

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of
VERIZON NORTHWEST, INC.
For Waiver of WAC 480-120-071(2)(a).

Docket No. UT-011439

PETITION FOR
ADMINISTRATIVE REVIEW OF
ORDER GRANTING MOTION TO
STRIKE REPLY TESTIMONY OF
ROBERT B. SHIRLEY

1 Commission Staff respectfully requests that the Commission reverse the decision made in the Ninth Supplemental Order issued November 1, 2002.¹ That decision granted a motion by Verizon to strike a portion of the reply testimony of Robert B. Shirley concerning a line extension built in Verizon's Sultan exchange (also known as the Cedar Ponds extension). On May 2, 2002, Verizon filed a tariff to recover from ratepayers, pursuant to WAC 480-120-071, the cost of this line extension. This cost of this extension which serves only a few customers, is quite substantial.²

¹ The Order states that parties may seek review of the order within ten days under WAC 480-09-460(2). That rule refers to prehearing conference orders. This appears to be a typographical error, as WAC 480-09-760 (2) permits petitions for review of interlocutory orders.

² Verizon has filed these numbers (total cost of the extension and number of customers served) as confidential. Please see the confidential version of the September 20, 2002 testimony of Robert B. Shirley for these figures.

2

Verizon has maintained, in its Petition for Waiver in this case, and repeatedly in its testimony, that the Commission should not have Washington ratepayers pay for the cost of the Taylor and Timm Ranch line extensions at issue in this case. Yet, on May 2, 2002, Verizon took precisely this same step regarding the Sultan exchange line extension. Staff believes that the Order striking this directly relevant testimony of Mr. Shirley is not well founded, and should not be upheld by the Commission.

I. ARGUMENT

A. **The November 1, 2002, Order Granting Verizon’s Motion to Strike Improperly Discounts the Significance of Verizon’s Decision to Seek Cost Recovery from Washington Ratepayers, Pursuant to WAC 480-120-071, for the Sultan Exchange Line Extension.**

3

The issue that Verizon placed before the Commission in its Petition for Waiver was whether Verizon “and Washington ratepayers,” (emphasis added) through terminating access payments authorized by WAC 480-120-071, should be required to support extensions that exceed one-half million dollars in cost, to provide service to a relatively small number of customers in two general locations. Verizon did not place before the Commission the question of whether its stockholders should have to spend this amount of money for the two extensions.³

4

Mr. Shirley’s September 20, 2002, testimony was intended to show that on May 2, 2002, Verizon took its first step to effectuate a decision to shift, from stockholders to Washington ratepayers, the cost of one highly expensive extension in its Sultan exchange which serves only a few customers. The November 1, 2002, order downplays the significance

³ The tariff filed by Verizon on May 2, 2002, will recover all of its nonreinforcement costs for the Sultan extension and thirteen other extensions in just one year. There is no cost to stockholders.

of what occurred on May 2, 2002, and suggests that the Staff should have testified about the Sultan exchange prior to this date. But Verizon's obligation since December 3, 1999, had been to construct the Sultan extension without ratepayer contribution. Under its December 1999 agreement, Verizon was not entitled to recover the cost through terminating access pursuant to WAC 480-120-071 (which became effective in January 2001).

5 Staff did not testify earlier about Verizon's December 3, 1999, commitment to extend service to the Sultan exchange at the expense of its stockholders, because that was not the issue in this case.⁴ The issue here is whether Verizon should be obligated to provide line extensions to be supported by Washington ratepayers, under WAC 480-120-071. Only on May 2, 2002, did that issue present itself here, through Verizon's tariff filing. Staff could not testify about this prior to that time. (Staff's direct testimony was due in April 2002).

6 Nor would it be proper to assert that Staff was somehow obligated to "anticipate" that Verizon might make the May 2, 2002, tariff filing that triggered Mr. Shirley's testimony. Had Staff, in fact, testified about this matter earlier, it would have likely been challenged as speculative and premature. In sum, Staff's actions prior to May 2, 2002 were entirely proper and reasonable.

B. If Verizon Intended to Recover The Cost of the Sultan Exchange From Ratepayers Under WAC 480-120-071 During the Discovery Period, In Which Case Staff Could Have Learned of This Intention and Testified About It, Verizon Did Not Inform Staff of That Intention.

7 On March 12, 2002, Staff sent a data request (Staff Data Request No. 44) to Verizon that asked:

⁴Paragraph 7 of the November 1, 2002, order suggests that Verizon had an agreement only with Staff on December 3, 1999, and not with the Commission. The commitment Verizon made in 1999, by letter to Carole Washburn, was to the Commission.

In response to DR 17, Verizon stated that it has computed an average cost for extensions since WAC 480-120-071 became effective. For all of its Washington districts, please list the location, length, cost of reinforcement, cost of extension, and number of households served for extensions constructed under Verizon's line extension tariff currently in effect.

8 Verizon responded in early April, 2002, with a list of 14 extensions that did not include the Sultan extension. (See confidential response to Staff Data Request No. 44, attached). Staff filed its direct testimony in this case, as required, on April 17, 2002.

9 After Verizon filed for terminating access recovery for fourteen extensions on May 2, 2002, Staff compared the list from the discovery response to a list supplied by Verizon in support of its May 2, 2002, filing. The May list was identical, with two notable exceptions: the Sultan extension and its substantial cost had been added, and a Newport extension costing a few thousand dollars had been removed.⁵

10 Staff cannot state that Verizon earlier intended to seek recovery under WAC 480-120-071 for the Sultan line extension. But Staff can firmly state that it directly inquired of Verizon about this matter prior to filing its April 17, 2002, testimony and no intention to file for cost recovery was communicated to Staff at that time.

C. If the November 1, 2002, Order Is Upheld, This Will Permit Verizon To Have the Advantage of Testimony That Will Go Unrebutted

11 The November 1, 2002, order states that Staff's September 20, 2002, filing was limited to responding to Qwest, not Verizon. Staff was responding to testimony filed by Verizon on July 5, 2002 (Qwest also filed testimony on July 5, 2002, and the

⁵ The Commission, at its July 10, 2002, Open Meeting, let go into effect the tariff Verizon originally filed on May 2, 2002. The Commission had knowledge of the December 3, 1999, agreement and the intention of Verizon to recoup costs for the several line extensions in its supporting documentation, including the Sultan extension Verizon agreed to construct without benefit of ratepayer contribution.

testimony not struck by the order was Staff's testimony in response to that July 5, 2002, testimony of Qwest). In the initial schedule promulgated in this case, Staff was permitted to respond to both Verizon and Qwest on July 11, 2002. See Fourth Supplemental Order in UT-011439, June 19, 2002, page 2. The schedule adopted in that order, however, was disrupted when the Commission joined RCC Minnesota as a party.

12 The Sixth Supplemental order, issued July 19, 2002, lists for September 20, 2002, only a Staff response to Qwest's July 5, 2002, testimony. Staff believes that notation was either made in error; otherwise, the Commission in that order effectively deprived Staff of the opportunity to respond to Verizon's July 5, 2002, testimony that it originally had provided. Staff believes that fairness requires that it have an opportunity to respond to Verizon. Staff further maintains that it could not have filed the testimony in question prior to May 2, 2002.

II. CONCLUSION

13 For the reasons stated above, Staff requests that the Commission reverse the decision striking Staff's testimony pertaining to Verizon's cost recovery for the Sultan exchange line extension, for which Verizon filed a tariff on May 2, 2002.

DATED this 12th day of November, 2002.

CHRISTINE O. GREGOIRE
Attorney General

GREGORY J. TRAUTMAN
Assistant Attorney General

