

THE PUBLIC UTILITIES COMMISSION OF OHIO

**IN THE MATTER OF THE APPLICATION OF
OHIO EDISON COMPANY FOR APPROVAL
OF AN UPDATE TO ITS POLE
ATTACHMENT TARIFF.**

CASE NO. 20-1643-EL-ATA

**IN THE MATTER OF THE APPLICATION OF
THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY FOR
APPROVAL OF AN UPDATE TO ITS POLE
ATTACHMENT TARIFF.**

CASE NO. 20-1644-EL-ATA

**IN THE MATTER OF THE APPLICATION OF
THE TOLEDO EDISON COMPANY FOR
APPROVAL OF AN UPDATE TO ITS POLE
ATTACHMENT TARIFF.**

CASE NO. 20-1645-EL-ATA

SECOND ENTRY ON REHEARING

Entered in the Journal on December 15, 2021

I. SUMMARY

{¶ 1} The Commission denies the applications for rehearing filed by The Ohio Cable Telecommunications Association.

II. DISCUSSION

{¶ 2} The Cleveland Electric Illuminating Company (CEI), Ohio Edison Company (Ohio Edison), and The Toledo Edison Company (Toledo Edison) (collectively, FirstEnergy Companies) are each an electric light company as defined in R.C. 4905.03 and a public utility as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of the Commission.

{¶ 3} On October 30, 2020, as amended on December 23, 2020, Ohio Edison filed an application in Case No. 20-1643-EL-ATA seeking to revise its pole attachment rates utilizing 2019 Federal Energy Regulatory Commission (FERC) Form 1 data.

{¶ 4} On October 30, 2020, as amended on December 23, 2020, CEI filed an application in Case No. 20-1644-EL-ATA (20-1644) seeking to revise its pole attachment rates utilizing 2019 FERC Form 1 data.

{¶ 5} On October 30, 2020, as amended on December 23, 2020, Toledo Edison filed an application in Case No. 20-1645-EL-ATA (20-1645) seeking to revise its pole attachment rates utilizing 2019 FERC Form 1 data.

{¶ 6} On November 20, 2020, The Ohio Cable Telecommunications Association (OCTA) filed objections to the applications filed in 20-1644 and 20-1645.

{¶ 7} On November 30, 2020, CEI and Toledo Edison filed joint responses to OCTA's objections in Case Nos. 20-1644 and 20-1645.

{¶ 8} On December 28, 2020, the Commission Staff (Staff) filed a separate Review and Recommendation in each of these cases. Staff indicated that in addition to the number of poles contained in unitized Account 364 investment, the companies included an estimate for the number of poles contained in non-unitized Account 364 investment in the calculations based on the actual average cost of a pole placed and unitized in 2019. Pursuant to its review of the pole attachment rate calculations and the source of the data used in the calculations, Staff found them to be consistent with the formula contained in Ohio Adm.Code 4901:1-3-04(D)(2), as well as prior Commission decisions. Therefore, Staff recommended that the applications be automatically approved.

{¶ 9} Consistent with the approval process established in the November 30, 2016 Entry in Case No. 13-579-AU-ORD, these cases were automatically approved on December 29, 2020, with an effective date of January 1, 2021.

{¶ 10} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 11} On January 28, 2021, OCTA filed an application for rehearing in each of the respective cases.

{¶ 12} Pursuant to its Entry on Rehearing of February 24, 2021, the Commission granted the applications for rehearing for the limited purpose of further consideration of the matters specified in the applications for rehearing and granted OCTA's motions for intervention.

{¶ 13} In support of its applications for rehearing, OCTA contends that it was unjust and unreasonable for the Commission to automatically approve the pole attachment rates proposed by CEI, Ohio Edison, and Toledo Edison based on inputs used to calculate an estimate of the number of non-unitized poles that do not match the respective company's records and cannot be verified. OCTA also contends that it was unjust and unreasonable for the Commission to automatically approve the proposed pole attachment rates without evidence in the record to demonstrate that the revised number of poles is just and reasonable. In support of the applications for rehearing filed in these cases, OCTA notes that each of the FirstEnergy Companies filed an amended application on December 23, 2020, in which it provided an increased number of poles for 2019. According to OCTA, the amended applications indicated that the revised number of poles "includes an estimate of the number of poles associated with the non-unitized plant balances in FERC Account 364, based on historical average costs per pole." According to OCTA, the inputs for calculating the non-unitized pole estimates should be consistent with the FirstEnergy Companies' records, however, they submit that the information is not identified in the amended application filings and that neither CEI, Ohio Edison, or Toledo Edison provided any further explanation, even though they have the burden of proof. Further, OCTA argues that with respect to CEI and Toledo Edison, the confidential discovery responses list a different value than that used by the companies with no explanation presented. Therefore, OCTA contends that it cannot validate the inputs used. Based on the discovery responses, OCTA submits that applicable inputs would have resulted in a lower pole attachment rate.

{¶ 14} On February 8, 2021, CEI, Ohio Edison, and Toledo Edison jointly filed a memorandum contra the respective applications for rehearing. FirstEnergy Companies assert that it was just and reasonable for each of their pole attachment rates to go into effect on January 1, 2021. FirstEnergy Companies insist that under the Commission's automatic approval process, it is up to the Commission's discretion whether to suspend such approval to the extent it deems it necessary. In support of their position, they note that Staff reviewed and determined the calculations to be reasonable. FirstEnergy Companies specifically note that Staff focused on each company's calculations of the non-unitized poles counts and determined that the pole attachment rate calculations, including the source of the data used in the calculations was consistent with the formula contained in Ohio Adm.Code 4901:1-3-04(D)(2), as well as prior Commission decisions.

{¶ 15} Additionally, FirstEnergy Companies also point out that OCTA is not disputing the methodology (formula) for calculating the estimate of non-unitized poles but, instead, is questioning the specific inputs. FirstEnergy Companies submit that the companies' rate formula inputs to estimate the number of non-unitized poles were derived from their records and can be verified. Specifically, they point to the footnote on Line 17 of Ex. C of the each of the FirstEnergy Companies' Amended Applications which explains that the "Total Number of Poles" includes an estimate for the number of poles associated with the non-unitized plant balances in FERC Account 364, based on historical average costs per pole." FirstEnergy Companies believe that this information provides sufficient evidence for the Staff's determination to allow the applications filed in these cases to be automatically approved.

{¶ 16} Further, FirstEnergy Companies explain that workpapers and supplemental information were provided to Staff for its review. According to the FirstEnergy Companies, OCTA was provided all such information that it requested during discovery.

{¶ 17} On October 14, 2021, Staff filed a Supplemental Review and Recommendation in each of the respective cases. Staff notes that in the Initial Review and Recommendations

filed in these cases, it stated that the estimate of the number of poles contained in the non-unitized Account 364 investment was calculated by dividing the non-unitized pole investment in Account 364 by the average cost of a pole placed and unitized in 2019. Staff now clarifies that its Initial Review and Recommendation should have stated that the estimate of the number of poles contained in the non-unitized Account 364 investment was calculated by dividing Account 364 investment by the average cost of a pole placed in 2019 and unitized as of November 30, 2020.

{¶ 18} Additionally, referencing FirstEnergy Companies' response to a Staff data request issued on June 15, 2021, Staff notes that FirstEnergy Companies explained that the pole count and associated Account 364 investment used to calculate the historic average cost of a pole in FirstEnergy Companies' amended applications were based on the poles placed in 2019 and their associated investment that had been unitized as of November 30, 2020.

{¶ 19} Further, Staff submits that if OCTA is suggesting that the estimate of the number of poles contained in non-unitized Account 364 investment should be derived by dividing that investment by the average cost of a pole placed and unitized in 2019, then the denominator in the calculation of the historic cost of a pole must also be changed, as the denominator in the FirstEnergy Companies' calculation is the number of poles placed in 2019 and unitized as of November 30, 2020. According to Staff, making this adjustment and reducing the estimate for the number of poles contained in the non-unitized Account 364 would increase the proposed amended rate from \$12.17 to \$12.18 for Ohio Edison (Case No. 20-1643) but would have no rate impact for CEI (20-1644) or Toledo Edison (20-1645). Based on these results, Staff contends that either methodology should yield a reasonable estimate of the number of poles associated with the non-unitized Account 364 investment at the end of 2019. However, given that most of the formula inputs are based on end of year FERC Form 1 data, Staff recommends that future filings use an estimate of the number of poles contained in non-unitized investment using the number of poles placed and unitized as of the end of the FERC Form 1 calendar year.

{¶ 20} In light of Staff's Supplemental Review and Recommendation, OCTA filed a motion for leave on November 2, 2021, to file comments in order to ensure that the Commission has further information in this matter. As part of its filing, OCTA included its proposed comments. OCTA notes that Staff's Supplemental Review and Recommendation is based on unfiled additional information that Staff requested in June 2021. According to OCTA, it was not served with this information. OCTA asserts that the pole formula and rate calculations should be transparent so that Staff, parties, and the Commission can evaluate and determine just and reasonable pole attachment rates. OCTA emphasizes that pole attachments are critical in enabling broadband service providers to reach consumers with broadband infrastructure.

{¶ 21} OCTA's motion for leave to file comments is reasonable and should be granted.

{¶ 22} On November 15, 2021, FirstEnergy Companies filed the cost information referenced in Staff's Supplemental Review and Recommendation.

{¶ 23} Upon a review of the arguments presented, the Commission finds that OCTA's applications for rehearing in these proceedings should be denied. In reaching this determination, the Commission relies on Staff's determination that the amended pole attachment calculations and inputs are consistent with the formula contained in Ohio Adm.Code 4901:1-3-04(D)(2), as well as prior Commission decisions. Additionally, based on the adjustments addressed above, the Commission notes that the resulting rates based on either FirstEnergy Companies' or OCTA's underlying methodologies results in a \$0.01 rate increase for Ohio Edison and no rate difference for CEI or Toledo Edison. Therefore, the Commission finds that the proposed rates should be adopted subject to the filing of final tariff sheets. Additionally, for the purpose of consistency, the Commission agrees with Staff that future filings use an estimate of the number of poles contained in the non-unitized investment using the number of poles placed and unitized as of the end of the FERC Form 1 calendar year.

III. ORDER

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That the OCTA's motion for leave to file comments be granted in accordance with Paragraph 21. It is, further,

{¶ 26} ORDERED, That the applications for rehearing be denied as set forth in this Entry on Rehearing. It is, further,

{¶ 27} ORDERED, That FirstEnergy Companies' proposed rates should be adopted subject to the filing of final tariff sheets. It is, further,

{¶ 28} ORDERED, That for future pole attachment rate filings, FirstEnergy Companies comply with the clarification set forth in Paragraph 23. It is, further,

{¶ 29} ORDERED, That a copy of this Entry on Rehearing be served upon each party of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JSA/mef

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12/15/2021 2:38:28 PM**

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Case No(s). 20-1643-EL-ATA, 20-1644-EL-ATA, 20-1645-EL-ATA

Summary: Entry on Rehearing denying the applications for rehearing filed by The Ohio Cable Telecommunications Association. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio