THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF THE 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

FINDING AND ORDER

Entered in the Journal on September 7, 2016

I. SUMMARY

{¶ 1} The Commission finds that The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company should file their final pole attachment tariffs consistent with the determinations set forth in this Finding and Order.

II. APPLICABLE LAW

{¶ 2} R.C. 4905.51 and 4905.71 authorize the Commission to determine the reasonable terms, conditions, and charges that a public utility may impose upon any person or entity seeking to attach any wire, cable, facility, or apparatus to a public utility's poles, pedestals, conduit space, or right-of-way.

III. PROCEDURAL BACKGROUND

{¶ 3} On July 30, 2014, as revised on October 15, 2014, the Commission in Case No. 13-579-TP-ORD (Pole Attachment Rules 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*, adopted new administrative rules regarding access to poles, ducts, conduits, and rights-of-way of the public utilities (Pole Attachment Rules). The new rules became effective in January 8, 2015. On February 25, 2015, as revised on April 22, 2015, the Commission, in 13-579 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 automatic approval date for the pole attachment

amendments was extended until September 1, 2015. At the same time, the Commission established August 1, 2015, as the deadline for filing motions to intervene and objections in the tariff application dockets.

{¶ 4} On May 15, 2015, as amended on August 3, 2015, The Ohio Edison (Ohio Edison), The Cleveland Electric Illuminating (Cleveland Electric), and The Toledo Edison (Toledo Edison) (collectively, "First Energy Companies"), each filed a tariff amendment application in this docket.

{¶ 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 First Energy Companies' tariff amendment applications.

{¶ 7} Pursuant to the attorney examiner Entry of August 7, 2015, the tariff amendment applications were suspended and removed from the automatic approval process. Additionally, the motion to intervene filed by OCTA was granted.

{¶ 8} On August 24, 2015, First Energy Companies filed a response to OCTA's objections.

{¶ 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 First Energy Companies, OCTA and the Commission Staff (Staff) can discuss outstanding issues with the intent of avoiding a hearing.

{¶ 10} On September 25, 2015, First Energy Companies filed a memorandum contra the motion for leave to file a reply.

{¶ 11} In regard to OCTA's September 18, 2015, motion for leave to file a reply, the Commission finds that the request is 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.

IV. DISCUSSION

A. *Calculation of Pole Attachment Rates Based on Net Investment in Pole Plant Presumption*

{¶ 12} OCTA objects to Ohio Edison's and Toledo Edison's (Companies) pole attachment rates because it contends that the calculations have deviated from the Commission's accepted formula without adequate justification.

{¶ 13} According to OCTA, the Federal Communications Commission (FCC) has adopted a presumption that 15 percent of the net investment in pole plant should be deducted to account for non-pole-related items that are of no value to the attacher, such as the cross-arms used for power lines. OCTA asserts that this presumption can only be rebutted by the presentation of probative, direct evidence regarding the actual investment in non-pole-related appurtenances. While Ohio Edison uses an appurtenance factor of 0.8762 and Toledo Edison uses an appurtenance factor of 0.9048, instead of 0.85, to adjust the net investment in pole plant figure, OCTA claims that Ohio Edison's and Toledo Edison's explanation is inadequate to justify deviating from this presumption and that without proof of actual investment, it is impossible to determine if the Companies' rates fairly allocate the costs that may be shared with attachers. Therefore, OCTA contends that Ohio Edison and Toledo Edison have not properly rebutted the 15 percent presumption. (OCTA Objections at 3-6.)

{¶ 14} Ohio Edison and Toledo Edison claim that while OCTA acknowledges that the FCC considers the 15 percent presumption to be rebuttable, it simply fails to address all of the evidence provided by the Companies in response to OCTA's discovery requests. Specifically, Ohio Edison and Toledo Edison contend that the Companies not only provided a description of the calculation but they also provided supporting documentation from the Companies' continuing property records. Altogether, the Companies claim they provided OCTA with nearly two thousand pages of "proof of actual investment" including a separately detailed computation supporting the specific appurtenance factors.

{¶ 15} The Companies claim that under FCC regulations, an attaching party may request information from a utility regarding the calculation of rental rates including the appurtenance factor used in invoicing for pole attachments, and if a dispute remains unresolved, the attaching party can submit a complaint to the FCC. In such a complaint proceeding, the Companies aver that the 15 percent and 5 percent ratios for electric and telephone companies, respectively, "shall be rebuttable presumptions to be utilized in the event no party chooses to present probative, direct evidence on the actual investment in non-pole-related appurtenances." Notably, the Companies contend that the OCTA has not alleged that the Companies have refused to provide requested information nor alleged that the Companies' calculation of the appurtenance factors is flawed. Instead, OCTA merely asserts that the Ohio Edison and Toledo Edison specific factors should be rejected for lack of proof.

{¶ 16} The Companies contend that OCTA's lack of objection to Cleveland Electric's use of a calculated 18 percent appurtenance factor, instead of the presumptive 15 percent, is also notable. In particular, the Companies note that they used exactly the same methodology to calculate all three companies' specific factors, and provided exactly the same supporting documentation in response to discovery, yet OCTA objects to Ohio Edison's and Toledo Edison's calculation but finds Cleveland Electric's specific factor to be acceptable. The Companies maintain that they presented probative, direct

evidence to OCTA proving the actual investment supporting specific appurtenance factors and applied this methodology consistently across the three operating companies in the same manner it follows in other states under FCC jurisdiction. Therefore, the Companies contend, OCTA's objection to the Companies' appurtenance factors is specious and should be rejected. (Response at 1-3.)

{¶ 17} The Commission finds that Ohio Edison and Toledo Edison are not required to modify their pole attachment rate calculations to incorporate the default presumption that 15 percent of the investment in Federal Energy Regulatory Commission (FERC) Account 364 is due to appurtenances. The Commission has reviewed information contained in the Companies' continuing property records that were provided in response to OCTA's interrogatories and finds that the documentation provides enough detail to determine the actual percentage of appurtenance investment contained in FERC Account 364. As such, Ohio Edison and Toledo Edison have provided probative, direct evidence on the actual investment in non-pole-related appurtenances and are permitted to use the proposed company-specific appurtenance factors in their calculations.

B. *Calculation of Pole Attachment Rate Based on Administrative Carrying Charge Factor*

{¶ 18} With respect to Cleveland Electric, OCTA objects to the proposed rate because the administrative carrying charge was extraordinarily high in 2014 and, thus, the proposed pole attachment rate is inflated.

{¶ 19} OCTA explains that in using the Commission's adopted pole attachment formula, the total administrative and general expenses are divided by net investment in total plant to calculate the administrative carrying charge element. OCTA claims that FERC Form 1 reports demonstrate Cleveland Electric's administrative expenses were unusually high in 2014. OCTA claims that in 2014, Cleveland Electric's administrative expenses were $67,853,261. OCTA argues that this value represents a dramatic increase

over the 2013 reported administrative expenses of $2,987,757, and a significant increase over the 2012 reported administrative expenses of $54,786,003 and 2011 reported administrative expenses of $44,958,593. OCTA argues that it would be unfair to enter a tariff establishing a pole attachment rate based upon unusually high administrative expenses. OCTA suggests using a simple average of the administrative carrying charge over the last four years to help balance out these anomalies. (OCTA Objections at 5.)

{¶ 20} Similarly, with respect to Toledo Edison, OCTA objects to the company's proposed rate because the administrative carrying charge was extraordinarily high in 2014 and, thus, the proposed pole attachment rate is inflated. OCTA contends that FERC Form 1 reports demonstrate Toledo Edison's administrative expenses were unusually high in 2014. OCTA claims that in 2014, Toledo Edison's administrative expenses were $45,459,181. OCTA argues that this value represents a dramatic increase over the 2013 reported administrative expenses of $2,355,805, and a significant increase over the 2012 reported administrative expenses of $37,176,396, and the 2011 reported administrative expenses of $31,023,536. OCTA argues that it would be unfair to enter a tariff establishing a pole attachment rate based upon unusually high administrative expenses. OCTA suggests using a simple average of the administrative carrying charge over the last four years to help balance out these anomalies. (OCTA Objections at 7.)

{¶ 21} Cleveland Electric and Toledo Edison contend that OCTA fails to explain how its request to average four years of administrative expenses complies with the Commission's Entry ordering all pole owners in Ohio to submit rates computed using 2014 data, nor does OCTA provide any basis to show that the 2014 expense is anomalous on a going forward basis. Cleveland Electric and Toledo Edison further contend that OCTA fails to point to any FCC authority which would suggest that the reliance on any given reported year is "unfair" and should be replaced by use of a four-year average.

{¶ 22} Cleveland Electric and Toledo Edison argue that OCTA does not allege malfeasance, imprudence, or anything improper on the part of the Companies; instead it merely seeks a rate lower than that produced by a straightforward implementation of the formula ordered by to be utilized in this proceeding. Cleveland Electric and Toledo Edison contend that OCTA's recommended approach could leave parties arguing every year that the instant year's reported numbers yield an "unfair" result. Further, Cleveland Electric and Toledo Edison argue that OCTA's recommendation also would increase the potential for dispute instead of reducing it. (Response at 3-4.)

{¶ 23} The Commission finds that Cleveland Electric's and Toledo Edison's use of 2014 FERC Form 1 administrative expense data is acceptable and should be used in the administrative factor for the pole attachment carrying charge rate. The Commission agrees with Cleveland Electric and Toledo Edison that using a historical average of administrative expense is contrary to the purpose of having a formula rate and does not comport with the required filing of rates based on 2014 data. If 2014 administrative expenses are not indicative of administrative expenses on a going forward basis, the Commission notes that subsequent filings using 2015 and later data will ultimately balance out any anomaly in the 2014 data.

C. *Implementation of Rate Gradualism*

{¶ 24} OCTA proposes that if the Commission ultimately determines that the correct pole attachment rate for First Energy Companies results in more than a 20 percent increase in its rate, the Commission should apply the concept of rate gradualism or rate continuity in this proceeding. OCTA contends that for decades, the Commission has applied the principle of gradualism in order to avoid hardships to suppliers and end users when a sudden, substantial rate increase would otherwise disrupt demand. OCTA maintains that the Ohio General Assembly granted general supervisory powers to the Commission to protect the public. OCTA avers that the Commission has authorized appropriate phase-in plans by using this supervisory authority under R.C. 4905.04 to avoid rate shock.

{¶ 25} OCTA believes the combination of the following three reasons requires the Commission to apply the equitable concept of gradualism as to the proposed pole attachment rate. First, the amount of the increase in the pole attachment rate proposed by First Energy Companies is extremely large. Second, the increase in the pole attachment rate is a business expense that is neither by-passable nor avoidable; thus, OCTA members will pay the rate increase and pass it along to the end users. Third, there is no evidence that the increase is commercially necessary. OCTA believes that the magnitude of the proposed rate increases under these circumstances and the potential disruptive impact on attaching entities and their customers warrant the application of the principle of gradualism and the establishment of a phase-in plan. OCTA further contends that a gradually implemented rate increase will not harm the utility. Accordingly, OCTA urges the Commission to establish a phase-in plan of approximately 20 percent each year until the authorized rate level is achieved. (Objections at 7-10.)

{¶ 26} First Energy Companies contend that OCTA's request for gradualism is unsupported by the record and is contrary to the Commission's previous orders. First Energy Companies argue that OCTA is simply wrong to assert that the applicants bear the burden of proof that the "increase must be implemented all at one time." In support of their position, First Energy Companies highlight that they have complied with the Commission directive that all pole owners in the state update their tariff rates using the FCC formula and 2014 data. Moreover, First Energy Companies contend that OCTA is also wrong to assert "there is no support in the record to immediately impose the full increase." (First Energy Response to Objections at 4-6.)

{¶ 27} The Commission finds that a phase-in of First Energy Companies' pole attachment rate is not appropriate in this proceeding. The Supreme Court of Ohio has determined that the Commission lacks authority to phase-in rates, such as the pole attachment rates in this case, that deprive a utility the annual revenues to which it is entitled. See *In re Columbus Southern Power Co. v. Pub. Utilities Comm. of Ohio*, 67 Ohio

St.3d 535, 620 N.E.2d 835 (Ohio 1993). While the Commission notes it now does have the limited authority pursuant to R.C. 4928.144, to phase-in Standard Service Offering (SSO) rates, this authority is distinguishable from the pole attachment rates being addressed in this case.

D. Denial of Access to Poles

{¶ 28} In regard to Ohio Edison's tariff, OCTA contends that the proposed language allows Ohio Edison, in its sole discretion, to decline access to its poles. OCTA submits that Ohio Edison's language does not appropriately recognize the existing statutory and regulatory duty to provide access to its poles or the permissible limitations on that access.

{¶ 29} OCTA argues that Ohio Edison is obligated to provide access to its poles and must do so within the parameters of the law. Specifically, OCTA contends that R.C. 4905.71 and Ohio Adm.Code 4901:1-3-03(A)(l) require Ohio Edison to provide nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by the company under rates, terms, and conditions that are just and reasonable. Moreover, OCTA asserts that access to poles may only be denied where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes as set forth in Ohio Adm.Code 4901:1-3-03(A)(l). (Objection at 11.)

{¶ 30} The Commission finds that Ohio Edison should revise its tariff consistent with Ohio Adm.Code 4901:1-3-03(A)(1) in order to properly specify the reasons for denying access to poles.

{¶ 31} Similar to the argument raised about Ohio Edison's tariff language, OCTA contends that Cleveland Electric's language also does not appropriately recognize the company's existing statutory and regulatory duty to provide access to its poles or the permissible limitations on that access. For example, First Energy points out that the proposed tariff language prohibits cable systems from attaching when the attachment

interferes with Cleveland Electric's own service requirements, "* * * or will be prejudicial to the economy, safety, or future needs of the Company's service or use of its facilities by others with prior rights to such use."

{¶ 32} Specifically, OCTA submits that Cleveland Electric is obligated to provide access to its poles and must do so within the parameters of the law. According to OCTA, R.C. 4905.71, and Ohio Adm.Code 4901:1-3-03(A)(l) require Cleveland Electric to provide nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by the utility under rates, terms, and conditions that are just and reasonable. Moreover, OCTA submits that a denial of access can only be based on certain limited reasons set forth in Ohio Adm.Code 4901:1-3-03(A)(l). (Objections at 20-21.)

{¶ 33} The Commission finds that Cleveland Electric should revise its tariff consistent with Ohio Adm.Code 4901:1-3-03(A)(1) in order to properly specify the reasons for denying access to poles.

E. Tariff Reference to a Separate Agreement

{¶ 34} OCTA contends that Ohio Edison's tariff language refers to a separate contractual agreement that may be required before any attachment applications can be accepted. Additionally, the tariff states that the contractual agreement may include, but is not limited to, the terms and conditions listed in the tariff. OCTA notes that the terms and conditions of that separate agreement are not completely spelled out in Ohio Edison's tariff. Therefore, according to OCTA, Ohio Edison's tariff includes some, but not all of the rates, terms, and conditions under which it will provide pole attachments.

{¶ 35} OCTA argues that Ohio Edison should not be allowed to mandate execution of a separate, non-negotiated agreement in order for parties who want the tariff offering to attach to its facilities. OCTA proposes that the Commission require Ohio Edison to either remove all references to the separate agreement and submit a new

tariff proposal that adds in the other rates, terms, and conditions; or add the separate agreement to the tariff as a stand-alone attachment. (OCTA Objections at 14-16.)

{¶ 36} First Energy Companies assert that the language contained in their tariffs regarding separate contractual agreements remains unchanged from the existing Commission approved tariff. Moreover, First Energy Companies contend, the statutory language that OCTA cites as prohibiting the separate agreement has not changed since the pole attachment tariff language was last approved by the Commission.

{¶ 37} First Energy Companies argue that contrary to the OCTA's objections, the separate agreements are certainly known by the parties as all of the OCTA members with attachments to Ohio Edison's poles already have such agreements covering terms and conditions that are not addressed in the new pole attachment rules. (Response to Objections at 9-10.)

{¶ 38} The Commission finds that OCTA's proposal to remove all references to the separate agreement in Ohio Edison's tariff and submit a new tariff that adds in the other rates, terms, and conditions; or add the separate agreement to the tariff as a stand-alone attachment should be denied. In reaching this determination, the Commission notes that the language in question was previously approved by this Commission in Case No. 99-1212-EL-ETP et al., *In re the Application of First Energy Corp. on Behalf of Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co. for Approval of Their Transition Plans and for Authorization to Collect Transition Revenues,* subsequent to the adoption of R.C. 4905.71. The Commission also recognizes that there have been no formal complaints filed at the Commission regarding First Energy Companies' separate agreements referenced in the tariff. Although First Energy Companies do not have to include the actual separate agreements as part of its tariffs, they should provide copies to an entity upon request. The rates, terms, and conditions incorporated into the separate agreements should be extended to all similarly situated customers purchasing service pursuant to the First Energy Companies' tariffs. The Commission notes that the

separate agreements referenced in the pole attachment tariffs must be consistent with the Commission's newly adopted pole attachment and conduit rules contained in Ohio Admin Chapter 4901:1-3. The rules take precedence to the extent that the agreements conflict with the rules. Further, the Commission points out that these same rules allow an attaching entity to file a complaint or seek arbitration if the parties are unable to reach agreement.

F. Payment Tariff Provisions

{¶ 39} OCTA claims that Ohio Edison's tariff has differing terms regarding payments that are unnecessarily confusing. For example, OCTA states that the tariff first requires an attaching entity to pay Ohio Edison the annual pole attachment charge on or before January 10 of each year or within 30 days of the invoice date, whichever is later. Elsewhere the tariff states that payments must be made on or before the date prescribed, but OCTA contends that the date is not identified as being any particular time period. A third section indicates that if Ohio Edison performs work for an attaching entity, then the full cost of the work shall be promptly paid.

{¶ 40} In addition, OCTA submits, the First Energy Companies' tariffs do not include one of the payment requirements set forth in the Commission's pole attachment rules. Specifically, OCTA notes that Ohio Adm.Code 4901:1-3-03(B)(2)(b) provides that cost estimates for make-ready work must be paid within 21 days of receipt of the estimate, unless there is a dispute or request for additional information regarding the scope of work or allocation of costs. Further, OCTA points out that receipt of a cost estimate may or may not be within the date prescribed on the invoice and that a dispute or request for additional information can extend the time for payment.

{¶ 41} Therefore, OCTA submits that the First Energy Companies' proposed tariffs should be revised to comply fully with Ohio Adm.Code 4901:1-3-03(B)(2)(b). Specifically, OCTA suggests that one uniform payment requirement be established,

requiring the attaching entity to make payment within 21 days of the date of receipt of an undisputed invoice from Ohio Edison. (Objections at 16-17, 22-23, 29-30.)

{¶ 42} OCTA submits that pursuant to Paragraph 16 of the proposed tariff, for any work that Toledo Edison performs for the Customer, the company can require a deposit and the bills "shall be due and payable within ten (10) days after presentation." Thus, OCTA argues, to the extent that Paragraph 16 applies to make-ready work performed by the Toledo Edison, it conflicts with the rules on multiple levels. Additionally, OCTA opines that the existence of multiple time frames can be confusing. Therefore, OCTA proposes that the tariff be revised to comply fully with Ohio Adm.Code 4901:1-3-03(B)(2)(b) by establishing a uniform 21-day interval for payment for all charges billed to the attaching entity. (Objections at 29-30.)

{¶ 43} OCTA also notes that pursuant to the Prorated Costs Section of Cleveland Electric's tariff, if there are multiple pole attachment applications for the same pole, the company shall equitably prorate the estimated costs of the attachments among the applicants and that the applicants "shall be bound by the Company's determination as to any such proration of costs." OCTA argues that Ohio Adm.Code 4901:1-3-03(B)(2)(c), allows an entity to dispute or request additional information regarding the scope of work or allocation of costs in a make-ready cost estimate. OCTA contends that Cleveland Electric's language directly conflicts with this new rule. OCTA proposes revising the tariff language in order to require payment within 21 days unless the Applicant submits a written dispute or request for additional information regarding the scope of the work or allocation of costs of the work. (OCTA Objections at 21-22.)

{¶ 44} First Energy Companies claim that there is no requirement that every payment term must conform to the "lone payment term provision" in the Pole Attachment Rules- namely, the payment of make-ready estimate. For example, First Energy Companies claim that there is no special reason to require the same 21-day term for payment of the annual rental invoice as for the make-ready invoice. Notably,

according to First Energy Companies, neither OCTA nor its members attached to First Energy Companies' poles has ever before complained to the Commission that these existing payment terms are confusing or have caused any problems. (Response at 11.).

{¶ 45} The Commission finds that since Ohio Edison, Cleveland Electric, and Toledo Edison include payment terms in their respective tariffs, they should also add the specific 21-day term for payment of make-ready work consistent with Ohio Adm.Code 4901:1-3-03(B)(2)(b). The Commission further finds that the First Energy Companies are not required to make all payment time frames consistent with the 21-day payment for make-ready work and need not modify their tariffs with respect to charges other than for make-ready work. Additionally, the Commission determines that although it is not necessary to recite the rules in the tariff, Toledo Edison should amend its tariff to reflect that an Attacher can dispute the make-ready cost estimate.

G. Attachment Process

{¶ 46} OCTA argues that Ohio Edison's tariff reflects that a potential attaching entity has to obtain company consent for the proposed attachment and is required to pay in advance for attachment work. According to OCTA, the tariff does not identify the various steps in between the application and the attachment work. Nor does the tariff identify time frames associated with the steps or any attaching entity's rights. OCTA believes that such additional steps and rights should be set forth in the tariff. (Objections 17.)

{¶ 47} With respect to the attachment process, the Commission recognizes that Ohio Edison is required to comply with all laws, ordinances, and regulations which in any manner affect the rights and obligations of the attaching party. While the tariff does not have to include language from specific applicable rules, for the purposes of clarity, and in an effort to reduce the likelihood of disputes in the future, the Commission finds that, at a minimum, the tariff should reflect that the attachment

process shall be consistent with rights and obligations set forth in Ohio Adm.Code 4901:1-3-03(B)(1) and (2).

H. Inspection Costs

{¶ 48} OCTA argues that both Ohio Edison's and Toledo Edison's tariffs provide that upon request, the attaching entity shall reimburse the company for the costs of inspections and that the inspections can be at the time of the new installation of the attachment or later. OCTA states that while it is not contesting the right of the companies to conduct inspections, it is contesting the companies right to impose a separate charge for all post-installation inspections.

{¶ 49} According to OCTA, if an inspection is conducted within a reasonable time of a particular pole attachment installation, it can accept being billed for the reasonable, actual costs incurred. However, for the periodic inspections thereafter, OCTA claims that the FCC has ruled that a separate fee is inappropriate when the pole attachment rate includes full costs. As such, OCTA argues that the companies should not have the right to collect for all post-installation inspections. (Objections at 17-18, 28.)

{¶ 50} First Energy Companies assert that, despite the fact that pole attachments in Ohio are not under FCC jurisdiction, OCTA cites to an FCC ruling for the proposition that a separate fee is inappropriate when the pole attachment rate includes full costs. First Energy Companies submit that OCTA's citation is incomplete with respect to context and ignores the very next sentence in the cited ruling, which states: "We will look closely at make-ready and other charges to ensure that there is no double recovery for expenses for which the utility has been reimbursed through the annual fee." * * * "Such charges might be reasonable to the extent they represented actual costs for each individual agreement and if, and only if, the amount reimbursed to the utility is not included in the accounts used to calculate the annual rate." (Response at 10 citing *Texas Cable & Telecom Ass'n v. GTE Southwest*, 14 FCC Rcd 2975, 2984 (1999).

{¶ 51} First Energy Companies attest that the inspection costs at issue here are indeed actual incremental costs for each individual agreement and the reimbursed amounts are credited to the accounts used to calculate carrying charges in the annual rate. In other words, according to First Energy Companies, there is no double recovery because the costs are fully "zeroed out" of the annual rate. Therefore, First Energy Companies believe that the Commission should reject OCTA's proposal to eliminate this provision from the Ohio Edison and Toledo Edison tariffs. (Response at 10-11.)

{¶ 52} The Commission determines that to the extent the inspection costs recovered in the inspection fee are credited to the expense accounts used to calculate the carrying charge amount, the inspection fee is permissible as it is not double recovered.

I. Facilities Change Process

{¶ 53} OCTA contends that under the new pole attachment rules, Ohio Edison does not have unfettered authority to mandate a change or itself change another's facilities. Therefore, OCTA argues that the tariff language does not comply with Commission's old attachment rules in several respects.

{¶ 54} First, OCTA contends that the language does not recognize that consistent with Ohio Adm.Code 4901:1-3-03(A)(5)(c), Ohio Edison is required to provide at least 60 days advance written notice, unless the modification is for routine maintenance or in response to an emergency. Second, OCTA submits that the tariff language for all three First Energy Companies does not recognize that the Attachee can contest the modification by seeking a temporary stay pursuant to Ohio Adm.Code 4901:1-3-03(A)(6). (Objections at 18-19; 28-29.) Finally, OCTA objects to Ohio Edison's tariff language that requires an attaching entity to modify, remove, replace, or alter an attachment in 30 days if Ohio Edison decides to discontinue the use of, remove, replace, or alter the location of any or all of its poles or facilities without liability to Attachee. (Objections at 19-20.)

{¶ 55} Similar to its arguments regarding Ohio Edison's tariff, OCTA objects to several sections of Cleveland Electric's and Toledo Edison's tariffs which OCTA contends involve situations resulting in attachment modifications that do not conform with the advance notice requirement set forth in the pole attachment rules. Specifically, OCTA submits that Ohio Adm.Code 4901:1-3-03(A)(5) requires 60 days' advance written notice before any removal or termination of service to the facilities, or any modification that does not involve routine maintenance or is in response to an emergency. (Objections at 22.)

{¶ 56} Further, OCTA contends that Toledo Edison's tariff does not recognize that the customer can contest the modification by seeking a temporary stay pursuant to Ohio Adm.Code 4901:1-3-03(A)(6). Additionally, OCTA submits that the tariff language does not recognize that the costs of modifying a facility are to be borne proportionally by all parties that obtain access to a facility per Ohio Adm.Code 4901:1-3-04(E). (OCTA Objections 29.)

{¶ 57} The Commission finds that the First Energy Companies' tariffs should include language in accordance with Ohio Adm.Code 4901:1-3-03(A)(5) reflecting a 60-day notice prior to (a) the removal of facilities or termination of any service to those facilities, (b) the modification of facilities other than for routine maintenance or modification in response to emergencies in accordance with Ohio Adm.Code 4901:1-3-03(A)(5)(c), and (c) any increase in pole attachment rates. The First Energy Companies' tariff language should also reflect that consistent with Ohio Adm.Code 4901:1-3-03(A)(6), within 15 days of such notice, an attaching entity may file a petition for a temporary stay of such action contained in the notice.

J. Minimum Number of Pole Attachments

{¶ 58} Regarding Toledo Edison's tariff, OCTA objects to language that states that pole attachments are available if the customer contracts for a specified number of at least 20 or more pole attachments or contacts. OCTA contends that there is no

authorization for requiring a minimum number of attachments. Rather, OCTA avers that, consistent with Ohio Adm.Code 4901:1-3-03(B)(6) pole requests starting at any size are permitted. Therefore, OCTA argues, the phase "a specified number of at least 20 or more" should be deleted from the sentence. (Objections at 24-25.)

{¶ 59} First Energy Companies concur with OCTA's arguments regarding the minimum pole requirement and will remove the requirement from Toledo Edison's tariff (Response at 9-10).

{¶ 60} The Commission agrees with the parties and directs that Toledo Edison should remove the minimum pole attachment requirement from its tariff.

K. Denial of Access

{¶ 61} With respect to Toledo Edison's tariff, OCTA contends that the tariff requires all attachments to be placed in a manner satisfactory to Toledo Edison so as not to interfere with any present or future use of the company's poles or wires. OCTA further states that Toledo Edison's tariff requires that all underground cable be laid "in a manner satisfactory to the Company so as not to interfere with any present or future use which the Company may desire to make of the trenches or facilities contained therein."

{¶ 62} OCTA believes that Toledo Edison's language in both instances does not appropriately recognize the existing statutory and regulatory duty to provide access to its poles or the permissible limitations on that access. Therefore, OCTA proposes that the tariff language be modified to include the acceptable reasons for denial of access to poles, ducts, and right-of-way contained in Ohio Adm.Code 4901:1-3-03. In particular, OCTA focuses on the ability of a public utility to deny an attaching entity access on a nondiscriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes. (Objections at 26-27.)

{¶ 63} The Commission finds that Toledo Edison should revise its tariff consistent with Ohio Adm.Code 4901:1-3-03(A)(1) in order to properly specify the reasons for denying access to poles.

L. *Applicability of Overlashing*

{¶ 64} OCTA next interprets the First Energy Companies' definition of "Attachment" as not prohibiting overlashing an existing pole attachment and also as not requiring overlashing to go through the full Attachment application process. To the extent that OCTA's interpretation is incorrect, then OCTA objects to the proposed tariff provisions. OCTA recommends that tariff language be added that clarifies that an attachment does not include a wire overlashed to an existing attachment or riser cable and that an attachee may overlash an existing, permitted attachment without a Company-approved application upon at least 15 days advance written notice to the Company. (OCTA Objections at 13-14, 23-24, 25-26.)

{¶ 65} First Energy Companies contend that OCTA's insistence that overlashing be permitted is untimely, unwarranted, and should be rejected. First Energy Companies explain that overlashing basically consists of wrapping or attaching a new cable or fiber to an existing series of wireline pole attachments. They submit that overlashing can significantly affect the loading on a pole and, if the pole is already at its limit, could create safety and reliability problems.

{¶ 66} First Energy Companies argue the pole attachment rules do not address overlashing in any fashion and that OCTA did not once during the *Pole Attachment Rules Case* suggest that the rules or tariffs should explicitly permit overlashing. Instead of introducing the concept in the rulemaking where all interested stakeholders could provide feedback, First Energy Companies submit that OCTA now objects to existing approved tariff language that has been in place for two decades or more and that has never been the subject of a complaint before the Commission.

{¶ 67} Finally, First Energy Companies contend that OCTA's argument that the tariffs should explicitly permit overlashing because the "FCC has found that overlashing does not require an attachment application and that prior notice is up to the parties to negotiate," has no merit in this proceeding. Specifically, First Energy Companies argue that neither the Ohio General Assembly nor the Commission has ceded jurisdiction over pole attachments to the FCC and, unlike the FCC, the Commission has the additional responsibility to regulate electric distribution utilities' and to provide for the safety and reliability of the electrical system. (First Energy Response to Objections at 7-9.)

{¶ 68} The Commission finds that OCTA's proposal to add language clarifying the definition of "Attachment" should be denied. The Commission's February 25, 2015 Entry in the *Pole Attachment Rules Case* directed each telephone company and electric distribution utility pole owner to file an application to amend its tariff in accordance with Ohio Adm.Code Chapter 4901:1-3. Because the new pole attachment rules do not address overlashing in any way and the Commission agrees with OCTA's position that overlashing an existing attachment does not constitute an attachment, there is no requirement that First Energy Companies address overlashing in their tariffs. Further the Commission agrees with First Energy that overlashing can affect the loading of a pole and a 15-day notice requirement to allow for overlashing may not provide adequate time to evaluate whether a pole can accommodate the additional load.

{¶ 69} Based on the foregoing, the following rates and their rate impacts are approved:

Ohio Edison

15-975-EL-ATA	Current Rate	New Rate	Increase/(Decrease)
Pole Attachment	$4.69	$10.58	$5.89
Conduit Attachment:	Not Applicable	Not Applicable	Not Applicable

Cleveland Electric

15-975-EL-ATA	Current Rate	New Rate	Increase/(Decrease)
Pole Attachment	$4.29	$10.33	$6.04
Conduit Attachment:	Not Applicable	Not Applicable	Not Applicable

Toledo Edison

15-975-EL-ATA	Current Rate	New Rate	Increase/(Decrease)
Pole Attachment	$3.39	$8.99	$5.60
Conduit Attachment:	Not Applicable	Not Applicable	Not Applicable

{¶ 70} Consistent with the determinations set forth in this Finding and Order, First Energy Companies are directed to file final pole attachment tariffs within 30 days of this Finding and Order.

V. ORDER

{¶ 71} It is, therefore,

{¶ 72} ORDERED, That within 30 days of this Finding and Order, First Energy Companies file final pole attachment tariffs consistent with the determinations set forth in this Finding and Order. It is, further,

{¶ 73} ORDERED, That all other arguments not addressed in this Finding and Order are denied. It is, further,

{¶ 74} ORDERED, That OCTA's motion for leave to file a reply is denied consistent with Paragraph (11). It is, further,

{¶ 75} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Asim Z. Haque, Chairman

Lynn Slaby

M. Beth Trombold

Thomas W. Johnson

M. Howard Petricoff

JSA/dah/vrm/dah

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Barcy F. McNeal
Secretary