

LAW OFFICE OF CHARLOTTE MITCHELL

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September 12, 2017

J. L. Jarvis
Chief Clerk
North Carolina Utilities Commission
430 N. Salisbury Street
Raleigh, NC 27603 – 5918

**Re: Blue Ridge Electric Membership Corporation's Motion for Leave to Amend Its
Verified Petition for Relief, NCUC Docket No. EC-23, Sub 50**

Dear Ms. Jarvis:

Enclosed herewith, please find Blue Ridge Electric Membership Corporation's Motion for Leave to Amend Its Verified Petition for Relief for filing on behalf of Blue Ridge Electric Membership Corporation in the above-referenced docket. Should you have any questions or comments, please do not hesitate to call me. Thank you in advance for your assistance and cooperation.

Regards,

/s Charlotte Mitchell

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. EC-23, SUB 50

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

BLUE RIDGE ELECTRIC
MEMBERSHIP CORPORATION,
Petitioner,

v.

CHARTER COMMUNICATIONS
PROPERTIES LLC,
Respondent.

BLUE RIDGE ELECTRIC
MEMBERSHIP CORPORATION'S
MOTION
FOR LEAVE TO AMEND
ITS
VERIFIED PETITION FOR RELIEF

NOW COMES Blue Ridge Electric Membership Corporation ("BREMC"), pursuant to Section 62-350 of the North Carolina General Statutes and Rule R1-5(f) of the Rules and Regulations of the North Carolina Utilities Commission, and respectfully moves the North Carolina Utilities Commission (the "Commission") for leave to amend BREMC's Verified Petition for Relief (the "Petition"), filed on November 30, 2016. In support of this motion, BREMC shows the Commission the following:

1. BREMC filed its initial Petition on November 30, 2017, asking the Commission to resolve a dispute between BREMC and Charter Communications Properties LLC ("Charter") arising out of their failed efforts to negotiate a pole attachment agreement allowing Charter to attach its facilities to BREMC's utility poles.

2. Charter responded to the Petition on January 31, 2017, by filing an Answer to Complaint and Counterclaims (the “Answer and Counterclaims”), in which it asked the Commission to resolve additional issues in dispute between the parties.

3. BREMC filed its Response to Charter’s Answer and Counterclaims on March 1, 2017.

4. As set forth in the parties’ respective pleadings, BREMC and Charter have sought to negotiate a new agreement to replace their prior pole attachment agreement, but have been unable to agree regarding either (i) the annual rental rate Charter must pay for its attachments to BREMC’s poles or (ii) the terms and conditions that will govern Charter’s attachments. In its initial Petition, BREMC identified certain terms and conditions that remain in dispute. The Petition, however, did not specifically list all of the terms and conditions over which the parties have not yet reached agreement. Further, since BREMC filed its Petition, both through the course of discovery and as a result of the positions Charter has taken in this and similar proceedings, BREMC has determined there are additional terms and conditions in dispute that will require a ruling from the Commission.

5. Thus, in order to (i) provide full notice to Charter of each and every term and condition on which BREMC intends to seek a ruling from the Commission and (ii) obtain resolution of all disputed terms and conditions in a single proceeding, BREMC seeks leave to file the First Amendment to its Verified Petition, attached hereto as Exhibit A, identifying additional terms and conditions which must be resolved in order for the parties to reach an agreement.

6. Granting BREMC's request to amend its Petition will not cause any undue delay or prejudice to Charter, nor will it delay any of the Commission's existing case management deadlines. Under the Commission's Order Establishing Procedural Schedule (the "Procedural Order"), issued on June 7, 2017, discovery in this matter commenced on July 5, 2017, and the parties may propound additional discovery through October 3, 2017. BREMC's pre-filed testimony is not due until October 11, 2017, and Charter's pre-filed testimony is not due until October 25, 2017. Accordingly, allowing BREMC to amend its Petition will not affect any of the deadlines or the hearing date established in the Procedural Order and will allow Charter ample time to conduct any additional discovery it deems necessary.

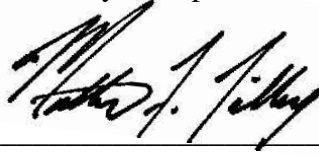
7. BREMC, in effort to minimize the number of issues for the Commission to resolve, intends to continue working with Charter to determine if the parties can reach agreement as to any of the terms and conditions identified in the pleadings. BREMC will inform the Commission in the event the parties are able to reach agreement as to any of the terms and conditions now in dispute.

WHEREFORE, BREMC requests that the Commission:

1. Enter an order granting BREMC leave to file the First Amendment to its Petition, as attached to this motion; and
2. Award such other relief as the Commission deems just and proper.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

Respectfully submitted this the 12th day of September, 2017.



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ATTORNEYS FOR BLUE RIDGE ELECTRIC
MEMBERSHIP CORPORATION

EXHIBIT A

STATE OF NORTH CAROLINA
UTILITIES COMMISSION
RALEIGH

DOCKET NO. EC-23, SUB 50

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of:

BLUE RIDGE ELECTRIC
MEMBERSHIP CORPORATION,
Petitioner,

v.

CHARTER COMMUNICATIONS
PROPERTIES LLC,
Respondent.

FIRST AMENDMENT
TO
VERIFIED PETITION FOR RELIEF BY
BLUE RIDGE ELECTRIC
MEMBERSHIP CORPORATION

NOW COMES Blue Ridge Electric Membership Corporation (“BREMC”) pursuant to Section 62-350 of the North Carolina General Statutes and Rule R1-5(f) of the Rules and Regulations of the North Carolina Utilities Commission (“Commission”) and submits this First Amendment to the Verified Petition for Relief (the “Petition”) filed by BREMC on November 30, 2016.

The Petition is hereby amended by inserting the following after the last sentence of Paragraph 11:

- j. Indemnity.** As part of its counterclaim in this action, Charter has sought to challenge the indemnity provisions BREMC has sought to include in a proposed pole attachment agreement. The parties generally agree that Charter must indemnify and defend BREMC against any and all claims, demands, damages, penalties, costs, liabilities and losses based upon any

alleged act, omission or negligence of Charter or Charter's agents or employees arising from or based on any breach of Charter's covenants and warranties under the agreement. Charter, however, takes the position that any indemnification requirement must be "reciprocal." However, Charter—not BREMC—should bear all risks associated with Charter's attachments. This includes an obligation that Charter defend and indemnify BREMC for all existing attachments Charter has made to BREMC's system that violate the National Electric Safety Code, the terms of the parties' agreements, or any other applicable design and safety standards. This is especially important given the widespread safety violations BREMC has discovered among Charter's existing attachments, including attachments made outside of the space allocated to Charter.

- k. Reservation of space.** To enable BREMC to accommodate future electrical facilities and make full use of the space allocated to it, any pole attachment agreement must include a provision specifying that all attachments made after the date of the agreement shall have at least 72 inches vertical clearance under BREMC's grounded neutral.
- l. Recovery of space.** If at any time BREMC requires space on its pole occupied by Charter's attachments, Charter should be required to rearrange or remove its attachments, at Charter's expense, within a time certain to allow BREMC to use the space. Therefore, any pole attachment agreement should include a provision allowing BREMC to require Charter to remove or rearrange its facilities, at Charter's expense, in the event

BREMC seeks to add additional electrical facilities and there is insufficient space on the pole due to Charter's attachments.

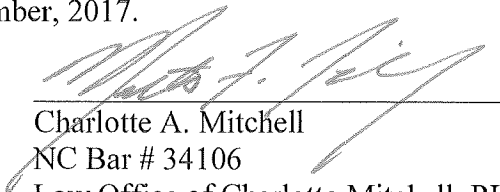
m. Overlashing. "Overlashing" is a method Charter uses to add aerial facilities by running a new cable (or cables) over an existing cable and then lashing the cables together, in effect using the existing cable as a way to support and string the new cable. Because it adds additional cables to Charter's existing attachments, overlashing can affect wind and ice loads on poles and add structural load to BREMC's poles. In addition, overlashing necessarily involves work by Charter (or its contractors) on BREMC's system. Accordingly, any pole attachment agreement should require Charter to apply for and obtain a permit from BREMC before overlashing to ensure BREMC has notice of Charter's overlashed facilities and opportunity to review and approve the design and construction of the overlashed facilities.

n. Unauthorized Attachment Fee. Charter opposes BREMC's request for a provision requiring Charter to pay a fee for any unauthorized attachments BREMC discovers on its system in addition to back rent. Charter contends BREMC should only be allowed to charge back rent or an unauthorized attachment fee, but not both. Charter's position, however, fails to compensate BREMC for the additional costs it incurs when it Charter makes unauthorized attachments to its system, including additional administrative costs associated with identifying, recording, and invoicing Charter for unauthorized attachments, as well as additional costs

to review the attachments for compliance with the parties' agreement and applicable safety standards. In addition, Charter's proposal that it only pay the rent *it should have paid in the first place* if BREMC discovers it has made unauthorized attachments creates a perverse set of incentives. Under Charter's proposal, it would be to Charter's advantage to attach to BREMC's system without obtaining permits, and then pay rent to BREMC only in the event Charter's attachments are discovered. Any pole attachment agreement between the parties should therefore require that Charter pay both back-rent and a fee in the form of liquidated damages for unauthorized attachments discovered on BREMC's system.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

This, the 12th day of September, 2017.


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ATTORNEYS FOR BLUE RIDGE ELECTRIC
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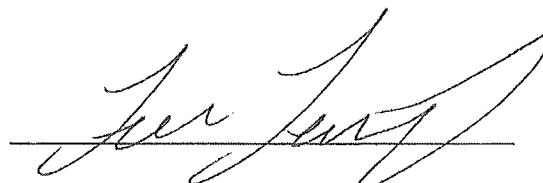
STATE OF NORTH CAROLINA

CALDWELL COUNTY

VERIFICATION

The undersigned, being first duly sworn, deposes and says that he is Lee Layton Senior Vice President of and Executive Consultant to Blue Ridge Electric Membership Corporation. He furthers states that he has read the foregoing First Amendment to Verified Petition For Relief By Blue Ridge Electric Membership Corporation, and that, to his personal knowledge and belief, the matters and statements contained therein are true, except as to those matters or statements made upon information and belief, and as to those, he believes them to be true; and that he verifies the attached amendment on behalf of Blue Ridge Electric Membership Corporation.

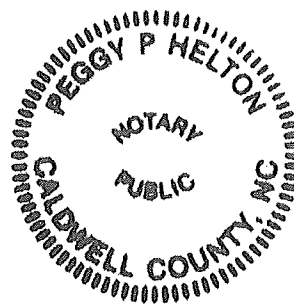
This the 11th day of September, 2017.


Lee Layton

Sworn to and subscribed before me
this 11th day of September, 2017.


Notary Public (Peggy P. Helton)

My Commission Expires: 08/16/19



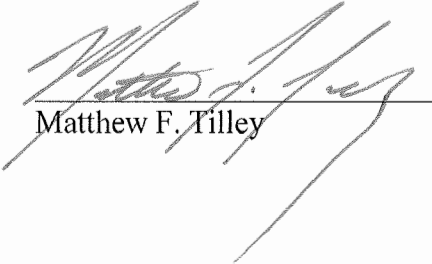
CERTIFICATE OF SERVICE

The undersigned certifies that she has served a copy of the foregoing upon the parties of record in this proceeding, or their attorneys, by electronic mail as follows:

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This 12th day of September, 2017.


Matthew F. Tilley