

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY FOR  
APPROVAL OF A TARIFF CHANGE.

CASE NO. 18-563-EL-ATA

IN THE MATTER OF THE APPLICATION OF  
OHIO EDISON COMPANY FOR APPROVAL  
OF A TARIFF CHANGE.

CASE NO. 18-564-EL-ATA

IN THE MATTER OF THE APPLICATION OF  
THE TOLEDO EDISON COMPANY FOR  
APPROVAL OF A TARIFF CHANGE.

CASE NO. 18-565-EL-ATA

### ENTRY ON REHEARING

Entered in the Journal on August 28, 2019

#### I. SUMMARY

{¶ 1} The Commission denies the applications for rehearing filed by the Ohio Cable Telecommunications Association as they are moot.

#### II. DISCUSSION

{¶ 2} The Cleveland Electric Illuminating Company (CEI), Ohio Edison Company (Ohio Edison), and The Toledo Edison Company (Toledo Edison) are each an electric company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of the Commission.

{¶ 3} On May 1, 2018, CEI filed an application in Case No. 18-563-EL-ATA seeking to revise its pole attachment rates utilizing 2017 Federal Energy Regulatory Commission (FERC) data.

{¶ 4} On May 1, 2018, Ohio Edison filed an application in Case No. 18-564-EL-ATA seeking to revise its pole attachment rates utilizing 2017 FERC data.

{¶ 5} On May 1, 2018, Toledo Edison filed an application in Case No. 18-565-EL-ATA seeking to revise its pole attachment rates utilizing 2017 FERC data.

{¶ 6} Consistent with the approval process established in in the November 30, 2016 Entry in Case No. 13-579-AU-ORD, these cases were automatically approved on June 30, 2018, with an effective date of July 1, 2018.

{¶ 7} On May 22, 2018, The Ohio Cable Telecommunications Association (OCTA) filed a motion to intervene in each of these cases. In support of its motions to intervene, OCTA submits that it has members who have existing and potential business interests in the service territories of CEI, Ohio Edison, and Toledo Edison. Specifically, OCTA asserts that pole and conduit access is essential for its members to provide a variety of communications services, including video, voice, and Internet access services in CEI's service territory. Therefore, OCTA avers that it and its members have a direct and significant stake in ensuring that the new proposed rates fully comply with the Commission's rules set forth in Ohio Adm.Code Chapter 4901:1-3 and are just and reasonable. According to OCTA, its interests are not represented by any other party in this proceeding. OCTA states that its intervention will contribute to a just and expeditious resolution of the issues involved in this proceeding and will not result in an undue delay.

{¶ 8} Also on May 22, 2018, OCTA filed objections to the applications filed in the respective cases.

{¶ 9} On June 22, 2018, CEI, Ohio Edison, and Toledo Edison each filed responses to OCTA's objections in the respective cases.

{¶ 10} OCTA was granted intervention pursuant to the August 29, 2018 Entry on Rehearing.

{¶ 11} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 12} On July 30, 2018, OCTA filed an application for rehearing in each of the respective cases. In support of its applications for rehearing, OCTA contends that it was unjust and unreasonable for the Commission to automatically approve the pole attachment rates proposed by CEI, Ohio Edison, and Toledo Edison without investigating whether the rate calculation properly included a significantly reduced amount of accumulated deferred taxes which was made as an accounting change. OCTA also contends that it was unjust and unreasonable for the Commission to automatically approve the proposed pole attachment rates while the Commission is still investigating, in Case No. 18-47-AU-COI, how the rates are affected by the Tax Cuts and Jobs Act of 2017 (TCJA) and what the proper treatment of excess accumulated deferred income taxes created by the TCJA should be for the purposes of the pole attachment formula. Finally, OCTA contends that in automatically approving the new pole attachment rates, it was unjust and unreasonable for the Commission to not grant its motion to strike and, instead, rely on the improper response filed by CEI on June 22, 2018.

{¶ 13} On August 9, 2018, CEI, Ohio Edison and Toledo Edison each filed a memorandum contra the respective applications for rehearing.

{¶ 14} Pursuant to its August 29, 2018 Entry on Rehearing, the Commission granted the applications for rehearing for the limited purpose of further consideration of the matters specified in the applications for rehearing.

{¶ 15} Pursuant to the stipulation in Case Nos. 18-1604-EL-UNC, et al., CEI, Ohio Edison, and Toledo Edison each filed a request on November 29, 2018, in the their individual ATA cases to modify their pole attachment rates to \$11.88, \$11.48, and \$9.68, respectively.

{¶ 16} On December 10, 2018, OCTA filed letters in these docket indicating that contingent upon the Commission approving the aforementioned proposed pole attachment rates, OCTA agrees to withdraw its applications for rehearing filed on July 30, 2018.

{¶ 17} Pursuant to the July 17, 2019 Opinion and Order in Case Nos. 18-1604-EL-UNC, et al., the Commission approved the stipulation jointly filed in these cases (Stipulation). Pursuant to the Stipulation, CEI, Ohio Edison, and Toledo Edison agreed to refund all tax savings associated with the TCJA, including riders, tax savings not reflected in riders, and the return over time of all of the normalized and non-normalized excess accumulated deferred income tax from January 1, 2018. The companies will credit tax savings through a new credit mechanism established for each company, which will be reconciled on an annual basis.

{¶ 18} The parties to the Stipulation also agreed that the aforementioned revised pole attachment rates reflect the inclusion of the respective company's excess accumulated deferred income tax balances as of December 31, 2017. The parties to the Stipulation also agreed that CEI, Ohio Edison, and Toledo Edison will adhere to the provisions of Stipulation regarding their next applications to adjust their pole attachment rates, and continue their collaborative efforts with OCTA to ensure that their future pole attachment rate adjustments accurately reflect the impacts from the TCJA as they relate to the Federal Communications Commission's pole attachment formula.

{¶ 19} As a result of the Commission approving the proposed pole attachment rates in the Stipulation, it has already approved the pole attachment rates proposed in these cases effective July 17, 2019. Therefore, the applications for rehearing are now moot.

{¶ 20} Additionally, the Commission directs CEI, Ohio Edison, and Toledo Edison to remove the existing language in their respective tariffs requiring the updating of pole attachment rates no later than May 1st of each year. Instead, consistent with the Stipulation, the companies should file revised pole attachment tariff language which includes the following: "The Companies will only file to adjust pole attachment rates once in a given calendar year period, unless otherwise required by law."

### III. ORDER

{¶ 21} It is, therefore,

{¶ 22} ORDERED, That the applications for rehearing be denied as they are moot. It is, further,

{¶ 23} ORDERED, That CEI, Ohio Edison, and Toledo Edison amend their respective tariffs consistent with Paragraph 20. It is, further,

{¶ 24} ORDERED, That a copy of this Entry on Rehearing be served upon each party of record.

COMMISSIONERS:

*Approving:*

Sam Randazzo, Chairman

M. Beth Trombold

Lawrence K. Friedeman

Daniel R. Conway

Dennis P. Deters

JSA/mef

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Summary: Entry on Rehearing that the Commission denies the applications for rehearing filed by the Ohio Cable Telecommunications Association as they are moot. electronically filed by Docketing Staff on behalf of Docketing