

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of	)	
Frontier North Inc.,	)	
	)	
Complainant,	)	Case No. 14-0759-AU-CSS
	)	
v.	)	
	)	
Ohio Power Company,	)	
	)	
Respondent.	)	

**MOTION FOR PROTECTIVE ORDER  
OF RESPONDENT OHIO POWER COMPANY**

Pursuant to O.A.C. 4901-1-24, Ohio Power Company (“AEP Ohio”) moves for an order protecting it from the “annoyance, \* \* \* oppression, or undue burden or expense” imposed by Complainant Frontier North Inc.’s (“Frontier”) First Set of Interrogatories and Requests for Production of Documents (“Frontier’s Requests”). Frontier’s Requests are voluminous; many of them are not reasonably calculated to lead to the discovery of evidence relevant to or admissible in this proceeding; and those requests related to AEP Ohio’s joint use, pole license, pole attachment, and pole rental agreements with other entities contain confidential and commercially sensitive business information to which Frontier – a prospective party to such an agreement with AEP Ohio – is not entitled under any circumstance. Moreover, the burden on AEP Ohio to provide the information and produce the documents Frontier seeks would be for nothing if the parties are able to settle their dispute at the upcoming August 12, 2014 settlement conference.

Accordingly, AEP Ohio respectfully requests that the Commission order that AEP Ohio need not respond to Frontier’s requests for information and documents that are irrelevant to the issues properly before the Commission in this proceeding. Additionally, with respect to Frontier’s request for all of AEP Ohio’s joint use, pole license, pole attachment, and pole rental

agreements entered into since 2000, *see* Ex. A at Req. for Prod. No. 4, AEP Ohio requests that the Commission order that AEP Ohio need not respond to that request for confidential and commercially sensitive business information at all. Finally, AEP Ohio requests that the Commission issue a protective order providing that AEP Ohio need not respond to any of Frontier's Requests until twenty days after the settlement conference in this case – *i.e.*, until September 1, 2014.

Respectfully submitted,

/s/ Christen M. Blend

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*Counsel for Respondent  
Ohio Power Company*

## **MEMORANDUM IN SUPPORT**

### **I. BACKGROUND**

Complainant Frontier North Inc. (“Frontier”) filed its Complaint in this docket on April 23, 2014, less than two weeks after Ohio Power Company (“AEP Ohio”) filed suit against Frontier in federal court seeking to collect unpaid amounts that Frontier owes AEP Ohio under the terms of the parties’ 1996 Agreement for the Joint Use of Poles (“Joint Use Agreement”). AEP Ohio answered Frontier’s Complaint and filed a motion to dismiss Frontier’s request that the Commission interpret and modify the reciprocal rental rate set forth in the parties’ Joint Use Agreement for the years 2012 and 2013 and order AEP Ohio to refund to Frontier amounts previously paid and currently – and properly – owing under that agreement on the grounds that that issue is a matter of pure contract dispute that is properly before the United States District Court for the Southern District of Ohio.<sup>1</sup> That motion is fully briefed, and the Attorney Examiner has held consideration of it in abeyance pending the parties’ upcoming August 12, 2014 settlement conference.<sup>2</sup>

#### **A. Frontier’s Requests**

On June 6, 2014, Frontier served Complainant’s First Set of Interrogatories and Requests for Production to Respondent (“Frontier’s Requests”), a copy of which is attached hereto as Exhibit A. Frontier’s Requests are expansive, seeking, among other things, the following information and documents:

1. The identities of all persons with knowledge of the facts and circumstances related to the case and a description of each person’s knowledge;<sup>3</sup>

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<sup>1</sup> See AEP Ohio Mot. to Dismiss (May 14, 2014).

<sup>2</sup> See Entry at ¶14 (June 12, 2014).

<sup>3</sup> Ex. A, Interrog. No. 1.

2. The identities of all persons with knowledge of the facts and circumstances concerning the drafting, formation, administration, implementation, modification, or amendment of the parties' 1996 Joint Use Agreement, and a description of each person's knowledge;<sup>4</sup>
3. The pole attachment compensation to which AEP Ohio claims it is entitled from July 2011 through the present, including detailed information regarding AEP Ohio's calculation of that compensation;<sup>5</sup>
4. The identities of all persons involved in calculating or invoicing the reciprocal rental rate that AEP Ohio charged Frontier for 2011 pole attachments;<sup>6</sup>
5. The identities of all persons involved in calculating or invoicing the reciprocal rental rate that AEP Ohio charged Frontier for 2012 pole attachments;<sup>7</sup>
6. All input values necessary to calculate the pole attachment rates that apply to Frontier's prior attachments that are the subject of AEP Ohio's federal suit against it;<sup>8</sup>
7. Historical information about AEP Ohio's pole ownership and Frontier's attachments thereto from 1996 to 2013;<sup>9</sup>
8. Information about the average number of entities attaching to AEP Ohio's distribution poles from 2010 through 2013;<sup>10</sup>
9. The identity of every entity that has placed an attachment or reserved attachment space on AEP Ohio's poles from 2010 through 2013;<sup>11</sup>
10. The identities of all persons familiar with the facts contained in AEP Ohio's Answer in this case;<sup>12</sup>
11. The identities of all persons with knowledge or information regarding the amount AEP Ohio's claims Frontier owes it under the Joint Use Agreement since 2011;<sup>13</sup>

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<sup>4</sup> *Id.*, Interrog. No. 2.

<sup>5</sup> *Id.*, Interrog. No. 3.

<sup>6</sup> *Id.*, Interrog. No. 4.

<sup>7</sup> *Id.*, Interrog. No. 5.

<sup>8</sup> *Id.*, Interrog. No. 6.

<sup>9</sup> *Id.*, Interrog. No. 7.

<sup>10</sup> *Id.*, Interrog. No. 8.

<sup>11</sup> *Id.*, Interrog. No. 9.

<sup>12</sup> *Id.*, Interrog. No. 10.

<sup>13</sup> *Id.*, Interrog. No. 11.

12. All joint use and pole attachment agreements entered into between the parties or their predecessors;<sup>14</sup>
13. All documents concerning the drafting, formation, modification, amendment, administration, or implementation of the 1996 Joint Use Agreement;<sup>15</sup>
14. All communications between the parties since 1996 concerning their joint use relationship;<sup>16</sup>
15. All of AEP Ohio's joint use agreements, pole license agreements, pole attachment agreements, and pole rental agreements since with any other entity since 2000;<sup>17</sup>
16. All documents concerning any change in the annual rates that AEP Ohio charged to Frontier since 1996;<sup>18</sup>
17. All documents concerning AEP Ohio's calculation of its reciprocal rental charge to Frontier since 1996;<sup>19</sup>
18. All documents concerning AEP Ohio's historical annual pole costs since 2010;<sup>20</sup>
19. All documents exchanged between AEP Ohio and the Commission or Federal Communications Commission ("FCC") concerning AEP Ohio's historical annual pole costs since 2010;<sup>21</sup>
20. All documents concerning AEP Ohio's compensation received from Frontier, including AEP Ohio's profit margin from Frontier's pole attachments, since 1996;<sup>22</sup>
21. All documents concerning the annual number of distribution poles AEP Ohio owned and that were jointly used by Frontier since 1990;<sup>23</sup>
22. All documents concerning the annual number of distribution poles Frontier owned and that were jointly used by AEP Ohio since 1990.<sup>24</sup>

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<sup>14</sup> *Id.*, Req. for Prod. No. 1.

<sup>15</sup> *Id.*, Req. for Prod. No. 2.

<sup>16</sup> *Id.*, Req. for Prod. No. 3.

<sup>17</sup> *Id.*, Req. for Prod. No. 4.

<sup>18</sup> *Id.*, Req. for Prod. No. 5.

<sup>19</sup> *Id.*, Req. for Prod. No. 6.

<sup>20</sup> *Id.*, Req. for Prod. No. 7.

<sup>21</sup> *Id.*, Req. for Prod. No. 8.

<sup>22</sup> *Id.*, Req. for Prod. No. 9.

<sup>23</sup> *Id.*, Req. for Prod. No. 11.

<sup>24</sup> *Id.*, Req. for Prod. No. 12.

23. All documents concerning changes in the parties' historical relative ownership of joint use poles since 1990;<sup>25</sup>
24. All documents containing historical information about the average height of AEP Ohio's distribution poles since 2010;<sup>26</sup>
25. All documents concerning historical attachments by other entities on AEP Ohio's poles since 2010;<sup>27</sup>
26. All documents concerning the parties' historical occupation of space on joint use poles since 1990;<sup>28</sup>
27. All documents concerning AEP Ohio's pole inventories or audits since 1990;<sup>29</sup>
28. All documents concerning the rate that Frontier paid to AEP Ohio for its 2012 pole attachments;<sup>30</sup>
29. All of AEP Ohio's property records, financial records, and annual reports for 2010 to the present;<sup>31</sup> and
30. All documents concerning the calculation of the pole attachment rates that apply to Frontier's historical attachments to AEP Ohio's poles since 2010, including detailed information regarding AEP Ohio's calculation of that compensation.<sup>32</sup>

**B. Efforts Taken To Resolve Differences Regarding Discovery**

Counsel for AEP Ohio called counsel for Frontier on June 18 and 24, 2014.<sup>33</sup> Counsel for AEP Ohio explained to counsel for Frontier that AEP Ohio believes that Frontier's Requests are expansive and seek information and documents not relevant to this proceeding and/or to which Frontier is not entitled.<sup>34</sup> Moreover, counsel for AEP Ohio explained that the burdensome discovery may become unnecessary if the parties are able to resolve their dispute at the

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<sup>25</sup> *Id.*, Req. for Prod. No. 13.

<sup>26</sup> *Id.*, Req. for Prod. No. 15.

<sup>27</sup> *Id.*, Req. for Prod. Nos. 16, 17.

<sup>28</sup> *Id.*, Req. for Prod. No. 18.

<sup>29</sup> *Id.*, Req. for Prod. No. 19.

<sup>30</sup> *Id.*, Req. for Prod. No. 20.

<sup>31</sup> *Id.*, Req. for Prod. No. 28.

<sup>32</sup> *Id.*, Req. for Prod. No. 29.

<sup>33</sup> (Affidavit of Christen M. Blend at ¶ 5.) Ms. Blend's affidavit is attached as Exhibit B.

<sup>34</sup> (*Id.* at ¶ 6.)

upcoming August 12, 2014 settlement conference.<sup>35</sup> Counsel for AEP Ohio requested that Frontier agree to extend the deadline by which AEP Ohio must respond to Frontier's Requests until after the settlement conference to avoid the potentially undue burden and expense of responding to them.<sup>36</sup>

Counsel for Frontier agreed to provide AEP Ohio a three-week extension to respond to discovery, and stated that Frontier would agree stay all discovery until after the settlement conference if AEP Ohio would agree to provide Frontier with: (1) copies of AEP Ohio's joint use and pole attachment agreements with other companies in Ohio, and (2) a "detailed rate calculation for each of the 2011, 2012 and 2013 rental years showing the calculation methodology of AEP [Ohio]'s per pole rental rate using the FCC's new telecom methodology," including in each rate calculation "each and every input used in the calculation and identify[ing] their source."<sup>37</sup> Counsel for AEP Ohio responded to counsel for Frontier on June 26, 2014, informing counsel for Frontier that AEP Ohio was willing to provide the information regarding its rate calculations, if Frontier would agree to provide the same, but that AEP Ohio would not provide copies of AEP Ohio's joint use and pole attachment agreements with other entities.<sup>38</sup> Counsel for AEP Ohio further requested that Frontier let AEP Ohio know whether Frontier would agree to that proposal.<sup>39</sup> On July 14, 2014, counsel for Frontier indicated that Frontier will not agree to stay discovery until after the settlement conference unless AEP Ohio provides the joint use and pole attachment agreements to Frontier.<sup>40</sup>

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<sup>35</sup> (*Id.*)

<sup>36</sup> (*Id.* at ¶ 7.)

<sup>37</sup> (*Id.* at ¶ 8.)

<sup>38</sup> (*Id.* at ¶ 9.)

<sup>39</sup> (*Id.*)

<sup>40</sup> (*Id.* at ¶ 10.)

AEP Ohio now seeks relief from the Commission from Frontier's broad, overly burdensome, and largely irrelevant requests.

## **II. LAW AND ARGUMENT**

O.A.C. 4901-1-24 authorizes the Commission, the legal director, the deputy legal examiner, or an attorney examiner to “issue an order that is necessary to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.”<sup>41</sup> Among other things, a protective order may provide that discovery not be had, be had only on specified terms and conditions, not be had as to certain matters, or be limited to certain matters.<sup>42</sup> It also may order that confidential or commercial information not be disclosed.<sup>43</sup>

Here, the Commission should issue a protective order relieving AEP Ohio of its obligation to respond to certain of Frontier's Requests that are irrelevant to the issues properly before the Commission in this case and others of Frontier's Requests because they seek confidential and competitively sensitive information to which Frontier is not entitled. The Commission also should order that AEP Ohio need not respond to the remainder of Frontier's Requests until twenty days after the settlement conference in this case – *i.e.*, until September 1, 2014.

### **A. The Commission Should Order That Discovery Into Matters Irrelevant To The Issues Properly Before It In This Case Not Be Had.**

As described above, the vast majority of Frontier's Requests relate to the parties' previous dealings under the 1996 Joint Use Agreement. As AEP Ohio explained in its May 14, 2014 Motion to Dismiss, it is well settled that the Commission “has no power to determine legal rights and liabilities with regard to contract rights or property rights, even though a public utility

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<sup>41</sup> O.A.C. 4901-1-24(A).

<sup>42</sup> O.A.C. 4901-1-24(A)(1), (2), (4), (5).

<sup>43</sup> O.A.C. 4901-1-24(A)(7).



is involved.’’<sup>44</sup> The parties’ dispute about the reciprocal rental rates charged under the 1996 Joint Use Agreement is not within the Commission’s jurisdiction.<sup>45</sup> As such, Frontier’s Requests that relate to that agreement, its negotiations, the payments made under it, and the calculation of those payments are not relevant to this proceeding. That discovery should be taken, if at all, in the civil proceeding pending before the United States District Court for the Southern District of Ohio. Accordingly, AEP Ohio requests that the Commission order that AEP Ohio is not required to respond to the following of Frontier’s Requests: Interrogatory Nos. 2, 3, 4, 5, 6, 7, 8, 9, and 11; Request for Production Nos. 1, 2, 3, 5, 6, 7, 9, 11, 12, 13, 15, 18, 19, 20, 28, and 29.

**B. The Commission Should Order That Discovery Into AEP Ohio’s Other Joint Use And Pole Attachment Agreements Not Be Had By Frontier – A Prospective Party To Such An Agreement With AEP Ohio.**

Frontier’s requests for documents relating to AEP Ohio’s other joint use and pole attachment agreements with other entities in Ohio (Request for Production Nos. 4, 16, and 17) also are inappropriate. The contracts and information that Frontier seeks are confidential and competitively sensitive, as they contain the terms and conditions of AEP Ohio’s pole use and attachment arrangements with other companies, including Frontier’s competitors. Moreover, Frontier and AEP Ohio likely will be negotiating a new joint use or pole attachment agreement in the near future. Frontier should not be permitted to engage in a fishing expedition into AEP Ohio’s agreements with other parties, which it will surely turn around and use in negotiations in order to obtain a disproportionately favorable agreement for itself. To allow Frontier to do so would eliminate AEP Ohio’s ability effectively negotiate a fair agreement with Frontier. The Commission should order that AEP Ohio need not respond to Frontier’s requests for confidential

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<sup>44</sup> AEP Ohio Mot. to Dismiss at 3 (May 14, 2014), quoting *Marketing Research Services, Inc. v. Pub. Util. Comm.*, 34 Ohio St.3d 52, 56, 517 N.E.2d 540 (1987), citing *Milligan v. Pub. Util. Comm.*, 56 Ohio St.2d 191, 383 N.E. 2d 575 (1978), *New Bremen v. Pub. Util. Comm.*, 103 Ohio St. 23, 132 N.E. 162 (1921), *Coss v. Pub. Util. Comm.* 101 Ohio St. 528, 130 N.E. 937 (1920).

<sup>45</sup> *Id.* at 3-4.

and competitively sensitive information that Frontier would surely use against AEP Ohio in subsequent contract negotiations. The Commission thus should grant AEP Ohio's request for protective order with respect to Request for Production Nos. 4, 16, and 17.

**C. To Prevent Potentially Unnecessary Burden And Expense, The Commission Should Order That AEP Ohio's Responses To Frontier's Remaining Requests Are Not Due Until Twenty Days After The Settlement Conference.**

Finally, AEP Ohio respectfully requests that the Commission order that AEP Ohio may respond to any of Frontier's Requests that remain pending after this motion is decided within twenty days after the parties' settlement conference – *i.e.*, by September 1, 2014. As set forth above, Frontier's Requests are expansive, and they may end up being moot if the parties are able to resolve their dispute at the August 12, 2014 settlement conference. Moreover, the extension likely will not prejudice Frontier, as it previously indicated a willingness to stay discovery other than as to Request for Production Nos. 4 and 29 (both of which are the subject of AEP Ohio's present motion) until after the settlement conference occurs.

### **III. CONCLUSION**

For each of the reasons set forth above, the Commission should grant AEP Ohio's request for a protective order and order that:

1. AEP Ohio is not required to respond to Interrogatory Nos. 2, 3, 4, 5, 6, 7, 8, 9, and 11; and Request for Production Nos. 1, 2, 3, 5, 6, 7, 9, 11, 12, 13, 15, 18, 19, 20, 28, and 29 contained in Frontier's Requests because those requests are not relevant to the issues in this proceeding over which the Commission has jurisdiction;
2. AEP Ohio is not required to respond to Request for Production Nos. 4, 16, and 17 because those requests seek competitively sensitive and confidential business information the disclosure of which to Frontier is inappropriate; and

3. AEP Ohio's responses to those of Frontier's Requests that remain after a ruling on this motion are due within twenty days after the parties' settlement conference in this case.

Respectfully submitted,

/s/ Christen M. Blend

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*Counsel for Respondent*

*Ohio Power Company*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing *Motion for Protective Order of Respondent Ohio Power Company* has been served upon the below-named counsel via electronic mail this 17th day of July, 2014:

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*Counsel for Complainant  
Frontier North Inc.*

/s/ Christen M. Blend  
Christen M. Blend

In the Matter of the Complaint of:	)	
FRONTIER NORTH INC.,	)	
	)	
Complainant,	)	Case No. 14-0759-AU-CSS
	)	
v.	)	
OHIO POWER COMPANY,	)	
	)	
Respondent.	)	

Complainant Frontier North Inc. (“Frontier”), by and through its undersigned counsel, requests that Respondent Ohio Power Company (“AEP Ohio”) respond within twenty (20) days to the following Interrogatories and Requests for Production in accordance with Sections 4901-1-19 and 4901-1-20 of the Ohio Administrative Code.

1. Requests shall not be interpreted in an artificially restrictive manner or be otherwise strained in order to avoid disclosure of discoverable information.

2. Responses and documents shall be produced at the law offices of Wiley Rein LLP, c/o Christopher S. Huther, 1776 K Street NW, Washington, D.C. 20006.

3. In response to each interrogatory or request for production, first restate the interrogatory or request for production.

4. Unless otherwise specified, each request herein relates to, covers and requests information for any and all periods of time.

5. Produce all responsive information that is in the possession, custody or control of AEP Ohio or any other person acting in the interest of, or on behalf of, AEP Ohio. If AEP Ohio

does not have responsive information, or has information that is only partially responsive, AEP Ohio should produce the available information and identify the information that is not available.

6. Identical copies may be furnished in lieu of original documents, provided that it is understood that, by doing so, the submission includes a waiver of any objection as to the authenticity of said copies as true and original copies of the originals should such copies be offered into evidence. Any documents produced in electronic form should be provided in a recognized format, mutually agreed to by the Parties. Spreadsheets should be produced in their native format.

7. These interrogatories and requests for production shall be deemed to be CONTINUING so as to require AEP Ohio to supplement its responses upon discovering or learning of additional information in its custody, possession, or control that was not produced or included in an earlier response.

8. If any response contains any objection, state with specificity the grounds for the objection and the part of the interrogatory or request for production to which the objection is made, but respond to the interrogatory or request for production fully insofar as it is not deemed objectionable.

9. Any information withheld on the basis of any claimed privilege, including, but not limited to, the attorney-client privilege and/or attorney work product, must be listed in a privilege log to be produced at the same time as these responses. This privilege log must include, without limitation, the following: (i) a description of the nature of the withheld information (*e.g.*, letter, memorandum, handwritten notes, software, recording); (ii) the date of the withheld information; (iii) a general description of its subject matter; (iv) all authors and recipients of the information withheld and each person to whom such information was available;

(v) the privilege or reason for withholding production; and (vi) if applicable, the information's uniquely identified page range (*e.g.*, "Bates" number).

10. If any information requested was, but is no longer, in AEP Ohio's possession or subject to AEP Ohio's control, or is no longer in existence, state whether it is missing or lost, destroyed, transmitted or transferred voluntarily or involuntarily to others, or otherwise disposed of, explain the circumstances surrounding the authorization for such disposition and the date or approximate date thereof, and identify all persons who have personal knowledge of the information.

11. A reasonable time, place, and manner of making the inspection and performing the related acts regarding the production of documents may be mutually agreed upon by the Parties.

### **DEFINITIONS**

1. "Agreement" refers to the January 1, 1996 agreement between Columbus Southern Power Company, Ohio Power Company, and GTE North Incorporated for the joint use of utility poles.

2. "Answer" means the answer filed by AEP Ohio in this Lawsuit and any amendments or supplements thereto.

3. "Concerning," "referring," and derivatives thereof, whether followed by a preposition or not, have the broadest meanings that may be accorded to them and include, but are not limited to, directly or indirectly relating, mentioning, describing, pertaining to, being connected with, setting forth, discussing, commenting on, analyzing, supporting, contradicting, proving, disproving, referring to, constituting, concerning, and/or connected to or reflecting in any way.

4. “Complaint” means the complaint filed by Frontier in this Lawsuit and any amendments or supplements thereto.

5. “Data” means, without limitation, all documents and other information, however produced or reproduced, that is responsive.

6. “Defendant,” “AEP Ohio,” “you,” and “your” mean Ohio Power Company and any persons associated with it, including, but not limited to, subsidiaries or affiliated entities, officers, directors, employees, agents, representatives, predecessors, successors, assigns, attorneys, and anyone acting or purporting to act on its behalf or on behalf of any of them.

7. “Describe” as used with respect to an occurrence, event, activity, or transaction means, without limitation, the provision of a complete and detailed list of the nature, time, place of the occurrence, event, activity, or transaction, and the identity of all persons present. “Describe” as used with respect to a document means, without limitation, the provision of a complete and detailed description of the nature and contents of the document.

8. “Document” and “information” have the fullest meanings allowed by law and include anything contemplated by Ohio Rule of Civil Procedure 34 and all writings and records of every type, whether handwritten, printed, recorded, transcribed, taped, typed or visually reproduced in any manner, including, without limitation, agreements, analyses, bills, budgets, bulletins, books, pamphlets, calculations, calendar entries, charts, communications, computer files, correspondence, data, data sheets, disks, drawings, e-mails, files, financial statements, graphs, indexes, information, instant messages, instructions, invoices, letters, literature, memoranda, minutes, notes, papers, photographs, records, recordings, reports, receipts, spreadsheets, studies, surveys, tapes, telephone records, text messages, transcripts, working papers, work sheets, and any other written, printed, reported, transcribed, punched, taped or



typed materials, movies or other photographic matter, however produced or reproduced, whether or not such files are presently in hard copy form. “Document” and “information” shall include any draft of the foregoing items, any attachments to the foregoing items, and any copy or reproduction of the foregoing items upon which any marking has been made which does not appear on the original. “Information” shall also mean copies of documents, notwithstanding that the originals thereof are not in AEP Ohio’s possession, custody, or control.

9. “Identify” means:

a. When referring to a person, the person’s full name, title, business address, email address, telephone number, and relationship to AEP Ohio. If you do not know the person’s current information, provide the person’s last known business affiliation and title, business address and telephone number, residential address and telephone number, email address, and relationship to AEP Ohio.

b. When referring to a document, the type of document (*e.g.*, letter, email, memorandum, etc.) or some other means of identification, its author(s) and addressee(s), its date, its subject, and all present locations by address and custodian.

c. When referring to an oral communication, the type of communication, the persons who participated in, heard, or witnessed it, the date of the communication, and the subject and substance of the communication, and identify any documents that set forth, summarize or refer to any portion of such oral communication.

d. When referring to a business organization, the corporate name or other names under which said organization does business and the location and phone number of its principal place of business.

10. “Lawsuit” means the lawsuit styled *Frontier North Inc. v. Ohio Power Company*, Case No. 14-0759-AU-CSS, currently pending before the Public Utilities Commission of Ohio.

11. “Party” or “Parties” means Frontier and/or AEP Ohio, as applicable.

12. “Person” and “entity” have the fullest meanings allowed by law and include, without limitation, a natural person, corporation, firm, partnership, association labor union, joint venture, proprietorship, governmental body, commission, board, agency, or any other organization, business, or legal entity.

13. “Plaintiff” and “Frontier” mean Frontier North Inc. and each of its current or former parents, subsidiaries, affiliates, officers, directors, independent contractors, agents, servants, attorneys, successors, predecessors, representatives, investigators, experts, employees, ex-employees, consultants, representatives, and others who are in possession of, or who may have obtained, information for or on behalf of these persons or entities.

14. Each singular word shall include its plural and each plural word shall include its singular. “And” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery all responses that might otherwise be construed to be outside its scope. The present tense includes the past tense, and vice versa. Terms are gender neutral and the use of one gender includes all genders.

15. Terms not otherwise defined have the same meaning as they are alleged to have in the Complaint and Answer. For terms not defined therein, terms shall have their ordinary and common meaning. Terms shall not be interpreted in an artificially restrictive or otherwise strained manner.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1:**

Identify all persons that have or had knowledge of the facts and circumstances concerning the allegations and defenses in this Lawsuit and describe the facts and circumstances of which they have or had knowledge.

Response:

### **INTERROGATORY NO. 2:**

Identify all persons that have or had knowledge of the facts and circumstances concerning the drafting, formation, administration, implementation, or proposed or completed modification or amendment of the Agreement and describe the facts and circumstances of which they have or had knowledge.

Response:

### **INTERROGATORY NO. 3:**

Identify the pole attachment compensation that AEP Ohio claims it is entitled to from Frontier during the following time periods: (1) from July 12, 2011 to December 31, 2011, (2) the 2012 rental year, (3) the 2013 rental year, and (4) any other month or year for which AEP Ohio seeks to be compensated. Include in your response the per pole rental rate used to determine the amount of compensation for each time period, the calculations, inputs, assumptions, and sources used to derive the rental rate, the vintage and source of the data used to calculate the rental rate, and an identification of all persons involved in the calculation of the rental rate. To the extent that the pole attachment compensation for any time period differs from the amount that AEP

Ohio invoiced for that particular time period, explain in detail every reason for the difference, including, but not limited to, differences in the per pole rental rate used, the methodology applied, and the vintage and source of the data and inputs used to calculate the rates.

Response:

**INTERROGATORY NO. 4:**

Identify all persons involved in calculating or invoicing the \$18.73 reciprocal rate that AEP Ohio charged Frontier for 2011 attachments.

Response:

**INTERROGATORY NO. 5:**

Identify all persons involved in calculating or invoicing the \$19.12 reciprocal rate that AEP Ohio charged Frontier for 2012 attachments.

Response:

**INTERROGATORY NO. 6:**

Identify all input values necessary to calculate the pole attachment rates that apply to Frontier's attachments to AEP Ohio's poles for 2011, 2012, 2013, and for any other month or year for which AEP Ohio seeks to be compensated, using the Federal Communications Commission's New Telecom Rate Formula (*see* 47 C.F.R. § 1.1409(e)(2); Ohio Admin. Code § 4901:1-7-23(B)) using year-end data for each year beginning with year-end 2010. If AEP Ohio is unable to provide a requested input value, provide the value that AEP Ohio would use in its place. Include in your response the data, calculations, assumptions, and source(s) used to

derive each input value and identify all persons who can testify to such input values and all supporting documents.

Response:

**INTERROGATORY NO. 7:**

As of each year-end from 1996 through 2013, and for any other month or year for which AEP Ohio seeks to be compensated, separately identify how many distribution poles (1) AEP Ohio owned or owns, (2) AEP Ohio owned or owns to which Frontier was or is attached, and (3) AEP Ohio contends Frontier owned or owns in AEP Ohio's service area to which AEP Ohio was or is attached, and identify all persons who can testify to the number of poles and all supporting documents.

Response:

**INTERROGATORY NO. 8:**

Identify the average number of attaching entities (including AEP Ohio, Frontier, telecommunications carriers, cable operators, municipalities, private entities, or any other attaching entities) on distribution poles owned by AEP Ohio as of year-end 2010, year-end 2011, year-end 2012, year-end 2013, and for any other month or year for which AEP Ohio seeks to be compensated. Include in your response the calculations, inputs, assumptions, and sources used to derive the average, and identify all persons who can testify to the average number of attaching entities and all supporting documents.

Response:

**INTERROGATORY NO. 9:**

Identify every entity that has placed an attachment, or reserved attachment space on a distribution pole owned by AEP Ohio as of year-end 2010, year-end 2011, year-end 2012, year-end 2013, and as applicable, any other month or year for which AEP Ohio seeks to be compensated. For each entity, identify by year (1) the number of AEP Ohio's distribution poles containing its attachments, (2) the average number of attachments per pole, (3) the average amount of space occupied by or reserved for such attachments, (4) the annual cost incurred by AEP Ohio because of the attachment or reservation of space, (5) the amount of make-ready charged and paid, (6) the amount of pole attachment rent charged to, and the amount paid, (7) the manner in which the amount of pole attachment rent charged was calculated, and (8) whether pole attachment rent was charged or paid on a "per pole" or "per attachment" basis. Also identify all persons who can testify to the identification of such entities, the amounts charged and paid by such entities, and all supporting documents.

Response:

**INTERROGATORY NO. 10:**

Identify all persons who are or may be familiar with any facts underlying or alleged in AEP Ohio's Answer.

Response:

**INTERROGATORY NO. 11:**

Identify all persons with knowledge of or information regarding the amount of compensation that AEP Ohio claims is due from Frontier for its attachments to AEP Ohio's poles for any month or year since July 12, 2011.

Response:

**INTERROGATORY NO. 12:**

Identify all persons providing information or otherwise participating in the preparation of AEP Ohio's responses to Frontier's interrogatories, requests for production of documents, or requests for admission in this Lawsuit, including a description of each person's role in doing so.

Response:

**INTERROGATORY NO. 13:**

Identify all persons you may call at trial in this Lawsuit, with a description of the subject matter on which each witness is expected to testify and the substance of the facts about which each witness is expected to testify.

Response:

**INTERROGATORY NO. 14:**

Identify all experts (including their educational degrees) that you intend to call at trial in this Lawsuit, with a description of the subject matter on which each expert is expected to testify, the substance of the facts and opinion about which each expert is expected to testify, and each opinion and the basis for the opinion reached by each expert.

Response:

**DOCUMENT REQUESTS**

**REQUEST FOR PRODUCTION NO. 1:**

All joint use agreements or pole attachment agreements entered into between the Parties and their predecessors, including, without limitation, copies of such agreements that contain notations or comments of any kind, whether handwritten or typed.

Response:

**REQUEST FOR PRODUCTION NO. 2:**

All documents concerning the drafting, formation, modification, amendment, administration, or implementation of the Agreement.

Response:



**REQUEST FOR PRODUCTION NO. 3:**

All communications between any agent, or employee or representative of AEP Ohio and any agent, employee or representative of Frontier or its predecessor entities concerning the joint use relationship between the Parties since the effective date of the Agreement.

Response:

**REQUEST FOR PRODUCTION NO. 4:**

All joint use agreements, pole license agreements, pole attachment agreements, and pole rental agreements entered into by AEP Ohio with entities that have, or had, attachments on poles owned by AEP Ohio, including any amendments to those agreements, that are currently operative or that were entered into since 2000.

Response:

**REQUEST FOR PRODUCTION NO. 5:**

All documents concerning any change, proposed change, or contemplated change in the annual rental rates to be charged Frontier since the effective date of the Agreement.

Response:

**REQUEST FOR PRODUCTION NO. 6:**

All documents concerning calculations and data used or considered by AEP Ohio to calculate the annual compensation sought from or charged to Frontier since the effective date of the Agreement, including, but not limited to, copies of all invoices sent by AEP Ohio to Frontier.

Response:

**REQUEST FOR PRODUCTION NO. 7:**

All documents concerning AEP Ohio's annual pole costs for 2010, 2011, 2012, 2013 and any other month or year for which AEP Ohio seeks to be compensated, including, but not limited to, documents concerning AEP Ohio's methodology or input values for calculating such annual pole costs or method of accounting or tracking costs for poles owned by AEP Ohio during such time periods.

Response:

**REQUEST FOR PRODUCTION NO. 8:**

All documents exchanged between AEP Ohio and the Ohio Public Utilities Commission or its staff, subdivisions, bureaus or related agencies or between AEP Ohio and the Federal Communications Commission or its staff, subdivisions, bureaus or related agencies concerning the calculation of pole costs or pole attachment compensation for 2010, 2011, 2012, 2013, and as applicable for any other month or year for which AEP Ohio seeks to be compensated.

Response:

**REQUEST FOR PRODUCTION NO. 9:**

All documents concerning compensation received from Frontier for pole attachments since the effective date of the Agreement, including, without limitation, documents concerning AEP Ohio's profit or margin from Frontier's pole attachments.

Response:

**REQUEST FOR PRODUCTION NO. 10:**

All documents concerning AEP Ohio's contention that the Agreement is still in effect as alleged in paragraph 3 of the Answer.

Response:

**REQUEST FOR PRODUCTION NO. 11:**

All documents concerning the total number of distribution poles owned by AEP Ohio and the total number of distribution poles owned by AEP Ohio that are jointly used by Frontier and AEP Ohio as of each year-end beginning with 1990.

Response:

**REQUEST FOR PRODUCTION NO. 12:**

All documents concerning the total number of distribution poles owned by Frontier and the total number of distribution poles owned by Frontier that are jointly used by Frontier and AEP Ohio as of each year-end beginning with 1990.

Response:

**REQUEST FOR PRODUCTION NO. 13:**

All documents concerning any changes in the Parties' relative ownership of joint use poles since 1990.

Response:

**REQUEST FOR PRODUCTION NO. 14:**

All documents concerning negotiations between AEP Ohio and Frontier for a new joint use agreement or a new joint use rental rate since the effective date of the Agreement.

Response:

**REQUEST FOR PRODUCTION NO. 15:**

All documents concerning the average height of AEP Ohio's distribution poles as of year-end 2010, year-end 2011, year-end 2012, year-end 2013, and as applicable to any other month or year for which AEP Ohio seeks compensation.

Response:

**REQUEST FOR PRODUCTION NO. 16:**

All documents concerning the average number of attaching entities (including AEP Ohio, Frontier, telecommunications carriers, cable operators, municipalities, private entities, or any other attaching entities) on AEP Ohio's distribution poles as of year-end 2010, year-end 2011, year-end 2012, year-end 2013, and as applicable to any other month or year for which AEP Ohio seeks compensation.

Response:

**REQUEST FOR PRODUCTION NO. 17:**

For each entity that had facilities attached to, or reserved space on, a distribution pole owned by AEP Ohio as of year-end 2010, year-end 2011, year-end 2012, year-end 2013, and as applicable to any other month or year for which AEP Ohio seeks compensation, all documents

concerning (1) the number of AEP Ohio's distribution poles containing its attachments, (2) the average number of attachments per pole, (3) the average amount of space occupied by or reserved for such attachments, (4) the annual cost incurred by AEP Ohio because of the attachment or reservation of space, (5) the amount of make-ready charged and paid, (6) the amount of pole attachment rent charged to, and the amount paid, (7) the manner in which the amount of pole attachment rent charged was calculated, and (8) whether pole attachment rent was charged or paid on a "per pole" or "per attachment" basis.

Response:

**REQUEST FOR PRODUCTION NO. 18:**

All documents concerning the space or average space occupied by each Party on a joint use pole and any changes to the space or average space occupied by each Party on a joint use pole since 1990.

Response:

**REQUEST FOR PRODUCTION NO. 19:**

All documents concerning inventories or audits of poles owned by AEP Ohio since 1990.

Response:

**REQUEST FOR PRODUCTION NO. 20:**

All documents concerning the pole attachment compensation paid by Frontier for its 2012 attachments to AEP Ohio's poles, including the \$6.07 per pole rental rate calculation used by Frontier to determine that compensation.

Response:

**REQUEST FOR PRODUCTION NO. 21:**

All documents provided to, exchanged with, prepared for, or prepared by any testifying expert witness in this Lawsuit.

Response:

**REQUEST FOR PRODUCTION NO. 22:**

All reports and statements of any expert whose opinion you intend to offer at trial in this Lawsuit.

Response:

**REQUEST FOR PRODUCTION NO. 23:**

All written or recorded statements obtained from any employee, former employee, contractor, former contractor, representative, or former representative of AEP Ohio concerning the subject matter of this Lawsuit.

Response:

**REQUEST FOR PRODUCTION NO. 24:**

All written or recorded statements obtained from any employee, former employee, contractor, former contractor, representative, or former representative of Frontier concerning the subject matter of this Lawsuit.

Response:

**REQUEST FOR PRODUCTION NO. 25:**

All documents that you intend to introduce or use during any deposition, at any hearing, or at trial in this Lawsuit, including, without limitation, any demonstrative exhibits.

Response:

**REQUEST FOR PRODUCTION NO. 26:**

All documents that you or your attorneys reviewed or consulted in preparing AEP Ohio's responses to discovery requests served by Frontier in this Lawsuit.

Response:

**REQUEST FOR PRODUCTION NO. 27:**

All documents concerning AEP Ohio's defenses to Frontier's Complaint.

Response:

**REQUEST FOR PRODUCTION NO. 28:**

All AEP Ohio continuing property records, financial records, and annual reports for 2010, 2011, 2012, 2013 and for any other year for which AEP Ohio seeks compensation, including, but not limited to, AEP Ohio's FERC Form 1 or its equivalent.

Response:

**REQUEST FOR PRODUCTION NO. 29:**

All documents concerning the calculation of the pole attachment rates that apply to Frontier's attachments to AEP Ohio's poles for 2011, 2012, 2013, and for any other month or year for which AEP Ohio seeks to be compensated, using the Federal Communications Commission's New Telecom Rate Formula (see 47 C.F.R. § 1.1409(e)(2)) using year-end data from 2010, 2011, 2012, 2013, and as applicable to any other month or year for which AEP Ohio seeks compensation, including, but not limited to:

- (a) Distribution Poles in Service
- (b) Average Pole Height
- (c) Usable Space on the Pole
- (d) Unusable Space on the Pole
- (e) Unusable Space Cost Sharing Allocation Factor
- (f) Average Number of Attaching Entities
- (g) Space Occupied by AEP Ohio
- (h) Space Occupied by Frontier
- (i) Net Pole Investment
- (j) Gross Pole Investment (Account 364)
- (k) Appurtenance Factor
- (l) General and Administrative Expense
- (m) Gross Plant Investment (Electric)
- (n) Gross Plant Investment (Total Plant)
- (o) Accumulated Depreciation (Account 108)
- (p) Accumulated Depreciation (Account 108) (Poles)
- (q) Accumulated Deferred Taxes 190, 281-283 (Plant)
- (r) Accumulated Deferred Taxes 190, 281-283 (Poles)
- (s) Maintenance of Overhead Lines (Account 593)
- (t) Pole Investment in Accounts 364, 365, and 369



- (u) Accumulated Depreciation (Poles) Related to Accounts 364, 365, and 369
- (v) Accumulated Deferred Taxes Related to Accounts 364, 365, and 369
- (w) Depreciation Rate for Gross Pole Investment
- (x) Taxes Other Than Income (Account 408.1)
- (y) Income Taxes Utility Operating Income (Account 409.1)
- (z) Deferred Income Taxes (Account 410.1)
- (aa) Investment Tax Credit Adjustments (Account 411.4)
- (bb) Deferred Income Taxes (Account 411.1)
- (cc) Applicable Rate of Return

Response:

Respectfully submitted,

**FRONTIER NORTH INC.**

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Motions for pro hac vice admissions to be filed

Dated: June 6, 2014

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was provided to the person listed below by electronic service and U.S. mail, postage prepaid, on June 6, 2014:

Christen M. Blend  
Daniel R. Conway  
Porter Wright Morris & Arthur, LLP  
41 South High Street, 30th Floor  
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(614) 716-2950  
[stnourse@aep.com](mailto:stnourse@aep.com)

/s/ Michele L. Noble  
Michele L. Noble

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of	)	
Frontier North Inc.,	)	
	)	
Complainant,	)	Case No. 14-0759-AU-CSS
	)	
v.	)	
	)	
Ohio Power Company,	)	
	)	
Respondent.	)	

**AFFIDAVIT OF CHRISTEN M. BLEND**

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF FRANKLIN        )

Christen M. Blend, being duly cautioned and sworn, states as follows:

1.     My name is Christen M. Blend. I am more than 18 years of age and I am competent to testify to the matters set forth herein from my personal knowledge.
2.     I make this affidavit in support of the Motion for Protective Order of Respondent Ohio Power Company.
3.     I am counsel of record for Ohio Power Company ("AEP Ohio") in the above-captioned proceeding.
4.     On June 6, 2014, Michele Noble, counsel for Complainant Frontier North, Inc. ("Frontier") served Complainant's First Set of Interrogatories and Requests for Production of Documents to Respondent ("Frontier's Requests") upon me by e-mail.
5.     I called Ms. Noble regarding Frontier's Requests on June 18, 2014, and we spoke by telephone on June 24, 2014.



6. During our June 24, 2014 telephone call, I advised to Ms. Noble that AEP Ohio believes that Frontier's Requests are expansive and seek information and documents that are either irrelevant or the production of which to Frontier would be inappropriate. I also noted that expense and inconvenience of discovery may prove to be unnecessary if the parties are able to resolve their dispute at the upcoming settlement conference, which is scheduled for August 12, 2014.


7. Consequently, I requested on behalf of AEP Ohio that Frontier agree to extend the deadline by which AEP Ohio must respond to Frontier's Requests until after the settlement conference to avoid the potentially undue burden and expense of responding to them.

8. Frontier agreed to provide AEP Ohio a three-week extension to respond to discovery. In a June 24, 2014 email to me, Ms. Noble further stated that Frontier would agree stay all discovery until after the settlement conference if AEP Ohio would agree to provide Frontier with: (1) copies of AEP Ohio's joint use and pole attachment agreements with other companies in Ohio, and (2) a "detailed rate calculation for each of the 2011, 2012 and 2013 rental years showing the calculation methodology of AEP [Ohio]'s per pole rental rate using the FCC's new telecom methodology," including in each rate calculation "each and every input used in the calculation and identify[ing] their source."

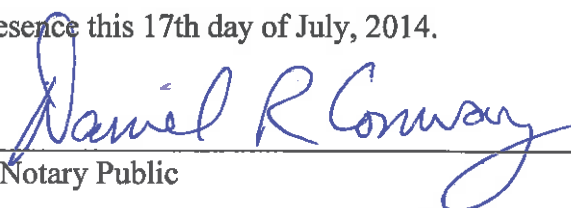
9. I responded to Ms. Noble's email on June 26, 2014, advising her that although AEP Ohio was willing to provide the information regarding its rate calculations if Frontier would agree to provide the same, AEP Ohio would not provide copies of AEP Ohio's joint use and pole attachment agreements with other entities. I also requested that she let me know whether Frontier would agree to that proposal.

10. On July 14, 2014, Ms. Noble sent me an email responding to AEP Ohio's June 26, 2014 proposal. In that email, she indicated that Frontier will not agree to stay discovery until after the settlement conference unless AEP Ohio provides the joint use and pole attachment agreements to Frontier.

Further affiant sayeth naught.

  
Christen M. Blend

Sworn to before me and subscribed in my presence this 17th day of July, 2014.

  
Notary Public

DANIEL R. CONWAY, Notary Public  
NOTARY PUBLIC - STATE OF OHIO  
LIFETIME COMMISSION

COLUMBUS/1729417v.1

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

**Commission of Ohio Docketing Information System on**

**7/17/2014 4:20:36 PM**

**in**

**Case No(s). 14-0759-AU-CSS**

Summary: Motion for Protective Order of Respondent Ohio Power Company electronically filed by Ms. Christen M. Blend on behalf of Ohio Power Company