

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)
Energy Ohio, Inc., to Amend its Pole)
Attachment and Conduit Occupancy) Case No. 15-965-EL-ATA
Tariff, P.U.C.O. No. 1.)

**RESPONSES OF DUKE ENERGY OHIO, INC.,
TO OBJECTIONS**

I. Introduction

This proceeding stems from the recent adoption, by the Public Utilities Commission of Ohio (Commission), of rules governing pole attachments and conduit occupancies. Specifically, the Commission adopted several new rules, in Ohio Administrative Code (O.A.C.) Chapter 4901:1-3, governing the rates that pole owners may charge for such attachments and occupancies, as well as a number of terms and conditions applicable to those arrangements.¹

In its Finding and Order adopting the new chapter, the Commission – as it generally does – addressed each rule on which interested parties filed comments. When it discussed O.A.C. 4901:1-3-04, which is the rule that establishes the new rate formula to be used for attachments and occupancies, the Commission noted specifically that it would subsequently address “the filing of tariffs consistent with the adopted rule.”² In other words, the Commission would subsequently require pole owners to file tariffs that would incorporate the new rate formula.

¹ *In the Matter of the Adoption of Chapter 4901:1-3, Ohio Administrative Code, Concerning Access to Poles, Ducts, Conduits, and Rights-of-Way by Public Utilities*, Case No. 13-579-AU-ORD (Rule Adoption Case).

² Rule Adoption Case, Finding and Order, pg. 41 (July 30, 2014)(emphasis added).

On February 25, 2015, the Commission issued an order in the Rule Adoption Case, addressing the newly adopted rate formula in O.A.C. 4901:1-3-04 and requiring pole owners to amend their tariffs to be consistent with that rule. Duke Energy Ohio, Inc., (Duke Energy Ohio) initiated this present proceeding in compliance with that mandate.

The Attorney Examiner in the present proceeding has allowed for the filing of objections to the proposed tariff rate amendment, as well as responses to any objections. Duke Energy Ohio hereby files its responses to the objections of the Ohio Cable Telecommunications Association (OCTA).

II. OBJECTIONS TO POLE ATTACHMENT RATE

A. Number of Poles

OCTA objects to Duke Energy Ohio's reporting of the number of poles it owns. Duke Energy Ohio does not disagree that the number of poles is a vital component of the rate calculation. However, OCTA's objection is irrational.

As Duke Energy Ohio reported in discovery, the source of this figure is the number of poles in its GIS mapping system. OCTA attempts to rely on objections it made seven years ago to bolster its argument here, but there is nevertheless no reason to believe that the source OCTA would prefer to use is more reliable than the source the Duke Energy Ohio uses. OCTA suggests that Duke Energy Ohio has "failed to provide any support for the number of poles" and that, therefore, the result is objectionable.

But OCTA fails to point out that, in the 2008 rate case, the Staff Report did not take issue with the Company's pole count. It also fails to note that its 2008 concerns were not litigated; consequently, there was no Commission conclusion that the GIS numbers were unreliable. This was merely OCTA's objection and nothing more.

In its initial filing, the Company used 330,243 as the number of distribution poles. Subsequent to that filing, the Company determined that the pole count in its initial filing was inaccurate because it included poles not owned by the Company. The Company did not use the pole count from FERC Account 364 because that pole count includes non-unitized poles. In its corrected calculation, the Company used the GIS pole count of 201,715 because that count includes all poles that are in service and carry primary conductor. The Company believes that the pole count obtained from its GIS system most accurately reflects the number of in-service poles that should be used in its rate calculation.

This objection should be rejected.

B. Tax Carrying Charge Element

OCTA's next objection relates to the calculation of the tax carrying charge. OCTA claims, erroneously, that the Company used its net investment in electric plant for the denominator, while the numerator was based on tax expenses for electric and gas plant. OCTA is wrong.

In actual fact, the numerator was also based on net plant attributable only to the electric portion of the business. OCTA may have been confused by a footnote identifying page 114 of the FERC Form 1 as the source of this information. While page 114 does report total company information, the relevant line specifically notes that the information came from "column (g)," on page 115, which clearly reflects only electric data.

The numerator and denominator were appropriately matched. This objection should be rejected.

C. Historical Inconsistencies

OCTA asserts that Duke Energy Ohio failed to "justify" certain significant changes between 2013 and 2014; specifically, an increase in the normalized tax expenses and decrease in

gross investment in total plant. As the Company explained in discovery responses, OCTA seems to understand that the step-down in assets resulted from the transfer of assets out of Duke Energy Ohio. But OCTA feels that it is unfair to compare this reduced investment in plant to taxes that were calculated on the basis of the prior plant investment.

OCTA's concern is misplaced. Although Duke Energy Ohio experienced a step-down in assets, this does not justify any modification of the rate. The formula adopted by the Commission simply takes the information reported in the FERC Form 1 and uses that to calculate a rate. OCTA's objection is, in actuality, asking the Commission to establish an exception to its new rule.

The Commission should note that, although property taxes are paid on a schedule that lags by one year, such taxes are always expensed (that is, recorded on the Company's books) in the current year. Furthermore, comparisons to prior years are immaterial, as the calculations are entirely independent.

This objection should be rejected.

D. Gradualism

Once again ignoring the formula that was just established, OCTA asks the Commission to apply the newly calculated rate only gradually, through a phase-in, over a period of five years. OCTA protests that the increased attachment rate will result in its customers having to absorb additional costs, and it suggests that Duke Energy Ohio hasn't proved that the increase is "commercially necessary."

It is critically important to understand the law behind OCTA's phase-in proposal. To support its approach, OCTA points to a 1992 Commission decision (CG&E case), in which the

Commission first considered its authority to phase in a rate increase.³ The Commission noted, in the CG&E case order, that it had previously approved phase-ins, but it had never initiated one.⁴ In spite of the utility's argument that Ohio law requires rates to be established without phase-in, calculated under R.C. 4909.15, the Commission nevertheless decided that its broad authority should allow it to deviate from that statute and phase in the new rates over time.⁵

If the story of the CG&E case ended with the Commission's Opinion and Order, OCTA's argument could be plausible. But it does not. That order was appealed to the Ohio Supreme Court, which, **reversed the Commission's decision as to its authority to phase in rates** and remanded the case for further consideration. The Court saw the phase-in as a reduction in the revenues to which the utility was entitled under Ohio law. The Court concluded that the Commission must calculate the rate in question, providing the utility with the revenues to which it is entitled. A phase-in, it said, would deprive the utility of those revenues.⁶

The situation is no different here. A phase-in of the properly calculated pole attachment rates would simply deprive Duke Energy Ohio of the revenues to which it is entitled. It cannot be ordered by the Commission.

Even if a phase-in were legal in this situation, which it is not, OCTA had the opportunity, in the Rule Adoption Case, to propose and justify a procedure that would require proof of commercial necessity, or that would change rates only gradually. The applicable rules are now in place and the present case is not one in which the Commission is evaluating policy or the wisdom of those rules. This is merely a proceeding to change the pole attachment and conduit occupancy rates in accordance with the formula set forth in the new rules.

³ *In the Matter of the Application of The Cincinnati Gas & Electric company for an Increase in Electric Rates in its Service Area*, Case No. 91-410-EL-AIR, 1992 Ohio PUC LEXIS 316 (May 12, 1992).

⁴ *Id.*, at pg. 214.

⁵ *Id.*, at pp. 215-216.

⁶ *Cincinnati Gas & Elec. Co. v. Pub.Util.Comm.*, 67 Ohio St.3d 517, 519, 620 N.E.2d 821 (1993)(citing, *Columbus Southern Power Co. v. Pub.Util.Comm.*, 67 Ohio St.3d 535, 540-541, 620 N.E.2d 835 (1993)(companion case)).

The Commission has just determined that a pole attachment rate based on this formula will compensate pole owners for their costs. It did not suggest that rates calculated under this formula would provide anything extra; they would only cover costs. The change, for Duke Energy Ohio, would move the rate from \$6.40 to \$9.81 per attachment, per year. That means that, under current rates, the Company undercharges \$3.41 per attachment, per year, as compared with the calculated cost to provide this service.

OCTA also suggests that Duke Energy Ohio must be recovering sufficient funds under the current rates, as it has not recently sought an increase. The Company last increased the pole attachment rate in its 2008 rate case, where the Company sought to increase the rate to \$14.42 per attachment, per year.⁷ The \$6.40 rate that was ultimately approved was solely the result of settlement. That the Company has not sought an increase since that time is proof of nothing and is entirely irrelevant to the present proceeding. The Commission ordered pole owners to file tariffs with recalculated rates. Duke Energy Ohio has done exactly that.

It is also certainly not lost on the Commission that Ohio law only allows the Commission to require a phase-in approach where it is statutorily authorized to do so. R.C. 4928.144 allows for phase-ins with regard to standard service offers. But that statute has no applicability to this matter and no similar statute exists for application outside of electric security plans. The Ohio Supreme Court has said that "the commission's power to limit annual rate increases, and thus phase-in . . . rates, comes from R.C. 4928.144."⁸ It has no such power here and, even if it did, there is no justifiable reason to do so. Indeed, rate-making principles also include the important aspect of cost causation, conveniently ignored by OCTA. As the attachers cause the Company to incur the expenses in question, they are the entities that should bear those costs.

⁷ *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Rates*, Case No. 08-709-EL-AIR, et al.

⁸ *In re Columbus Southern Power Co.*, 129 Ohio St.3d 568, 570, 2011-Ohio-4129, ¶ 10.

This objection should be rejected.

III. OBJECTIONS TO MATTERS OTHER THAN RATES

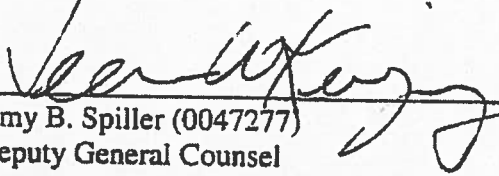
As discussed above, the application in this docket was filed in response to the Commission's order that rates for pole attachments and conduit occupancies be calculated under the newly adopted formula and that relevant tariffs be amended. OCTA has filed objections to numerous issues that go well beyond that requirement. If OCTA wanted the Commission to order pole owners to modify their tariffs to address all of the matters covered in the entirety of the newly adopted O.A.C. Chapter 4901:1-3, OCTA should have filed for rehearing of the Commission's entry, within 30 days after its issuance on February 25, 2015. It did not do so and is, thus, bound by the terms of that entry.

Duke Energy Ohio does not dispute that there may be differences between the terms and conditions laid out in its tariff and the terms and conditions set forth in the new chapter of administrative rules. At an appropriate time, the Company will likely seek to amend the tariff to correspond to the rules and OCTA will have its opportunity to comment upon those amendments. In the meantime, the rules certainly govern where a difference exists.

All of OCTA's objections to matters other than the calculation of the new pole attachment and conduit occupancy rates should be rejected as not relevant to the present proceeding.⁹

⁹ In the event the Commission believes that OCTA's objections to matters other than the calculation of rates are relevant to the present proceeding, Duke Energy Ohio respectfully requests an opportunity to address those objections individually.

Respectfully submitted,
Duke Energy Ohio, Inc.



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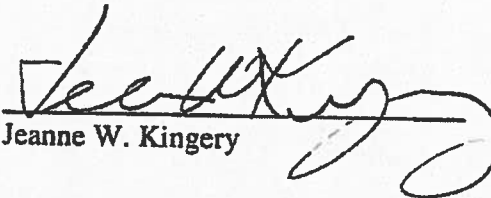
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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio will electronically serve notice of the filing of this document on the parties identified on the service list of the docket car who have electronically subscribed to the case. In addition, I hereby certify that a true and accurate copy of the foregoing was delivered via U.S. mail (postage prepaid), personal, or electronic mail delivery, on this the 24th day of August, 2015, to the parties listed below.


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Summary: Response Responses of Duke Energy Ohio, Inc., to Objections electronically filed by Dianne Kuhnell on behalf of Duke Energy Ohio, Inc. and Spiller, Amy B. and Kingery, Jeanne W.