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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

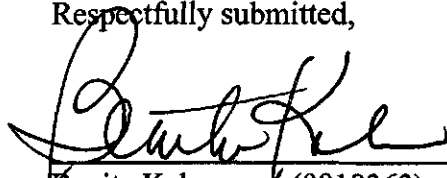
In the Matter of the Application of Ohio )  
Power Company and Columbus Southern ) Case Nos. 10-2376-EL-UNC  
Power Company for Authority to Merge )  
And Related Approvals. )

MOTION TO INTERVENE OF  
THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION

Pursuant to Section 4903.221, Revised Code and Rule 4901-1-11 of the Ohio Administrative Code ("OAC"), The Ohio Cable Telecommunications Association ("the OCTA") moves for leave to intervene in this proceeding. The reasons supporting the Motion to Intervene are set forth in the accompanying Memorandum in Support.

WHEREFORE, the OCTA respectfully requests that it be permitted to intervene in these matters.

Respectfully submitted,



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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of Ohio</b>	)	
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<b>And Related Approvals.</b>	)	

**MEMORANDUM IN SUPPORT**

On October 18, 2010, Columbus Southern Power Company ("CSP") and Ohio Power Company ("OPC") (collectively "the Companies") filed an Application for authority to merge and for related approvals ("the Application"). The Commission has stated that the Companies must demonstrate that the merger "will promote the public interest and not adversely affect any class of CSP or OPC customers within the Commission's jurisdiction."<sup>1</sup> Further, the Companies contend in the Application that this merger will "promote public convenience and result in the provision of adequate service for a reasonable rate, rental, toll, or charge."<sup>2</sup> In reviewing the Application, to ensure the merger will not adversely affect any class of customer, the Commission will need to consider the effect on the Companies' rates and whether the resulting rates will be just and reasonable. The OCTA requests authority to intervene in this case to ensure that the proposed merger will promote the public interest and will not result in unreasonable rates for OCTA members or customers of its members.

Section 4903.221, Revised Code, provides that any "person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding." The OCTA meets this statutory standard and as such, requests that the Commission allow the OCTA to intervene in this proceeding.

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<sup>1</sup> *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, Commission's Entry dated February 9, 2011, p. 2.

<sup>2</sup> *Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, p. 2.

**A. The Commission's Standard For Intervention Requests**

Section 4903.221, Revised Code, sets forth the criteria the Commission must consider when ruling on a motion to intervene:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings; and
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

The Commission has promulgated Rule 4901-1-11(B) of the Ohio Administrative Code to implement this statutory provision. Rule 4901-1-11(B) directs the Commission, Legal Director, Deputy Legal Director, or Attorney Examiner to consider the following factors in deciding whether to permit intervention:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues; and
- (5) The extent to which the person's interest is represented by existing parties.

The OCTA meets the considerations of both the statute and the rule. The OCTA's interests in, and contributions to, this proceeding require grant of this motion.

**B. The OCTA And Its Interests In This Proceeding**

The OCTA is a trade association made up of various cable television operators throughout Ohio. Today, the OCTA members offer a variety of electronic communications services in addition to "linear" video services, including internet access and data services, as well as interconnected voice over internet protocol-enabled service. To provide these services, the OCTA's members often attach their facilities to utility poles owned and controlled both by electric utilities and incumbent local exchange carriers. Thus, the rates charged by the electric utilities for use of the utility pole attachments, although only a small portion of the electric tariff, has a significant effect on the cable telecommunications industry, including the OCTA members and their customers. As a result, the OCTA has a real and substantial interest in this proceeding.

As noted by the Commission and by the Companies, the approval of the Application requires that the merger be in the best interest of the public and will not result in rates that are unjust or unreasonable. This standard of approval requires an examination of the effect of the Companies' proposed merger on the reasonableness of the Companies' rates. The proposed merger will result in the creation of a single, combined company with blended assets and rates. Based on the current separate rates, the resulting single rate may be unjust and unreasonable, particularly with regard to pole attachments.

The basic underlying principle of ratemaking is cost causation, in that those consumers who cause the costs, must also pay for those costs. The pole attachment rates are currently determined by an FCC formula that clearly and specifically allocates the costs caused by users of the poles based on several factors specific to each company individually, including the number of poles of the individual company and associated maintenance expenses. The distinctions between the number and locations of poles of CSP and OPC have resulted in a significant difference in CSP and OPC pole attachment rates. Currently, the OPC rates are approximately ninety cents higher than the CSP rates, resulting in rates that are more than 30% greater.

The Companies' proposed merger will eliminate the specific tracking of cost causation per individual company that is currently in place and has resulted in this significant difference in pole

attachment rates. However, to promote the public interest and not adversely affect any customers, the Companies must continue to account for the significant difference in the current rates and address the inherent distinctions between the cost causation issues of CSP and OPC even after the merger. The proposed merger does not address the possibility of retaining separate pole attachment rates nor separate asset and related expense accounting for the current companies. Based on audit procedures for poles, this could be accomplished by creating regions and retaining the cost causative principle used in setting rates.

The Companies claim that this merger will “promote the public convenience and result in the provision of adequate service for a reasonable rate.”<sup>3</sup> This claim cannot be fully developed or examined without considering the effects of this merger on the reasonableness of the Companies’ rates. The OCTA recognizes that the merger case is distinct from the distribution rate increase case. More important, unless addressed in this merger proceeding, the Companies’ merger will result in the consolidation and blending of the pole attachment rates that will significantly affect the OCTA members and their customers and that are no longer consistent with the cost causation principles. If the proposed merger were to be determined without consideration of these interests of the OCTA, there may not be an opportunity to revisit this.

### **C. Conclusion**

The Companies’ proposed merger will clearly affect the reasonableness of the Companies’ pole attachment rates and, thus, the ability to provide communications services at a just and reasonable rate to customers of the OCTA members. As stated above, pole attachment rates are a significant issue in the cable telecommunications industry. No other party in this case has intervened to protect the interests of companies providing communications services similar to those of the OCTA and thus, the interests of the OCTA are not currently represented by any other party to the proceeding. As a result, the OCTA will significantly contribute to the full development and equitable resolution of the factual issues addressed in this merger. Further, the OCTA’s intervention is timely and will not unduly delay this proceeding, as no hearing date and no intervention deadline has been set for this proceeding.

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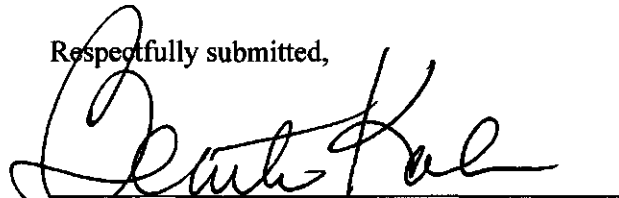
<sup>3</sup> Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge, dated October 18, 2010, at 2.

The OCTA has a real and substantial interest in this proceeding and expertise and perspective that will assist the Commission in making the required legal determinations. The OCTA submits that it will participate substantively and on a timely basis that will assist the Commission in reaching a determination on the prudence and full effects of the Companies' proposed merger consistent with the Commission's statutory obligations, precedent, and policies.

The failure to grant intervention in this case will impede the ability of the OCTA to protect and defend the interests of its members. Further, granting intervention to the OCTA is consistent with the Commission's policy to "encourage the broadest possible participation in its proceedings."<sup>4</sup> In sum, the OCTA has met the Commission's standards for intervention.

For these reasons, the OCTA respectfully requests that the Commission find that the OCTA's motion to intervene be granted in accordance with Section 4903.221, Revised Code and Ohio Administrative Code Rule 4901-1-11.

Respectfully submitted,



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<sup>4</sup> *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2; *In the Matter of the Restatement of the Account and Records*, Case No. 84-1187-EL-UNC, Entry date November 4, 1985.

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Motion to Intervene was served upon the following persons via email this 13th day of June, 2011.



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