

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of)	
)	DOCKET NO. UT-011439
)	
VERIZON NORTHWEST, INC.,)	NINTH SUPPLEMENTAL ORDER
)	
For Waiver of WAC 480-120-071(2)(a).)	ORDER GRANTING MOTION TO
)	STRIKE REPLY TESTIMONY OF
.....)	ROBERT B. SHIRLEY
)	
)	
)	

1 *Synopsis: The Commission grants Verizon’s motion to strike portions of the reply testimony of Commission Staff witness Robert B. Shirley.*

I. INTRODUCTION

2 **Proceedings:** Docket No. UT-011439 is a petition by Verizon Northwest, Inc. (Verizon), seeking a waiver or an exemption from WAC 480-120-071 regarding extending service to two separate locations in Verizon’s Bridgeport exchange in Okanogan and Douglas Counties.

3 **Appearances:** Judith Endejan, Graham & Dunn, Seattle, Washington, represents Verizon Northwest Inc. Gregory Trautman, Assistant Attorney General, Olympia, Washington, represents Staff of the Washington Utilities and Transportation Commission (Commission Staff or Staff). Robert Cromwell, Attorney, represents the Office of Public Counsel. Douglas N. Owens represents Qwest Corporation (Qwest). Elizabeth Kohler, David LaFuria and Richard Busch represent RCC.

4 **Background:** On May 31, 2002, the Commission entered an order granting Commission Staff’s motion to join Qwest as a party to this proceeding. Subsequently, on July 19, 2002, in the Sixth Supplemental Order in this case, the Commission approved a schedule of proceedings allowing Commission Staff to file testimony in response to Qwest’s filing. The Commission Staff filing date was September 20, 2002.

5 On September 20, 2002, Commission Staff filed the reply testimony of three witnesses: Robert T. Williamson, Thomas L. Spinks, and Robert B. Shirley.

On October 4, 2002, Verizon filed a motion to strike the portions of the reply testimony of Mr. Shirley pertaining to Verizon's Cedar Ponds line extension in the Sultan exchange. On October 23, 2002, Commission Staff filed its response to Verizon's motion.

II. ARGUMENT

6 **Verizon:** Verizon seeks to strike lines 18-22, page 10; pages 11-14; and, lines 1-13, page 15 of Mr. Shirley's reply testimony filed on September 20, 2002. This part of Mr. Shirley's testimony describes Verizon's May 2, 2002 filing of a tariff to recover costs for a line extension Verizon built in its Sultan exchange in 2000, prior to the adoption of WAC 480-120-071. The tariff went into effect on July 10, 2002, without suspension.

7 Mr. Shirley claims in the disputed testimony that the cost of the Sultan service extension was only somewhat less than the cost Verizon would incur to extend service to Kay Taylor and the Timm Ranch in this proceeding. Mr. Shirley further alleges that although Staff agreed not to file a complaint against Verizon in return for Verizon's construction of the Sultan project, Staff did not agree with Verizon that Verizon should be able to wait to recover the cost of the extension pursuant to the new line extension rule, which went into effect on January 5, 2001.

8 Verizon contends that the schedule established in the Sixth Supplemental Order gave Commission Staff the opportunity to respond to Qwest because Qwest had been made a party to the case after the first round of filings had been made by Verizon and Staff. Verizon argues that the sections of Mr. Shirley's testimony it seeks to strike do not respond to Qwest's filing, but rather, respond to Verizon's case. Furthermore, Verizon contends that Mr. Shirley was well aware of the Cedar Ponds line extension project in the Sultan exchange, which is the subject of the disputed testimony, long before he filed his opening testimony on April 17, 2002, and thus he could have included information about it at that time.

9 Verizon requests that if the Commission denies the motion to strike, that Verizon be permitted to file responsive testimony on December 18, 2002. This testimony would explain Verizon's version of the agreements Verizon had with Staff about constructing the Sultan exchange project.

10 **Staff:** Staff argues that in its May 2, 2002, tariff filing, Verizon sought to recover a substantial amount of money for an extension built in Verizon's Sultan exchange to serve only a few customers. Staff points out that Verizon never mentioned this extension, or its plans to seek recovery for the extension, in testimony Verizon filed in this case on March 6, May 17 or July 5, 2002.

11 Staff contends that because one of Verizon's witnesses has testified about how expensive the Kay Taylor and Timm Ranch extensions are and has stated that

subsidies required to provide service to customers such as they are not justified, it is relevant for Staff to point out how much cost Verizon has incurred in building the Sultan exchange extension.

- 12 Staff states that it could not have filed testimony on this subject any earlier in the case because Verizon's request to seek cost recovery for the Sultan extension was not made until May 2, 2002 and the filing date for Staff's testimony was in April, 2002. Staff asserts that it is irrelevant that the Sultan extension was constructed earlier under a prior version of the line extension rule, because Verizon did not choose to seek cost recovery for it until May 2, 2002, well after the effective date of the new rule.

III. DISCUSSION AND DECISION

- 13 We are persuaded that we should grant Verizon's motion to strike. The schedule established in this proceeding limited Staff's September 20, 2002 filing to be responsive to Qwest's case, not to Verizon's. Staff did not request leave to file additional testimony on September 20, 2002, responding to Verizon's case. We recognize that Staff could not have testified in its April, 2002, filing, established as the time for Staff's response to Verizon's case, that Verizon was going to file a tariff in May, 2002, requesting cost recovery for the Sultan extension. However, Staff was well aware by April, 2002 how much Verizon had expended to construct the project, since it was completed in the prior year. Staff could have included this cost information in its April filing. By our October 7, 2002 Order in this proceeding we did permit Staff to file testimony outside of the predetermined schedule. However that testimony was associated with a specific event, of which Staff could have had no prior knowledge, that occurred after Staff's last scheduled filing date.

ORDER

- 14 The Commission grants Verizon's motion to strike portions of Mr. Shirley's reply testimony as found at page 2, lines 1-4; page 10, lines 18-22; pages 11-14; and, page 15, lines 1-13.

DATED at Olympia, Washington and effective this _____ day of November, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE
Administrative Law Judge

NOTICE TO PARTIES: Any objection to the provisions of this Order must be filed within ten (10) days after the date of mailing of this statement, pursuant to WAC 480-09-460(2). Absent such objections, this order will control further proceedings in this matter, subject to Commission review.