

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

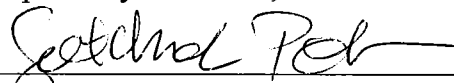
---

**THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION'S  
MOTION FOR LEAVE TO FILE A REPLY *INSTANTER*  
AND  
MOTION FOR AN EXPEDITED RULING**

---

Now comes the Ohio Cable Telecommunications Association ("OCTA"), who seeks leave to file a reply *instanter* to the response filed by Duke Energy Ohio, Inc. on August 24, 2015, in this proceeding. The OCTA makes this motion to (a) ensure that the Public Utilities Commission of Ohio has further information upon which to consider certain disputed issues in this matter and (b) present a proposal for the next procedural steps. The OCTA requests an expedited ruling on the motion for leave so that this motion can be considered expeditiously and not unduly delay the proceedings. The reasons supporting the OCTA's motion for leave and motion for an expedited ruling are set forth more fully in the attached Memorandum in Support.

Respectfully submitted,

  
\_\_\_\_\_  
Benita A. Kahn (0018363), Counsel of Record  
Stephen M. Howard (0022421)  
Gretchen L. Petrucci (0046608)  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street  
Columbus, Ohio 43216-1008  
Tel. (614) 464-6487  
[bakahn@vorys.com](mailto:bakahn@vorys.com)  
[smhoward@vorys.com](mailto:smhoward@vorys.com)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)

*Attorneys for the Ohio Cable Telecommunications Association*

**MEMORANDUM IN SUPPORT  
OF THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION'S  
MOTION FOR LEAVE TO FILE A REPLY *INSTANTER*  
AND  
MOTION FOR EXPEDITED RULING**

On February 25, 2015, as revised on April 22, 2015, the Public Utilities Commission of Ohio (“Commission”) ordered all public utility pole owners in Ohio to file amended tariffs that correspond with the Commission’s newly adopted administrative rules.<sup>1</sup> At the same time, the Commission established August 1, 2015, as the deadline for filing motions to intervene and objections in the tariff application dockets. Duke Energy Ohio, Inc. (“Duke”) filed its tariff application on May 15, 2015, and the Ohio Cable Telecommunications Association (“OCTA”) timely filed a motion to intervene and its objections in this docket. By Entry issued on August 7, 2015, the Commission granted the OCTA’s intervention request and allowed Duke the opportunity to respond to the OCTA’s objections.<sup>2</sup> Duke filed its response on August 24.

The August 7 Entry did not provide for an opportunity to reply to Duke’s response, or provide any indication as to how this matter would proceed after the pole owner’s response was filed. Now that the OCTA has reviewed Duke’s response (as well as those in the other pole attachment/conduit occupancy cases in which the OCTA is involved), the OCTA believes that a brief, targeted reply can complete the arguments in support of the remaining issues and assist the Commission in determining the next procedural steps in this proceeding.

The OCTA stands by the arguments it made in its objections. In its objections, the OCTA raised several concerns with Duke’s proposed pole attachment tariff revisions. Duke

---

<sup>1</sup> The Entry was issued in *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.

<sup>2</sup> The Entry was issued in this case, as well as ten other dockets involving applications to establish new pole attachment and conduit occupancy tariff provisions.

responded to those objections, but Duke did not accept all of the OCTA's objections. Thus, there are issues remaining for Commission resolution. The OCTA wishes to reply regarding:

- Important issues involving (a) the number of poles used in its rate calculations, (b) the mis-matched tax expense included in the rate calculations, (c) the application of gradualism to the proposed new pole attachment rate (Duke has proposed a 53% increase in pole attachment rate), and (d) ensuring compliance with the new rules – responding to new information and arguments from Duke.
- Next procedural steps – suggesting that the Commission order an informal conference be held between Duke, the OCTA and the Commission Staff for possible informal resolution of the remaining tariff issues. In the event that a complete resolution is not reached, then a hearing may be held so that the parties have the opportunity to present the facts and arguments needed for determining the appropriate tariff provisions for the remaining issues.

The issues are technical and not straight-forward. Duke's response raised, for the first time, arguments to which the OCTA would like to reply. Also, the issues involve the inaugural tariff for Duke following the Commission's adoption of new industry-wide rules. As such, the OCTA believes that these disputed issues warrant careful deliberations so that Duke's pole attachment tariff will be fully compliant with the Commission's new rules and the public interest. The OCTA seeks leave to reply in a targeted manner to a few arguments made by Duke in its response. This brief additional reply can provide a fuller picture for the Commission to understand the complexities of these few issues. For these reasons, the OCTA seeks leave to reply to the new arguments.

In addition, in reviewing the pole owner's response in Case No. 15-971-EL-ATA (The Dayton Power and Light Company's pole attachment case), the OCTA believes there is merit to suggest an informal conference so that Duke, the OCTA and Commission Staff can discuss the outstanding issues. This is another avenue for resolving the disputed issues – as a means for

avoiding a hearing.<sup>3</sup> In the event that a complete resolution is not reached, then a hearing may be necessary so that the parties have a full opportunity to present evidence for the Commission to appropriately resolve the remaining disputed tariff provisions. Accordingly, the OCTA also seeks leave to put forth that procedural suggestion to the Commission.

Nothing in the Commission's rules precludes the OCTA's leave request. Moreover, as has been found by the Ohio Supreme Court, the Commission has the discretion to manage its dockets, including allowing leave to file the requested reply:

As the Ohio Supreme Court has recognized, the Commission is vested with broad discretion to manage its dockets, including the discretion to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business.<sup>4</sup>

The OCTA's request is akin to the reply memorandum under the motion cycle set forth in in Rule 4901-1-12, Ohio Administrative Code:

<b>Motion Cycle</b>	<b>Procedure Set Forth in this Case</b>
Motion	Objections
Memoranda Contra	Response
Rely Memorandum	Reply (requested by OCTA)

Finally, the OCTA notes that its motion for leave will not *unduly* delay this proceeding. Automatic approval of the proposed tariff has been suspended and there is no timetable under which this matter will move forward. Moreover, the OCTA's Reply is being filed along with this motion for leave (as Attachment A) so that prompt consideration can be given.

---

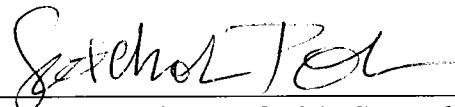
<sup>3</sup> The OCTA's requested informal conference is an alternative dispute resolution option that seems appropriate when considering the Commission Staff's knowledge on the technical considerations involved. The Commission has incorporated another more formal alternative dispute resolution option for parties who are unable to agree on rates, terms, or conditions for a pole attachment/conduit occupancy agreement. See, Rule 4901:1-3-06, Ohio Administrative Code.

<sup>4</sup> *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO et al, Entry on Rehearing at 36 (May 28, 2015), citing *Duff v. Pub. Util. Comm.*, 56 Ohio St. 2d 367, 384 N.E. 2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St. 2d 559, 433 N.E. 2d 212 (1982).

In sum, the Commission has the flexibility and discretion to allow the filing of the reply. Also, the OCTA's motion for leave to file a reply *instante* is reasonable and presented for good cause. No harm will come from granting OCTA's request for leave. Rather, granting the OCTA leave will allow the OCTA to provide the Commission with more information regarding the disputed issues and also suggest informal discussions among Duke, the OCTA and the Commission Staff, which could possibly resolve the remaining issues. Therefore, the Commission should grant the OCTA's motion.

Finally, the OCTA requests that the Commission issue an expedited ruling on this leave request. The OCTA has contacted Duke (the only other party in this proceeding) to determine if it objects to the issuance of an ruling on this motion without the filing of memoranda, as allowed under Rule 4901-1-12(C), Ohio Administrative Code. Duke objected to the issuance of an immediate ruling.

Respectfully submitted,



---

Benita A. Kahn (0018363), Counsel of Record  
Stephen M. Howard (0022421)  
Gretchen L. Petrucci (0046608)  
VORYS, SATER, SEYMOUR AND PEASE LLP  
52 East Gay Street  
Columbus, Ohio 43216-1008  
Tel. (614) 464-6487  
[bakahn@vorys.com](mailto:bakahn@vorys.com)  
[smhoward@vorys.com](mailto:smhoward@vorys.com)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)

*Attorneys for the Ohio Cable Telecommunications Association*

**CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 18<sup>th</sup> day of September 2015 upon all persons/entities listed below:

Amy B. Spiller at [amy.spiller@duke-energy.com](mailto:amy.spiller@duke-energy.com)

Jeanne W. Kingery at [jeanne.kingery@duke-energy.com](mailto:jeanne.kingery@duke-energy.com)

  
\_\_\_\_\_  
Gretchen L. Petrucci

**ATTACHMENT A  
To the OCTA Motion for  
Leave to File a Reply *Instante***

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

---

**THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION'S  
REPLY TO THE RESPONSE OF DUKE ENERGY OHIO, INC.**

---

**I. Introduction**

Duke Energy Ohio Inc. ("Duke") filed a pole attachment/conduit occupancy tariff application in this docket on May 15, 2015. The Ohio Cable Telecommunications Association ("OCTA") timely filed a motion to intervene and objections. By Entry issued August 7, 2015, the Public Utilities Commission of Ohio ("Commission") granted the OCTA's intervention request and allowed Duke the opportunity to respond to the OCTA's objections,<sup>1</sup> which it did on August 24.

The OCTA has reviewed Duke's response (as well as those in the other pole attachment/conduit occupancy cases in which the OCTA is an intervenor), and files this pleading to briefly reply to the Duke response. The OCTA believes that this targeted reply will assist the Commission in determining the next procedural steps in this proceeding and ensure that the Commission has further information upon which to consider a few of the remaining issues.

---

<sup>1</sup> The Entry was issued in this case, as well as ten other dockets involving applications to establish new pole attachment and conduit occupancy tariff provisions.

## **II. Important Issues in Dispute**

The OCTA raised a number of objections about the following in Duke's tariff applications:

- Number of poles used in the rate calculation
- Tax carrying charge element of the rate calculation
- Gradualism
- Separate agreement
- Payments
- Access to pole attachments
- Rearrangement of pole attachments
- Removal/rearrangement/changes due to interference/safety or default
- Disconnection/removal of company facilities
- Definition of "wireline attachment" and overlash

This will be the inaugural pole attachment/conduit occupancy tariff for Duke following the Commission's adoption of new industry-wide rules. Thus, these disputed issues warrant careful deliberations so that Duke's pole attachment/conduit occupancy tariff will be fully compliant with the Commission's new rules. These issues are technical and not straight-forward. In reply to the arguments made by Duke, the OCTA wishes to provide the Commission with further information for purposes of evaluating the issues raised in this matter regarding (a) the number of poles used in calculating the rates, (b) the tax carrying charge used in calculating the rates, (c) gradualism, (d) the scope of this tariff proceeding, and (e) ensuring consistency with the Commission's new rules.

*The Number of Poles:* Duke initially proposed a rate of \$10.91 with its application filing on May 15, 2015. Then, Duke changed its proposed rate to \$9.81, with an amendment filing on July 28, 2015. At the same time, Duke changed the number of poles used in the calculations. There was no explanation in the docket – Duke simply stated in the July 28 cover letter that it had discovered certain errors in the earlier rate calculations. However, review of the underlying data reflects that Duke switched from a pole count in its property records to a pole count in its



GIS mapping system. In Duke's August 24 response, it acknowledged that its July 28 filing used the GIS pole count and then stated that it "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."<sup>2</sup> The OCTA questions whether the GIS system pole count is the most accurate, particularly since there have been concerns with that very same data in the past.<sup>3</sup> Duke's contention that those past concerns did not end up being litigated<sup>4</sup> (because the case was resolved through a stipulation) does not even address the accuracy or reliability of Duke's GIS pole count today. Moreover, Duke's contention today that the data is "most accurate" rings hollow, particularly since Duke itself did not rely on the GIS pole count when it first presented its application in May 2015. There is a difference of fact and opinion between the OCTA and Duke on the number of poles to be included in the calculation, and an opportunity to present facts and arguments to the Commission is warranted for further review and analysis.

*The Tax Carrying Charge:* The OCTA questioned Duke's tax carrying charge as a ratio of normalized tax expenses (based on total plant) to net investment in only the electric plant.<sup>5</sup> The OCTA found there to be a mis-match between the numerator and denominator used to calculate the tax carrying charge. Duke claims in its response that both the numerator and denominator of its ratio are based on net plant for only its electric portion of its business.<sup>6</sup> However, the tax expenses for Duke were high in 2014, even though Duke's net plant decreased due to its transfer of ownership of many generation assets. There remain significant questions of

---

<sup>2</sup> Duke Response at 3.

<sup>3</sup> *In the Matter of the Application of Duke Energy Ohio, Inc. for Tariff Approval*, Case No. 08-710-EL-ATA, Opinion and Order (July 8, 2009).

<sup>4</sup> Duke Response at 2.

<sup>5</sup> OCTA Objections at 6.

<sup>6</sup> Duke Response at 3.

facts about the tax carrying charge calculation, and an opportunity to present facts and arguments to the Commission is warranted for further review and analysis of this issue as well.

*Gradualism:* The OCTA noted that Duke's proposed pole attachment rate, if adopted as now proposed, is a 53% rate increase.<sup>7</sup> Consistent with the regulatory equitable concept of gradualism, the OCTA requested that Duke's new pole attachment rate resulting from the Commission's new rate formula be gradually implemented, approximately 20% each year until the authorized level is achieved.<sup>8</sup> Duke argues that this request should be rejected because the Commission does not have the necessary authority to gradually implement an increased pole attachment rate.<sup>9</sup> Duke's position ignores that the Commission's general supervisory authority under O.R.C. 4905.04 includes the duty to review the effects of implementing rate increases and consideration of the equitable balance. That is how the Commission would be using its supervisory authority if it elects to gradually implement the significant increase in pole attachment rates requested.

The facts in this proceeding support the principles behind the equitable concept of gradualism to address the rate increase. Those facts include: (a) the size and dollar amount of the possible increase represented by the proposed pole attachment rate, which is unquestionably significant; (b) the increase will not be avoidable and if the approved new rate is sizeable, it cannot be easily absorbed by OCTA members, leading to the likelihood of an impact on retail customers; and (c) Duke has failed to support that a need for immediate, full implementation.

Duke does not dispute the magnitude of its requested price increase; rather, its objection rests on the legal argument that, pursuant to the Ohio Supreme Court's finding in *Columbus S. Power Co. v. Pub. Util. Comm.*, the Commission lacks jurisdiction here to gradually implement

---

<sup>7</sup> OCTA Objections at 8.

<sup>8</sup> *Id.* at 7-10.

<sup>9</sup> Duke Response at 5-6.

this rate increase. Duke's reliance on this decision in this proceeding is misplaced. The Court in *Columbus S. Power Co.* was specifically addressing the "detailed, comprehensive and, as construed by this court, mandatory ratemaking formula under O.R.C. 4909.15".<sup>10</sup> Importantly, when the OCTA requested that the Commission apply O.R.C. 4909.18 (which incorporates the requirements of O.R.C. 4909.15) in the event of a rate increase, the electric utilities objected. The electric utilities argued that "[i]t would be inappropriate to consider all of the statutes and rules generally and specifically applicable to public utility services as applying to pole attachments because they are distinguishable from one another and serve different purposes".<sup>11</sup> But now to argue that the principle of gradualism cannot be applied here, Duke wants to rely on that comprehensive ratemaking construct that it argued was "inappropriate." The inconsistency is plain and clear. The Commission should disregard Duke's argument.

Rather, the Commission should consider that as recently as 2009 it noted that gradualism is a useful tool in managing overall customer impacts.<sup>12</sup> It has applied the regulatory concept of gradualism to avoid a price spike and let the market adjust to significantly higher rates. In light of the fact that this matter is not being conducted under the dictates of O.R.C. 4909.15 and the increase could exceed 50%, the Commission should follow the gradualism concept it has used in other proceedings to allow approximately 20% each year until the authorized level is achieved. The Commission has the authority and should apply gradualism when implementing the new pole attachment rate structure for Duke.

---

<sup>10</sup> *Columbus S. Power Co. v. Pub. Util. Comm.* (1993), 67 Ohio St.3d 535, 537.

<sup>11</sup> See, *In re 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, Memorandum Contra Ohio Cable Telecommunications Association Motion for Clarification or, In the Alternative Application for Rehearing at 5 (April 6, 2015).

<sup>12</sup> OCTA Objections at 4, footnote 9.

In addition, Duke claims that its proposed rate should not be gradually implemented because its new proposed rate demonstrates that Duke has been undercharging attaching entities.<sup>13</sup> This claim is just a red herring. Duke's current pole attachment rate was ruled as a just and reasonable rate when it was established,<sup>14</sup> and remains such until such time as it is modified by the Commission. Nothing in this pending application reverses that earlier decision and, therefore, this argument against gradualism should also be rejected.

*Scope of this Tariff Proceeding:* By Entry dated February 25, 2015, the Commission ordered all public utility pole owners to file company-specific tariff amendment applications.<sup>15</sup> The Commission elaborated that, "unless otherwise suspended by the Commission, the tariff revisions, including new rates, shall be automatically effective July 1, 2015." (Emphasis added)<sup>16</sup> Then, the Commission issued an Entry on April 22, 2015, stating that interested stakeholders can challenge the justness and reasonableness of the pole owners' tariffs by either seeking to intervene in the individual tariff proceedings or by filing a complaint.<sup>17</sup> In that same Entry, the Commission also modified the timetable for the tariff filings, interventions, objections and automatic approval. In creating this process, the Commission never stated that the tariff applications can *only* propose new rates or that an intervening party can raise objections *only* as to the just and reasonableness of the new rates.

Duke, however, has taken a very myopic position in its response, claiming that this tariff proceeding is limited to only the rate calculations because the Commission only referred to Rule

---

<sup>13</sup> Duke Response at 6.

<sup>14</sup> *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., Opinion and Order (July 8, 2009).

<sup>15</sup> *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 (hereinafter referred to as the "Rules Docket").

<sup>16</sup> *Id.*, Entry at ¶3 (February 25, 2015).

<sup>17</sup> *Id.*, Entry at ¶13 (April 22, 2015).

4901:1-3-04, and the OCTA's objections go well beyond the Commission's order.<sup>18</sup> Duke's argument is wrong for several reasons. First, as just noted, the Commission did not limit the tariff applications to only proposing new rates or rule that an intervening party can raise objections only as to the just and reasonableness of the new rates. In fact, by stating "including new rates," the Commission indicated that it anticipated the tariff filings would cover more than rates. Second, Rule 4901:1-3-04 addresses rates, terms and conditions for poles, ducts, and conduits. That rule, itself, is not just the rate formula/calculations. Thus, Duke's reliance on that rule does not even support its argument.

Third, Duke's theory about the scope of the tariff proceedings is not shared by the other public utility pole owners who filed applications at the same time as Duke. A review of the more than 45 tariff revision applications filed in response to the Commission's decision in the Rules Docket illustrates that:

- In response to the Commission's directive, virtually every small telecommunications company in Ohio proposed brand new tariffs that include multiple terms and conditions, as well as rates for pole attachments and/or conduit occupancy.
- Nearly every other public utility pole owner proposed specific new or revised language, in addition to proposed rate revisions, to incorporate specific aspects of the Commission's new rules.
- Many of the proposed language changes were extensive. For example, the Windstream companies proposed all new tariffs (Case Nos. 15-950-TP-ATA and 15-951-TP-ATA), The Dayton Power and Light Company proposed substantial revisions throughout its existing attachment tariff (Case No. 15-971-EL-ATA) and AT&T Ohio proposed substantial revisions throughout its existing attachment tariff (Case No. 15-920-TP-ATA).

Fourth, even if a public utility proposed only new rates, the Commission expressly stated that an intervenor can challenge the justness and reasonableness of the pole owner's tariffs in

---

<sup>18</sup> Duke Response at 1, 7.

these tariff proceedings.<sup>19</sup> The OCTA has, in fact, done that, arguing that several tariff provisions are unjust and unreasonable under the Commission's new rules.

Altogether, Duke's argument is wrong. Accordingly, it should be rejected.

*Ensuring Consistency with the New Rules:* In this case, Duke proposed revisions to just the rates in its Pole Attachment/Conduit Occupancy Tariff. In reviewing Duke's application, the OCTA considered whether, based on the proposal put forth by Duke, its Pole Attachment/Conduit Occupancy Tariff would comply with the newly effective rules and be just and reasonable. But the OCTA could not determine if Duke's tariff would be just and reasonable by evaluating only the proposed rate changes. As a result, the OCTA reviewed the existing tariff along with Duke's proposed rate revisions. Duke contends that review of its entire tariff was not required by the Commission, and that the OCTA should have specifically requested through rehearing in Case No. 13-579-TP-ORD for that directive from the Commission.<sup>20</sup> Even more cavalierly, Duke states in its response that "[a]t an appropriate time, the Company will likely seek to amend the tariff to correspond to the rules" and in the interim, the rules "certainly govern where a difference exists." What Duke ignores is that the tariff should not contain any provisions not in compliance with the new Commission rules. Moreover, it would **not** be just and reasonable for the Commission to continue terms and conditions that conflict with its own rules. It is for these reasons the OCTA has reviewed Duke's tariff in full, and specifically proposed changes for a limited number of those provisions.

### **III. Next Procedural Steps**

The OCTA wishes to present a proposal for the next procedural steps in this matter. The OCTA suggests that the Commission order an informal conference to be held between Duke, the

---

<sup>19</sup> Rules Docket, Entry at ¶13 (April 22, 2015).

<sup>20</sup> Duke Response at 7.

OCTA and the Commission Staff for further discussions and possible resolution of the remaining tariff issues. The issues in this matter are important on a going-forward basis. The OCTA believes that this approach can be effective to work through the issues efficiently. This is another avenue for resolving the disputed issues – as a means for avoiding a hearing.<sup>21</sup>

In the event that a complete resolution of issues does not result from the informal conference, then a hearing may be necessary so that the parties have a full opportunity to present the facts and arguments needed and the Commission can appropriately resolve the remaining disputed tariff provisions. The issues herein are technical and important. The tariff provisions that will be established in this proceeding will have a significant impact on pole attachments for years to come. The OCTA strongly urges the Commission to order that informal discussions be held between Duke, the OCTA and the Commission Staff. To the extent that a difference of opinion remains after the informal discussions, the OCTA suggests that a hearing be held.

The OCTA further believes that this approach will help establish just and reasonable pole attachment tariff provisions on a going-forward basis that are compliant with the Commission's new rules.

#### **IV. Conclusion**

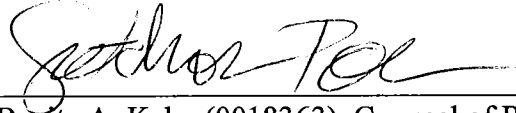
The OCTA appreciates the opportunity to reply to Duke's response in this docket. The OCTA urges the Commission to order its Staff to schedule an informal conference between Duke, the OCTA and the Commission Staff for further discussions and possible resolution of the remaining tariff issues. In the event that a complete resolution is not reached, then a hearing may

---

<sup>21</sup> The OCTA's suggested informal conference is an alternative dispute resolution option that seems appropriate when considering the Commission Staff's knowledge on the technical considerations involved. The Commission has incorporated another more formal alternative dispute resolution option for parties who are unable to agree on rates, terms, or conditions for a pole attachment/conduit occupancy agreement. *See*, Rule 4901:1-3-06, Ohio Administrative Code.

be necessary so that the parties can present the facts and arguments needed to determine the appropriate tariff provisions for remaining issues.

Respectfully submitted,



---

Benita A. Kahn (0018363), Counsel of Record

Stephen M. Howard (0022421)

Gretchen L. Petrucci (0046608)

VORYS, SATER, SEYMOUR AND PEASE LLP

52 East Gay Street

Columbus, Ohio 43216-1008

Tel. (614) 464-6487

[bakahn@vorys.com](mailto:bakahn@vorys.com)

[smhoward@vorys.com](mailto:smhoward@vorys.com)

[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)

*Attorneys for the Ohio Cable Telecommunications  
Association*



**CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 18<sup>th</sup> day of September 2015 upon all persons/entities listed below:

Amy B. Spiller at [amy.spiller@duke-energy.com](mailto:amy.spiller@duke-energy.com)

Jeanne W. Kingery at [jeanne.kingery@duke-energy.com](mailto:jeanne.kingery@duke-energy.com)

  
\_\_\_\_\_  
Gretchen L. Petrucci

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**9/18/2015 4:32:22 PM**

**in**

**Case No(s). 15-0965-EL-ATA**

Summary: Motion For Leave to File a Reply Instanter and Motion for an Expedited Ruling electronically filed by Mrs. Gretchen L. Petrucci on behalf of Ohio Cable Telecommunications Association