

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of)
Frontier North Inc. to add a New Service) Case No. 10-1419-TP-ATA
to its Tariff.)

**RESPONSE OF FRONTIER NORTH INC. TO
THE VILLAGE OF MINSTER, OHIO'S MOTION TO INTERVENE**

I. INTRODUCTION

On September 23, 2010, Frontier North Inc. ("Frontier") filed a zero-day tariff application seeking to add a new service to its General Tariff (the "Application"). On October 21, 2010, Frontier filed a revised version to replace the original tariff sheet filed on September 23, 2010 (the "Revised Application"). Later that same day, the Village of Minster, Ohio ("Minster") filed its Comments and Objections to the Application, apparently unaware of the filing of the Revised Application. On October 22, 2010, the Commission entered an Entry that suspended the Revised Application until the Commission orders otherwise.

On November 1, 2010, Minster filed its Motion to Intervene.

II. MOTION FOR INTERVENTION

In its Motion to Intervene, Minster submits that it is entitled to intervene because it has an interest in these proceedings that cannot be protected otherwise by the Commission. (Motion to Intervene, at p. 2.) While Frontier certainly does not agree with Minster's contention that it has an interest that warrants intervention, Frontier will not oppose Minster's Motion to Intervene in this proceeding so long as the Commission limits Minster's intervention solely to the general applicability of the tariff provision in question. To the extent that Minster is seeking to challenge

the applicability of that tariff provision to it with respect to a particular project, Frontier submits that this is not the proper proceeding in which to do so. Rather, if Minster wishes to challenge the applicability of this tariff provision to the Village, or to challenge the charge that Frontier is requiring Minster to pay for relocating its utility facilities underground, Minster must do so by filing a Complaint with the Commission under R.C. 4905.26. *See State ex rel. Columbus Southern Power Co. v. Fais*, 117 Ohio St.3d 340, 2008-Ohio-849, ¶¶11, 23. This proceeding, wherein Frontier seeks authorization to add section 2.10, Facilities Rearrangements, to its General Tariff, is not the proper proceeding for Minster's specific dispute.

Contrary to Minster's false and improper accusations that Frontier is attempting to create a defense to Minster's declaratory judgment action (*see* Motion to Intervene, at p. 2), in filing its Application and Revised Application, Frontier is merely seeking to include in its tariff its longstanding policy to charge the costs of relocating its utility facilities to the party which requests such relocation. Similarly, Minster's claims, that Frontier's tariff provision singled out municipal governments, and that Frontier is seeking to "unilaterally alter the operation of local laws," are patently false. (*See* Motion to Intervene, at p. 2, note 1.) First, the tariff provision as filed on September 23, 2010 applied to "an applicant, customer, association, government entity or political division or other third-party," and not merely municipal governments. (General Exchange Tariff for Frontier North Inc., P.U.C.O. No. 7, Section 1, 6th Revised Sheet No. 5, General Regulations, 2.10 Facility Rearrangements.) The revised tariff provision filed on October 21, 2010 eliminated the specific reference to "government entity and political division," and applied broadly to "an applicant or other third-party." (Revised Tariff Sheet of General Exchange Tariff for Frontier North Inc., P.U.C.O. No. 7, Section 1, 6th Revised Sheet No. 5, General Regulations, 2.10 Facility Rearrangements.)

Minster's second claim, that Frontier is "proposing unilaterally to alter the operation of local laws through a tariff application," is incorrect and has no legal basis. As a general matter, Frontier is merely seeking to have its tariff comport with its longstanding policy requiring the requesting party to cover the costs of relocating Frontier's facilities. This tariff of general applicability would simply accomplish this. Nevertheless, it is patently clear under the laws of the State of Ohio that public utilities may charge the costs of relocating their facilities to the party requesting relocation, even municipalities and other government entities. Indeed, both R.C. 727.013 and R.C. 515.15 expressly authorize municipal corporations and township trustees to enter into contracts with public utilities for the relocation of utility facilities underground, and expressly provide that each of those government entities shall pay the costs related to relocation. R.C. 727.013 (the contracts "shall provide for the payment of the contract price by the municipal corporation"); R.C. 515.15 ("the township shall pay the cost of the relocation as provided in the contract").

The tariff provision proposed in the Application and the Revised Application, which requires the requesting party to cover the costs of relocating utility facilities, is not unique to Frontier. Other public utilities have similar provisions contained in their general tariffs. For example, the tariff of Columbus Southern Power Company contains a provision similar to that proposed by Frontier here:

The Company shall not be required to construct general distribution lines underground unless the cost of such special construction for general distribution lines and/or the cost of **any change of existing overhead general distribution lines to underground which is required or specified by a municipality or other public authority** (to the extent that such cost exceeds the cost of construction of the Company's standard facilities) **shall be paid for by that municipality or public authority**. The "cost of any change" as used herein, shall be the cost to the Company of such change. The "cost of special construction" as used herein, shall be the actual cost to the

Company in excess of the cost of standard construction. When a charge is to be based on the excess cost, the Company and municipality or other public authority shall negotiate the amount thereof.

Temporary service supplied for a period less than one (1) full month will be billed on the basis of a full month's schedule billing, including the minimum charge if applicable.

(Columbus Southern Power Company Tariff, P.U.C.O. No. 7, 1st Revised Sheet No. 3-12D, Cancels Original Sheet No. 3-12D, Case No. 09-1003-EL-ATA) (emphasis added).

Here, the sole issue is whether Frontier's tariff provision of general applicability may be included in its General Tariff (clearly it may). On October 22, 2010, the Commission issued an Entry suspending approval of Frontier's Revised Application. To the extent Minster solely addresses the merits of Frontier's tariff application, and whether the Facility Rearrangements provision is appropriate, Frontier does not object to Minster's intervention in this proceeding. However, to the extent Minster intends to turn this proceeding into an adjudication of the provision's applicability to Minster's specific reconstruction project currently underway in the Village, Frontier would object.

Respectfully submitted,

FRONTIER NORTH INC.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via electronic mail and U.S. mail, postage prepaid, on the parties listed below on this 16th day of November 2010.

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Summary: Response of Frontier North Inc. to The Village of Minster, Ohio's Motion to Intervene electronically filed by Carolyn S Flahive on behalf of Frontier North Inc.