

**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,)	ORDER GRANTING MOTION
)	FOR LEAVE TO AMEND VERIFIED
v.)	PETITION AND DENYING MOTION
)	FOR TEMPORARY STAY
Charter Communications Properties, LLC,)	
)	
Respondent)	

BY THE CHAIRMAN: On November 30, 2016, Blue Ridge Electric Membership Corporation (BREMC) filed a Verified Petition for Relief (Petition) against Charter Communications Properties, LLC, (Charter) in the above-captioned docket pursuant to G.S. 62-350 seeking to resolve certain issues in dispute between BREMC and Charter.

On February 1, 2017, Charter filed its Answer to Complaint and Counterclaims. Pursuant to the Certificate of Service, a copy of the Answer and Counterclaims were served on BREMC on January 31, 2017.

On March 1, 2017, BREMC filed its Answer to Charter's Counterclaims.

On May 26, 2017, BREMC filed a Motion for Procedural Schedule.

On May 31, 2017, Charter filed its Response to BREMC's Motion for a Procedural Schedule.

On June 7, 2017 the Commission adopted the following procedural and hearing schedule:

1. Discovery shall be regulated according to the following provisions:
 - a. Discovery shall begin on July 5, 2017. No new discovery requests shall be propounded after October 3, 2017.

- b. Parties shall meet and confer (via conference call) within 6 calendar days of receiving discovery requests to minimize the number of objections filed with the Commission.
- c. Parties shall have up to 10 calendar days to file with the Commission objections to discovery requests on an item-by-item basis. The party objecting to discovery shall e-mail a copy of its objections to the party seeking discovery contemporaneously with its filing.
- d. If the party seeking discovery intends to pursue requests which are the subject of objection, it must file responses to the objections on an item-by-item basis. The party seeking discovery shall e-mail a copy of its responses to the other contemporaneously with its filing.
- e. The Commission will resolve the objections raised by the parties based on the arguments presented in the objections and responses, or such further documents or arguments as it may request.
- f. Parties receiving discovery requests shall serve answers to requests to which they have not objected on the party seeking the discovery within 21 calendar days of the service of such requests.
- g. If the Commission orders a party to answer discovery requests to which it has objected, the party shall have 10 calendar days from the date of such order to serve answers to such discovery requests.
- h. No party shall direct more than an overall total of 75 data requests (in one or more sets) to any other party, except upon leave of the Commission for good cause shown or by agreement with the other party. Parts and subparts shall be counted as separate data requests.
- i. Depositions are allowed on at least seven days written notice prior to the taking of the deposition; provided however, all depositions (except for expert depositions) must be taken by the close of discovery. Expert depositions must be taken by the close of expert discovery.
- j. Any motion for subpoena of a witness to appear and/or produce documents in this proceeding shall be filed with the Commission and served by hand delivery or facsimile to the person sought to subpoenaed at or before filing with the Commission and shall make a reasonable showing that the evidence of such person will be relevant and material to an issue in the proceeding. G.S. 62-62. A party seeking such subpoena shall certify that the motion for subpoena has been served on the person to be subpoenaed and that

the person sought to be subpoenaed has been notified in writing that: (1) the motion has been filed; and, (2) unless an objection is filed, the Chief Clerk shall issue the requested subpoena 24 hours after such motion is filed.

- k. A party may file a motion (or motions) for summary judgment and request for oral argument at any time after discovery has commenced by providing ten days written notice to the opposing party.
2. The matter shall be scheduled for purposes of hearing and that a hearing shall begin on November 8, 2017, at 9:30 a.m., in Commission Hearing Room 2115, Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina;
- a. Complainant BREMC shall prefile direct testimony by October 11, 2017;
 - b. Respondent Charter shall prefile responsive testimony by no later than October 25, 2017; and
 - c. Complainant BREMC shall prefile rebuttal testimony by no later than November 1, 2017.

BREMC's Motion for Leave to Amend Verified Petition

On September 12, 2017, BREMC filed a Motion for Leave to Amend its Verified Petition (Motion for Leave). In support of the Motion for Leave, BREMC alleged that it had filed a petition against Charter, that the petition arose out of their failure to negotiate a pole attachment agreement that would permit Charter to attach its facilities to BREMC's poles. Further, BREMC alleged that Charter had answered its Petition and filed counterclaims to BREMC's complaint on January 31, 2017 and BREMC had filed its answer to Charter's counterclaims on March 1, 2017. Finally, BREMC alleged that in its initial Petition, BREMC had identified certain terms and conditions that were in dispute, that the Petition did not list all terms and conditions over which the parties had not yet reached agreement and that since the filing of its Petition, BREMC has determined through the course of discovery and as a result positions that Charter had taken in this proceeding and similar proceedings that there are additional terms and conditions in dispute that will require a ruling from the Commission. According to BREMC, granting its request to amend its Petition will not cause any undue delay or prejudice to Charter, nor will it delay any of the Commission's case management deadlines because, pursuant to the Order Establishing Procedural Schedule, discovery commenced on July 7, 2017, the parties may propound additional discovery through October 3, 2017, BREMC's prefiled testimony is not due until October 11, 2017, Charter's prefiled testimony is not due until October 25, 2017 and the hearing in this matter is scheduled to begin on November 8, 2017.

Charter's Response in Opposition to Motion for Leave to Amend Petition

On September 18, 2017, Charter filed its response in opposition to BREMC's Motion for Leave to Amend (Opposition Response). In the Opposition Response, Charter stated that BREMC's Motion for Leave to Amend was inadequate and untimely and should be denied. In support of its Opposition Response, Charter stated that BREMC's Motion for Leave seeks to add five additional terms and conditions in this proceeding which were not identified in its initial petition, that while these terms are similar to the terms and conditions identified in Charter's counterclaims, these terms and conditions are not in dispute as required by G.S. 62-350, instead, these new terms and conditions while similar to the terms and conditions are terms and conditions "over which the parties have not yet reached agreement." Additionally, Charter notes that BREMC's decision to file the request for leave to amend so late after the pleadings have closed in this matter, will leave Charter with inadequate time to answer the claims and to take discovery before the scheduled completion of the discovery period and the scheduled hearing. Finally, Charter also notes that if the Commission were to grant BREMC's motion for leave to amend, the granting of that motion would provide support for the Motion for a Stay that Charter filed contemporaneously with its previously discussed response. Thus, Charter opposes BREMC's Motion for Leave to Amend for the aforementioned reasons.

BREMC's Reply to Charter's Opposition to Motion to Amend Petition

On September 21, 2017, BREMC filed a Reply to Charter's Opposition to BREMC's Motion for Leave to Amend. In its reply, BREMC stated that despite Charter's insistence to the contrary, each of the new terms and conditions that it sought to be decided by the Commission by inclusion in the amended Petition are indeed in dispute. BREMC noted that Charter itself put the terms and conditions in dispute either through its counterclaims or the sworn testimony of its witnesses that it has now indicated will testify in the case. Moreover, BREMC observes that even though Charter has not specified any discovery that it believes would be necessary to respond to these new claims, Charter has had and continues to have ample time to propound any additional discovery that it believes would be necessary. Thus, BREMC again urges the Commission to permit it to amend its Petition to include the terms and conditions that it proposes.

Charter's Motion to Stay Pending Proceeding Temporarily

As noted above, on September 18, 2017, Charter filed its Motion for a Stay of the pending proceeding. In the Stay Motion, Charter observes that the current proceeding is the latest of seven proceedings in which pole owners and communications companies have requested Commission assistance in adjudicating just and reasonable pole attachment rates, terms and conditions. (Two of the matters were settled and four have been heard and await decision by the Commission.) According to Charter, the issues in each of these cases are virtually identical including the same rate theories and experts, and some of the same fact witnesses as the four cases in which the Commission is set to decide. Given the overlap between the cases, Charter asserts that the Commission should suspend its procedural order in this case which governs discovery and the

scheduled hearing until the four pending proceedings are decided by the Commission. Charter asserts that the temporary stay or suspension of this proceeding will not prejudice BREMC as it will enable BREMC to submit testimony and proceed to a case specific hearing on issues the parties will not be able to resolve based upon the Commission's precedent (presumably rendered in the four pending proceedings.) Charter contends that by granting the stay, significant time and resources of the parties and the Commission could potentially be saved.

BREMC's Reply in Opposition to Stay

On September 21, 2017, BREMC filed its Response in Opposition to Charter's Motion to Stay. In BREMC's response, it states that the Commission should deny BREMC's motion to stay because the motion is a transparent attempt to avoid its discovery obligations and to prevent it from vindicating its rights to have pole attachment disputes resolved by the Commission on a "case-by-case" basis as required by G. S. 62-350. In its discussion supporting its opposition, BREMC observes that Charter has previously suggested that the Commission stay these proceeding but neither the Commission nor BREMC agreed. Further, BREMC notes that in its stay requests, Charter states that a stay would allow the parties to pursue negotiations during the pendency of the stay which might conceivably lead to a settlement of some or all of the issues. BREMC states that its experience with Charter leads it to the conclusion that Charter is not actually interested in negotiations, but has instead raised the possibility of compromise only to secure a stay without any actual commitment or assurance that doing so might facilitate meaningful discussions. For these and other reasons, BREMC requests that the Commission deny Charter's request for a stay.

Charter's Reply in Support of Motion for Temporary Stay

On September 22, 2017, Charter filed a reply in support of its Motion for Temporary Stay. In the Reply in Support, Charter reiterates its contention that granting a temporary stay in this docket until the Commission renders a decision in the four pending pole attachment proceedings in which the Commission has heard evidence would promote an efficient allocation of the parties' and the Commission's resources, avoid substantial waste and better equip the parties to settle or narrow the issues in this case.

CONCLUSIONS

Although BREMC and Charter have made two separate and distinct motions requesting Commission relief, as both parties have noted, there is considerable overlap in the reasoning and rationale for either granting or denying both motions. Therefore, after carefully considering the motions, and the responses in support of and in opposition to each, and the record proper, the Chairman, in his discretion, finds and so concludes that (1) BREMC's motion to amend its Petition should be granted¹ for the reasons set forth in BREMC's filings, and (2) Charter's request that the Commission temporarily stay this

¹ The Chairman also notes that leave to amend should be freely given unless some material prejudice is shown. Mangum v. Surles, 281 N.C. 91, 187 S.E.2d 697(1972).

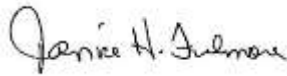
docket should be denied for those same reasons. Further, the Chairman finds and so concludes that good cause exists to grant Charter until October 5, 2017 to propound additional discovery requests to BREMC regarding the new terms and conditions that BREMC is permitted to include in its Petition and that BREMC is required to respond to those discovery request by October 11, 2017. Finally, the Chairman finds that good cause exists to extend the time for Charter to file its prefiled testimony until October 27, 2017.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 27th day of September, 2017.

NORTH CAROLINA UTILITIES COMMISSION

A handwritten signature in dark ink, appearing to read "Janice H. Fulmore". The signature is written in a cursive, flowing style.

Janice H. Fulmore, Deputy Clerk