

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

Fiber Technologies Networks, LLC,)	
)	
Complainant,)	
)	
v.)	Case No: 14-564-AU-CSS
)	
Ohio Power Company)	
)	
Respondent.)	

ANSWER AND COUNTERCLAIM OF OHIO POWER COMPANY

Pursuant to Rule 4901-9-01, Ohio Administrative Code (“O.A.C.”), Ohio Power Company (“AEP Ohio” or “Respondent”) hereby answers the Complaint filed in this proceeding by Fiber Technologies Networks, LLC, (“Fibertech” or “Complainant”) and states as follows:

ANSWER TO ALLEGATIONS

1. AEP Ohio denies each and every allegation not specifically admitted to.
2. AEP Ohio is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 1 of the Complaint.
3. AEP Ohio is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 2 of the Complaint.
4. AEP Ohio admits the allegations set forth in Paragraph 3 of the Complaint.
5. AEP Ohio admits the allegations set forth in Paragraph 4 of the Complaint.
6. AEP Ohio admits the allegations set forth in Paragraph 5 of the Complaint.
7. AEP Ohio states that Paragraph 6 of the Complaint references statutory text that speaks for itself and no response is required.

8. AEP Ohio states that Paragraph 7 of the Complaint references statutory text that speaks for itself and no response is required.
9. AEP Ohio states that Paragraph 8 of the Complaint contains a legal conclusion to which no response is required.
10. AEP Ohio states that Paragraph 9 of the Complaint contains a legal conclusion to which no response is required. AEP Ohio is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in Paragraph 9 of the Complaint.
11. AEP Ohio admits the allegations set forth in Paragraph 10 of the Complaint.
12. AEP Ohio admits the allegations set forth in Paragraph 11 of the Complaint.
13. AEP Ohio states that effective December 31, 2011 the former legal entity Columbus Southern Power Company merged with and into Ohio Power Company with the latter being the surviving entity after the merger. AEP Ohio denies the remaining allegations set forth in Paragraph 12 of the Complaint.
14. AEP Ohio states that Paragraph 13 of the Complaint references statutory text that speaks for itself and no response is required. AEP Ohio further states that Paragraph 13 of the Complaint contains a legal conclusion to which no response is required.
15. AEP Ohio states that Paragraph 14 of the Complaint contains a legal conclusion to which no response is required.
16. AEP Ohio is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 15 of the Complaint.

17. AEP Ohio admits that it met with Fibertech in 2012. AEP Ohio is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations set forth in Paragraph 16 of the Complaint.
18. AEP Ohio is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 17 of the Complaint.
19. AEP Ohio admits that it has received pole attachment applications from Fibertech. AEP Ohio denies the remaining allegations set forth in Paragraph 18 of the Complaint.
20. AEP Ohio admits that it requires Fibertech to pay for the total cost of all work initiated as a result of a Fibertech attachment application and that if work is necessary to prepare Company poles for Fibertech's proposed attachment, then AEP Ohio requires that the make ready work be completed prior to approving a permanent attachment. AEP Ohio is without sufficient knowledge or information to form a belief as to the number of poles which require work as a result of Fibertech's "application to attach to 49 AEP -owned poles." AEP Ohio denies the remaining allegations set forth in Paragraph 19 of the Complaint.

ANSWER TO ALLEGATIONS CONTAINED IN COUNT 1 OF THE COMPLAINT

21. With respect to Paragraph 20 of the Complaint, AEP Ohio restates and incorporates its responses to Paragraphs 1-19 of the Complaint as if fully set forth herein.
22. AEP Ohio states that Paragraph 21 of the Complaint contains a legal conclusion to which no response is required. AEP Ohio admits that it is responsible for maintaining its poles in compliance with the NESC relative to matters within the Company's control. AEP Ohio denies the remaining allegations set forth in Paragraph 21 of the Complaint.

23. AEP Ohio states that Paragraph 22 of the Complaint contains a legal conclusion to which no response is required.
24. AEP Ohio states that Paragraph 23 of the Complaint references pole attachment agreement text that speaks for itself and no response is required.
25. AEP Ohio states that the rights and responsibilities set forth in its pole attachment agreements speak for themselves and no response is required. AEP Ohio denies the remaining allegations set forth in Paragraph 24 of the Complaint.
26. AEP Ohio admits that it requires Fibertech to pay for the total cost of all work initiated as a result of a Fibertech attachment application and that if work is necessary to prepare Company poles for Fibertech's proposed attachment, then AEP Ohio requires that the make ready work be completed prior to approving a permanent attachment. AEP Ohio states that the remaining allegations contained in Paragraph 25 of the Complaint constitute a legal conclusion to which no response is required.
27. AEP Ohio is without sufficient knowledge or information to form a belief as to Fibertech's contractual obligations with its customers as described in Paragraph 26 of the Complaint. AEP Ohio admits that it allowed Fibertech to make attachments on a temporary basis to a small subset of non-compliant poles with the understanding that Fibertech would diligently replace the temporary attachments with permanent attachments.
28. AEP Ohio admits that it had conversations with Fibertech as described in Paragraph 27 of the Complaint.
29. AEP Ohio admits that it requires Fibertech to pay for the total cost of all work initiated as a result of a Fibertech attachment application and that if work is necessary to prepare

Company poles for Fibertech's proposed attachment, then AEP Ohio requires that the make ready work be completed prior to approving a permanent attachment. AEP Ohio is without sufficient knowledge or information to form a belief as to the number of poles which require work or the nature of the work required as a result of "the survey for one application for 49 AEP –owned poles." AEP Ohio denies the remaining allegations set forth in Paragraph 28 of the Complaint.

30. With respect to Paragraph 29 of the Complaint, AEP Ohio admits that Fibertech has disputed paying for the total cost of all work initiated as a result of a Fibertech attachment application and necessary to prepare Company poles for Fibertech's proposed attachment.
31. With respect to Paragraph 30 of the Complaint, AEP Ohio states that what Fibertech "was not and is not legally obligated to do" constitute legal conclusions to which no response is required. AEP Ohio admits that "Fibertech agreed that it would pay for all work involving the rearrangement of existing facilities on existing poles necessary to correct pre-existing safety violations."
32. With respect to Paragraph 31 of the Complaint, AEP Ohio states that what Fibertech "was not and is not legally obligated to do" constitute legal conclusions to which no response is required. AEP Ohio admits that Fibertech informed AEP Ohio of its intentions to discuss pole replacement cost allocation with other pole licensees and convey its offer to contribute to the costs of such corrective work during those discussions.
33. AEP Ohio is without sufficient knowledge or information to form a belief as to the truth of the allegations set forth in Paragraph 32 of the Complaint.

34. With respect to Paragraph 33 of the Complaint, AEP Ohio admits that Fibertech requested that AEP Ohio submit a letter to other pole licensees indicating support of Fibertech's efforts to discuss pole replacement cost allocation.
35. AEP Ohio states that Paragraph 34 of the Complaint contains a legal conclusion to which no response is required. AEP Ohio further states that it is without sufficient knowledge or information to form a belief as to the basis or focus of Fibertech's efforts.
36. With respect to Paragraph 35 of the Complaint, AEP Ohio admits that it did not send Fibertech's draft letter. AEP Ohio denies the remaining allegations set forth in Paragraph 35 of the Complaint.
37. AEP Ohio admits the allegations contained in Paragraph 36 of the Complaint.
38. AEP Ohio admits the allegations contained in Paragraph 37 of the Complaint.
39. With respect to Paragraph 38 of the Complaint, AEP Ohio admits that Fibertech communicated to AEP Ohio that Fibertech would not sign the letter of agreement. AEP Ohio states that the text of the letter of agreement speaks for itself and no response is required.
40. With respect to Paragraph 39 of the Complaint, AEP Ohio states that what Fibertech is not legally obligated to do constitutes a legal conclusion to which no response is required. AEP Ohio admits that Fibertech forwarded a \$100,000 payment to AEP Ohio.
41. AEP Ohio admits the allegations contained in Paragraph 40 of the Complaint.
42. With respect to Paragraph 41 of the Complaint, AEP Ohio admits that it requires Fibertech to pay for the total cost of all work initiated as a result of a Fibertech attachment application and that if work is necessary to prepare Company poles for Fibertech's proposed attachment, then AEP Ohio requires that the make ready work be

completed prior to approving a permanent attachment. AEP Ohio is without sufficient knowledge or information to form a belief as to Fibertech's motivation for the \$100,000 payment.

43. AEP Ohio admits that it suggested Fibertech seek reimbursement from other pole licensees. AEP Ohio further states that Paragraph 42 of the Complaint contains a legal conclusion to which no response is required.
44. AEP Ohio states that the requirements of the NESC speak for themselves and no response is required. AEP Ohio admits that it requires Fibertech to pay for the total cost of all work initiated as a result of a Fibertech attachment application and that if work is necessary to prepare Company poles for Fibertech's proposed attachment, then AEP Ohio requires that the make ready work be completed prior to approving a permanent attachment. AEP Ohio denies the remaining allegations set forth in Paragraph 43 of the Complaint.
45. AEP Ohio states that Paragraph 44 of the Complaint contains a legal conclusion to which no response is required. AEP Ohio denies the remaining allegations set forth in Paragraph 44 of the Complaint.
46. AEP Ohio denies the allegations contained in Paragraph 45 of the Complaint.
47. AEP Ohio admits that it informed Fibertech's contractor that it would suspend processing Fibertech's attachment applications in response to Fibertech refusing to pay for the total cost of all work necessary as a result of a Fibertech attachment application. Nevertheless, AEP Ohio continues to provide access to Fibertech pursuant to the same access rules applicable to all parties that attach to the Company's poles. AEP Ohio is without

sufficient knowledge or information to form a belief as to the remaining allegations contained in Paragraph 46 of the Complaint.

48. AEP Ohio states that Paragraph 47 of the Complaint contains a legal conclusion to which no response is required. AEP Ohio further states that it is without sufficient knowledge or information to form a belief as to the remaining allegations contained in Paragraph 47 of the Complaint.

49. AEP Ohio states that Paragraph 48 of the Complaint contains a legal conclusion to which no response is required. AEP Ohio denies the remaining allegations set forth in Paragraph 48 of the Complaint.

50. AEP Ohio denies that Fibertech is entitled to any relief requested in the Complaint or to any relief whatsoever.

AFFIRMATIVE DEFENSES

1. Fibertech has failed to set forth reasonable grounds for complaint.
2. At all times relevant to the Complaint, AEP Ohio has complied with the pole attachment agreements in effect between the parties, applicable regulations governing pole attachments, applicable provisions of Title 49 of the Ohio Revised Code, and in accordance with all of AEP Ohio's filed tariffs.
3. AEP Ohio continues to allow Fibertech nondiscriminatory access to its poles and continues to process Fibertech's pole attachment applications pursuant to the pole attachment agreements in effect between the parties, applicable regulations governing pole attachments, and applicable provisions of Title 49 of the Ohio Revised Code.
4. Many if not all of the NESC violations alleged by Fibertech were caused by others and are beyond the knowledge and/or control of AEP Ohio.

5. AEP Ohio reserves the right to raise additional defenses or to withdraw any of the foregoing affirmative defenses as may become necessary during the investigation and discovery of this matter.

COUNTERCLAIM OF AEP OHIO

1. Upon information and belief, Fibertech was granted a Certificate of Public Convenience and Necessity by the Commission to provide local exchange and interexchange telecommunications services in the State of Ohio.
2. Fibertech is therefore subject to the jurisdiction of the Commission under sections 4905.04 and 4905.05 and Chapter 4927, Revised Code.
3. Accordingly, the rates, terms, and conditions associated with the operation and maintenance of Fibertech's facilities and services fall within the regulatory authority of the Commission by virtue of the Commission's general supervisory powers contained in section 4905.06, Revised Code.
4. The rates, terms, and conditions for nondiscriminatory access to public utility poles shall be established through negotiated arrangements and the Commission has the authority to address any fact-specific issues related to access to public utility poles. *See* Rule 4901:1-7-23(B), O.A.C.
5. Furthermore, pursuant to section 4905.48, Revised Code, the Commission has jurisdiction over contracts between public utilities.
6. Fibertech and AEP Ohio are parties to two pole attachment license agreements ("Pole Agreements"). *See* Paragraphs 10 and 11 of the Complaint; Exhibit A attached to AEP Ohio's Memorandum contra Fibertech's April 15, 2014 Motion for Assistance.

7. The terms of the Pole Agreements govern Fibertech's revocable, non-exclusive, and limited license to attach its facilities to AEP Ohio's distribution poles and maintain its approved attachments.
8. Pursuant to section 11 of the Pole Agreements, any attachment made without the written approval of AEP Ohio pursuant to the terms of the Pole Agreements shall be considered an unauthorized attachment.
9. During a recent audit of AEP Ohio's distribution poles having Fibertech facilities attached, AEP Ohio discovered that over 18% of Fibertech's attachments are unauthorized. See Exhibit 1 attached hereto for audit findings.
10. Additional unauthorized attachments have likely occurred since AEP Ohio's recent audit.
11. AEP Ohio has informed Fibertech of its discovery of Fibertech's unauthorized attachments.
12. Several of Fibertech's unauthorized attachments constitute safety violations under the provisions of the NESC. See Exhibit 2 attached hereto for examples of Fibertech safety violations.

PRAYER FOR RELIEF

WHEREFORE, Ohio Power Company respectfully requests that the Commission grant the following relief:

1. Find that Fibertech fails to set forth reasonable grounds for complaint;
2. Deny Fibertech the relief it requests;
3. Find that Fibertech has unauthorized attachments on AEP Ohio's distribution poles in violation of the Pole Agreements;

4. Order Fibertech to remove its unauthorized/temporary attachments or bring its unauthorized/temporary attachments into compliance pursuant to the terms of the Pole Agreements;
5. Order Fibertech to pay to AEP Ohio for each unauthorized attachment the applicable fee set forth in the Pole Agreements for a period of five years, including interest at the current interest rate; and
6. Order any other relief for AEP Ohio that the Commission deems appropriate, just, and reasonable.

Respectfully submitted,

/s/ Yazen Alami

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served via electronic mail upon the below-listed individuals this 28th day of April, 2014.

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/s/ Yazen Alami

Columbus Southern Power 2012 Inventory

Pole Attachment Recapitulation

Year of Inventory	2012	
Company Name	Fiber Systems LLC (1144)	REVISED

Inv. Dates 6/2012-12/2012

1144-Franklin

Pending	Mainline	85	UA	Contractor found them on 85 poles in 2012 that were on Pending proposals
Update	Mainline	422	authorized	These records were existing in 2012 and updated in inventory
Add	Mainline	9	UA	Contractor found them on 9 poles in 2012 with no existing proposal 2012 total UA is 94

Examples of Fibertech safety violations

Pole #	Location	Proposal #	Violation details
1811758741162	Scioto Darby Rd.	2013-007-1818	Safety Zone Violation (AEP Neutral @ 21'6", AEP Primary Riser @ 21'1', Fibertech @ 18'10")
1816365758432	Rings Rd.	2013-007-1714	Safety Zone Violation (AEP Primary Riser @ 26'3", Fibertech @ 24'3")
1818501717186	Hilliard Rome Rd.	2012-007-2291	Safety Zone Violation (AEP Secondary @ 26'4", Fibertech @ 23'8") and Mid Span Violation (AEP Secondary @ 23'6", Fibertech @ 23'1")
1818675715484	Hilliard Rome Rd.	2013-007-2291	Safety Zone Violation (AEP Secondary @ 29'0", Fibertech @ 26'3") and Mid Span Violation (AEP Secondary @ 23'3", Fibertech @ 22'10")
18919595758775	Rings Rd.	2013-007-1714	Safety Zone Violation (AEP 24'7", Fibertech @ 24'9")

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Summary: Answer and Counterclaim electronically filed by Mr. Yazen Alami on behalf of Ohio Power Company