

**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. )

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**MEMORANDUM IN SUPPORT OF RESPONDENT DUKE ENERGY OHIO, INC.'S  
MOTION FOR PROTECTIVE ORDER TO STAY DISCOVERY PENDING  
RESOLUTION OF ITS MOTION TO DISMISS THE COMPLAINT**

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On July 25, 2018, Duke Energy Ohio, Inc. (Duke Energy Ohio or Company) filed an application to establish a rider to credit its electric customers with the benefits of the Tax Cuts and Jobs Act of 2017 (TCJA). The Ohio Cable Telecommunication Association (OCTA) filed a motion to intervene, seeking to protect its interest related to the Company's pole attachment rates. OCTA is not an electric customer of Duke Energy Ohio. OCTA's intervention would thus inject into the proceeding issues unrelated to the Company's Application.

Duke Energy Ohio respectfully requests that discovery in this matter be stayed, pursuant to O.A.C. 4901-1-24, so that Duke Energy Ohio can avoid the burden and expense of responding to discovery that will ultimately be unnecessary, since it is clear that the OCTA's Motion to Intervene must be denied. In seeking this relief, Duke Energy Ohio expressly states that the scope of its present motion is limited to the issuance of discovery, in the first instance. It is not intended to address the validity of any request and thus cannot be seen as acquiescence, the Company's part, that the substance of the requests are proper.

As discussed herein, OCTA should not be entitled to automatically engage in discovery in a proceeding in which it will not be adversely affected and in which it does not have a real and substantial interest.<sup>1</sup>

### **Argument**

OCTA is, justifiably, interested in ensuring that its members pay the lowest possible rates for attaching to utilities' poles. However, the current proceedings are entirely unrelated to pole attachment rates. These proceedings are focused solely on a methodology by which Duke Energy Ohio can return to its electric customers the remainder of the TCJA benefits to which such electric customers are entitled.

OCTA, in its motion to intervene, makes no suggestion that it is interested in receiving TCJA benefits as an electric customer of the Company. Rather, OCTA's concern relates to the impact that the TCJA had or would have on pole attachment rates.

Although applicable rules allow discovery to be propounded as soon as a potential intervenor files a motion to intervene, the Commission has broad discretion to limit or delay discovery in order to prevent an abuse of the discovery process.<sup>2</sup> Likewise, the Commission has exercised that discretion in order to stay discovery pending the resolution of dispositive motions or when otherwise appropriate to do so.<sup>3</sup> It could not be more appropriate for the Commission to stay discovery than it is here, where a potential intervenor, with no interest whatsoever in the

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<sup>1</sup> O.A.C. 4901-1-11(A)(2)

<sup>2</sup> See *State ex rel. Grandview Hospital and Medical Center v. Gorman*, 51 Ohio St.3d 94, 95 (1990)(explaining that "[t]rial courts have extensive jurisdiction and power over discovery"); *In the Matter of the Application of FirstEnergy Corp. on Behalf of Ohio Edison Company, et al., for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues*, Case No. 99-1212-EL-ETP, 2000 Ohio PUC LEXIS 676 (explaining that "[t]he Commission and the attorney examiners necessarily have considerable discretion in the procedural management of proceedings, including discovery").

<sup>3</sup> See, e.g., *Wilkes v. Ohio Edison Co.*, Case No. 09-682-EL-CSS Entry, ¶ 4 (Dec. 16, 2009)(finding that "staying discovery is in the interest of both parties should the Commission ultimately decide to grant Ohio Edison's motion to dismiss"); *In the Matter of the Joint Application of Cinergy Corp., on behalf of the Cincinnati Gas & Electric Company, and Deer Holding corp. for Consent and Approval of a Change of Control of The Cincinnati Gas & Electric Company*, Case No. 05-732-EL-MER, Entry (June 14, 2005)(staying discovery until determination of nature and scope of review).

actual merits and scope of the proceeding, is seeking to abuse the Commission's discovery rules to fish for information, to which it would otherwise have no right.

Pursuant to its broad discretion over the discovery process, and its power to grant protective orders under O.A.C. 4901-1-24, the Commission should stay discovery in this proceeding pending resolution of OCTA's intervention. A stay of discovery will prevent the parties from undertaking time-consuming and costly discovery that will ultimately be unnecessary.

The Company seeks an expedited ruling on this motion, as the responses to OCTA's discovery are due soon. The Company is not able to certify that no party has any objection to the issuance of such a ruling.

### **Conclusion**

For the reasons stated herein, Duke Energy Ohio respectfully requests that the Commission issue an order staying discovery by OCTA until such time as the Commission rules on the OCTA's motion to intervene.

Respectfully submitted,

DUKE ENERGY OHIO, INC.

/s/ Jeanne W. Kingery

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## **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing Motion was served on the following parties this 4<sup>th</sup> day of October 2018, by regular U.S. Mail, overnight delivery, or electronic delivery.

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Telecommunications Association**

**BEFORE  
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Energy Ohio, Inc., for Implementation of the	)	Case No. 18-1185-EL-UNC
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Amendments.	)	

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**THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION’S  
FIRST SET OF DISCOVERY  
PROPOUNDED UPON DUKE ENERGY OHIO, INC.**

**September 20, 2018**

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Pursuant to Rules 4901-1-16, 4901-1-17, 4901-1-18, 4901-1-19, and 4901-1-20, Ohio Administrative Code, the Ohio Cable Telecommunications Association (“OCTA”) serves this First Set of Discovery upon Duke Energy Ohio, Inc. (“Duke Energy”).

**DEFINITIONS AND INSTRUCTIONS**

1. With respect to each discovery request, all information is to be divulged that is within the knowledge, possession or control of the parties to whom it is addressed, including their agents, employees, attorneys and/or investigators.
2. Where an interrogatory calls for an answer in more than one part, each part should be separated in the answer so that the answer is clearly understandable.
3. All answers must be separately and fully stated in writing under oath.
4. Pursuant to Rules 4901-1-16(D) and (E), Ohio Administrative Code, you are under a continuing duty to seasonably supplement all discovery responses with respect to any question directly addressed to the identity and locations of persons having knowledge of discoverable matters, the identity of each person expected to be called as an expert witness at the hearing, and the subject matter on which the expert is expected to testify. Further, a party who knows or later learns that a response is incorrect is under a duty to seasonably correct the response.

5. For purpose of these discovery requests, the following terms shall have meanings set forth below:

- a. As used herein, “document,” “documentation” and/or “record,” whether stated as the singular or the plural, means any course of binders, book, pamphlet, periodical, letter, correspondence, memoranda, including but not limited to, any memorandum or report of a meeting or telephone or other conversation, invoice, account, credit memo, debit memo, financial statement, general ledger, ledger, journal, work papers, account work papers, report, diary, telegram, record, contract, agreement, study, draft, telex, handwritten or other note, sketch, picture, photograph, plan, chart, paper, graph, index, tape, data processing card, data processing disc, data cells or sheet, check acceptance draft, e-mail, studies, analyses, contracts, estimates, summaries, statistical statements, analytical records, reports and/or summaries of investigations, opinions or reports of consultants, opinions or reports of accountants, trade letters, comparisons, brochures, pamphlets, circulars, bulletins, notices, forecasts, electronic communication, printouts, all other data compilations from which information can be obtained (translated if necessary by defendants into usable form), any preliminary versions, drafts or revisions of any of the foregoing, and/or any other written, recorded, transcribed, punched, taped, filmed or graphic matter, however produced or reproduced and regardless of origin or location, in the possession, custody and/or control of the defendant and/or their agents, accountants, employees, representatives and/or attorneys. “Document” and “record” also mean all copies of documents by whatever means made, if the copy bears any other markings or notations not found on the original.
- b. The terms “relating to,” “referring to,” “referred to,” “pertaining to,” “pertained to” and “relates to” means referring to, reporting, embodying, establishing, evidencing, comprising, connected with, commenting on, responding to, showing, describing, analyzing, reflecting, presenting and/or constituting and/or in any way involving.
- c. The terms “and,” “or,” and “and/or” within the meaning of this document shall include each other and shall be both inclusive and disjunctive and shall be construed to require production of all documents, as above-described, in the broadest possible fashion and manner.
- d. To “identify” shall mean:
  - i. With respect to a document, to state its date, its author, its type (for example, letter, memorandum, chart, photograph, sound reproduction, etc.), its subject matter, its present location, and the name of its present custodian. The document may be produced in lieu of supplying the foregoing information. For each document which contains information as privileged or otherwise excludable from discovery, there shall be included

a statement as to the basis for such claim of privilege or other grounds for exclusion.

- ii. With regard to a natural person, to state his or her full name, last known employer or business affiliation, title and last known home address.
- iii. With regard to a person other than a natural person, state the title of that person, any trade name, or corporate name or partnership name used by that person, and the principal business address of that person.
- e. To “produce” or to “identify and produce,” shall mean that the parties shall produce each document or other requested tangible thing. For each tangible thing which the parties contend are privileged or otherwise excludable from discovery, there shall be included a statement as to the basis for such claim of privilege or other grounds for exclusion.
- f. The terms “Party” or “Parties” shall mean any organization, person, corporation, entity, etc., which intervened in the above-captioned proceeding and shall further include Staff of the Public Utilities Commission of Ohio.
- g. “Duke Energy” means Duke Energy Ohio, Inc.
- h. “PUCO” or “Commission” means the Public Utilities Commission of Ohio.
- i. “TCJA” means the Tax Cuts and Jobs Act of 2017.
- j. “ADIT” means accumulated deferred income taxes.
- k. “ARAM” means average rate assumption method.
- l. “GIS mapping system” refers to the system that Duke Energy referenced in its August 24, 2015 Responses filed in PUCO Case No. 15-965-EL-ATA.

**INTERROGATORIES**

INT 1-1: Identify each person who answered or furnished information or documents, or assisted in answering or furnishing any information or documents, used in answering any of these Interrogatories and/or Requests for Production of Documents, and identify each Interrogatory and/or Request for Production of Document for which such person participated in the response.

**RESPONSE:**

INT 1-2: Has the PUCO Staff submitted or forwarded data requests to Duke Energy related to this proceeding?

**RESPONSE:**

INT 1-3: Has the PUCO Staff submitted or forwarded informal data requests to Duke Energy related to this proceeding?

**RESPONSE:**

INT 1-4: What was the amount of Duke Energy's protected excess ADIT as of December 31, 2017?

**RESPONSE:**

INT 1-5: What was the amount of Duke Energy's unprotected excess ADIT as of December 31, 2017?

**RESPONSE:**

INT 1-6: What was the amount of Duke Energy's protected excess ADIT as of July 31, 2017?

**RESPONSE:**

INT 1-7: What was the amount of Duke Energy's unprotected excess ADIT as of July 31, 2017?

**RESPONSE:**

INT 1-8: What was the amount of Duke Energy's protected excess ADIT as of July 31, 2018?

**RESPONSE:**

INT 1-9: What was the amount of Duke Energy's unprotected excess ADIT as of July 31, 2018?

**RESPONSE:**

INT 1-10: Has Duke Energy booked its protected and unprotected excess ADIT as of December 31, 2017, into one account?

(A) If yes, what account?

(B) If no, please identify the accounts and dollar amounts into which Duke Energy booked its protected and unprotected excess ADIT as of December 31, 2017. Please use the following chart formats in your response:

<b>Account Number</b>	<b>Amount of Protected Excess ADIT as of December 31, 2017</b>
Account No.	\$
Account No.	\$

<b>Account Number</b>	<b>Amount of Unprotected Excess ADIT as of December 31, 2017</b>
Account No.	\$
Account No.	\$

**RESPONSE:**

INT 1-11: How does Duke Energy distinguish/separately identify in the account(s) listed in INT 1-10(A) and/or INT-1-10(B) the protected excess ADIT amounts as of December 31, 2017, from the unprotected excess ADIT amounts as of December 31, 2017?

**RESPONSE:**

INT 1-12: Has Duke Energy booked its protected and unprotected excess ADIT commencing January 1, 2018 and resulting from the enactment of the TCJA, into one account?

(A) If yes, what account?

(B) If no, please identify the accounts and dollar amounts into which Duke Energy booked its protected and unprotected excess ADIT as a result of the enactment of the TCJA as of January 1, 2018. Please use the following chart formats in your response:

<b>Account Number</b>	<b>Amount of Protected Excess ADIT as of January 1, 2018</b>
Account No.	\$
Account No.	\$

<b>Account Number</b>	<b>Amount of Unprotected Excess ADIT as of January 1, 2018</b>
Account No.	\$
Account No.	\$

**RESPONSE:**

INT 1-13: How does Duke Energy distinguish/separately identify in the account(s) listed in INT 1-12(A) and/or INT-1-12(B) the protected and unprotected excess ADIT amounts commencing January 1, 2018 and resulting from the enactment of the TCJA from each other?

**RESPONSE:**

INT 1-14: Please identify the following information.

- (A) The number of poles in Duke Energy's continuing property records as of December 31, 2017.
- (B) The number of poles in Duke Energy's GIS mapping system as of December 31, 2017.
- (C) The usable height of the poles in Duke Energy's continuing property records as of December 31, 2017.
- (D) The usable height of the poles in Duke Energy's GIS mapping system as of December 31, 2017.
- (E) The average remaining life (in years) of Duke Energy's poles recorded in utility account 364 for the most recent time period available? Please identify the most recent time period as well.
- (F) The number of units and associated actual dollar amounts of investment in appurtenances recorded in utility account 364 as of December 31, 2017.
- (G) The calculated appurtenance percentage in Duke Energy's continuing property records as of December 31, 2017.
- (H) To the extent the GIS mapping system tracks appurtenances on Duke Energy's poles, identify as of December 31, 2017, the information tracked, including but not limited to the number of units and associated actual dollar amounts of investment in appurtenances, along with the calculated appurtenance percentage in Duke Energy's GIS mapping system.

**RESPONSE:**

INT 1-15: What is the amortization period under the average rate assumption method (ARAM) for Duke Energy's protected excess ADIT as a result of the enactment of the TCJA? Please identify the amortization period in years.

**RESPONSE:**

INT 1-16: Explain with specificity the basis for Duke Energy's proposal to amortize the unprotected excess ADIT over 120 months (10 years), as reflected in Duke Energy's application in these proceedings (Section 8.b.ii).

**RESPONSE:**

INT 1-17: What is Duke Energy's proposal or plan for returning the protected excess ADIT to its pole-attaching customers?

**RESPONSE:**

INT 1-18: What is Duke Energy's proposal or plan for returning the unprotected excess ADIT to its pole-attaching customers?

**RESPONSE:**

INT 1-19: Will the manner in which the excess ADIT is returned affect the current tax year's tax expense as booked in Accounts 408 to 411? If the answer is yes, please explain with specificity those actual or expected effects as of December 31, 2017, July 31, 2018, and December 31, 2018.

**RESPONSE:**

INT 1-20: Explain with specificity the accounting adjustments that will be made to each of the accounts identified in response to the OCTA's INT 1-12(A) and INT 1-12(B) to reflect the amortization of the protected excess ADIT for each year within the ARAM amortization period, beginning with year one of the amortization period.

**RESPONSE:**

INT 1-21: Explain with specificity the accounting adjustments that will be made to each of the accounts identified in response to the OCTA's INT-1-12(A) and INT 1-12(B) to reflect the amortization of the unprotected excess ADIT for each year within the amortization period adopted by the PUCO, beginning with year one of the amortization period.

**RESPONSE:**

INT 1-22: Please identify each of Duke Energy's utility accounts affected or potentially affected by the PUCO's directive (issued January 10, 2018, in PUCO Case No. 18-47-AU-COI) to utilities, effective January 1, 2018, to record on their books as a deferred liability, in an appropriate account, the estimated reduction in federal income tax

resulting from the TCJA. For each account so identified, please explain with specificity the accounting adjustments that have and/or will be made to that account.

**RESPONSE:**

INT 1-23: Please identify each of Duke Energy's utility accounts affected or potentially affected by the TCJA in connection with Duke Energy's compliance with Generally Accepted Accounting Principles (GAAP). For each account so identified, please explain with specificity the accounting adjustments that have and/or will be made to that account as of December 31, 2017, July 31, 2018, and December 31, 2018.

**RESPONSE:**

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

The OCTA requests that Duke Energy produce true and accurate copies of the following documents:

- RPD 1-1: Documents identified or referenced in response to the foregoing Interrogatories.
- RPD 1-2: Documents that contain any information used or reviewed in preparing the responses to the foregoing Interrogatories.
- RPD 1-3: All data requests received from the PUCO Staff related to this proceeding and Duke Energy's responses thereto.
- RPD 1-4: All informal data requests received from the PUCO Staff related to this proceeding and Duke Energy's responses thereto.
- RPD 1-5: All other documents, workpapers, and electronic files that Duke Energy provided to the PUCO Staff related to this proceeding.
- RPD 1-6: All discovery responses served by Duke Energy in this proceeding prior to August 28, 2018.
- RPD 1-7: Provide a copy of Duke Energy's continuing property records as of December 31, 2017, containing the number of poles with enough detail to show all subaccounts and breakdowns kept by Duke Energy.
- RPD 1-8: Provide a copy of Duke Energy's GIS mapping system records as of December 31, 2017, containing the number of pole with enough detail to show breakdowns kept by Duke Energy.
- RPD 1-9: Provide a copy of Duke Energy's continuing property records as of December 31, 2017, containing the usable height of its poles.

- RPD 1-10: Provide a copy of Duke Energy's GIS mapping system records as of December 31, 2017, containing the usable height of its poles.
- RPD 1-11: Provide a copy of Duke Energy's records containing the number of units and associated actual dollar amounts of investment in appurtenances recorded in utility account 364.
- RPD 1-12: Provide a copy of Duke Energy's continuing property records as of December 31, 2017, containing the calculated appurtenance percentage.
- RPD 1-13: Provide a copy of Duke Energy's GIS mapping system records as of December 31, 2017, containing appurtenance information, including but not limited to the number of units and associated actual dollar amounts of investment in appurtenances, along with the calculated appurtenance percentage.
- RPD 1-14: Provide a copy of the documents supporting the ARAM amortization period for Duke Energy's pole-related assets identified in INT 1-15.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served (via electronic mail) on the 20th day of September 2018 upon the entities and persons listed below.

/s/ Gretchen L. Petrucci  
Gretchen L. Petrucci

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**Case No(s). 18-1185-EL-UNC, 18-1186-EL-ATA**

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