

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
FRONTIER NORTH INC. TO MAKE
REVISIONS TO EXISTING POLE AND
ANCHOR ATTACHMENTS AND CONDUIT
OCCUPANCY ACCOMMODATIONS TARIFF.

CASE NO. 15-972-TP-ATA

FINDING AND ORDER

Entered in the Journal on May 18, 2016

I. SUMMARY

{¶ 1} The Commission finds that Frontier North Inc. (Frontier) should file final 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 utilities' 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. The new rules became effective January 8, 2015. On February 25, 2015, as revised on April 22, 2015, the Commission, in the *Pole Attachment Rules Case*, 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, Frontier filed its tariff amendment application in this docket.

{¶ 5} On June 26, 2015, The Dayton Power and Light Company (DP&L) filed a motion to intervene and comments in this proceeding.

{¶ 6} Pursuant to the attorney examiner Entry of August 7, 2015, the tariff amendment application was suspended and removed from the automatic approval process. Additionally, the motion to intervene filed by DP&L was granted.

{¶ 7} On August 24, 2015, Frontier filed a response to DP&L's comments. On August 31, 2015, DP&L filed reply comments.

IV. DISCUSSION

A. *DP&L's Reply Comments*

{¶ 8} In regard to DP&L's reply comments, the Commission finds that the comments will not be considered. 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 DP&L's reply fails to raise additional arguments of significance for the Commission's consideration.

B. *Non-Discriminatory Access to Frontier's Poles, Ducts, and Conduits*

{¶ 9} In its comments, DP&L claims that Frontier's proposed tariff discriminates against it and prevents it from attaching to Frontier's poles and facilities. In support of its position, DP&L states that while its tariff authorizes Frontier to make a request to attach to DP&L's poles, Frontier's tariff explicitly bars its application with respect to any power company. DP&L notes that the two companies no longer have an agreement in place that applies to new attachments to poles not previously designated as joint poles. Therefore,

DP&L asserts that Frontier is violating its duty to provide it with non-discriminatory access to Frontier's poles, ducts, and conduits.

{¶ 10} According to DP&L, Frontier has denied its requests to attach on three occasions causing DP&L to install additional poles and pole lines in order to extend service to new customers. DPL requests that the Commission direct Frontier to remove the explicit exclusion of power companies from the tariff. Additionally, DP&L requests that the Commission clarify that Frontier may not be permitted to reject an application on grounds that its existing or planned pole is insufficiently strong or tall enough to accompany power company attachments. (Comments at 3-6.)

{¶ 11} Frontier states that DP&L voluntarily allowed the parties' prior joint use agreement to expire, and that the parties have been engaged in good faith negotiations on a new joint use agreement. Furthermore, Frontier avers that it has properly limited its pole attachment and conduit occupancy accommodations tariff to non-utility attaching entities consistent with R.C. 4905.71 and Ohio Adm.Code 4901:1-3-03. Specifically, Frontier argues that DP&L's claims are without merit since R.C. 4905.71 only requires non-utility attachment rates to be established pursuant tariff. With respect to utility attachments, Frontier states that the agreements must be negotiated pursuant to Ohio Adm.Code 4901:1-3-04(B) and that attachers must petition the Commission for relief to the extent that negotiations fail. (Response at 1-4.)

{¶ 12} Consistent with the rules and the determinations set forth in the July 30, 2014, Finding and Order and the October 15, 2014, Entry on Rehearing in the *Pole Attachment Rules Case*, the Commission recognizes that pole attachment and conduit arrangements between two public utilities, such as Frontier and DP&L, are only to be provisioned pursuant to negotiated agreements. In support of this determination, the Commission notes that Ohio Adm.Code 4901:1-3-04(B) explicitly states that "[r]ates, terms, and conditions for nondiscriminatory access *** by another public utility **shall** be

established through *negotiated agreements*.” (Emphasis added). There are no other provisions in the Commission’s rules or orders that contemplate the ability to extend the application of a tariff for the provision of pole attachment or conduit arrangements. Therefore, although DP&L would like to have its current dispute with Frontier resolved pursuant to tariff, it is not the appropriate mechanism.

{¶ 13} DP&L is entitled to pursue its attachment of equipment to Frontier poles pursuant to the R.C. 4905.51 and Ohio Adm.Code 4901:1-3-04(B). Therefore, the parties should continue with their negotiations. To the extent that the negotiations are not successful, either party may pursue the right to mediation or arbitration in accordance with Ohio Adm.Code 4901:1-3-06. Additionally, the Commission notes that an attaching entity may file a complaint pursuant to Ohio Adm.Code 4901:1-3-05 alleging that it has been denied access to a public utility, pole, duct, conduit, or right-of-way, or that a rate, term, or condition for a pole attachment is not just and reasonable.

{¶ 14} Consistent with the determinations set forth in this Finding and Order, Frontier is directed to file a final pole attachment tariff on or before June 20, 2016.

V. ORDER

{¶ 15} It is, therefore,

{¶ 16} ORDERED, That on or before June 20, 2016, Frontier file its final pole attachment tariff consistent with this Finding and Order. It is, further,

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

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

Commissioners Voting: Andre T. Porter, Chairman; Asim Z. Haque, Vice Chairman; Lynn Slaby; M. Beth Trombold; Thomas W. Johnson.

JSA/dah/vrm