

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Joint Application by Verizon New England, Inc., Bell Atlantic Communications, Inc.
NYNEX Long Distance Company, Verizon Select Services
and
FairPoint Communications, Inc.

Docket No. DT 07-011

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE'S OBJECTION TO LATE
FILED MOTION OF VERIZON NEW ENGLAND, INC. TO EXCLUDE
TESTIMONY AND DISMISS INTERVENORS' REQUESTS THAT
REIMBURSEMENT FOR MAINTENANCE EXPENSES BE IMPOSED AS A
CONDITION UPON APPROVAL OF PETITION**

Public Service Company of New Hampshire ("PSNH") hereby objects to the late filed "Motion to Exclude Testimony and Dismiss Intervenors' Requests That Reimbursement for Maintenance Expenses Be Imposed as a Condition Upon Approval of Petition" ("Motion") filed by Verizon New England, Inc. *et al.* ("Verizon"). In support of its Objection, PSNH says the following:

1. The Motion is untimely without any good cause shown for late filing. Verizon waited to file its Motion until October 22, 2007, *the date hearings on the merits began* and three days before the electric utility witnesses are scheduled to testify, despite the fact that it was aware of the issue in question *for over four months!* Verizon's attempt to ambush other parties is untenable. PSNH is entitled to ten days to respond to any motion. N.H. Code Admin. Rule Puc §203.07(e). There is no justification for the delay in filing this Motion.

PSNH made the Commission Staff, the Office of Consumer Advocate ("OCA"), Verizon and FairPoint Communications, Inc. ("FairPoint") aware of its intent to raise the issue of maintenance trimming shortfalls as against Verizon during a

Technical Session/ Settlement conference held in this proceeding on June 5, 2007. PSNH's testimony of Mr. Hybsch, which included PSNH's position on this issue, was timely filed on August 1, 2007. Verizon filed data requests on that testimony to which PSNH responded in a timely fashion. Over two and one half months later, Verizon filed its Motion with no valid justification why the Motion could not have been filed earlier. Verizon states, *inter alia*, that PSNH is not entitled to the customary time for filing a written response because,

(2) the need and appropriateness of the motion became apparent only after Unital and PSNH reached a resolution of all issues they have raised in this case other than their request for monetary damages against Verizon, and the Memorandum of Understanding regarding the resolution of those issues was filed only last week, Verizon cover letter of October 22, 2007 to the Motion.

Mr. Hybsch anticipated the resolution of jointly-owned pole issues on a going-forward basis with FairPoint alone in his pre-filed testimony of August 1.¹ PSNH never negotiated with Verizon concerning the Memorandum of Understanding ("MOU") eventually executed between PSNH and FairPoint; therefore, Verizon would have no expectation that the PSNH/Verizon issue regarding maintenance trimming might have been resolved by the MOU. Verizon further argues the issues are not complex and that an expedited ruling would allow the Commission to exclude evidence that Verizon argues is not relevant to the petition. *Id.* PSNH answers that the issues are the same today as they were on the day after Mr. Hybsch's testimony was filed, and Verizon could have avoided taking up valuable time during the hearings on the merits by filing its Motion weeks in advance rather than the morning the hearings began.

¹ "Yes, in collaboration with the State's other electric utilities, PSNH and FairPoint are attempting to define a jointly agreed set of performance conditions and expectations to govern the parties going forward in carrying out their respective Joint Ownership or Joint Use Agreements and associated IOPs. Those efforts are ongoing and, if successful, could result in a presentation to the Commission, for approval as a condition to the asset transfer, of a consensual agreement between PSNH and FairPoint which would serve in lieu of imposition of the specific conditions regarding FairPoint recommended above in my testimony." Hybsch Testimony, Exhibit PSNH 1-P at 10.

2. **PSNH's testimony is well within the scope of this proceeding.** The position taken by PSNH's witness regarding past maintenance trimming practices of Verizon is well within the scope of this proceeding. The transfer of Verizon assets to FairPoint can only be approved if the Commission finds it is in the public good. RSA 374:30. The permanent discontinuance of service from Verizon must be consistent with the public good. RSA 374:28.² The "public good" and "public interest" standards are very broad. The Commission has the power to impose conditions upon a proposed merger in order that it be in the public good *See, In re PSNH* (merger of Northeast Utilities with Consolidated Edison, Inc.) Docket No. DE 00-099, 85 NH PUC 758, 800-801 (2000). Indeed both PSNH and FairPoint are requesting that the MOU be approved as a condition to the approval of the merger. PSNH Exhibit 3-P at 6. In executing the MOU, PSNH did not waive its claim against Verizon, *Id.* There is a net harm of more than \$1/2 million which PSNH and its customers have lost. The Commission has the authority to address the net harm as a condition of the approval of the transfer of Verizon's assets and the discontinuance of its service. Verizon should not be allowed to merely "walk-away" from its obligations to New Hampshire entities as a result of its deal with FairPoint.³

² "In addition to the Settlement Agreement and our order approving it, we also recognize this Commission's responsibilities under RSA 374:28 in the matter of franchise discontinuances. That statute delegates to the Commission the authority to grant requests to permanently discontinue service when to do so is consistent with the public good. In exercising its decision-making authority, the Commission has the discretion to establish the terms under which such requests may be granted." *Re Claremont Gas Corporation*, Docket No. DE 94-056 Order No. 21,483, 80 NH PUC 4, 7 (1995).

³ The Commission rightfully was concerned that a newly merged telephone utility would do just that – neglect the interests of New Hampshire – when it approved the NYNEX / Bell Atlantic merger in 1997. "Third, at the hearing we obtained commitments from NYNEX and Bell Atlantic to maintain a strong local presence in New Hampshire with real authority, which is critical to our approval of the merger. We consider this local presence and local autonomy to be extremely important in order to ensure that New Hampshire customers receive the full benefits of this merger and that New Hampshire and its interests are not neglected in the merged company." *Re New England Telephone and Telegraph Co.*, 82 NH PUC 30, 33 (1997). The condition placed on Verizon in the prior merger transaction to protect New Hampshire's interests must now be enforced as a condition to Verizon's leaving the state.

3. **In addition to the authority the Commission has to condition the transfer of assets and the discontinuance of service, the Commission has the authority to adjudicate disputes between joint owners of utility facilities used to provide service.** The Commission has “the general supervision of all public utilities and the **plants** owned, operated or controlled by the same so far as necessary to carry into effect the provisions of this title.” RSA 374:3 (Emphasis added). PSNH and Verizon may only enter into an agreement for joint ownership of poles by order of the Commission. RSA 374:30.⁴ The Commission granted that authority under the previous statute and the current statute.⁵ The Commission has the authority to “alter, amend, suspend, annul, set aside, or otherwise modify **any** order made by it”, including orders permitting joint ownership and joint use. RSA 365:28 (Emphasis added). Notwithstanding an agreement to jointly own, operate and maintain the poles, the Commission could withdraw, alter or amend its previous grant of authority and impose conditions to the joint ownership agreement under its general supervisory powers over the utilities and the plant owned and operated for the public good in providing utility service. It can be “fairly implied” that any joint ownership agreement, specifically authorized by the Commission under a regulatory statute, could be altered, set aside or amended. Under its general supervisory powers, the agreement might be reviewed by the Commission as well as the operation of the utilities under said agreement under the Commission’s jurisdiction to supervise utility plant and to ensure that “service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable.” RSA 374:1. It is axiomatic that the Commission has jurisdiction to examine all issues related to utility poles, including the performance of joint owners under joint ownership or joint use agreements.

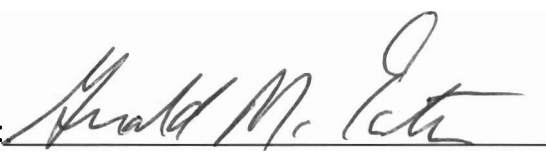
⁴ “The commission may, by general order, authorize a public utility to transfer to another public utility a part interest in poles and their appurtenances for the purpose of joint use by such public utilities.” RSA 374:30.

⁵ Docket I-E7509, Order No. 4479, 25 NH PSC 206 (1943) and Order No. 7676, 43 NH PUC 118 (1961).

WHEREFORE, PSNH respectfully requests that the Commission deny the Motion filed by Verizon on October 22, 2007 and order such further relief as may be just and equitable.

Respectfully submitted this 24th day of October, 2007,

Public Service Company of New Hampshire

By: 
Gerald M. Eaton, Esq.
Senior Counsel

Certificate of Service

I hereby certify that a copy of the above Petition for Intervention was provided to all persons on the attached service list pursuant to the Commission rules of practice and procedure.

October 24, 2007
Date


Gerald M. Eaton

I—E7509

WIRE USING UTILITIES

AUTHORITY TO LEASE OR TRANSFER PART INTEREST IN
POLES.**Wire Using Utilities — Lease or transfer of part interest in poles.**

1. Wire using utilities were authorized to lease or transfer to any other utility, a part interest in poles and their appurtenances for the purpose of joint use by such public utilities.

ORDER No. 4479

WHEREAS, under R. L. c. 289, s. 28, as amended by c. 29, Laws of 1943, the Commission may, by general order, authorize a public utility to transfer to another public utility a part interest in poles and their appurtenances for the purpose of joint use by such public utilities; it is

ORDERED, that each utility is hereby authorized to lease or transfer to any other utility, a part interest in poles and their appurtenances for the purposes of joint use by such public utilities, *provided*, that each utility file with this Commission before October 1, 1943, a copy of its basic sale or lease agreements with other utilities as effective on July 1, 1943, along with a summarized list of all the poles affected within the utility; and, *further provided*, that each utility file with this Commission each change in, such basic lease or transfer agreement ten (10) days prior to the effective date of such change; and, *further provided*, that semi-annually on April 1 and October 1 of each year, each utility file a summary of all changes in the number of poles jointly owned or used for the half year ending the proceeding January 1 or July 1; and it is

FURTHER ORDERED, that all such joint ownership or lease

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agreements, effective on July 1, 1943, or subsequent thereto, will be valid upon filing of the aforementioned agreements, unless otherwise ordered by the Commission.

By order of the Public Service Commission of New Hampshire this twenty-sixth day of July, 1943.

JAMES W. DOON
Secretary

25 N. H. P. S. C.

I-E7509

WIRE USING UTILITIES

Authority to lease or transfer part interest in poles.

Wire Using Utilities - Lease or transfer of part interest in poles - Amendment of Order No. 4479.

1. Order No. 4479, pertaining to lease or transfer of part interest in poles of Wire Using Utilities, was amended to permit certain modifications of the requirements, as set forth in said order.

SECOND SUPPLEMENTAL ORDER NO. 7676

WHEREAS, Order No. 4479, effective July 26, 1943, prescribed the "Authority to Lease or Transfer Part Interest in Poles" for Wire Using Utilities, which effective date was extended to December 31, 1943, by Supplemental Order No. 4514; and

WHEREAS, it appears that certain modifications of the requirements set forth in said Order No. 4479 will be in the interest of both the public and the utilities; it is

ORDERED, that said Order No. 4479 be, and hereby is, modified and revised to read as follows:

"Pursuant to RSA 374:30, each utility is hereby authorized to lease or transfer to any other utility, a part interest in poles and their appurtenances for the purpose of joint use by such public utilities, provided, that each utility file with this Commission before September 1, 1961, a copy of its basic lease or transfer agreements with other utilities as effective on January 1, 1961;"

and it is

FURTHER ORDERED, that each utility file with this Commission each change in such basic lease or transfer agreement ten (10) days prior to the effective date of such change; and it is

FURTHER ORDERED, that all such lease or transfer agreements effective on January 1, 1961, or subsequent thereto, will be valid upon filing such agreements, unless otherwise ordered by the Commission.

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By order of the Public Utilities Commission of New Hampshire this twenty-sixth day of June, 1961.

JAMES W. DOON
Secretary

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