

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265**

**Robert W. Miller v. Verizon North
Inc.**

**Public Meeting held December 3, 2009
2094937-ALJ**

Docket No. C-2009-2094937

MOTION OF COMMISSIONER WAYNE E. GARDNER

On March 5, 2009, Robert W. Miller filed a complaint alleging billing issues and service problems. Specifically, Mr. Miller claimed that in 2006, Verizon North, Inc. (Verizon or the Company) agreed to replace a defective underground service line. As a temporary fix, the company established a temporary above ground line running from a utility pole to the house but never returned to replace and bury the line. In February 2008, Mr. Miller contacted Verizon because the temporary above ground line had failed. After investigating, Verizon refused to replace the line explaining that it was the customer's responsibility because it was on the customer's side of the demarcation point. Mr. Miller also alleged that he has been without service now continually since December 2008, is being charged by the company for service calls that he did not make and is being charged for service that he is not receiving.

In the decision, the Administrative Law Judge (ALJ) concluded that the key issue was the original location of the demarcation point. Mr. Miller argued that the demarcation point was initially on the house and that in 2008 after the above ground line failed, Verizon attempted to relocate the demarcation point to the utility pole. However, Verizon argued that the demarcation point was always on the utility pole and that it established a Network Interface Device (NID) on the house as a courtesy so that Mr. Miller could check whether an outage was related to wiring inside the house or wiring between the house and the utility pole.

Based on the record evidence, the ALJ concluded that the original demarcation point was on Mr. Miller's house and that Verizon provided unreasonable public utility service, in violation of 66 Pa. C.S. § 1501, when it followed unreasonable operating practices in the attempted shifting of the demarcation point and subsequent refusal to replace the defective facilities serving Mr. Miller. Additionally, the ALJ found that the company had offered unreasonable service when it demonstrated disregard for Mr. Miller's inability to use his alarm system. The ALJ ordered that Verizon remove the \$206.53 service charges from Mr. Miller's bill and refund Mr. Miller for all local service charges paid since December 2008. The ALJ also assessed Verizon a civil penalty in the amount of \$750 for its violations.

I agree with the recommendation and believe that the ALJ provided a well-written and reasoned analysis of the situation. However, given the egregiousness of the violation at hand, I disagree that the imposition of a \$750 civil penalty is sufficient. In the Commission's Policy Statement at 52 Pa. Code § 69.1201(c), certain factors are provided which provide guidance when determining the proper amount of a civil penalty. Among the factors to be considered are the seriousness of the offense, whether the violation was intentional or not, the amount of time over which the offense occurred, and an appropriate amount to deter future violations. Here, all

of these factors alone justify a higher civil penalty. Specifically, the company's conduct here was serious as it involved relocation of facilities in order to avoid replacement costs; it was intentional; and this has been ongoing since February 2008. In reviewing the factors set forth in the Commission's Policy Statement, I believe that a civil penalty of \$5,000 is warranted and is sufficient to deter future violations.

THEREFORE, I MOVE THAT:

1. The Initial Decision be modified.
2. Verizon North Inc. be ordered to pay a civil penalty of \$5,000.00.
3. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion in both a public and a proprietary version.

WAYNE E. GARDNER, COMMISSIONER

Date