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BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION

In the Matter of the Petition of)	Docket No. UT-011439
)	
VERIZON NORTHWEST INC.,)	RESPONSE OF VERIZON NORTHWEST
)	INC. TO PETITION FOR ADMINISTRATIVE
For Waiver of WAC 480-120-071(2)(a))	REVIEW OF ORDER GRANTING MOTION
)	TO STRIKE REPLY TESTIMONY OF
)	ROBERT B. SHIRLEY

I. INTRODUCTION

Verizon Northwest Inc. (“Verizon”) opposes the Commission Staff’s Petition for Administrative Review of the Order Granting Motion to Strike Reply Testimony of Robert B. Shirley (“Ninth Supplemental Order”). This Petition is based on three erroneous assumptions. First, the Petition suggests that Staff did not know and could not have known about the line extension built in Verizon’s Sultan exchange, the subject of the stricken testimony, in time to address it in Mr. Shirley’s opening testimony.¹ Second, the Petition assumes that the circumstances of the Cedar Ponds Project and those of the line extensions at issue in this case are similar. Third, the Petition assumes that the Staff was allowed to respond to Verizon’s July 5, 2002 testimony. As explained below each assumption is wrong. The Ninth Supplemental Order should be sustained.

¹ The Petition refers to this project as the Sultan Exchange Project. Verizon refers to it as the Cedar Ponds Line Extension Project (“Cedar Ponds Project”).

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II. ARGUMENT

1. Staff knew about the Cedar Ponds project and actually suggested that Verizon seek cost recovery, long before Mr. Shirley's April 17, 2002 testimony.

Staff knew of Verizon's attempt to seek cost recovery for the Cedar Ponds Project prior to May 2, 2002 and prior to Staff's filing of its testimony. As demonstrated in the attached declaration of Joan Gage and the July 9, 2002 declaration of Ms. Gage filed with Verizon's response to Commission Staff's Motion to Compel, in June of 2000, Mr. Shirley suggested to Verizon that it could obtain cost recovery for the Cedar Ponds project under the new line extension rule, WAC 480-120-071, even though the project was commenced prior to the new rule's effective date. Had Mr. Shirley not made this suggestion, Verizon would not have sought recovery under WAC 480-120-071.

Mr. Shirley first contacted Verizon regarding requests for service from residents in the Cedar Ponds Lake area in the summer of 1999. At that time the interpretation of Verizon's existing line extension tariff was the subject of a dispute with Staff. Verizon and Staff differed as to whether the tariff language allowed multiple applicants along a line extension route to pool their free half-mile allowances to avoid paying for lengthy and costly line extensions. This issue was central to the dispute between the Company and Commission Staff with regard to another project, the Pontiac Ridge project, discussed in the prefiled testimony of Mr. Shirley and Verizon's witness Kay Rausch in this case. Regarding the Pontiac Ridge project, the Staff made it clear to Verizon that its interpretation was that the free half mile allowances were to be pooled and that Staff was willing to open a complaint proceeding against the company as to the proper interpretation of the tariff language. The Company made a business decision to build Pontiac Ridge after considering the risk of an unfavorable decision in a complaint docket and possible associated penalties. In view of the Pontiac Ridge history Verizon elected to construct the Cedar Ponds Project consistent with Staff's interpretation of its tariff. Under that approach of pooling the allowances, because of the number of applicants and the distance from the existing network, Verizon anticipated that it would have to absorb 100% of the cost of the Cedar Ponds Project, until Mr. Shirley suggested otherwise.

1 Mr. Shirley met with Verizon company officials in June of 2000. At that meeting, Mr. Shirley
2 told Verizon that Staff would not oppose a request by the company to recover the costs of the Cedar
3 Ponds project under the new line extension rule, when the project was finished. Ms. Gage confirmed
4 Mr. Shirley's position during several subsequent conversations. Indeed, had it not been for
5 Mr. Shirley's advice, Verizon would not have made the tariff filing the Commission Staff claims it could
6 not have anticipated.

7 Under the circumstances the Commission Staff clearly knew about the Cedar Ponds Project
8 and Verizon's intention to seek cost recovery well in advance of April 2002. Accordingly it was
9 entirely proper for the Administrative Law Judge (ALJ) to strike Mr. Shirley's testimony for failure to
10 include it in Mr. Shirley's opening testimony.

11 2. The Cedar Ponds project is not relevant or significant to the issue presented by Verizon's
12 petition in this case.

13 The underlying issue that generated Verizon's decision to undertake the Cedar Ponds Project
14 was a dispute over the tariff in effect in 1999-2000. This tariff was changed as the result of the new line
15 extension rule, WAC 480-120-071, which took effect January 15, 2001. That new rule established the
16 waiver criteria at issue in this case.. The failure to include testimony about the Cedar Ponds Project is
17 not significant to resolution of the single fundamental issue in this case: should the Commission compel
18 shareholders, the Company and/or Washington ratepayers to spend over a million dollars to provide
19 service to these few applicants..

20 Additionally, it is simply not the case, contrary to Staff's suggestion, that Verizon had no
21 problem expending significant sums of money to complete the Cedar Ponds Project. Verizon had to
22 make an exception to its normal capital budget in order to accomplish the Cedar Ponds Project, which
23 turned out to cost the large sum of money discussed in the confidential version of Mr. Shirley's stricken
24 testimony. Verizon did not anticipate the costs would be as large as they ultimately grew to be. The
25 Cedar Ponds Project was a unique situation and should not be viewed as an admission of Verizon in
26 any respect and should not be held against the company in this case.

1 Staff suggests that Verizon withheld information about the Cedar Ponds Project when
2 responding to the discovery requests (Petition p. 4). In fact, the Cedar Ponds Project was not
3 responsive to the data request, which dealt with the cost of extension projects commenced after the
4 effective date of WAC 480-120-071. Verizon did not “hide the ball” from Staff in responding to
5 discovery about a project not responsive to the request, about which Staff was fully apprised prior to
6 April 17, 2002. Moreover, as discussed above, Staff was already well aware of the Cedar Ponds
7 project.

8 3. Staff knew it was only entitled to file testimony in response to Qwest’s July 5, 2002 testimony.

9 Staff tries to shoehorn the stricken testimony into this case by alleging that it was responsive to
10 Verizon’s July 5, 2002 testimony. First, the stricken testimony was not directly responsive to
11 Dr. Danner’s testimony. Dr. Danner did not discuss the Cedar Ponds project in his July 5, 2002
12 testimony. His testimony merely contends that the cost for Verizon to provide service in this case is too
13 high to justify its provision. Rather, staff attempts to introduce new material into the record without
14 seeking leave of the Commission to supplement. Second, Commission Staff knew it could not include
15 testimony about the Cedar Ponds Project without seeking leave of the Commission to file supplemental
16 testimony. In its Motion to Compel Responses by Verizon filed July 3, 2002, the Staff admitted it
17 would have to seek leave to file supplemental testimony, as justification for the requested discovery.²
18 Staff cannot now claim that it did not need to seek leave to file supplemental testimony because it
19 allegedly responds to Verizon’s July 5, 2002 testimony.

20 Finally, at the July 17, 2002 pre-hearing conference the parties deliberately discussed and
21 carefully crafted the schedule that was embodied in the Sixth Supplemental Order. At that time counsel
22 for Staff indicated it needed time to file a response to the Qwest filing. He did not mention a need to
23 refile a response to a Verizon filing. Indeed the previous schedule had anticipated a Staff response only
24 to a Qwest filing because Qwest filed testimony on July 5, 2002. In summary, Staff did not indicate a
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26 ² See footnote 2, and p. 5 of Commission Staff’s Motion to Compel Responses by Verizon.

1 desire or need to file a response to Verizon's July 5, 2002 testimony and the Sixth Supplemental Order
2 properly limited the Staff response to Qwest July 5, 2002 testimony.

3 **III. CONCLUSION**

4 The ALJ's decision properly adheres to the procedural schedule in this case and finds that Staff
5 may not present evidence about the Cedar Ponds Project late in the case. Allowing the stricken
6 testimony to be restored will require that Verizon have an opportunity to respond to an issue that is not
7 relevant to the issues in this case.

8 DATED this _____ day of November, 2002.

9 GRAHAM & DUNN PC

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11 By _____
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