

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND)	DOCKET NO. UT-040788
TRANSPORTATION COMMISSION,)	
)	ORDER NO. 04
Complainant)	
)	
v.)	ORDER DENYING PETITION FOR
)	COMMENCEMENT OF
VERIZON NORTHWEST INC.,)	BIFURCATED RATE CASE AND
)	WAIVER OF ADMINISTRATIVE
Respondent.)	CODE PROVISIONS
.....)	

1 **Synopsis:** *The Commission denies a petition seeking (a) waiver of rules requiring Verizon to file proposed tariffs to begin a general rate proceeding, and (b) “bifurcation” of the revenue requirements and rate design phases of a general rate proceeding. The Commission allows the Company thirty days from the date of this order to file proposed tariffs in this docket and an additional 30 days, if necessary, to complete and file testimony and other necessary support for the tariffs as required by WAC 480-07-510.*

2 On April 30, 2004, Verizon Northwest Inc. filed with the Commission certain tariff revisions designed to effect an interim increase in its rates for telecommunication services in this state of approximately \$29.7 million. The Company filed a “Petition of Verizon Northwest Inc. Seeking Interim Rate Increase” with these tariff revisions. The Company’s request for interim rate relief is related to, and dependent upon, the Company’s request to pursue total general rate relief of approximately \$240 million that this order concerns.

3 The Company has proposed a novel plan for addressing its need for a general rate increase. It seeks a Commission order waiving provisions of a rule that requires it to file proposed tariffs at the commencement of a general rate increase proceeding, and authorizing a “bifurcated” rate case in which the Commission first decides the Company’s revenue requirement. After learning its revenue requirement, the Company would design a rate structure to produce the required revenue, design proposed tariffs to produce that revenue, file those tariffs with the Commission, and provide notice and opportunity for hearing on the proposed tariffs.

4 Other parties indicated a desire to respond to Verizon’s motion, and a procedural schedule was established for addressing the motion. WeBTEC filed a statement that it was neutral on the motion. Commission Staff, Public Counsel, and AARP filed answers, to which Verizon replied.

5 Verizon seeks both bifurcation (the separation of revenue requirement and spread of rates elements into two separate phases) and waiver of various rules relating to the timing of tariff and related filings that must accompany a general rate filing. Because the Company’s interest in bifurcation appears to depend largely on whether we grant the requested waivers of the rule, we consider the propriety of Verizon’s requested waivers before considering bifurcation.

A. Waiver of Commission Rules

6 Verizon seeks waiver of several Commission rate case filing requirements. The principal issue is whether it may be exempted from WAC 480-07-510(2), which requires that the company must provide “...copies of the proposed new or

revised tariff sheets [.]” Verizon cannot comply with some other provisions of the rule if it proposes no tariffs at the outset.¹

- 7 Verizon’s petition argues that its proposed bifurcated approach is reasonable, practical, fair to all parties, and is in the public interest. It argues that this approach “allows all parties to focus on the revenue requirement without having to propose (and litigate) competing rate designs.” Verizon notes that the revenue requirement is the starting point for rate design decisions. It contends that Staff and other parties will likely propose significantly different revenue requirements, and Verizon contends that it is more efficient to decide the revenue requirement issue first and only then proceed to perform rate design studies and calculations and develop a rate design.
- 8 Verizon argues that no party is prejudiced by a bifurcated approach, because each party will have the opportunity to address all issues in this case in a more focused, efficient manner. Verizon also notes that because it is not filing a proposed tariff, the statutory 10-month clock for general rate cases (RCW 80.04.130(1)) will not begin to run. It does not argue (except by negative implication) that complying with the rule would harm it.

¹Verizon also seeks exemption from the following:

WAC 480-07-510(4)(c), which requires Verizon to provide the “[r]equested revenue change in percentage, in total, and by major customer class;”

WAC 480-07-510(4)(d), which requires a summary document that includes the “[r]equested revenue change in dollars, in total, and by major customer class;” and

WAC 480-07-510(4)(e), which requires a summary document that includes the “[r]equested revenue change in dollars, per average customer, by customer class, or other representation, if necessary to depict the representative effect of the request. Filings must also state the effect of the proposed rate increase in dollars per month on typical residential customers by usage categories.”

9 **Commission Staff.** Commission Staff does not oppose Verizon's proposal, although it sees little reason for granting the petition. Staff believes that RCW 80.04.130² allows the Commission to begin a review of the Company's revenue requirement without filing a tariff demonstrating how it would collect the revenue requirement that it seeks. Staff suggests that the Commission require renoticing if it grants the petition and the exemptions from rule, to ensure that interested persons have notice of the opportunity to participate in the revenue requirement phase of the proceeding. Staff has worked with Verizon to develop a proposed form of public notice that would alert the public that the Company is proposing a substantial increase in rates, that states an illustrative level of rates, and that states that the Company's actual eventual proposal could be greater or less than the illustration.

10 **Public Counsel / AARP.** Public Counsel and AARP vigorously oppose the petition in a joint pleading. They ask the Commission to deny bifurcation and to require the company to file a proposed tariff before the Commission considers any of the Company's proposed general rate increase. They pose several arguments in support of their position.

11 Public Counsel and AARP first contend that RCW 80.04.130 requires that a tariff be filed before the Commission can begin a rate case analysis, pointing to the structure of the statute, the functions of the tariff filing in providing specific notice to affected customers of the exact effect that the proposal will have if the

² The statute reads in relevant part as follows:

1) . . . [W]henver any public service company shall file with the commission any schedule, classification, rule, or regulation, the effect of which is to change any rate, charge, rental, or toll theretofore charged, the commission shall have power, either upon its own motion or upon complaint, upon notice, to enter upon a hearing concerning such proposed change and the reasonableness and justness thereof. Pending such hearing and the decision thereon, the commission may suspend the operation of such rate, charge, rental, or toll for a period not exceeding ten months from the time the same would otherwise go into effect. After a full hearing, the commission may make such order in reference thereto as would be provided in a hearing initiated after the same had become effective.

Commission finds the proposed revenue requirement. They point out that no other process is authorized by statute.

- 12 Public Counsel and AARP next argue that Verizon has failed to support its request for exemption from the pertinent rules. They contend that the Verizon proposal violates the fundamental principle of full, clear, and accurate notice to customers and the Commission of whether and how a company proposes to change its rates. They also point out that WAC 480-07-500(3) states that the purpose of the filing rules is “to standardize presentations, clarify issues, and speed and simplify processing.” PC/AARP contend that Verizon’s proposal has the opposite result, creating new issues rather than clarifying, and complicating rather than simplifying procedures.
- 13 Finally, PC/AARP argue that Verizon fails to provide adequate support for its proposal. They urge that the reasons advanced by the Company provide little or no support for the request, and that substantial reasons support the view that the proposal is not consistent with the public interest.
- 14 **Verizon response.** Verizon opposes the Public Counsel / AARP arguments. It responds that RCW 80.04.130 by its terms does not specifically prohibit other procedures in setting rates, and notes that the Commission has set rates by a different process (e.g., by complaint) in the past. It offers to provide adequate notice and give customers greater opportunity for participation than in a typical proceeding.
- 15 Verizon argues that the request it makes involves unique revenue-requirements issues that will affect the calculation of rates, and to require calculation of rates at the outset would require Verizon to spend resources developing cost studies and rate designs that might be “useless.” It contends that it has provided adequate reasons for the Commission to grant its requests.

Commission Analysis and Decision

16 **1. Does the statute require a tariff as a precondition to commencing a general rate proceeding?** The Commission finds it unnecessary to rule on this question. To grant Verizon’s petition, the Commission must find *both* that the statute permits the proposed process *and* that Verizon has adequately supported its request for waiver. As we demonstrate below, Verizon has failed to support its request for waiver. While (as Commission Staff argues) the statute might not prohibit the proposed process, we need not determine the question now.

17 **2. Has Verizon met its burden to support its request for exemptions from rules?** As the moving party, Verizon has the burden to come forward with information that supports its proposal and the burden of persuasion that its proposal meets the tests for granting exemptions.

18 Exemptions from rules in chapter 480-07 are governed by WAC 480-07-110.³ The test for exemption set out in the rule is whether the exemption is “consistent with the public interest, the purposes underlying regulation, and applicable statutes.”

19 In defining the “public interest” for determining whether exemption from a rule would be consistent with the public interest, we will look to the positive and negative effects of the exemption on the public, the requestor, and the purposes underlying the rule, including whether applying the rule would impose a hardship on the requestor, of a degree or a kind different from hardships imposed on similarly situated persons by application of the rule.

³ The rule reads in relevant part as follows: WAC 480-07-110 Exceptions from and modifications to the rules in this chapter; special rules. (1) Exceptions and modifications. The commission may modify the application of these rules in individual cases if consistent with the public interest, the purposes underlying regulation, and applicable statutes.

- 20 **The importance of a specific rate proposal.** Verizon proposes that the Company not make public at the outset the rates that it would charge if the Commission were to grant its entire proposal. PC/AARP argue that Verizon's is proposal violates the fundamental principle of full, clear, and accurate notice to customers and the Commission of whether and how a company proposes to change its rates. PC/AARP argue that WAC 480-07-510(2), and the related provisions of 510(4)(c), (d) and (e), are designed to require *actual* notice to customers, at the outset of a rate proceeding, of the *specific* proposals of the company for rate changes to achieve an overall proposed revenue increase. They argue that a generalized, conditional warning is insufficient to provide the statutory notice required to the Commission and the public, and point to concerns of the Department of Defense about whether it should intervene at this stage or wait until later in the process. Verizon responds that it will provide more than adequate notice, including full notice now and full notice after it files a tariff.
- 21 The Commission finds that lack of a filed tariff blunts the effect of the notice to the public, making it an abstract range of rates that might or might not come about, as opposed to a real proposal that the Company tells its customers it will implement if its rate request is granted. A specific proposal—even recognizing that the Commission may adjust final rates up or down from the proposal—is important for interested persons to decide whether to speak on the issue of suspension and decide whether to intervene in the formal proceeding. A company tariff illustrates to the public the full dimensions of the company proposal. The tariff demonstrates to the public and the Commission the Company's official position on the rates that the Company believes it can justify. The existing process contemplates clear, full, and accurate notice to the public of a specific rate proposal. This factor argues against a grant of the requested exemptions.

22 Moreover, the absence of a proposed tariff deprives the Commission of information important to it in evaluating the proposal, and it hinders the parties' ability to consider and argue relationships among all relevant factors. The Commission is charged with deciding whether the proposal is fair, just, and reasonable. *RCW 80.04.130*. The Commission must also determine whether the company has an opportunity to earn a fair rate of return on its investment, considering the level of its allowable expenses.⁴ The Commission must look at all elements of the proposal in balancing the factors and the interests necessary to determine fairness, justness, and reasonableness. Level of rates has been determined to be an element proper for consideration in an overall decision or a rate increase proposal.⁵ Absence of a filed tariff hinders the Commission and the parties, which weighs against granting the proposed exemptions.

23 **The statutory framework.** Public Counsel and AARP point to the structure of the statute as an indication that a proposed tariff is an essential element to provide notice to the public and the Commission of the Company's specific proposal. While the Commission does not determine whether the statute requires a tariff in every instance, it is clear that the statute contemplates a tariff filing, and that publication of the proposal is a significant element in the process of suspension and review that the statute sets out. This factor raises a concern about the proposed exemptions.

⁴ *Duquesne Light Company v. Borsch*, 488 U.S. 299, 310, 312, 109 S.Ct. 609, 102 L. Ed. 2d 646, 98 P. U. R. 4th 253 (1989); *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944); *Bluefield Water Works Improvement Co. v. PSC of West Virginia*, 262 U.S. 679 (1923)

⁵ See, e.g., recognitions of "rate shock" as one factor among many that the Commission may consider in setting elements of revenue requirements. *WUTC v. U. S. WEST Communications, Inc.*, Docket No. UT-950200, Fifteenth Supplemental Order (April 11, 1996); *WUTC v. American Water Resources, Inc.*, Sixth Supplemental Order (January 21, 1999), and *In the Matter of the Petition of U.S. West Communications, Inc. for Depreciation of Accounting Changes*, Fourth Supplemental Order (May 26, 1995)

24 **Concerns with timing of a tariff filing.** Public Counsel and AARP charge that under Verizon's proposal, the Company's eventual tariff filing would not be a proposal, but would in effect be a final tariff. Verizon responds that it does not suggest that the tariff would be final, but that it would be subject to argument and discussion about the level of rates between and within customer classes in a full hearing.

25 Both positions have some validity. Verizon's proposal would not be final, in the sense that, (absent an agreed tariff), it would be subject to disagreements among the customers and customer classes who would be responsible for payment. However, it would also be true that some of the factors considered in rate spread, including specific costs that may be responsibilities of or allocated among customer classes, already would have been determined in the revenue-requirements phase of the proposed hearing schedule. Persons who joined the proceeding only on the filing of tariffs would be barred from contesting elements of revenue requirement that are significant factors in the determination of rate design. This factor argues against granting the requested exemptions from the rules, and is the factor that most concerns us in this case.

26 **Policy of the rules from which exemption is sought.** Public Counsel and AARP point out that the policy of the general rate case filing rules, as stated in WAC 480-07-500(3), is "to standardize presentations, clarify issues, and speed and simplify processing." We find that Verizon's proposal meets none of these goals. This factor weighs against granting the proposed exemptions.

27 **Verizon's Support for Exemption.** We identified factors above that weigh against (or cause concerns about) granting the requested exemptions. Verizon contends that its waiver proposal is reasonable, practical, fair, and in the public interest. Now we will consider Verizon's proposed factors, to determine whether they outweigh the negative aspects of the proposal sufficiently to make the request consistent with the public interest.

28 First, Verizon contends that all parties will have ample opportunity to participate in all phases of the litigation. While that statement is true from one perspective—all parties would indeed have the opportunity to participate in each phase of the proposed docket—it tells only part of the story. We noted above that a notice without a specific proposal for rates is a less effective notice and may not draw the interest or the participation in rate-setting that a specific tariff proposal would draw. We also noted that absence of a specific rate proposal could hinder the parties' ability to argue, and the Commission's ability to consider, the Company's proposal as a unified and complete request with all variables under consideration at the same time. Under the Company's proposal, parties do not have the same opportunity to participate in all relevant matters that they would have in a unified "traditional" proceeding. Thus, Verizon's argument does not support its proposal.

29 Verizon contends that its proposed process will save it the time and expense of performing rate studies and accomplishing rate design at the outset of the proceeding. We do not accept Verizon's contention that any savings would be significant. Verizon acknowledges that, if the Commission finds that the Company needs additional revenues, it must perform such studies in any event. The proposed schedule for a bifurcated proceeding that it suggested with its May 12 and May 24 amended petitions allows less than one month (from March 11 to April 8) from entry of an order on revenue requirement until Verizon would file its proposed tariffs. Verizon has already enjoyed more than ten months since entry of the Commission's order in Docket No. UT-020406, which suspended effect of ordered rate reductions temporarily to allow Verizon time to file for rate relief. Verizon therefore has already had a considerable period in which to perform the studies. It has suggested in its proposed schedule that relatively little time will be necessary to accomplish the work, and it has not demonstrated that subsequent changes to its tariff filing would require any more duplication of effort and expense in a filing consistent with the rule than would be required if

the exemption is granted. Therefore, we do not find persuasive Verizon's contention that exemptions from the Commission's filing rule would save Verizon time and expense relating to rate studies and tariff design.

30 Verizon argues that it will provide adequate notice not once but twice in its proposed schedule. While we agree that Verizon proposes two notices, our analysis above demonstrates that the first notice is not adequate to inform customers of the real effect on them of Verizon's proposal, and that the second notice would be provided only after the determination of factors—both the overall revenue requirement and the determination of specific costs—that will drive the level and design of rates (*i.e.*, the real effect). Customer participation in only the second proposed phase would not have the same meaning as participation in a unified rate proposal.

31 **Conclusion on Exemption from Rules.** We conclude that Verizon's request for exemption from the tariff-filing rule requirements would cause negative effects on other parties and on the ratemaking process, and that the proffered advantages in the proposal are at best too weak to support the request. Verizon has not demonstrated that the proposed exemptions from the application of rules are consistent with the public interest, with the purposes underlying regulation, and with applicable statutes, as required by WAC 480-07-110. In so saying we do not rule on whether the proposal would be prohibited by RCW 80.04.130. Nor do we say that no circumstance could ever justify such exemptions (if permitted under the statute) but only that, on review, we find this particular proposal to offer too many negative aspects and too few positives for us to find that the proposed exemptions meet the standards for approval.

B. Bifurcation

32 Verizon also asks for bifurcation, i.e., the determination of revenue requirement before the determination of tariffed rates. While the principal purpose for this request would appear to fall with the denial of Verizon's request for exemption from the tariff filing rules, we will address the proposal.

33 Verizon argues in support of the proposed length of time for resolution of the bifurcated matter that the opportunity for refund protects customers from unexpected delays and from interim rates that are too high. In general, we agree with that statement, but refunds are not a perfect solution. To the extent that the rates may ultimately be found improperly high, the company has had the use of the funds represented by such excess payments, and consumers have not. Even if a company keeps track of payments by customer, many customers move in the course of a year, and many customers may not be reached for the payment of refunds.

34 Verizon argues that the process affords adequate opportunity for participation, which we address above and which we find not to be true. The Commission's policy in a general rate case, as set out in WAC 480-07-500(3), is to resolve all relevant matters in a single proceeding. Isolating some issues from the discussion of others may hinder parties and the Commission in reaching a proper result.

35 **Conclusion on bifurcation.** The Commission determines that it should deny Verizon's request for bifurcation of the issues, to delay determination on the spread of rates until after revenue requirement is determined. The Commission will consider parties' requests for *phased* hearing sessions, to the extent that they parties believe that doing so will offer benefits to the hearing process.

36 Verizon presented an interesting, creative process. While we have determined that its suggestion is not appropriate, for the reasons we describe above, we commend the company for its creativity.

C. Procedural Matters

37 To maintain this docket, Verizon must file within 30 days after the date of this order tariffs by which it would recover no more than the revenue deficiency that it believes is supported by its testimony and other materials previously filed in this docket. The tariffs must bear a stated effective date no earlier than 30 days after the date they are filed.

38 Verizon must also file sufficient supporting information with the proposed tariffs to demonstrate the accuracy of Verizon's calculation of the proposed tariff revenues. Verizon may delay filing of the remainder of its full support for the filed tariffs until their completion, if such materials have not been completed at the time the tariffs are filed, until no later than 30 days after the date the tariffs are filed.

39 The Commission will schedule a prehearing conference to discuss with parties the procedural consequences of the rulings in this order and to determine a schedule for completion of the balance of the proceeding. It is the Commission's goal to proceed expeditiously with the docket and to complete the hearing and enter a final order prior to the suspension date. Parties have been in possession of the supporting materials and have begun—or have been able to begin—discovery and the production of documents for all issues except the tariff issues, so we expect that parties will not require the full ten months after the stated effective date for completion of the docket. We encourage the existing parties to continue with preparations to enable swift completion of the docket after a tariff has been filed.

D. Notice of Prehearing Conference

40 A prehearing conference in this matter will be held at **1:30 p.m., on Thursday, July 1, 2004**, in the Commission's Hearing Room, Second Floor, Chandler Plaza Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington, to address scheduling and procedural issues resulting from the entry of this order and other procedural matters that the parties or the Commission may raise.

ORDER

41 The Commission denies Verizon's petition for bifurcation of this proceeding and for exemption from application of certain provisions of WAC 480-07-510 and 520.

DATED at Olympia, Washington and effective this 23rd day of June, 2004

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MARILYN SHOWALTER, Chairwoman

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner