

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of)
Frontier North, Inc. to Make Revisions to) Case No. 15-972-TP-ATA
Existing Pole and Anchor Attachments)
and Conduit Occupancy Accommodations Tariff)

**MOTION AND MEMORANDUM OF SUPPORT FOR
INTERVENTION AND COMMENTS
OF
THE DAYTON POWER AND LIGHT COMPANY**

The Dayton Power and Light Company (“DP&L”) hereby moves to intervene, pursuant to Ohio Administrative Code (“O.A.C.”) 4901:1-11(A)(2) and 4901:1-12, and files these comments with respect to the Applicability section of the Application filed on May 15, 2015 by Frontier North, Inc. (“Frontier”) to modify its existing Pole and Anchor Attachments and Conduit Occupancy Accommodations Tariff (the “Tariff”).

In support thereof, DP&L states as follows:

**MEMORANDUM OF SUPPORT OF
INTERVENTION AND COMMENTS**

I. Background.

1. DP&L and Frontier have overlapping service territories in the west-central portion of Ohio in and around Dayton. Frontier owns poles and other facilities to which DP&L may want to make attachments. Frontier’s filed tariff in this proceeding, however, discriminates against DP&L and prevents it from attaching to Frontier’s poles and facilities.

2. Frontier’s predecessor, General Telephone Company of Ohio (“GTE”), and

DP&L executed a Joint Use Pole Agreement on July 1, 1969 (“Joint Use Agreement”), which authorized each entity to place attachments on poles owned by the other pursuant to procedures set forth in the Joint Use Agreement. With minor changes through the years, that Joint Use Agreement remained in place until June 30, 2014, when it terminated with respect to any new attachments on poles not previously designated as a “joint pole.” Existing attachments on poles already designated as “joint poles” are unaffected by this termination because section 19 of the Joint Use Agreement states that the “Agreement shall remain in full force and effect with respect to all joint poles covered hereunder at the time of such termination.” There is no contract in place, however, that would permit DP&L to make a new attachment to a pole owned by Frontier on a pole not already designated as a “joint pole.”

3. On August 29, 2011, Frontier provided one year’s written notice of termination of the Joint Use Agreement. On September 15, 2011, DP&L provided written notice of its acceptance of that termination and provided its own notice of termination. During the subsequent discussions to negotiate a new agreement, the termination date was extended three times. Discussions ended in 2014. The last extension agreement was allowed to expire, and, as of July 1, 2014, there is no agreement in place under which either entity has the right to attach to the facilities of the other that had not already been designed prior to that date as a joint pole.

II. Intervention.

4. In its decisions to permit intervention, the Commission looks to the five factors set forth in O.A.C. 4901-1-11(B), each of which is met here. As set forth in more detail below, the nature and extent of DP&L’s interest is to ensure that it has non-discriminatory access to attach to Frontier’s poles, consistent with Commission policy to ensure such access to all Attaching Entities, including public utilities. The legal position advanced by DP&L is consistent

with Commission policy to allow all entities, including power companies, non-discriminatory access to poles owned by Frontier, which is also a utility. The only procedural step that has taken place thus far is Frontier's filing of a proposed tariff. At this early stage, DP&L's intervention will not unduly prolong or delay the proceedings. DP&L's intervention will significantly contribute to the full development and equitable resolution of the issues in this case. DP&L has a direct and immediate interest in this proceeding and no other party can represent that interest.

III. Comments

5. The Commission's regulations impose a duty on Frontier, DP&L, and other public utilities within Ohio to provide non-discriminatory access to all Attaching Entities including to other public utilities. O.A.C. 4901:1-3-03(A)(1) states:

A public utility shall provide an attaching entity with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it under rates, terms and conditions that are just and reasonable. Notwithstanding this obligation, a public utility may deny an attaching entity access to its poles, ducts, conduits, or rights-of-way, on a nondiscriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering purposes.

6. DP&L has been and remains willing to provide such non-discriminatory access to Frontier through DP&L's Pole Attachment tariff ("DP&L Tariff"). As filed on May 15, 2015, DP&L's Tariff authorizes Frontier to make a request to attach to DP&L's poles under the DP&L Tariff and its requests will be processed the same way and subject to the same terms and conditions as any other requesting entity that is an "Attaching Entity" as defined by Ohio Administrative Code ("O.A.C.") 4901:1-3-01(A).

7. In contrast, Frontier's Tariff explicitly bars its application to any power company. Specifically, Frontier's Tariff provides (emphasis supplied):

“1.01. This tariff contains the regulations and rates applicable to any attachment by a cable television system or other entity other than power companies to a pole, pedestal, duct, conduit, or right-of-way owned or controlled by GTE North Incorporated, hereafter referred to as the Telephone Company, within its operating territory in the State of Ohio.

2.01.01. Scope

Subject to the provisions of this tariff, the Telephone Company will authorize the attachment of an attachee's facilities to a pole, pedestal, or anchor, the utilization of an anchor and its associated guy strand or the placement of an attachee's facilities in a conduit system for any lawful communications purpose.

8. The combination of a Frontier Tariff that excludes power companies and the lack of an agreement in place between Frontier and DP&L that applies to new attachments to poles not previously designated as joint poles, means that Frontier is violating its duty under Commission regulations to provide DP&L with non-discriminatory access to Frontier's poles, ducts and conduits. This is not just a violation in theory; since July 1, 2014, DP&L has made at least three requests to attach DP&L facilities to poles owned by Frontier and all such requests have been rejected. As a result, DP&L has been forced to install additional poles and pole lines in order to extend electric utility service to certain new customers. DP&L has not yet made a large number of requests or incurred a huge expense, but, absent a change in Frontier's tariff, the costs will grow over time to the detriment of DP&L and its customers. Without non-discriminatory access to Frontier's facilities, the underlying purposes of pole attachment regulations are unmet. Non-discriminatory access is needed to promote efficiency through reduced total costs among pole users and to avoid the need and expense for duplicate facilities to be constructed.

9. The Commission's regulations, O.A.C. 4901:1-3-01(A), explicitly includes public utilities within the list of entities that can be "Attaching Entities" (emphasis supplied):

"Attaching entity" means cable operators, telecommunications carriers, incumbent and other local exchange carriers, public utilities, governmental entities and other

entities with either a physical attachment or a request for attachment to the pole, duct, conduit, or right-of-way and that is authorized to attach pursuant to sections 4905.51 or 4905.71 of the Revised Code. It does not include governmental entities with only seasonal attachments to the pole.

DP&L, an electric light company, is a public utility and therefore potentially an Attaching Entity.¹

10. The Commission's regulations recognize that public utilities, as between themselves, have typically been able to reach voluntarily negotiated agreements that establish the rights, terms, and prices for attachments. Thus, O.A.C. 4901:1-3-04 establishes the expectation that public utilities should and will be able to reach negotiated agreement to establish rates, terms and conditions for non-discriminatory access to public utility poles, ducts and conduits. Starting in 2011, when Frontier first notified DP&L that it was terminating the Agreement, and continuing into 2014, good faith efforts were made by DP&L to negotiate a replacement agreement. DP&L would not characterize Frontier's efforts during that time as other than in good faith as well. But it is now abundantly clear that DP&L and Frontier are deadlocked and there is no current expectation that the DP&L and Frontier will be able to achieve a negotiated agreement on a purely voluntary basis.

IV. Requested Relief.

11. As noted above, DP&L is making its Tariff available for non-discriminatory access to Frontier for future pole attachments. Frontier's Tariff, however, does not allow for such non-discriminatory access. DP&L therefore requests in this proceeding that the

¹ O.A.C. 4901:1-3-02(C): "The obligations found in this chapter, shall apply to: (i) all public utilities pursuant to 47 U.S.C. 224(c) through (i), 47 U.S.C. 253(c), as effective in paragraph (A) of this rule, and section 4905.51 of the Revised Code; and (ii) a telephone company and electric light company that is a public utility pursuant to section 4905.71 of the Revised Code. 'Public utilities' includes power companies." *See also*, O.A.C. 4901:1-3-01(O), defining a public utility by reference to Ohio Revised Code ("O.R.C.") §4905.02, which further cross-references to a list of categories of public utilities in O.R.C. § 4905.03 that includes electric light companies.

Commission direct Frontier to refile its Tariff with the following modifications:

“1.01. This tariff contains the regulations and rates applicable to any attachment by an Attaching Entity, as defined in O.A.C. 4901:1-3-01(A), ~~a cable television system or other entity other than power companies~~ to a pole, pedestal, duct, conduit, or right-of-way owned or controlled by GTE North Incorporated, hereafter referred to as the Telephone Company, within its operating territory in the State of Ohio.

2.01.01. Scope

Subject to the provisions of this tariff, the Telephone Company will authorize the attachment of an attachee's facilities to a pole, pedestal, or anchor, the utilization of an anchor and its associated guy strand or the placement of an attachee's facilities in a conduit system for any lawful ~~communications~~ purpose.

DP&L would further urge that the Commission's order make clear that the Frontier is not permitted to reject an application for attachment on grounds that its existing or planned pole is insufficiently strong or tall enough to accommodate power company attachments. The incremental costs of a stronger or taller pole are legitimately part of the costs of make-ready work that would be paid by the requesting party and are not grounds for rejection of the attachment request itself.

On behalf of

Respectfully submitted,
THE DAYTON POWER AND
LIGHT COMPANY

by: *Randall V. Griffin*

Randall V. Griffin
Ohio Bar No. 0080499
1065 Woodman Drive
Dayton, OH 45432
Telephone: (937) 259-7221
Telecopier: (937) 259-7813
Email: randall.griffin@aes.com

Its Attorney

Date: June 25, 2015

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing has been served either electronically or via first class mail, postage prepaid, this 25th day of June, 2015 upon the following parties of record.

ss: *Randall V. Griffin*

Randall V. Griffin
Chief Regulatory Counsel
The Dayton Power and Light Company

Cassandra Cole
Regulatory Manager
1500 Columbus Sandusky Rd. N.
Marion, Ohio 43302

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Summary: Motion to Intervene and Comment and Memorandum in Support of The Dayton Power and Light Company