

FILE

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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

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**THE OHIO CABLE TELECOMMUNICATIONS ASSOCIATION'S
REPLY IN SUPPORT OF ITS MOTION TO INTERVENE**

Columbus Southern Power Company and Ohio Power Company (collectively the "Companies") filed a Memorandum Contra to Ohio Cable Telecommunications Association's motion to intervene on June 15, 2011. The Companies misinterpret and misapply the statutory requirements for intervention in order to argue that the intervention of the Ohio Cable Telecommunications Association ("OCTA") should be denied as untimely. As shown in OCTA's motion to intervene, OCTA meets the statutory standards for intervention as the intervention is timely, will not delay the proceedings, and OCTA has a unique knowledge and experience to offer to the Commission's determination in this case that is not adequately represented by other parties.

A. OCTA's Motion to Intervene is Timely in Accordance with Rule 4901-1-11(E)

Ohio Administrative Code Rule 4901-1-11(E) provides that a motion to intervene will not be considered timely if (a) "it is filed later than five days prior to the scheduled date of hearing" or (2) later than "any specific deadline established by order of the commission for purposes of a particular proceeding." The Commission has not set a hearing date in this proceeding and the Commission has not set a specific deadline for motions to intervene. Thus, in accordance with the rule, OCTA's motion to intervene is timely.

The Companies assert that because OCTA has filed its motion to intervene after the Commission's deadline for initial comments, OCTA's motion is untimely, and thus may only be granted under extraordinary circumstances. The Companies incorrectly interpret Rule 4901-1-11(E) to state that motions filed after *any* deadline established by the Commission in the proceeding renders such a motion

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untimely. This interpretation is an overly broad and prejudicial interpretation of the intervention statute that is inconsistent with prior Commission interpretations and the language of the rule.

The Commission has consistently interpreted the phrase “specific deadline” to refer to a specific *intervention* deadline, not any deadline established in the case.¹ The Companies’ proposed interpretation of the intervention standard may limit participation in Commission proceedings by foreclosing a party from participating because the party did not file an intervention before the date of *any* deadline set in the case. Such an interpretation would set a precedent restricting intervention and participation in future Commission proceedings. It also ignores the ongoing process in this proceeding that could include a hearing, stipulation or other orders that address issues in the merger that could affect OCTA and its members. Also significant is that the Companies’ interpretation of Rule 4901-1-11 is directly contrary to the Ohio Supreme Court’s mandate that the standard for intervention be “generally liberally construed in favor of intervention.”²

B. OCTA Meets the Remaining Standards for Intervention

Pole attachment rates are a significant issue in the cable telecommunications industry and are affected by the proposed merger. Although other existing intervenors may seek to ensure that the proposed merger is in the public interest and will not result in unreasonable rates, no other party in this case has intervened to protect the unique interests of companies providing communications services similar to those of OCTA. Thus, the interests of OCTA are not currently represented by any other party to the proceeding. As a result, OCTA’s unique knowledge and expertise with regard to communications services will significantly contribute to the full development and equitable resolution of the factual issues

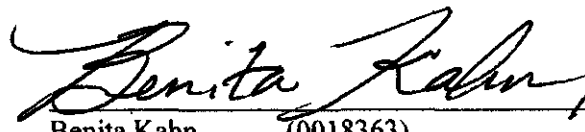
¹ *In the Matter of the Petition of The Avon Lake Subscribers of The Century Telephone Company of Ohio*, Case No. 93-911-TP-PEX, Entry, Feb. 17, 1995 (“Since there was no specific Commission order as to *when intervention motions needed to be filed*, the IXC’s motion should have been filed [five days before the hearing], in order to be found timely.”) (emphasis added); *In the Matter of the Continuation of the Rate Freeze and Extension of the Market Development Period for The Dayton Power and Light Company*, Case No. 02-2779-EL-ATA, et al., Opinion and Order, Sept. 2, 2003 (“Ohio law provides that a motion to intervene will not be considered timely if it is filed later than either five days before the scheduled date of the hearing on the matter or the *specific deadline established for intervention* in the particular matter.”) (emphasis added).

² *Ohio Consumers’ Counsel v. PUC*, 111 Ohio St. 384, 386 (2006).

addressed in this merger. Further, only initial comments have been filed in this case, and no hearing date or further proceedings have been set. Thus, OCTA's intervention in this case will not cause delay to the proceedings.

For these reasons, OCTA respectfully requests that the Commission find that 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,



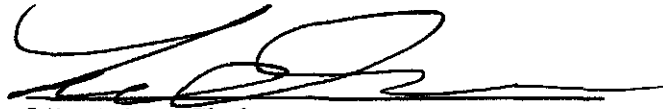
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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Motion to Intervene was served upon the following persons via email this 22nd day of June, 2011.



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