

Before the Public Utilities Commission of Ohio

**In the Matter of the Commission's
Review of Ohio Administrative
Code Chapter 4901:1-03,
Concerning Access to Poles, Ducts,
Conduits, and Rights of Way**

Case No. 19-0834-AU-ORD

Memorandum of Ohio Telecom Association in Opposition to Applications for Rehearing of the Dayton Power and Light Company and Ohio Cable Telecommunications Association

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Introduction

In the Finding and Order issued on April 7, 2021, the Public Utilities Commission of Ohio took an important and useful step in aligning the Ohio and federal rules applicable to pole attachments including overloading and make ready work.¹ In its application for rehearing filed on May 6, 2021, the Dayton Power and Light Company (“DP&L”) seeks additional requirements that vary from the FCC rules regarding overloading and make ready work. Application for Rehearing and Memorandum in Support of the Dayton Power and Light Company (May 6, 2021) (“DP&L Application”). Because of the value of uniform application of pole attachment rules across the industry, the Commission should deny the application for rehearing of DP&L.²

The Ohio Cable Telecommunications Association seeks rehearing on the Commission’s decision to limit the definition of overloading to the overloading of fiber to

¹ The rules address access to poles, ducts, and conduits. For convenience, this pleading refers to the facilities as pole attachments.

² Besides OTA, DP&L, and Ohio Cable Telecommunications Association, AT&T Ohio filed an application for rehearing. The application for rehearing of AT&T Ohio aligns with that of OTA.

an existing line. Application for Rehearing of the Ohio Cable Telecommunications Association at 3 (May 7, 2021) (“OCTA Application”). While the proposal of OCTA would move the definition in the right direction, the Commission should amend the definition of overlashing to include other types of cable recommended by OCTA and “similar incidental equipment.”

Argument

In its application for rehearing, DP&L first seeks a rule that would require the 15 day notice to include the size and weight of the cable that will be overlashed and the pole locations for the overlash if the public utility requires it. DP&L Application at 2. Second, it wants permission to determine whether a pole is overloaded based on “default values.” Id. at 3. Third, it recommends that an overlashing notice contain a certification by the existing attacher of the facilities to be overlashed that the overlashed facility is still in service. Id. at 4. Fourth, it wants to be authorized to charge an annual fee for use of the overlash. Id. at 5. Fifth, it wants to be able to suspend an overlash until the costs to rectify a loading violation by previous attachers is corrected and to assign the cost of repair to those parties. Id. at 7. Regarding make ready work, DP&L is recommending that utilities be afforded an additional 30 days if the make ready work includes a pole replacement. Id. at 8.

Telephone companies are pole owners, too, and share many of the concerns raised by DP&L concerning overlashing and make ready work, but several reasons support a Commission order denying rehearing of the issues concerning overlashing and the extension of compliance times for make ready work raised by DP&L.

First, the changes that DP&L is requesting would undermine one of the apparent goals of the amendments of these rules. By incorporating many of the FCC rules by reference, the Commission sought to align state and federal rules concerning pole attachments. Finding and Order ¶¶ 15-16 (Apr. 7, 2021). That goal would be undermined by the adoption of the changes urged by DP&L. As AT&T Ohio explains separately, DP&L is seeking changes to what should be uniform standards nationwide in the wrong forum. It should take its concerns to the FCC. AT&T Ohio's Memorandum Contra at 2 (May 24, 2021).

Second, DP&L raised its concerns about the notification requirements, the use of default values to determine pole loading, removal of unused facilities, and fees in its comments. Initial Comments of the Dayton Power and Light Company at 7, 8, 9, and 11 (Aug. 15, 2019). Other commenters, Ohio Power Company, Duke Energy Ohio, and FirstEnergy, sought to allow the utility to impose delays for preexisting violations by other attachers. Initial Comments of Duke Energy Ohio, Inc. and the Ohio Power Company at 18-19 (Aug. 15, 2021); Comments of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company at 7 (Aug. 15, 2019). In the application for rehearing, DP&L raises nothing new on these concerns which the Commission has already considered and rejected. Accordingly, those grounds for rehearing should be denied. In the Matter of the Application of Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to R.C. 4928.143, in the Form of an Electric Security Plan, Case Nos. 16-1852-EL-SSO, et al., Second Entry on Rehearing ¶ 50 (Aug. 15, 2018).

OCTA seeks rehearing of the Commission’s decision to limit overlashing to the overlashing of fiber optic cable. OCTA Application at 3. OCTA correctly points out that the exclusion of other types of cable from the rules applicable to overlashing is problematic. Additionally, there is no practical reason to exclude “other similar equipment such as fiber splice closures” from the definition of overlashing. See AT&T Ohio Reply Comments at 2 (Sept. 9, 2019). Accordingly, the Commission should grant rehearing to address the definition of overlashing and adopt a definition that expands that provided in the initial entry proposing rules in this proceeding that conforms to industry practice. See Entry, Attachment A at 2 (July 17, 2019).

Conclusion

In summary, DP&L’s proposed changes raised in its application for rehearing would undermine the goal of aligning state and federal rules concerning pole attachments, and its assignments of error generally raise no new issue regarding overlashing that has not already been addressed in the Finding and Order. Accordingly, rehearing on those issues should be denied. However, the Commission should amend the definition of overlashing to include other types of cable recommended by OCTA and “similar incidental equipment.”

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the Commission's e-filing system will electronically serve notice of the filing of the Memorandum of Ohio Telecom Association in Opposition to the Application for Rehearing of the Dayton Power and Light Company and the Ohio Cable Telecommunications Association upon the interested persons on May 24, 2021. In addition, service by email has been given to all parties that have entered an appearance in the proceeding listed below.

/s/ Frank P. Darr

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Summary: Memorandum Memorandum of Ohio Telecom Association in Opposition to Applications for Rehearing of the Dayton Power and Light Company and Ohio Cable Telecommunications Association electronically filed by Frank P. Darr on behalf of Ohio Telecom Association