

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the 2020 Review of the)	
Delivery Capital Recovery Rider of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 20-1629-EL-RDR
Illuminating Company, and The Toledo)	
Edison Company.)	

**MOTION TO INTERVENE OF
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

The Ohio Cable Telecommunications Association (“OCTA”), representing the interests of Ohio’s cable telecommunications industry, moves for intervention in the above-styled proceeding as a full party of record pursuant to Revised Code Section 4903.221 and Ohio Administrative Code 4901-1-11. Supporting reasons are set forth in the accompanying Memorandum in Support.

WHEREFORE, the OCTA respectfully requests that the Public Utilities Commission of Ohio grant this motion to intervene and make the OCTA a full party of record.

Respectfully submitted,

/s/ Gretchen L. Petrucci

Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
614-464-5407
glpetrucci@vorys.com
(Willing to accept service via email)

Counsel for the Ohio Cable Telecommunications Association

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

Revised Code (“R.C.”) Section 4903.221 and Ohio Administrative Code (“Ohio Adm.Code”) 4901-1-11 establish the standard for intervention in the above-styled proceedings.

Ohio Adm.Code 4901-1-11 states in part:

Upon timely motion, any person shall be permitted to intervene in a proceeding upon a showing that:

* * *

(2) The person has a real and substantial interest in the proceeding, and the person is so situated that the disposition of the proceeding may, as a practical matter, impair or impede his or her ability to protect that interest, unless the person’s interest is adequately represented by existing parties.

In addition to establishment of a direct interest, the factors that the Public Utilities Commission of Ohio (“Commission”) considers in implementing the above rule are the nature of the intervenor’s interest, 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. *See* R.C. 4903.221(B), upon which the above rule is authorized. A review of these factors in light of the following facts supports granting the OCTA’s intervention in this matter.

The OCTA represents the cable telecommunications industry in Ohio. The OCTA members have existing and potential business interests in the State and, in particular, in the service territories of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (“FirstEnergy Utilities”), which could be directly and substantially affected by the outcome of this proceeding. The members attach to the poles of the FirstEnergy Utilities, and access to those poles at just and reasonable rates, terms and conditions are critical for OCTA members.

The Commission’s review in this proceeding of the Delivery Capital Recovery (“DCR”) Riders of the FirstEnergy Utilities involves issues that will affect their pole attachment rates. First, the auditor disagreed with the excess accumulated deferred income tax (“EDIT”) balances used by the FirstEnergy Utilities, finding that they used adjusted EDIT balances inconsistent with the Commission-approved stipulation in Case No. 18-1604-EL-UNC (“TCJA Stipulation”).¹ The adjusted EDIT balances would result in improperly inflated net bare pole costs, and unjust and unreasonable pole rates when those rates are adjusted in the future. Second, the auditor found that, for years, the FirstEnergy Utilities inflated their pole attachment rates by charging pole attachers for costs unrelated to poles, after unrelated and questionable transactions were booked to accounts used in calculating pole attachment rates.²

The OCTA satisfies the intervention requirements above. First, the OCTA seeks to intervene to protect the interests of its members. The OCTA and its members have a direct and significant stake in restoring the EDIT balances back to the levels in the TCJA Stipulation for Rider DCR as the auditor recommended, which is necessary for Rider DCR and for future pole rate proceedings.³ The OCTA and its members also have a direct and significant stake in the correction for the past inflated pole attachment rates and in ensuring the pole attachment rate formula is properly applied going forward.

¹ Audit Report at 107-108 (August 3, 2021). The appropriate EDIT balances is also an issue that has not yet been resolved in the Commission’s prior DCR audit proceeding. *In the Matter of the 2019 Review of the Delivery Capital Recovery Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 19-1887-EL-RDR. The OCTA intervened and supported the auditor’s findings in the prior DCR audit proceeding as well.

² Auditor’s Expanded Scope Report at 4-5, 9-11, 14, 23 (August 3, 2021).

³ The restoration is also necessary to be compliant with the Commission’s prior directive for properly including EDIT values in the future pole rate cases. *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, Finding and Order at ¶ 30 (October 24, 2018) (“...the Commission directs pole owners filing future pole attachment rate adjustment application to deduct, in addition to ADIT and depreciation reserves, any unamortized excess ADIT resulting from the TCJA from total gross plant and gross pole investment in their pole attachment rate calculations”).

Second, the OCTA's motion is timely filed. Third, as a knowledgeable association with extensive experience in Ohio, the OCTA will contribute to a just and expeditious resolution of issues involved in this proceeding. The OCTA has participated in prior Commission proceedings affecting these utilities and contributed significantly.⁴ Fourth, its intervention will not result in an undue delay of the proceeding. Finally, the OCTA's unique interests are not represented by any other party in this proceeding.

WHEREFORE, for all of the foregoing reasons, the OCTA respectfully requests that the Commission grant this motion to intervene and that the OCTA be made a full party of record in these proceedings.

Respectfully submitted,

/s/ Gretchen L. Petrucci

Gretchen L. Petrucci (0046608)
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
614-464-5407
glpetrucci@vorys.com
(Willing to accept service via email)

Counsel for the Ohio Cable Telecommunications Association

⁴ See, e.g., 2019 Review of the Delivery Capital Recovery Rider, *supra* and Tax Cuts and Jobs Act of 2017, *supra*.

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 4th day of October, 2021 upon all persons/entities listed below:

Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company	bknipe@firstenergycorp.com mrgladman@jonesday.com mdengler@jonesday.com radoringo@jonesday.com sgoyal@jonesday.com
Environmental Law and Policy Center	mleppla@theOEC.org
Interstate Gas Supply, Inc.	bethany.allen@igs.com joe.oliker@igs.com evan.betterton@igs.com
Natural Resources Defense Council	rdove@keglerbrown.com
Ohio Consumers' Counsel	William.Michael@occ.ohio.gov Ambrosia.Wilson@occ.ohio.gov
Ohio Environmental Council	mleppla@theOEC.org tdougherty@theOEC.org ctavenor@theOEC.org
Ohio Hospital Association	dparram@bricker.com eakhbari@bricker.com rmains@bricker.com
Ohio Manufacturers' Association Energy Group	Bojko@carpenterlipps.com Donadio@carpenterlipps.com
Ohio Partners for Affordable Energy	rdove@keglerbrown.com
Staff of the Public Utilities Commission of Ohio	Werner.Margard@OhioAttorneyGeneral.gov Thomas.Lindgren@OhioAttorneyGeneral.gov

/s/ Gretchen L. Petrucci
Gretchen L. Petrucci

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

10/4/2021 4:48:49 PM

in

Case No(s). 20-1629-EL-RDR

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