

RATE PA

POLE ATTACHMENT/CONDUIT OCCUPANCY TARIFF

APPLICABILITY

Applicable to any person or entity other than a public utility (hereinafter "Licensee") authorized to complete a "wireline attachment" or an "occupancy", as defined herein, to any distribution pole or in any conduit in the service territory of Duke Energy Ohio, Inc. (hereinafter the "Company"). As used in this Tariff, a "wireline attachment" is the attachment of wire or cable and associated facilities or apparatus within one (1) foot of vertical space to any distribution pole owned by the Company and "occupancy" is the placement of wire or cable and associated facilities or apparatus in conduit space owned by the Company.

AGREEMENT

Before any wireline attachment or occupancy is made, Licensee shall enter into and be bound by a Pole Attachment or Conduit Occupancy License Agreement (hereinafter the "Agreement").

ATTACHMENT CHARGES

An annual rental of \$9.81 per wireline attachment shall be charged for the use of the Company's poles. Any attachments outside the one (1) foot of vertical space will be considered another attachment and a separate annual rental charge will apply. The charge will apply if any portion of a pole is occupied or reserved at the Licensee's request.

For conduit occupancy, the occupancy fee shall be \$0.40 per linear foot.

PAYMENT

All payments due from Licensee shall be invoiced by Company and payment shall be made by Licensee within twenty-one (21) days from the date of invoice, except for payments for make-ready work. Payment for make-ready work shall be made within twenty-one (21) days of receipt of the cost estimate, unless, during said 21-day period, the Company receives a written dispute or request for additional information regarding the scope of work or allocation of costs of the work from the Customer, in which case the 21-day period will be held in abeyance until the dispute or inquiry is resolved. When any payments due from Licensee are not timely made and not disputed or subject to inquiry, the amount due shall be adjusted to include interest equal to one and one-half percent (1.5%) of the unpaid amount which will accrue monthly until paid.

The annual rental amount shall be paid in advance by Licensee.

As new attachments/occupancies are made after the initial rental year, rentals for such attachments/occupancies shall be paid for the entire year if made within the six-month period after any anniversary date, and for one-half year if made during the following six-month period. For any attachments/occupancies removed by Licensee and for which the Company shall have received written notice from Licensee, the

Filed pursuant to an Order dated July 26, 2017 in Case No. 15-965-EL-ATA before the Public Utilities Commission of Ohio.

Issued: October 12, 2017

Effective: April 12, 2017

Issued by James P. Henning, President

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yearly rental shall be adjusted on the same basis.

TERMS AND CONDITIONS

1. APPLICATION

Before any wireline attachment to any pole other than a drop pole, is made by Licensee, or any occupancy is made on Licensee's behalf, Licensee shall make written application for permission to install such wireline attachments on any pole of the Company or occupy any conduit of the Company. The written application shall specify the location of each pole/conduit in question, the character of its proposed attachments/occupancies, and the amount and location of space desired. Within forty-five (45) days after receipt of such written application, the Company shall notify Licensee in writing whether or not it is willing to permit the attachments or occupancies and, if so, under what conditions. If such permission is granted, Licensee shall have the right to occupy the space allotted by the Company under the conditions specified in such permit and in accordance with the terms of the Agreement but Company shall not be required to set a pole/conduit for the sole use by Licensee. The Company shall not unreasonably or discriminatorily deny occupancy or attachments, but the Company may deny access to its poles or conduits where there is insufficient capacity or for reasons of safety, reliability, and general applicable engineering purposes. Permission to occupy the conduit, if granted, shall not authorize Licensee to access the Company's conduit. Such access shall be limited to the Company or its designated representative.

2. TECHNICAL MANUALS

Upon the execution of the Agreement and before any attachments/occupancies are made by Licensee, Licensee shall send the Company all manufacturer's technical manuals and information, and construction standards and manuals regarding the equipment Licensee proposes to use pursuant to the provisions of the Agreement.

3. TECHNICAL SPECIFICATIONS

All wireline attachments or occupancies are to be placed on poles or in conduits of the Company in a manner satisfactory to the Company and so as not to interfere with the present or any future use that the Company may desire to make of such poles, wires, conduits, or other facilities. All wireline attachments or occupancies shall be installed and maintained by Licensee or on Licensee's behalf and at its expense so as to comply at least with the minimum requirements of the National Electrical Safety Code and any other applicable regulations or codes promulgated by federal, state, local or other governmental authority having jurisdiction. Licensee shall take any necessary precautions, by the installation of protective equipment or other means, to protect all persons and property of all kinds against injury or damage occurring by reason of Licensee's attachments/occupancies on the Company's poles/conduits. The Company shall determine in a fair, reasonable and non discriminatory manner, the requirements for the present and future use of its poles, conduits and equipment and of

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any interference therewith.

4. REPLACEMENT COSTS

In any case where it is necessary for the Company to replace a pole or conduit because of the necessity of providing adequate space or strength to accommodate the wireline attachments or occupancies of Licensee thereon, either at the request of Licensee or to comply with the above codes and regulations, the Licensee shall pay the Company the total cost of this replacement. Such cost shall be the total estimated cost of the new pole/conduit, including material, labor, and applicable overheads, plus the cost of transferring existing electric facilities to the new pole or conduit, plus the cost of removal of the existing pole or conduit and any other incremental cost required to provide for the attachments or occupancy of the Licensee, including any applicable taxes the Company may be required to pay because of this change in plant, minus salvage value of any facilities removed.

Licensee shall also pay to the Company and other owners thereof the cost of removing all existing attachments/occupancies from the existing pole or conduit and re-establishing the same or like attachments/occupancies on the newly installed pole/conduit. The new pole or conduit shall be the property of the Company regardless of any payments by Licensee towards its cost, and Licensee shall acquire no right, title or interest in such pole or conduit.

5. REARRANGING COSTS

If Licensee's proposed wireline attachments or occupancy can be accommodated on existing poles or conduits of the Company by rearranging facilities of the Company and of other Licensees thereon and if the Company and other Licensees are able to make such rearrangement consistent with the NESC, such rearrangement shall be made by the Company and such other Licensees, and Licensee shall reimburse the Company and such other Licensees for any expense incurred by them in transferring or rearranging such facilities. Any additional guying required by reason of the attachments or occupancies of Licensee shall be made by Licensee at its expense, and to the satisfaction of the Company.

6. INSPECTIONS

The Company reserves the right to inspect each new installation of Licensee on its poles and in its conduits and to make periodic inspections every five (5) years or more often if conditions warrant such inspection, and Licensee shall reimburse the Company for the expense of such inspection. The Company's right to make such inspections and any inspection made pursuant to such right shall not relieve Licensee of any responsibility, obligation, or liability imposed by law or assumed under the Agreement. Subsequent to the completion of a baseline inventory by the Company when an unauthorized attachment or occupancy is found during an inspection, the Licensee will pay the

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Company an unauthorized attachment or occupancy sanction in the following amounts: Annual rental for the prior five years. For purposes of this penalty, an unauthorized attachment shall be any attachment for which the Company does not have a record and which was not identified on the Company's inventory of attachments.

7. SAFETY VIOLATIONS

Other than for routine maintenance, whenever the Company notifies Licensee in writing that the wireline attachments or occupancies of Licensee interfere with the operation of properly installed existing facilities of the Company or other Licensee, or constitute a hazard to the service rendered by the Company or other Licensee, or fail to comply with codes or regulations above-mentioned, Licensee shall, within sixty (60) days after provision of such notification, remove, rearrange or change its wireline attachments or ensure that, at its expense, its occupancy is removed, rearranged, or changed as directed by the Company. Licensee may file a petition for a temporary stay of the action with the Public Utilities Commission of Ohio. In case of emergency, the Company reserves the right to remove or relocate the attachments/occupancies of Licensee at Licensee's expense and without notice, and no liability therefor shall be incurred by the Company because of such action.

8. INDEMNIFICATION

Licensee agrees to indemnify and save harmless the Company from and against any and all liability, loss, damage, costs, attorney fees, or expense, of whatsoever nature or character, arising out of or occasioned by any claim or any suit for damages, injunction or other relief, on account of injury to or death of any person, or damage to any property including the loss of use thereof, or on account of interruption of Licensee's service to its subscribers or others, or for public charges and penalties for failure to comply with Federal, state or local laws or regulations, growing out of or in connection with any act or omission, negligent or otherwise, of Licensee or its servants, agents or subcontractors in the attachment/occupancy, operation and maintenance of facilities of Licensee on the poles/conduits of the Company, and in the performance of work hereunder, whether or not due in whole or in part to any act, omission or negligence of the Company or any of its representatives or employees (except insofar as such indemnity arising out of such injury or damage caused by the sole negligence of the Company or such representatives or employees may be judicially found to be contrary to law, in which case this Agreement of indemnity shall in all other respects be and remain effective and binding). The Company may require Licensee to defend any suits concerning the foregoing, whether such suits are justified or not.

9. INSURANCE REQUIREMENTS

Licensee agrees to obtain and maintain at all times during the period Licensee has attachments or occupancies on the Company's poles/conduits, policies of insurance as follows:

- (a) Public liability and automobile liability insurance for itself in an amount as specified by the

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Company for bodily injury to or death of any one person, and, subject to the same limit for any one person, in an aggregate amount as specified by the Agreement for any one occurrence.

- (b) Property damage liability insurance for itself in an amount as specified by the Company for any one occurrence.
- (c) Contractual liability insurance in amounts as specified by the Company to cover the liability assumed by the Licensee under the agreements of indemnity set forth in the Agreement.

10. CERTIFICATE OF INSURANCE

Prior to making wireline attachments to the Company's poles or occupancy in the Company's conduits, Licensee shall furnish to the Company two copies of a certificate, from an insurance carrier acceptable to the Company, stating that policies of insurance have been issued by it to Licensee providing for the insurance listed above and that such policies are in force. Such certificate shall state that the insurance carrier will give the Company thirty (30) days prior written notice of any cancellation of or material change in such policies. The certificate shall also quote in full the agreements of indemnity set forth in the Agreement as evidence of the type of contractual liability coverage furnished. If such certificate recites that it is subject to any exceptions or exclusions contained in the policy or policies of insurance, such exceptions or exclusions shall be stated in full in such certificate, and the Company may, at its discretion, require Licensee before starting work, to obtain policies of insurance which are not subject to any exceptions or exclusions that the Company finds objectionable.

11. DISCONTINUATION OF COMPANY FACILITIES

The Company reserves the right, without liability to Licensee or its subscribers, to discontinue the use of, remove, replace or change the location of any or all of the Company's poles/conduits, attachments/occupancies or facilities regardless of any occupancy of the Company's poles/conduits by Licensee, and Licensee shall, at its sole cost and within 60 days after written notice by the Company make such changes in, including removal or transfer of, its attachments/occupancies as shall be required by such action by the Company. Company shall set forth the basis for the modification (i.e., insufficient capacity, for reasons of safety, reliability, and generally applicable engineering purposes). Licensee may file a petition for a temporary stay of the action with the Public Utilities Commission of Ohio.

12. ABANDONMENT

Licensee may at any time abandon the use of a pole or conduit under the Agreement hereunder by removing there from all of its wireline attachments or by requesting the Company to remove, at

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Licensee's expense, all of its occupancies and by giving written notice thereof to the Company.

13. PERMITS, EASEMENTS, AND RIGHTS-OF-WAY

Licensee shall secure any right, license or permit from any governmental body, authority, or other person or persons that may be required for the construction or maintenance of attachments or occupancies of Licensee, at its expense. The Company does not guarantee any easements, rights-of-way or franchises for the construction and maintenance of such attachments/occupancies. Licensee hereby agrees to indemnify and save harmless the Company from any and all claims, including the expenses incurred by the Company to defend itself against such claims, resulting from or arising out of the failure of Licensee to secure such right, license, permit or easement for the construction or maintenance of such attachment on the Company's pole or occupancy in the Company's conduit.

14. SUPPLY OF ELECTRIC SERVICE

Electric service for power supplies of a Licensee shall be supplied from the lines of the Company in a manner specified by the Company.

15. USE BY THIRD PARTIES

The Company shall have the right, from time to time during the term of the Agreement, to grant, by contract or otherwise, to others not parties to the Agreement, rights or privileges to use any pole/conduits covered by the Agreement, and the Company shall have the right to continue and extend any such rights or privileges heretofore granted. The attachment/occupancy privileges granted hereunder shall at all times be subject thereto.

16. BOND

Licensee shall furnish bond, as specified by the Company, to guarantee the performance of the obligations assumed by Licensee under the terms of the Agreement not otherwise covered by the insurance required by paragraph 9. Such bond shall be submitted to the Company prior to Licensee's making attachment/occupancy to the Company's poles/conduits.

17. REIMBURSEMENT FOR WORK PERFORMED

In case one Party is obligated to perform certain work at its own expense and the Parties mutually agree in writing that it is desirable for the other Party to do such work, then such other Party shall promptly do the work at the sole expense of the Party originally obligated to perform the same. Bills for expense so incurred shall be due and payable within twenty-one (21) days of receipt.

18. DEFAULT

If Licensee fails to comply with any of the provisions of the Agreement or defaults in the performance of any of its obligations under the Agreement and fails within sixty (60) days after written notice from the Company to correct such default or non-compliance, the Company may, at its option, forthwith

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terminate the Agreement, or the specific permit or permits covering the poles/conduits and Licensee's attachments/occupancies to which such default or non-compliance is applicable, and remove attachments/occupancies of Licensee at Licensee's expense, and no liability therefor shall be incurred by the Company because of such action.

19. **MAPS**

The area covered by the Agreement shall be set forth on a map, attached to, and made a part of the Agreement. Such area may be extended or otherwise modified by a supplemental agreement mutually agreed upon and signed by the Parties to an Agreement with a new map attached thereto showing the changed area to be thereafter covered by the Agreement. Such supplement shall be effective as of the date of final execution thereof and shall be attached to all executed copies of the Agreement.

20. **EXPIRATION OF AGREEMENT**

If Licensee does not exercise the rights herein granted within six (6) months from the execution date of the Agreement, the Agreement shall be void. The Agreement shall start as of the execution date thereof and shall continue for a period of one year and shall be self-renewing from year to year thereafter unless terminated by either Party's giving to the other Party written notice at least sixty (60) days prior to the end of any yearly term. Licensee shall completely remove its wireline attachments from the Company's poles or direct the Company to remove, at Licensee's expense, its occupancy in the conduit on or prior to the termination date, unless a new Agreement covering such poles or conduit has been executed by the Parties hereto.

21. **BINDING EFFECT**

The Agreement shall be binding upon and inure to the benefit of the Parties thereto, their respective successors and/or assigns, but Licensee shall not assign, transfer or sublet any of the rights hereby granted or obligations hereby assumed without the prior written consent of the Company.

22. **DEPOSIT**

The Licensee may be required to pay a cash deposit to the Company in order to establish or re-establish credit in an amount not in excess of the total annual rental fees. After the Licensee has established a reasonable credit record by paying the rental fees for two consecutive years within the time specified in the Agreement, the Company shall apply the deposit plus an accrued interest to the next annual rental fee amount which is due and payable with the next subsequent anniversary date. The Company shall pay interest thereon in accordance with Rule 4901:1-17-05 of the Ohio Administrative Code.

23. **FORCE MAJEURE**

Except as may be expressly provided otherwise, neither Party shall be liable to the other for any failure

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of performance under the Tariff or Agreement due to causes beyond its reasonable control, including: (a) acts of nature, fire, explosion, vandalism, storm, or other similar occurrences; (b) national emergencies, insurrections, riots, acts of terrorism, or wars; (c) strikes, lockouts, work stoppages, or other labor difficulties. To the extent practicable, the Parties shall be prompt in restoring normal conditions, establishing new schedules and resuming operations as soon as the force majeure event causing the failure or delay has ceased. Each Party shall promptly notify the other Party of any delay in performance under this paragraph and its effect on performance required under the Tariff or Agreement.

If any pole or conduit of the Company is damaged or destroyed by a force majeure event so that the pole or conduit is rendered materially unfit for the purposes described in the Tariff or Agreement and the Company elects not to repair or replace the pole or conduit, then permission to attach to such pole or occupancy shall terminate as of the date of such damage or destruction.

SERVICE REGULATIONS

The supplying and billing for service, and all conditions applying thereto, are subject to the jurisdiction of the Public Utilities Commission of Ohio, and to Company's Service Regulations currently in effect, as filed with the Public Utilities Commission of Ohio, as provided by law.

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