

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Fiber Technologies Networks, L.L.C.,)	
)	
Complainant,)	
)	Case No. 14-564-AU-CSS
v.)	
)	
Ohio Power Company d/b/a AEP Ohio,)	
)	
Respondent.)	
)	

**MOTION FOR ASSISTANCE TO PREVENT TERMINATION OF SERVICE AND
REQUEST FOR EXPEDITED RULING
FILED BY FIBER TECHNOLOGIES NETWORKS, L.L.C.**

On April 7, 2014, Fiber Technologies Networks, L.L.C. (Fibertech) filed a complaint (Complaint) with the Public Utilities Commission of Ohio (Commission) against Ohio Power Company d/b/a AEP Ohio, an operating company subsidiary of American Electric Power Company, Inc., and all other entities, including former Columbus Southern Power Company, under which AEP does business in relation to providing pole attachments in Ohio (hereinafter, AEP). In the Complaint, Fibertech requested that the Commission order AEP to discontinue its unreasonable, unjust, and discriminatory practices. AEP unlawfully refuses to grant Fibertech nondiscriminatory access to its poles. AEP refuses to process Fibertech's pole attachment applications, complete engineering and make ready work and allow National Electric Safety Code (NESC)-compliant temporary attachments on non-compliant poles until and unless Fibertech pays to correct safety violations caused by AEP or other attachers. AEP even refuses to process applications for poles which do not contain any NESC violations, and for which


Fibertech has paid or is ready to pay all AEP charges such as make ready work and costs associated therewith.¹ See Sections 4905.51, 4905.71, and 4927.02, Revised Code, and Rule 4901:1-7-23, Ohio Administrative Code (O.A.C.), which requires nondiscriminatory access to AEP's public utility poles and rights-of-way.

Given the circumstances set forth in Fibertech's Complaint, Fibertech believes that it is facing termination of service relating to pole attachments by AEP, and/or that AEP has already terminated service to Fibertech by denying Fibertech access to its poles and refusing to process Fibertech's submitted pole attachment applications associated with disputed and undisputed costs. Accordingly, pursuant to Rule 4901-9-01(E), O.A.C., Fibertech hereby files this motion, requesting assistance from the Commission to prevent the termination of service by AEP to Fibertech during the pendency of the Complaint in this matter associated with both applications for poles containing pre-existing NESC non-compliant conditions as well as applications which do not contain such conditions. The rationale for this motion and its necessity are set forth in the attached Memorandum in Support.

¹ Late yesterday, Fibertech was notified of AEP's intention to remove the "hold" on Fibertech's applications and to resume the processing of Fibertech's applications that are not in dispute. Fibertech is without knowledge as to whether the processing has in fact begun. While Fibertech appreciates AEP's willingness to process those applications that it believes are not in dispute or will not result in a dispute, Fibertech believes the Commission's rules require more. AEP is required to process all applications and allow access to its poles, regardless of whether there is a dispute as to who should pay for the costs of completing such work. AEP should not be allowed to terminate a service for a disputed charge invoiced by the utility to a nonresidential customer during the pendency of a complaint. See, e.g., Rule 4901:1-10-15, O.A.C.

Additionally, because of the significant negative consequences resulting or potentially resulting from AEP's continued refusal to process Fibertech's pole attachment applications and allow access to its facilities, Fibertech hereby requests that the Commission issue an expedited ruling on this motion pursuant to Rule 4901-1-12(C), O.A.C. Pursuant to Rule 4901-1-12(C), O.A.C., counsel for Fibertech contacted AEP and AEP objects to the issuance of an expedited ruling.

Respectfully submitted,



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MEMORANDUM IN SUPPORT

As explained in detail in Fibertech's Complaint, over the past year, Fibertech has invested tens of millions of dollars in Ohio in order to build more than 1,000 route miles of fiber-optic network in the metropolitan areas of Columbus, Cleveland, Cincinnati, Akron, Dayton, and Toledo. Fibertech's expansion and investment efforts have been focused, in part, in locations within AEP's service area. During the course of its expansion efforts, Fibertech has encountered many AEP-owned utility poles that are non-compliant with NESC standards. These NESC violations existed before any attempt by Fibertech to attach to the AEP-owned poles in question. Despite these circumstances, AEP is presently refusing to process Fibertech's pole attachment applications and/or allow Fibertech to permanently attach to AEP's poles until the pre-existing NESC violations are resolved at Fibertech's expense.

In an attempt to continue, in a timely fashion, facilitating its planned Columbus market expansion, Fibertech agreed to assist AEP in collecting money from companies whose attachments contributed to the NESC violations to cover the costs associated with correction of the violations. In the spirit of cooperation, and with no legal obligation to do so, Fibertech even agreed to initiate discussions among the various attachers and contribute a reasonable amount of its own money to the effort. In return, Fibertech was initially permitted by AEP to build its network in AEP's service territories using NESC-compliant temporary attachments, where necessary, to permit attachment to the NESC non-compliant poles.

Despite Fibertech's assistance and offer to contribute, AEP demanded that Fibertech pay all costs, including labor and materials, associated with correcting the NESC violations caused by other attachers. Given its unlawful and unreasonable nature, Fibertech did not agree to AEP's demand. However, in an effort to sustain AEP's processing of its attachment applications and to

continue to build its network, deliver service, and thereby fulfill its obligations to contracted customers, Fibertech paid \$100,000 to AEP as a demonstration of good faith that it would stand by its commitment to contribute a reasonable amount to resolve the issue. Despite Fibertech's significant and gratuitous contribution, and because Fibertech refused to pay all costs, including labor and materials, or any additional amounts (in excess of the \$100,000) toward the correction of pre-existing safety violations on AEP's poles, AEP stopped processing Fibertech's pole attachment applications, stopped issuing the requisite permits or licenses, and has refused to allow Fibertech further access to its poles, including poles contained in applications with which Fibertech would agree to pay for all costs, including those that are not in dispute. In so doing, AEP has effectively terminated its required provision of pole attachment service to Fibertech. Such pole attachment service is required by Sections 4905.51, 4905.71, and 4927.02, Revised Code, and Rule 4901:1-7-23, O.A.C.

In the course of completing its initial expansion routes throughout Ohio, Fibertech entered into several contracts to serve customers across the state. For example, in AEP's service territories, Fibertech has committed to serve school districts as well as other customers. AEP's discontinuation of service to Fibertech by means of its refusal to process or evaluate Fibertech's pole attachment applications or permit Fibertech to make new attachments to its poles jeopardizes Fibertech's ability to complete the projects mentioned above and, consequently, impairs Fibertech's business and contractual relationships with these customers. Because of these serious negative consequences, Fibertech feels that it is necessary to request assistance from the Commission to prevent the termination of service, i.e., the moratorium on processing attachment applications that AEP has unreasonably imposed, as well as AEP's refusal to permit new Fibertech attachments to its poles.

As stated previously, despite having no legal obligation to do so, Fibertech previously contributed, and AEP accepted from Fibertech, \$100,000 toward resolution of the NESC non-compliant conditions on AEP's poles. At this point, however, AEP has demanded that Fibertech pay the balance of the \$311,000 for materials, plus commence paying labor costs, if it wants to attach to poles in AEP's service area. The over \$311,000 that AEP alleges Fibertech must pay is in dispute in this proceeding, as is whether Fibertech should be required to pay for the labor involved in correcting pre-existing safety violations. Despite these disputes, Fibertech has paid and will continue to pay all undisputed amounts owed to AEP during the pendency of the complaint as required by Rule 4901-9-01, O.A.C. Those amounts include application/license and processing fees, make-ready material and labor costs, engineering costs, inspection fees, etc. Fibertech also pays independent contractors separately for completing some of the work.

In its Complaint, Fibertech requested that the Commission direct AEP to discontinue its unreasonable, unjust, and discriminatory practices, namely, its refusal to allow Fibertech nondiscriminatory access to poles that AEP's own contractors have deemed ready for attachments, and its refusal to process Fibertech's pole applications until and unless Fibertech pays to correct safety violations caused by AEP or other companies. In conjunction with the allegations in its Complaint, by means of this motion and pursuant to Rule 4901-9-01, O.A.C., Fibertech is specifically requesting that the Commission provide its assistance to Fibertech by directing AEP to resume processing, during the pendency of the Complaint, Fibertech's pole attachment applications on a timely basis, and to grant Fibertech access to its poles in a nondiscriminatory manner.

Pursuant to Rule 4901-1-12(C), O.A.C., Fibertech is further requesting an expedited Commission ruling on this motion, as each day in which AEP refuses to process Fibertech's pole

attachment applications and denies access to its poles jeopardizes Fibertech's contractual and business relationships and frustrates the efforts and investments Fibertech has made in the context and locale of AEP's service area.

WHEREFORE, Fibertech respectfully requests that the Commission expeditiously grant its motion for assistance to prevent termination of service and further harm to Fibertech.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 15th day of April, 2014 by electronic mail upon the persons listed below.



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Summary: Motion For Assistance To Prevent Termination Of Service And Request For Expedited Ruling Filed By Fiber Technologies Networks, L.L.C. electronically filed by Mrs. Kimberly W. Bojko on behalf of Fiber Technologies Networks