DM 05-172

VERIZON NEW HAMPSHIRE AND ELECTRIC UTILITIES

Generic Investigation into Utility Poles

Order Setting Procedural Schedule

ORDER NO. 24,558

December 9, 2005

APPEARANCES: Victor D. DelVecchio, Esq. for Verizon New Hampshire; Gerald Eaton for the Public Service Company of New Hampshire; Colin Owyang, Esq. for Granite State Electric Company, d/b/a National Grid-New Hampshire; Gary Epler, Esq. for Unitil Service Corporation; Devine, Millimet and Branch by Mark Dean, Esq. for the New Hampshire Electric Cooperative, Inc.; Wensley, Jones & Azarian, PLLC by Danford J. Wensley, Esq. for City of Rochester; Paul F. Cavanaugh, Esq. for the City of Concord; Mark S. Gearreald, Esq. for the Town of Hampton; Donahue, Tucker & Ciandella, PLLC by Robert D. Ciandella, Esq. for the municipalities of Exeter, Hanover, Keene, Newmarket, Portsmouth, Raymond, Salem, Seabrook and Stratham; Philip Monk for George E. Sansoucy, P.E., LLC; Maura Carroll, Esq. for the New Hampshire Local Government Center; Gary Abbott for Associated General Contractors of New Hampshire; Devine Millimet & Branch PA by Frederick J. Coolbroth, Esq. for the New Hampshire Telephone Association; Steve Wengert for BayRing Communications; Jeremy L. Katz for segTEL, Inc.; William Durand, Esq. for New England Cable and Telecommunications Association, Inc.; Lynmarie Cusack, Esq. of the N.H. Department of Justice for the N.H. Department of Transportation; F. Anne Ross, Esq. for the Office of Consumer Advocate; Lynn Fabrizio, Esq. for Staff

I. BACKGROUND AND PROCEDURAL HISTORY

On October 24, 2005, the New Hampshire Public Utilities Commission (Commission) issued an Order of Notice opening a generic investigation into issues related to, *inter alia*, joint ownership of poles by electric and telecommunications utilities; pole installations, replacements, and removals; response time to customer requests for service; maintenance obligations and related safety concerns; emergency response; tree trimming; private property construction charges and multiple attachments. The Order of Notice was based on a Commission Staff (Staff) memorandum, dated October 20, 2005, that outlined the scope and

nature of certain complaints received from customers as well as utilities during the past year related, *inter alia*, to the installation, maintenance and shared use of utility poles. In its memorandum, Staff recommended that the Commission open a docket and initiate a generic investigation into poles-related issues, pursuant to RSA 365:5.

The Order of Notice scheduled a Prehearing Conference for November 10, 2005 at 1:30 p.m., to be followed by a Technical Session. The Order further made Verizon New Hampshire (Verizon), Public Service Company of New Hampshire (PSNH), Granite State Electric Company d/b/a National Grid–New Hampshire (National Grid), Unitil Service Corporation (Unitil), and New Hampshire Electric Cooperative, Inc. (NHEC) mandatory parties to this proceeding, and directed Staff and Parties to discuss the scope of the investigation and recommend a procedural schedule in the Technical Session. The Order required any petitions for intervention pursuant to Puc 203.02 to be filed on or before November 7, 2005, and any objections to petitions to intervene to be filed on or before November 10, 2005.

Petitions for intervention were received from segTEL, Inc. (segTEL); the New England Cable and Telecommunications Association, Inc. (NECTA); the Associated General Contractors of New Hampshire (Associated General Contractors); the New Hampshire Department of Transportation (NHDOT); the municipalities of Exeter, Hanover, Keene, Newmarket, Portsmouth, Raymond, Salem, Seabrook, and Stratham appearing jointly, as well as Concord, Hampton and Rochester; the New Hampshire Local Government Center; Sprint Spectrum and Nextel Communications (Sprint/Nextel); Union Communications, Inc. (Union); BayRing Communications (BayRing); the New Hampshire Telephone Association (NHTA); and George E. Sansoucy, P.E., LLC (Sansoucy). The Office of Consumer Advocate (OCA) notified the Commission on October 26, 2005, of its intent to participate in the docket.

On November 9, 2005, segTEL filed a Motion for Clarification of Scope in this docket, asking the Commission to review relevant CLEC experiences with both electric company and Verizon pole attachment practices and to consider how the competitive market is affected by those practices. segTEL further requested that the Commission review pole attachment practices for compliance with Federal Communications Commission (FCC) regulations.

The Prehearing Conference and Technical Session were held as scheduled on November 10, 2005. At the Prehearing Conference, NHEC objected to its status as a mandatory party, citing the Commission's lack of regulatory jurisdiction over this aspect of NHEC's operations. NHEC further stated its desire to participate via a monitoring only status, as part of the service list and as a participant in informal discovery only. All pending Motions to Intervene were granted from the bench at the Prehearing Conference. On November 18, 2005, Staff submitted a report on the Technical Session outlining a proposed preliminary schedule for the early stages of this docket.

II. PRELIMINARY POSITIONS OF THE PARTIES AND STAFF

A. Staff

Staff noted the number of complaints and inquiries being filed with the Commission and stated that, in its view, a generic investigation into poles-related issues is warranted. The range of issues that has been the subject of complaints and inquiries includes: timely installation and removal of poles; trimming and maintenance of poles; utility response to emergency situations; potential competitive barriers created by the current structure of pole ownership and responsibility; provisioning delays; and charges for private property construction. Staff stated that, in the course of a generic investigation, it intended to determine whether issues that have been traditionally addressed by joint pole agreements remain practicable in the current

environment; to investigate issues regarding multiple attachers; to consider whether private property construction charges should be revised to make them less confusing to customers; and to determine whether the joint ownership of utility poles remains in the public interest. Finally, Staff noted that it intends to work with interested parties to prioritize the order in which the various issues should be addressed.

B. Office of Consumer Advocate

The OCA noted its alarm at the number of complaints reported by Staff and suggested that the rise in poles-related issues indicates that Verizon might not be meeting its operational responsibilities to either its customers, the general public at large, or to its utility partners, when it comes to pole installation and maintenance issues. OCA further noted that public safety, the competitive market, consumer satisfaction, service quality and service reliability can all be negatively impacted, not only for Verizon, but for any entity that occupies space or seeks to occupy space on a pole jointly owned by Verizon.

C. Public Utility and Utility Trade Association Intervenors

segTEL contended that issues that have arisen concerning pole attachments, in effect, constitute a barrier to market entry to the detriment of CLECs who need to rent attachment space on utility poles. BayRing noted, in particular, that the timeframes and costs associated with pole attachments are of serious concern for CLECs. NHTA pointed out that to the extent this generic proceeding might lead to decisions regarding the joint ownership of poles, it would directly affect NHTA members. Although NECTA itself is not a public utility, it appeared on behalf of "substantially all of the cable companies…in New Hampshire," noting that its members have a particular interest in issues associated with the rental of pole space for attachments.

D. Municipalities

The several municipalities and certain representatives of municipality interests all stated general concern for public safety and emergency management. Noting that municipalities control the public rights-of-way on which many utility poles are located, the municipal intervenors emphasized the lack of timeliness and responsiveness on the part of utility companies that own utility poles and the consequent implications for public safety. Representatives of the Town of Hampton and of the nine municipalities appearing jointly also cited delays to municipal-sponsored construction projects as detrimental to municipal economic development and competition.

E. Contractors and NHDOT

The Associated General Contractors and NHDOT are interested primarily in the effect of utility pole management on highway construction projects and they noted the serious financial consequences of delays caused by the lack of timeliness on the part of utilities that own and manage the installation, removal and maintenance of utility poles and facilities.

F. Mandatory Parties

Verizon; PSNH; National Grid; Unitil and NHEC were made mandatory parties in the Order of Notice. They generally stated their intent to proceed on a cooperative basis in the course of the investigation. Verizon emphasized that it viewed this proceeding as a generic investigation, that the problem was likely overstated, and that Verizon itself looked forward to responding to concerns raised and to participating in a series of workshops on the various issues.

PSNH noted that the issues raised generally are addressed in the joint use agreements and associated inter-company operating procedure agreements, and that PSNH strives to be cooperative with regard to poles-related issues.

Unitil pointed out that the issues raised by this investigation are either directly involved in or touch upon the Joint Ownership Agreements and associated Inter-Company Operating Procedures that exist between the electric utility companies and the telephone companies, that such agreements have existed for many years, and that they were intended to be based on principles of mutual advantage, equitable sharing of costs, and the provision of reasonable service levels. Unitil contends that the Joint Ownership Agreement between Unitil and Verizon no longer provides the same economic advantage and business advantage to Unitil, that costs are no longer being shared equitably under the agreement, and that important maintenance obligations are not being fulfilled. Unitil further noted its specific concerns in areas such as emergency response time, pole sets for new customer service requests, pole sets for system upgrades and construction, pole inspections, maintenance, and replacements, sharing of tree trimming costs to maintain line clearances, a timely relocation and transfers, and the issue of double poles. According to Unitil, there are three basic alternatives to the current system, although more may arise as the docket progresses: 1) to address each of the areas of concern and continue operating under the Joint Ownership Agreement and Inter-Company Operating Procedures where such joint ownership is of mutual advantage; 2) to transition to a sole ownership model, in which the electric company assumes ownership and custodial responsibility for the poles, while telecommunications companies lease space for attachments according to either FCC or state requirements; 3) to terminate the Joint Ownership Agreements and develop a new framework for pole construction and maintenance.

NHEC objected to its inclusion as a mandatory party, citing jurisdictional issues, and stated that it wishes to participate in a monitoring role only, as part of the service list and a participant in informal discovery.

Finally, National Grid expressed its reservation, and PSNH, Unitil and Verizon objected to segTEL's Motion for Clarification of Scope to the extent that the Motion sought to extend the scope of this proceeding to a review of FCC regulations concerning pole attachments.

G. Public Comment

Various members of the public gave statements of their experience with utility pole issues. Generally, those who spoke included: (1) homeowners and (2) contractors/project managers. Both groups complained of the lack of timeliness and responsiveness on the part of Verizon with respect to pole installations and removals, and the resulting frustration and financial burdens in homebuilding and other construction projects. Speakers described examples of delays caused by Verizon's failure to remove wires or to install and replace poles in a timely manner, and by the lack of coordination between telephone and electric utilities.

III. PROPOSED PRELIMINARY PROCEDURAL SCHEDULE

Following the Prehearing Conference, Parties and Staff met in a Technical Session to discuss a procedural schedule for completing this docket. Staff, on November 18, 2005, submitted the following agreed-upon schedule:

November 18, 2005	Suggestions from interested parties to Staff for initial data requests
November 29, 2005	Staff data requests to Parties
December 20, 2005	Responses to Staff data requests
December 28, 2005	Suggestions from interested parties to Staff for prioritization and grouping of issues
January 6, 2006	Second technical session (9:00 a.m.)

Staff stated that it would explore with the Parties a schedule for further proceedings during the January 6, 2006 technical session.

IV. COMMISSION ANALYSIS

We agree with Staff that the numerous complaints regarding various aspects of utility pole installation and maintenance warrant a generic investigation into poles-related issues.

Because the complaints touch on so many areas, however, this investigation may need to proceed in phases in order to address comprehensively and systematically the broad range of issues noticed in this proceeding. We have reviewed the proposed preliminary schedule and believe that it is administratively sufficient to initiate the investigation of issues raised in this docket. Therefore, we approve the preliminary schedule as filed.

We note that NHEC has objected to its status as a mandatory party in this proceeding, citing the Commission's lack of regulatory jurisdiction over the Cooperative. Inasmuch as no party objected to NHEC's proposal that it participate in a monitoring role only, NHEC's request is granted. Therefore, NHEC will not be required to participate as a mandatory party.

Several objections were voiced by the mandatory parties with regard to segTEL's Motion for Clarification of Scope of the investigation in this docket. To the extent that segTEL requests the Commission to review utility compliance with the FCC's rules and regulations on pole attachments, we deny the motion. New Hampshire has not asserted regulatory authority over pole attachments, pursuant to FCC Rules, Section 1.1414(b) and, therefore, these matters are within the jurisdiction of the FCC. To the extent that segTEL requests that the investigation include electric utilities as well as Verizon, we note that it has always been our intention to include the electric utilities in the scope of this proceeding, as evidenced by our inclusion of all the electric utilities as mandatory parties in our Order of Notice of October 24, 2005. Therefore, we grant that part of the motion to the extent that it reiterates and confirms our original intent in initiating this investigation. Finally, we direct Staff to report on the outcome of the January 6, 2006, technical session with a recommendation as to how to proceed further with the investigation.

Based upon the foregoing, it is hereby

ORDERED, that the Procedural Schedule for the above-captioned docket is APPROVED; and it is

FURTHER ORDERED, that all of the Motions to Intervene are GRANTED; and it is

FURTHER ORDERED, that segTEL's Motion for Clarification of Scope is DENIED in part and GRANTED in part; and it is

FURTHER ORDERED, that the New Hampshire Electric Cooperative's request to participate in a non-mandatory, monitoring role is GRANTED.

By order of the Public Utilities Commission of New Hampshire this ninth day of December, 2005.

Thomas B. Getz Chairman	Graham J. Morrison Commissioner	Michael D. Harrington Commissioner

Attested by:

Debra A. Howland
Executive Director & Secretary