

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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

FINDING AND ORDER

The Commission finds:

- (1) On September 23, 2010, Frontier North Inc. (Frontier) filed a zero-day tariff application (ZTA) that added a new service provision to its tariff. The provision states that, upon request, Frontier will change the type or location of facilities or relocate facilities underground at the expense of the requestor.
- (2) Upon review, staff found that the application was not to add a new service, but instead, clarified the terms and conditions of an existing service. On October 20, 2010, the filing was changed to an application for tariff amendment (ATA) by staff.
- (3) On October 20, 2010, staff requested that Frontier remove the following language from the proposed section to make it consistent with other tariff language in regard to special construction, facilities and arrangements: "customer, association, government entity or political division or other third-party."
- (4) On October 21, 2010, Frontier filed the revised tariff which removed "customer, association, government entity or political division" from the proposed language, but left "or other third-party" in the tariff as agreed upon with staff.
- (5) Also, on October 21, 2010, the Village of Minster (Minster) filed comments and objections to the application, as well as a memorandum in support of its comments and objections.

In its memorandum in support, Minster states that, as part of a major street reconstruction project, it advised all utilities with facilities located in its right-of-way that in order to maintain those facilities in the right-of-way, the facilities needed to be relocated underground at the expense of the utility or moved to private property. Minster also states that, due to Frontier's unwillingness to comply with Minster's request, Minster filed a

complaint for declaratory judgment in the Court of Common Pleas for Auglaize County, Ohio, on June 4, 2010, case number 2010 CV 0200.

Minster states that the application should be rejected because to allow these changes under these circumstances is unreasonable, illegal, unjust, and unjustly discriminatory.

- (6) Pursuant to an entry issued by the Commission on October 22, 2010, this application was suspended until the Commission specifically ordered otherwise to allow the Commission and its staff to more thoroughly review Minster's comments and objections.
- (7) On November 1, 2010, in response to the change in the case designation from a ZTA notice filing to an ATA filing, Minster filed a motion to intervene in this proceeding. In support of its motion, Minster submits that it satisfies the intervention criteria set forth in Section 4903.221(B), Revised Code, and Rule 4901-1-11, Ohio Administrative Code (O.A.C.).
- (8) On November 16, 2010, Frontier filed its response to Minster's motion to intervene in this proceeding.
- (9) Minster has set forth reasonable grounds for intervention and, accordingly, its motion for intervention is granted.
- (10) On February 28, 2011, Minister filed a notice seeking to withdraw its comments and objections. In support, Minister notes that the state court litigation between Minister and Frontier has been resolved by mutual agreement of the parties. Further, Minister submits that it no longer objects to the Commission's approval of the Frontier tariff amendment and affirmatively supports such approval.
- (11) The Commission determines that the proposed tariff language, as amended, does not appear to be unjust or unreasonable in that it allows Frontier to recover the actual costs incurred by Frontier in relocating facilities when such a request is made by any applicant or any other third-party. Therefore, Frontier's application for tariff amendment is approved, as amended on October 21, 2010.

It is, therefore,

ORDERED, That Minster's motion for intervention be granted consistent with Finding (9). It is, further,

ORDERED, That Frontier's application for tariff amendment be approved consistent with Finding (11). It is, further,


ORDERED, That Frontier provide notice of the nonrecurring charge for a facility relocation at the time such request is made by any applicant or any other third-party. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella



Valerie A. Lemmie *all concurring Opinion*


Steven D. Lesser


Cheryl L. Roberto

JRJ/RR/vrm

Entered in the Journal


Betty McCauley
Secretary

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CONCURRING OPINION
OF COMMISSIONERS VALERIE A. LEMMIE AND CHERYL L. ROBERTO

We concur with our colleagues that on its face the proposed tariff language does not appear to be unjust or unreasonable.

However, we caution that to the extent that the "third-party" requesting a change in the location of the facility is a municipality exercising its right of self-governance with regard to the management, regulation, and administration of a public way pursuant to Chapter 4939, Revised Code, both the utility and this Commission are bound by the cost recovery mechanisms identified in Section 4939.07, Revised Code.



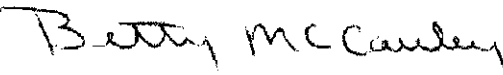
Valerie A. Lemmie



Cheryl L. Roberto

Entered in the Journal

APR 05 2011



Betty McCauley
Secretary