

**BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of The Toledo Edison Company for Approval of a Tariff Change</b>	) ) )	<b>Case No. 18-565-EL-ATA</b>
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**MEMORANDUM CONTRA OF THE TOLEDO EDISON COMPANY  
TO MOTION TO STRIKE OF THE OHIO CABLE  
TELECOMMUNICATIONS ASSOCIATION**

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Pursuant to Rule 4901-1-12 of the Ohio Administrative Code, The Toledo Edison Company (“Toledo Edison” or “Company”) respectfully requests the Public Utilities Commission of Ohio (“Commission”) deny the Ohio Cable Telecommunications Association (“OCTA”) Motion to Strike the June 22, 2018 Response filed by Toledo Edison in this matter. For the reasons set forth below, Toledo Edison’s Response to OCTA’s Objections should be considered by the Commission in this proceeding.

**I. THE COMPANY’S REQUEST FOR LEAVE TO FILE ITS RESPONSE WAS APPROPRIATE UNDER THE CIRCUMSTANCES.**

The procedural rules set forth in the Ohio Administrative Codes do not address filing of Objections and Responses to Objections, and therefore do not specify a response deadline applicable in this proceeding. OCTA’s Motion cites to the Commission’s November 30, 2016 Entry arising in Case No. 16-2117-TP-ATA (“November 30 Entry”) for the Commission’s establishment of a procedural process for annual pole attachment update filings, but does not explain the history of that Entry and how it relates to this case. For a number of reasons, the Company anticipated its ability to file a Response to be governed by a specific Entry in this matter.

First, in the underlying rulemaking docket, Case No. 13-579-AU-ORD, prior to the case being closed on July 8, 2016, the Commission had not established a process for an Applicant's filing of a Response to an Objection.<sup>1</sup> When the Company filed its required update in that proceeding, Staff requested that its update be filed in a new docket, and the Company did so in Case No. 15-975-EL-ATA. There was no further action in the rulemaking docket with respect to the Company's tariff updates.<sup>2</sup> In that new case, after OCTA filed Objections pursuant to the April 22, 2015, the attorney examiner issued an Entry specifically establishing the timing for filing any Responses to the Objections.<sup>3</sup> Thus, from the Company's direct experience, it believed an Entry would issue in the instant case controlling the filing of its Response. Not having received such an Entry, the Company filed its Response on June 22, 2018, respectfully requesting leave to do so.

Second, although the Company's tariff update case was still pending at the time of the November 30 Entry, there was no establishment of or reference to the newly-issued standard procedure in the Commission's two decisions subsequently issued in 2017.<sup>4</sup> The Company was neither a party to nor had notice of the AT&T case giving rise to the November 30 Entry, but research shows in that case the timing of filing a Response to Objections was established specifically by the Attorney Examiner's Entry.<sup>5</sup> Although the new procedure was issued directly

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<sup>1</sup> *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 on Rehearing, at p.7, April 22, 2015 ("All motions to intervene and corresponding objections should be filed by August 1, 2015.").

<sup>2</sup> The Company's subsequent tariff update filings in Case Nos. 17-2007-EL-ATA and 18-565-EL-ATA were made in compliance with its tariff provisions approved in Case No. 15-975-EL-ATA to make annual update filings.

<sup>3</sup> *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, Entry, August 7, 2015.

<sup>4</sup> Case No. 15-975-EL-ATA, Entry, April 12, 2017, and Entry on Rehearing, July 28, 2017 (recounting the procedural history of Case No. 13-579-AU-ORD).

<sup>5</sup> *In the Matter of the Application of AT&T Ohio to Update its Pole Attachment and Conduit Rates*, Entry, November 8, 2016.

to AT&T three weeks later in its pending tariff update case, there was no corresponding Entry in the Company's then-pending tariff update case.<sup>6</sup>

Third, while counsel for the Company has never entered an Appearance in the rulemaking docket, he had requested case alerts from the Docketing Information System. However, a diligent search of his contemporaneous electronic mail reveals no "dissubscription" alerts for the November 30 Case Action reopening the closed case for issuance of the Entry. Nor did the Company's outside tracking service of Commission activity provide such an alert to him despite contemporaneous notifications of activity in other cases from both sources. Further, OCTA's Objections filed in this proceeding omitted reference to the November 30 Entry as the relevant authority for the filing of its Objections,<sup>7</sup> While not an excuse, Counsel was unaware that permission for and the timing of the Company's Response was governed by the November 30 Entry, and so included no specific request for leave to file or showing of good cause therein. The Company respectfully does so now.

## **II. THE COMPANY'S RESPONSE PROVIDES IMPORTANT INFORMATION RELEVANT TO THE COMMISSION'S CONSIDERATION OF OCTA'S OBJECTIONS.**

OCTA's Objections raised a number of questions to which it provided no answers. The Company's Response directly answers those questions and is highly relevant to the issues raised. OCTA's Motion asks the Commission to reject the Company's Response and to not allow the Company to now "build a record" due to the timing of filing its Response. However, with the

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<sup>6</sup> To the best of the Company's knowledge, the FirstEnergy Ohio utilities and AT&T are the only companies that have updated their pole attachment tariffs subsequent to the initial update required by the rulemaking docket.

<sup>7</sup> While OCTA's Objection makes a reference to the November 30 Entry, it does so only in the context of suspending automatic approval and not for the proposition of establishing the timing of filing Objections or Responses. Moreover, the Company's approved tariff includes a specific description of an annual filing and automatic approval, and, therefore needed no additional approval in the rulemaking case to establish such authority.

unanswered questions having been presented to it by OCTA, the record and, hence, the Commission's decision in this matter, will be more fully informed by due consideration of the Company's Response.

### **CONCLUSION**

For all of the foregoing reasons, the Commission should deny OCTA's Motion to Strike the Company's Response to OCTA's Objections.

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

### **CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Memorandum Contra was served via electronic mail to the following person on this 29<sup>th</sup> day of June 2018.

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

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

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

**Commission of Ohio Docketing Information System on**

**6/29/2018 5:19:13 PM**

**in**

**Case No(s). 18-0565-EL-ATA**

Summary: Memorandum Memorandum Contra of The Toledo Edison Company to Motion to Strike of Ohio Cable Telecommunications Association electronically filed by Mr Robert M Endris on behalf of Endris, Robert Mr.