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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of)
Frontier North Inc.to Make Revisions to)
Existing Pole and Anchor Attachments and)
Conduit Occupancy Accommodations Tariff)

Case No. 15-972-TP-ATA

FRONTIER NORTH INC.'S RESPONSE TO THE
COMMENTS OF THE DAYTON POWER AND LIGHT COMPANY

I. Introduction

Pursuant to the Public Utilities Commission of Ohio's Entry dated August 7, 2015, Frontier North Inc. ("Frontier") respectfully submits its Response to the Comments of The Dayton Power and Light Company ("DPL") in the above-captioned matter. As explained below, DPL voluntarily allowed the parties' prior joint use agreement to expire, Frontier and DPL continue to engage in good faith negotiations on a new joint use agreement, and Frontier has properly limited its pole attachment and conduit occupancy accommodations tariff to non-utility attaching entities under Ohio Revised Code § 4905.71 or Ohio Administrative Code § 4901:1-3-04(A).

II. Background Information

Although irrelevant to the Commission's consideration of Frontier's Application, Frontier agrees with DPL that the parties entered their previous joint use agreement on July 1, 1969, that DPL provided a notice of termination under that agreement on September 15, 2011 (after Frontier attempted to revoke its own termination notice), that the parties have engaged in good faith negotiations for a new agreement, and that the previous agreement terminated as to the

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placement of any new attachments on the parties' poles on July 1, 2014.¹ But Frontier notes that it unsuccessfully offered to delay the termination of the old joint use agreement until the parties negotiated a new agreement. Moreover, contrary to the assertion in DPL's Comments, the parties' good faith negotiations for a new joint use agreement remain ongoing with the next negotiation session scheduled for this Wednesday, August 26.

III. Frontier's Pole Attachment and Conduit Occupancy Accommodations Tariff Properly Applies Only to Non-Utilities

Public utilities must provide all attaching entities, whether non-utilities or other utilities, to "nondiscriminatory access to any pole, duct, conduit, or right of way..."² However, as detailed below, the rates, terms and conditions for such access by non-utilities are to be set forth in utility tariffs.³ In contrast, the rates, terms and conditions for such access between utilities are to be determined in negotiated agreements,⁴ and if the parties disagree, in a complaint proceeding.⁵ The same nondiscriminatory rate formulas apply to both non-utilities and utilities,⁶ but the method of implementation is different.

Here, DPL notes that Frontier's tariff applies to non-utility attaching entities, such as cable television systems and competitive telecommunications carriers, but not to utilities such as DPL. It then incorrectly asserts that this limitation constitutes impermissible discrimination under Ohio law. In making this assertion, DPL fails to recognize that Ohio maintains two separate pole attachment statutes, one for non-utility attachments, which requires the pole owner

¹ *In the Matter of the Application of Frontier North Inc. to Make Revisions to Existing Pole and Anchor Attachments and Conduit Occupancy Accommodations Tariff*, Case No. 15-972-TP-ATA, Motion and Memorandum of Support for Intervention and Comments of The Dayton Power and Light Company, pp. 1-2 (June 25, 2015).

² Ohio Admin. Code § 4901:1-3-03(A)(1).

³ Ohio Admin. Code § 4901:1-3-04(A).

⁴ Ohio Admin. Code § 4901:1-3-04(B).

⁵ Ohio Admin. Code § 4901:1-3-05. A non-utility may also bring a complaint proceeding. *Id.*

⁶ Ohio Admin. Code § 4901:1-3-04(D).

to implement an approved tariff, and one for utility attachments, which only allows utilities to seek relief before the Commission when their negotiations reach impasse.

Under Ohio Revised Code § 4905.71, a utility pole owner must implement a Commission-approved tariff setting forth the pole attachment rates, terms, and conditions that apply to non-utility attachers. Accordingly, the Commission's pole attachment regulations expressly state that any such tariff only applies to non-utility attachers: "Rates, terms, and conditions for nondiscriminatory access to poles, ducts, conduits, and right-of-way of a telephone company or electric light company by an entity that is *not* a public utility are established through tariffs pursuant to section 4905.71 of the Revised Code."⁷

In contrast, DPL, as a public utility, maintains its right to access on Frontier's poles under Ohio Revised Code § 4905.51. This statutory provision only allows attaching utilities to seek relief from the Commission when their rate negotiations with pole-owning utilities reach impasse. Consistent with this statutory provision, the Commission's pole attachment regulations state that the "[r]ates, terms, and conditions for nondiscriminatory access to public utility poles, ducts, conduits, and rights-of-way by another public utility shall be established through negotiated agreements."⁸ In addition, the regulations provide that "[r]elative to joint use agreements, the default rates may be negotiated or determined by the Commission in the context of a complaint case."⁹

Frontier has properly limited its pole attachment and conduit occupancy accommodations tariff to non-utility attaching entities, and DPL has no basis under Ohio law to complain about that limitation or to demand the limitation's removal. Instead, if DPL believes that its

⁷ Ohio Admin. Code § 4901:1-3-04(A) (emphasis added).

⁸ Ohio Admin. Code § 4901:1-3-04(B).

⁹ Ohio Admin. Code § 4901:1-3-04(D)(5).

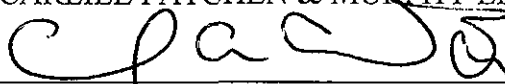
negotiations with Frontier on a new joint use agreement have reached impasse, then it must seek relief from the Commission by initiating a complaint proceeding.

IV. Conclusion

DPL's proposed revisions to Frontier's pole attachment and conduit occupancy tariff are contrary to Ohio law and the Commission's pole attachment regulations. Consequently, the Commission should reject them and approve Frontier's application as submitted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Response of Frontier North Inc.* was served upon the following parties of record this 24th day of August 2015, *via* first class U.S. mail, postage prepaid.



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On Behalf of the Public Utilities Commission of Ohio