

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Implementation of)	Case No. 18-1185-EL-UNC
the Tax Cuts and Jobs Act of 2017.)	

In the Matter of the Application of Duke)	
Energy Ohio, Inc., for Approval of Tariff)	Case No. 18-1186-EL-ATA
Amendments.)	

**REPLY IN SUPPORT OF THE MOTION TO INTERVENE OF
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

The Ohio Cable Telecommunications Association (“OCTA”), representing the interests of Ohio’s cable telecommunications industry, files this reply in support of its intervention. Duke Energy Ohio, Inc. (“Duke”) filed the application in these proceedings in order to resolve the issues associated with the Tax Cuts and Jobs Act of 2017 (“TCJA”) and despite Duke’s claims to the contrary, determinations made in these proceedings could impact the OCTA and its members. The OCTA seeks to intervene in order to protect its rights. Its intervention motion is not untimely, and the OCTA will contribute to the resolution of the issues. The OCTA’s participation will not unduly delay or prolong these proceedings. No other party represents the OCTA’s interests and, therefore, the OCTA’s motion to intervene should be granted.

I. The application in these cases seeks to resolve the remaining TCJA issues for Duke.

Duke repeatedly stated in its application that it initiated these proceedings to propose how it will implement the impacts of the TCJA and pass the benefits on to customers. The following excerpts from Duke’s application confirm this intent:

- “Duke Energy Ohio * * * requests that the Commission utilize this docket to resolve matters relating to the [TCJA] for Duke Energy Ohio’s electric distribution operations and to facilitate an efficient resolution of those matters, as set forth herein.” (Application - Introductory paragraph)

- The Commission’s “TCJA COI is not likely to directly resolve all issues related to jurisdictional services” as impacted by the TCJA. (Application - Paragraph 5).¹
- “An efficient and expeditious way to resolve and implement TCJA issues on a comprehensive basis for individual gas and electric utilities is through separate, utility-service specific dockets. Thus, Duke Energy Ohio initiates this instant docket with a proposal to commence crediting its electric distribution customers with the full benefits of the TCJA, not already recognized in current rates...” (Application - Paragraph 6)
- “Duke Energy Ohio seeks resolution of this matter for its electric customers expeditiously and * * * seeks to change its rates * * * thereby providing the full impact of the current federal tax law to its electric distribution customers.” (Application - Paragraph 7)
- “* * * consider this application on an expedited basis in order to enable benefits to begin flowing back* * *.” (Application - Paragraph 13)
- “In order to expeditiously resolve this issue and provide electric distribution customers with immediate benefits of the TCJA * * *.” (Application - Paragraph 14)

Notably, Duke did not state in its application that it wishes to resolve only some TCJA-related issues for certain customers. Duke has stated that it wants the Commission to resolve the TCJA-related issues and it wants that to occur in these proceedings. The OCTA, therefore, has every reason to expect that the determinations could decide TCJA-related issues that could impact the OCTA and its members’ interests. The OCTA wishes to protect its interests by intervening in these proceedings.

II. Determinations made in these proceedings could affect OCTA members.

Duke proposes to convey the benefits of the TCJA not already recognized in Duke’s rates via a credit to certain customers. Duke proposes no other mechanism. Duke argues unequivocally that because it does not propose to address attachments, the OCTA and its members will not be adversely affected by these proceedings. See Duke Memorandum Contra at

¹ The TCJA COI refers to the Commission-ordered investigation of the impact of the TCJA. See *In the Matter of the Commission’s Investigation of the Financial Impact of the Tax Cuts and Jobs Act of 2017 on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI.

2. Yet, Duke overlooks that it asks the Commission to address and resolve the remaining TCJA issues and overlooks that:

- The Commission has already recognized that the OCTA and its members have TCJA-related interests in other related proceedings.
- Duke's rider proposal includes issues that could have an impact on the OCTA and its members.

A. The OCTA and its members have interests in the TCJA issues.

The Commission granted the OCTA's intervention request in the TCJA COI. See TCJA COI Hearing Transcript at 10. The OCTA participated in the TCJA, presented a witness and filed a brief. We await a Commission ruling in that matter. The OCTA also was granted intervention in Ohio Power Company's proceeding addressing its remaining TCJA-related issues. See *In the Matter of Ohio Power Company's Implementation of the Tax Cuts and Jobs Act of 2017*, Case No. 18-1007-EL-UNC, Entry at ¶6 (July 12, 2018). A denial here of the OCTA's intervention request in Duke's proceedings to resolve all remaining TCJA-related issues would be inconsistent with those determinations that the OCTA has real and substantial interests in TCJA-related issues, particularly since these proceedings are a direct off-shoot of the TCJA COI. The OCTA's motion to intervene in these proceedings likewise explained how this application appears to be intended to address all remaining TCJA issues and if accepted as such, there could be an impact on the OCTA and its members who are interested in ensuring that the benefits of the TCJA are *appropriately recognized*. See, OCTA Motion to Intervene at 2-3.

B. Duke's proposal could impact the OCTA and its members.

The fact that Duke does not propose to adjust its attachment rate in its application does not in and of itself mean that the OCTA could not have a valid interest in these proceedings. Nor does it mean that the OCTA cannot be adversely affected by the determinations here. Since Duke's application reflects a desire to definitively resolve the remaining TCJA issues, the fact

that it does not purport to address the other rates that have a tax component – attachment rates – could adversely affect the OCTA and its members.

There are, additionally, elements of Duke's rider proposal that, if approved, could potentially impact inputs or arguments related to future attachment rates. For example, Duke uses a 10-year amortization period for the unprotected excess accumulated deferred income taxes in its rider proposal. *See* Attachment 2, page 1 of 4, lines 3 and 4. Also, Duke uses a one-year amortization period for nine months of the federal income tax deferrals in 2018 in its rider proposal. *See* Attachment 2, page 1 of 4, line 14. The OCTA advocated in the TCJA COI for a different amortization period for purposes of calculating attachment rates. Duke could argue, for instance, that acceptance of the proposed amortization periods under its rider proposal here precludes or is somehow otherwise determinative of how attachment rates are to be affected by the TCJA. Without the opportunity to participate in this proceeding, the OCTA cannot ensure that its interests are protected regardless of when Duke next proposes to adjust its attachment rates.

Moreover, to the extent the Commission determines in the TCJA COI that the utilities, including Duke, must take certain actions, these proceedings could be used for such future actions. If the OCTA is not permitted to intervene, it would be precluded from ensuring that the Commission's directives are carried out properly. Each of these reasons reflects that the OCTA and its members could be adversely affected by the determinations in these proceedings.

III. The OCTA satisfies the other remaining elements for intervention.

In addition to a person's interest, the Commission considers the extent that interest is represented by existing parties, the intervenor's potential contribution to a just and expeditious resolution of the issues involved, and whether intervention would result in an undue delay of the proceeding. The OCTA has unique knowledge and perspective. Its interests are not represented

by any other party in these proceedings. The only party at present is Duke and no other entity who seeks to intervene represents the OCTA's interests.

The OCTA can contribute to a just and expeditious resolution of these proceedings. The OCTA's intervention will not result in an *undue* delay of the proceedings. Duke's claims on these points are pure conjecture. Lastly, the OCTA's motion is timely filed – no intervention deadline has been set for these proceedings and, as reflected above, determinations here could impact the OCTA and its members in the future.

IV. Conclusion

The OCTA has a real and substantial interest in these proceedings, and is so situated that the disposition of these proceedings may, as a practical matter, impair or impede the OCTA's ability to protect that interest. Its interest is not adequately represented by Duke (the only other existing party) and would not be adequately represented by the other entities whose motions to intervene are pending. The OCTA wishes to continue protecting its interests by intervening in this TCJA-related proceeding. For all of the foregoing reasons, the OCTA respectfully requests that the Commission reject Duke's arguments, find that the OCTA has met the intervention test in Rule 4901-1-11, Ohio Administrative Code, and grant the OCTA motion to intervene, allowing the OCTA to participate as a full party of record.

Respectfully Submitted,

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/s/ Gretchen L. Petrucci

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Summary: Reply in Support of the Motion to Intervene electronically filed by Mrs. Gretchen L. Petrucci on behalf of Ohio Cable Telecommunications Association