

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of</b>	)	
<b>Ohio Power Company to Amend its</b>	)	<b>Case No. 15-974-EL-ATA</b>
<b>Pole Attachment Tariff</b>	)	

---

**OHIO POWER COMPANY’S MEMORANDUM CONTRA THE OHIO CABLE  
TELECOMMUNICATIONS ASSOCIATION’S APPLICATION FOR REHEARING**

---

**I. INTRODUCTION**

Ohio Power Company (“AEP Ohio” or the “Company”) hereby submits this memorandum contra to the application for rehearing that the Ohio Cable Telecommunications Association (“OCTA”) filed in this proceeding on May 12, 2017. After successfully delaying the implementation of AEP Ohio’s new pole attachment rate, at the expense of AEP Ohio’s customers, OCTA now seeks yet again to avoid its members paying the lawfully approved rate for their attachment to AEP Ohio’s facilities that the Commission established in September 2016. Having failed to challenge that rate when it was approved, or AEP Ohio’s final tariff filing when it was made last fall, OCTA now asks the Commission to preclude AEP Ohio from charging attaching entities at the new rate for yet another seven month period (from September 19, 2016 through April 19, 2017) on the basis that the Commission supposedly did not actually approve the rate until April 12, 2017.

As set forth below, OCTA’s position is without merit, both as a factual and a legal matter. The Commission should reject OCTA’s meritless arguments and deny its application for rehearing in its entirety.

## **II. FACTUAL AND PROCEDURAL BACKGROUND**

AEP Ohio initiated this proceeding more than two years ago, on May 15, 2015, filing an application to amend its pole attachment tariffs consistent with the Commission's orders and newly promulgated pole attachment rules in Case No. 13-579-AU-ORD. Consistent with the formula rate the Commission approved in that proceeding, AEP Ohio requested a pole attachment rate of \$9.59. (Appl. at Sched. 1.) OCTA intervened and objected to AEP Ohio's proposal.

Although the Commission's orders in Case No. 13-579-AU-ORD contemplated that pole attachment tariff amendments would be automatically approved on September 1, 2015, the Attorney Examiner suspended this case from automatic approval on August 7, 2015 in order to fully investigate OCTA's objections and AEP Ohio's responses thereto. *See* Entry at 3 (Aug. 7, 2015). The August 7, 2015 Entry further provided that AEP Ohio's tariff amendment would be approved and take effect through separate Commission Order. *Id.*

That approval occurred on September 7, 2016, when the Commission issued a Finding and Order ("September Order") approving AEP Ohio's proposed tariff amendment, including the requested pole attachment rate, over OCTA's objections. *See* September Order at 3-4, 11-12. The Commission directed AEP Ohio to "file its final pole attachment tariff" with the rate approved in the Finding and Order, and with modified tariff language regarding nondiscriminatory access and payment due dates that OCTA requested, within 30 days. *Id.* at 7, 12. OCTA did not seek rehearing of that Finding and Order.

In compliance with the Commission's September Order, the Company filed its final tariffs in this docket on September 19, 2016. Those final tariffs contained limited redlines related only to the nondiscriminatory access and payment due date terms that the Finding and

Order required. The pole attachment rate that the Company proposed in its May 15, 2015 Application, and which the Commission approved in its September Order, did not change. OCTA did not object to the Company's final pole attachment rate tariff filing. The Commission approved the Company's nondiscriminatory access and payment due date revisions on April 12, 2017. *See* Entry at 2 (Apr. 12, 2017).

## **II. LAW AND ARGUMENT**

In response to the Commission's April 12, 2017 Entry approving the Company's revisions to the nondiscriminatory access and payment due date language in its tariff, and more than a year and a half *after* the Commission approved AEP Ohio's pole attachment rate, OCTA now meritless collateral challenges to AEP Ohio's collection of that lawfully approved rate. OCTA's application for rehearing raises several related arguments that are each premised upon a fundamental misapprehension of the Commission's September Order. Specifically, contrary to the express language of the September Order, OCTA advances the fallacy that that decision was interlocutory or preliminary in nature as to the pole attachment rate applicable to AEP Ohio's poles and that the Commission did not actually approve the pole attachment rate until April 2017. (*See* OCTA AFR at 4.) But that Order did not, as OCTA represents, merely "direct AEP Ohio to further modify its proposed tariff." (*See id.*) Rather, in no uncertain terms, the Commission expressly approved AEP Ohio's proposed pole attachment rate and authorized AEP Ohio to file its tariff and begin collecting that rate. September Order at 3-4, 11-12.

### **A. The Commission has not engaged in retroactive ratemaking.**

Despite the Commission's very clear approval of AEP Ohio's pole attachment rate in September, OCTA nonetheless devotes the majority of its application for rehearing to the flawed argument that the Commission's April 12, 2017 Entry constitutes retroactive ratemaking because

the Commission supposedly did not approve AEP Ohio's proposed rate was just and reasonable until April 12. (*See* OCTA AFR at 4-7.) OCTA's position is misplaced as a factual matter, as set forth above. The Commission approved the rate in its September Order. Thus, it was appropriate and lawful for the rate to become effective upon AEP Ohio's September final tariff filing.

Additionally, OCTA's attempt to impose the requirements applicable to the fixation of *customer* rates set forth in R.C. Chapter 4909 is inappropriate. The Commission has already expressly rejected OCTA's attempt to apply R.C. Chapter 4909 to pole attachment tariff proceedings like this one. *See 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*, 13-579-AU-ORD, Entry at 6 (April 22, 2015) (denying OCTA's attempt on rehearing to apply the "statutorily mandated procedures" set forth in Chapter 4909 to an electric distribution utility's application "to increase its pole attachment or conduit rate"). In any event, OCTA's position that the Commission did not find AEP Ohio's rate to be just and reasonable until April 2017 is simply incorrect. (*See* OCTA AFR at 4-5.) In its September Order, the Commission considered whether the Company's proposed pole attachment rate was just and reasonable and approved the rate. *See* September Order at 6,8, 12 (applying Ohio Adm. Code 4901:1-3-03(A)(1)).

**B. R.C. 4905.32 authorized AEP Ohio to begin charging its Commission-approved pole attachment rate upon the filing of its final tariff on September 19, 2016.**

OCTA's related argument that AEP Ohio's pole attachment tariff became effective only upon its filing in Case No. 89-6007-EL-TRF is also unpersuasive. (OCTA AFR at 7-9.) As OCTA's application for rehearing reflects, R.C. 4905.32 authorizes a public utility to collect a

rate for service rendered that is “specified in its schedule filed with the public utilities commission which is in effect at the time.” (*Id.* at 8.) AEP Ohio’s pole attachment rate has been filed with the Commission since September 2016. That the Company waited, as an administrative matter, until after the Commission confirmed its approval of the Company’s modified nondiscriminatory access and payment due date terms to file its final pole attachment tariff in its tariff docket does not change the fact that the Company filed its schedule containing the Commission-approved rate on September 19, 2016, as the Commission directed. There is simply no requirement that a utility must file an updated tariff in its tariff docket before a rate increase becomes effective, and OCTA has not pointed to one.

For this reason as well, there is no reason for the Commission to “clarify” on rehearing that AEP Ohio “is not authorized to charge the new pole attachment rate for attachments prior to the date on which the newly-approved tariff was on file with the Commission.” (*Id.* at 9-10.) AEP Ohio’s tariffs were filed in this docket September 2016. As the Commission correctly confirmed in its April 12, 2017 Entry, AEP Ohio was authorized to begin collecting the new pole attachment rate upon the final tariff’s filing in this case. *See* September Order at 2.

### **III. CONCLUSION**

After years of litigation on the issue of the proper rate that AEP Ohio and other electric utilities are entitled to charge attaching entities that use their poles, OCTA’s belated and untimely challenge to the pole attachment rate that the Commission approved for AEP Ohio last September is without merit. The Commission should reject OCTA’s attempt to cast the Commission’s most recent Entry, which merely approves tariff language and confirms the effective date of the previously-authorized rate, as retroactive ratemaking, and it should deny OCTA’s application for rehearing in its entirety.

Respectfully submitted,

/s/ Steven T. Nourse

---

Steven T. Nourse  
American Electric Power Service Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, Ohio 43215-2373  
Telephone: (614) 716-1608  
Facsimile: (614) 716-2950  
stnourse@aep.com

*Counsel for Ohio Power Company*

### **CERTIFICATE OF SERVICE**

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon the following parties. In addition, I hereby certify that a service copy of the foregoing was sent by, or on behalf of, the undersigned counsel to the following parties of record and the Attorney Examiner this 22nd day of May, 2017, via electronic transmission.

/s/ Steven T. Nourse

Steven T. Nourse

### **EMAIL SERVICE LIST**

glpetrucci@vorys.com  
smhoward@vorys.com  
jay.agranoff@puc.state.oh.us

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**5/22/2017 2:23:06 PM**

**in**

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

Summary: Memorandum - Ohio Power Company's Memorandum Contra the Ohio Cable Telecommunications Association's Application for Rehearing electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company