

67
FILE

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Duke Energy Ohio for an)
Increase in Electric Distribution Rates)

Case No. 08-709-EL-AIR

In the Matter of the Application of)
Duke Energy Ohio for Tariff)
Approval)

Case No. 08-710-EL-ATA

In the Matter of the Application of)
Duke Energy Ohio 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

PUCO

2009 FEB 26 PM 4:07

RECEIVED-BUSKETING DIV

**OBJECTIONS TO THE STAFF REPORT BY THE OHIO CABLE
TELECOMMUNICATIONS ASSOCIATION**

The Ohio Cable Telecommunications Association ("OCTA"), an Intervenor in this case, hereby submits its objections to the January 27, 2009 Staff Report in the above-captioned cases in accordance with 4909.19, Revised Code, and 4901-1-28(B) of the Ohio Administrative Code, as follows:

Proposed Pole Attachment Rate

1. OCTA objects to the Staff's determination that Duke's pole attachment rate as calculated under the FCC formula is \$9.25. Staff's calculations of Duke Energy Ohio's (including its predecessors, "Duke's") pole attachment rate under the Federal Communications Commission ("FCC") formula significantly overstate the rate properly derived under that formula. In fact, Duke has failed to meet its burden to

**This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.**

Technician Tm Date Processed 2/26/2009

justify any rate increase above its current \$4.25 rate. And even if the Staff could properly recommend a rate increase, based on the FCC formula, that rate is no more than \$6.05.

A. The Public Utilities Commission of Ohio ("PUCO") relies on the FCC's formula for calculating pole attachment rates. *See, e.g., In re Cincinnati Bell for Authority to Adjust its Rates & Charges & to Change its Tariffs*, Case No. 81-1338-TP-AIR, Opinion & Order, Mar. 9, 1982, p. 42 (Commission adopts formula used by FCC); *Columbus & Southern Ohio Elec. Co.*, Case No. 81-1058-EL-AIR (Nov. 5, 1982) (same).

B. Pole attachment calculations under the FCC formula are driven largely by the average cost of a distribution pole as contained in FERC Account 364 (poles, towers and fixtures). The average cost of a distribution pole is determined by dividing the investment in distribution poles as of a certain date by the number of poles owned by the utility as of that same date. *See* 47 C.F.R. § 1.1409(e)(1). The Staff's calculations, however, are based on its acceptance of Duke numbers that both significantly overstate the pole investment in the numerator of that fraction and understate the number of poles in the denominator. Both of these unwitting errors by the Staff act to inflate the FCC pole rate far above its proper range.

i. Duke's FERC Account 364 is supported by the Company's "Continuing Property Records" ("CPR"), which contain expenditures logged to both General Ledger 101 ("GL 101") ("Classified Expenditures") and General Ledger 106 ("Completed Construction Not Classified") ("GL 106"). When a construction project is placed in service, the project's costs are moved from "Construction Work In Progress" ("CWIP") (General Ledger 107) to "Completed Construction Not Classified" (GL 106) and entered into Account 364. [Continued Deposition of James Dean, Jan. 30, 2009]

(“Dean Dep. 2”) at 21-22, 39.] According to the instructions for Account 364 in the FERC Form 1, GL 106 is to include “on an estimated basis, if necessary,” the amounts of unclassified expenditures, with the expectation that entries of “tentative distributions of prior year” will be reversed where appropriate. FERC Form Page 204. As of the end of 1999, ****This information is redacted. It refers to depositions and deposition exhibits submitted under seal on February 23, 2009.**** of Duke’s Account 364 consisted of “Classified” GL 101 original investment and ****This information is redacted. It refers to depositions and deposition exhibits submitted under seal on February 23, 2009.**** of the Account consisted of “Completed Construction Not Classified” (GL 106) investment. [See OCTA Dep. Ex. 28 (submitted under seal).]

ii. Duke’s process of “classifying” (also called “unitizing”) pole investment from GL 106 to GL 101 in Account 364 involves an “inventory” to establish the number of poles installed, and then the application of “standard factor” costs for the size and type of poles involved to derive the correct amount to be carried forward in GL 101 of the Account. [Dean Dep. 2 at 42, 49.] The purpose of “classifying” expenses from GL 106 to GL 101 “is to be sure that the correct amounts are assigned to the different property accounts.” [Id. at 49.]

iii. When this classification process is completed, Duke “close[s] the project” and moves it to GL 101. [Deposition of James Dean, Dec. 15, 2008 (“Dean Dep. 1”), at 33.] ****This information is redacted. It refers to depositions and deposition exhibits submitted under seal on February 23, 2009.****

iv. Duke’s investment in Account 364, to the extent that it includes amounts in General Ledger 106, is simply too uncertain and questionable to be

reasonably relied on in this case. Duke has not met its burden of proof or persuasion. See Ohio Admin. Code § 4901-7-01; *In the Matter of the Commission's Review of Chapter 4901-7, Ohio Administrative Code, Standard Filing Requirements for Rate Increases Filed Pursuant to Chapter 4909, Revised Code*, 2008 WL 2180185, *8 (Ohio P.U.C. 2008) ("Any utility that files a rate increase shall be prepared to go forward at hearing time on the data and prepared direct testimony filed in support of the application, the two month update, and any revisions or new schedules to sustain the burden of proof that the rate increase is just and reasonable."). Nor should Duke be rewarded for its efforts to obscure and hide the errors in its accounting from OCTA and the Commission through its initial efforts to rely on pole costs that it knew were overstated, and its refusals and failures to cooperate in discovery to provide timely and accurate responses related to these errors.

v. Duke discovered in June or July of 2008 that some of the investment carried in GL 106 of Account 364 had been overstated – "[t]hat certain projects that had been initiated had had an estimated account put on them that showed poles greater than what the estimate should have been for the poles." [Dean Dep. 1 at 32-34.] Despite this discovery, however, Duke continued to rely on the entire amount of GL 106 in its pole attachment calculations. When OCTA sought to get behind the amounts in Account 364 early in discovery by submitting a Production of Documents Request ("POD") that explicitly sought Duke's Continuing Property Records for Account 364 for 2000-2007, Duke refused to provide them and instead provided a "summary" it made up of those records for purposes of responding to the POD. [Dean Dep. 1 at 24-25.] Only after counsel for OCTA complained about Duke's failure to provide the records

themselves did Duke finally produce them. [OCTA POD 01-004 Supplemental, attached hereto as Exhibit 1.]

vi. The “summary” of the Continuing Property Records supplied initially by Duke for 2000-2007 not only failed to divulge the errors that Duke had already discovered in Account 364; it contained numerous other errors, as well. Those errors were not admitted by Duke until Duke’s witness, James Dean, who is generally responsible for adding facilities to the Continuing Property Records of Account 364 [Dean Dep. 1 at 12], was confronted at his first deposition on December 15 with the fact that the numbers in the summary of Account 364 did not jibe with the numbers for Account 364 reported in the Company’s annual FERC Form. At that time, Mr. Dean admitted that the schedule “has been revised” – though the revised summary had not been provided to OCTA. [Dean Dep. 1 at 37-38.] Even after admitting that its summary of years 2000-2007 was flawed, Duke then produced a similarly flawed summary for the years 1993-1999. [Dean Dep. 2 at 17.] Only in mid-January did Duke provide a revised summary for both time periods. And even though Duke had already revised its Account 364 by deleting a portion of GL 106, the revised summary did not reflect that revision. [See OCTA Dep. Ex. 21, Attach. OCTA-INT-03-022; Dean Dep. 2 at 18.]

vii. Also during his first deposition on December 15, 2008, Mr. Dean admitted that Duke had charged amounts to GL 106 of Account 364 that should have been allocated instead to other property accounts. ****This information is redacted. It refers to depositions and deposition exhibits submitted under seal on February 23, 2009.**** He admitted that it was not possible to tell whether amounts in GL 106 had been properly allocated to Account 364 without reviewing the work orders involved in

each case. [*Id.* at 74-76, 77-78, 79, 82-84.] After that deposition, Duke submitted two different measures of the amount by which it believed Account 364 should be reduced. Duke's initial reduction was \$65.6 million, but later, without explanation, Duke revised its reduction to \$61.4 million. [*Compare* Staff DR 50-001 (reducing Account 364 by \$65,638,734), attached hereto as Exhibit 2, *with* Staff DR 50-001 Supplemental (reducing Account 364 by \$61,410,077), attached hereto as Exhibit 3.]

viii. Duke eventually related to OCTA on January 14, 2009, that it had reduced Account 364 by \$61 million. [OCTA Dep. Ex. 21, OCTA INT 03-023.] But in arriving at this amount, Duke failed to review work orders covering millions of additional dollars in GL 106; it failed to adjust other work orders where the allocation of millions of dollars to Account 364 was broadly arbitrary; and it failed to establish any reasonable basis for the adjustments it did make. As a result, it is plain that Duke's new estimates of the original (embedded) investment of \$223 million as of year end 2007 (and of \$225 million as of March 2008) in Account 364 are wholly unreliable. Duke has not met its burden in this case of establishing the amount of pole investment in Account 364 when it includes GL 106.

ix. ****This information is redacted. It refers to depositions and deposition exhibits submitted under seal on February 23, 2009.****

x. ****This information is redacted. It refers to depositions and deposition exhibits submitted under seal on February 23, 2009.****

xi. *In an unknown number of the projects that were reviewed by Duke but not adjusted, the distribution operations group had arbitrarily allocated to Account 364 a proration of the project's total costs based simply on the number of FERC*

property accounts involved in the project. ****This information is redacted. It refers to depositions and deposition exhibits submitted under seal on February 23, 2009.****

xii. For the large majority of projects reviewed, no underlying documentation in the form of work orders or other documents was produced by Duke, despite OCTA's requests. [See OCTA Dep. Ex. 21, OCTA INT 02-023; OCTA POD 03-016 Supplemental.] ****This information is redacted. It refers to depositions and deposition exhibits submitted under seal on February 23, 2009.****

xiii. The distribution operations group did adjust GL 106 (and thus Account 364) by removing approximately \$61 million. But again Mr. Dean, the witness produced by Duke to testify about the adjustments, was unable to give the reasons for the size of the adjustments in any particular cases. ****This information is redacted. It refers to depositions and deposition exhibits submitted under seal on February 23, 2009.****

xiv. Based on (1) Duke's failure to provide any documentary support for the adjustments made in GL 106, (2) the failure of the witness designated by Duke to be able to support the adjustments made (and not made), (3) Duke's failure even to review numerous work orders with questionable allocations to Account 364, (4) Duke's failure to adjust arbitrary pro-rata allocations to Account 364 in amounts of many millions of dollars, and (5) Duke's reliance on its distribution operations group's questionable allocations to GL 106 in so-called "like-work" projects to determine the proper percentage allocations to make to Account 364, Duke's final estimated investment in GL 106 for Account 364 is totally unreliable. **OCTA objects, therefore, to the Staff's reliance on Duke's estimates and to the Staff's implicit finding that Duke has**

met its burden of proof in relying on Duke's embedded pole investment numbers to the extent they include GL 106.

xv. OCTA also objects to the Staff's reliance on GL 106 in determining the average pole cost because the Staff's use of an embedded pole investment that includes GL 106 does not bear any relationship to the number of poles on which the Staff relies for the denominator of the fraction. In addition to the questions raised about the investment amounts contained in Duke's adjusted GL 106 for Account 364, the Staff's rate calculation suffers from a lack of any relationship between the investment used for Account 364 and the number of poles used to divide that investment. It is necessary, of course, that the numerator and the denominator of the average pole cost equation be properly matched. The Staff's rate calculation, however, relies on a number of poles in Account 364 that not only purports to have been determined as of a different period of time, but that also does not include many poles whose investment was included in the Staff's embedded pole investment number.

xvi. First, the number of distribution poles in Account 364 (248,901) relied on by the Staff purports to be determined as of December 31, 2007. [Continued Deposition of Donald Storck, Jan. 29, 2009 ("Storck Dep. 2"), at 12.] But the embedded investment for Account 364 on which the Staff relies purports to be as of March 30, 2008. Even according to the Duke figures on which the Staff relies, the investment in Account 364 increased by \$2.2 million in the first quarter of 2008. [See Attachment Staff DR 60 001e page 12 of 50, attached hereto as Exhibit 5.] ^{1/} The number of poles on which the Staff relies was not similarly updated and increased.

^{1/} Duke has now calculated that its investment in Account 364 at year-end 2007 was \$223,125,044.07 and that its investment grew by March 30, 2008 to \$225,327,637.51.

xvii. More significant, however, is that the number of poles on which Duke and the Staff rely fails to include many of the poles whose investment is included in the adjusted Account 364 (including GL 106) on which they also rely. According to Duke's responses to discovery, the number of poles in the Staff's pole attachment calculation (248,901) was "derived with reference to Duke Energy Ohio's Small World infrastructure system" – its GIS records. [OCTA Dep. Ex. 21, OCTA INT 03-028.] Duke's deposition testimony established that poles are not added to the GIS system until the project is "closed out" and the poles inventoried. [Deposition of Steve Adams, Jan. 29, 2009 ("Adams Dep."), at 12-13; Dean Dep. 2 at 25, 41.] The Company does not even know the number of poles it has installed in connection with a project until they are "inventoried" in the process of "classifying" ("unitizing") investments from GL 106 to GL 101. [Dean Dep. 1 at 33, 57-58; Dean Dep. 2 at 25, 38-42.] ****This information is redacted. It refers to depositions and deposition exhibits submitted under seal on February 23, 2009.**** It is apparent, therefore, that Duke's pole number (248,901) does not contain many (if any) of the poles whose investment is included in GL 106 of Account 364. Until those poles are "inventoried" in the process of the projects being "classified" into GL 101 – and added to the number of poles used in the denominator of the average pole cost fraction – it would be improper to include the investment in those poles.

xviii. As noted above, therefore, the numerator (pole investment) and the denominator (number of poles) relied on by the Staff in determining the average cost of a pole have different bases. There is no apparent consistency in the dates or

universes represented by the numbers. Accordingly, OCTA objects to the Staff's reliance on these numbers.

xix. **OCTA further objects to the Staff's reliance on the number of poles (248,901) Duke claims because that number has never been adequately supported by Duke.** The Company has assiduously avoided providing any support for that number, and the witness designated by the Company to testify at deposition about the number of poles and the records that might support it was unable or unwilling to do so.

a. OCTA's Document Production Request No. 4, requested Duke to provide "all documents that relate to the number of Distribution Poles owned by Duke by year since 2000." [OCTA Dep. Ex. 4, OCTA-POD 01-004.] In its initial response, Duke provided only a "Summary of CPR – adds and retires for account 364 for the years 2000 through 2007." [*Id.*] That Summary was prepared by Duke for purposes of responding to OCTA's document production request, and contained columns denoted as "quantity" and "amount." [*Id.*] After counsel for OCTA complained about the failure to provide the underlying documents requested, Duke provided a copy of printouts of its Continuing Property Records ("CPRs") showing the additions and retirements by year and the final year-end CPRs for 2007, for both GL 101 and 106. [OCTA POD 01-004 Supplemental, attached hereto as Exhibit 6.]

b. At his first deposition on December 15, 2008, Mr. Dean initially testified that the "quantity" numbers in POD 01-004 represented the number of poles in Account 364, except that the number of poles in the field would be "slightly" greater due to a "paper work lag." [Dean Dep. 1 at 27-31 ("Quantity is to

represent the number of poles that have been added or the book quantity that you see here.”).] ****This information is redacted. It refers to depositions and deposition exhibits submitted under seal on February 23, 2009.**** When Mr. Dean was later asked to explain why Duke initially advised OCTA that the number of poles in Account 364 was represented in the continuing property records, he had no explanation. [Dean Dep. 2 at 28-29.]

c. OCTA’s Interrogatory No. 03-028, exchanged after Mr. Dean’s first deposition, asked Duke to “[e]xplain fully how Duke determined that it had 248,901 distribution poles in Account 364 as of the end of 2007, including the basis for the number [and] what back-up exists to support that number.” Response to Interrogatory No. 03-028, attached hereto as Exhibit 7. Duke objected to the Interrogatory and responded only that “the quantity of distribution poles used for purposes of the proposed pole attachment rate was derived with reference to Duke Energy Ohio’s Small World infrastructure system.” [*Id.*] No further detail about how the number was derived was given; nor was any description of any back-up supporting the number provided. In his second deposition on January 29, 2009, Donald Storck testified that he had received an email from Nancy Musser that provided the 248,901 number. [Storck Dep. 2 at 11-12.] No such email has been provided to OCTA.

d. On January 29, 2009, Duke produced for deposition Steve Adams to testify about “[i]mplementation and use of Duke’s GIS system for poles, including any pole counts available through the GIS mapping system,” “[t]he number of distribution poles in Account 364 for each of the years 1993 through 2007, and Duke’s

records of these numbers of poles.” [OCTA Dep. Ex. 19; Adams Dep. at 8.] ^{2/} Mr. Adams was unable to give the basis for Duke’s reliance on 248,901 poles. ^{3/} Indeed, he stated that Duke does not even have documentation of the number of poles in the GIS system as of year-end 2007. [*Id.* at 11.] He testified, moreover, that there was no way to use the Small World (GIS) infrastructure system to determine the number of poles owned by Duke as of year-end 2007 – the date portrayed by Duke as the basis for the number. [*Id.* at 28.]

e. **Because Duke has never provided any support for the number of poles it has used to divide the pole investment in Account 364 to derive an average embedded cost per pole, OCTA objects to the Staff’s use of that number to divide Duke’s revised investment in Account 364.**

2. **Based on the failure of Duke to provide adequate justification for its pole attachment rate, OCTA objects to the Staff’s allowing Duke to increase its rate at this time.**

A. Duke witness Dean stated at deposition that Duke now plans on eliminating the backlog of classification of GL 106 in 2009. Perhaps after the millions of dollars remaining in GL 106 have been classified and the poles inventoried and added to the Small World GIS system, Duke may be in a position to calculate a proper pole attachment rate. ^{4/} Until then no increase can be justified, and no increase should be

^{2/} It was agreed by the parties that Mr. Adams would be responsible for discussing the GIS system, but to the extent that the questions went “specifically [to] Account 364,” Mr. Dean would be responsible for them. Adams Dep. at 8.

^{3/} Mr. Dean did not know about the basis for that number, either. [Dean Dep. 1 at 43-44.] Nor did Mr. Storck, who sponsored Duke’s rate calculations. [Deposition of Donald Storck, Nov. 21, 2008 (“Storck Dep. 1”), at 71.]

^{4/} This would assume, of course, that Duke’s allocations to GL 101 are not also

permitted. Although the Staff's recommendation that Duke be permitted at a maximum to increase its pole attachment rate no more than 50 percent above its current rate of \$4.25 would make sense were the FCC rate to actually approach the \$9.25 annual rate calculated by the Staff, the magnitude of such an increase is not justified based on the record here.

B. Even if some increase in the pole attachment rate were justified, it should not exceed the rate that is obtained by reference to a correct application of the FCC methodology, including corrected data inputs. In this case, such a rate may be calculated relying solely on GL 101, divided by the number of poles provided by Duke. GL 101 represents all poles that have been classified. And the number of poles in the Small World system represents all poles that have been inventoried and closed out in that system in the process of classification. Since Duke has represented that 248,901 is the number of poles "derived with reference to Duke Energy Ohio's Small World infrastructure system," if the Commission is to allow any pole attachment rate increase, it should determine the maximum such rate by applying that number of poles to the GL 101 investment. It is clear that any number of poles "derived with reference" to the Small World system is much more closely related to the investment in GL 101 than it is related to the combined investment in GL 101 and GL 106.

3. **OCTA objects to the Staff's determination that Duke's pole attachment rate may be above \$6.05**, the rate calculated by OCTA's expert, Patricia Kravtin. *See* Testimony of Patricia Kravtin ("Kravtin Test.") at 36. If Duke's rate is to be raised at all at this time, it should not be raised above \$6.05.

infected and that the actual number of poles related to the investment in Account 364 can be determined.

4. **OCTA objects to the use of any formula or calculations other than as represented here.** The calculations performed by Patricia Kravtin should be those used to calculate Duke's pole attachment rate, if Duke's rate is to be increased at all. *See* Kravtin Test. Attach. 4, attached hereto as Exhibit 8.

5. **OCTA further objects to the Staff's determination that the rate should be set as high as \$6.40.** That rate would not only exceed the rate calculated under the FCC formula, even relying on information provided by Duke, but it would also be above the pole attachment rates of any Ohio utility. The current rates for Ohio utilities are set forth in the chart below. *See* Testimony of Edward Kozelek on behalf of OCTA ("Kozelek Test."), at 4-6 & Ex. 1 thereto.

Ohio Pole Attachment Rates

<u>Telephone Utility</u>	<i>Telephone Utilities</i>			
	<u>2008</u>	<u>2007</u>	<u>2006</u>	<u>2005</u>
AT&T	\$2.52	\$2.52	\$2.52	\$2.52
Century Telephone Co.	\$1.95	\$1.95	\$1.95	\$1.95
Champaign Telephone Co.	\$1.75	\$1.75	\$1.75	\$1.75
Chillicothe Telephone Co.	\$1.68	\$1.68	\$1.68	\$1.68
Cincinnati Bell Telephone (Cable Attachees)	\$4.50	\$4.50	\$4.50	\$4.50
Columbus Grove	\$3.80	\$3.80	\$3.80	\$3.80
Germantown Telephone Company	\$2.25	\$2.25	\$2.25	\$2.25
Orwell dba Fairpoint	\$3.80	\$3.80	\$3.80	\$3.80
Verizon North	\$2.00	\$2.00	\$2.00	\$2.00

United Telephone (Embarq)⁵	N/A	N/A	N/A	N/A
Windstream Ohio	\$1.75	\$1.75	\$1.75	\$1.75
(All Exchanges Except Elyria and Columbia Station)				
Windstream Ohio	\$2.85	\$2.85	\$2.85	\$2.85
(Elyria and Columbia Station Exchanges)				
Windstream Western Reserve	\$2.00	\$2.00	\$2.00	\$2.00

Electric Utilities

<u>Electric Utility</u>	<u>2008</u>	<u>2007</u>	<u>2006</u>	<u>2005</u>
CEI	\$4.29	\$4.29	\$4.29	\$4.29
Columbus Southern Power	\$2.98	\$2.98	\$2.98	\$2.98
Dayton Power & Light	\$3.50	\$3.50	\$3.50	\$3.50
Duke Energy	\$4.25	\$4.25	\$4.25	\$4.25
Ohio Edison	\$4.69	\$4.69	\$4.69	\$4.69
Ohio Power Company	\$3.90	\$3.90	\$3.90	\$3.90
Toledo Edison	\$3.39	\$3.39	\$3.39	\$3.39

A. The rate of \$6.40 proposed by the Staff would also be above the rates charged by Duke's affiliates in Kentucky, North Carolina and Indiana. The rates charged by Duke's affiliates are contained in the chart below. See Kozelek Test. 6-7 & Ex. 2 thereto.

^{5/} No pole attachment rate was located in Embarq's tariff.

<i>State</i>	<i>Per Pole Attachment Charge</i>
Indiana	\$4.91 per pole
Kentucky	\$4.60 per pole for a two-user pole \$4.00 per pole for a three-user pole
North Carolina	\$5.32 per pole

B. Duke's witnesses at deposition were not able to give any reason why Duke's pole costs should be higher in Ohio than in these other jurisdictions. Especially in light of the failure of Duke to justify any increase in its pole attachment rate at this time, and the Staff's proposed rate exceeding the rate charged by any other Ohio utility and the rates charged by any Duke affiliate, the rate should not be raised above the rate of \$6.05 calculated by Ms. Kravtin, if any increase in the rate is permitted at all. *See Kravtin Test at 40-42.*

6. **OCTA objects to the Staff's failure to require Duke to specify a conduit rate in its tariff.** Under Ohio law, a utility is obligated to permit the attachment of communications wires and equipment to its poles as well as to permit "the placement of same in conduit duct space." *See Ohio Rev. Code Ann. § 4905.71(A).* And every utility is also required to "file tariffs with the public utilities commission containing the charges, terms and conditions establishing such use" of its poles and conduit. *See id.* § 4905.71(A). Accordingly, Duke's "charge" for conduit use must be included in its tariff. *See id.* The rate should be set according to the FCC formula. *See 47 C.F.R. § 1.1409(e)(3); see also In re Cincinnati Bell for Authority to Adjust its Rates & Charges*

& to Change its Tariffs, Case No. 81-1338-TP-AIR, Opinion & Order, Mar. 9, 1982, p. 42 (adopting FCC formula); *Columbus & Southern Ohio Elec. Co.*, Case No. 81-1058-EL-AIR (Nov. 5, 1982) (same); *see also* Kravtin Test. at 42-46.

7. **OCTA objects to the Staff's failure to specify in Duke's tariff a conduit rate of \$0.55 a foot.** Ms. Kravtin has determined, based on Duke's Rate Case filings, as well as information from Duke's FERC Form and information provided by Duke in discovery, that the rate calculated under the FCC formula is no more than \$0.55 a foot of Duke conduit used. *See* Kravtin Test. at 45.

8. **OCTA objects to any conduit rate calculations other than as set forth here.** The proper rate calculations for Duke's conduit rate have been determined by Ms. Kravtin. *See* Kravtin Test. Attach. 5, attached hereto as Exhibit 9. The calculations are based on the FCC's formula and, consistent with the PUCO's determinations to follow the FCC pole attachment formula, the FCC's conduit formula should be adopted and followed in this case. ^{6/} *See* Kravtin Test. Attach. 5.

Terms and Conditions

9. **OCTA objects to the Staff's failure to make clear in its Report that a cable operator may overlash additional communications wires on its existing attachments without obtaining a permit or otherwise seeking permission from Duke and that overlashed wires do not constitute separate attachments.** *See* Staff Report p. 23.

A. Duke's proposed tariff provides that a cable operator's overlashing of an additional cable to its existing attachment is subject to a separate agreement

^{6/} *See* 47 C.F.R. § 1.1409(e)(3); *see also* Amendment of Commission's Rules & Policies Governing Pole Attachments, 16 F.C.C.R. 12,103, 12,151, ¶ 97 (2001).

between the cable operator and Duke, meaning that Duke would have complete discretion regarding charges, terms and conditions of the overlash. [See Proposed Tariff, Applicability, at Schedule E-1, page 1 of 9; Storck Dep. 1 at 90.]

B. Overlashing does not create any separations or clearance issues with other attachments to a pole or seriously impact pole loading, because the practice involves no more than a cable operator lashing an additional, light-weight fiber-optic wire to the operator's existing attachment. [Kozelek Test. at 8-10; Testimony of Neal Hensley on behalf of OCTA ("Hensley Test."), at 2-4.] Thus, advance permitting requirements are unnecessary and can represent a potent anti-competitive tool for delaying or preventing cable operators from extending services to their customers, including advanced communications services like broadband Internet access service. [Kozelek Test. at 8-10; Hensley Test. at 2-4; Kravtin Test. at 46-54.]

C. Moreover, allowing Duke to require cable operators to obtain permits before overlashing their facilities (and to charge additional rental for overlashed wires) would constitute bad policy that the FCC has expressly rejected. The FCC has recognized that the industry-wide practice of overlashing additional wires is a vital engine for third-party communications attachers to timely deploy advanced communications services to their customers. ^{7/} The FCC has therefore held that

^{7/} See *Amendment of Commission's Rules Governing Pole Attachments*, 16 F.C.C.R. 12,103, 12,141, ¶ 75 (2001) ("We affirm our policy that neither the host attaching entity nor the third party overlasher must obtain additional approval from or consent of the utility for overlashing other than the approval obtained for the host attachment."), *aff'd Southern Co. Servs., Inc. v. FCC*, 313 F.3d 574, 582 (D.C. Cir. 2002) (holding FCC's "overlashing rules show due consideration for the utilities' statutory rights and financial concerns" and that their "concerns were balanced with the efficiency gains that overlashing brings to the industry"); *Implementation of Section 703(E) of the Telecommunications Act of 1996, Amendment of the Commission's Rules & Policies Governing Pole Attachments*, 13 F.C.C.R. 6777, 6807, ¶ 62 (1998) ("We believe

overlashed facilities occupy the same one foot of space as the underlying (or “host”) attachment and that no prior approval for overlashing may be required. ^{8/} The Staff should have similarly made clear here that overlashing need not be subject to a permitting process and does not constitute a separate attachment.

10. **OCTA objects to the Staff’s failure to explicitly exclude risers or power supplies from the “Applicability” section of Duke’s proposed tariff.** *See* Staff Report p. 23; Proposed Tariff, Applicability, at Schedule E-1, page 1 of 9.

A. Power supplies used by cable operators are located in the “unusable space” on a pole – *i.e.*, the space on a utility pole below the minimum grade level where wires can be attached – and are a source of revenue for Duke’s commercial-grade electricity business. ^{9/} [Kozelek Test. at 10; Hensley Test. at 6-7; Deposition of Ulrich Angleton, Dec. 15, 2008 (“Angleton Dep.”), at 49.] By the same token, risers,

overlashing is important to implementing the 1996 Act as it facilitates and expedites installing infrastructure essential to providing cable and telecommunications services to American communities. Overlashing promotes competition by accommodating additional telecommunications providers and minimizes installing and financing infrastructure facilities.”); *Common Carrier Bureau Cautions Owners of Utility Poles*, Public Notice, DA 95-35 (Jan. 11, 1995) (warning utility pole owners against imposing restrictions on cable operators seeking to overlash their own attachments).

^{8/} *See Amendment of Commission’s Rules Governing Pole Attachments*, 16 F.C.C.R. at 12,141, ¶ 74 (“We determined that facilities overlashed by third parties are presumed to share the presumptive one foot of usable space occupied by the host attachment.”).

^{9/} Under the FCC’s rules, “usable space” means “the space on a utility pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment, and which includes space occupied by the utility.” 47 C.F.R. § 1.1402(c). By contrast, “unusable space” is “the space on a utility pole below the usable space, including the amount required to set the depth of the pole.” *Id.* § 1.1402(f). The FCC has adopted a presumption that an average pole has 24 feet of unusable space. *See, e.g., Implementation of Section 703(E) of the Telecommunications Act of 1996*, 12 F.C.C.R. 11,725, 11,732-11,733 (1997) (adopting presumption of “an average amount of usable space of 13.5 feet, and an average amount of 24 feet of unusable space on a pole”).

which are used by all attachers on the pole to safely transition wires from underground to aerial construction (and vice versa), also do not deny use of any “usable” pole space.

[Kozelek Test. at 10; Hensley Test. at 6-7; Angleton Dep. at 50-51.]

B. As a result of the Staff’s failure to address this issue, Duke may attempt to charge a cable operator additional rental charges for placing power supplies and risers on the pole, even though that does not prevent Duke from making productive and revenue-producing use of the entire usable space on the pole other than the one foot occupied by the cable operator’s attachment of its horizontal wires. ^{10/} [See Storck Dep. 1 at 80-81.] That Duke would seek to capitalize on the Staff’s failure to address this issue is clear from the fact that, during the course of its partial audit of Time Warner Cable’s (“TWC’s”) plant, it attempted to impose an additional attachment charge where the attachment was located more than one foot from the telephone company’s attachment. Duke also attempted to impose a charge for power supplies and risers. [Hensley Test. at 9-10.] Moreover, as Duke’s witnesses have made clear, Duke does not impose separate charges on joint user telephone companies for power supplies or risers. [See Angleton Dep. at 45-46; Deposition of Teresa Brierly, Dec. 15, 2008 (“Brierly Dep.”), at 19-28.] The Staff erred in failing to make clear that Duke cannot impose such charges on cable operators either.

11. OCTA objects to the Staff’s failure to recommend removing from Duke’s proposed tariff language purporting to allow Duke to “authorize” the type of

^{10/} See, e.g., *Amendment of Commission’s Rules & Policies Governing Pole Attachments*, 16 F.C.C.R. 12,103, 12,129, ¶ 47 (2001) (“The Commission established a rebuttable presumption of one foot as the amount of space a cable television attachment occupies” for rental purposes).

services they provide over their attachments. *See* Staff Report p. 24; Proposed Tariff, Agreement, at Schedule E-1, page 1 of 9.

A. Duke cannot properly dictate to cable operators the type of service they are authorized to provide over attachments to Duke's poles. Far from it: Duke is required to "permit, upon reasonable terms and conditions and the payment of reasonable charges, the attachment of any wire, cable, facility, or apparatus to its poles, pedestals, or placement of same in conduit duct space, by any person or entity other than a public utility" irrespective of the service provided over any such attachment. *See* Ohio Rev. Code Ann. § 4905.71(A); *see also* 47 U.S.C. § 224(a)(1)(4) (defining pole attachment without reference to service it is used to provide).

B. If Duke were permitted to control the services that cable operators provide, that discretion could be put to obvious anti-competitive ends, especially as Duke, through its investment in Current Technologies, has taken steps to compete cable operators in the broadband services marketplace. [Kozelek Test. at 3-4, 10-11; Hensley Test. at 7-8; Kravtin Test. at 54-55.] In any event, there is no reason for Duke to authorize particular services because its conduit and pole charges are not even properly keyed to the type of service a cable provider provides. Accordingly, Duke's proposed language not only would be anti-competitive, but it is also unnecessary and irrelevant. [Kravtin Test. at 54-55.] The Staff erred in failing to recommend its removal.

12. OCTA objects to the Staff's failure to expressly reject Duke's effort to reserve to itself the authority to backfill in its pole attachment agreements additional, and unapproved "terms and conditions" that are not "inconsistent" with those set forth in its tariff.

A. Duke's proposed language could be interpreted to allow it to impose whatever additional terms and conditions it likes on cable operators, so long as they are not in some sense "inconsistent" with the terms of its published tariff. *See* Proposed Tariff, Agreement, at Schedule E-1, page 1 of 9. Indeed, during deposition testimony, Donald Storck, the Duke representative who offered direct testimony in support of the utility's changes to its pole attachment tariff, declared that there are no limitations on the additional terms and conditions that Duke could impose on attachers for any matter not expressly addressed in the tariff. [Storck 1 Dep. at 93-94.]

B. Moreover, under Ohio law, Duke must include all material terms and conditions of attachment in its tariff. ^{11/} Giving Duke potentially sweeping authority to radically revise its pole attachment arrangements through private agreement with pole attachers or unilateral imposition would essentially enable it to circumvent the law. [Kozelek Test. at 13.] The Staff erred in preventing Duke from asserting such authority.

13. **OCTA objects to the Staff's failure to prevent Duke from arrogating to itself unfettered discretion to reserve unused pole space for its "present or future use" and possibly to force an existing cable operator attacher to give up the space it occupies on a pole whenever Duke demands. *See, e.g.,* Proposed Tariff, Terms & Conditions ¶¶ 3-5.**

^{11/} *See* Ohio Rev. Code § 4905.30 ("Every Public Utility shall print and file with the public utilities commission schedules showing all rates . . . , and all rules and regulations affecting them."); *see id.* § 4905.71 ("Every telephone, telegraph, or electric light company shall file tariffs with the public utilities commission *containing the charges, terms and conditions established for such use.*") (emphasis added); *see also* *Ohio Cable Television Ass'n v. Columbus Southern Power Co.*, Case No. 96-1309-EL-CSS, Opinion & Order at 19 (Aug. 27, 1997) ("Columbus Southern and Ohio Power should revise their pole attachment tariffs *to incorporate all terms and conditions governing pole attachments.*" (emphasis added)).

A. Such discretion flies in the face of federal and Ohio law affording a right of access to utility poles to third-party attachers. Before it assumed jurisdiction to regulate pole attachments, the Commission was obligated to certify to the FCC that it regulated access to utility poles. ^{12/} Ohio Revised Code Section 4905.71 explicitly affords a right to cable operators to attach to utility poles. ^{13/} Duke cannot undercut these clear pole access rights by invoking the vague notion of “present or future use” to reclaim space already occupied by a third-party attacher.

B. It is particularly important for the Commission to recognize the right of access guaranteed to cable operators by federal and state law here. Duke has announced that any third-party attachment made above 23’8” from the ground resides in so-called “borrowed” space that it may reclaim at any time and for any reason – including to provide competitive communications services – even if Duke failed to identify any planned use for that space when the party made its attachment to the pole. [Kozelek Test. at 13-14; Hensley Test. at 13; Storck Dep. 1 at 102.] Donald Stock, Duke’s witness, also confirmed that Duke claims unfettered discretion to require a cable operator to remove its attachment if Duke later determines that it wants to use the space the existing attachment occupies. [Storck Dep. 1 at 103-106.] That rule could clearly be employed discriminatorily and for improper anti-competitive reasons, especially now that Duke has

^{12/} See 47 U.S.C. § 224(c)(1)-(3); *see also id.* § 224(f) (“A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it.”).

^{13/} See Ohio Rev. Code Ann. § 4905.71(A) (“Every telephone, telegraph, or electric light company, which is a public utility as defined by section 4905.02 of the Revised Code, *shall permit*, upon reasonable terms and conditions and the payment of reasonable charges, the attachment of any wire, cable, facility, or apparatus to its poles, pedestals, or placement of same in conduit duct space . . .”).

indicated an intent to compete with cable operators in the provision of broadband service. [Kozelek Test. at 13-14; Hensley Test. at 7-8; Kravtin Test. at 57-58.]

C. Additionally, Duke should only be allowed to reserve space for its future use in accordance with a *bona fide* development plan in force at the time that an attachment was made. That requirement is fully consistent with the sound approach adopted by the FCC. ^{14/}

D. The Staff erred by failing to make clear that Duke cannot reserve space for its own use whenever it wants.

14. **OCTA objects to the Staff's failure to make clear that cable operators may attach to "drop poles" – i.e., non-mainline poles used to provide access to particular homes or businesses – before obtaining permission to attach from Duke as is the universal standard industry practice. See Staff Report p. 24; Proposed Tariff, Terms & Conditions ¶ 1.**

A. Drop poles are poles that are used to maintain ground clearance, such as over a road, between a mainline distribution pole and the customer's premises. ^{15/} [Kozelek Test. at 11; Hensley Test. at 4.] In other words, a drop pole is used to string a service drop to connect a customer to the cable system from the mainline

^{14/} See, e.g., *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15,449, 16,078, ¶ 1168 (1996) ("We will permit an electric utility to reserve space if such reservation is consistent with a *bona fide* development plan that reasonably and specifically projects a need for that space in the provision of its core utility service."); see also *Southern Co. v. FCC*, 293 F.3d 1338, 1338, 1347-49 (11th Cir. 2002) (holding "[t]he FCC guideline requiring a 'bona fide development plan' as a prerequisite to a utility's reservation of space for its future needs is a reasonable exercise of agency discretion").

^{15/} See, e.g., *Mile Hi Cable Partners, L.P. v. Public Serv. Co. of Colo.*, 15 F.C.C.R. 11,450, 11,458, ¶ 17 (Cab. Serv. Bur. 2000), *aff'd*, 17 F.C.C.R. 6268 (2002), *aff'd sub nom.*, *Public Serv. Co. of Colo. v. FCC*, 328 F.2d 675 (D.C. Cir. 2003).

distribution pole and then to the customer's premises. [Kozelek Test. at 11; Hensley Test. at 4.] The standard industry practice, and one followed in Ohio, is for cable operators to provide notice to pole owners of attachments to drop poles, if at all, only after the fact because the cable operators would otherwise be unable to compete with other types of service providers. *See, e.g., Mile High Cable Partners, L.P.*, 15 F.C.C.R. 11,450, ¶ 19 (Cab. Serv. Bur. 2000), *aff'd*, 17 F.C.C.R. 6268 (2002), *aff'd sub nom., Public Serv. Co. of Colo. v. FCC*, 328 F.2d 675 (D.C. Cir. 2003).

B. Cable operators do not license or make attachments to any drop poles as a matter of course when they initially construct their cable systems. [Kozelek Test. at 11-12; Hensley Test. at 4-6.] At the time when cable systems are designed, cable operators do not know which potential subscribers will take their services, and thus drop poles are not part of the initial design or applications to attach to utilities' poles. [Kozelek Test. at 11-12; Hensley Test. at 4-6.] Only when a potential customer requests cable service, and an installer arrives to hook the customer up to the cable system, does a cable operator even find out that attachment to a drop pole is required to provide service. [Kozelek Test. at 12; Hensley Test. at 4-6.] Were the cable operator then forced to wait for the permitting process to be completed, the potential customer almost certainly would change its plans and take its video and high-speed Internet service from a satellite provider or the local phone company, neither of which would have to obtain prior drop pole approval. [Kozelek Test. at 12; Hensley Test. at 4-6.]

C. The FCC has previously held that, while requiring notice of attachments to drop poles after the fact is reasonable, requiring cable operators to obtain

advance permission for such attachments is not. ^{16/} The reasonableness of such an approach is further bolstered by the fact that Duke has not required the local incumbent phone companies that attach to its poles pursuant to joint use arrangements to obtain permits for attachments to drop poles in advance. [Angleton Dep. at 42-43, 46-47, 53-54, 71; Brierly Dep. at 27-28; Storck Dep. 1 at 98.] Any such requirement on cable operators would be discriminatory and have the potential to serve as an anti-competitive weapon to delay or prevent cable operators from serving customers. [Kozelek Test. at 12; Kravtin Test. at 64-65.] Accordingly, the Staff erred in failing to recommend that Duke cannot require drop poles to be subject to any advance permitting requirements. [Storck Dep. 1 at 95-97.] ^{17/}

15. **OCTA objects to the Staff's failure to prevent Duke from denying licensees' access to its conduit.** See Staff Report p. 25; Proposed Tariff, Terms & Conditions ¶ 1.

A. Duke's proposal to restrict access to its conduit to itself or its "designated representative" is manifestly unreasonable and inconsistent with its obligation to provide access not only to its poles, but also its conduit. [Kozelek Test. at 14; Kravtin Test. at 57.] ^{18/}

^{16/} See, e.g., *Salsgiver Communications, Inc. v. North Pittsburgh Tel. Co.*, 22 F.C.C.R. 20,536, 20,543-44, ¶¶ 24-25 (2007); *Mile High Cable Partners, L.P.*, 15 F.C.C.R. at 11,450, ¶ 19 ("For drop poles, therefore, notification to Respondent of Complainant's use of a drop pole is reasonable *but Complainant need not wait for approval prior to attaching.*") (emphasis added).

^{17/} While Duke's existing tariff does not address drop poles explicitly, and Duke has not historically interpreted its tariff as covering them, that changed after Duke became involved with Current's BPL deployment. Now that Duke apparently interprets its tariff to cover drop poles it is important for the Commission to address the issue.

^{18/} See Ohio Rev. Code Ann. § 4905.71(A) ("Every . . . electric light company, which is a public utility as defined by section 4905.02 of the Revised Code, *shall permit*,

B. Moreover, the FCC has made clear that, while a utility may require any personnel working in proximity to electrical lines to meet the same standards that the utility sets for its own workers, it may not dictate the identity of the workers who perform the work – an attacher may use any workers that meet the criteria established by the utility. ^{19/} As the FCC has explained, the problem with a utility only allowing its workers to access conduit is that it provides the utility an opportunity to delay for anti-competitive or other reasons access to conduit, which necessarily retards cable operators ability to provide timely service to their customers. ^{20/} Duke's proposal would also lead inevitably to disputes over the rates to be paid to the utility's employees who access the conduit on the cable operator's behalf. ^{21/} The Staff erred in failing to recommend deletion of Duke's effort to restrict access to its conduit.

upon reasonable terms and conditions and the payment of reasonable charges, the attachment of any wire, cable, facility, or apparatus to its poles, pedestals, or placement of same in conduit duct space") (emphasis added).

^{19/} See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers & Commercial Mobile Radio Serv. Providers*, CC Docket No. 96-98, 1999 WL 969849, ¶ 86 (1999) ("[A] utility may require that individuals who will work attaching or making ready attachments of telecommunications or cable system facilities to utility poles, in the proximity of electric lines, have the same qualifications, in terms of training, as the utility's own workers, but the party seeking access will be able to use any individual workers who meet these criteria. Thus, utilities may ensure that individuals who work in proximity to electric lines to perform pole attachments and related activities meet utility standards for the performance of such work, but the utilities may not dictate the identity of the workers who will perform the work itself."); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15,499, 16,083, ¶ 1182 (1996) ("A utility may require that individuals who will work in the proximity of electric lines have the same qualifications, in terms of training, as the utility's own workers, but the party seeking access will be able to use any individual workers who meet these criteria. ").

^{20/} See *id.*

^{21/} See *Implementation of the Local Competition Provisions in the*

16. **OCTA objects to the Staff's implication that Duke may impose a penalty for alleged "unauthorized attachments" that exceeds the maximum reasonable penalty permitted by the FCC.** See Staff Report p. 23 ("Staff believes a system-wide baseline should first be established . . . before such a punitive proposal could be entertained."); Proposed Tariff, Terms & Conditions ¶ 6.

A. The FCC has held that penalties for "unauthorized attachment" that exceed more than five times the annual pole attachment rate are unreasonable and unlawful. See, e.g., *Mile Hi Cable Partners, L.P.*, 15 F.C.C.R. at 11,458, ¶ 14 ("We believe that a reasonable penalty for unauthorized attachments will not exceed an amount approximately equal to the annual pole attachment fee for the number of years since the most recent inventory or five years, whichever is less, plus interest at a rate set for that period by the Internal Revenue Service . . . for individual underpayments . . ."). As the FCC has explained, its maximum penalty advances the objective noted by the Staff of discouraging unauthorized penalties. See *id.* (explaining that its penalty "provide[s] incentive for [third party attachers] to comply with a reasonable applications process"); see also Staff Report p. 25 (agreeing with "Applicant's objective of discouraging unauthorized attachments.").

B. But the FCC's maximum penalty also serves another important objective: It encourages utilities to undertake regular audits of their plant by removing the incentive of windfall profits for identifying stale unreported attachments. *Mile Hi Cable Partners, L.P.*, 15 F.C.C.R. at 11,458, ¶ 14 (explaining that five-year cap

Telecommunications Act of 1996, 11 F.C.C.R. at 16,083, ¶ 1182 ("Allowing a utility to dictate that only specific employees or contractors be used would impede the access that Congress sought to bestow on telecommunications providers and cable operators and would inevitably lead to disputes over rates to be paid to the workers.").

“encourage[es] utilities not to delay audits of unauthorized attachments”). Thus, OCTA agrees with the Staff’s recommendation that Duke should not be permitted to impose penalties for “unauthorized attachments” before the utility has completed a system-wide attachment inventory establishing a baseline number of attachments, given that claims of “unauthorized” attachments are often erroneous, including because they are based on shifting standards. [Kozelek Test. at 14-16; Hensley Test. 8-10; Storck Dep. 1 at 114-119.] But even after that baseline is established there still would be no justification for allowing Duke to impose penalties that exceeded the FCC maximum. [Kozelek Test. at 14-16; Hensley Test. 8-10; Kravtin Test. at 63-64.] 22/

C. There are two additional reasons why unauthorized attachment penalties above those allowed by the FCC are unreasonable and unnecessary to discourage unauthorized attachments here. *First*, if severe penalties were truly necessary to discourage attachers from making attachments outside of the permit process, one would think that Duke would uniformly hold all attachers to the same standard. But it does not: Duke’s joint use agreements provide no penalties of any kind for “unauthorized attachments.” [Brierly Dep. at 14-17; Angleton Dep. at 23-26, 36-42; Storck Dep. at 140; OCTA Dep. Exhibit 15; OCTA Dep. Exhibit 16.] *Second*, and equally important, if unauthorized penalties were a problem of the magnitude that Duke’s proposed penalties suggest, one would think that other utilities in Ohio would have moved to impose similar penalties. [Kozelek Test. at 15 & Ex. 8 thereto.] But other utilities in Ohio have not: Many have not even sought to impose penalties for unauthorized attachments at all, and those that have, have largely adopted penalties far less severe than those Duke seeks to

22/ See *Mile Hi Cable Partners, L.P.*, 15 F.C.C.R. at 11,458, ¶ 14.

impose. [Kozelek Test. at 15 & Ex. 8 thereto (chart of Ohio utility rates, terms and conditions).]

D. Furthermore, Duke's affiliates have not sought to impose the same kind of penalties on cable operators that Duke does here. [Kozelek Test. at 15 & Ex. 3 thereto.] Duke's affiliates' penalties do not exceed the FCC maximum. [*Id.*] If Duke were to receive any authority to impose charges for unauthorized attachments, the Commission should adopt the approach used by Duke Energy in North Carolina. [*Id.*] There, back rental is required for any increase in the number of attachments found following inventories conducted every five years. [*Id.*] Half of any increase in attachments is added to the first billing period following the inventory, with the remainder divided equally among the interim years. [*Id.*] The billing for the interim years is then adjusted using the rate in effect for that period and the adjusted number of attachments, plus interest for any under billed amount under the FCC rate for calculating interest on underpayments. [*Id.*]

E. The Staff erred by failing to make clear that Duke's proposed penalties for unauthorized attachments are unreasonable and unnecessary to encourage attachers to comply with its permitting requirements.

17. OCTA objects to the Staff's failure to explicitly bar Duke from imposing on cable operator attachers construction "safety" standards that exceed those required by the National Electrical Safety Code ("NESC"). See Staff Report pp. 23-25; Proposed Tariff, Terms & Conditions ¶ 3.

A. The NESC reflects the industry consensus on the requirements of construction of communications and electric facilities that are necessary for safety. See

NESC Handbook, 5th Edition, Purpose 010 (stating “NESC [rules] give the basic requirements of construction that are necessary for safety.”) As the NESC itself makes clear, there is no reason to exceed its requirements “for safety purposes.” *Id.* (“If the responsible party wishes to exceed those requirements for any reason, he may do so for his own purpose, *but need not do so for safety purposes.*”) (emphasis added).

B. Therefore, the Staff should have expressly denied Duke any discretion to impose construction and maintenance requirements that exceed those set by the NESC under the guise of “safety.” [Kozelek Test. at 16.]

18. **OCTA objects to the Staff’s failure to reject Duke’s effort to impose any form of penalties on cable operator attachers for alleged “safety violations.”** Proposed Tariff, Terms & Conditions ¶ 7.

A. OCTA agrees with the Staff that the PUCO should not even consider penalties for safety violations until a full safety inspection has been completed and all parties have cured any existing violations. *See* Staff Report p. 25. Even after all pole users have undertaken to cure existing violations, however, Duke still should not be allowed to penalize cable operators for attachments that it concludes are out of compliance with safety or other requirements. [Kozelek Test. at 17-18.] Multiple reasons support this conclusion.

i. Because utility poles exist in an organic environment, facilities placed by any pole user – including those of the pole owner – are equally subject to falling out of compliance due to environmental causes, as well as the actions of the other parties attached to the pole. [*Id.*] Allegations of “safety” violations are thus not clear cut; instead, they arise in a complex and ever-evolving factual setting. [*Id.*] And

judgment calls about which attached party is responsible for a given condition are frequently disputed. [*Id.*] These disputes would only be aggravated by authorizing a utility to receive payments for violations created by third-party attachers. [*Id.*] Indeed, it is fair to say that such penalties would lead to never-ending disputes. [*Id.*]

ii. “Safety” inspections conducted by utilities, or on their behalf, often produce unreliable results. [*Id.*; Hensley Test. at 10-13.] Importantly, the partial inspection that was performed on Duke’s behalf in 2004-2006 (and is offered by Duke as a justification for authority to impose penalties for safety violations) demonstrates this problem quite clearly. [Kozelek Test. at 17; Hensley Test. at 10-13.] During the course of that inspection, many of the violations that Duke alleged simply did not exist, some could not be confirmed in the field, others were simply instances where Duke held old attachments to newly-minted standards, and some were actually caused by Duke itself. [Kozelek Test. at 17; Hensley Test. at 10-13.] Under such circumstances, it would be unreasonable and inappropriate for Duke to have authority to unilaterally sanction third-party attachers for safety violations that it asserted they created. [Kozelek Test. at 17; Hensley Test. at 10-13.]

iii. Owing in part to the issues noted above, utilities have generally not been given discretion to penalize attachers for safety violations. [Kozelek Test. at 18.] This Commission has not authorized any other utility in Ohio to impose any kind of penalties on attachers for safety violations. [Kozelek Test. at 18 & Ex. 8 thereto.] And other states that regulate pole attachments have also uniformly declined to give utilities that authority. 23/

23/ In the only outlier state where utilities have received such authority – Oregon – it has by and large not been used by utilities to collect penalties from cable operators. Even

iv. Duke has not even suggested that any purported safety violations caused by third parties have imposed any cost on it. [Kozelek Test. at 18.] Absent such a demonstration, there is no justification for Duke to receive payment for safety violations created by third-party attachers. [Kozelek Test. at 18.]

v. Duke does not subject any joint user telephone companies to monetary fines for safety violations that they create on poles that Duke owns, and its affiliates do not impose penalties on attachers in other areas. [Kozelek Test. at 18; OCTA Dep. Exhs. 15 & 16.] The fact that Duke lacks any authority to penalize joint pole users for their plant that falls out of compliance, and that its affiliates do not penalize attachers for safety violations, shows that such penalties are unnecessary to ensure that its plant is safe. In any event, Duke has not demonstrated why such penalties should be discriminatorily applied only to cable operators and not telephone companies. [Kozelek Test. at 18.] Such penalties carry clear anti-competitive potential. [*Id.* at 18; Kravtin Test. at 66.]

vi. Duke has failed to bear its burden to demonstrate any need to impose stiff monetary penalties on third-party attachers to ensure compliance with its technical construction standards. Indeed, the only basis that Duke has offered – *i.e.*, its

Oregon's approach provides important checks on utility abuse. A utility in Oregon may not sanction an attacher if the attacher submits a plan to correct the violation within 60 days of receiving notice of it and if the attacher corrects the violation (and provides notice of the correction) within 180 days of receiving notice. *See* Oregon Admin. R. 860-028-0150(3); *see also id.* 860-028-0120(5). Oregon utilities also may not penalize attachers for violations discovered in a joint post-construction inspection, unless the attacher fails to correct such a violation within 60 days. *See id.* 860-028-0150(5)(b). And Oregon's regulations provide procedural mechanisms for contesting violations claimed by a utility. *See id.* 860-028-0170; 860-028-0210; 860-028-0220. By contrast, Duke here seeks to require attachers to fix their plant in 10 days, without affording them any reasonable period in which to fix their attachments penalty-free, and without providing them any recourse to contest violations.

partial audit of TWC's plant – clearly will not do. [Kozelek Test. at 17-18; Hensley Test. 10-13.] That survey was riddled with errors. [Kozelek Test. at 17-18; Hensley Test. 10-13.] Among other things, the audit identified violations that did not exist, violations that could not be confirmed in the field, violations that were created by Duke's own construction practices, and violations that were the byproduct of Duke's effort to hold old plant to newly-minted standards. [Kozelek Test. at 17-18; Hensley Test. 10-13.] 24/

vii. Nor has Duke demonstrated that its own attachments are free from safety violations, or that it is diligent in curing them. [Kozelek Test. at 18; Hensley Test. 12-13.] To the contrary, Duke's partial audit of TWC's plant showed that Duke has also created safety violations, which, even years later, it has not corrected. [Kozelek Test. at 18; Hensley Test. 12-13.]

B. For all of these reasons, if the Staff believes that there should be penalties for safety violations, it should recommend that the Commission commence a rulemaking to consider an appropriate penalty mechanism applicable to all entities that use poles, including Duke. [Kozelek Test. at 18.] Such penalties if they are to be imposed should be imposed by the Commission on all offending parties, not by Duke in its discretion. [Kozelek Test. at 18.]

19. **OCTA objects to the Staff's failure to make clear that cable operator attachers are only required to begin to take actions necessary to correct safety violations that they have created within 10 days of receiving notice from Duke, rather than entirely correcting any such violations within 10 days, as Duke purports to require. See Staff Report p. 25; Proposed Tariff, Terms & Conditions ¶ 7.**

24/ Moreover, it bears noting that, while TWC has moved to cure issues identified in Duke's partial audit of its pole attachments, there is no evidence that Duke has yet corrected its own violations. [Hensley Test. at 12-13.]

A. In many instances, a cable operator cannot rearrange, relocate, or remove its facilities within 10 days of receiving notice from Duke that it must do so because the cable operator must wait for other parties, including Duke, to take action first. [Kozelek Test. at 19.] It is simply unrealistic and unreasonable for Duke to demand that cable operators fix all safety violations that it identifies within 10 days. [Kozelek Test. at 19; Kravtin Test. at 67; Storck Dep. 1 at 132-135.] 25/ This is particularly the case where, as here, Duke has failed to address most of the safety violations that it created and which were uncovered during its partial audit of TWC's facilities and where, as here, Duke has largely failed to cooperate with TWC to identify both who was responsible for creating a pole condition and who should cure it. [Kozelek Test. at 18; Hensley Test. 8, 13.] The Staff erred by entirely failing to address this issue. 26/

20. **OCTA objects to the Staff's failure to recommend that all language purporting to vest Duke with unfettered discretion be removed from its proposed tariff.**

A. While OCTA agrees with the Staff's recommendation to remove the sentence contained in the "Application" section of the tariff that purported to vest Duke with the "sole right" to determine the availability of a pole for joint use [Staff

25/ Indeed, under the NESC, only violations "that could reasonably be expected to endanger life or property" must be "promptly repaired, disconnected, or isolated." NESC Rule 214(A)(5). Less serious violations need only be recorded and corrected as soon as practicable. See NESC Rule 213(A)(4) (non-serious violations "if not promptly corrected, shall be recorded; such records shall be maintained until the defects are cured").

26/ It bears mentioning that this was never a problem during the many years that Duke's existing tariff has been in force until recently when Duke took steps to compete against cable operators. Now that the issue has emerged, it should be expressly addressed in Duke's revised tariff.

Report p. 24; Storck Dep. 1, at 100-112, 128-130], the Staff erred in failing to recommend the removal of similar language contained elsewhere in the proposed tariff. [Kozelek Test. at 19; *see also, e.g.*, Kravtin Test. at 55, 57-59, 65.] 27/

21. OCTA objects to the Staff's failure to make clear that Duke does not have unfettered discretion to conduct inspections of licensees' attachments (at their expense) whenever it wants and to recommend that Duke may only require a licensee to reimburse it for those portions of an inspection that do not benefit other pole users, including Duke itself. See Staff Report p. 25.

A. The FCC has made clear that it is unreasonable to force cable operators to bear the cost of inspection activities that benefit other attachers. 28/ It is imperative that the Staff recognize this limitation here, for Duke has attempted recently to impose on licensees costs for inspections that clearly benefited other pole users. [Kozelek Test. at 20; Hensley Test. at 8; Storck Dep. 1 at 107-112.] The Staff erred by not doing so in its Report.

22. OCTA objects to the Staff's failure to prevent Duke from implementing its tariff in ways that enable Duke or another pole user or users to

27/ See *e.g.*, Proposed Tariff, Terms & Conditions ¶ 3 & ¶ 7 (Technical Specifications).

28/ See, *e.g.*, *Mile Hi Cable Partners, L.P.*, 15 F.C.C.R. at 11,455, ¶ 8 ("The cost of an inspection of pole attachments should be borne solely by the cable company only if cable attachments are the sole attachments inspected and there is nothing in the inspection to benefit the utility or other attachers to the pole."); *see Knology v. Georgia Power Co.*, 2003 WL 22722903, ¶ 29 (2003) ("If an inspection is designed to yield information about more than cable attachments, and thus to benefit other pole users, the cable company should not be required to bear the cost exclusively. In other words, the costs of a pole inspection unrelated to a particular company's attachments should be borne by all attachers.") (internal quotation marks omitted); *First Commonwealth Communications v. Virginia Elec. & Power Co.*, Order, 7 F.C.C.R. 2614, 2615, ¶ 8 (Com. Car. Bur. 1992) (same).

prevent a licensee from using pole space by refusing to relocate their facilities on a pole at the licensee's expense. See Proposed Tariff, Terms and Conditions ¶ 5.

A. As explained above, federal and state law provide cable operators with a clear right to access Duke's utility poles, and Duke should not be able to undermine that right by refusing to make room for a cable operator by rearranging its facilities, or allowing another pole user to refuse to relocate its facilities for a cable operator to gain access to the pole. [Storck Dep. 1 at 106-107.] ^{29/} The Staff erred by failing to prevent Duke from deleting language from its existing tariff that makes clear that neither Duke nor attachers can contravene Ohio law by refusing to relocate their facilities. [Kozelek Test. at 20.]

23. OCTA objects to the Staff's failure to limit Duke to charging cable operators only for replacement costs associated with new attachments. See Proposed Tariff, Terms and Conditions ¶ 4.

A. As currently formulated, Duke's tariff could possibly be interpreted to give it authority to require cable operators to pay for pole or conduit replacement costs where those costs are not associated with any new cable attachment, but for costs associated with poles or conduit that they already occupy. If Duke were allowed to impose such costs on cable operators, it would essentially allow Duke to upgrade its plant at the expense of cable operators with whom it has taken steps to compete in the broadband market. [Kozelek Test. at 21; Kravtin Test. at 59-60.] The

^{29/} See Ohio Rev. Code Ann. § 4905.71(A) ("Every telephone, telegraph, or electric light company, which is a public utility as defined by section 4905.02 of the Revised Code, *shall permit*, upon reasonable terms and conditions and the payment of reasonable charges, the attachment of any wire, cable, facility, or apparatus to its poles, pedestals, or placement of same in conduit duct space . . .").

tariff should be modified to make clear that cable operators may only be liable for replacement costs occasioned by their making new attachments. [Kozelek Test. at 21.]

24. **OCTA objects to the Staff's failure to expressly make clear that Duke may only require cable operators to fix conditions that interfere with existing facilities on a pole. See Proposed Tariff, Terms & Conditions ¶ 7.**

A. Duke's proposed tariff, as currently drafted, seems to imply that Duke may require cable operators to rearrange, relocate or remove facilities at their expense that may interfere with future attachments by Duke or another party. [Stork Dep. 1 at 105-106; 128-130]. That authority could be put to anti-competitive ends by making cable operators incur costs that properly should be incurred by other parties. [Kozelek Test. at 22; Kravtin Test. at 61-62.] Duke's tariff should therefore make clear that Duke can only require a cable operator to rearrange facilities at its expense if they interfere with Duke's or another attacher's facilities currently on the pole. [Kozelek Test. at 22.]

25. **OCTA objects to the Staff's failure to expressly make clear that Duke may only deny pole attachment permit applications for reasons of safety, reliability and generally-accepted engineering principles. See Proposed Tariff, Terms & Conditions ¶ 1.**

A. In deposition testimony, Duke's witness, Donald Storck, stated that the utility has discretion to deny access to poles for any reason whatsoever. [Storck Dep. 100-101.] Such discretion is clearly inappropriate, as it could be used by Duke to undermine cable operators' rights to access its poles and for anti-competitive reasons, especially now that Duke has moved to compete in the broadband market. [Kozelek Test.

at 21; Kravtin Test. at 55-56.] The Staff therefore should have made clear that Duke can only deny applications to attach for reasons of safety, reliability and generally-applicable safety standards. [Kozelek Test. at 21.]

26. **OCTA objects to the Staff's failure to recommend revisions to the "Indemnification" section of Duke's proposed tariff necessary to make it reasonable and non-discriminatory.** See Proposed Tariff, Terms & Conditions ¶ 8. As currently drafted, Duke's proposed tariff purports to require cable operators to hold Duke harmless from Duke's own negligent actions. That is plainly unreasonable and discriminatory. Duke does not agree to hold cable operator attachers harmless for their negligent actions. [Kozelek Test. at 22.] Accordingly, cable operators should at most only be required to hold Duke harmless from their actions. [*Id.*]

27. **OCTA objects to the Staff's failure to recommend revisions to Section 15 of Duke's proposed tariff necessary to make it reasonable and non-discriminatory.** See Proposed Tariff, Terms & Conditions ¶ 15. As currently drafted, Duke's proposed tariff makes the rights of cable operators potentially subject to rights Duke later gives to other third parties, such as joint user telephone companies. That authority could be used unreasonably, discriminatorily and/or for anti-competitive ends. [Kozelek Test. at 22-23.] The tariff language should be revised accordingly.

28. **OCTA objects to the Staff's failure to recommend that Section 16 of Duke's proposed tariff be revised to deny Duke unilateral authority to demand any bond of its choosing.** See Proposed Tariff, Terms & Conditions ¶ 16. As drafted, Duke's proposed tariff purports to allow it to require cable operators to provide a bond in any amount that it demands. Such discretion can clearly be wielded unreasonably,

discriminatorily, and for anti-competitive purposes. [Kozelek Test. at 23.] Accordingly, Duke should only be allowed to require a reasonable bond.

29. **OCTA objects to the Staff's failure to recommend revisions to Section 20 of Duke's proposed tariff necessary to deny Duke authority to undermine cable operators' rights to attach to Duke's poles on reasonable and non-discriminatory terms and conditions.** See Proposed Tariff, Terms & Conditions ¶ 20. As drafted, Section 20 of Duke's proposed tariff purports to give the utility authority to cancel a cable operator's pole attachment agreement, and force it to remove its attachments, simply on 60 days notice, regardless of the cable operator's legal right to access Duke's conduit and poles. Given cable operators' lack of alternatives to accessing Duke's conduit and poles to serve their customers, Duke could clearly invoke the right to cancel an existing agreement as a means of pressuring a cable operator to accede to unreasonable terms and conditions of attachment inconsistent with its legal rights. [Kozelek Test. at 23.] Such authority also could clearly be used for discriminatory and anti-competitive reasons. [*Id.*] Duke's right to cancel an agreement with a cable operator should therefore be made subject to the operator's right of access to its poles and conduit on reasonable and non-discriminatory terms and conditions.

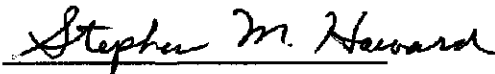
30. **OCTA objects to the Staff's failure to make clear that a cable operator is only required to begin to remove or transfer its facilities upon 10 days' notice from Duke.** See Proposed Tariff, Terms & Conditions ¶ 11. As currently drafted, Duke's tariff purports to require cable operators to remove or transfer their facilities within 10 days of receiving notice from Duke. In some circumstances, it is simply not feasible for cable operators to remove or relocate their attachments within 10 days.

[Kozelek Test. 24.] Indeed, cable operators frequently must wait for other parties to remove or relocate their facilities before they can remove or relocate theirs. [*Id.*] Duke's proposed tariff should be revised to reflect this reality.

* * *

For all of the foregoing reasons, the Commission should recommend that Duke's tariff be revised in accordance with OCTA's objections.

Respectfully submitted,



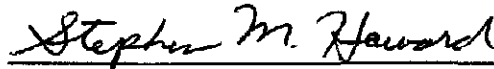
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, Ohio 43216-1008
Tel: (614) 464-5401
Fax: (614) 719-4772
E-mail: smhoward@vorys.com

Gardner F. Gillespie
Paul A. Werner
Hogan & Hartson LLP
Columbia Square
555 13th Street, N.W.
Washington, D.C. 20004
Tel: (202) 637-8796
Fax: (202) 637-5910
E-mail: gfgillespie@hhlaw.com

***Attorneys for The Ohio Cable
Telecommunications Association***

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing document was served upon the following persons via email, this 26th day of February, 2009.



Stephen M. Howard

Paul Colbert, Esq.
Rocco D'Ascenzo, Esq.
Duke Energy-Ohio
139 East Fourth Street
Cincinnati, OH 45201
paul.colbert@duke-energy.com
rocco.dascenzo@duke-energy.com

David C. Rinebolt, Esq.
Colleen L. Mooney, Esq.
Ohio Partners for Affordable Energy
337 South Main Street, 4th Floor, Suite 5
P. O. Box 1793
Findlay, OH 45839-1793
drinebolt@aol.com
cmooney@columbus.rr.com

John W. Bentine, Esq.
Mark S. Yurick, Esq.
Chester, Wilcox & Saxbe LLP
65 East State Street, Suite 1000
Columbus, OH 43215-4213
jbentine@cwslaw.com
myurick@cwslaw.com

Stephen Reilly, Esq.
Office of the Attorney General
Public Utilities Commission of Ohio
180 East Broad Street, 6th Floor
Columbus, OH 43215
Stephen.Reilly@puc.state.oh.us

Thomas J. O'Brien, Esq.
Sally W. Bloomfield, Esq.
Bricker & Eckler LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com
sbloomfield@bricker.com

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
Boehm, Kurtz & Lowry
36 East 7th Street, Suite 1510
Cincinnati, OH 45202-4454
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com

Ann M. Hotz, Esq.
Jeffrey M. Small, Esq.
Jacqueline Lake Roberts, Esq.
Office of Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, OH 43215-3485
hotz@occ.state.oh.us
small@occ.state.oh.us
roberts@occ.state.oh.us
idzkowski@occ.state.oh.us

Mary W. Christensen
Christensen Christensen Donchatz
Kettlewell & Owens, LLP
100 East Campus View Blvd., Suite 360
Columbus, OH 43235-4679
mchristensen@columbuslaw.org

Gardner F. Gillespie
Paul A. Werner
Hogan & Hartson LLP
Columbia Square
555 13th Street, N.W.
Washington, D.C. 20004
gfgillespie@hhlaw.com

Douglas E. Hart
441 Vine St., Suite 4192
Cincinnati, OH 45202
dhart@douglashart.com

Pamela H. Sherwood
4625 W. 86th St., Ste. 500
Indianapolis, IN 46268
pamela.sherwood@twtelecom.com

Albert E. Lane
7200 Fair Oaks Drive
Cincinnati, OH 45237
aelmicten@aol.com

Exhibit 1

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
First Set Production of Documents
Date Received: October 24, 2008

OCTA-POD-01-004 Supplemental Confidential

REQUEST:

Please provide a copy of all documents that relate to the number of Distribution Poles owned by Duke by year since 2000. (Please include all continuing property records of Distribution Poles by year, all summaries and counts of poles, and all summaries and counts of poles added, retired or subtracted.)

RESPONSE:

CONFIDENTIAL AND PROPRIETARY TRADE SECRET

Objection. This document request is overly broad and unduly burdensome given the time period pursuant to which it is to be answered and its reference to "all" documents relating to pole ownership. Furthermore, this document request seeks to elicit information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection, and with reference to a more limited and thus reasonable time frame, see Attachment OCTA-POD-01-004. See also confidential documents attached hereto.

PERSON RESPONSIBLE: N/A

Exhibit 2

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
PUCO Fiftieth Set Staff Data Requests
Date Received: December 12, 2008

STAFF-DR-50-001

REQUEST:

Please provide the Staff with the following data:

Please provide the corrected balances to Accounts 364 and other affected accounts, as reported in the company's 2007 FERC Form 1. Provide an explanation as to the error in distributing dollars to the proper accounts.

RESPONSE:

Below are the revised accounts balances as of 12-31-07 used in the calculation of the pole attachment rate:

	Account 364	Account 365	Account 369
Original Cost	\$284,535,121	\$283,463,254	\$49,635,936
Adjustment	<u>-65,638,734</u>	<u>+11,756,905</u>	<u>+2,750,129</u>
Adjusted Original Cost	218,896,387	295,220,159	52,386,065
Accumulated Depr	100,036,816	89,824,712	34,674,167
Adjustment	<u>-1,774,471</u>	<u>+409,254</u>	<u>-14,116</u>
Adjusted Accum Depr	98,262,345	90,233,963	34,660,051
Adjusted OCD	\$120,634,042	\$204,986,196	\$17,726,014

The corrections go back to 2001, although the 2001 – 2004 corrections are minor. There were two errors that caused these problems. First, in April 2005, the Company implemented a new accounting system. A number of blanket work orders were established at that time for Distribution projects and they were coded to go to account 364. When these were classified to account 106, they were not allocated to several distribution accounts as they should have been, but were allocated only to account 364. Second, amounts on blanket work orders must be transferred to a specific work order to establish a vintage year for the additions. In December 2006, several specific work orders were created to receive amounts from the Distribution blanket work orders that were in service (account 106.) The new specific work orders were erroneously coded in CWIP (account 107) rather than in service. This was discovered and corrected in January 2007, but as a result, the additions became 2007 additions and 2006 additions were understated.

PERSON RESPONSIBLE: Donald Storck

Exhibit 3

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
PUCO Fiftieth Set Staff Data Requests
Date Received: December 12, 2008

STAFF-DR-50-001Supplemental

REQUEST:

Please provide the Staff with the following data:

Please provide the corrected balances to Accounts 364 and other affected accounts, as reported in the company's 2007 FERC Form 1. Provide an explanation as to the error in distributing dollars to the proper accounts.

RESPONSE:

Below are the revised accounts balances as of 12-31-07 used in the calculation of the pole attachment rate:

	<u>Account 364</u>	<u>Account 365</u>	<u>Account 369</u>
Original Cost	\$284,535,121	\$283,463,254	\$49,635,936
Adjustment	- 61,410,077	+ 9,434,658	+ 2,750,129
Adjusted Original Cost	223,125,044	292,897,912	52,386,065
Accumulated Depreciation	100,036,816	89,824,712	34,674,167
Adjustment	- 1,942,323	+ 383,353	+ 5,423
Adjusted Accumulated Depreciation	98,094,493	90,208,065	34,679,590
Adjusted Original Cost Depreciated	\$125,030,551	\$202,689,847	\$17,706,475

The corrections go back to 2001, although the 2001 – 2004 corrections are minor. There were two errors that caused these problems. First, in April 2005, the Company implemented a new accounting system. A number of blanket work orders were established at that time for Distribution projects and they were coded to go to account 364. When these were classified to account 106, they were not allocated to several distribution accounts as they should have been, but were allocated only to account 364. Second, amounts on blanket work orders must be transferred to a specific work order to establish a vintage year for the additions. In December 2006, several specific work orders were created to receive amounts from the Distribution blanket work orders that were in service (account 106.) The new specific work orders were erroneously coded in CWIP (account 107) rather than in service. This was discovered and corrected in January 2007, but as a result, the additions became 2007 additions and 2006 additions were understated.

PERSON RESPONSIBLE: Donald Storck

Exhibit 4

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
Third Set Production of Documents
Date Received: December 20, 2008

OCTA-POD-03-016Supplemental

REQUEST:

Please produce all documents OCTA has requested Duke to identify in Interrogatories 22-46.

RESPONSE:

See responses to individual Interrogatories 22-46 and attachments provided as responsive documentation.

PERSON RESPONSIBLE: N/A

Exhibit 5

DUKE ENERGY OHIO, INC.
CASE NO. 08-709-EL-AIR
GROSS ADDITIONS, RETIREMENTS & TRANSFERS
From October 1, 2004 to March 31, 2009
Distribution Plant

Date: X Actual ___ Estimated
Type of Filing: X Original ___ Updated ___ Revised
Work Papers Reference No(s)

WPG-2.2b
Witness Responsible:
C. J. Council
01/23/09

Company Acct. No.	Beginning Balance	Additions	Retirements	Amount	Transfers/Reclassifications		Ending Balance
					Explanation of Transfer	Other Accts. Involved	
3622	\$ 72,307,844.76	\$ 1,715,331.52	\$ 73,808.58	\$ 0.00			\$ 73,949,369.72
10/1/04 - 12/31/04		4,787,822.88	854,384.34	(32,118.35)			77,789,491.86
Year 2005		4,885,064.05	342,395.46	123,316.35			82,389,273.68
Year 2006		7,243,073.46	489,150.64	4,219.58			89,177,415.36
Year 2007		848,464.07	82,984.85	0.00			89,943,887.80
11/1/08-3/31/08							
Total	19,451,758.03	1,923,122.57	97,419.58				89,943,887.80
3635	50,584.13	89,971.31	0.00	0.00			140,255.44
10/1/04 - 12/31/04		655,022.44	0.00	0.00			795,277.86
Year 2005		885,186.36	0.00	0.00			1,780,464.24
Year 2006		882,433.52	0.00	0.00			2,585,898.76
Year 2007		607,054.04	0.00	0.00			3,192,953.80
11/1/08-3/31/08							
Total	3,142,279.57	0.00	0.00				3,192,953.80
3640	209,612,785.67	(599,527.00)	578,438.39	(2,148.16)			208,329,685.85
10/1/04 - 12/31/04		607,313.73	2,420,588.12	(713,143.80)			210,037,125.36
Year 2005		3,148,974.45	1,353,091.67	0.00			216,986,736.30
Year 2006		8,318,655.59	2,185,782.76	0.00			223,125,044.07
Year 2007		8,298,057.53	367,937.21	1,144.86			225,327,833.51
11/1/08-3/31/08		2,689,886.00	0.00	(14,148.31)			225,327,833.51
Total	22,600,840.30	8,691,610.16					
3650	263,655,314.82	327,794.00	882,359.74	715.27			267,029,901.27
10/1/04 - 12/31/04		3,727,445.82	2,606,285.94	(10,148.65)			272,684,444.25
Year 2005		4,909,974.97	2,548,871.36	(1,261.55)			281,733,126.08
Year 2006		10,888,826.78	4,003,303.84	0.00			292,867,914.58
Year 2007		15,165,077.34	643,033.70	0.00			294,779,883.14
11/1/08-3/31/08		2,502,072.26	10,298,864.60	(10,682.33)			294,779,883.14
Total	41,433,132.35	10,298,864.60					

Exhibit 6

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
First Set Production of Documents
Date Received: October 24, 2008

OCTA-POD-01-004 Supplemental

REQUEST:

Please provide a copy of all documents that relate to the number of Distribution Poles owned by Duke by year since 2000. (Please include all continuing property records of Distribution Poles by year, all summaries and counts of poles, and all summaries and counts of poles added, retired or subtracted.)

RESPONSE:

CONFIDENTIAL AND PROPRIETARY TRADE SECRET

Objection. This document request is overly broad and unduly burdensome given the time period pursuant to which it is to be answered and its reference to "all" documents relating to pole ownership. Furthermore, this document request seeks to elicit information that is irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Without waiving said objection, and with reference to a more limited and thus reasonable time frame, see Attachment OCTA-POD-01-004. See also confidential documents attached hereto.

PERSON RESPONSIBLE: N/A

Exhibit 7

Duke Energy Ohio, Inc.
Case No. 08-709-EL-AIR
Ohio Cable Telecommunications Association
Third Set Interrogatories
Date Received: December 20, 2008

OCTA-INT-03-028

REQUEST:

Number of Distribution Poles in Account 364

The number of distribution poles in Account 364 is another key driver of the pole attachment rate as it is the denominator for the average investment per pole. See the formula in Attachment DLS-2. In the formula, Duke uses the number 248,901 as the number of poles in Account 364. In the summary of the continuing property records initially provided to OCTA, as a substitute for the continuing property records requested by OCTA in POD 01-004, Duke listed the total number of poles in Account 364 as 234,942. But in his deposition Mr. Dean said that the summary was not correct and is being revised. Please respond fully to the following interrogatories addressing this issue.

Explain fully how Duke determined that it had 248,901 distribution poles in Account 364 as of the end of 2007, including the basis for the number, what back-up exists to support that number, where all such back-up can be found and in what form, and identify a witness who can testify about these matters.

RESPONSE:

Objection. This Interrogatory misinterprets the prior deposition testimony of James Dean and is thus based upon incorrect statements. The pole count information used in the formula is not incorrect as compared to the summary of the continuing property records. As Mr. Dean explained, the quantity information on the continuing property records lags behind field records. This Interrogatory is further objectionable as it is duplicative of prior requests, including those posed to Mr. Dean during his deposition. Without waiving said objections, the quantity of distribution poles used for purposes of the proposed pole attachment rate was derived with reference to Duke Energy Ohio's Small World infrastructure system.

PERSON RESPONSIBLE: N/A

Exhibit 8

Pole Attachment Formula For

Electric Utility Owners Using FERC Part 101 Accounts (excluding Wisconsin carriers)

A. Components

1. Rate of Return

= 8.61%

2. Depreciation

Depreciation \times Gross Pole Investment
Rate Net Pole Investment

2.23% \times

\times $\frac{1,179,586,197}{597,822,213} = 318,183,445$

= 0.30%

3. Tax Expense

Tax Expense

Net Distribution Plant in Service \times Accumulated Depreciation \times ADIT (Acct. 180, 285, 281-283)

$\frac{59,641,946}{1,763,333,257} + \frac{123,152}{(817,643,889)} + \frac{0.073,405}{(175,764,145)}$

= $\frac{69,738,603}{899,822,213} = 7.76\%$

4. Maintenance Expense

FERC Account 588

(Investment in Account 584 \times 365 \times 369) \div (Depreciation in 364 \times 365 \times 369) \div (ADIT in 364 \times 365 \times 369)

$\frac{21,709,084}{21,709,084}$

= $\frac{21,709,084}{246,674,035} = 8.80\%$

5. Administrative Expense

Distribution Administrative and General Expense

Net Distribution Plant in Service \times Accumulated Depreciation \times ADIT (Acct. 180, 285, 281-283)

$\frac{72,776,380}{1,763,333,257} \div (817,643,889) \div (175,764,145)$

= $\frac{72,776,380}{899,822,213} = 7.99\%$

B. Distribution Pole Carrying Charge Rate

% of Net Base Pole Cost per Year

Rate of Return
Depreciation Expense
Federal, State, and Other Taxes
Maintenance Expense
Administrative Expense
Total Annual Carrying Charge Rate

8.61%
5.38%
7.19%
8.80%
7.58%
38.46%

C. Net Investment Per Pole

85.0% (Gross Pole Investment \times Pole Depreciation Reserve) \div ADIT for Poles

Number of Poles in Service

$\frac{0.85}{251,358}$

= \$212.28

D. Base Calculation

1. Net Investment per Base Pole \times Annual Carrying Charge = Annual Pole Cost

\$212.28 \times 38.46%

= \$81.48

2. Annual Pole Cost \times Attachment Percentage of Usable Pole Space = Attachment Rate for CATV

\$81.48 \times 7.41%

= \$6.05

* This information is redacted. It refers to
Deposits and Deposition Exhibits submitted
under seal on February 23, 2009*

Duke Energy Ohio

**Pole Attachment Formula
For Electric Utility Pole Owners**

Kravlin Attachment 4
Page 2/4

<u>FCC Pole Attachment Rate Formula</u>	<u>Amount</u>	<u>Reference/Source</u>
1 Gross Pole Investment	*	A. Below
2 Pole Depreciation Reserve	*	B1 below
3 Crossarm Factor	*	(1.minus 2.minus O1.) times 15 percent
4 Accumulated Deferred Taxes	(\$175,764,145)	O. Below
5 Net Pole Investment	\$62,769,065	1. minus 2.minus O1
6 Number of Poles	251,356	D. Below
7 Net Investment Per Bare Pole	\$212.26	5. minus 3. divided by 6.
8 Pole Maintenance		
A. Maintenance of Overhead Lines	\$21,709,094	E. Below
B. Total Investment in Poles	\$527,134,526	A. plus F. Plus G.
C. Depreciation Reserve	\$224,126,062	B1+B2+B3
D. Accumulated Deferred Taxes	\$56,332,409	O1+O2+O3
E. Total Investment in Poles - Net	\$246,674,035	8B. minus 8C. Minus 8D.
F. Pole Maintenance Ratio	8.60%	8A. divided by 8E.
9 Depreciation	6.38%	(1. divided by (1. minus 2. minus O1.)) times H.
10 Administration	7.50%	(1. divided by (J. minus K. minus O))
11 Taxes (Normalized)	7.19%	(L. through N.) divided by (J. minus K minus O)
12 Rate of Return	8.61%	T. Below
13 Total Carrying Charge	36.48%	8F. plus (9. through 12.)
14 Allocated Space	7.41%	1 divided by 13.5 (Pole Space Reserved)
15 Maximum Rate	\$6.05	(7. times 13.) times 14.
<u>Input Data</u>		
A. Poles, Towers, & Fixtures (Acctg.364)	*	OCTA TY Calculation based on CPR Ledger 101 Acctg (OCTA Deposition Exh. 14)
B. 1. Accum Depr. for FERC Acctg 364	*	Per Schedule WPB-3.3b, Witness C.J. Council adjusted to match OCTA corrected 364 plant investment
2. Accum Depr. for FERC Acctg 365	*	Per Schedule WPB-3.3b, Witness C.J. Council
3. Accum Depr. for FERC Acctg 369	\$34,957,075	Per Schedule WPB-3.3b, Witness C.J. Council
C. Distribution Plant	\$1,644,636,777	Staff Report Schedule B-1
D. Number of Distribution Poles	251,356	PD Process Improvement -Nancy Musser adjusted per OCTA TY Calculation
E. Mtce of Overhead Lines (Acctg. 593)	\$21,709,094	Applicant's Schedule C-2.1
F. Overhead Conductors & Devices (Acctg. 365)	294,779,890	Per Schedule WPB-2.3b, Witness C.J. Council
G. Services (Acctg. 369)	52,789,439	Per Schedule WPB-2.3d, Witness C.J. Council
H. Depreciation Rate - Distribution Property	2.23%	Staff Report Schedule B-3.2a
I. Distribution Admin. & Gen. Exps.	\$72,778,390	Applicant's Schedule C-2 and Staff's Schedule C-3
J. Net Distribution Plant in Service	\$1,763,333,257	Staff's Schedule B-1
K. Accum. Depr. - Utility Plant in Service	(\$617,643,899)	Staff's Schedule B-1
L. Taxes Other Than Income Taxes	\$59,841,948	Staff's Schedule C-2
M. State Income Taxes Expense	\$123,152	Staff's Schedule C-4
N. Federal Income Taxes Expense	\$9,973,405	Staff's Schedule C-4
O. Accumulated Deferred Inc. Taxes (Acct 190, 255, 281-283)	(\$175,764,145)	Per Schedule B-6, Witness W.D. Wathen
1. ADIT for Poles (Acct 364)	\$19,193,445	Deferred Tax Calculation Worksheet
2. ADIT for Overhead Conductor (Acct 365)	\$31,496,935	Deferred Tax Calculation Worksheet
3. ADIT for Services (Acct 369)	\$5,642,028	Deferred Tax Calculation Worksheet
P. Accum. Def Invest Tax Credits (Acct. 255)	(182,063)	Per Schedule B-6, Witness W.D. Wathen
Q. Accum. Defer Inc Taxes - Accrat. Amort. (Acct. 281)	-	Per Schedule B-6, Witness W.D. Wathen
R. Accum. Defer Inc Taxes - Other Property (Acct. 282)	(197,678,639)	Per Schedule B-6, Witness W.D. Wathen
S. Accum. Defer Inc Taxes - Other (Acct. 283)	(4,752,723)	Per Schedule B-6, Witness W.D. Wathen
T. Rate of Return	8.61%	Staff Report Schedule D-1, Midpoint
U. Space Occupied	1.00	FCC Order Docket 97-151
V. Usable Space	13.6	FCC Order Docket 97-151
X. Pole Height	37.5	FCC Order Docket 97-151

This information is redacted. It refers to Depositions and Deposition Exhibits submitted under seal on February 23, 2009

Duke Energy Ohio

Allocation of Distribution Accumulated Deferred Tax Balances (Acct. 190)
To Plant Accounts 364, 365 and 369
As of March 31, 2008

	Allocated ADIT Amounts	FERC Form No. 1 Source
Accumulated Deferred Taxes (Acct. 190)	27,049,300	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Investment Tax Credits (Acct. 255)	(182,083)	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Income Taxes - Accel. Amort. (Acct. 281)	-	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Income Taxes - Other Property (Acct. 282)	(197,878,639)	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Income Taxes - Other (Acct. 283)	(4,752,723)	Per Schedule B-6, Witness W.D. Wathen
Accumulated Deferred Taxes for Electric	<u>(175,764,145)</u>	
Distribution Electric Plant in Service ¹	(\$)	
Total Plant	1,644,636,777	100.00%
Poles (Acct. 364)	*	Staffs Schedule B-1
Overhead Conductor (Acct. 365)	*	s C.J. Council as revised by OCTA TY Adjustment
Services (Acct. 369)	*	NPB-2.3b, Witness C.J. Council
Total Accts 364, 365 and 369	<u>58,332,409</u>	NPB-2.3b, Witness C.J. Council

¹ Duke Energy 2007 FERC Form No. 1

*This information is redacted. It refers to
Depositions and Deposition Exhibits submitted
under seal on February 23, 2009*

Acct 364 101 Accounting Adjusted for Test Yr

Revised Acct	364 Plant Test	364 YRE 07	% increase in	CPR Ledger	CPR Ledger	\$ Diff Duke
			\$ Plant	101 Corrected	Revised and	
			End 07 to Test	364 Plant	364 Plant Test	
			Year	YRE 07	Yr Adjusted	
\$ 225,327,638	\$223,125,044	\$2,202,594	0.99%	\$ *	*	*

Acct 364 Depreciation Reserve Adjusted for 101 Accounting

Orig DE 364	Revised 364	Rev 364 Plant	Depreciation	YR Difference	% Decrease	\$ Diff Duke	\$ Difference
Plant YR 07	Plant YR 07	YRE 07	YR 07	07	\$ Depreciation	Revised and	Depreciation
\$ 284,535,121	\$223,125,044	\$(61,410,077)	\$ *	*	per \$ Decrease	Corrected 364	Applying Duke
					Plant	TY Adj	% Decrease
					3.16%	*	*

Account 364	\$ Difference	Adjusted
Depreciation	Depreciation	Account 364
Test Yr	Applying Duke	Depreciation
\$ *	% Decrease	Test Yr
	*	*

Distribution Pole Count Adjusted for Test Yr

YRE 07	% Incr \$Plant	TY Adjusted
	YR07 to TY	Pole Count
248,901	0.99%	251,358

Sources:

Attachment Staff DR-60-001f Schedule B-3, Witness Council
Attachment Staff DR-60-001j WPB-3.3b, Witness Council
Attachment Staff DR-60-001e WPB-2.3b, Witness Council
Attachment DLS-2

*This information is redacted. It refers to
Depositions and Deposition Exhibits submitted
under seal on February 23, 2009*

Exhibit 9

Conduit Attachment Formula For Electric Utility Owners Using FERC Part 101 Accounts (excluding telecom carriers)

1.85% X	\$97,573.885	
	\$97,573.885	\$28,403.288
		\$10,422.814

Oct. 1900.

67 + 360

1.258

Page 190, 2

Odell, Cos

7.15%

7.50%
27.45%

Product

22,814)

Amurak Co.

ie = Attan

Duke Energy Ohio

Kravtin Attachment 5
Page 2/4

Conduit Attachment Formula For Electric Utility Conduit Owners

<u>FCC Conduit Rate Formula</u>		<u>Amount</u>	<u>Reference/Source</u>
1	Gross Conduit Investment	\$97,573,685	A. Below
2	Conduit Depreciation Reserve	\$29,403,258	B1 below
3			
4	Accumulated Deferred Taxes	(\$175,764,145)	O. Below
5	Net Conduit Investment	\$57,747,613	1. minus 2. minus O1.
6	Duct Feet of Distribution Conduit	14,532,269	D. Below
7	Net Investment Per Duct Foot	\$3.97	5. minus 3. divided by 6.
8	Conduit Maintenance		
	A. Maintenance of Underground Lines	\$2,670,893	E. Below
	B. Total Investment in Conduit	\$422,139,852	A. plus F. Plus G.
	C. Depreciation Reserve	\$124,417,139	B1+B2+B3
	D. Accumulated Deferred Taxes	\$45,118,866	O1+O2+O3
	E. Total Investment - Conduit	\$252,604,057	8B. minus 8C. Minus 8D.
	F. Conduit Maintenance Ratio	1.06%	8A. divided by 8E.
9	Depreciation	3.13%	(1. divided by (1. minus 2. minus O1.)) times H.
10	Administration	7.50%	(1. divided by (J. minus K. minus O.))
11	Taxes (Normalized)	7.19%	(L. through N.) divided by (J. minus K minus O.))
12	Rate of Return	8.61%	T. Below
13	Total Carrying Charge	27.48%	8F. plus (9. through 12.)
14	Allocated Space	50.00%	1 divided by 2 ducts per conduit (presumptive conduit capacity occupied)
15	Maximum Rate	\$0.55	(7. times 13.) times 14.

Input Data

A.	Underground Conduit (Acctg. 366)	\$97,573,685	Per Schedule B-3, Witness C.J. Council
B.	1. Accum Depr. for FERC Acctg 366	\$29,403,258	Per Schedule WPB-3.3b, Witness C.J. Council
	2. Accum Depr. for FERC Acctg 367	\$60,056,806	Per Schedule WPB-3.3b, Witness C.J. Council
	3. Accum Depr. for FERC Acctg 369	\$34,957,075	Per Schedule WPB-3.3b, Witness C.J. Council
C.	Distribution Plant	\$1,644,636,777	Staff Report Schedule B-1
D.	Number of Duct Feet of Conduit	14,532,269	OCTA-INT-02-020 Adjusted per OCTA TY Calculation
E.	Mlce of Underground Lines (Acctg. 594)	\$2,670,893	FERC Form 1, pg 322, line 150, col B
F.	Underground Conductors & Devices (Acctg. 367)	271,796,728	Per Schedule WPB-2.3b, Witness C.J. Council
G.	Services (Acctg. 369)	52,769,439	Per Schedule WPB-2.3d, Witness C.J. Council
H.	Depreciation Rate - Distribution Property	1.85%	Staff Report Schedule B-3.2a
I.	Distribution Admin. & Gen. Exps.	\$72,778,390	Applicant's Schedule C-2 and Staff's Schedule C-3
J.	Net Distribution Plant in Service	\$1,763,333,257	Staff's Schedule B-1
K.	Accum. Depr. - Utility Plant in Service	(\$517,643,899)	Staff's Schedule B-1
L.	Taxes Other Than Income Taxes	\$59,641,948	Staff's Schedule C-2
M.	State Income Taxes Expense	\$123,152	Staff's Schedule C-4
N.	Federal Income Taxes Expense	\$9,973,405	Staff's Schedule C-4
O.	Accumulated Deferred Inc. Taxes (Acct 190, 255, 281-283)	(\$175,764,145)	Per Schedule B-6, Witness W.D. Wathen
	1. ADIT for Conduit (Acct 366)	\$10,422,814	Deferred Tax Calculation Worksheet
	2. ADIT for Underground Conductor (Acct 367)	\$29,053,813	Deferred Tax Calculation Worksheet
	3. ADIT for Services (Acct 369)	\$5,642,029	Deferred Tax Calculation Worksheet
P.	Accum. Def Invest Tax Credits (Accl. 255)	(182,983)	Per Schedule B-6, Witness W.D. Wathen
Q.	Accum. Defer Inc Taxes - Accel. Amort. (Accl. 281)	-	Per Schedule B-6, Witness W.D. Wathen
R.	Accum. Defer Inc Taxes - Other Property (Accl. 282)	(197,678,639)	Per Schedule B-6, Witness W.D. Wathen
S.	Accum. Defer Inc Taxes - Other (Accl. 283)	(4,752,723)	Per Schedule B-6, Witness W.D. Wathen
T.	Rate of Return	8.61%	Staff Report Schedule D-1, Midpoint
U.	Space Occupied	1.00	FCC Order Docket 97-151
V.	Number inner ducts per conduit	2	FCC Order Docket 97-151

Duke Energy Ohio

Allocation of Distribution Accumulated Deferred Tax Balances (Acct. 190)
To Plant Accounts 366, 367 and 369
As of March 31, 2008

	Allocated ADIT Amounts	FERC Form No. 1 Source
	(\$)	
Accumulated Deferred Taxes (Acct. 190)	27,049,300	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Investment Tax Credits (Acct. 255)	(182,083)	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Income Taxes - Accel. Amort. (Acct. 281)	-	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Income Taxes - Other Property (Acct. 282)	(197,878,839)	Per Schedule B-6, Witness W.D. Wathen
Accum. Deferred Income Taxes - Other (Acct. 283)	<u>(4,762,723)</u>	Per Schedule B-6, Witness W.D. Wathen
Accumulated Deferred Taxes for Electric	<u>(175,764,145)</u>	

		% of Total	
Distribution Electric Plant in Service ¹	(\$)		(\$)
Total Plant	<u>1,644,636,777</u>	<u>100.00%</u>	Staff's Schedule B-1
Conduit (Acct. 366)	97,573,685	5.93%	10,422,814 NPB-2.3b, Witness C.J. Council
Underground Conductor (Acct. 367)	271,796,728	16.53%	29,053,813 NPB-2.3b, Witness C.J. Council
Services (Acct. 369)	52,769,439	3.21%	<u>5,642,029</u> NPB-2.3b, Witness C.J. Council
Total Accts 364, 365 and 369			<u>45,118,656</u>

¹ Duke Energy 2007 FERC Form No. 1

OCTA Test Year Adjustments
Duke Energy - Ohio

Acct 366 Adjusted for Test Yr

366 Plant	366 Plant	\$ Difference	
Test Yr	YRE 07	Gross Plant	% incr TY Plant
\$ 97,573,685	\$97,189,588	\$384,097	0.40%

Duct Feet of Conduit Adjusted for Test Yr

	% incr TY	TY Adjusted Pole
YRE 07	Plant	Count
14,475,063	0.40%	14,532,269

Sources:

Attachment Staff DR-60-001f Schedule B-3, Witness Council
Attachment Staff DR-60-001j WPB-3.3c, Witness Council
Attachment Staff DR-60-001e WPB-2.3c, Witness Council
Duke Response to OCTA-INT-02-020