

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

VERIZON NORTHWEST INC.,

Respondent.

DOCKET NO. UT-040788

PUBLIC COUNSEL ANSWER TO
VERIZON MOTION TO CLARIFY
ORDER NO. 15

I. INTRODUCTION

1. Pursuant to the Commission's April 18, 2005, Notice of Opportunity to Respond to Verizon's Motion for Clarification, Public Counsel¹ files this Answer to Verizon's Motion for Clarification of Order No. 15 (Motion) in this docket.
2. Like Verizon, Public Counsel shares the Commission's concern about the impact of the late payment charge and is willing to help in the analysis of its effects on ratepayers. *See* Motion, p. 2. The arguments in this Answer are intended to respond to the Motion and the Commission's modified approach to late payment fees and should not be construed as advocacy inconsistent with the settlement agreement. As set forth below, however, Public Counsel does not agree that Order No. 15 improperly creates new risks for Verizon, and does not agree with Verizon's recommended modification to address the issue during the "Stay Out" period. Should the Commission wish to address the uncertainties discussed by Verizon, Public Counsel recommends alternative approaches more consistent with the intent expressed by the Commission in Order No. 15.

¹ AARP participated jointly with Public Counsel in these proceedings in testimony and briefing. AARP counsel has authorized Public Counsel to represent that AARP supports the intent of Order No. 15 and concurs with the Commission's concern regarding the impact of the late payment fee.

II. ANSWER

A. Verizon's Motion Does Not Argue That Order No. 15 Is Unlawful.

3. Verizon's Motion asks the Commission to clarify that it "did not intend to eliminate approximately \$ ___ (Confidential) of the \$38.6 million revenue requirement agreed upon by the parties in the settlement agreement." Motion, p. 1. This is the amount projected to be generated by the agreed new late payment fee. Verizon also asks for clarification of the reporting requirement regarding late payment fees.
4. As an initial matter it is useful to note what Verizon's motion does not do. Verizon chose not to file a petition for reconsideration based on an asserted factual or legal error in the Commission's order. WAC 480-07-850. Verizon does not argue in its motion that the Commission may not lawfully set an expiration date for the late payment fee tariff.
5. Moreover, while Verizon describes the challenged provisions of the order as creating "a new condition," Motion, p. 2, the Company has chosen not to exercise its option to withdraw from the agreement. Settlement Agreement, ¶ 64; Order, ¶ 68. The motion makes this explicit, stating that "Verizon does not view this motion as a rejection of the new conditions imposed by Order No. 15 but rather as a request for clarification that preserves the intent and purposes of the Settlement Agreement." Motion, p. 3, n. 4. Notwithstanding its strong tone, Verizon's Motion does not assert that the new condition is a material change in the settlement.
6. While it appears, therefore, that Verizon accepts the provisions of Order No. 15, the motion also requests that the Commission substantially change the terms of the order by completing a review of the late payment charge and any resulting tariff changes during the "Stay Out" period. Motion, pp. 1-2.

B. Public Counsel Does Not Agree With Verizon’s Reading of Order No. 15.

7. The gist of Verizon’s motion appears to be that it faces a potential “risk of loss that no party advocated” under the Order, and that the Commission should, therefore, “eliminate the potential financial risk to Verizon” which Order No. 15 assertedly creates. Motion, p. 2.

Public Counsel does not agree with Verizon’s interpretation of the order.

8. The Settlement Agreement does not, as Verizon suggests, create a guarantee that it will receive the \$38.6 million dollar revenue requirement in perpetuity, or that the agreed rate spread and rate design will remain unchanged. Instead, these components of the settlement are expressly, by virtue of the “Stay Out” and related provisions, in effect only until July 1, 2007. Settlement Agreement, ¶¶ 23-48. Order No. 15 changes neither the agreed revenue requirement nor the agreed rate design/rate spread which apply during the “Stay Out” period.² The expiration date set by the Commission for the late payment fee tariff occurs outside the period. As the Settlement Agreement states in ¶ 45: “The parties intend this Agreement to provide Verizon NW with the opportunity to earn the revenues agreed to in ¶¶ 23-25 above, based upon the rates agreed to in ¶¶ 27-37 above, *during the time period from the effective date until July 1, 2007 (the “Stay-Out Period”)*. Therefore, in the event any other rate changes are ordered as a result of Commission action *during the Stay-Out Period* that increase or decrease Verizon NW’s revenues, Verizon NW will be permitted to make offsetting rate adjustments to achieve revenue neutrality.” (emphasis added).

² It is important to remember that even the agreed revenue level is based on projected volumes of customer usage of various services and may vary in practice. Neither Verizon nor other parties are allowed by the settlement to return in the middle of the “Stay Out” period and seek rebalancing of rates to make up for differences between projected and actual revenues.

9. The Settlement Agreement is clear that after July 1, 2007, all parties are returned to the *status quo ante* of the statutory scheme of regulation, under which there is “financial risk” for all. Under the *status quo ante*, ratepayers are at risk that Verizon is free at any time to seek new rate increases, perhaps significant ones as they did in this docket, and a different rate design. Verizon, on the other hand, is at risk of a complaint by the Commission or another party that any one or more of its tariffed rates are no longer just and reasonable. RCW 80.04.110.
10. These are not new risks created by Order No. 15. Even if the order were silent as to the late payment fee issue, the Commission could have required information gathering and reports by Verizon under RCW 80.04.070 and 80.04.090, and then initiated a complaint proceeding on its own motion against Verizon after July 1, 2007, under RCW 80.04.110, asserting that the late payment fee was unjust and unreasonable. Verizon is free after July 1, 2007, to file tariffs proposing alterations in its late payment fees to take effect after December 31, 2007. Verizon thus has a mechanism available to address the concerns it raises here. Nothing in Order No. 15 prevents the company from filing a tariff after the “Stay Out” period, based on the analysis and reports conducted, proposing an extension of the late payment tariff, “as is” or in some modified form. Order No. 15 indeed expresses the intent “to afford the Company ample time to consider extending the tariff.” Order, ¶ 26. The Commission could suspend such a filing for a new proposed late payment fee and investigate the late payment fee in the second half of 2007 (see discussion of alternatives below).

C. The Commission Should Not Adopt Verizon's Alternative, or Adopt Any Prospective Guarantee of Rate Rebalancing.

To resolve its concerns, Verizon proposes that the Commission complete its analysis of the late payment charge prior to July 1, 2007, so that the any tariff changes could be implemented through revenue neutral rate rebalancing under the terms of the settlement. Public Counsel does not support this proposal. Unlike the tariff termination provisions of Order No. 15, which, as noted above, operate after the settlement period, Verizon's proposal creates the potential for a significant modification of the settlement terms themselves during the settlement "Stay Out" period. This is the case because any reduction ordered in late payment fees will *inevitably* result in increases in other rates, and thus disturb the agreed rate spread. This is significantly different from the path chosen by the Commission in Order No. 15, a path which does not have that inevitable result. Verizon's alternative, therefore, is asking the Commission not just for clarification, but for a material change in the Order and the Settlement Agreement.

11. Public Counsel also opposes any modification of Order No. 15 which would guarantee Verizon revenue neutral rate rebalancing after the termination of the tariff in December 31, 2007, or other termination date outside the "Stay Out" period. The Commission, in Order No. 15, has expressed its concern with automatic revenue neutral rate rebalancing:

Revenue neutrality should be confined to very limited circumstances....The level of revenue, over time, has no necessary bearing on whether the rates are fair, just, and reasonable, because it does not consider the effect of rising or falling costs. Order, ¶ 34.

12. Consistent with this principle, the Commission should not, and we would argue cannot properly, guarantee Verizon that on January 1, 2008, or some date thereafter, it will be entitled to recover every dollar of revenue reduction attributable to full or partial termination

of the late payment fee.³ It is pure speculation at this point to say how much any reduction would be, what Verizon's financial picture will be at that time, and whether rate rebalancing would be justified.

D. Public Counsel's Recommendation Regarding The Termination Provision.

13. For the reasons stated above, Public Counsel does not support clarification of Order No. 15 in the manner proposed by Verizon.

14. Public Counsel acknowledges, however, that Verizon may reasonably feel some uncertainty about the process for evaluation and termination of the late payment fee. The Commission could address this concern, by way of clarification:

- By authorizing Verizon to file a proposed tariff after July 1, 2007, reinstating a late payment fee after December 31, 2007, and indicating that tariff would be suspended for investigation.
- Alternatively, the Commission could direct that an "own motion" complaint be initiated against the late payment fee promptly after July 1, 2007.

15. In either event, the adjudication could be scheduled so as to be completed prior to December 31, 2007. If it chose, Verizon could raise its rate rebalancing argument in that docket.⁴

16. As an option, because an adjudication would have an end date by operation of statute, the Commission could adopt one of these adjudication alternatives without the need for a specified "sunset date." This would help address the company's concern about the termination date. The adjudication order would direct Verizon to terminate the tariff, file

³ The Commission appropriately notes the relevance of *AT&T v. Verizon*, Docket No. UT-020406, to this issue. Order, ¶¶ 34-35.

