

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Duke)
Energy Ohio, Inc. to Amend its Pole) Case No. 15-965-EL-ATA
Attachment and Conduit Occupancy Tariff)
P.U.C.O. No. 1.)

ENTRY

The Commission finds:

- (1) Duke Energy Ohio, Inc. (Duke) is an electric distribution utility as defined in R.C. 4928.01(A)(6) and a public utility as defined in R.C. 4905.02, and, as such is subject to the jurisdiction of this Commission.
- (2) On July 30, 2014, as revised on October 15, 2014, the Commission adopted new administrative rules regarding access to poles, ducts, conduits, and rights-of-way of public utilities in Case No. 13-579-TP-ORD (13-579 or Rule Making Case). *In re the Adoption of Chapter 4901:1-3, Ohio Administrative Code, Concerning Access to Poles, Ducts, Conduits, and Rights-of-Way by Public Utilities*, Case No. 13-579-TP-ORD, Finding and Order (Jul. 30, 2014); Entry on Rehearing (Oct. 15, 2014). The new rules became effective in January 8, 2015.
- (3) In the Rule Making Case, on February 25, 2015, as revised on April 22, 2015, the Commission ordered all public utility pole owners in Ohio to file the appropriate company-specific tariff amendment application, including the applicable calculations based on 2014 data. The Commission set September 1, 2015, as the automatic approval date for the tariff amendments and August 1, 2015, as the deadline for filing motions to intervene and objections in the tariff application dockets.¹
- (4) On May 15, 2015, as amended on July 28, 2015, Duke filed its tariff amendment application in this docket.

¹ As August 1, 2015 was a Saturday, objections and motions to intervene were due by close of business on August 3, 2015.

- (5) On June 26, 2015, the Ohio Cable Telecommunications Association (OCTA) filed a motion to intervene in this proceeding.
- (6) On August 3, 2015, OCTA filed objections relative to Duke's tariff amendment application, as further delineated in Finding (12).
- (7) On August 24, 2015, Duke filed a response to OCTA's objections (Duke's Response).
- (8) Pursuant to the attorney examiner Entry of August 7, 2015, Duke's tariff amendment application was suspended and removed from the automatic approval process. Additionally, the motion to intervene filed by OCTA was granted.
- (9) On September 18, 2015, OCTA filed a motion for leave to file a reply and a request for an expedited ruling. OCTA explains that its motion is appropriate in order ensure that the Commission has further information upon which to consider certain disputed issues in this proceeding. OCTA also offers a proposal for the next procedural steps in this case. Specifically, OCTA proposes that an informal conference be scheduled so that Duke, OCTA, and the Commission Staff can discuss outstanding issues with the intent of avoiding a hearing.
- (10) On September 25, 2015, Duke filed a memorandum contra the motion for leave to file a reply.
- (11) The Commission determines that OCTA's September 18, 2015 motion for leave to file a reply should be denied. The Commission notes that the procedural schedule set forth in the Entries of February 25, 2015, and April 22, 2015, did not contemplate the filing of replies to the responses to objections. Additionally, the Commission finds that OCTA's reply fails to raise additional arguments of significance for the Commission's consideration. Finally, the Commission does not believe that an informal conference will be productive at this time.
- (12) Among the delineated objections filed on August 3, 2015, OCTA objects to Duke's tariff language concerning separate agreements not included in the tariff; payments; access to pole attachments and conduit occupancy; rearrangement of attachments; removal, rearrangement, and changes due to

interference, safety, or default; discontinuation and removal of company facilities; and definitions of "wireline attachment" and "overlashing".

- (13) In response to the above issues addressed by OCTA in its objections, Duke states that the application filed in this docket was specific to the calculation of rates under the new rate formula adopted as part of Ohio Adm.Code 4901:1-3-04. Duke contends that if OCTA wanted the Commission to order pole owners to modify their tariff to address all of the matters covered in the entirety of the newly adopted Ohio Adm.Code Chapter 4901:1-3, OCTA should have filed for rehearing of the Commission's Entry, within 30 days after its issuance on February 25, 2015. Duke does not dispute that there may be differences between the terms and conditions laid out in its tariff and terms and conditions set forth in the new chapter of administrative rules. Duke asserts that, at an appropriate time, it will seek to amend the tariff to correspond to the rules and OCTA will have its opportunity to comment upon those amendments. In the meantime, Duke concedes that the rules certainly govern where a difference exists. (Duke Response at 7.)
- (14) In the Rule Making Case, the Commission's February 25, 2015, and April 22, 2015 Entries anticipated that the pole owners would file tariffs that were consistent with all of the rules adopted and not just the rate formula rule. As discussed above, Duke did not file a substantive response for specific objections raised by OCTA due to the belief that the issues raised extend beyond the scope of the requisite tariff filings. *At this time, Duke will be afforded the opportunity to file a substantive response to the objections delineated above not already addressed in its August 24, 2015 response.* The supplemental response should be filed on or before February 29, 2016.

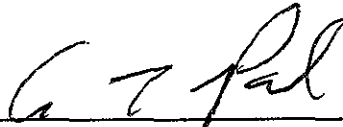
It is, therefore,

ORDERED, That Duke file its supplemental responses consistent with Finding (14). It is, further,

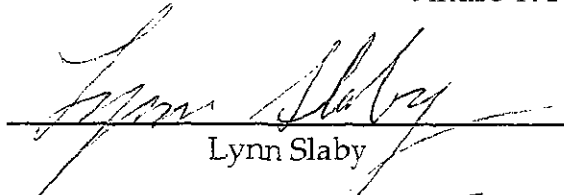
ORDERED, That OCTA's motion for leave to file a reply be denied consistent with Finding (11). It is, further,

ORDERED, That a copy of this Entry be served upon all parties of record.

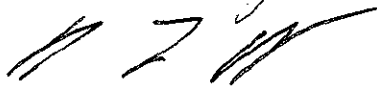
THE PUBLIC UTILITIES COMMISSION OF OHIO



Andre T. Porter, Chairman



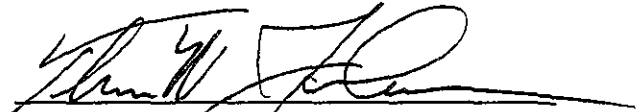
Lynn Slaby



Asim Z. Haque



M. Beth Trombold

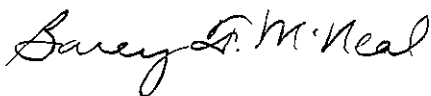


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Barcy F. McNeal
Secretary