

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE COMMISSION'S
REVIEW OF OHIO ADM.CODE CHAPTER
4901:1-3, CONCERNING ACCESS TO
POLES, DUCTS, CONDUITS, AND RIGHT-
OF-WAY.

CASE NO. 19-834-AU-ORD

ENTRY ON REHEARING

Entered in the Journal on June 2, 2021

I. SUMMARY

{¶ 1} The Commission grants the applications for rehearing filed by The Dayton Power and Light Company, Ohio Telecom Association, AT&T Ohio, and the Ohio Cable Telecommunications Association, respectively, on May 7, 2021, for the purpose of further consideration of the matters specified in the applications for rehearing.

II. DISCUSSION

A. *Applicable Law*

{¶ 1} R.C. 111.15(B) and R.C. 106.03(A) require all state agencies to conduct a review of their rules every five years to determine whether the rules should be continued without change, amended, or be rescinded. The Commission has opened this docket to review the rules regarding pole attachments in Ohio Adm.Code Chapter 4901:1-3.

{¶ 2} R.C. 106.03(A) requires that the Commission determine whether the rules:

- (a) Should be continued without amendment, be amended, or be rescinded, taking into consideration the purpose, scope, and intent of the statute under which the rules were adopted;
- (b) Need amendment or rescission to give more flexibility at the local level;

- (c) Need amendment or rescission to eliminate unnecessary paperwork;
- (d) Incorporate a text or other material by reference and, if so, whether the citation accompanying the incorporation by reference would reasonably enable the Joint Committee on Agency Rule Review or a reasonable person to whom the rules apply to find and inspect the incorporated text or material readily and without charge and, if the rule has been exempted in whole or in part from R.C. 121.71 to 121.74 because the incorporated text or material has one or more characteristics described in R.C. 121.75(B), whether the incorporated text or material actually has any of those characteristics;
- (e) Duplicate, overlap with, or conflict with other rules;
- (f) Have an adverse impact on businesses, as determined under R.C. 107.52;
- (g) Contain words or phrases having meanings that in contemporary usage are understood as being derogatory or offensive; and,
- (h) Require liability insurance, a bond, or any other financial responsibility instrument as a condition of licensure.

{¶ 3} In accordance with R.C. 121.82, in the course of developing draft rules, the Commission must evaluate the rules against the business impact analysis (BIA). If there will be an adverse impact on businesses, as defined in R.C. 107.52, the agency is to incorporate features into the draft rules to eliminate or adequately reduce any adverse impact. Furthermore, the Commission is required, pursuant to R.C. 121.82, to provide the Common Sense Initiative office the draft rules and the BIA.

{¶ 4} Pursuant to R.C. 121.95(F), a state agency may not adopt a new regulatory restriction unless it simultaneously removes two or more other existing regulatory restrictions. In accordance with R.C. 121.95, and prior to January 1, 2020, the Commission identified rules having one or more regulatory restrictions that require or prohibit an action, prepared a base inventory of these restrictions in the existing rules, and submitted this base inventory to the Joint Committee on Agency Rule Review, as well as posted this inventory on the Commission's website at <https://puco.ohio.gov/wps/portal/gov/puco/documents-and-rules/resources/restrictions>. With regard to the amendments discussed in this Finding and Order with respect to Ohio Adm.Code Chapter 4901:1-3, the Commission has both considered and satisfied the requirements in R.C. 121.95(F).

B. Procedural History

{¶ 5} On May 21, 2019, the Commission held a workshop in this proceeding to afford interested stakeholders an opportunity to propose revisions to the rules in Ohio Adm.Code Chapter 4901:1-3 for the Commission's consideration. The purpose of the workshop was to allow stakeholders to propose their own revisions to the rules for consideration. Approximately 21 interested stakeholders attended the workshop, and representatives from the Ohio Cable Telecommunications Association (OCTA) provided comments.

{¶ 6} Commission Staff (Staff) evaluated the rules contained in Ohio Adm.Code Chapter 4901:1-3 and, following Staff's review, proposed amendments to Ohio Adm.Code 4901:1-3-01, 4901:1-3-02, 4901:1-3-03, 4901:1-3-04, and 4901:1-3-05. The remaining rules in the chapter were, under Staff's proposal, to remain unchanged.

{¶ 7} By Entry issued on July 17, 2019, the Commission requested comments and reply comments on Staff's proposed revisions to Ohio Adm.Code Chapter 4901:1-3, and ordered that comments and reply comments be filed by August 15, 2019, and September 9, 2019, respectively.

{¶ 8} Consistent with the Entry issued on July 17, 2019, written comments were timely filed on August 15, 2019, by Sprint Corporation (Sprint), Crown Castle Fiber LLC (Crown Castle), The Dayton Power and Light Company (DP&L), the Ohio Telecom association (OTA), Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy), OCTA, and collectively by Duke Energy Ohio, Inc. (Duke) and the Ohio Power Company (AEP), in response to Staff's proposed revisions. Reply comments were then timely filed on September 9, 2019, by DP&L, Crown Castle, OTA, AT&T Ohio (AT&T), FirstEnergy, OCTA, and collectively by Duke and AEP.

{¶ 9} On April 7, 2021, the Commission issued a Finding and Order adopting certain proposed amendments to Ohio Adm.Code Chapter 4901:1-3 regarding the Commission's rules for access to poles, ducts, conduits, and right-of-way, as determined and attached to the Finding and Order.

{¶ 10} R.C. 4903.10 states that any party who has entered an appearance in a Commission proceeding may apply for rehearing with respect to any matters determined in that proceeding, by filing an application within 30 days after the entry of the order upon the journal of the Commission.

{¶ 11} On May 7, 2021, DP&L, OTA, AT&T, and OCTA filed separate applications for rehearing alleging several assignments of error.

{¶ 12} Upon consideration, the Commission believes that sufficient reason has been set forth by the parties to warrant further consideration of the matters specified in the application for rehearing. Accordingly, the applications for rehearing filed on May 7, 2021, should be granted for the limited purpose of further consideration of the matters specified therein.

III. ORDER

{¶ 13} It is, therefore,

{¶ 14} ORDERED, That the separate applications for rehearing filed by DP&L, OTA, AT&T, and OCTA on May 7, 2021, be granted for further consideration of the matters specified in the applications for rehearing. It is, further,

{¶ 15} ORDERED, That a copy of this Entry on Rehearing be served upon each party of record.

COMMISSIONERS:

Approving:

- Jenifer French, Chair
- M. Beth Trombold
- Lawrence K. Friedeman
- Daniel R. Conway
- Dennis P. Deters

LLA/hac

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Case No(s). 19-0834-AU-ORD

Summary: Entry granting the applications for rehearing filed by The Dayton Power and Light Company, Ohio Telecom Association, AT&T Ohio, and the Ohio Cable Telecommunications Association, respectively, on May 7, 2021, for the purpose of further consideration of the matters specified in the applications for rehearing electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio