BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to Change Their Pole Attachment Tariffs	**)** **)** **)** **)** **)**	**Case No. 15-975-EL-ATA**

RESPONSE OF OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY TO MOTION TO REPLY *INSTANTER* AND MOTION FOR EXPEDITED RULING OF THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION

Pursuant to the Attorney Examiner's Entry dated August 7, 2015, Ohio Edison Company ("OE"), The Cleveland Electric Illuminating Company ("CEI"), and The Toledo Edison Company ("TE") (collectively, the "Companies"), respectfully submitted a Response to Objections of The Ohio Cable Telecommunications Association ("OCTA") on August 24, 2015. Nearly a month later, on September 18, 2015, OCTA filed with the Public Utilities Commission of Ohio ("Commission") yet another request for a departure from the procedural schedule established in this proceeding (The Ohio Cable Telecommunications Association's Motion for Leave to File a Reply Instanter and Motion for Expedited Ruling of or "Motion"), and moreover asks the Commission for an expedited ruling on its Motion in an apparent effort to limit the Companies' ability to respond. For the reasons set forth below, the Companies oppose OCTA's latest attempt to delay the regulatory process in this case.

I. THE OCTA'S MOTION IS PROCEDURALLY UNSOUND.

The OCTA claims its Motion is "akin to the reply memorandum under the motion cycle set forth in Rule 4901-1-12, Ohio Administrative Code." (Motion at p.5) However, Rule 4901-1-12 is inapplicable to the matter at hand. The Companies filed an *Application* to amend their respective

tariffs under the Commission's established procedural schedule—not a *Motion* to which parties may file memoranda and replies pursuant to the cited Rule. If any analogy is applicable, OCTA's Motion is more akin to a request to file Surrebuttal testimony, which is rarely permitted in Commission proceedings even as part of evidentiary hearings. In any event, OCTA's request remains unsupported by good cause.

Moreover, OCTA improperly seeks to "have the last word" in the record. OCTA has argued that the Companies bear the burden of proof in this proceeding. (OCTA Objections at p.8). As such, the Companies are entitled to have the last reply filed in the record. Yet, as more fully explained below, OCTA's Motion fails to allege with specificity that the Companies' Response provided incorrect facts or raised new issues for the first time; therefore, surrebuttal or reply *instanter* is unwarranted.

Finally, the Companies take issue with OCTA's assertion that it "did not hear back" from the Companies as to whether they objected to a ruling without the filing of memoranda. (Motion at p.6). The fact is OCTA took three and a half weeks after the filing of the Companies' Response to seek the request herein, but then provided the Companies' counsel only three and a half hours between contact and filing on a Friday afternoon when OCTA's counsel knew, or reasonably should have known, that the Companies' counsel was unavailable. In any event, the Companies were not given a reasonable opportunity to respond to OCTA. Notably, OCTA's *Memorandum in Support* gives no reason whatsoever why it needs an expedited ruling on its Motion. It only circularly states elsewhere in its Motion that it requests an expedited ruling so that its motion can be considered expeditiously. (Motion at p. 1).

II. THE OCTA'S MOTION PRESENTS NO NEW FACTS AND FAILS TO IDENTIFY THAT NEW ISSUES WERE RAISED IN THE COMPANIES' RESPONSE.

Although the OCTA claims its Motion is filed in order to present the Commission with facts and to respond to the issues and facts raised in the Companies' Response, its Motion is nothing more than a regurgitation of its Objections. There is no new data about monthly bill impacts to its members' customers, no new facts about over-lashing, no new legal arguments to support its concept of gradualism, and no support for not using the 2014 account data in formula rates as ordered by the Commission. For example, despite the Companies' arguments in response to the issues raised in OCTA's Objections, OCTA again fails to cite FCC guidance on whether and how the formula rates should use anything other than the reported FERC Form 1 Account data in annual rates—it just lists the same historic values in a reformatted table and states that it stands by its position. Indeed, OCTA elsewhere finds fault with an EDU for *not* using the 2014 FERC Form 1 2014 account data.[1] Clearly the OCTA feels no compunction against inconsistent litigation positions in its unsupportable attempt to forestall implementation of the formula rates for which it advocated.

For another example, OCTA does not address the data that the Companies explained was provided in response to OCTA's Request for Production. It simply reiterates the same statements claiming a lack of direct, probative investment in appurtenances that it made earlier. The fact that is not in dispute is that the Companies excluded <u>all</u> investment in appurtenances from its calculation, and gave OCTA the evidence to prove it. It also remains undisputed by OCTA that

[1] 15-971-EL-ATA, in the Matter of the Application of Dayton Power and Light Company to Amend its Pole Attachment Tariff, OCTA Objections at p.4.

there is substantial direct, probative evidence supporting calculation of the CEI appurtenance factor.

Equally inappropriate is OCTA's suggestion that the Commission convene an "informal conference" between the Companies and OCTA because the Companies "failed to accept" its objections. In reality, OCTA is requesting an off-the-record attempt to persuade Staff at an informal conference instead of filing its "surrebuttal" in the record. Because OCTA has raised no new facts, issues, or arguments, any such informal discussion conference will be equally unproductive as OCTA's improper "surrebuttal" type comments.

Moreover, OCTA's insinuation that the Staff lacks the expertise to evaluate and advise the Commission on the basis of the record before it is without merit. The Commission employs a fully staffed Electric Safety Monitoring and Enforcement Division that conducts uniform safety and reliability audits of the Companies' electric distribution utility systems in Ohio. The Companies and Staff address the development and implementation of construction standards that balance the needs of electric customers and the public at large while ensuring safe and reliable service. The Commission considered the Staff's knowledge of the issues when it established the procedural schedule in this case—if the Commission believed it required a procedural schedule for further input from intervenors, it would have scheduled for it. Moreover, the Commission Staff can convene an informal conference any time after the new tariffs are made effective to address any issues they deem appropriate.

CONCLUSION

For the reasons set forth herein, the Electric Utilities respectfully request that the Commission deny OCTA's Motion and approve the Company's amended tariffs as proposed by the Companies.

Respectfully submitted this 25th day of September, 2015,

On Behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company,

/s/ James W. Burk

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Certificate of Service

I hereby certify that a copy of the foregoing has been served this 25th day of September, 2015 by e-mail, as noted below, on the parties listed below.

/s/ Robert M. Endris
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Summary: Memorandum Memorandum Contra of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to OCTA Reply Instanter electronically filed by Mr. Robert M. Endris on behalf of Burk, James W. Mr.