

POLES, DUCTS, AND CONDUITS ATTACHMENT TARIFF

GENERAL TERMS AND CONDITIONS

**1. AVAILABILITY.** (a) Except as provided below, this tariff is applicable to any “Attaching Entity” as defined in Section 4901:1-3-01(A) of the Ohio Administrative Code (OAC) (hereinafter called "Attachor") who installs any facilities on poles, in ducts or conduits, and along rights-of-way owned by The Dayton Power and Light Company (hereinafter called "Owner" or "Company"). Attachors and/or entities with attachments subject to this Tariff shall be required to execute the “POLES, DUCTS AND CONDUITS ATTACHMENT” agreement (“Tariff Agreement”), substantially in the form set forth in Exhibit A, hereto. As set forth in paragraphs 17 and 21 below, the Attachor has the separate obligation to determine whether any additional authorizations are necessary to obtain access on, in, or across real property not owned by Owner in order to install facilities on, in, or along Owner’s poles, ducts, conduits, and rights-of-way. Pursuant to OAC §4901:1-3-01 "Pole attachment" means any attachment by an attaching entity to a pole, duct, conduit, or right-of-way owned or controlled by a public utility.

(b) This Tariff shall not apply with respect to an entity who has an effective written contract allowing the installation of facilities on, in or along Owner's poles, ducts, conduits or rights-of-way on or after the time of the effective date of this Tariff either pursuant to a Joint Use Agreement, Joint Pole Agreement or other agreement irrespective of how captioned that provides for such installation under terms and conditions that are not intended by the parties thereto to be subject to the Tariff (“Non-Tariff Agreement”).

**2. APPLICATION.** (a) Attachor shall make written application using the Company’s current notification processes and system for permission to install or change attachments or equipment (e.g. power supply or amplifier) on or in any poles, ducts, and/or conduits of Owner, specifying the location of each pole, duct and conduit in question, the character of its proposed attachments and the amount and location of space desired as prescribed by Section 4901:1-3 of the Ohio Administrative Code. Owner shall notify Attachor in writing, consistent with the time period described in Section 4901:1-3-03(B) of the Ohio Administrative Code, whether or not it is willing to permit the use of such poles, ducts, conduits, and/or rights-of-way and, if so, under what conditions. Owner shall have the sole right to determine the availability of such poles, ducts, conduits, and rights-of-way for Attachor’s use; shall permit attachment to poles, ducts, conduits, and rights-of-way on a nondiscriminatory basis; and the Owner will not unreasonably refuse to grant permission except for reasons of lack of capacity, safety, reliability or engineering standards, consistent with the National Electric Safety Code and Owner’s engineering and construction standards. If permission is granted, Attachor shall have the right to occupy the space allotted by Owner solely in accordance with the conditions specified in said permit, the terms of this Tariff, and the Tariff Agreement, if any, between Owner and Attachor, it being fully understood by Attachor that the Owner may at any time authorize other parties to also place attachments on, in, or along Owner's poles, ducts, conduits and conduits and/or right-of-way. No attachment shall be allowed until the completion of survey, engineering and applicable make

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ready work. An Attachor's failure to request and receive the Owner's permission as described herein will subject each pole on which the Attachor has placed an unauthorized attachment to an unauthorized attachment fee.

(b) Company shall evaluate requests for attachments, accept or deny applications, provide notices, including notices with respect to "overlashing", prepare both "complex make-ready" and "simple make-ready" estimates and perform make-ready work consistent with the requirements, including exceptions, limitations and conditions, set forth in the Ohio Administrative Code, Section 4901:1-3-03. The terms "complex make-ready," "overlashing" and "simple make-ready" have the same meaning as in Ohio Administrative Code, Section 4901:1-3-01.

**3. APPLICATION FEE/INSPECTION FEE.** An application fee (also referred to as an "inspection fee") will be charged for each pole attachment request. This fee will cover the Owner's costs of field inspection, preparing of records and maps, transportation and other associated overhead costs required to evaluate requested attachments. The amount of such fee shall be the amount of Owner's experienced costs in making the initial and follow-up field inspections and in preparing such documents, including all associated costs as determined by the Owner. Applicable only with respect to notices of overlashed fiber optic and coaxial cable, an inspection fee will be charged equal to the just and reasonable costs actually incurred by Owner to inspect the pole prior to the installation of the proposed overlash.

**4. NON-COMPLIANCE.** When set forth in notices that Owner may issue pursuant to this Tariff, the Tariff Agreement, O.A.C. 4901:1-3-03, or otherwise, Attachor shall have the obligation to perform work within a specified period with respect to: making its attachments, removing, relocating, or otherwise modifying its attachments to facilitate an attachment by another Attaching Entity, or removing and reattaching its attachments to a replacement pole. Attachor shall respond to all such notices and shall complete all requested work within the time set forth in Owner's notice. If, after notice, Attachor does not comply with and is not contesting any obligation to perform work, Owner shall have the right to perform such work and charge Attachor for Owner's cost.

**5. CONDITIONS OF ATTACHMENT.** All attachments are to be placed on, in, or along Owner's poles, ducts, conduits, and rights-of-way as instructed by and in a manner satisfactory to Owner so as not to interfere with the present or any future use in the electric space which Owner may desire to make of said poles, duct, conduits, and rights-of-way or the wires attached thereto or therein. All attachments shall be installed and at all times maintained by Attachor so as to comply with the requirements of the Owner's engineering and construction standards, National Electrical Safety Code (NESC) and any other applicable regulations or codes promulgated by any state, local or other governmental authority having jurisdiction thereover, as such standards, codes or regulations may be amended from time to time. The Attachor shall effectively ground its facilities

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to Owner's multi-grounded neutral, per NESC requirement. Any guying required by reason of the attachments of Attachor either in Attachor's or Owner's judgment shall be installed, maintained and provided at the expense of Attachor and to the satisfaction of Owner and shall be in place prior to the installation of Attachor's messenger wire and/or cable. In no event shall Attachor use any of Owner's anchors without first securing Owner's approval.

**6. REARRANGEMENT.** If Attachor's desired attachments can be accommodated on existing poles, ducts, and conduits of Owner by rearranging the facilities of Owner and other Attachors thereon, Owner shall notify Attachor and all other existing Attaching Entities of the necessary rearrangements that need to be made. Owner's notice to the Attachor shall include the name and contact information of other existing Attaching Entities whose facilities need to be rearranged. The existing Attaching Entities, including any other utility subject to O.A.C. 4901:1-3, shall rearrange and/or modify their attachment on or before the completion date established by Owner in its notice issued pursuant to O.A.C. 4901:1-3-03. The requesting Attachor shall be obligated to pay Owner for any costs incurred by Owner for such rearrangements and shall be financially obligated with respect to any charges imposed by the other Attaching Entity's for their costs to rearrange, except that the requesting Attachor will pay proportional to its use with any existing Attaching Entity or Attaching Entities that adds to or modifies its attachment after receiving notice of the rearrangement. A subsequent Attaching Entity who attaches after the rearranging shall share proportionately in the rearranging costs if the rearrangement made possible its attachment. The requesting Attachor shall not be obligated to pay Owner or existing Attachors for rearrangement costs incurred to rectify an existing condition or issue, which shall be charged instead to either: (a) the last attachor(s) or overlasher(s) who cause the condition or issue; or (b) if records are inadequate to determine who caused the condition or issue, then all attachor(s) and overlasher(s) and the public utility shall pay to rectify the existing condition proportional to their use. If any additional guying is required by reason of the attachments of the Attachor, then Attachor shall reimburse Owner for the total costs of such work. If guying is required in the communication zone, Attachor shall be responsible for installation at its own expense. Attachor shall have the responsibility to seek agreement with other Attaching Entities with respect to the financial obligations relating to any such rearrangements. Outside of providing the standard proposal notifications, Owner undertakes no obligation and shall not be responsible for coordinating the rearrangement of the existing Attaching Entities attachments.

**7. REPLACEMENT FACILITIES.** (a) In any case where Owner plans to install a new pole, duct, or conduit as a replacement of an existing pole, duct, or conduit, Owner shall notify all Attaching Entities with attachments on or in the existing pole, duct, or conduit of such plans. Attaching Entities have 15 days from such notification by Owner to indicate their intent to attach to or in the new pole, duct, or conduit and shall further indicate whether the existing specifications for their facilities remain the same or if there are changed requirements. A failure to provide a response shall be treated as if the Attaching Entity had indicated intent to attach to the new pole, duct, or conduit with no change in existing specifications.

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(b) In any case where Owner installs a new pole as a replacement of an existing pole because of the necessity of providing adequate space or strength to accommodate the attachments of Attachor, either at the request of Attachor or to comply with the above standards, codes and regulations, the Attachor shall pay Owner's make-ready cost of this replacement, except that the requesting Attachor will pay proportional to its use with any existing Attaching Entity or Attaching Entities that adds to or modifies its attachment after receiving notice of the pole replacement. A subsequent Attaching Entity who attaches after the pole replacement shall share proportionately in the replacement costs if the replacement made possible its attachment. Such cost shall be the total estimated cost of the new pole, including material, labor, and applicable overheads, plus the cost of transferring existing electric facilities to the new pole, plus the cost of removal of the existing pole and any other incremental costs required to provide for the attachments including any applicable taxes and fees the Owner may be required to pay because of this change in plant, minus salvage value of any facilities removed. The requesting Attachor shall not be obligated to pay Owner or existing Attachors for pole replacement costs incurred to rectify an existing condition or issue, which shall be charged instead to either: (a) the last attachor(s) or overlasher(s) who cause the condition or issue; or (b) if records are inadequate to determine who caused the condition or issue, then all attachor(s) and overlasher(s) and the public utility shall pay to rectify the existing condition proportional to their use.

(c) Attachor shall also pay to the Owner and shall be financially responsible to any existing Attaching Entities for the cost of removing all existing attachments from the existing pole and re-establishing the same or like attachments on the newly installed pole. Owner's notice to the Attachor shall include the name and contact information of other existing Attaching Entities whose facilities need to be transferred.

(d) Where Owner is initiating the installation of a new pole, either as a replacement of an existing pole or as an initial installation and a new or modified attachment is proposed by an Attachor which, in the opinion of Owner, makes it necessary to install a new pole taller or stronger than would be needed but for the Attachor's new or modified attachments, the added total costs incurred by Owner due to such extra height and/or strength shall be paid by Attachor. Such added total costs shall be the difference between the total cost of installing the new pole required to accommodate Attachor's new or modified attachment and the current total cost that would have been incurred in the absence of Attachor's new or modified attachment.

(e) Any new pole installed pursuant to the provisions of this paragraph shall be the property of Owner regardless of any payments by Attachor towards its cost, and Attachor shall acquire no right of ownership in, or title to, such pole (or with respect to any other pole subject to this Tariff).

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(f) Attachor shall transfer its facilities by the date set for completion by Owner in Owner's notice to Attachor that the Owner has replaced a pole on which Attachor has attachments so the Owner may remove the old pole. Should the Attachor fail to transfer the facilities as of such completion date, the Attachor shall be subject to the Non-Compliance conditions set forth in Section 4.

(g) The provisions of 7(b) through 7(f) shall be applied with respect to replacement ducts and conduits with appropriate modifications to reflect the differences in work and costs to replace ducts and conduits relative to replacement poles.

**8. MULTIPLE APPLICANTS.** When Owner receives applications from more than one applicant for attachment space on or in any particular pole, duct or conduit and because of such multi-attachments either the pole, duct or conduit must be replaced or the facilities thereon must be rearranged to provide additional space for said attachments, Owner will prorate the additional total costs resulting from the pole, duct or conduit replacement or rearrangement in a fair and reasonable way to the extent practicable between Attachor and the other attachment applicant(s). Such prorated total costs shall include the common engineering, material and other expenses which result to Owner from the multiple attachments. Owner's proration of total costs shall be determinative as to all parties subject to Attaching Entities' rights to dispute a make ready determination.

**9. OWNER'S RIGHT OF INSPECTION.** Owner reserves the right to inspect each new installation of Attachor on its poles, ducts and conduits. Owner reserves the right to make periodic inspections, as conditions may warrant, and Attachor shall reimburse Owner for the total costs of one post-installation inspection. Owner's right to make such inspections and any inspection made pursuant to such right shall not relieve Attachor of any other responsibility, obligation or liability assumed under this Tariff or under law.

**10. ATTACHMENT AUDIT.** Owner shall provide Attachor with no less than 180 days advance written notice of its intention to conduct an attachment inventory audit and shall provide to Attachor a reasonable opportunity to participate in the planning and implementation of the inventory audit.

**11. UNAUTHORIZED ATTACHMENT.** If the Owner discovers any equipment or facilities of an Attachor on its poles, ducts and/or conduits which have not been properly applied for or paid for under the terms set forth herein or pursuant to some other authorization, then Owner may take any or all of the following actions as applicable:

- Assess an unauthorized attachment fee of \$500 per pole for Attachors without a contract (i.e., when there is no pole attachment agreement between the parties);
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- Assess an unauthorized attachment fee of five times the current annual rental fee per pole if: 1) the Attachor has not submitted an Application, 2) the Attachor has not received an authorization to attach and the violation is self-reported or discovered through a joint inspection, or 3) the unauthorized attachment is identified by Owner or Owner's contractor during daily job responsibilities or during a pole examination for a new attachment request.

Owner shall provide specific notice of violation (including pole number and location) before seeking relief against an Attachor ("Notice of Unauthorized Attachment").

There is a mutual obligation of Owner and Attachors to correct immediately violations that pose imminent danger to life or property. If a party corrects another party's violation, the party responsible for the violation must reimburse the correcting party for the actual cost of corrections.

**12. PAYMENTS.** All payments due from Attachor shall be invoiced by Owner. Payment shall be made by Attachor within thirty (30) days from the date of the invoice, except for payments for make ready work. Payment for a make ready work estimate shall be made at any time, unless the Owner withdraws the estimate. The Attachor may submit a written dispute or request for additional information regarding the scope of make-ready work or allocation of costs of the mark-ready work. Owner may, but is not required to, withdraw an outstanding estimate of charges to perform make-ready work beginning 14 days after the estimate is presented.

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**13. OWNER'S NOTIFICATION.** (a) Whenever Owner notifies Attachor any time that the attachments of Attachor interfere with the maintenance and operation of equipment of Owner or other Attaching Entities, create a safety violation or constitute a hazard to the service rendered by Owner or other Attaching Entities, or fail to comply with standards, codes or regulations hereinafter mentioned, Attachor shall within ten (10) days after the date of such notice remove, rearrange or change its attachments as directed by Owner at Attachor's expense. Failure to comply shall result in Attachor being subject to the Non-Compliance conditions set forth in Section 4. In any emergency as deemed by Owner, Owner reserves the right to remove and/or relocate the attachments and/or facilities of Attachor at any time at Attachor's expense without notice and no liability therefore shall be incurred by Owner because of such action, and Attachor shall be liable to Owner for Owner's total costs in removing and/or relocating Attachor's attachments and/or facilities and Attachor shall be deemed to have indemnified and held Owner harmless for such action pursuant to Section 18. Whenever Owner notifies Attachor that the attachments of Attachor interfere with routine maintenance, Attachor shall within thirty (30) days after the date of such notice remove, rearrange or change its attachments as directed by Owner.

(b) Owner reserves the right, without liability to Attachor or Attachor's customers, on (sixty) 60 day notice to Attachor to discontinue the use of, remove or change the location of any or all of its poles or attachments regardless of any occupancy of Owner's poles, ducts, and conduits by Attachor and Attachor shall, at its sole cost and within sixty (60) days after written notice by Owner, make such changes in, removal or transfer of its attachments as shall be required by such action of Owner. Failure to comply shall result in Attachor being subject to the Non-Compliance conditions set forth in Section 4.

**14. ABANDONMENT BY ATTACHOR.** Attachor may at any time abandon the use of Owner's pole, duct, conduit, or right-of-way hereunder by giving written notice thereof to Owner and then removing therefrom all of its attachments. Attachor shall remove all of its attachments within 60 days after providing such notice to Owner. Failure to comply shall result in Attachor being subject to the Non-Compliance conditions set forth in Section 4.

**15. ATTACHOR'S EQUIPMENT.** If Attachor should desire to mount equipment outside of the communication zone (power supplies, amplifiers, etc.) on Owner's poles a written application shall be submitted for permission to install/mount equipment on Owner's Poles. The Annual Rental fee for authorized equipment installation that is in compliance with the authorization shall be the Annual Rental Fee. Any electric power service provided by Owner for power supplies, amplifiers or other equipment of Attachor shall be paid for by Attachor as per Owner's applicable electric tariff.

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**16. COMPUTATION AND PAYMENT OF MAKE READY COSTS.** In computing the amounts becoming due pursuant to these General Terms and Conditions for make ready costs (other than the Annual Rental Fee), the fees and charges shall be the actual costs incurred by the Company to make the facilities ready for Attachor's proposed attachment. Make ready costs pursuant to these General Terms and Conditions shall include not only all labor and material costs and expenses, but also overheads and indirect costs required including any applicable taxes, permit fees, and other charges the Owner is required to incur or pay to make the facilities ready for Attachor's proposed attachments.

**17. THIRD PARTY CLAIMS.** In granting Attachor the right to attach to Owner's poles, ducts, and conduits or other facilities as provided herein, Owner makes no representation as to what rights may exist in others regarding the land on which Owner's poles and other facilities are located. Attachor shall have full responsibility for meeting the title claims or requirements of any other parties relating to the placement of its facilities upon, under, or above said land, and Attachor shall hold harmless Owner against any such claims.

**18. RELEASE AND INDEMNIFICATION.** (a) As further consideration to Owner for its granting Attachor permission to use Owner's facilities as herein provided, Attachor hereby releases Owner from any and all liability for loss of or damage to its attachments subject to this Tariff, and for any interruption to or failure of any service rendered by Attachor in which such attachments are used. Under no circumstance, shall Owner be responsible to Attachor, either directly or through claims raised against Attachor by Attachor's employees, contractors, or customers, for incidental, indirect, punitive, special or consequential damages, including, but not limited to, loss of profits or revenues, interruption of customer service or interference with business operations.

(b) Attachor further shall indemnify, hold harmless and defend Owner from and against any and all actions or causes of action, claims, demands, liabilities, loss, damage or expense of whatsoever kind and nature ("Claims"), including Claims of Attachor's employees, contractors, and customers whether raised directly against Owner or raised indirectly against Owner through Attachor, and including incidental, indirect, punitive, special or consequential damages, including, but not limited to, loss of profits or revenues, interruption of customer service or interference with business operations, and further including attorneys' fees arising from such action, by reason of bodily injury, including death, to any person or persons, or by reason of damage to or destruction of any property, including the loss of use thereof, including property of Owner,

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arising out of or in any manner connected with the facilities of Attachor to be installed hereunder, including any costs which Owner may sustain or incur in the investigation, settlement or litigation of any such claims, including any legal action instituted to enforce the obligation of this agreement of indemnity, whether or not due in whole or in part to any act, omission, or negligence of Owner, or any of its representatives or employees, subject, however, to the provisions of Section 2305.31 of the Revised Code of Ohio (O.R.C.), where applicable, provided, further, however, that nothing herein shall require indemnification as to any claims against Owner arising under the Ohio Worker's Compensation Law with respect to Owner's employees and contractors. This indemnity obligation does apply, however, to claims against Owner by Attachor's employees, contractors and customers. To the extent that Attachor might otherwise be immune from indemnifying Owner under the applicable workers compensation law, Attachor hereby expressly waives this immunity. For claims arising under Ohio law, this waiver applies to Section 35, Article II of the Ohio Constitution and O.R.C. Section 4123.74. Moreover, Attachor expressly waives any subrogation rights, including those provide under O.R.C. Section 4123.93, it may have arising from any claim brought by its employees against Owner for injuries allegedly sustained while involved in pole attachment activities.

(c) Approval of the above tariff language by the PUCO does not constitute a determination by the Commission that the limitation of liability imposed by the Company should be upheld in a court of law. Approval by the Commission merely recognizes that since it is a court's responsibility to adjudicate negligence and consequent damage claims, it is also the court's responsibility to determine the validity of the exculpatory clause.

**19. PUBLIC LIABILITY INSURANCE.** Attachor shall obtain and maintain at all times during the joint use of poles hereunder policies of insurance as follows:

- (a) Public Liability Insurance for itself in an amount not less than \$1,000,000.00 for any one person and, subject to the same limit for any one person, in an amount not less than \$1,000,000.00 for any one occurrence.
- (b) Property Damage Liability Insurance for itself in an amount not less than \$1,000,000.00.
- (c) Contractual Liability Insurance with limits as provided in (a) and (b) above to cover the liability assumed by Attachor under the agreement of indemnity herein above set forth.

Attachor shall furnish to Owner a certificate, from an insurance carrier acceptable to Owner, stating that policies of insurance have been issued by it to Attachor providing for the insurance

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listed above and stating that such policies are in force. Such certificate shall state that the insurance carrier will endeavor to give Owner at least thirty (30) days' prior written notice of any cancellation of or material change in such policies. The certificate shall also quote in full the agreement of indemnity set forth above as evidence of the type of contractual liability coverage furnished. If such certificate recites that it is subject to any exceptions contained in the policy or policies of insurance, such exceptions shall be stated in full in said certificate. Owner may, in its discretion, require that before the Attachor starts work, Attachor must obtain policies of insurance which are not subject to any exceptions which Owner finds objectionable.

**20. PERFORMANCE BOND.** Attachor shall furnish a performance bond in the amount of Ten Thousand Dollars (\$10,000.00) or lesser or greater amount as Owner from time to time may require to guarantee the performance of the obligations assumed by Attachor under the terms of this Tariff not otherwise covered by the insurance required by Section 19. Such bond shall be identical in terms to the form of bond marked Exhibit B, attached hereto and made a part hereof.

**21 PERMITS, EASEMENTS, AND RIGHTS-OF-WAY.** Attachor, at its expense, shall be solely responsible for determining the extent to which it is necessary to secure and shall secure any additional easement, right-of-way, franchise, other right, license or permit from any governmental body, authority or any other landowner, entity, or person that may be required for the construction, maintenance or continued siting of Attachor's attachments and related equipment and facilities. Owner does not provide or guarantee that Attachor will be able to obtain any necessary easements, right-of-way or franchises, other right, license or permit for the construction and maintenance of such attachments. Attachor hereby agrees to indemnify and save harmless the Owner from any and all claims, including the expenses incurred by the Owner to defend itself against such claims, resulting from or arising out of the failure of Attachor to secure any necessary easement, right-of-way, franchise, other right, license or permit for the construction, maintenance or continued sitting of such attachment on the Owner's pole or along Owner's pole line or occupancy in the Owner's duct or conduit.

**22. WORK OF ONE PARTY PERFORMED BY THE OTHER.** In case one party hereto is obligated hereunder to perform certain work at its own expense and it is mutually agreed between the parties hereto that it is desirable for the other party to do said work, then said other party shall promptly do the work at the sole expense of the party originally obligated to perform the same and at a price agreed to by the parties at the time.

**23 ADDITIONAL TERMINATION RIGHTS.** If Attachor fails to comply with any of the provisions of this Tariff or defaults in the performance of any of its obligations under this Tariff and fails to correct such default or non-compliance within 60 days of Owner's notification, which may be in writing or via the electronic system used by Owner to communicate with Attachors, Owner

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may, at its option, forthwith remove Attachor's facility from Owner's pole, duct and conduit and no liability shall be incurred by Owner because of such action and Attachor shall indemnify and hold Owner harmless for such action pursuant to Section 18. In addition, Attachor shall be liable to Owner for Owner's total costs in removing Attachor's attachments and/or facilities.

**24. FORCE MAJEURE.** Neither Owner nor Attachor shall be deemed to be in breach of this Tariff by reason of failure to perform any of its obligations hereunder if, while and to the extent that such failure is due to strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of governmental authority, weather conditions, floods, riots, rebellion, sabotage, or any other circumstances for which it is not responsible and which are not reasonably within its control.

**25. DELAYED PAYMENT CHARGE.** Payment of the total amount due must be received by the Company or an authorized agent by the due date shown on the bill. If Attachor does not pay the total amount due to the Company by the due date shown, an additional amount equal to one and one-half percent (1.5%) per month of the total unpaid balance shall also become due and payable.

**26. RETURNED CHECK CHARGE.** A charge of the actual banking fee amount for returned check shall be added to the Attachor's account each time a check is returned by the financial institution.

**27. GENERAL TERMS AND CONDITIONS MAY BE AMENDED.** The Company reserves to itself the right with the approval of The Public Utilities Commission of Ohio, to modify, alter, amend, or add new provisions into these General Terms and Conditions as experience and conditions may suggest, or as it deems necessary in the conduct of its business.

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