

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**INITIAL COMMENTS OF
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

The Ohio Cable Telecommunications Association (“OCTA”) appreciates the opportunity to file initial comments in this proceeding and timely addresses two distinct issues discussed by Blue Ridge Consulting Services, Inc. (“the Auditor”) in its August 3, 2020¹ Audit Report relating to pole attachment rental rates.

At the outset, the OCTA seeks to impress upon the Commission the significance of these issues, and why they are important to the OCTA. Pole attachment rental rates may seem obscure at first glance, but they are of absolutely vital importance to the public interest. As society has learned – particularly during the past eighteen months of pandemic-driven social distancing and remote work – robust broadband access for every Ohio consumer and business is a necessity; an essential driver of economic success. Pole attachment rates serve as a critical input for OCTA members and other service providers currently building out the broadband infrastructure necessary to connect Ohio consumers, businesses, and communities to high-speed internet services. Unreasonable rates, terms, and conditions for utility pole attachments rank among the largest barriers to rural broadband deployment. Accurate calculation of pole costs, fairly reflected in reasonable pole attachment rental rates, terms, and conditions, are therefore crucial for ensuring that broadband infrastructure investment can reach as many unserved areas as possible in an economically efficient manner.

Against this background, the OCTA offers the following comments. First, the OCTA suggests that process improvements are needed because, again, Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (“FirstEnergy Utilities”) have inappropriately calculated pole attachment rental rates. Second, the FirstEnergy Utilities’ use of excess accumulated deferred income tax (“EDIT”) balances must be resolved consistent with a prior Commission-approved settlement (these balances carry over to pole attachment rates).

Related to the process improvements needed to ensure lawful pole attachment rates, the Auditor found that, for six consecutive years, FirstEnergy Utilities inflated their pole attachment rates by charging pole attachers for costs unrelated to poles.¹ The FirstEnergy Utilities accomplished this by recording costs associated with unrelated and questionable transactions to accounts used in calculating pole attachment rates.² The OCTA supports the Auditor’s review to consider whether the cost inputs used in pole attachment rates from 2014-2019 were proper inputs. By peeling the “onion” and not just verifying the mathematical accuracy of the FirstEnergy Utilities’ calculated pole attachment rates, the Auditor found repeated instances in which these utilities inappropriately included costs not recoverable under the Commission-adopted pole attachment rate formula.

The OCTA continues to support the Commission-adopted formula used to calculate pole attachment rates, which the Commission reaffirmed in its recent review of its pole attachment rules in Ohio Administrative Code Chapter 4901:1-3.³ The manner in which that formula is applied,

¹ Auditor’s Expanded Scope Report at 4-5, 9, 14, 23.

² *Id.* at 10-11.

³ *In the Matter of the Commission’s Review of Ohio Adm. Code Chapter 4901:1-3, Concerning Access to Poles, Ducts, Conduits, and Right-of-Way*, Case No. 19-834-AU-ORD, Finding and Order (April 7, 2021) and Entry on Rehearing (September 23, 2021).

however, should be ensured so that unjust and unreasonable rates do not result. It is important to note that the Auditor's findings are in addition to other instances identified by the OCTA where the First Energy Utilities inflated pole rate proposals through questionable and/or improper inputs.⁴

Pole attachment rental rates based on rational, appropriate and verifiable inputs should be the standard. To ensure this happens going forward, the Commission should require corrective actions in addition to the Auditor's suggestion that the First Energy Utilities include an adjustment in their next pole attachment rate adjustment filing.⁵ The FirstEnergy utilities should be required to:

- Substantiate their future pole attachment rate adjustment applications by including explanations and detailed utility-specific documentation (including workpapers, the appurtenance factor, pole height, pole count and the CPRs – continuing property records);
- Identify in the applications the specific sources of the formula inputs;
- Include affidavits from officers of the utilities affirming the accuracy and veracity of the applications, calculations and supporting documentation;

⁴ See e.g. *In the Matter of the Application of The Cleveland Electric Illuminating Company to Update its Pole Attachment Rate*, Case Nos. 20-1644-EL-ATA et al. (in the 2020 pole attachment rate adjustment applications, the FirstEnergy utilities did not include poles associated with non-unitized investment in the pole counts, and only provided an estimated number after the OCTA raised the issue); *In the Matter of the Application of The Cleveland Electric Illuminating Company for Approval of a Tariff Change*, Case Nos. 19-1038-EL-ATA et al. (in the 2019 pole attachment rate adjustment applications, the FirstEnergy utilities included a significant amount of non-unitized investment without support); and *In the Matter of the Application of The Cleveland Electric Illuminating Company for Approval of a Tariff Change*, Case Nos. 18-564-EL-ATA et al. (in the 2018 pole attachment rate adjustment applications, the FirstEnergy utilities significantly decreased their accumulated deferred taxes, inflating the net bare pole costs and the pole rates).

⁵ Auditor's Expanded Scope Report at 28.

- Provide the applications and detailed utility-specific documentation to the OCTA concurrent with the filings (the OCTA is willing now to put into place a protective agreement like it has previously); and
- Work cooperatively with the parties in their pole attachment rate adjustment proceedings to allow for more successful reviews and analyses of those applications.

Regarding the use of EDIT balances, the OCTA reviewed and concurs with the Auditor that there remains an outstanding issue related to the FirstEnergy Utilities' compliance with the settlement and Commission order in Case No. 18-1604-EL-UNC regarding the use of EDIT balances resulting from the Tax Cuts and Jobs Act of 2017.⁶ As a party to that stipulation that has concerns with the EDIT balances and their impact on pole attachment rates, the OCTA recommends that the Commission resolve the outstanding issue for this audit and the prior DCR audit in Case No. 19-1887-EL-RDR consistent with the Auditor's recommendations.⁷

The OCTA appreciates the opportunity to submit these comments in this proceeding and urges the Commission to take the actions recommended above.

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

Counsel for the Ohio Cable Telecommunications Association

⁶ Auditor's Report at 14, 105-109.

⁷ The OCTA intervened and participated in Case No. 19-1887-EL-RDR.

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

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Summary: Comments - Initial Comments electronically filed by Mrs. Gretchen L. Petrucci on behalf of Ohio Cable Telecommunications Association