are not able to articulate today
24 specifically what OCTA finds objectionable about
25 this language in Paragraph 1 of Exhibit 3,

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1 correct?

2 A. As we sit here today, no. But we will
3 study the -- the information that is garnered
4 through our discovery process; and after we've had
5 a chance to analyze the Staff Report, we will file
6 objections with the Commission timely.

7 Q. Okay. Sir, if you could, on Duke Energy
8 Ohio Exhibit 3, if you could turn to Page 2 of 6,
9 Paragraph No. 3 under "Terms and Conditions".

10 And this paragraph reads, "All
11 attachments/occupancies are to be placed on poles/
12 conduits of the Company in a manner satisfactory
13 to the Company and so as to not interfere with the
14 present or any future use which the Company may
15 desire to make of such poles/conduits, wires or
16 other facilities," correct?

17 A. You read that correctly.

18 Q. To your knowledge, sir, has OCTA ever
19 filed a complaint against Duke Energy Ohio,
20 alleging that this existing requirement is unjust?

21 A. Not to my knowledge.

22 Q. Has OCTA, to your knowledge, sir, ever
23 filed a complaint against Duke Energy Ohio,
24 alleging that this existing requirement is
25 unreasonable?

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1 A. Not to my knowledge.

2 Q. Has OCTA ever filed a complaint against
3 Duke Energy Ohio, alleging that this requirement
4 is discriminatory?

5 A. Not to my knowledge.

6 Q. Mr. McGee, although OCTA has not, to your
7 knowledge, complained about this language before,
8 are you able today to specifically articulate what
9 it finds objectionable about this language now?

10 MR. GILLESPIE: Objection. That is a
11 mischaracterization of his testimony.

12 If you want to rephrase the question to
13 say whether or not OCTA has ever filed a complaint
14 with the PUCO, I think it's a fair
15 characterization of his testimony, not with
16 respect to whether or not it's ever complained.

17 MS. SPILLER: Would you like to take the
18 deposition?

19 MR. GILLESPIE: No.

20 MS. SPILLER: Okay. Would you like to be
21 sworn in?

22 MR. GILLESPIE: No.

23 MS. SPILLER: All right.

24 BY MS. SPILLER:

25 Q. Mr. McGee, given that OCTA has not

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1 complained about this language before to the PUCO,
2 are you able to articulate today what it finds
3 objectionable with this requirement?

4 A. This requirement in this document?

5 Q. Yes, sir.

6 A. Well, this -- this -- correct me if I'm
7 wrong, but this document is not the subject of
8 your application in the matter pending before the
9 PUCO, is it?

10 Q. It's the existing pole attachment tariff.

11 A. And the existing pole attachment tariff
12 is not being objected to over at the PUCO; it's
13 the proposed, isn't it?

14 Q. It's the proposed pole attachment tariff
15 that will be decided in this case.

16 But my question is: Do you find that
17 language objectionable?

18 MR. GILLESPIE: Objection.

19 THE WITNESS: I'm -- I guess I'm -- don't
20 quite understand how this language would be
21 relevant to the -- to the tariff that's been
22 proposed --

23 BY MS. SPILLER:

24 Q. Sure. And --

25 A. -- and the subject matter of this

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1 deposition.

2 Q. And maybe I can help with that. If you
3 look at what's previously been marked as OCTA
4 Exhibit No. 7, it's actually the second page of
5 the exhibit, Page 33, under "Terms And
6 Conditions", Paragraph No. 3, "Technical
7 Specifications".

8 A. Uh-huh.

9 Q. The first sentence of that paragraph
10 says, "All wireline attachments or occupancies are
11 to be placed on poles or in conduit of the Company
12 in a manner satisfactory to the Company and so as
13 to not interfere with the present or any future
14 use that the Company may desire to make of such
15 poles, wires, conduits, or other facilities."

16 Did I read that correctly?

17 A. Yes.

18 Q. Sir, as you sit here today, are you able
19 to articulate, on behalf of OCTA, whether it finds
20 that requirement objectionable?

21 MR. GILLESPIE: I object, but you can
22 answer.

23 THE WITNESS: Again, this -- as this
24 matter is ongoing and discovery is -- is
25 proceeding, once we have collected all the

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1 information and have the time to review the Staff
2 Report and their recommendations, in consultation
3 with counsel, we'll put together our objections
4 and timely file those with the PUCO.

5 BY MS. SPILLER:

6 Q. So today you cannot articulate OCTA's
7 specific objection, if any, to this requirement,
8 correct?

9 A. Not on the basis of -- of today, no.

10 Q. Okay. Thank you, sir.

11 And, again, sir, referring back to
12 Deposition Exhibit --

13 MR. GILLESPIE: Can we take a short
14 break?

15 MS. SPILLER: Sure.

16 MR. GILLESPIE: Thank you.

17 (Recess taken.)

18 MS. SPILLER: Mr. McGee, if you could
19 refer back, please, to DE Ohio Exhibit 3, the
20 existing pole attachment tariff. We were speaking
21 of Paragraph 3 under "Terms and Conditions" on
22 Page 2 of the document.

23 A. Uh-huh.

24 Q. The last sentence in Paragraph 3 states
25 that, "The Company shall be the sole judge as to

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1 the requirements for the present or future use of
2 its poles/conduits and the equipment -- and
3 equipment and of any interference therewith,"
4 correct?

5 A. Yes, that is a proper reading of that
6 sentence.

7 Q. And to your knowledge, sir, OCTA has
8 never filed a complaint against Duke Energy Ohio,
9 alleging that this existing requirement is unjust,
10 correct?

11 A. Not to my knowledge.

12 Q. And OCTA has never, to your knowledge,
13 filed a complaint against Duke Energy Ohio,
14 alleging that this existing requirement is
15 unreasonable, correct?

16 A. Not to my knowledge.

17 Q. And OCTA has never filed a complaint
18 against Duke Energy Ohio, alleging that this
19 existing requirement is discriminatory, correct?

20 A. Not to my knowledge.

21 Q. And, sir, you do not know whether this
22 requirement has at all hindered Time Warner
23 Cable's ability to make attachments to Duke Energy
24 poles, correct?

25 A. I have no information sufficient to form

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1 an answer.

2 Q. And based upon your prior testimony,
3 Mr. McGee, you are not able today to articulate
4 OCTA's objection, if any, to this particular
5 language, correct?

6 A. The OCTA will formulate its objections
7 and -- after we have continued with discovery and
8 have had an opportunity to review the Staff's
9 Report, we will file objections with the PUCO, and
10 after consultation with counsel.

11 Q. Can you help me understand, Mr. McGee,
12 what specifically OCTA's interest is in this rate
13 case?

14 A. Well, certainly, that the rate case is --
15 is changing the rates of pole attachments, and
16 that is always a concern to the membership of the
17 OCTA, the system members.

18 Q. Any other concerns or interests in this
19 matter?

20 A. The whole -- The whole -- I mean, the
21 whole -- your proposal changes a lot of things
22 besides the rate and there are other terms and
23 conditions, as well. And all of that, of course,
24 is of concern.

25 Q. But you can't articulate those concerns

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1 at this point, correct?

2 A. That -- Well, we will articulate our
3 objections to your -- your proposed plan once
4 we've had an opportunity to review all the
5 evidence and after consultation with counsel.

6 Q. I understand.

7 But you intervened -- I'm trying to get a
8 basis for the interest for which OCTA sought
9 intervention in this matter. And I understand the
10 pole attachment rate, correct, was one of those
11 areas?

12 A. The rates, terms and conditions that were
13 outlined, all -- all of that -- all of those
14 changes were of concern.

15 Q. But absent consultation with your counsel
16 and further review, you cannot elaborate on OCTA's
17 concerns with any other terms and conditions of
18 the proposed tariff, absent the rate, correct?

19 THE WITNESS: Could you read that back
20 again?

21 (Question read back as requested.)

22 THE WITNESS: I'm not sure what you mean
23 by "absent the rate".

24 BY MS. SPILLER:

25 Q. Well, excluding the rate.

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1 A. So you're saying that -- Maybe rephrase
2 the question.

3 Q. Sure. I would be happy to do that.

4 I -- And we will talk about the pole
5 attachment rate and the dollar amount. But with
6 the exception of that pole attachment rate, are
7 you able today to articulate OCTA's concerns with
8 the terms and conditions of Duke Energy Ohio's
9 proposed pole attachment tariff?

10 MR. GILLESPIE: Other than his prior
11 answers?

12 MS. SPILLER: Well, his answers have
13 indicated that he simply needs to consult with
14 counsel, file objections, and review the matter
15 further.

16 THE WITNESS: Again, that -- I would need
17 to consult with counsel, review the matter
18 further, and after we have had a chance to develop
19 the record and had a chance to review the Staff
20 Report.

21 BY MS. SPILLER:

22 Q. Okay. So today, as the Executive
23 Director of OCTA, you cannot testify -- or, strike
24 that.

25 Today, as the Executive Director of OCTA,

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1 you have -- you have not formed any opinions with
2 respect to the terms and conditions proposed in
3 Duke Energy Ohio's pole attachment tariff?

4 A. We are currently reviewing the -- the
5 evidence that has been brought forward in this
6 case, and we will continue to review the Staff
7 Report and formulate opinions with the assistance
8 of counsel.

9 Q. I understand. But, sir, I'm asking about
10 whether you, as the Executive Director, have
11 formed any opinions as of today. And if I --

12 MR. GILLESPIE: Objection.

13 BY MS. SPILLER:

14 Q. -- understand your testimony, that answer
15 would be no.

16 MR. GILLESPIE: Objection with respect to
17 the asking this witness for an opinion. He's not
18 been proposed as an expert witness.

19 MS. SPILLER: That's fine.

20 BY MS. SPILLER:

21 Q. Go ahead.

22 A. Again, I'm not -- Excuse me. I'm sorry,
23 I lost track.

24 Q. Sure.

25 THE WITNESS: Could you read --

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1 MS. SPILLER: Could you read the question
2 back, please?

3 THE WITNESS: -- that back?

4 (Question read back as requested.)

5 BY MS. SPILLER:

6 Q. Is that correct?

7 A. That is correct.

8 Q. Thank you.

9 Sir, if we could again refer to DE Ohio
10 Exhibit 3, Page 3 of 6 of the document under
11 "Terms and Conditions", the paragraph numbered 6.

12 A. All right.

13 Q. And the first sentence in this paragraph
14 says, "The Company reserves the right to inspect
15 each new installation of licensee on its
16 poles/conduits and to make periodic inspections,
17 semi-annually or more often as conditions may
18 warrant, and licensee shall, on demand, reimburse
19 the Company for the expense of such inspections."

20 Did I read that correctly?

21 A. That was an accurate reading.

22 Q. And, Mr. McGee, to your knowledge, OCTA
23 has never filed a complaint against Duke Energy
24 Ohio, alleging that this existing requirement is
25 unjust, correct?

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1 A. Not to my knowledge.

2 Q. And OCTA has never filed a complaint
3 against Duke Energy Ohio, alleging that this
4 existing requirement is unreasonable, correct?

5 A. Not to my knowledge.

6 Q. And OCTA has never filed a complaint
7 against Duke Energy Ohio, alleging that this
8 existing requirement is discriminatory, correct?

9 A. Not to my knowledge.

10 Q. And, sir, based upon your prior
11 testimony, would I be correct in stating that you,
12 as of today, have not formulated any opinions, as
13 the Executive Director of OCTA, concerning a
14 requirement for inspection costs as set forth in
15 Duke Energy Ohio's proposed pole attachment
16 tariff?

17 A. Again, we are currently on that
18 conduct -- conducting discovery and we are
19 reviewing the Staff Report; and in consultation
20 with counsel, we will file objections at the
21 appropriate time.

22 Q. And, again, you, as the Executive
23 Director of OCTA, have formulated no such opinion
24 as of today regarding the provisions in Duke
25 Energy Ohio's proposed pole attachment tariff

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1 pertaining to inspection fees?

2 MR. GILLESPIE: Objection as regarding
3 the word "opinions".

4 THE WITNESS: No.

5 BY MS. SPILLER:

6 Q. Sir, again referring to Duke Energy Ohio
7 Exhibit No. 3, the same page that we were on, one
8 paragraph below, Paragraph No. 7.

9 A. All right.

10 Q. And this paragraph provides in the first
11 sentence, "Whenever the Company notifies licensee
12 in writing that the attachments/occupancies of
13 licensee interfere with the operation of
14 facilities of the Company or other licensee or
15 permittee, or constitute a hazard to the service
16 rendered by the Company or other licensee or
17 permittee, or fail to comply with codes or
18 regulations above-mentioned, licensee shall within
19 10 days after the date of such notice, remove,
20 rearrange, or change its attachments/occupancies
21 as directed by the Company."

22 Did I read that correctly?

23 A. That was an accurate reading.

24 Q. To your knowledge, Mr. McGee, has OCTA
25 ever filed a complaint against Duke Energy Ohio,

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1 alleging that this existing requirement is unjust?

2 A. Not to my knowledge.

3 Q. Has OCTA, sir, ever filed a complaint
4 against Duke Energy Ohio, alleging that this
5 existing requirement is unreasonable?

6 A. Not to my knowledge.

7 Q. Has OCTA ever filed a complaint against
8 Duke Energy Ohio, alleging that this existing
9 requirement is discriminatory?

10 A. Not to my knowledge.

11 Q. To your knowledge, Mr. McGee, does OCTA
12 have objection with this ten-day requirement?

13 A. Again, we are currently reviewing this
14 matter and conducting discovery, and we will
15 certainly look at the PUCO's Staff Report and file
16 our objections with the PUCO after we've
17 formulated and had a chance to review with our --
18 our legal counsel.

19 Q. But as of today, as the Executive
20 Director of OCTA, you cannot -- you have not
21 formulated any opinion regarding this requirement
22 to remove or relocate facilities within ten days?

23 A. Not at this point.

24 Q. Okay. Mr. McGee, do you know whether
25 Time Warner Cable has allowed third parties to

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1 attach to its attachments on Duke Energy Ohio
2 poles?

3 A. No, I do not.

4 Q. Do you know whether anyone else at OCTA
5 would have that knowledge?

6 A. I do not know of anyone.

7 Q. And, Mr. McGee, with respect to Duke
8 Energy Ohio's existing pole attachment tariff,
9 OCTA has never, to your knowledge, filed a
10 complaint against Duke Energy Ohio, alleging that
11 this tariff in its entirety is unjust, correct?

12 A. Not to my knowledge.

13 Q. And, again, sir, to your knowledge, OCTA
14 has never filed a complaint against Duke Energy
15 Ohio, alleging that this tariff in its entirety is
16 unreasonable, correct?

17 A. Not to my knowledge.

18 Q. And OCTA has not filed a complaint
19 against Duke Energy Ohio, alleging that its
20 existing pole attachment tariff in its entirety is
21 discriminatory, correct?

22 A. Not to my knowledge.

23 Q. Mr. McGee, can you explain for me the
24 basis for OCTA's assertion that Duke Energy Ohio's
25 assessment of fines for safety violations as set

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1 forth in its proposed tariff is discriminatory?

2 A. At this point, we are continuing to
3 conduct our discovery and analysis of the case and
4 reviewing the Staff Report. And after we've had a
5 chance to do that and in consultation with
6 counsel, we'll file our objections on that matter
7 with the PUCO.

8 Q. Understood. But as of today, you, as the
9 Executive Director of OCTA, have no opinion as to
10 whether the proposed pole attachment provisions
11 regarding safety violations is discriminatory or
12 not?

13 A. As of today, no.

14 Q. And, again, sir, you've indicated that
15 you have reviewed OCTA's motion to intervene in
16 this case.

17 A. Yes, I did.

18 Q. Did you agree with the -- Strike that.

19 And in seeking intervention, OCTA
20 expressly identified the "...discriminatory
21 assessment of fines at Duke's discretion for cable
22 operators' (but not Duke's) safety violations...",
23 correct?

24 A. Were you reading from the Motion to
25 Intervene?

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1 Q. Yes, sir; Page 3 of the document.

2 A. And what is the question, then?

3 Q. As a basis for seeking intervention, OCTA
4 has identified the "...discriminatory assessment
5 of fines at Duke's discretion for cable operators'
6 (but not Duke's) safety violations...", correct?

7 A. That is what the motion says.

8 Q. Who from OCTA determined that Duke
9 Energy's proposed pole attachment tariff
10 discriminatorily assessed fines?

11 A. This was a matter that is -- was
12 determined in consultation with counsel.

13 Q. And I understand, sir, that you are
14 formulating objections, et cetera. But when this
15 motion to intervene was filed, did you, as the
16 Executive Director of OCTA, have the opinion that
17 Duke's proposed pole attachment tariff
18 discriminatorily assessed fines for safety
19 violations?

20 THE WITNESS: May I have a word with
21 counsel?

22 (Discussion held off the record between
23 the witness and Mr. Gillespie.)

24 THE WITNESS: Again, this document was
25 put together in consultation with counsel.

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1 BY MS. SPILLER:

2 Q. I understand. But certainly you would
 3 have had a basis for asserting that allegation in
 4 a motion, correct?

5 A. Well --

6 MR. GILLESPIE: The document was filed by
 7 counsel.

8 MS. SPILLER: I understand that.

9 MR. GILLESPIE: Okay.

10 BY MS. SPILLER:

11 Q. But, sir, you reviewed this, as the
 12 client, correct?

13 A. I did.

14 Q. And certainly you would not allow your
 15 counsel to advance an allegation that you did not
 16 also agree with, correct?

17 A. Well, I'm not sure that this is an
 18 allegation.

19 Q. Does -- Strike that.

20 OCTA is intervening in this case,
 21 alleging that it has interests relative to Duke
 22 Energy Ohio's pole attachment tariff, correct?

23 A. Yes, that's correct.

24 Q. And is one of those interests an alleged
 25 concern regarding the discriminatory assessment of

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1 fines?

2 A. All of the matters that were set forth in
3 the -- the Duke proposed tariff were reviewed
4 with -- with counsel; and on the basis of -- of
5 counsel's advice, this document was prepared and
6 filed.

7 Q. Do you have an opinion, sir, as the
8 Executive Director of OCTA, whether Duke Energy
9 Ohio's proposed pole attachment tariff
10 discriminatorily assesses fines?

11 MR. GILLESPIE: Objection with respect to
12 the word "opinion".

13 THE WITNESS: And, again, this -- this
14 document was -- was prepared after consultation
15 with counsel. So to that extent that, you know,
16 we believe at this point what we have set forth in
17 the Motion to Intervene, we are currently going
18 through the discovery process. We are going to,
19 you know, evaluate all of the -- the matters that
20 you have put forward in your proposed tariff, and
21 we will object accordingly.

22 BY MS. SPILLER:

23 Q. I understand.

24 But, sir, identifying discriminatory
25 assessment of fines by Duke Energy Ohio is

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1 contained in your Motion to Intervene. And I
2 would like to know the basis for making that
3 statement.

4 A. Well, again, the -- the basis of that
5 was -- was put together after consultation with --
6 with counsel and on the advice of counsel.

7 Q. So you are not aware of the basis for
8 OCTA asserting that Duke Energy Ohio's proposed
9 pole attachment tariff discriminates with respect
10 to the assessment of fines?

11 MR. GILLESPIE: Objection. Asked and
12 answered. And you're asking for matters that the
13 witness has testified are subject to privilege.

14 MS. SPILLER: I'm certainly entitled to
15 testify [sic] as to the basis for the allegations
16 that your client is asserting against Duke Energy
17 Ohio.

18 MR. GILLESPIE: And he's already answered
19 that interpretation of the tariff is something
20 that he's dealt with with counsel.

21 MS. SPILLER: I understand that.

22 BY MS. SPILLER:

23 Q. But certainly, sir -- Strike that.

24 So you don't know whether Duke Energy
25 Ohio's proposed pole attachment tariff is

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1 discriminatory with respect to the assessment of
2 fines, do you?

3 A. The matter is currently under discovery.
4 And we will, of course, analyze what is being
5 requested in the proposed tariff along with the
6 facts as they are brought forward in this case,
7 and we will file appropriate objections at the
8 time.

9 Q. So when you, as the Executive Director of
10 the OCTA, allowed your counsel to file this motion
11 to intervene on your behalf, you did not know
12 whether Duke Energy Ohio's proposed pole
13 attachment tariff was discriminatory or not with
14 respect to the assessment of fines, correct?

15 MR. GILLESPIE: Same -- Same objection.

16 THE WITNESS: Well, at the -- at the time
17 that this was filed, it was filed on -- after --
18 on the advice of counsel and with the
19 understanding that this would be an ongoing
20 proceeding where further facts would be brought
21 forth -- forward which would be analyzed at a
22 later time.

23 BY MS. SPILLER:

24 Q. Mr. McGee, you are aware that Duke Energy
25 Ohio has revised the attachment rate relative to

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1 its proposed pole attachment tariff, correct?

2 A. Correct.

3 Q. And what is your understanding of the
4 revised rate, sir?

5 A. You mean what the number is?

6 Q. Yes, sir.

7 A. I believe it's \$9.88.

8 Q. And what is OCTA's objection, if any,
9 with this attachment rate?

10 A. Well, again, we are currently conducting
11 discovery, and we will put together all of our --
12 our objections once we've had a chance to fully
13 understand, through the discovery process, what is
14 being requested here. And we will formulate
15 our -- our answers and put those -- or, our
16 objections, and put those before the PUCO.

17 Q. So as of today, you, as the Executive
18 Director of OCTA, have no opinion as to whether
19 this proposed rate is objectionable, correct?

20 MR. GILLESPIE: I object. I don't think
21 that's an accurate characterization of his
22 testimony.

23 BY MS. SPILLER:

24 Q. Do --

25 A. Would you like to rephrase the question?

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1 Q. Sure. Do you have an opinion -- Strike
2 that.

3 You have not, as the Executive Director
4 of OCTA, formulated any opinion with respect to
5 Duke Energy Ohio's revised pole attachment rate,
6 correct?

7 A. At this point, we are continuing to -- to
8 look at the facts and depose witnesses from --
9 from Duke that -- you know, that is forming the
10 basis of the Duke proposal. We will now analyze
11 that in consultation with our counsel and file
12 our -- our objections with the PUCO at the
13 appropriate time.

14 Q. So as of today, sir, you don't have an
15 opinion regarding the rate, correct?

16 A. As --

17 MR. GILLESPIE: Objection. He's answered
18 the question.

19 MS. SPILLER: Again, Mr. Gillespie, I'm
20 allowed to elicit a "yes" or "no" answer. He can
21 most certainly explain, but the question calls for
22 a "yes" or "no".

23 MR. GILLESPIE: Well, this witness is not
24 the appropriate witness to be asking the opinion
25 of.

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1 MS. SPILLER: He is the Executive
2 Director --

3 MR. GILLESPIE: And he's not -- he's not
4 an expert witness.

5 MS. SPILLER: Certainly he is able to
6 articulate whether his association has a -- has an
7 objection with that pole attachment rate.

8 MR. GILLESPIE: That wasn't the question.
9 BY MS. SPILLER:

10 Q. Sir, have you formed an opinion, as the
11 Executive Director of OCTA, regarding Duke Energy
12 Ohio's proposed pole attachment rate?

13 A. Well, I believe that it is -- is
14 inappropriate and -- which is, of course,
15 witnessed by the fact that you have already went
16 forward and -- following discovery and readjusted
17 the -- your request. And we will continue with
18 our discovery and analysis of this issue.

19 And after we have had an opportunity to
20 further complete our discovery and in consultation
21 with our legal counsel, we will file our formal
22 objections to it.

23 Q. What about the rate \$9.88 per attachment
24 is inappropriate?

25 A. I'm sorry?

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1 Q. What about this rate \$9.88 is
2 inappropriate, as you've just described it?

3 A. I think, you know, at this point we
4 would -- you know, I would need to take a look at
5 the testimony that you, counsel, relied upon from
6 your own witnesses to reduce that rate.

7 Q. Okay.

8 A. And I haven't had a chance to fully
9 review those depositions and those -- that
10 testimony.

11 Q. So as of this time, Mr. McGee, you do not
12 have an opinion, as the Executive Director of
13 OCTA, regarding Duke Energy Ohio's revised pole
14 attachment rate, correct?

15 A. We are still reviewing the -- the
16 evidence, the documents that your shop has
17 provided to our counsel. And in consultation with
18 counsel, we will analyze your 9.88 revised rate
19 and file objections as appropriate.

20 Q. So, again, sir, you do not today have an
21 opinion regarding Duke Energy Ohio's proposed pole
22 attachment rate, correct?

23 A. Not until I have had -- we have had a
24 full chance to explore all the evidence and
25 consult with our counsel, will we have a -- an

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1 objection formulated.

2 Q. Mr. McGee, do you understand the concept
3 of cross-subsidies in the context of a regulated
4 utility industry?

5 A. No, I do not.

6 Q. Is Time Warner Telecommunications Company
7 a member of OCTA?

8 A. Time Warner Telecom which is now called
9 TW Telecom?

10 Q. Uh-huh.

11 A. No, they are not.

12 Q. Have they ever been, to your knowledge?

13 A. No.

14 Q. Mr. McGee, has OCTA performed any
15 calculations regarding Duke Energy Ohio's proposed
16 pole attachment rate?

17 A. The OCTA has not.

18 Q. Has it retained an expert to perform such
19 calculations?

20 A. Yes, we have.

21 Q. Has that expert prepared a draft report
22 for your review?

23 A. Not at this point.

24 Q. Do you know, Mr. McGee, whether Time
25 Warner Cable has entered into pole attachment

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1 agreements with regulated electric utility
2 companies in Ohio that contain penalty provisions
3 for unauthorized attachments?

4 A. I do not.

5 Q. Can you articulate for me today,
6 Mr. McGee, whether OCTA has any objection with
7 Duke Energy Ohio's proposal for penalties for
8 unauthorized attachments in its tariff?

9 A. Again, our discovery is ongoing. And we
10 are currently reviewing that and will review that
11 in conjunction with counsel and the Staff Report
12 from the PUCO. And once we have had an
13 opportunity to fully review that material, we will
14 file our objections with the Commission.

15 Q. So today, as the Executive Director of
16 OCTA, you have no opinion on Duke Energy's
17 proposal to include a penalty provision for
18 unauthorized attachments, correct?

19 A. Again, at this point, we are continuing
20 to review the evidence. And based on advice of
21 counsel, we will file our -- our objections at the
22 appropriate time.

23 Q. I understand.

24 So as of today, you do not have an
25 opinion, correct?

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1 A. That is correct.

2 Q. Has OCTA ever intervened in a matter in
3 Ohio -- Strike that.

4 Has OCTA ever challenged a regulated
5 electric utility company's tariff insofar as it
6 contained a provision for unauthorized attachments
7 and penalties for those unauthorized attachments?

8 A. Not to my knowledge.

9 MS. SPILLER: If we could go off the
10 record and take a short break, please.

11 (Recess taken.)

12 BY MS. SPILLER:

13 Q. Mr. McGee, before we took a break, you
14 indicated that OCTA has retained an expert
15 relative to Duke Energy Ohio's proposed pole
16 attachment rate, correct?

17 A. Yes.

18 Q. And who is that, please?

19 A. Patricia, I believe it's "Kravtin".

20 Q. Have you talked with Ed Kozelek about the
21 dispute between Time Warner Cable and Duke Energy
22 Ohio regarding pole attachments made by Time
23 Warner Cable?

24 MR. GILLESPIE: Let me caution the
25 witness with respect to answering any questions

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1 about discussions that have involved counsel, as
2 well.

3 So is your question whether you've talked
4 to Mr. Kozelek other than in the -- or, without
5 counsel?

6 MS. SPILLER: My question is -- Yes. And
7 I would certainly expect this -- this trained
8 attorney to appreciate the attorney-client
9 privilege.

10 BY MS. SPILLER:

11 Q. Have you talked with Mr. Kozelek, sir,
12 about Duke Energy -- about the dispute between
13 Duke Energy Ohio and Time Warner Cable concerning
14 Time Warner Cable's attachments to Duke Energy
15 Ohio poles?

16 A. I believe that we have.

17 Q. Was your counsel present?

18 A. I don't recall.

19 Q. Do you have any notes from those
20 conversations?

21 A. No.

22 Q. Can you tell me about the conversations
23 that you had with Mr. Kozelek concerning this
24 dispute?

25 A. Only to the extent that it exists.

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1 Q. You don't know anything else about it?

2 A. No, not really.

3 Q. You don't know that Time Warner Cable
4 requested the PUCO to mediate the dispute?

5 A. I am aware of that.

6 Q. And how did that knowledge come to your
7 attention?

8 A. I suppose Mr. Kozelek would have
9 mentioned it.

10 Q. Mr. McGee, how does the OCTA membership
11 determine whether to intervene in a matter pending
12 before the Commission?

13 A. A matter of this import would go before
14 our Board of Directors.

15 Q. And is it put to vote?

16 A. I don't recall if this was put to a vote
17 or not.

18 Q. Can you tell me how the matter would be
19 presented to the Board of Directors?

20 A. Either through a -- through a Board
21 meeting, whether that would be in person or they
22 may also be by teleconference.

23 Q. And are there written materials that are
24 usually presented in these meetings when OCTA is
25 determining whether to intervene in a matter

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1 pending before the Commission?

2 A. Not always.

3 Q. Do you know whether there were written
4 documents here?

5 A. I don't recall whether there were or not.

6 Q. And then there would have been minutes
7 from the Board meeting at which this issue was a
8 topic of discussion, correct?

9 A. If it were a formal Board meeting.

10 Q. Well, if the issue is presented to the
11 Board, does the Board then vote on whether to
12 intervene?

13 MR. GILLESPIE: I object. I don't think
14 this is relevant.

15 THE WITNESS: It depends on the issue.
16 Some -- You know, in the general matters that come
17 before the Board, some things are -- are put
18 forward on a vote, some are not.

19 BY MS. SPILLER:

20 Q. But you don't recall -- Strike that.

21 Did the Board of Directors vote in
22 support of OCTA intervening in this matter?

23 A. I don't recall if there was a formal vote
24 in this matter, but we did have the support of the
25 Board before moving forward.

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1 Q. And would the support of the Board be
2 contained in -- or, reflected in written
3 documents, such as minutes or the like?

4 A. I don't --

5 MR. GILLESPIE: Objection. This is
6 irrelevant.

7 THE WITNESS: I don't recall whether or
8 not there were minutes taken on the meeting.

9 BY MS. SPILLER:

10 Q. And how long does OCTA retain its Board
11 meeting minutes?

12 A. As far as I know, we still have them from
13 the beginning, somewhere.

14 Q. In connection with Duke Energy Ohio's
15 rate case and OCTA's decision to intervene, was
16 there a presentation that was made to the Board to
17 solicit its approval?

18 A. What do you mean by "presentation"?

19 Q. Someone came in and talked.

20 A. It was probably me that, you know,
21 presented it to the Board and that -- in an oral
22 fashion. I don't recall having any documents
23 presented.

24 Q. And what was your basis in presenting
25 this matter to your Board to obtain its support to

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1 intervene?

2 A. The fact that the -- of the issues that
3 were outlined in our Motion to Intervene were of
4 concern.

5 Q. But if I understand your testimony, you
6 can't articulate today the specific concerns with
7 Duke Energy Ohio's proposed pole attachment
8 tariff, correct?

9 A. Well, there were certainly concerns
10 raised by the fact that, you know, what you
11 were -- you were asking. As to any specifics
12 regarding those concerns, we are still in the
13 process of trying to garner information from Duke
14 and formulate our objections in toto.

15 Q. So when you sought permission from OCTA's
16 Board to intervene in this case, you did not
17 identify specific concerns with Duke's proposed
18 pole attachment tariff?

19 A. We out- -- We would have outlined what
20 was being requested. For instance, the fact that
21 you requested a 232-percent increase in your --
22 your attachment rate was certainly brought
23 forward. And the other items were also mentioned
24 that were of -- you know, of concern.

25 Q. So you do have opinions regarding the

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1 terms and conditions of Duke Energy Ohio's
2 proposed pole attachment --

3 MR. GILLESPIE: Objection.

4 BY MS. SPILLER:

5 Q. -- tariff, correct?

6 A. Well, again, we're -- we've -- we've
7 indicated in our Motion to Intervene that there
8 are several items, but -- you know, that of are
9 concern. And, of course, we are going through the
10 discovery process now to elucidate their -- or, to
11 elicit evidence from which we will formulate
12 our -- our formal objections to the request.

13 Q. Why, specifically, did you tell the Board
14 of OCTA that it should intervene in this matter?

15 MR. GILLESPIE: Objection. I don't think
16 that's relevant.

17 THE WITNESS: I did not -- And I do not
18 recall telling them that they should intervene.
19 It's not my position to tell my Board what to do.

20 BY MS. SPILLER:

21 Q. In presenting this matter to your -- to
22 OCTA's Board, though, you identified concerns with
23 Duke Energy Ohio's proposed pole attachment
24 tariff?

25 A. We went over the -- what was being

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1 requested and that those were -- would be of
2 concern, yes.

3 Q. Did you tell your Board that the proposed
4 pole attachment tariff is different than the
5 existing tariff in that it contains a requirement
6 for prior written approval before attaching to
7 drop poles?

8 A. I don't recall -- I don't recall
9 specifically what -- what we said in detail.

10 Q. And you have no notes from your -- your
11 commentary to the Board?

12 A. I don't believe I do. I don't do notes.

13 Q. You just talked off the cuff?

14 A. (Nods head.)

15 Q. Did you tell the Board that Duke Energy
16 Ohio's proposed pole attachment tariff
17 discriminatorily assessed fines for safety
18 violations?

19 A. I don't recall.

20 Q. What Board members did you -- did you
21 speak to regarding this decision to intervene in
22 Duke Energy Ohio's rate case?

23 A. I don't recall which Board members would
24 have been present at the meeting.

25 Q. Would there be a roll call available from

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1 OCTA?

2 A. Probably not.

3 Q. Did anyone from Time Warner Cable address
4 your Board on this issue of whether OCTA should
5 intervene in Duke Energy Ohio's rate case?

6 A. The President of the Board is Ed Kozelek
7 and he was on the call.

8 Q. Did Mr. Kozelek render an opinion as to
9 whether the Board should intervene?

10 MR. GILLESPIE: Objection. I don't think
11 this is relevant.

12 THE WITNESS: The end result was the
13 Board approved the moving forward with the
14 intervention.

15 BY MS. SPILLER:

16 Q. And you remember Mr. Kozelek being on the
17 phone. Do you remember any other Board members
18 who were on the phone?

19 A. If it -- No, I don't recall specifically
20 who was -- who was on the call. It was a call.

21 Q. Mr. McGee, is it fair to say that OCTA
22 intervened in this matter to advance the interests
23 of Time Warner Cable?

24 A. As the -- The reason that the OCTA has
25 intervened in this is for the interest of the

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1 entire Ohio cable industry, and Time Warner is
2 certainly a part of that industry.

3 Q. Time Warner Cable, to your knowledge, is
4 the only member of OCTA that has attachments in
5 Duke Energy Ohio's -- cable attachments in Duke
6 Energy Ohio's service territory, correct?

7 A. At this point.

8 Q. Have any of the other members from OCTA
9 articulated concern with Duke Energy Ohio's pole
10 attachment tariff?

11 A. Not that I can recollect in specifics.

12 Q. But Time Warner Cable has done that,
13 correct?

14 A. In -- Not in -- Not in specifics in
15 conversations that I have had that counsel has not
16 been present.

17 Q. And, sir, based upon the comments from
18 your counsel today, you will not testify on behalf
19 of OCTA regarding the interpretation of Duke
20 Energy Ohio's proposed pole attachment tariff?

21 A. I don't know if counsel has said anything
22 to that matter, but testimony will be decided upon
23 at a later date as to who will -- who will or
24 not -- who will or will not be called as
25 witnesses, if that's what you're asking.

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1 Q. So at this point, you don't know whether
2 you would be a witness for OCTA; is that correct?

3 A. At this point, I do not know one way or
4 the other.

5 Q. Have you spoken with anyone from the
6 Commission Staff regarding Duke Energy Ohio's
7 proposed pole attachment tariff?

8 A. No, I have not.

9 Q. Has anyone else from OCTA done that, to
10 your knowledge?

11 A. You mean OCTA staff?

12 Q. Has anyone from OCTA, to your knowledge,
13 talked with anyone from the Commission Staff
14 regarding Duke Energy Ohio's proposed pole
15 attachment tariff?

16 A. I believe -- Excuse me. I believe so.

17 Q. And who has done that, please?

18 A. I believe that Ed Kozelek may have.

19 Q. And do you know with whom he spoke?

20 A. No, I don't.

21 Q. Did he share with you that conversation?

22 A. No.

23 MR. GILLESPIE: Are you -- Let me ask for
24 a clarification here.

25 THE WITNESS: Yeah.

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1 MR. GILLESPIE: Are you talking about
2 speaking with Staff?

3 MS. SPILLER: Yes.

4 MR. GILLESPIE: Okay.

5 THE WITNESS: Well, I was -- I was in a
6 meeting with Staff that Mr. Kozelek was present.
7 I did not speak.

8 BY MS. SPILLER:

9 Q. Who else was present at that meeting?

10 A. Counsel.

11 Q. Who was the Staff member or members? Who
12 were the Staff members present?

13 A. I don't recall their names. They al- --
14 They were also represented by counsel.

15 Q. You don't recall any of the Staff members
16 who were there --

17 A. I don't --

18 Q. -- Commission Staff members?

19 A. I'm sorry, I don't recall their names.

20 Q. When did this meeting occur?

21 A. I don't recall.

22 Q. You don't know whether it was within the
23 last six months?

24 A. Yes.

25 Q. Would you have notes from this meeting?

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1 A. No.

2 Q. Was anyone recording notes at the
3 meeting?

4 A. Not that I know of.

5 Q. And what was the purpose for the
6 conversation?

7 MR. GILLESPIE: Well, I object to the
8 extent that any of these discussions would have
9 work product.

10 MS. SPILLER: That's fine.

11 MR. GILLESPIE: Staff is a party here and
12 counsel obviously is entitled to talk to other
13 parties.

14 MS. SPILLER: I understand that, but
15 I'm -- it's not a -- it's not a privileged
16 conversation, so we're certainly entitled to
17 discover.

18 MR. GILLESPIE: Well, to the extent that
19 there were discussions that were handled by
20 counsel at that meeting, it would be subject to
21 work product.

22 MS. SPILLER: I don't know that the
23 entire conversation is subject to work product.

24 BY MS. SPILLER:

25 Q. What was the basis for the conver- -- of

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1 the conversation, sir?

2 A. The basis was to discuss your -- your
3 proposed tariff.

4 Q. And you were a silent participant in the
5 meeting?

6 A. I -- Yes.

7 Q. Your counsel and Mr. Kozelek advocated
8 the interests of OCTA?

9 A. Counsel did.

10 Q. Did Mr. Kozelek have any other
11 conversations with Staff regarding Duke Energy
12 Ohio's proposed pole attachment tariff?

13 A. I don't know.

14 Q. What did Staff tell you in this
15 conversation?

16 A. I don't recall them saying anything in
17 response.

18 Q. Staff didn't say anything?

19 A. Nothing that I can recall offhand.

20 Q. Do you recall, Mr. McGee, does the name
21 Vic Gallina ring a bell to you as to a Staff
22 member that would have been present?

23 A. No.

24 Q. Steve Lesser?

25 A. I do know Steve Lesser. He popped in

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1 briefly at the -- before the meeting started and
2 left.

3 Q. Allen Francis?

4 A. No, Allen was not there.

5 Q. Okay. How many meetings has OCTA had
6 with Staff regarding Duke Energy Ohio's proposed
7 pole attachment tariff?

8 A. I am only aware of the one.

9 Q. During that conversation, did the dispute
10 between Time Warner Cable and Duke Energy Ohio
11 come up?

12 A. Not that I recall.

13 MS. SPILLER: I don't have anything
14 further. Thank you.

15 MR. GILLESPIE: Thank you. We'll want to
16 have an opportunity to review and sign.

17 (Signature not waived.)

18 - - -

19 (Thereupon, the deposition was
20 concluded at 11:39 o'clock a.m.
21 on Monday, February 2, 2009.)

22 - - -

23

24

25

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614.431.1344 COLUMBUS, OHIO 800.498.2451

A F F I D A V I T

- - -

STATE OF _____,)

) SS:

COUNTY OF _____,)

Jonathon McGee, having been duly placed
under oath, deposes and says that:

I have read the transcript of my
deposition taken on Monday, February 2, 2009, and
made all necessary changes and/or corrections as
noted on the attached correction sheet, if any.

Jonathon McGee

Placed under oath before me and
subscribed in my presence this _____ day of
_____, _____.

Notary Public

My Commission Expires: _____.

- - -



FILE

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PUCO

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dianne.kuhnell@duke-energy.com

Dianne B. Kuhnell,
Senior Paralegal

VIA OVERNIGHT MAIL DELIVERY

January 23, 2009

Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

Re: Case No. 08-709-EL-AIR, *et al.*

Dear Docketing Division:

Enclosed please find for filing an original and twenty-two copies each of the Revised Notice of Deposition of Jonathon McGee and the Revised Notice of Deposition of Edward Kozalek.

Please file-stamp and return two copies of each in the envelope provided.

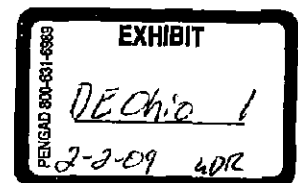
Should you have any questions, please contact me at (513) 419-1837.

Very truly yours,

Dianne Kuhnell
Senior Paralegal

Enclosure

cc: Parties of record



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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

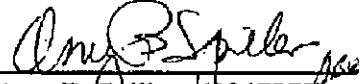
In The Matter of the Application of)	
Duke Energy Ohio, Inc. for an	)	Case No. 08-709-EL-AIR
Increase in Electric Distribution Rates)	
)	
In the Matter of the Application of)	
Duke Energy Ohio, Inc. for Tariff	)	Case No. 08-710-EL-ATA
Approval)	
)	
In the Matter of the Application of)	
Duke Energy Ohio, Inc. for Approval	)	Case No. 08-711-EL-AAM
to Change Accounting Methods)	
)	
In the Matter of the Application of Cincinnati)	
Gas & Electric Company for Approval of its	)	Case No. 06-718-EL-ATA
Rider BDP, Backup Delivery Point.)	

REVISED NOTICE OF DEPOSITION DUCES TECUM OF JONATHON MCGEE

Please take notice that pursuant to Rule 4901-1-2(F) of the Ohio Administrative Code (OAC), and by its counsel, Petitioner, Duke Energy Ohio will take the deposition of Jonathon McGee on February 2, 2009, beginning at 9:30 a.m. and continuing thereafter until completed. The deposition will take place at the offices of Duke Energy Ohio, 155 E. Broad Street, 21st Floor, Columbus, Ohio 43215, and will be recorded by a court stenographer authorized to issue oaths. Said deposition will be taken as if on cross-examination for purposes of discovery, use at the trial and or hearing, and all other uses permitted under the Ohio Rules of Civil Procedure and Evidence.

The deponent is requested to bring to the deposition the documents identified in the attached Exhibit A.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Amy B. Spiller".

Amy B. Spiller (0047277)
Associate General Counsel
Elizabeth Watts (0031092)
Associate General Counsel
Duke Energy Ohio
139 East Fourth Street, Rm. EA025
P.O. Box 960
Cincinnati, Ohio 45201
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E-mail: amy.spiller@duke-energy.com

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was delivered on this the 23rd day of January, 2009, via electronic mail or ordinary US mail delivery, postage prepaid, to the following:

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Ann M. Hotz, Counsel of Record
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Columbus, OH 43215-3420

Boehm, Kurtz & Lowry
David Boehm/ Michael Kurtz
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Cincinnati, OH 45202-4454

Chester, Willcox & Saxbe LLP
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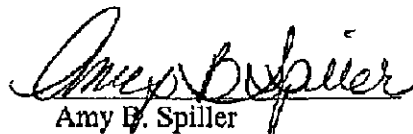

Amy B. Spiller

EXHIBIT A

NOTICE OF DEPOSITION DUCES TECUM

The term "Documents" means documents as that term is used in Rule 34 of the Federal Rules of Civil Procedure, including without limitation, any written, printed, electronic, recorded or photographic matter or sound reproduction, and specifically including but not limited to contracts, agreement, letters, correspondence, e-mail, memoranda, telegrams, handwritten notes, books, records, reports, orders, security agreements, financing statements, mortgages, checks, drafts, sales records, invoices, bills, working papers, diaries, charts, papers, notes, indices, lists, inventories, computer printouts, accounting records, ledger sheets, statements, analyses, forecasts, instructions, manuals, pamphlets, brochures, flyers, announcements, schedules, written memorials of personal or telephone conversations or meetings or conferences and all other interoffice and intraoffice communications, teletypes, correspondence, worksheets, minutes, data processing cards, photographs, films, or any other writing however produced or reproduced or any computer file, server, tape, computer disk, or electronic sound recording. In the event that the original or non-identical copy of a document is not available, "documents" means an identical copy of an original or a copy of a non-identical copy. Any document bearing notations, markings or writing of any kind differing from the original shall be treated as an original document.

The items to be produced by the deponent at this deposition are as follows:

1. All documents evidencing or confirming payment made by OCTA's member organization, including but not limited to Time Warner Cable, to Duke Energy Ohio and its predecessors, for attachments made by OCTA's member organization, including but not limited to Time Warner Cable, to Duke Energy Ohio's poles. For purposes of this request, documents include, but are not limited to, invoices, cancelled checks, and accounts payable ledgers.
2. All documents regarding all audits of attachments by OCTA's member organization, including but not limited to Time Warner Cable, to Duke Energy Ohio's poles from 1999 to the present.
3. All documents concerning the work performed by or on behalf of TWC, from 2000 to the present to install anchors for its attachments to Duke Energy Ohio's poles. For purposes of this request, documents include, but are not limited to, work orders, drawings, bills of lading or purchase, time sheets, contracts with third parties, and invoices.
4. All documents concerning the work performed by or on behalf of TWC from 2000 to the present to complete the guying of its attachments to Duke Energy Ohio's poles. For purposes of this request, documents include, but are not limited to, work orders, drawings, bills of lading or purchase, time sheets, contracts with third parties, and invoices.

5. All documents concerning the work performed by or on behalf of TWC, including but not limited to Time Warner Cable, from 2000 to the present to reduce the size of TWC, cable bundles attached to Duke Energy Ohio's poles. For purposes of this request, documents include, but are not limited to, work orders, drawings, bills of lading or purchase, time sheets, contracts with third parties, and invoices.
6. All documents concerning the work performed by or on behalf of TWC, from 2000 to the present in response to the violations identified in any audit of TWC, including but not limited to Time Warner Cable's attachments to Duke Energy Ohio's poles. For purposes of this request, documents include, but are not limited to, work orders, drawings, bills of lading or purchase, time sheets, contracts with third parties, and invoices.
7. All documents concerning meetings between TWC and Duke Energy Ohio representatives from 2000 to the present; said meetings at which any audit of TWC's attachments to Duke Energy Ohio's poles were discussed.
8. All agreements in effect from 2000 to the present between OCTA's member organization, including but not limited to Time Warner Cable, and Time Warner Telecom pursuant to which TWTC attached or overlashed to TWC's attachments to Duke Energy Ohio's poles.
9. All agreements in effect from 2000 to the present between OCTA's member organization, including but not limited to Time Warner Cable, and any Ohio public utility concerning attachments by OCTA's member organization, including but not limited to Time Warner Cable, to each such utility's poles.
10. All documents corroborating any and all written notice provided by TWC to Duke Energy Ohio of safety violations observed by TWC. For purposes of this request, a "safety violation" means a violation of the National Electric Safety Code.
11. All documents concerning the work performed by TWC from 2000 to the present to correct safety violations that TWC representatives observed in the field and in Duke Energy Ohio's service territory. For purposes of this request, a "safety violation" means a violation of the National Electric Safety Code.
12. All internal corporate documents showing how much is allocated by members of the Ohio Telecommunications Association to line maintenance and safety.
13. Documents showing pole attachment agreement disputes between OCTA's member organization, including but not limited to Time Warner Cable, and any other utility to which it attaches.

FILE

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.)	Case No. 08-709-EL-AIR
In the Matter of the Application of Duke Energy Ohio, Inc., for a Tariff Approval.	)	Case No. 08-710-EL-ATA
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	Case No. 08-711-EL-AAM
In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point.	)	Case No. 06-718-EL-ATA

MOTION TO INTERVENE OF
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION

Pursuant to Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code ("OAC"), The Ohio Cable Telecommunications Association ("the OCTA") moves for leave to intervene in these proceedings. The reasons supporting the Motion to Intervene are set forth in the accompanying memorandum in support.

WHEREFORE, the OCTA respectfully requests that it be permitted to intervene in these matters.

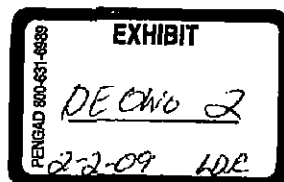
Respectfully submitted,

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Attorneys for The Ohio Cable
Telecommunications Association

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates.)	Case No. 08-709-EL-AIR
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for a Tariff Approval.	)	Case No. 08-710-EL-ATA
)	
In the Matter of the Application of Duke Energy Ohio, Inc., for Approval to Change Accounting Methods.	)	Case No. 08-711-EL-AAM
)	
In the Matter of the Application of Cincinnati Gas & Electric Company for Approval of its Rider BDP, Backup Delivery Point.	)	Case No. 06-718-EL-ATA
)	

MEMORANDUM IN SUPPORT

Section 4903.221, Revised Code, establishes the following items which the Commission must consider when ruling on a motion to intervene:

- (1) The nature and extent of the prospective intervener's interests;
- (2) The legal position advanced by the prospective intervener and its probable relation to the case;
- (3) Whether the intervention by the prospective intervener will unduly prolong or delay the proceedings; and
- (4) Whether the prospective intervener will significantly contribute to full development and equitable resolution of the factual issues.

To implement the statutory provision the Commission promulgated Rule 4901-1-11(B) of the Ohio Administrative Code which instructs the Legal Director, the Deputy Legal Director, or the Attorney Examiner to consider:

- (1) The nature of person's interests;

- (2) The extent to which the person's interest is represented by existing parties;
- (3) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding; and
- (4) Whether granting the request to intervention would unduly delay the proceeding or unjustly prejudice any existing party.

The Ohio Cable Telecommunications Association ("the OCTA") is a trade association made up of various cable television operators throughout Ohio. Its members often attach to electric or telephone poles to string cable in order to provide cable television service to customers throughout Ohio, including the electric service territory of Duke Energy Ohio, Inc. ("Duke Energy Ohio" and/or "Duke Energy" and/or "Duke"). Many of the OCTA members attach to electric utility poles, pay rental rates, and are subject to tariff provisions contained in electric utility's tariffs regarding pole attachments.

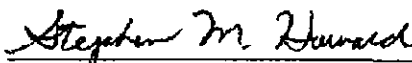
In the Application to increase rates before the Commission, Duke Energy proposes to increase its annual pole attachment rate from \$4.25 per pole per year to \$14.42 per pole per year. Further, Duke proposes to make substantial changes to the rules and regulations contained in its pole attachment tariff. Some of these proposed tariff changes include excluding overloading of facilities from the tariff, reservation of unilateral discretion in decisions regarding attachment, penalties for unrecorded attachments, the requirement of a prior approval before a cable television operator can attach to a drop pole, the determination of cost responsibility where rearrangement of attachments on a pole is necessary, discriminatory assessment of fines at Duke's discretion for cable operators' (but not Duke's) safety violations, and issues relating to pole inspections and audits.

Members of the OCTA who provide cable television service in the Duke Energy Ohio service territory will be affected by the proposed increase in pole attachment rates and the proposed changes to the tariff. These proposals, if adopted, will have consequences on the operations and business interests of the members of the OCTA. Therefore, the OCTA and its members have a real and substantial interest in these matters.

The OCTA and its members' experience and knowledge will assist the Commission in considering the issues in these cases, as the OCTA's participation has assisted the Commission in other pole attachment tariff cases. Therefore, the OCTA's participation will contribute to the full development and equitable resolution of the issues. No other party can adequately represent the interests of the OCTA. Its participation will not unduly delay or unjustly prejudice any existing party. For the above-discussed reasons, the OCTA has a direct, real and substantial interest in the issues in these matters, which can only be protected by its participation.

WHEREFORE, for the reasons explained above, the OCTA respectfully requests that the Commission permit it to intervene in the above-captioned proceedings and be made a party for all purposes.

Respectfully submitted,



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*Attorneys for The Ohio Cable
Telecommunications Association*

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Intervene was served upon the following persons via email and via first-class U.S. mail, postage prepaid, this 17th day of October, 2008.

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Stephen M. Howard

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RATE PA

POLE ATTACHMENT/OCCUPANCY TARIFF

APPLICABILITY

Applicable to attachments/occupancies by any person or entity other than a public utility to any pole/conduit of the Company within its entire territory or occupancy by any person or entity of any conduit of the Company by a licensee; i.e., a person who enters into an Agreement with the Company.

ATTACHMENT CHARGES

An annual rental of \$4.25 per pole shall be charged for the use of the Company's poles. The charge will apply if any portion of a pole is occupied or reserved at the licensee's request.

An initial contact fee of \$1.00 per pole, will be charged by the Company.

PAYMENT

Rental payments shall be made on the anniversary of the agreement. When payments are not made, the invoiced amount shall include an additional amount equal to one and one-half percent (1.5%) of the unpaid balance.

As new attachments/occupancies are made after the initial rental year, rentals for such attachments/occupancies shall be paid for the entire year if made within the six-month period after any anniversary date, and for one-half year if made during the following six-month period. For any attachments/occupancies removed by licensee and for which the Company shall have received written notice from licensee, the yearly rental shall be adjusted on the same basis.

TERMS AND CONDITIONS

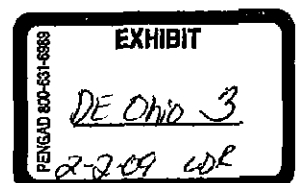
1. Before any attachments/occupancies is made by licensee, it shall make written application for permission to install attachments/occupancies on any pole/conduit of the Company, specifying the location of each pole/conduit in question, the character of its proposed attachments/occupancies and the amount and location of space desired. Within 30 days after receipt of such application, the Company shall notify licensee in writing whether or not it is willing to permit the attachments/occupancies and, if so, under what conditions. The Company shall have the sole right to determine the availability of such pole/conduit for joint use and shall be under no obligation to grant permission for its use by licensee. If such permission is granted, licensee shall have the right to occupy the space allotted by the Company under the conditions specified in such permit and in accordance with the terms of the Agreement but Company shall not be required to set a pole/conduit for the sole use by licensee.

Filed pursuant to an Order dated March 29, 2006 in Case No. 06-407-GE-ATA before the Public Utilities Commission of Ohio.

Issued: March 31, 2006

Effective: April 3, 2006

Issued by Sandra P. Meyer, President



TERM AND CONDITIONS (Contd.)

2. Upon the execution of the Agreement and before any attachments/occupancies are made by licensee, licensee shall send the Company all manufacturer's technical manuals and information, and construction standards and manuals regarding the equipment licensee proposes to use pursuant to the provisions of the Agreement.
3. All attachments/occupancies are to be placed on poles/conduits of the Company in a manner satisfactory to the Company and so as not to interfere with the present or any future use which the Company may desire to make of such poles/conduits, wires or other facilities. All attachments/occupancies shall be installed and maintained by licensee so as to comply at least with the minimum requirements of the National Electrical Safety Code and any other applicable regulations or codes promulgated by federal, state, local or other governmental authority having jurisdiction. Licensee shall take any necessary precautions, by the installation of protective equipment or other means, to protect all persons and property of all kinds against injury or damage occurring by reason of licensee's attachments/occupancies on the Company's poles/conduits. The Company shall be the sole judge as to the requirements for the present or future use of its poles/conduits and equipment and of any interference therewith.
4. In any case where it is necessary for the Company to replace a pole/conduit because of the necessity of providing adequate space or strength to accommodate the attachments/occupancies of licensee thereon, either at the request of licensee or to comply with the above codes and regulations, the licensee shall pay the Company the total cost of this replacement. Such cost shall be the total estimated cost of the new pole/conduit including material, labor, and applicable overheads, plus the cost of transferring existing electric facilities to the new pole/conduit, plus the cost of removal of the existing pole/conduit and any other incremental cost required to provide for the attachments/occupancies of the licensee, including any applicable taxes the Company may be required to pay because of this change in plant, minus salvage value of any facilities removed.

Licensee shall also pay to the Company and other owners thereof the cost of removing all existing attachments/occupancies from the existing pole/conduit and re-establishing the same or like attachments/occupancies on the newly installed pole/conduit. The new pole/conduit shall be the property of the Company regardless of any payments by licensee towards its cost and licensee shall acquire no right, title or interest in such pole/conduit.

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TERM AND CONDITIONS (Contd.)

5. If licensee's proposed attachments/occupancies can be accommodated on existing poles/conduits of the Company by rearranging facilities of the Company and of other licensees or permittees thereon and if the Company and other licensees or permittees are willing to make such rearrangement, such rearrangement shall be made by the Company and such other licensees or permittees, and licensee shall on demand reimburse the Company and such other licensees or permittees for any expense incurred by them in transferring or rearranging such facilities. Any additional guying required by reason of the attachments/occupancies of licensee shall be made by licensee at its expense, and to the satisfaction of the Company.
6. The Company reserves the right to inspect each new installation of licensee on its poles/conduits and to make periodic inspections, semi-annually or more often as conditions may warrant, and licensee shall, on demand, reimburse the Company for the expense of such inspections. The Company's right to make such inspections and any inspection made pursuant to such right shall not relieve licensee of any responsibility, obligation, or liability imposed by law or assumed under the Agreement.
7. Whenever the Company notifies licensee in writing that the attachments/occupancies of licensee interfere with the operation of facilities of the Company or other licensee or permittee, or constitute a hazard to the service rendered by the Company or other licensee or permittee, or fail to comply with codes or regulations above-mentioned, licensee shall within 10 days after the date of such notice, remove, rearrange, or change its attachments/occupancies as directed by the Company. In case of emergency, the Company reserves the right to remove or relocate the attachments/occupancies of licensee at licensee's expense and without notice, and no liability therefor shall be incurred by the Company because of such action.
8. Licensee agrees to indemnify and save harmless the Company from and against any and all liability, loss, damage, costs, attorney fees, or expense, of whatsoever nature or character, arising out of or occasioned by any claim or any suit for damages, injunction or other relief, on account of injury to or death of any person, or damage to any property including the loss of use thereof, or on account of interruption of licensee's service to its subscribers or others, or for public charges and penalties for failure to comply with federal, state or local laws or regulations, growing out of or in connection with any act or omission, negligent or otherwise, of licensee or its servants, agents or subcontractors in the attachment/occupancy, operation and maintenance of facilities of licensee on the poles/conduits of the Company, and in the performance of work hereunder, whether or not due in whole or in part to any act, omission or negligence of the Company or any of its representatives or employees (except insofar as such indemnity arising out of such injury or damage caused by the sole negligence of the Company or such representatives or employees may be judicially found to be contrary to law, in which case this Agreement of indemnity shall in all other respects be and remain effective and binding). The Company may require licensee to defend any suits concerning the foregoing, whether such suits are justified or not.

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TERM AND CONDITIONS (Contd.)

9. Licensee agrees to obtain and maintain at all times during the period licensee has attachments/occupancies on the Company's pole/conduits, policies of insurance as follows:
 - (a) Public liability and automobile liability insurance for itself in an amount as specified by the Company for bodily injury to or death of any one person, and, subject to the same limit for any one person, in an aggregate amount as specified by the Company for any one occurrence.
 - (b) Property damage liability insurance for itself in an amount as specified by the Company for any one occurrence.
 - (c) Contractual liability insurance in amounts as specified by the Company to cover the liability assumed by the licensee under the agreements of indemnity set forth in the Agreement.
10. Prior to making attachments/occupancies to the Company's poles/conduits, licensee shall furnish to the Company two copies of a certificate, from an insurance carrier acceptable to the Company, stating that policies of insurance have been issued by it to licensee providing for the insurance listed above and that such policies are in force. Such certificate shall state that the insurance carrier will give the Company 30 days prior written notice of any cancellation of or material change in such policies. The certificate shall also quote in full the agreements of indemnity set forth in the Agreement as evidence of the type of contractual liability coverage furnished. If such certificate recites that it is subject to any exceptions or exclusions contained in the policy or policies of insurance, such exceptions or exclusions shall be stated in full in such certificate, and the Company may, at its discretion, require licensee before starting work, to obtain policies of insurance which are not subject to any exceptions or exclusions which the Company finds objectionable.
11. The Company reserves the right, without liability to licensee or its subscribers, to discontinue the use of, remove, replace or change the location of any or all of the Company's poles/conduits, attachments/occupancies or facilities regardless of any occupancy of the Company's poles/conduits by licensee, and licensee shall, at its sole cost and within 10 days after written notice by the Company make such changes in, including removal or transfer of, its attachments/occupancies as shall be required by such action of the Company.
12. Licensee may at any time abandon the use of a jointly used pole/conduit hereunder by removing therefrom all of its attachments/occupancies and by giving written notice thereof to the Company.

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TERM AND CONDITIONS (Contd.)

13. Licensee shall secure any right, license or permit from any governmental body, authority, or other person or persons which may be required for the construction or maintenance of attachments/occupancies of licensee, at its expense. The Company does not guarantee any easements, rights-of-way or franchises for the construction and maintenance of such attachments/occupancies. Licensee hereby agrees to indemnify and save harmless the Company from any and all claims, including the expenses incurred by the Company to defend itself against such claims, resulting from or arising out of the failure of licensee to secure such right, license, permit or easement for the construction or maintenance of such attachments/occupancies on the Company's pole/conduits.
14. Electric service for power supplies of a licensee shall be supplied from the lines of the Company in a manner specified by the Company.
15. The Company shall have the right, from time to time during the term of the Agreement, to grant, by contract or otherwise, to others not parties to the Agreement, rights or privileges to use any pole/conduits covered by the Agreement, and the Company shall have the right to continue and extend any such rights or privileges heretofore granted. The attachment/occupancy privileges granted hereunder shall at all times be subject thereto.
16. Licensee shall furnish bond, as specified by the Company, to guarantee the performance of the obligations assumed by licensee under the terms of the Agreement not otherwise covered by the insurance required by paragraph 9. Such bond shall be submitted to the Company prior to licensee's making attachment/occupancy to the Company's poles/conduits.
17. In case one party is obligated to perform certain work at its own expense and the parties mutually agree in writing that it is desirable for the other party to do such work, then such other party shall promptly do the work at the sole expense of the party originally obligated to perform the same. Bills for expense so incurred shall be due and payable within 30 days after presentation.
18. If licensee fails to comply with any of the provisions of the Agreement or defaults in the performance of any of its obligations under the Agreement and fails within 60 days after written notice from the Company to correct such default or non-compliance, the Company may, at its option, forthwith terminate the Agreement, or the specific permit or permits covering the poles/conduits and licensee's attachments/occupancies to which such default or non-compliance is applicable, and remove attachments/occupancies of licensee at licensee's expense, and no liability therefor shall be incurred by the Company because of such action.

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TERM AND CONDITIONS (Contd.)

19. The area covered by the Agreement is set forth on a map, attached to, and made a part of the Agreement. Such area may be extended or otherwise modified by a supplemental agreement mutually agreed upon and signed by the parties to an Agreement with a new map attached thereto showing the changed area to be thereafter covered by the Agreement. Such supplement shall be effective as of the date of final execution thereof and shall be attached to all executed copies of the Agreement.
20. If licensee does not exercise the rights herein granted within six months from the execution date of an agreement, the Agreement shall be void. The Agreement shall start as of the execution date thereof and shall continue for a period of one year and shall be self-renewing from year to year thereafter unless terminated by either party's giving to the other party written notice at least 60 days prior to the end of any yearly term. Licensee shall completely remove its attachments/occupancies from the Company's poles/conduits on or prior to the termination date, unless a new agreement covering such poles/conduits has been executed by the parties hereto.
21. The Agreement shall be binding upon and inure to the benefit of the parties thereto, their respective successors and/or assigns, but licensee shall not assign, transfer or sublet any of the rights hereby granted or obligations hereby assumed without the prior written consent of the Company.
22. The licensee may be required to pay a cash deposit to the Company in order to establish or re-establish credit in an amount not in excess of the total annual rental fees. After the licensee has established a reasonable credit record by paying the rental fees for two consecutive years within the time specified in the Agreement, the Company shall apply the deposit plus an accrued interest to the next annual rental fee amount which is due and payable with the next subsequent anniversary date. The Company shall pay interest thereon in accordance with Rule 4901:1-17-05 of the Ohio Administrative Code.

SERVICE REGULATIONS

The supplying and billing for service, and all conditions applying thereto, are subject to the jurisdiction of the Public Utilities Commission of Ohio, and to Company's Service Regulations currently in effect, as filed with the Public Utilities Commission of Ohio, as provided by law.

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The average percentage increase (decrease) in the total bill of customers under RTP-DS, RTP-DP, and RTP- TS, including a firm supply of electric generation, should the increase be granted in full is 17.21%, 34.90% and (0.34%) respectively.

**PROPOSED RATE PA
POLE ATTACHMENT/CONDUIT OCCUPANCY TARIFF
P.U.C.O NO. 1, SHEET NO. 1.6**

APPLICABILITY

Applicable to any person or entity other than a public utility (hereinafter "Licensee") authorized to complete a "wireline attachment" or an "occupancy", as defined herein, to any distribution pole or in any conduit in the service territory of Duke Energy Ohio, Inc. (hereinafter the "Company"). As used in this Tariff, a "wireline attachment" is the attachment of wire or cable and associated facilities or apparatus within one (1) foot of vertical space to any distribution pole owned by the Company and "occupancy" is the placement of wire or cable and associated facilities or apparatus in conduit space owned by the Company.

Rentals for any requested attachment or occupancy other than those to which this Tariff applies, including but not limited to wireless and WiFi equipment/attachments and overlying of existing attachments, shall be negotiated separately between the Company and prospective attacher. The size, type, and placements of any attachment or occupancy that is not subject to this Tariff shall be at the sole discretion of the Company and in compliance with a signed agreement between the Company and prospective attacher authorizing such attachment or occupancy.

AGREEMENT

Before any wireline attachment or occupancy is made, Licensee shall enter into and be bound by a Pole Attachment or Conduit Occupancy License Agreement (hereinafter the "Agreement"). The Agreement shall specifically authorize the type of service to be provided, e.g., cable television. In addition to any wireline attachment or occupancy, the Agreement may authorize other attachments to which this Tariff does not apply, as agreed between the Company and Licensee.

The Company expressly reserves the right to establish terms and conditions in the Agreement that are not inconsistent with this Tariff.

ATTACHMENT CHARGES

An annual rental of \$14.42 per wireline attachment shall be charged for the use of the Company's poles. Any attachments outside the one (1) foot of vertical space will be considered another attachment and a separate annual rental charge will apply. The charge will apply if any portion of a pole is occupied or reserved at the Licensee's request.

For conduit occupancy, the occupancy fee per linear foot shall be negotiated by the Company and Licensee based on the location, space availability and other factors.

PAYMENT

All payments due from Licensee shall be invoiced by Company and payment shall be made by Licensee within twenty-one (21) days from the date of invoice. When any payments due from Licensee are not timely made, the amount due shall be adjusted to include interest.

equal to one and one-half percent (1.5%) of the unpaid amount, which will accrue monthly until paid.

The annual rental amount shall be paid in advance by Licensee.

As new wireline attachments or occupancies are made after the initial rental year, rentals for such wireline attachments or occupancies shall be paid for the entire year if made within the six-month period after any anniversary date, and for one-half year if made during the following six-month period. For any wireline attachments that Licensee removed or any occupancy that Licensee caused, at its expense, to be removed and for which the Company received written notice from Licensee, the yearly rental shall be adjusted on the same basis.

TERMS AND CONDITIONS

1. APPLICATION

Before any wireline attachment is made by Licensee or any occupancy is made on Licensee's behalf, Licensee shall make written application for permission to install such wireline attachment on any pole of the Company or occupy any conduit of the Company. The written application shall specify the location of each pole or conduit in question, the character of the proposed attachment or occupancy, and the amount and location of space desired. Within forty-five (45) days after receipt of such written application, the Company shall notify Licensee in writing whether or not it is willing to permit the wireline attachment or occupancy and, if so, under what conditions. Licensee is not presumed to have permission to make any wireline attachment or to occupy Company's conduit in the event notification is not made by the Company within forty-five (45) days of its receipt of Licensee's written application. The Company shall have the sole right to determine the availability of such pole or conduit for joint use and shall be under no obligation to grant permission for its use by Licensee. If such permission is granted, Licensee shall have the right to use the space allotted by the Company under the conditions specified in such permit and in accordance with the terms of the Agreement but Company shall not be required to set a pole or install conduit for the sole use by Licensee. Permission to occupy a conduit, if granted, shall not authorize Licensee to access the Company's conduit. Such access shall be limited to the Company or its designated representative.

2. TECHNICAL MANUALS

Upon the execution of the Agreement and before Licensee makes any wireline attachment or causes an occupancy to be made, Licensee shall send the Company all manufacturer's technical manuals and information, construction standards and manuals, and feasibility or loading studies regarding the equipment Licensee proposes to use pursuant to the provisions of the Agreement.

3. TECHNICAL SPECIFICATIONS

All wireline attachments or occupancies are to be placed on poles or in conduit of the Company in a manner satisfactory to the Company and so as not to interfere with the present or any future use that the Company may desire to make of such poles, wires, conduits, or other facilities. All wireline attachments or occupancies shall be installed and maintained by Licensee or on Licensee's behalf and at its expense so as to comply at least with the minimum requirements of the National Electrical Safety Code, any requirements that may be established by the Company, and any other applicable regulations or codes promulgated by federal, state, local or other governmental authority having jurisdiction. Licensee shall take any necessary precautions, by the installation of protective equipment or other means, to protect all persons and property of all kinds against injury or damage occurring by reason of Licensee's wireline attachments on the

Company's poles or occupancy in the Company's conduit. The Company shall be the sole judge as to the requirements for the present or future use of its poles, conduits, and equipment and of any interference therewith.

4. REPLACEMENT COSTS

In any case where it is necessary for the Company to replace a pole or conduit because of the necessity of providing adequate space or strength to accommodate the wireline attachments or occupancy of Licensee thereon, either at the request of Licensee or to comply with the above mentioned codes and regulations, the Licensee shall pay the Company the total cost of this replacement. Such cost shall be the total estimated cost of the new pole or conduit, including material, labor, and applicable overheads, plus the cost of transferring existing electric facilities to the new pole or conduit, plus the cost of removal of the existing pole or conduit and any other incremental cost required to provide for the wireline attachments of or occupancy by the Licensee, including any applicable taxes the Company may be required to pay because of this change in plant, minus salvage value of any facilities removed.

Licensee shall also pay to the Company and other owners thereof the cost of removing all existing attachments from the existing pole or conduit and re-establishing the same or like attachments on the newly installed pole or in the newly installed conduit. The new pole or conduit shall be the property of the Company regardless of any payments by Licensee towards its cost, and Licensee shall acquire no right, title or interest in such pole or conduit.

5. REARRANGING COSTS

If Licensee's proposed wireline attachments or occupancy can be accommodated on existing poles or in existing conduit of the Company by rearranging facilities of the Company and of other licensees thereon and if the Company and other licensees are willing to make such rearrangement, such rearrangement shall be made by the Company and such other licensees, and Licensee shall reimburse the Company and such other licensees for any expense incurred by them in transferring or rearranging such facilities. Any additional guying required by reason of the attachments of Licensee shall be made by Licensee at its expense and to the satisfaction of the Company. The Company shall not be responsible for coordinating the relocation of third party attachments.

6. INSPECTIONS

The Company reserves the right to inspect each new installation of Licensee on its poles and in its conduit and to make periodic inspections/inventories every five (5) years or more often if, in the Company's sole discretion, the conditions may warrant, and Licensee shall reimburse the Company for the expense of such inspections/inventories. The Company's right to make such inspections and any inspection made pursuant to such right shall not relieve Licensee of any responsibility, obligation, or liability imposed by law or assumed under the Agreement. When an unauthorized attachment or occupancy is found during an inspection/inventory, the Licensee will pay the Company an unauthorized attachment or occupancy sanction in the following amounts: \$100 per unauthorized attachment or occupancy plus five (5) years annual rental if an unauthorized attachment or occupancy is found and Licensee has not participated in a required audit; or, \$50 per unauthorized attachment or occupancy plus five (5) years annual rental if the Licensee does participate in the audit or identifies the unauthorized attachment or occupancy on its own.

7. SAFETY VIOLATIONS

Whenever the Company notifies Licensee in writing that the wireline attachments or occupancies of Licensee interfere with the operation of facilities of the Company or

other licensee, constitute a hazard to the service rendered by the Company or other licensee, or fail to comply with codes, regulations, or requirements set forth in Paragraph 3 above or in the Agreement, Licensee shall, within ten (10) days after the date of such notice, remove, rearrange, or change its wireline attachments or ensure that, at its expense, its occupancy is removed, rearranged, or changed as directed by the Company. In case of emergency, the Company reserves the right to remove or relocate the Licensee's wireline attachments or occupancy at Licensee's expense and without notice, and no liability therefore shall be incurred by the Company because of such action.

Licensee shall be assessed a sanction of \$200 dollars for each wireline attachment or occupancy that violates the codes, regulations, or requirements set forth in Paragraph 3 above or in the Agreement.

8. INDEMNIFICATION

Licensee agrees to indemnify and save harmless the Company from and against any and all liability, loss, damage, costs, attorney fees, or expense, of whatsoever nature or character, arising out of or occasioned by any claim or any suit for damages, injunction or other relief, on account of injury to or death of any person, or damage to any property including the loss of use thereof, or on account of interruption of Licensee's service to its subscribers or others, or for public charges and penalties for failure to comply with federal, state or local laws or regulations, growing out of or in connection with any act or omission, negligent or otherwise, of Licensee or its servants, agents or subcontractors in the attachment, operation and maintenance of facilities of Licensee on the poles or in the conduit of the Company, and in the performance of work hereunder, whether or not due in whole or in part to any act, omission or negligence of the Company or any of its representatives or employees (except insofar as such indemnity arising out of such injury or damage caused by the sole negligence of the Company or such representatives or employees may be judicially found to be contrary to law, in which case this Agreement of indemnity shall in all other respects be and remain effective and binding). The Company may require Licensee to defend any suits concerning the foregoing, whether such suits are justified or not.

9. INSURANCE REQUIREMENTS

Licensee agrees to obtain and maintain at all times during the period Licensee has wireline attachments on the Company's poles or occupancy in the Company's conduit, policies of insurance as follows:

- (a) Public liability and automobile liability insurance for itself in an amount as specified by the Company for bodily injury to or death of any one person, and, subject to the same limit for any one person, in an aggregate amount as specified by the Company for any one occurrence.
- (b) Property damage liability insurance for itself in an amount as specified by the Company for any one occurrence.
- (c) Contractual liability insurance in amounts as specified by the Company to cover the liability assumed by the Licensee under the agreements of indemnity set forth in the Agreement.

10. CERTIFICATE OF INSURANCE

Prior to making wireline attachments to the Company's poles or occupancy in the Company's conduit, Licensee shall furnish to the Company two copies of a certificate, from an insurance carrier acceptable to the Company, stating that policies of insurance have been issued by it to Licensee providing for the insurance listed above and that such

policies are in force. Such certificate shall state that the insurance carrier will give the Company thirty (30) days prior written notice of any cancellation of or material change in such policies. The certificate shall also quote in full the agreements of indemnity set forth in the Agreement as evidence of the type of contractual liability coverage furnished. If such certificate recites that it is subject to any exceptions or exclusions contained in the policy or policies of insurance, such exceptions or exclusions shall be stated in full in such certificate, and the Company may, at its discretion, require Licensee before starting work, to obtain policies of insurance that are not subject to any exceptions or exclusions that the Company finds objectionable.

11. DISCONTINUATION OF COMPANY FACILITIES

The Company reserves the right, without liability to Licensee or its subscribers, to discontinue the use of, remove, replace or change the location of any or all of the Company's poles, attachments, conduit, or facilities regardless of any wireline attachment to the Company's poles by Licensee or occupancy in the Company's conduit by Licensee, and Licensee shall, at its sole cost and within ten (10) days after written notice by the Company make or cause to be made such changes in, including removal or transfer of, its wireline attachments or occupancies as shall be required by such action of the Company.

12. ABANDONMENT

Licensee may at any time abandon the use of a pole or conduit under the Agreement hereunder by removing therefrom all of its wireline attachments or by requesting the Company to remove, at Licensee's expense, all of its occupancies and by giving written notice thereof to the Company.

13. PERMITS, EASEMENTS, AND RIGHTS-OF-WAY

Licensee shall secure any right, license or permit from any governmental body, authority, or other person or persons that may be required for the construction or maintenance of Licensee's wireline attachments or occupancies, at its expense. The Company does not guarantee any easements, rights-of-way or franchises for the construction and maintenance of such wireline attachments or occupancies. Licensee hereby agrees to indemnify and save harmless the Company from any and all claims, including the expenses incurred by the Company to defend itself against such claims, resulting from or arising out of the failure of Licensee to secure such right, license, permit or easement for the construction or maintenance of such attachment on the Company's pole or occupancy in the Company's conduit.

14. SUPPLY OF ELECTRIC SERVICE

Electric service for power supplies of a Licensee shall be supplied from the lines of the Company in a manner specified by the Company.

15. USE BY THIRD PARTIES

The Company shall have the right, from time to time during the term of the Agreement, to grant, by contract or otherwise, to others not parties to the Agreement, rights or privileges to use any pole or conduit covered by the Agreement, and the Company shall have the right to continue and extend any such rights or privileges heretofore granted. The wireline attachment and occupancy privileges granted hereunder shall at all times be subject thereto.

16. BOND

Licensee shall furnish a bond, as specified by the Company, to guarantee the performance of the obligations assumed by Licensee under the terms of the Agreement not otherwise covered by the insurance required by paragraph 9. Such bond shall be

submitted to the Company prior to Licensee making attachment to the Company's poles or occupying the Company's conduit.

17. REIMBURSEMENT FOR WORK PERFORMED

In case one Party is obligated to perform certain work at its own expense and the Parties mutually agree in writing that it is desirable for the other Party to do such work, then such other Party shall promptly do the work at the sole expense of the Party originally obligated to perform the same. Bills for expense so incurred shall be due and payable within thirty (30) days after presentation.

18. DEFAULT

If Licensee fails to comply with any of the provisions of the Agreement or defaults in the performance of any of its obligations under the Agreement and fails within sixty (60) days after written notice from the Company to correct such default or non-compliance, the Company may, at its option, forthwith terminate the Agreement, or the specific permit or permits covering the poles or conduit and Licensee's wireline attachments or occupancies to which such default or non-compliance is applicable, and remove wireline attachments or occupancies of Licensee at Licensee's expense, and no liability therefore shall be incurred by the Company because of such action.

19. MAPS

The area covered by the Agreement shall be set forth on a map, attached to, and made a part of the Agreement. Such area may be extended or otherwise modified by a supplemental agreement mutually agreed upon and signed by the Parties to an Agreement with a new map attached thereto showing the changed area to be thereafter covered by the Agreement. Such supplement shall be effective as of the date of final execution thereof and shall be attached to all executed copies of the Agreement.

20. EXPIRATION OF AGREEMENT

If Licensee does not exercise the rights herein granted within six (6) months from the execution date of the Agreement, the Agreement shall be void. The Agreement shall start as of the execution date thereof and shall continue for a period of one year and shall be self-renewing from year to year thereafter unless terminated by either Party's giving to the other Party written notice at least sixty (60) days prior to the end of any yearly term. Licensee shall completely remove its wireline attachments from the Company's poles or direct the Company to remove, at Licensee's expense, its occupancy in the conduit on or prior to the termination date, unless a new Agreement covering such poles or conduit has been executed by the Parties hereto.

21. BINDING EFFECT

The Agreement shall be binding upon and inure to the benefit of the Parties thereto, their respective successors and/or assigns, but Licensee shall not assign, transfer or sublet any of the rights hereby granted or obligations hereby assumed without the prior written consent of the Company and without the execution of a separate agreement between the Company and Licensee's assignee, transferee, or sublessee.

22. DEPOSIT

The Licensee may be required to pay a cash deposit to the Company in order to establish or re-establish credit in an amount not in excess of the total annual rental fees. After the Licensee has established a reasonable credit record by paying the rental fees for two consecutive years within the time specified in the Agreement, the Company shall apply the deposit plus an accrued interest to the next annual rental fee amount which is due and payable with the next subsequent anniversary date. The Company shall pay interest thereon in accordance with Rule 4901:1-17-05 of the Ohio Administrative Code.

23. **FORCE MAJEURE**

Except as may be expressly provided otherwise, neither Party shall be liable to the other for any failure of performance under the Tariff or Agreement due to causes beyond its reasonable control, including: (a) acts of God, fire, explosion, vandalism, storm, or other similar occurrences; (b) national emergencies, insurrections, riots, acts of terrorism, or wars; (c) strikes, lockouts, work stoppages, or other labor difficulties. To the extent practicable, the Parties shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the force majeure event causing the failure or delay has ceased. Each Party shall promptly notify the other Party of any delay in performance under this paragraph and its effect on performance required under the Tariff or Agreement.

If any pole or conduit of the Company is damaged or destroyed by a force majeure event so that, in the Company's sole discretion, the pole or conduit is rendered materially unfit for the purposes described in the Tariff or Agreement and the Company elects not to repair or replace the pole or conduit, then permission to attach to such pole or occupy such conduit shall terminate as of the date of such damage or destruction.

SERVICE REGULATIONS

The supplying and billing for service, and all conditions applying thereto, are subject to the jurisdiction of the Public Utilities Commission of Ohio, and to Company's Service Regulations currently in effect, as filed with the Public Utilities Commission of Ohio, as provided by law.

OTHER PROPOSED CHANGES

The Company proposes to make the following additional changes to its electric tariff:

1. **Section IV – Customer's and Company's Installations, paragraph 3 – Installation and Maintenance.** The following provision is added:

The Company shall not be required to construct general distribution lines underground unless the cost of such special construction for general distribution lines and/or the cost of any change of existing overhead general distribution lines to underground which is required or specified by a municipality or other public authority (to the extent that such cost exceeds the cost of construction of the Company's standard facilities) shall be paid for by that municipality or public authority.

2. **Section VI – Billing and Payment, paragraph 3 – Temporary Discontinuance of Service.** The following provision is changed:

If any residential customer notifies the Company in writing to discontinue service, the Company will make no minimum charge for any full meter reading period during the period of discontinuance; provided however, that the Company may charge and collect a fee in accordance with paragraph B of Sheet No. 92 prior to reconnecting a service which was discontinued at the customer's request within the preceding twelve months.

3. **Section VI – Billing and Payment, paragraph 6 – Net Metering.** The following sentence is added to the end of the third last subparagraph:

Credits will be limited to generation charges, and will not apply to other metered charges such as those for distribution and transmission service.

The above proposed provisions, rates, and charges are subject to changes, including changes as to amount and form, by The Public Utilities Commission of Ohio following a public hearing on the filed application. Recommendations which differ from the filed application may be made by the Staff of The Public Utilities Commission of Ohio or by intervening parties and may be adopted by the Commission.

Any person, firm, corporation or association may file, pursuant to Section 4909.19 of the Revised Code, an objection to such proposed increased rates by alleging that such proposals are unjust and discriminatory or unreasonable.

Any person, firm, corporation or association may file a motion to intervene. Intervenor may obtain copies of the application and other filings made by the Company by contacting Ms. Anita Schafer at (513) 419-1847, Duke Energy Ohio, Inc.

WHEREFORE, since the rates, prices, charges, and other provisions in DE-Ohio's current electric rate schedules do not yield just and reasonable compensation to DE-Ohio for supplying electric distribution service to the customers to which they are applicable, do not yield a just and reasonable return to DE-Ohio on the value of the property used for furnishing such electric distribution service to such customers, and result in the taking of DE-Ohio's property for public use without compensation and without due process of law, DE-Ohio respectfully prays that your Honorable Commission:

- (a) Accept this Application for filing;
- (b) Find that this Application and the attached Schedules filed herewith and incorporated herein, are in accordance with R. C. 4909.18 and the Rules of the Commission;
- (c) Approve the Form of Notice in the attached Schedule S-3;
- (d) Find that the current rates, prices, and charges for electric service are unjust, unreasonable and insufficient to yield reasonable compensation to DE-Ohio for the electric distribution service rendered;
- (e) Find that the proposed rates, prices, and charges are just and reasonable based upon the test period for the twelve months ending December 31, 2008, and approve such schedules in the form tendered herewith;
- (f) Find that DE-Ohio is in compliance with R. C. 4905.35;
- (h) Approve DE-Ohio's Application for Approval to Change Accounting Methods consistent with the Commission's approval of DE-Ohio's proposed deferrals in Case Nos. 08-711-EL-AAM and 08-710-EL-ATA and its Distribution Reliability Rider, and its Development Incentive Rider;

- (i) Fix the date on or after which applicable services provided to non-residential customers are subject to the proposed rates at January 1, 2009; and
- (j) Fix the date on or after which applicable services provided to residential customers are subject to the proposed rates at January 1, 2009.

A copy of the Application, including a copy of the present and proposed rate sheets, may be inspected by any interested party at the office of the Commission, 180 East Broad Street, Columbus, Ohio 43266-0573; or at the following business offices of the Company: 139 East Fourth Street, Cincinnati, Ohio or 644 Linn St. Cincinnati, Ohio 45203

Any interested party seeking detailed information with respect to all affected rates, charges, regulations and practices may inspect a copy of the application, including supporting schedules and present and proposed rate sheets, at the offices of the Commission at 180 East Broad Street, 13th floor, Columbus, Ohio, 43215-3793; by visiting the Commission's web site at <http://www.puco.ohio.gov>, selecting DIS, inputting 08-709 in the case-lookup box, and selecting the date the application was filed; or by telephoning the Commission at 1-800-686-7826. In addition, a copy of the application and supporting documents may be viewed at the business office of the Company at 139 East Fourth Street, Cincinnati, Ohio or 644 Linn St., Cincinnati, Ohio.

DUKE ENERGY OHIO, INC.