

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND)	DOCKET NO. UT-040788
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	ORDER NO. 17
)	
v.)	
)	
VERIZON NORTHWEST INC.,)	ORDER ON CLARIFICATION
)	
Respondent.)	
.....)	

1 **Synopsis:** *The Commission clarifies the meaning of its Fifteenth Supplemental Order in this docket. In so doing, the Commission allows removal of the expiration date for Verizon’s business late fee tariff, denies Verizon’s request to shorten the expiration date of the residential late fee; agrees to extend the expiration date of the residential late fee until the conclusion of any proceeding to review a replacement tariff; and encourages the parties to cooperate in defining and analyzing relevant data about the effect of the residential late fee and in designing any replacement tariff.*

2 **Relevant Procedural History:** This docket comprises the review of a general rate increase proposed by Verizon Northwest, Inc. (“Verizon”). The Commission entered a final order on April 12, 2005, in which it adopted a settlement proposed by parties.

3 In so doing, the Commission expressed concerns about the magnitude of proposed tariffs imposing “late charges” for customer payments that are received more than 30 days after the due date. The order provided that the tariff must be refiled to expire on December 31, 2007, and noted that the Company could re-file the tariff (or a modified tariff) after July 1, 2007, for continued operation after the authorized tariff expired. The order also provided that

during the interim period, Commission Staff and Verizon were to report regularly about the operation and effect of the tariff.

4 No party considered the requirements about the late fee tariff to be a material change warranting its withdrawal from the agreement. Verizon, however, petitioned for clarification of the order.

5 **Verizon motion for Clarification.** Verizon asks the Commission to revise the expiration date of the late payment charge tariffs. The settlement provided, and the Commission adopted, a period of rate neutrality in which rate reductions could be offset by increases in other rates to maintain the revenue level achieved by the reduced rates. Verizon asks that the late charge tariff expire prior to the end of the revenue neutrality period, so if the Commission were to order reduction or elimination of the residential late fee, the Company would be entitled to offsetting increases. It suggests in the alternative that the Commission remove the termination requirement and accept the burden of complaining against the tariff after reviewing pertinent data, if it felt the tariff were flawed.

1 WeBTEC, Commission Staff, and Public Counsel¹ answered the motion.²

2 **Appearances.** Verizon is represented on the motion by Judy A. Endejan, attorney, Graham and Dunn, Seattle. WeBTEC, represented by Arthur A. Butler, attorney, Ater Wynne LLP, Seattle, and Commission Staff, represented by Donald T. Trotter, Assistant Attorney General, answered in support of the motion. Public Counsel, by Simon ffitch, Assistant Attorney General, Seattle, opposed the motion.

¹ Public Counsel reported that AARP counsel 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.

² Verizon filed a motion for leave to reply to Public Counsel's answer, accompanied by the reply. The Commission accepts the reply, and considers it in this Order.

I. ARGUMENTS

- 3 **Terms of the Order.** In its final order the Commission adopted the proposed settlement agreement, but stated concerns about proposed tariffs that would establish Verizon's first charge for late payments and set the minimum fee at \$2.50 for residential accounts and \$5 for business accounts. The order provided that tariffs must be refiled with a stated expiration date of December 31, 2007, and that the Company and Commission Staff must gather data about the tariff's effect. The order recognized the Company's right to refile the tariff or a substitute on or after July 1, 2007, for effect on January 1, 2008. Verizon did refile the tariffs, as directed.
- 4 **Verizon petition.** Verizon petitions for clarification, seeking a ruling "that the Commission did not intend to eliminate [millions of dollars from] the revenue agreement" that the parties agreed upon and the Commission adopted. Verizon argues that the Commission action puts at risk a large proportion of the revenue authorized in the order. It asks the Commission to revise the order to provide that any action on the late charge tariff must take place prior to July 1, 2007, and thereby fall within a period of revenue neutrality authorized by the order.
- 5 WeBTEC responds in support of the Company's motion. Commission Staff acknowledges that the termination and refiling provision create uncertainty for Verizon, and states that their concerns appear to be reasonable.
- 6 **Public Counsel answer.** Public Counsel opposes Verizon's motion. He denies that the order improperly creates uncertainties for Verizon and opposes the Company's proposed modifications to the order.
- 7 Public Counsel argues that although the Company notes that the tariff termination provision is a new condition, Verizon does not contend that the

provision is unlawful or that it is material change from the parties' agreement. He argues that the Company did not exercise its right to exercise its right to withdraw from the agreement after learning of the change.

8 Public Counsel also notes that Verizon's proposed "cure" for the uncertainty would be a material change in the agreement, requiring—within the agreement's stay-out period—the termination of a tariff and a spread of rates that the parties agreed should continue unchanged for the entire stay-out period. Public Counsel notes that neither the agreement nor the Commission order constitutes a guarantee of revenue to Verizon, and that the termination would properly occur after the stay-out and revenue neutrality provisions expire. He further notes that the result of the order—the imposition of reporting requirements and a change in rates—are acts that the Commission could take independently, consistent with the terms of the settlement, and that the associated risks are therefore not "new" risks.

9 Public Counsel opposes Verizon's recommendation for Commission action, and suggests that the Commission allow the Company to file a tariff on or after July 1, 2007, or that the Commission agree to complain against the tariff.

10 **Verizon reply.** Verizon seeks leave to reply to Public Counsel's answer; the Commission grants the request. Verizon contends that Public Counsel's action is inconsistent with the settlement agreement by supporting a revenue requirement different from that agreed to, and by opposing revenue neutrality. Verizon now argues that setting a sunset date on a tariff deprives the Company of due process by finding the tariff in advance not to be fair, just, and reasonable.

II. DISCUSSION AND DECISION

A. Verizon's petition for clarification.

11 **Clarification.** First, we clarify the order. The Commission's concerns, as described in the Fifteenth Order, run principally to the effect of the proposed residential late charge tariff and not to the effect of the late charge for business customers. The Commission hereby authorizes Verizon to remove the termination date from the late charge applicable to business services.³ That will go a long way toward moderating whatever risk exists.

12 In addition, we emphasize that the Commission recognizes—as noted in the order—that late payments impose costs upon the Company. The Commission has determined that in many settings it is appropriate to ask cost-causers to provide revenues to offset costs, and that charges for optional services may exceed costs. Our concern here was that—according to the record—the Verizon-proposed tariff imposed the Company's first late payment charge and its first minimum late payment charge, and did so at a level significantly higher than that of comparable regulated utilities.⁴

13 The Fifteenth Order requires that the parties collect, review, and submit information about the effect of the late payment charge on residential customers, and states that the Commission will review such information when considering any tariff that Verizon may offer to replace the expiring residential late payment charge. In that review, we will look to the fairness, justness, and reasonableness

³ The revised tariff page may be accepted by letter from the Commission's Executive Secretary upon confirmation that the change is limited to the provision authorized herein.

⁴ Verizon's reply to Public Counsel's answer contained information about the late payment charges of companies classified as competitive. We refuse to consider the information, as it is improper to offer evidence after the close of the record, and the asserted charges are irrelevant because the companies are classified as competitive rather than subject to traditional rate regulation.

of the proposed tariff. We have no information in this record indicating that the proper late payment charge would be no such charge at all.

B. Public Counsel's answer.

- 14 We agree with Public Counsel's analysis that Verizon's proposal to move the expiration date of the late charge tariff forward, into the stay-out period, *would* constitute a material alteration to the settlement agreement. That is why the Commission's decision is structured as it is. We agree with Public Counsel that he or another representative of his office should participate in the identification and review of data relating to application of the late charge tariff.
- 15 We encourage Staff, Public Counsel, and the Company⁵ to continue demonstrating the spirit of cooperation they have shown in achieving the settlement, and to determine jointly the relevant information for collection, subject to Commission approval. We encourage them to review the information jointly, and to participate in developing a late charge tariff to be effective on and after January 1, 2008. An agreed proposal, supported by relevant data, might be susceptible of acceptance without suspension and could replace the current tariff sooner than its stated termination date.
- 16 **Verizon's reply.** Verizon's reply to Public counsel's answer is not well taken. Neither the Commission order nor Public Counsel's answer is inconsistent in any regard with the settlement agreement or Verizon's revenue requirement. Verizon admits that it failed to reject the provision in question, which was its right under the terms of the settlement agreement and the order.
- 17 The Order's termination provision has no effect on either the stay-out provision or the revenue neutrality provision, which end on June 30, 2007. Verizon suffers

⁵ Other parties to this docket should be welcome to participate, as well.

no loss of due process protections; the Commission's right to reject tariffs carries with it the right to condition those tariffs. The Commission explained its concerns in the order, directed the parties to gather data to analyze the tariff's effect, and acknowledged Verizon's right to re-file. The Commission has not reached any determination about replacement of the tariff, and seeks the benefit of additional information in deciding on a longer-term solution to the revenue requirements and cash flow issues presented by the residential late payment charges. The Commission agrees that, if the proposed replacement tariff is suspended, the Commission will extend the expiration date until the conclusion of the review and such further period as the order on review of the tariff may specify.

18 We reject the arguments in Verizon's reply.

Conclusion.

19 In conclusion, we grant Verizon's motion for clarification, and clarify that the Fifteenth Supplemental Order does not require Verizon to place a termination date on its late payment charge for business services. We reject Verizon's contentions that the condition on the residential late payment charge denied it due process. We refuse to consider evidence offered for the first time in Verizon's reply to Public Counsel's answer. We reject Verizon's contention that altering the late payment charge during the stay-out period would be consistent with the settlement agreement and the Fifteenth Order. Finally, we invite the parties to consult in the recommendation of specific information to gather to test the effect of the late charge and in the recommendation of a tariff to supersede the expiring tariff.

III. ORDER

20 THE COMMISSION ORDERS the following:

21 (1) The Commission accepts Verizon Northwest, Inc. (Verizon)'s reply to the
answer of Public Counsel.

22 (2) Verizon may refile the tariff establishing a late payment fee for business
services to remove the provision for expiration of the rate on December 31,
2007. The refiled tariff, if it complies with the terms of this order, may be
accepted by letter from the Commission's Executive Secretary.

23 (3) The Commission clarifies its Fifteenth Order to encourage the parties to
work cooperatively to resolve issues relating to the residential customer
late fee, and to file a replacement tariff to which all agree. The parties may
consult about the data to be provided in response to the Fifteenth Order,
and shall file their recommendations within 30 days after the date of this
Order. The Commission may accept, reject, or modify the proposal by
letter from the Commission's Executive Secretary. The parties must
compile and report data relating to the charge and its effect, as authorized
and required by the letter.

24 (4) If the proposed replacement tariff is suspended, the Commission will
extend the expiration date of the current residential late charge tariff until
the conclusion of the review, and for such further period as the order on
review of the tariff may specify.

- 25 (5) In all other respects, the Commission denies Verizon's motion for clarification and rejects the arguments posed in Verizon's reply.

DATED at Olympia, Washington, and effective this 5th day of May, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARK H. SIDRAN, Chairman

PATRICK J. OSHIE, Commissioner

PHILIP B. JONES, Commissioner