

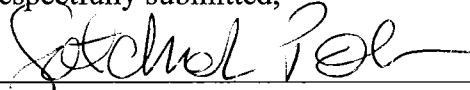
**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company to Amend Its Pole)	Case No. 15-974-EL-ATA
Attachment Tariffs.)	

**THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION'S
MOTION FOR LEAVE TO FILE A REPLY *INSTANTER*
AND
MOTION FOR AN EXPEDITED RULING**

Now comes the Ohio Cable Telecommunications Association ("OCTA"), who seeks leave to file a reply *instanter* to the response filed by Ohio Power Company on August 24, 2015, in this proceeding. The OCTA makes this motion to (a) ensure that the Public Utilities Commission of Ohio has further information upon which to consider certain disputed issues in this matter and (b) present a proposal for the next procedural steps. The OCTA requests an expedited ruling on the motion for leave so that this motion can be considered expeditiously and not unduly delay the proceedings. The reasons supporting the OCTA's motion for leave and motion for an expedited ruling are set forth more fully in the attached Memorandum in Support.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT
OF THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION'S
MOTION FOR LEAVE TO FILE A REPLY *INSTANTER*
AND
MOTION FOR EXPEDITED RULING**

On February 25, 2015, as revised on April 22, 2015, the Public Utilities Commission of Ohio ("Commission") ordered all public utility pole owners in Ohio to file amended tariffs that correspond with the Commission's newly adopted administrative rules.¹ 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. Ohio Power Company ("AEP") filed its tariff application on May 15, 2015, and the Ohio Cable Telecommunications Association ("OCTA") timely filed a motion to intervene and its objections in this docket. By Entry issued on August 7, 2015, the Commission granted the OCTA's intervention request and allowed AEP the opportunity to respond to the OCTA's objections.² AEP filed its response on August 24.

The August 7 Entry did not provide for an opportunity to reply to AEP's response, or provide any indication as to how this matter would proceed after the pole owner's response was filed. Now that the OCTA has reviewed AEP's response (as well as those in the other pole attachment/conduit occupancy cases in which the OCTA is involved), the OCTA believes that a brief, targeted reply can complete the arguments in support of the remaining issues and assist the Commission in determining the next procedural steps in this proceeding.

The OCTA stands by the arguments it made in its objections. In its objections, the OCTA raised several concerns with AEP's proposed pole attachment tariff revisions. AEP

¹ The Entry was issued in *In the Matter of 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-AU-ORD.

² The Entry was issued in this case, as well as ten other dockets involving applications to establish new pole attachment and conduit occupancy tariff provisions.

responded to those objections, but AEP did not accept all of the OCTA's objections. Thus, there are issues remaining for Commission resolution. The OCTA wishes to reply regarding:

- Important issues involving the inflated carrying charge in its calculations, the application of gradualism to the approved new pole attachment rate (AEP has proposed a 52.7% increase in pole attachment rate), and overlash—responding to new information and arguments from AEP.
- Next procedural steps – suggesting that the Commission order an informal conference be held between AEP, the OCTA and the Commission Staff for possible informal resolution of the remaining tariff issues. In the event that a complete resolution is not reached, then a hearing may be held so that the parties have the opportunity to present the facts and arguments needed for determining the appropriate tariff provisions for the remaining issues.

The issues are technical and not straight-forward. AEP's response raised, for the first time, arguments to which the OCTA would like to reply. Also, the issues involve the inaugural tariff for AEP following the Commission's adoption of new industry-wide rules. As such, the OCTA believes that these disputed issues warrant careful deliberations so that AEP's pole attachment tariff will be fully compliant with the Commission's new rules and the public interest. The OCTA seeks leave to reply in a targeted manner to a few arguments made by AEP in its response. This brief additional reply can provide a fuller picture for the Commission to understand the complexities of these few issues. For these reasons, the OCTA seeks leave to reply to the new arguments.

In addition, in reviewing the pole owner's response in Case No. 15-971-EL-ATA (The Dayton Power and Light Company's pole attachment case), the OCTA believes there is merit to suggest an informal conference so that AEP, the OCTA and Commission Staff can discuss the outstanding issues. This is another avenue for resolving the disputed issues – as a means for

avoiding a hearing.³ In the event that a complete resolution is not reached, then a hearing may be necessary so that the parties have a full opportunity to present evidence for the Commission to appropriately resolve the remaining disputed tariff provisions. Accordingly, the OCTA also seeks leave to put forth that procedural suggestion to the Commission.

Nothing in the Commission's rules precludes the OCTA's leave request. Moreover, as has been found by the Ohio Supreme Court, the Commission has the discretion to manage its dockets, including allowing leave to file the requested reply:

As the Ohio Supreme Court has recognized, the Commission is vested with broad discretion to manage its dockets, including the discretion to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business.⁴

The OCTA's request is akin to the reply memorandum under the motion cycle set forth in in Rule 4901-1-12, Ohio Administrative Code:

Motion Cycle	Procedure Set Forth in this Case
Motion	Objections
Memoranda Contra	Response
Rely Memorandum	Reply (requested by OCTA)

Finally, the OCTA notes that its motion for leave will not *unduly* delay this proceeding. Automatic approval of the proposed tariff has been suspended and there is no timetable under which this matter will move forward. Moreover, the OCTA's Reply is being filed along with this motion for leave (as Attachment A) so that prompt consideration can be given.

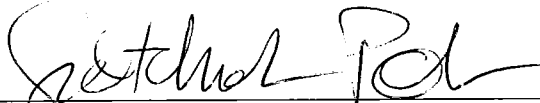
³ The OCTA's requested informal conference is an alternative dispute resolution option that seems appropriate when considering the Commission Staff's knowledge on the technical considerations involved. The Commission has incorporated another more formal alternative dispute resolution option for parties who are unable to agree on rates, terms, or conditions for a pole attachment/conduit occupancy agreement. See, Rule 4901:1-3-06, Ohio Administrative Code.

⁴ *In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan*, Case Nos. 13-2385-EL-SSO et al, Entry on Rehearing at 36 (May 28, 2015), citing *Duff v. Pub. Util. Comm.*, 56 Ohio St. 2d 367, 384 N.E. 2d 264 (1978); *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St. 2d 559, 433 N.E. 2d 212 (1982).

In sum, the Commission has the flexibility and discretion to allow the filing of the reply. Also, the OCTA's motion for leave to file a reply *instanter* is reasonable and presented for good cause. No harm will come from granting OCTA's request for leave. Rather, granting the OCTA leave will allow the OCTA to provide the Commission with more information regarding the disputed issues and also suggest informal discussions among AEP, the OCTA and the Commission Staff, which could possibly resolve the remaining issues. Therefore, the Commission should grant the OCTA's motion.

Finally, the OCTA requests that the Commission issue an expedited ruling on this leave request. The OCTA has contacted AEP (the only other party in this proceeding) to determine if it objects to the issuance of an ruling on this motion without the filing of memoranda, as allowed under Rule 4901-1-12(C), Ohio Administrative Code. AEP objected to the issuance of an immediate ruling.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a courtesy copy of the foregoing document is also being served (via electronic mail) on the 18th day of September 2015 upon all persons/entities listed below:

Steven T. Nourse at stnourse@aep.com



Gretchen L. Petrucci

**ATTACHMENT A
to the OCTA Motion
for Leave to file a Reply *Instante***

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Power Company to Amend Its Pole)	Case No. 15-974-EL-ATA
Attachment Tariffs.)	

**THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION'S
REPLY TO THE RESPONSE OF OHIO POWER COMPANY**

I. Introduction

Ohio Power Company LLC ("AEP") filed its pole attachment tariff application on May 15, 2015, and the Ohio Cable Telecommunications Association ("OCTA") timely filed a motion to intervene and objections in this docket. By Entry issued August 7, 2015, the Public Utilities Commission of Ohio ("Commission") granted the OCTA's intervention request and allowed AEP the opportunity to respond to the OCTA's objections,¹ which it did on August 24.

The OCTA has reviewed AEP's response (as well as those in the other pole attachment/conduit occupancy cases in which the OCTA is an intervenor), and files this pleading to briefly reply to the AEP response. The OCTA believes that this targeted reply will ensure that the Commission has further information upon which to consider a few of the remaining issues and assist the Commission in determining the next procedural steps in this proceeding.

¹ The Entry was issued in this case, as well as ten other dockets involving applications to establish new pole attachment and conduit occupancy tariff provisions.

II. Important Issues in Dispute

The OCTA raised several objections about the following in AEP's tariff:

- AEP's proposed carrying charge component in the pole attachment rate calculation appears to be based on mis-matched taxes and investment
- The sizeable proposed increase in the pole attachment rate (a 52.7% increase) warrants application of the concept of gradualism
- Access to pole attachments
- Definition of "Attachment" and overloading
- Payment for make-ready work
- Separate agreement

This will be the inaugural pole attachment tariff for AEP following the Commission's adoption of new industry-wide rules. Thus, these disputed issues warrant careful deliberations so that AEP's pole attachment tariff will be fully compliant with the Commission's new rules. These issues are technical and not straight-forward. In reply to the arguments made by AEP, the OCTA wishes to provide the Commission with further information for purposes of evaluating the issues raised in this matter regarding (a) the carrying charge, (b) gradualism, and (c) overloading.

Carrying Charge: The OCTA challenged AEP's carrying charge in its calculation of the pole attachment rate because of a mis-match in the 2014 FERC Form 1 between the reduced investment in plant and the higher taxes that did not recognize that reduction. As the OCTA stated earlier, it would be unfair to establish a pole attachment rate based upon unusually high tax changes.² AEP has claimed that the differences between its FERC Form 1 reports are not material to the calculation presented here and that the increase in the tax carrying charge is primarily due to differences in operating taxes and net plant investment.³ Additionally, AEP claims that there are no "unexpected rate design anomalies" and no reason for a hearing.⁴ These

² OCTA Objections at 3. Anomalies in the rate calculation can be smoothed out when they make the rate unrepresentative for ratemaking purposes. *Columbus S. Power Co. v. Pub. Util. Comm.* (1993), 67 Ohio St.3d 535, 537-538.

³ AEP Response at 2-3.

⁴ *Id.*

statements are conclusory, not supported with facts, and do not explain the large disparities from year to year or the mis-match that appears in the FERC Form 1 data relied upon in this matter. Rather, AEP has raised issues of fact that need to be resolved.

Gradualism: The OCTA noted that AEP's proposed pole attachment rate, if adopted as proposed, is a 52.7% rate increase.⁵ Consistent with the regulatory equitable concept of gradualism, the OCTA requested that AEP's new pole attachment rate resulting from the Commission's new rate formula be gradually implemented, approximately 20% each year until the authorized level is achieved.⁶ AEP argues that this request should be rejected because the Commission does not have the necessary authority to gradually implement an increased pole attachment rate.⁷ AEP's position ignores that the Commission's general supervisory authority under O.R.C. 4905.04 includes the duty to review the effects of implementing rate increases and consideration of the equitable balance. That is how the Commission would be using its supervisory authority if it elects to gradually implement the significant increase in pole attachment rates requested.

The facts in this proceeding support the principles behind the equitable concept of gradualism to address the rate increase. Those facts include: (a) the size and dollar amount of the possible increase represented by the proposed pole attachment rate, which is unquestionably significant; (b) the increase will not be avoidable and if the approved new rate is sizeable, it cannot be easily absorbed by OCTA members, leading to the likelihood of an impact on retail customers; and (c) AEP has failed to support that a need for immediate, full implementation.

AEP does not dispute the magnitude of its requested price increase; rather, its objection rests on the legal argument that, pursuant to the Ohio Supreme Court's finding in *Columbus S.*

⁵ OCTA Objections at 5.

⁶ OCTA Objections at 4-6.

⁷ AEP Response at 3-4.

Power Co. v. Pub. Util. Comm., the Commission lacks jurisdiction here to gradually implement this rate increase. AEP's reliance on this decision in this proceeding is misplaced. The Court in *Columbus S. Power Co.* was specifically addressing the "detailed, comprehensive and, as construed by this court, mandatory ratemaking formula under O.R.C. 4909.15".⁸ Importantly, when the OCTA requested that the Commission apply O.R.C. 4909.18 (which incorporates the requirements of O.R.C. 4909.15) in the event of a rate increase, the electric utilities objected. The electric utilities argued that "[i]t would be inappropriate to consider all of the statutes and rules generally and specifically applicable to public utility services as applying to pole attachments because they are distinguishable from one another and serve different purposes".⁹ But now to argue that the principle of gradualism cannot be applied here, AEP wants to rely on that comprehensive ratemaking construct that it argued was "inappropriate." The inconsistency is plain and clear. The Commission should disregard AEP's argument.

Rather, the Commission should consider that as recently as 2009 it noted that gradualism is a useful tool in managing overall customer impacts.¹⁰ It has applied the regulatory concept of gradualism to avoid a price spike and let the market adjust to significantly higher rates. In light of the fact that this matter is not being conducted under the dictates of O.R.C. 4909.15 and the increase could exceed 50%, the Commission should follow the gradualism concept it has used in other proceedings to allow approximately 20% each year until the authorized level is achieved. The Commission has the authority and should apply gradualism when implementing the new pole attachment rate structure for AEP.

⁸ *Columbus S. Power Co. v. Pub. Util. Comm.* (1993), 67 Ohio St.3d 535, 537.

⁹ See, *In re 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-AU-ORD, Memorandum Contra Ohio Cable Telecommunications Association Motion for Clarification or, In the Alternative Application for Rehearing at 5 (April 6, 2015).

¹⁰ OCTA Objections at 4, footnote 9.

Overlashing: The OCTA reviewed AEP's tariff and interpreted it as not prohibiting overlashing an existing pole attachment and as not requiring overlashing to go through the full Attachment application process. In particular, the OCTA pointed to the definition of "Attachment" as not including overlashing:

As used in this Tariff, an "Attachment" shall mean the physical connection of (a) a messenger strand supporting the wires, cables or strand-mounted associated facilities and equipment of a cable system or (b) service drops affixed to the pole and located more than one vertical foot away from the point at which the messenger strand is attached to the pole (but not a strand-originating or mid-span service drop) or (c) service drops located on a dedicated service, drop or lift pole. An Attachment shall consume no more than one foot (1') of vertical space on any distribution pole owned by the Company.

AEP's response did not indicate whether the OCTA's interpretation of the above tariff language is correct. Rather, AEP claimed overlashing's impact on pole attachments is such that overlashing "is best left to the parties through mutual agreement."¹¹ AEP implies in its response that there are many considerations before overlashing can take place.¹² Certainly, there is a difference of fact and opinion between the OCTA and AEP, and an opportunity to present facts and arguments to the Commission is warranted for this issue.

Overlashing is a simple and safe way for an attaching party with an existing attachment to add a wire or cable to its strand to allow the provision of new services or service to new customers. The cable operator adds a light fiber or coaxial cable to its existing facilities, without making a new attachment or creating any issues regarding use of pole space. While pole loading can be impacted, the typical increase in ice or windloading is minimal and can safely be reviewed by the pole owner after the fact. That is why the Federal Communications Commission

¹¹ AEP Response at 6.

¹² AEP Response at 4.

(“FCC”) has held that overlashing does not require permitting and does not even require prior notice.¹³

Additionally, even though the FCC has held that overlashing does not require prior notice, OCTA believes providing 15 days’ notice prior to overlashing would best benefit all interests involved. However, the OCTA also urged the Commission to expressly distinguish between an attachment and overlashing in AEP’s tariff so that there is no misunderstanding or a lack of clarity.¹⁴ In other words, the OCTA urges the Commission to expressly distinguish between an attachment and overlashing in AEP’s tariff and to treat these different matters differently. To that end, the OCTA recommends that appropriate clarifying language be added at the end of AEP’s “Availability of Service” section of the proposed tariff, stating:

An Attachment does not include a wire overlashed onto an existing attachment or riser cable to the extent that it runs vertically on the Pole owned by Owner and begins or ends at the base of the pole, in duct or direct buried and extends vertically to the point of horizontal attachment of the cable and/or strand owned by the Customer on the pole. In addition, a modification to an attachment does not include overlashing an existing permitted attachment.

Customer may overlash an existing, permitted attachment without a Company-approved application upon at least fifteen (15) days advance written notice to the Company.

¹³ See, *Implementation of Section 703(E) of the Telecommunications Act of 1996, Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, Report and Order, 13 FCC Rcd 6777, 6807, ¶¶ 59-69 (rel. Feb. 6, 1998); *Amendment of Commission’s Rules and Policies Governing Pole Attachments*, 16 FCC Rcd. 12103, 12141-12145 (rel. May 25, 2001) (overlasher is not required to obtain prior consent of the pole owner, but should provide notice); see also *S. Co. Servs., Inc. v. FCC*, 313 F.3d 574, 578 (D.C. Cir. 2002) (“The Commission * * * clarified that an overlashing party does not need to obtain advance consent from a utility if that party has a primary wire attachment already in place * * * however * * * a utility is entitled to notice of the overlashing * * *.” (internal citation and quotation omitted)); *Cable Television Ass’n of Georgia v. Georgia Power Co.*, 18 FCC Rcd. 16333, 16340-41 (rel. Aug. 8, 2003) (affirming policy that no prior consent may be required for overlashing).

¹⁴ The OCTA also stated that if its understanding is incorrect and AEP’s definition of Attachment does either prohibit overlashing an existing pole attachment or require an Attachment application, then the OCTA objects. (OCTA Objections at 8).

III. Next Procedural Steps

OCTA wishes to present a proposal for the next procedural steps in this matter. The OCTA suggests that the Commission order an informal conference to be held between AEP, the OCTA and the Commission Staff for further discussions and possible resolution of the remaining tariff issues. The issues in this matter are limited in number, but nonetheless important on a going-forward basis. The OCTA believes that this approach can be effective to work through the issues efficiently. This is another avenue for resolving the disputed issues – as a means for avoiding a hearing.¹⁵

In the event that a complete resolution of issues does not result from the informal conference, then a hearing may be necessary so that the parties have a full opportunity to present the facts and arguments needed and the Commission can appropriately resolve the remaining disputed tariff provisions. The issues herein are technical and important. The tariff provisions that will be established in this proceeding will have a significant impact on pole attachments for years to come. The OCTA strongly urges the Commission to order that informal discussions be held between AEP, the OCTA and the Commission Staff. To the extent that a difference of opinion remains after the informal discussions, the OCTA suggests that a hearing be held.

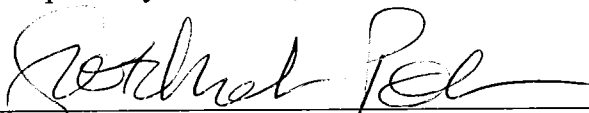
The OCTA further believes that this approach will help establish just and reasonable pole attachment tariff provisions on a going-forward basis that are compliant with the Commission's new rules.

¹⁵ The OCTA's suggested informal conference is an alternative dispute resolution option that seems appropriate when considering the Commission Staff's knowledge on the technical considerations involved. The Commission has incorporated another more formal alternative dispute resolution option for parties who are unable to agree on rates, terms, or conditions for a pole attachment/conduit occupancy agreement. *See*, Rule 4901:1-3-06, Ohio Administrative Code.

IV. Conclusion

The OCTA appreciates the opportunity to reply to AEP's response in this docket. The OCTA urges the Commission to order its Staff to schedule an informal conference between AEP, the OCTA and the Commission Staff for further discussions and possible resolution of the remaining tariff issues. In the event that a complete resolution is not reached, then a hearing may be necessary to determine the appropriate tariff provisions for the remaining issues.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Benita A. Kahn", is written over a horizontal line.

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Steven T. Nourse at stnourse@aep.com



Gretchen L. Petrucci

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Case No(s). 15-0974-EL-ATA

Summary: Motion For Leave to File a Reply Instanter and Motion for an Expedited Ruling electronically filed by Mrs. Gretchen L. Petrucci on behalf of Ohio Cable Telecommunications Association