

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF  
DAYTON POWER AND LIGHT COMPANY  
D/B/A AES OHIO FOR APPROVAL TO  
ESTABLISH A NEW POLE ATTACHMENT  
TARIFF

CASE NO. 22-80-EL-ATA

## ENTRY

Entered in the Journal on July 13, 2022

### I. SUMMARY

{¶ 1} In this Entry, the Commission approves, in part, and denies, in part, the tariff filing of Dayton Power and Light Company d/b/a AES Ohio for approval to establish a new pole attachment tariff.

### II. DISCUSSION

#### A. *Applicable Law*

{¶ 2} Dayton Power and Light Company d/b/a AES Ohio (AES) is 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, is subject to the jurisdiction of the Commission.

{¶ 3} Ohio Adm.Code 4901:1-3 describes the pole attachment and conduit occupancy rules applicable to a public utility and an attaching entity.

#### B. *Procedural History*

{¶ 4} Pursuant to its April 7, 2021, Finding and Order, as revised on September 23, 2021, the Commission, in Case No. 19-834-AU-ORD, *In re the Commission's Review of Ohio Adm.Code 4901:1-3, Concerning Access to Poles, Ducts, Conduits, and Rights-of-Way*, adopted new administrative rules regarding access to poles, ducts, conduits, and rights-of-way of public utilities. The new rules became effective January 31, 2022.

{¶ 5} On March 9, 2022, as amended on May 5, 2022, AES filed an application for a tariff amendment seeking to update rates, terms, and conditions for use of its poles and

conduits for the purpose of bringing its tariff into compliance with the new rules in Ohio Adm.Code 4901:1-3.

{¶ 6} Consistent with Ohio Adm.Code 4901:1-3-04(A), changes to the rates, terms, and conditions for nondiscriminatory access to poles ducts, conduits, or rights-of-way shall be subject to a 60-day automatic approval process.

{¶ 7} On March 30, 2022, The Ohio Cable Telecommunications Association (OCTA) filed objections to AES' application. On April 11, 2022, AES filed reply comments to OCTA's objections.

{¶ 8} OCTA was granted intervention pursuant to an Entry on May 6, 2022. As part of that same Entry, AES' application was suspended for 30-days consistent with Ohio Adm.Code 4901:1-3-04(A)(2).

{¶ 9} Pursuant to an Entry of June 3, 2022, the application was suspended a second time pursuant to Ohio Adm.Code 4901:1-3-04(A)(2).

{¶ 10} On June 3, 2022, Commission Staff (Staff) filed a Review and Recommendation.

### **C. Arguments**

{¶ 11} In its objections to AES' application, OCTA submits that while it does not oppose most of the proposed changes, AES does not include additional changes that should be made in order to bring the tariff into compliance with the new rules that became effective on January 31, 2022.

{¶ 12} In the May 5, 2022 amendment to its application, AES represents that it now proposes modifications to its tariff that incorporate certain OCTA proposals, as well as other additional changes. Specifically, AES states that in order to address concerns that OCTA expressed regarding potential charges for overlashed fiber and coaxial cable, it has amended its proposed tariff language. In response to concerns expressed by OCTA, AES clarified that

while overlashers are required to provide notice prior to overlashing, there is no approval requirement for the overlashing of fiber optic and coaxial cable. Additionally, AES deleted a sentence identified by OCTA that had applicability only to 2017 rates.

{¶ 13} AES also responded to a concern raised by OCTA regarding language related to interference with present or future use of the electric space of the pole. Language proposed by OCTA regarding written notice of non-compliance activities has been accepted by AES but modified to include notice through the electronic system used by AES and attachers. Language identified by OCTA requiring payment of make-ready costs within 21 days has been modified to more closely adhere to the Commission's rules that permit payments at any time until the estimate of make-ready costs is revoked and to clarify that such revocation can be made any time after 14 days has passed without payment. Language identified by OCTA that referred to "promulgating rules and regulations" has been deleted and replaced with language referring to proposing new provisions for the tariff. Language was added to track the new Commission rule allowing inspection fees to be charged to an overlashing entity between the date that notice of a proposed overlash is given and the date that the overlash is installed.

{¶ 14} Finally, AES avers that while it has accepted OCTA proposed language relating to cost responsibilities for rearrangements and pole replacements, it has been modified so that only subsequent attachers who attach within 12 months of a rearrangement or pole replacement and are able to attach due to the rearrangement or pole replacement will pay a proportional share of the costs. In support of its position, AES argues that Ohio Adm.Code 4901:1-3-04(E) creates an administrative difficulty in that it contains no explicit time period for the ending of the requirement for subsequent attachers who gain access to the pole as a result of a rearrangement or pole replacement to pay a proportional share of those expenses. Specifically, AES contends that pursuant to the current rule, a pole owner must continue to track costs that might then be reassigned years in the future to a subsequent new attacher.

{¶ 15} OCTA did not file a response to AES' amended application.

{¶ 16} In its Review and Recommendation, Staff notes that the amended application incorporates terms and conditions that the Applicant initially objected to but has now agreed to accept as reflected in AES' Reply Comments. Staff also points out that there are other changes that AES initially objected to but now accepts with modifications. Staff proposes that the application not be approved as currently proposed due to the fact that AES has failed to make the requested revisions in order for the proposed tariff amendments to be consistent with the Commission's pole attachment rules. Specifically, Staff believes that by limiting the amount of time to 12 months that subsequent attachers must share proportionally in the cost of the modification that made the attachment possible, AES is in violation of Ohio Adm.Code 4901:1-3-04(E), which does not contain any limitation on the time frame that subsequent attachers must share proportionately in the cost.

{¶ 17} In support of its position, Staff notes that the current language of Ohio Adm.Code 4901:1-3-04(E) was adopted in Case No. 13-579-AU-ORD, and that in the most recent rule making proceeding (19-834-AU-ORD), Staff proposed no changes to the rule and no intervenors, including AES, proposed adding an explicit time period for ending this requirement.

{¶ 18} The Commission finds that the application should be approved except as to AES' proposed revisions to the General Terms and Conditions Section, Paragraphs 6 and 7(b), which are inconsistent with the current language of Ohio Adm.Code 4901:1-3-04(E). In reaching this determination, the Commission agrees with Staff that, to the extent that AES seeks to have the adoption of language that limits the period for cost-sharing of pole attachers to 12 months, AES should propose a revision to Ohio Adm.Code 4901:1-3-04(E) during the next five-year rule review for Ohio Adm.Code 4901:1-3.

### III. ORDER

{¶ 19} It is, therefore,

{¶ 20} ORDERED, That the AES' revised pole attachment and conduit occupancy tariff be approved, in part, and denied, in part, consistent with Paragraph 18. It is, further,

{¶ 21} ORDERED, That AES amend its pole attachment and conduit occupancy tariff consistent with this Entry and file final tariff sheets with an effective date no earlier than the date of filing. It is, further

{¶ 22} ORDERED, That a copy of this Entry be served upon all parties and interested persons 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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Summary: Entry approving, in part, and denying, in part, the tariff filing of Dayton Power and Light Company d/b/a AES Ohio for approval to establish a new pole attachment tariff electronically filed by Heather A. Chilcote on behalf of Public Utilities Commission of Ohio