

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio
Power Company for Authority to Establish a
Standard Service Offer Pursuant to §
4928.143, Ohio Rev. Code, in the Form of an
Electric Security Plan

Case No. 23-0023-EL-SSO

In the Matter of the Application of Ohio
Power Company for Approval of Certain
Accounting Authority

Case No. 23-0024-EL-AAM

**MOTION TO INTERVENE AND MEMORANDUM IN SUPPORT
OF THE OHIO TELECOM ASSOCIATION**

Frank P. Darr (Reg. No. 0025469)
6800 Linbrook Blvd.
Columbus, Ohio 43235
614-390-6750
Fdarr2019@gmail.com
(willing to accept service via email)

MARCH 24, 2023

ATTORNEY FOR OHIO TELECOM ASSOCIATION

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MOTION TO INTERVENE OF THE OHIO TELECOM ASSOCIATION

Under R.C. 4903.211 and Rule 4901-1-11, Ohio Administrative Code, Ohio Telecom Association moves to intervene. The reasons supporting this motion are set out in the accompanying memorandum in support of this motion.

Respectfully submitted,

/s/ Frank P. Darr

Frank P. Darr (Reg. No. 0025469)
6800 Linbrook Blvd.
Columbus, Ohio 43235
614-390-6750
Fdarr2019@gmail.com
(willing to accept service via email)

Attorney for Ohio Telecom Association

**MEMORANDUM IN SUPPORT OF THE MOTION TO INTERVENE
OF THE OHIO TELECOM ASSOCIATION**

I. Introduction

Ohio Power Company (“Ohio Power”) seeks authorization of a new rider to recover the costs associated with the laying of fiber optic communications facilities in this proceeding. In its application and supporting testimony, it states that these facilities are intended to provide back-haul, but will be overbuilt in such a way that the fiber communications system will be available for lease to third parties. Application at 17 (Jan. 6, 2023); Direct Testimony of Scott S. Osterholt in Support of AEP Ohio’s Electric Security Plan at 11-24 (Jan. 6, 2023). It proposes to recover the cost of installing the facilities through a new rider from distribution customers. Direct Testimony of Curtis M. Heitkamp on Behalf of Ohio Power Company at 8 (Jan. 6, 2023). Because the lease and sale of broadband services are competitive telecommunications services that members of Ohio Telecom Association (“OTA”) are actively engaged in, members would be adversely affected if the Commission approves this part of the application. Based on the interests of its members, OTA moves to intervene.

II. The Commission has been directed to grant intervention liberally under its rules

R.C. 4903.221 provides for intervention in Commission hearings of any person who may be adversely affected by the outcome of the proceeding.¹ In assessing a motion to intervene, the

¹ R.C. 4903.221 provides:

Any other person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding, provided:

(A) That such other person files a motion to intervene with the commission no later than:

(1) Any specific deadline established by order of the commission for purposes of a particular proceeding; or, if no such deadline is established;

Commission is to consider the nature and extent of the moving party's interest, the legal position of the moving party and its relation to the merits of the case, whether the intervention of the moving party will unduly prolong or delay the proceedings, and whether the moving party will significantly contribute to the full development and equitable resolution of the factual issues. R.C. 4903.221(B). In addressing a motion to intervene, the Supreme Court of Ohio directs the Commission to liberally grant intervention so that the positions of all persons with a real and substantial interest in the proceeding can be considered by the Commission. *Consumers' Counsel v. Public Utils. Comm'n of Ohio*, 111 Ohio St. 3d 384, 388 (2006).

III. Members of Ohio Telecom Association are actively engaged in the provision of broadband services in Ohio and therefore have an interest in the outcome of this proceeding

The OTA is a statewide trade association that promotes the common interests of telecommunications companies serving and employing Ohioans. The OTA currently represents 41 telecommunications providers, two wireless providers, and over 100 associate member companies that supply goods and services to the telecommunications industry. In total, the OTA member companies employ more than 16,000 Ohioans.

The association represents the telecommunications industry before the Ohio General Assembly and the Commission. The OTA plays an active role in the formulation of

(2) Five days prior to the scheduled date of hearing. The public utilities commission may, in its discretion, grant motions to intervene which are filed after the deadlines set forth in divisions (A)(1) and (2) of this section for good cause shown.

(B) That the commission, in ruling upon applications to intervene in its proceedings, shall consider the following criteria:

- (1) The nature and extent of the prospective intervenor's interest;
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case;
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings;
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

The Commission has by rule also set out the factors it will consider in addressing a motion to intervene. Rule 4901-1-11(B).

telecommunications policy and seeks to ensure that its members can provide the best telecommunications services possible. It also collects and disseminates information relative to the industry and provides a forum for the discussion and resolution of issues of mutual concern.

By supporting the common interests of the telecommunications industry in Ohio, the OTA helps ensure that Ohio residential consumers, businesses, and other customers have ready access to the most modern telecommunications services available. As noted in a recent report regarding expansion of broadband service, “Ohio’s incumbent local phone companies contribute more than \$4 billion annually to Ohio’s economy and invest more than \$1 billion annually in the network, making the incumbent local phone companies powerful drivers of economic development.” Telecom in Ohio: A Report on the State of the Industry 10 (Oct. 2017), available at http://www.ohiotelecom.com/aws/OTIA/asset_manager/get_file/169746?ver=27776. Moreover, investment in broadband is subject to the discipline of a highly competitive market. *Id.* at 6-7. To that end, OTA members, while subject to market discipline, are actively engaged in the expansion of broadband services in Ohio including in areas overlapped by the Ohio Power service territory that is the subject of this application.

IV. Ohio Telecom Association should be granted intervention

Based on the applicable statutory requirements, OTA should be granted intervention in this proceeding.

Initially, OTA members have a direct interest in the outcome of this proceeding. As noted, Ohio Power is seeking through this application for authority to recover the cost of facilities providing “middle mile” communications facilities and to recover the cost of those facilities through rates applicable to its distribution customers. It further seeks to sale or lease access to that system to third parties for the provision of last mile communications services. OTA

members have a similar interest in expanding facilities for unserved areas, but their attempts to enter these markets will not benefit from the subsidies that Ohio Power is seeking in this proceeding. Accordingly, OTA members have a direct interest in the outcome of this proceeding and its legal position that approval of this part of the application is not lawful or reasonable is readily apparent.

Additionally, granting OTA's motion to intervene is timely and will not prolong or delay the proceedings. Moreover, the expertise of OTA and its members regarding the delivery of broadband services will contribute to the full development and equitable resolution of the factual issues presented by Ohio Power's effort to leverage its distribution facilities into the competitive broadband business.

V. Conclusion

For these reasons, the Commission should grant the motion of OTA to intervene.

Respectfully submitted,

/s/ Frank P. Darr

Frank P. Darr

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 Motion to Intervene of the Ohio Telecom Association upon the interested parties, this 24th day of March 2023. The following persons were provided by electronic mail a copy of this document.

/s/ Frank P. Darr _____

Frank Darr

stnourse@aep.com

mjschuler@aep.com

matthew@msmckenzieltd.com

egallon@porterwright.com

Christopher.miller@icemiller.com

mkurtz@bkllawfirm.com

kboehm@bkllawfirm.com

jkylerecohn@bkllawfirm.com

henry.eyman@amadapower.com

bojko@carpenterlipps.com

wygonski@carpenterlipps.com

trent@hubaydougherty.com

rdove@keglerbrown.com

brian.gibbs@nationwideenergypartners.com

dparram@bricker.com

rmains@bricker.com

dborchers@bricker.com

khernstein@bricker.com

little@litohio.com

hogan@litohio.com

ktreadway@oneenergyllc.com
jdunn@oneenergyllc.com
alex.kronauer@walmart.com
cgrundmann@spilmanlaw.com
dwilliamson@spilmanlaw.com
slee@spilmanlaw.com
evan.betterton@igs.com
stacie.cathcart@igs.com
michael.nugent@igs.com
emcconnell@elpc.org
rkelter@elpc.org
paul@carpenterlipps.com
knordstrom@theoec.org
ctavenor@theoec.org
william.michael@occ.ohio.gov
angela.obrien@occ.ohio.gov
connor.semple@occ.ohio.gov
mpritchard@mcneeslaw.com
bmckenney@mcneeslaw.com
awalke@mcneeslaw.com
mjsettineri@vorys.com
glpetrucci@vorys.com
dproano@bakerlaw.com
ahaque@bakerlaw.com
eprouthy@bakerlaw.com

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

3/24/2023 1:58:14 PM

in

Case No(s). 23-0023-EL-SSO, 23-0024-EL-AAM

Summary: Motion Motion to Intervene and Memorandum in Support of the Ohio
Telecom Association electronically filed by Frank P. Darr on behalf of Ohio Telecom
Association.