

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The)	
Toledo Edison Company)	Case No. 18-565-EL-ATA
for Approval of a Tariff Change)	
)	

**RESPONSE OF THE TOLEDO EDISON COMPANY TO OBJECTIONS OF THE
OHIO CABLE TELECOMMUNICATIONS ASSOCIATION**

Once again the Ohio Cable and Telecommunications Association (“OCTA”) has come before the Public Utilities Commission of Ohio (“Commission”) to complain about the outcome of the formula rate process that it advocated in the prior rulemaking, Case No. 13-579-AU-ORD. Not only does OCTA repeat its failed arguments that the increase in pole rental rates is unfair to its members, it insinuates nefarious motives by The Toledo Edison Company (“Toledo Edison” or “Company”) merely for implementing its tariffs in precisely the manner approved by the Commission. The Company respectfully requests the Commission grant it leave to file and accept this Response to OCTA’s Objections. For the reasons set forth below, the Commission should reject OCTA’s collateral attack on prior Commission rulings and its efforts to halt the established process for setting pole attachment rates.

As a preliminary matter, the Company questions OCTA’s captioning its Objections including three separately docketed proceedings in the same caption. These cases have not been consolidated by the Commission, nor has any party moved for their consolidation. Whatever purpose OCTA has for listing all three cases in each of its filings does not justify creating the potential confusion among readers that these cases have been—or have been requested to be—consolidated by the Commission.

I. THE COMPANY’S POLE ATTACHMENT TARIFF RATES ARE JUST AND REASONABLE.

OCTA’s objections are replete with incorrect statements. OCTA complains that the Company’s pole attachment rates have increased: “In the last thirteen months, beginning in April 2017, the amounts that FE companies have charged communications providers for pole attachments *has ballooned*.”¹ OCTA also complains about the frequency of the Company’s tariff adjustments, calling it an “alarming trend,”² and alleges that the Company has not provided “adequate justification” for the increases.³ OCTA mischaracterizes the rates as “unreasonable” and suggests the Company is required to explain and justify the formula rate outcome each time it files an update.⁴ OCTA even goes so far as to criticize the Companies for the Commission having ruled against OCTA’s requested relief in an earlier proceeding: “Over OCTA’s objections and requests for a multi-year phase-in to temper the rate shock, each of the FE utilities has imposed 150-200% increases to its pole rates since April 2017.”⁵ These and other similar statements by OCTA unfairly misrepresent the facts and history of Commission proceedings and the Company’s filings.

A. Formula rates are just and reasonable by definition.

Despite OCTA’s rhetoric demanding the Company “explain” and “justify” its application to update its tariff, the Commission has already established that the formula produces rates that are just and reasonable. With a full and complete record before it, the Commission found that

¹ Objections at p.1 (emphasis added).

² *Id.*

³ Objections at p.3.

⁴ Objections at p.1. (See also p.3: “FE does not explain the reasons for its latest round of increases, let alone attempt to justify them.”)

⁵ *Id.* (Apparently referring to OCTA’s Objections filed in Case No. 15-975-EL-ATA, in which the Commission explicitly rejected OCTA’s request for “gradualism”).

the rate formula is appropriate and should be adopted for the purpose of determining a just and reasonable rate.⁶ Indeed, the explicit language of the adopted rule makes crystal clear that application of the formula rate by definition and operation of the rule results in rates that are just and reasonable.⁷

Moreover, OCTA's allegations regarding the amount of increase since April 2017 are deliberately misleading. OCTA knows full well through its active participation that the Commission ordered all pole owning utilities to update their tariff rates using the adopted formula rates,⁸ and that the vast majority of the referenced increase is due to the fact that the Company's tariff rate had not been updated for several decades. This portion of the increase was previously included in OCTA's Objections filed in Case No. 15-975-EL-ATA, and the Commission confirmed the rates to be just and reasonable. Similarly, the Commission Staff issued its Review and Recommendation in Case No. 17-2007-EL-ATA, finding those rates to be just and reasonable. Lumping these two prior approved increases into the current objection is both disingenuous and irrelevant, and appears calculated to create a false impression.

B. The Commission approved an annual update process.

OCTA claims that "the pace is quickening, too;"⁹ as if to suggest the Company has accelerated a process without permission or "adequate justification." Quite the opposite is true—the Commission previously approved the Company's annual update process in Case No.

⁶ *In the Matter of the Adoption of Chapter 4901:1-3, Ohio Administrative Code, regarding Access to Poles, Ducts, Conduits, and Rights of Way by Public Utilities*, Finding and Order, p. 41 (July 30, 2014) ("Based on the record in this case and the analysis set forth supra, the Commission finds that, with respect to calculation of pole attachment occupancy rates, the definitions, assumptions, and methodologies set forth in 47 C.F.R. 1.1409(e)(1) should be adopted, including those related to the net cost of a bare pole and carrying charge rates.")

⁷ 4901:1-3-04(D)(2): "The commission will apply the formula set forth in 47 C.F.R. 1.1409 (e)(1), as effective in paragraph (A) of rule [4901:1-3-02](#) of the Administrative Code for determining a maximum just and reasonable rate for pole attachments."

⁸ *In the Matter of the Adoption of Chapter 4901:1-3, Ohio Administrative Code, regarding Access to Poles, Ducts, Conduits, and Rights of Way by Public Utilities*, Case No. 13-579-AU-ORD, Entry, February 25, 2015.

⁹ Objections at p.1.

15-975-EL-ATA.¹⁰ The Company's 2017 and 2018 update filings thus were required pursuant to the approved tariff. OCTA objected to many provisions of the Company's proposed pole attachment tariff, but not this one. The approved timing and frequency of these filings does not constitute proper grounds for an objection, and the Commission should disregard OCTA's assertions.

II. THE COMPANY'S RATE UPDATE FILING IS CONSISTENT WITH THE COMMISSION APPROVED FORMULA.

OCTA complains that "net bare pole costs are increasing" and attempts to attribute the increase solely to the Company's "decision to inflate its net bare pole cost account by reducing the Accumulated Deferred Taxes Component in the Pole Formula"¹¹. However, OCTA completely ignores the different components of the Commission approved formula rate in reaching misleading conclusions. For the reasons explained below, OCTA is either woefully ignorant or deliberately overlooks the manner in which certain tax inputs flow through the approved formula rate.

A. The formula rate uses audited FERC Form 1 data inputs.

First, there are almost *two dozen* different input sources from the Company's FERC Form 1 reports. To suggest that the Company has deliberately inflated or deflated one single number just to manipulate its pole attachment tariff rate is without foundation, as is the request that the Commission should investigate or audit these inputs. Importantly, the Company's FERC Form 1 reports are, in fact, audited statements, and the values therein are based on sound accounting policies. That is one reason why formula rates were adopted in the first place.

¹⁰ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to Change Their Pole Attachment Tariffs*, Case No. 15-975-EL-ATA, Finding and Order, (September 7, 2016).

¹¹ Objection at p.4.

B. The decrease in ADIT causes a decrease in the carrying charges.

Second, OCTA seems not to understand how the rate formula works beyond its singular observation about the net cost of a bare pole. While it is true that lower accumulated deferred income taxes (“ADIT”) leads to an increase in the net cost of a bare pole, that’s not the whole story. Four out of the five carrying charge components *decrease* when accumulated deferred income taxes are lower, serving to mitigate the increase in the net cost of a bare pole. This is true because in the Administrative, Maintenance, Depreciation and Taxes carrying charge components, ADIT appears as a subtraction in the denominator of the term—simply put: the smaller the ADIT, the larger the denominator, which means the lower the carrying charge, and hence, the lower the pole rental rate. Therefore, OCTA’s singular focus on the ADIT impacts to the net cost of a bare pole is misguided, incomplete, and should not be given any weight.

C. The approved rate formula correctly includes tax expenses reported in the FERC Form 1.

Finally, OCTA complains that the Company’s “reported tax expenses have remained in line with prior years”¹² and that it did not see the lower tax carrying charge it “expected would be the case.” As an initial matter, OCTA’s insinuation that the tax carrying charge increased compared to last year is incorrect and contradicted by the Company’s filing. Apparently, OCTA didn’t even bother to examine the Taxes carrying charge in preparing its objection, or else it would have known that due to the mathematical formula noted above the carrying charge actually *decreased* from 0.1777 in the prior update to 0.1597 in this case.

Regardless, OCTA’s “expectation” regarding the outcome of the formula rate is irrelevant, as the Company’s filing correctly includes the tax expenses reported in the 2017 FERC Form 1, consistent with the Commission approved formula rate. In next year’s

¹² Objections at p.7.

Commission ordered annual update, the Company will similarly include the tax expenses reported in the 2018 FERC Form 1. While not entirely clear, OCTA appears to imply that there should be a modification to the Commission approved formula rate related to tax expenses. The Commission previously rejected OCTA's argument to substitute an alternative input source for expenses OCTA deemed "anomalous," stating that "using a historical average of Administrative expense is contrary to the purpose of having a formula rate."¹³ The Commission should reject OCTA's objection based on the Company's use of the actual FERC Form 1 report data inputs.

CONCLUSION

For all of the foregoing reasons, the Commission should reject OCTA's Objections and deny its request to stay the automatic effective date in order to investigate its empty arguments.

Respectfully submitted,

/s/ Robert M. Endris
Robert M. Endris (#0089886)
FirstEnergy Service Company
76 South Main Street
Akron, Ohio 44308
Phone: 330-384-5728
Fax: 330-384-3875

On behalf of The Toledo Edison
Company

¹³ *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company to Change Their Pole Attachment Tariffs*, Case No. 15-975-EL-ATA, Finding and Order, (September 7, 2016) ("The Commission finds that Cleveland Electric's and Toledo Edison's use of 2014 FERC Form 1 administrative expense data is acceptable and should be used in the administrative factor for the pole attachment carrying charge rate.")

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer was served via electronic mail to the following person on this 22nd day of June 2018.

glpetrucci@vorys.com
William.wright@ohioattorneygeneral.com

/s/ Robert M. Endris
An Attorney for The Toledo Edison
Company

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Summary: Response Response of The Toledo Edison Company to Objections of Ohio Cable Telecommunications Association electronically filed by Mr Robert M Endris on behalf of Endris, Robert Mr.