

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**Verizon New England Inc., Bell Atlantic Communications, Inc.,  
NYNEX Long Distance Company, Verizon Select Services  
and  
FairPoint Communications, Inc.**

**DT 07-071**

**VERIZON'S MOTION TO EXCLUDE TESTIMONY AND DISMISS INTERVENORS'  
REQUESTS THAT REIMBURSEMENT FOR MAINTENANCE EXPENSES BE  
IMPOSED AS A CONDITION UPON APPROVAL OF PETITION**

NOW COME Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Verizon Select Services (collectively "Verizon"), and move to exclude the testimony of Intervenors Public Service of New Hampshire ("PSNH") and Unitil Energy Systems, Inc. ("Unitil") regarding their requests that the New Hampshire Public Utilities Commission ("PUC" or the "Commission") require, as a condition to the approval of Verizon's petition to transfer assets to FairPoint Communications, Inc., that Verizon reimburse them for certain maintenance tree-trimming expenses. This motion further seeks dismissal of PSNH's and Unitil's requests to the extent that they constitute claims against Verizon for which they seek a Commission order requiring payment of such amounts. In support of this motion, Verizon states as follows:

**I. The Requests of PSNH and Unitil Are Outside the Scope of This Proceeding and Therefore Are Irrelevant**

1. On January 31, 2007, Verizon and FairPoint Communications Inc. ("FairPoint") filed with the Commission a joint petition seeking approval of the transfer of assets from Verizon to FairPoint. In their petition, Verizon and FairPoint requested a determination by the

Commission that the proposed transactions are for the public good pursuant to RSA 374:26, 374:30, and 374:28.

2. On February 7, 2007, the Commission issued an Order of Notice establishing the scope of this investigation, stating that the petition of Verizon and FairPoint raised "issues related to whether the proposed transactions are for the public good pursuant to [RSA 374:26, 374:30, and 374:28]." *Order of Notice dated February 7, 2007* at 2.

3. The Order further required any party seeking to intervene in the investigation to submit a petition "stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding." *Id.* at 3.

4. Verizon is a party to Joint Ownership Agreements (the "Agreements") with PSNH and Unitil that apportion ownership of utility poles between the parties in areas of overlapping service. *See, e.g., Direct Testimony of Thomas P. Meissner Jr.* at 4-5. The Agreements, which define the rights and obligations of the parties with respect to utility pole ownership and maintenance, include Intercompany Operating Procedures ("IOPs") setting forth operational and maintenance procedures, including those for maintenance tree trimming. *See, e.g., id.* at 5.

5. The IOPs explicitly state that maintenance tree trimming "shall be done on a joint basis when both companies have a need." *Rebuttal Testimony of John F. Nestor, III* at 20. The IOPs provide that "when it is agreed that both parties will benefit" from maintenance tree trimming, the cost incurred will be divided 75% to the electric company and 25% to Verizon. *Direct Testimony of Robert H. Hybsch* at 5.

6. There are disputes between Verizon and Unitil and between Verizon and PSNH regarding the correct interpretation of the language in the Agreements governing maintenance

tree trimming and the apportionment of incurred costs. *See, e.g., Direct Testimony of Robert H. Hybsch; Rebuttal Testimony of John F. Nestor, III.* As a result of these disputes, representatives of PSNH and Unitil have requested that the Commission impose a condition upon the approval of the proposed transfer of assets that would require Verizon to reimburse the two electric utilities for certain costs they claim are due as a result of maintenance tree trimming.

7. In this proceeding the Commission is required to determine, pursuant to RSA 374:26, 374:28, and 374:30, whether the transaction proposed by Verizon and FairPoint is consistent with "the public good." *See* RSA 374:26, 374:28, and 374:30. Under RSA 374:26, the "public good" determination is based on an assessment of an applicant's managerial, technical, and financial capabilities. *See Hampstead Area Water Co., Inc.*, DW 05-092, order No. 24,592 at 4 (February 24, 2006). Under RSA 374:30, the Commission traditionally applies a "no net harm" standard when reviewing a proposed transaction.<sup>1</sup> *See Re New England Power Co.*, DR 97-251, 83 NH PUC 392, 397 (1998). The role of the Commission in matters such as these is to safeguard the public interest, rather than to resolve contractual disputes between private entities that are better left to the courts.

8. In testimony before this Commission, Unitil's representative enumerated six issues that Unitil felt should be addressed through conditions imposed upon the proposed transaction: (1) inspection and maintenance of utility poles; (2) emergency response; (3) timely placement and removal of poles; (4) double poles; (5) pole line trimming; and (6) dispute resolution. *Testimony of Timothy P. Meissner, Jr.* at 10. Unitil's representative further testified

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<sup>1</sup> The "no net harm" test requires that the Commission approve a transaction if the public interest is not adversely affected after the balancing of certain relevant factors. *Re New England Elec. Sys.* DE 99-035, 84 NH PUC 502, 510. (1999).

that Unitil "[did] not oppose the transfer of assets so long as each of these issues [was] adequately addressed." *Id.*

9. Similarly, in his testimony before this Commission, PSNH's representative testified that "PSNH [did] not oppose the transfer of assets, but request[ed] certain conditions be imposed as a condition of the transfer of assets in order to ensure that FairPoint perform[ed] its obligations under the Joint Ownership Agreement and Inter-Company Operating Procedures." *Direct Testimony of Robert T. Hybsch at 2* (emphasis added).

10. In the past week, Unitil and PSNH each filed with the PUC a Memorandum of Understanding (collectively "Memoranda") entered into with FairPoint. These Memoranda explicitly stated that they "represent[ed] the good faith negotiated resolution of the issues and concerns raised in [Docket DT 07-011]" by Unitil and PSNH with respect to FairPoint. *Memorandum of Understanding Between Unitil and FairPoint*, attached hereto as Exhibit A, at 6; *Memorandum of Understanding Between PSNH and FairPoint*, attached hereto as exhibit B, at 6.

11. The Memoranda make clear that Unitil, PSNH and FairPoint have resolved any issues which may have arisen in this docket between those parties, and the relevant "rights, duties, privileges, immunities or other substantial interest[s]" of Unitil and PSNH as applicable to their post-closing relationship with FairPoint are no longer at issue, except to the extent that the Memoranda are being presented for final approval. Specifically, Section 12 of each of the Memoranda provides that "[e]ach of the Parties agrees to fully support, through its filings, testimony and other proceedings in Commission Docket No. DT 07-011, the approval of this Memorandum of Understanding by the Commission, as representing the good faith negotiated resolution of the issues and concerns raised in said Docket by the Electric Company with respect

to post closing operations by FairPoint and the intent of FairPoint to fully and adequately address those issues and concerns upon FairPoint's completion of the Merger. As a result, and subject to the Commission's approval of the terms hereof, the Electric Company hereby supports the Commission's approval of the Merger. However, the Electric Company does not waive its rights as to any disputed claims under any other agreement or on any other basis.”

12. Now that the future relationship of Unitil and PSNH with FairPoint has been resolved, the only remaining matter raised by Unitil and PSNH in this case is their existing contract disputes with Verizon. Those disputes are wholly irrelevant to whether the transfer of assets to FairPoint is in the public interest.

13. Because the requests of Unitil and PSNH for payment by Verizon are irrelevant to the statutory analysis to be undertaken by the Commission in this proceeding, the Commission should exclude any testimony regarding them at the hearing on the merits. (The particular testimony at issue is located at page 6, lines 8-18 of Mr. Hybsch's testimony and in Mr. Meissner's testimony at page 28, line 4 through page 29, line 14 as well as the sentence beginning on page 29, line 17.) In particular, PSNH's and Unitil's witnesses are scheduled to testify on October 25. Verizon therefore respectfully requests that the Commission issue an order as soon as possible excluding any testimony from those witnesses regarding the two electric utilities' claims for payment under the Agreements.<sup>2</sup>

14. The need to exclude such testimony is particularly apparent when one considers that the Commission has scheduled seven days of hearings in this matter for 37 different witnesses. The time for cross examination on just the issues raised by Unitil and PSNH is estimated by the parties to be approximately three and a half hours (two hours of which alone are

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<sup>2</sup> Verizon is mindful that the Commission's Order would necessarily exclude any rebuttal testimony from Verizon on this issue, as well.

for cross examination of Verizon's witness by Unitil's counsel). There are far more substantial issues that bear directly on the public good determination to be made by the Commission that could be affected by devoting what amounts to approximately a half day of hearing time to an issue that is wholly unrelated to the applicable standard of review in this case. Administrative efficiency therefore also demands that Unitil's and PSNH's testimony be excluded to the extent that it relates to their monetary claims against Verizon. Excluding such testimony will further reduce the volume of testimony in this case because it will allow the Commission to exclude the responsive testimony of Verizon's witness, Mr. Nestor, on this issue.

## **II. The Commission Is Without Jurisdiction to Consider the Requests of PSNH and Unitil and Therefore Those Requests for Relief Should Be Dismissed**

15. In addition to considerations of relevance and administrative efficiency, the Commission should exclude PSNH's and Unitil's remaining claims because the Commission lacks the authority to act as an arbiter of purely private disputes regarding the interpretation of contract language.

16. The Commission's authority to grant remedies is limited to those powers vested in it by the legislature. *See, e.g., Appeal of Granite State Elec. Co.*, 121 N.H. 787, 792 (1981) ("The PUC, as an administrative agency, must act within the scope of its delegated powers."). "The PUC is a creation of the legislature and as such is endowed with only the powers and authority which are expressly granted or fairly implied by statute." *Appeal of Public Serv. Co. of N.H.*, 122 N.H. 1062, 1066 (1982) (citing *Petition of Boston & Maine R.R.*, 82 N.H. 116 (1925)); *see also Appeal of Public Serv. Co. of N.H.*, 130 N.H. 285, 291 (1988). Though RSA 365:1 grants permissive jurisdiction over public utilities to the Commission, that jurisdiction cannot infringe upon the jurisdiction of the courts in non-regulatory matters. *See, e.g., Nelson v. Public*

*Serv. Co. of N.H.*, 119 N.H. 327, 329-30 (1979). "The Commission does not have exclusive jurisdiction over all matters concerning public utilities." *Id.* at 329 (emphasis added).

17. While the legislature has vested in the PUC certain judicial duties, *see State v. New Hampshire Gas & Elec. Co.*, 86 N.H. 16 (1932), an order of the Commission may affect private rights only if its "determination is related to its regulatory functions." *Appeal of Milford Water Works*, 126 N.H. 127, 134 (1985) (emphasis added) (*citing Petition of Boston & Maine Corp.*, 109 N.H. 324, 326 (1969)). The role of the PUC is to regulate "so that the constitutional right of free trade and private enterprise are disrupted as little as possible." *Appeal of Public Svc. Co. of N.H.*, 122 N.H. 1062, 1067 (1982). Resolution of the issues raised by PSNH and Unutil, which arise from contracts freely entered into by the parties, is not relevant to the Commission's regulatory functions, particularly with respect to Verizon's petition to transfer assets, and would interfere directly in what is essentially a private legal dispute regarding moneys claimed to be due.

18. The legislature has never expressly granted the Commission the authority to act as arbiter of contract disputes between private parties, and such authority cannot be "fairly implied" from any statute that is applicable to this proceeding.<sup>3</sup>

19. In this proceeding, Unutil and PSNH are asking the PUC to consider their claims for amounts they assert are due under contracts with Verizon. Their claims hinge upon the interpretation of those contracts, not on regulatory issues that are within the purview of this Commission. In fact, the Agreements at issue were not subject to the approval of this Commission when they were initially entered into, and they make no reference to the

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<sup>3</sup> The legislature has granted the Commission authority over the making of particular types of contracts, *see, e.g., RSA 366:3 and RSA 378:18 – 20*, as well as the authority to disallow charges under certain existing contracts if not shown to be reasonable, *see RSA 366:7*. Such authority relates only to the Commission's role regulating in the public interest, and conveys no authority upon the Commission to act as arbiter in a contract dispute between private entities.

Commission having jurisdiction over disputes arising under them. *See, e.g., Joint Ownership Agreement of New England Telephone and Telegraph Co. and Concord Electric Company et al.*, attached to Testimony of Thomas P. Meissner, Jr. on Behalf of Unitil.

20. To the extent that PSNH and Unitil argue that the Agreements relate to matters such as public safety and reliability of service that may otherwise be within the Commission's jurisdiction, the electric utilities have now each reached their own agreements with FairPoint that address those issues on a post-transaction basis, the only time period that matters for purposes of the Commission's review in this case. *See Memoranda of Understanding between FairPoint and PSNH and Unitil, supra.* If the Commission were to now assume the purely judicial function of interpreting contractual provisions that do not affect the public good, it would not only exceed its legislatively granted authority, but also open the door to non-regulatory contractual disputes that could clutter its docket in the future and impede its ability to act in the public interest.

21. The legislature has expressly granted jurisdiction over "civil actions and pleas, real, personal, and mixed, according to the common law" to the superior courts of New Hampshire. RSA 491:7. As such, the purely contract interpretation question raised by Unitil and PSNH is properly left to the jurisdiction of New Hampshire's courts. *See, e.g., Nelson*, 119 N.H. at 330. Like the dispute in *Nelson*, the issue raised here by Unitil and PSNH "does not involve the complex issues of rates, fair return, distribution of rates among classes, or other matters better left to the [C]ommission." *Id.*

22. Furthermore, the Commission lacks the authority to award the sort of civil monetary damages now sought by Unitil and PSNH. *See Re Public Serv. Co. of N.H.*, 86 NH PUC at 410-411 (noting that while the Commission may order a utility to make reparations payments to customers, it "lack[s] the authority to award civil damages to a utility customer as a



result of service provided by a utility that is of deficient quality."). The Commission has declined to "superintend something very much like a civil lawsuit, in which the contending parties generate competing evidence, a verdict is rendered and the wronged party is made whole," because "neither the statutes governing the Commission, nor the Administrative Procedure Act, permit the Commission to provide such a remedy." *Id.*; see also *Re Verizon N.H.*, Order No. 24, 440 (March 4, 2005) p. 8 (affirming that the Commission may order reparations payments for overcharges, but does not have the authority to award monetary damages). Accordingly, the Commission should leave this non-regulatory question to a court of competent jurisdiction.

WHEREFORE, Verizon respectfully requests that the Commission:

- A. Exclude testimony relating to disputed amounts under the Joint Ownership Agreements with Unitil and PSNH and other contractual disputes arising under those agreements;
- B. Dismiss the requests of Unitil and PSNH for reimbursement of maintenance tree trimming costs;
- C. Issue an Order granting the requested relief in advance of the testimony scheduled for October 25, 2007; and
- D. Grant such other and further relief as may be just and reasonable.

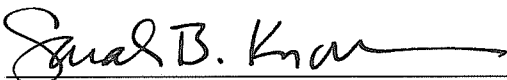
Respectfully submitted,

Verizon New England Inc.  
Bell Atlantic Communications, Inc.  
NYNEX Long Distance Company  
Verizon Select Services Inc.

By Their Attorneys,

MCLANE, GRAF, RAULERSON & MIDDLETON,  
PROFESSIONAL ASSOCIATION

October 22, 2007

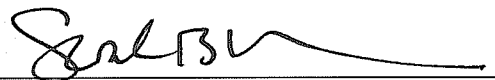
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**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of October, 2007, a copy of Verizon's Motion in Limine has been forwarded by electronic mail to the parties listed on the Commission's service list in this docket.



Sarah B. Knowlton

**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding is dated as of October \_\_, 2007, and is by and between Unitil Energy Systems, Inc. (the Electric Company) and FairPoint Communications, Inc. (FairPoint).

WHEREAS, FairPoint has agreed to acquire the incumbent local exchange operations of Verizon Communications Inc. (individually or with its affiliates, Verizon) in the states of Maine, New Hampshire and Vermont (the "Acquired Properties"), which will be accomplished by Verizon's transfer of such Acquired Properties to an affiliate of Verizon, Northern New England Telephone Operations Inc., directly or indirectly held by another Verizon affiliate, Northern New England Spinco Inc. (Spinco), and the merger of Spinco with and into FairPoint (which transfer, merger, and all related transactions are collectively referred to herein as the Merger), with FairPoint being the surviving entity;

WHEREAS, FairPoint and Verizon are seeking all necessary approvals of the Merger from the Federal Communications Commission, the Maine Public Utilities Commission, the Vermont Public Service Board, the New Hampshire Public Utilities Commission (the Commission) and any other regulatory authorities as required by law;

WHEREAS, FairPoint and the Electric Company (individually a Party, and collectively the Parties) desire (i) to amicably resolve any differences between them, (ii) to allow FairPoint the opportunity to promptly secure all necessary approvals and consummate the Merger and (iii) set out terms of the Parties' agreement and understanding concerning the issues and differences between them as more fully set forth below; and

NOW, THEREFORE, in consideration of the foregoing, and the promises, representations and covenants set forth herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**1. Communication and Coordination**

The Electric Company and FairPoint shall each designate an employee to serve as a Joint Pole Coordinator. The Joint Pole Coordinators shall meet monthly during the first year after the Merger and the first year of the term of the new Joint Ownership Agreement (JOA) and at least quarterly thereafter to discuss joint pole operations and procedures, budget issues and general methods of improving joint pole administration. The Joint Pole Coordinators shall also be responsible for maintaining contact information relating to other relevant stakeholders including but not limited to representatives of parties with pole attachments, municipal and state officials, emergency response personnel, etc.

The Electric Company and FairPoint shall each designate a senior management representative with ultimate responsibility for joint pole operations. Issues arising under the JOA that cannot be resolved at the Joint Pole Coordinator level shall be escalated to the senior management representatives. The senior management representatives shall

discuss the disputed issue(s) within ten (10) business days after such issues have been raised by one or both Joint Pole Coordinators. The senior management representatives shall resolve the matter within thirty (30) days from the date when the disputed issue(s) is brought to their attention. Failure to reach agreement at this senior management level shall allow one or both Parties to submit the dispute to the dispute resolution process prescribed under Paragraph 11 of this Memorandum of Understanding.

## **2. Emergency Response**

The Electric Company and FairPoint shall work cooperatively to ensure that the Incident Control System adopted in each municipality includes protocols for pole emergencies that direct first responders (Incident Commander) to make contact with both the Electric Company and FairPoint at the earliest stages of the response regardless of the maintenance area.

The Electric Company and FairPoint shall maintain notification procedures to ensure early communication between each other during pole emergency situations. The utility with responsibility for the maintenance area involved shall notify other attaching carriers affected by the incident.

A transition period of six (6) months following the Merger will exist; thereafter, FairPoint will evaluate possible alternatives to meet the same average response time as the Electric Company, including, without limitation, the addition of new employees, the negotiation of stand-by arrangements with employees represented under a collective bargaining agreement, the possible use of contractors or the implementation of changes in intercompany practices, and then will implement the appropriate course of action with the objective of enabling FairPoint, within twenty-four (24) months of the Merger, to meet the same average response time to emergencies in its maintenance area as the target average emergency response time for the Electric Company in its maintenance area.

For poles temporarily made safe by emergency measures in FairPoint's maintenance area, FairPoint agrees to complete transfers and repairs and remove the defective condition or defective pole on an expedited basis.

This paragraph shall not apply in the event of major weather events as defined by the Commission.

## **3. Pole Inspection and Maintenance**

The Electric Company shall maintain its existing pole inspection program. FairPoint shall develop and maintain a pole inspection program designed for all jointly owned poles to be inspected initially at or before the age of twenty (20) years and to be re-inspected at a maximum of 10 year intervals thereafter. Records of inspections shall be retained to show where and when corrective action was taken. The inspection program

and the criteria for poles needing replacement shall be in accordance with the Intercompany Operating Procedures (IOP) and National Electrical Safety Code.

#### **4. Maintenance Trimming**

The Electric Company and FairPoint shall meet on or before September 1<sup>st</sup> each year or another mutually agreeable date in advance of the Parties' respective budget cycles to determine the trimming plan and budget for the ensuing calendar year. In no year will the trimming plan involve more than twenty-five percent (25%) of the Electric Company's miles of lines. The Electric Company shall prepare a plan for maintenance trimming within the service territories of both Parties, using its own trimming specifications and specifications provided by FairPoint. Payment for trimming shall be as follows:

- A. Where the Electric Company and FairPoint agree that a trimming plan benefits both Parties, the Electric Company shall pay 75% and FairPoint shall pay 25% of the trimming costs.
- B. Where the Parties agree that particular maintenance trimming plan for a proposed circuit or proposed portion of a circuit benefits one Party and not the other, the Party benefited shall pay the entire trimming cost.
- C. If the Parties are unable to agree on a trimming plan for a particular circuit proposed by the Electric Company, the Electric Company shall pay 85% of total trimming costs and FairPoint shall pay 15% for circuits with jointly owned poles.

Participation in non-emergency trimming that is not included in the trimming plan shall be in accordance with the IOP. The Joint Pole Coordinators shall review maintenance trimming schedules at least monthly during the trimming season.

Emergency major storm trimming costs and the cost of removing so called "hazard trees" shall be managed in accordance with the IOP (i.e., 50%/50%).

#### **5. New Construction Trimming**

For new construction involving poles to be jointly owned by the Electric Company and FairPoint, the trimming costs shall be divided in accordance with the Parties' applicable IOP.

#### **6. Pole Relocations**

The Parties shall work cooperatively to arrange the scheduling of pole replacements required for highway construction. The Electric Company and FairPoint shall participate in meetings of the New Hampshire Department of Transportation and municipal public works officials to coordinate and schedule relocation work thereby committing the

necessary resources to meet the agreed upon schedules. Responsibility for expediting transfers of facilities by attaching carriers shall follow the requirements found in each utility's IOP. The Parties understand and agree that the relocation schedule includes the removal of double poles once facilities of the joint owners and third party attachees have been removed.

#### **7. Transfer of Facilities; Double Poles**

The company with maintenance area responsibility shall notify attaching parties of the need to transfer facilities in accordance with the IOP. Each Party shall effect such transfers consistent with each Party's IOP. With respect to the anticipated backlog of approximately 7,000 double poles, FairPoint shall eliminate such backlog within a maximum of 36 months following the six (6) month, post-Merger transition period.

#### **8. New Pole Sets**

The Parties shall each work cooperatively on the scheduling of new pole sets. The Electric Company and FairPoint agree to work together to develop an improved "Exchange of Notice" (EON) process. The EON process shall include a notification time frame in which FairPoint notifies the Electric Company of its non-desire to participate in the joint ownership of the new poles within fifteen days. In this case, the ownership, installation and maintenance of the poles shall be entirely the responsibility of the Electric Company without regard to maintenance area. The Electric Company and FairPoint shall schedule joint pole sets to be accomplished, on average, not later than the date the customer has requested the installation to be completed, which shall be no shorter than 15 days for small jobs (not more than 3 pole sets) or no shorter than 30 days for large jobs after the date that all pre-payments have been made and all necessary property rights and governmental permits have been obtained. The Party performing the pole set shall also perform the construction trimming necessary to accommodate telecom, electric and attaching party facilities. The Parties shall review their respective line extension policies to determine if there are any inconsistencies and, if so, determine if it would be beneficial to make them more consistent. The time frames set forth in this paragraph shall not apply to major highway construction, which shall be planned in advance and implemented in accordance with such plans (see Section 6).

**9. Standards**

All practices under the JOA shall be conducted in accordance with the requirements of the National Electric Safety Code and applicable regulatory requirements.

**10. Readoption of Joint Ownership Agreement and Intercompany Operating Procedures**

The Electric Company and FairPoint agree to negotiate in good faith to arrive at a new JOA and IOP which conform more closely with this Memorandum of Understanding. FairPoint and the electric utilities will explore the possibility of developing a standard JOA and IOP which will have common terms for all of the utilities wherever possible. Within six (6) months after the Merger, FairPoint and the Electric Company shall begin to incorporate into the JOA and IOP all of the terms agreed to in this Memorandum of Understanding, and such incorporation shall be completed no longer than six (6) months thereafter. No later than twelve (12) months after the Merger, FairPoint and the Electric Company agree to negotiate in good faith any other changes in the JOA and IOP that will bring further operational efficiencies to the relationship and the construction, operation and management of the jointly owned plant. Failure to agree on the terms of the new JOA and IOP(s) shall neither prevent the Parties from proceeding with all other jointly agreed procedures, hereunder or otherwise, nor prevent the Parties from abiding by the terms of this Memorandum of Understanding. Any disagreements shall be resolved in accordance with Paragraph 11 below.

**11. Resolution of Disputes**

The Electric Company and FairPoint agree that all disputes not resolved at the senior management level, as described in Paragraph 1 of this Memorandum of Understanding, shall be resolved as follows:

First, the Parties may attempt to resolve the matter through mediation. Either Party may initiate mediation by notice in writing to the other Party. Within five business days following the receipt of such notice, the other Party will provide a list of three possible mediators. The Party requesting mediation will choose one mediator. Mediation will then be scheduled within 30 days. If mediation results in an agreed resolution, the resulting agreement shall be the final and binding resolution of the matter.

Second, if the matter is not resolved by mediation, the Parties may, by mutual agreement, submit the matter to arbitration. Arbitration will proceed by each Party selecting one representative to a three member arbitration panel. The selection will be communicated to the other Party within ten (10) days of the request for arbitration. Within fourteen (14) days, the two arbitrators will then select a mutually agreeable individual to serve as the third member of the panel. Arbitration will be scheduled within thirty (30) days of the notice of the choice of the third arbitrator, unless a longer period is agreed to by both

Parties. A final decision shall be made in writing, shall be based on a two-thirds vote of the panel members and shall constitute the final and binding resolution of the matter. The arbitration shall be heard in Concord, New Hampshire, unless the Parties agree otherwise.

Third, if the dispute is not resolved by mediation or submitted to arbitration, the Parties shall have all of their respective rights at law and in equity to resolve the matter before a court or regulatory agency having jurisdiction, including, without limitation, the Commission. The Electric Company and FairPoint agree that the Commission has jurisdiction over disputes arising out of this Memorandum of Understanding, the JOA and the IOP.

## **12. Approval by the New Hampshire Public Utilities Commission**

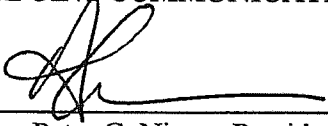
The Electric Company and FairPoint agree that it is a condition of the effectiveness of this Memorandum of Understanding that it be approved in its entirety by the Commission as a condition of the Commission's approval of the Merger. Each of the Parties agrees to fully support, through its filings, testimony and other proceedings in Commission Docket No. DT 07-011, the approval of this Memorandum of Understanding by the Commission, as representing the good faith negotiated resolution of the issues and concerns raised in said Docket by the Electric Company with respect to FairPoint and the intent of FairPoint to fully and adequately address those issues and concerns upon FairPoint's completion of the Merger. As a result, and subject to the Commission's approval of the terms hereof, the Electric Company hereby supports the Commission's approval of the Merger. However, the Electric Company does not waive its rights as to any disputed claims under any other agreement or on any other basis.

*[The remainder of this page intentionally has been left blank.  
Signature pages follow.]*



IN WITNESS WHEREOF the parties have executed this Memorandum of Understanding as of the day and year first above written.

FAIRPOINT COMMUNICATIONS, INC.

By:   
Peter G. Nixon, President

UNITIL ENERGY SYSTEMS, INC.

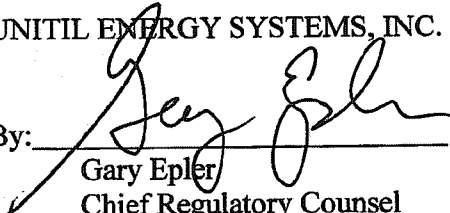
By: \_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF the parties have executed this Memorandum of Understanding as of the day and year first above written.

FAIRPOINT COMMUNICATIONS, INC.

By: \_\_\_\_\_  
Peter G. Nixon, President

UNITIL ENERGY SYSTEMS, INC.

By:  \_\_\_\_\_ 10/4/2007  
Gary Epler  
Chief Regulatory Counsel  
Unitil Service Corp.  
Attorney for Unitil Energy Systems, Inc.

**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding is dated as of September 13, 2007, and is by and between Public Service Company of New Hampshire (the Electric Company) and FairPoint Communications, Inc. (FairPoint).

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WHEREAS, FairPoint and Verizon are seeking all necessary approvals of the Merger from the Federal Communications Commission, the Maine Public Utilities Commission, the Vermont Public Service Board, the New Hampshire Public Utilities Commission (the Commission) and any other regulatory authorities as required by law;

WHEREAS, FairPoint and the Electric Company (individually a Party, and collectively the Parties) desire (i) to amicably resolve any differences between them, (ii) to allow FairPoint the opportunity to promptly secure all necessary approvals and consummate the Merger and (iii) set out terms of the Parties' agreement and understanding concerning the issues and differences between them as more fully set forth below; and

NOW, THEREFORE, in consideration of the foregoing, and the promises, representations and covenants set forth herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**1. Communication and Coordination**

The Electric Company and FairPoint shall each designate an employee to serve as a Joint Pole Coordinator. The Joint Pole Coordinators shall meet monthly during the first year after the Merger and the first year of the term of the new Joint Ownership Agreement (JOA) and at least quarterly thereafter to discuss joint pole operations and procedures, budget issues and general methods of improving joint pole administration. The Joint Pole Coordinators shall also be responsible for maintaining contact information relating to other relevant stakeholders including but not limited to representatives of parties with pole attachments, municipal and state officials, emergency response personnel, etc.

The Electric Company and FairPoint shall each designate a senior management representative with ultimate responsibility for joint pole operations. Issues arising under the JOA that cannot be resolved at the Joint Pole Coordinator level shall be escalated to the senior management representatives. The senior management representatives shall

discuss the disputed issue(s) within ten (10) business days after such issues have been raised by one or both Joint Pole Coordinators. The senior management representatives shall resolve the matter within thirty (30) days from the date when the disputed issue(s) is brought to their attention. Failure to reach agreement at this senior management level shall allow one or both Parties to submit the dispute to the dispute resolution process prescribed under Paragraph 11 of this Memorandum of Understanding.

## **2. Emergency Response**

The Electric Company and FairPoint shall work cooperatively to ensure that the Incident Control System adopted in each municipality includes protocols for pole emergencies that direct first responders (Incident Commander) to make contact with both the Electric Company and FairPoint at the earliest stages of the response regardless of the maintenance area.

The Electric Company and FairPoint shall maintain notification procedures to ensure early communication between each other during pole emergency situations. The utility with responsibility for the maintenance area involved shall notify other attaching carriers affected by the incident.

A transition period of six (6) months following the Merger will exist; thereafter, FairPoint will evaluate possible alternatives to meet the same average response time as the Electric Company, including, without limitation, the addition of new employees, the negotiation of stand-by arrangements with employees represented under a collective bargaining agreement, the possible use of contractors or the implementation of changes in intercompany practices, and then will implement the appropriate course of action with the objective of enabling FairPoint, within twenty-four (24) months of the Merger, to meet the same average response time to emergencies in its maintenance area as the target average emergency response time for the Electric Company in its maintenance area.

For poles temporarily made safe by emergency measures in FairPoint's maintenance area, FairPoint agrees to complete transfers and repairs and remove the defective condition or defective pole on an expedited basis.

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This paragraph shall not apply in the event of major weather events as defined by the Commission.

## **3. Pole Inspection and Maintenance**

The Electric Company shall maintain its existing pole inspection program. FairPoint shall develop and maintain a pole inspection program designed for all jointly owned poles to be inspected initially at or before the age of twenty (20) years and to be re-inspected at a maximum of 10 year intervals thereafter. Records of inspections shall be retained to show where and when corrective action was taken. The inspection program

and the criteria for poles needing replacement shall be in accordance with the Intercompany Operating Procedures (IOP) and National Electrical Safety Code.

#### **4. Maintenance Trimming**

The Electric Company and FairPoint shall meet on or before September 1<sup>st</sup> each year or another mutually agreeable date in advance of the Parties' respective budget cycles to determine the trimming plan and budget for the ensuing calendar year. The trimming plan shall be based on trimming circuits on average with 34.5 kilovolt lines every four years, with 12 kilovolt lines every five years and with 4 kilovolt lines every six years. In no year will the trimming plan involve more than twenty percent (20%) of the Electric Company's miles of lines. The Electric Company shall prepare a plan for maintenance trimming within the service territories of both Parties, using its own trimming specifications and specifications provided by FairPoint. Payment for trimming shall be as follows:

- A. Where the Electric Company and FairPoint agree that a trimming plan benefits both Parties, the Electric Company shall pay 75% and FairPoint shall pay 25% of the trimming costs.
- B. Where the Parties agree that particular maintenance trimming plan for a proposed circuit or proposed portion of a circuit benefits one Party and not the other, the Party benefited shall pay the entire trimming cost.
- C. If the Parties are unable to agree on a trimming plan for a particular circuit proposed by the Electric Company, the Electric Company shall pay 85% of total trimming costs and FairPoint shall pay 15% for circuits with jointly owned poles.

Participation in non-emergency trimming that is not included in the trimming plan shall be in accordance with the IOP. The Joint Pole Coordinators shall review maintenance trimming schedules at least monthly during the trimming season.

Emergency major storm trimming costs and the cost of removing so called "hazard trees" shall be managed in accordance with the IOP (i.e., 50%/50%).

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#### **5. New Construction Trimming**

For new construction involving poles to be jointly owned by the Electric Company and FairPoint, the trimming costs shall be divided in accordance with the Parties' applicable IOP.

#### **6. Pole Relocations**

The Joint Pole Coordinators shall work cooperatively to arrange the scheduling of pole replacements required for highway construction. The Electric Company and FairPoint

shall participate in meetings of the New Hampshire Department of Transportation and municipal public works officials to coordinate and schedule relocation work thereby committing the necessary resources to meet the agreed upon schedules. Responsibility for expediting transfers of facilities by attaching carriers shall follow the requirements found in each utility's IOP. The Parties understand and agree that the relocation schedule includes the removal of double poles once facilities of the joint owners and third party attachees have been removed.

#### **7. Transfer of Facilities; Double Poles**

The company with maintenance area responsibility shall notify attaching parties of the need to transfer facilities in accordance with the IOP. Each Party shall effect such transfers consistent with each Party's IOP. With respect to the anticipated backlog of approximately 7,000 double poles, FairPoint shall eliminate such backlog within a maximum of 36 months following the six (6) month, post-Merger transition period.

#### **8. New Pole Sets**

The Joint Pole Coordinators shall each work cooperatively on the scheduling of new pole sets. The Electric Company and FairPoint agree to work together to develop an improved "Exchange of Notice" (EON) process. The EON process shall include a notification time frame in which FairPoint notifies the Electric Company of its non-desire to participate in the joint ownership of the new poles within fifteen days. In this case, the ownership, installation and maintenance of the poles shall be entirely the responsibility of the Electric Company without regard to maintenance area. The Electric Company and FairPoint shall schedule joint pole sets to be accomplished, on average, not later than the date the customer has requested the installation to be completed, which shall be no shorter than 15 days for small jobs (not more than 3 pole sets) or no shorter than 30 days for large jobs after the date that all pre-payments have been made and all necessary property rights and governmental permits have been obtained. The Party performing the pole set shall also perform the construction trimming necessary to accommodate telecom, electric and attaching party facilities. The Joint Pole Coordinators shall review their respective line extension policies to determine if there are any inconsistencies and, if so, determine if it would be beneficial to make them more consistent. The time frames set forth in this paragraph shall not apply to major highway construction, which shall be planned in advance and implemented in accordance with such plans (see Section 6).

## **9. Standards**

All practices under the JOA shall be conducted in accordance with the requirements of the National Electric Safety Code and applicable regulatory requirements.

## **10. Readoption of Joint Ownership Agreement and Intercompany Operating Procedures**

The Electric Company and FairPoint agree to negotiate in good faith to arrive at a new JOA and IOP which conform more closely with this Memorandum of Understanding. FairPoint and the electric utilities will explore the possibility of developing a standard JOA and IOP which will have common terms for all of the utilities wherever possible. Within six (6) months after the Merger, FairPoint and the Electric Company shall begin to incorporate into the JOA and IOP all of the terms agreed to in this Memorandum of Understanding, and such incorporation shall be completed no longer than six (6) months thereafter. No later than twelve (12) months after the Merger, FairPoint and the Electric Company agree to negotiate in good faith any other changes in the JOA and IOP that will bring further operational efficiencies to the relationship and the construction, operation and management of the jointly owned plant. Failure to agree on the terms of the new JOA and IOP(s) shall neither prevent the Parties from proceeding with all other jointly agreed procedures, hereunder or otherwise, nor prevent the Parties from abiding by the terms of this Memorandum of Understanding. Any disagreements shall be resolved in accordance with Paragraph 11 below.

## **11. Resolution of Disputes**

The Electric Company and FairPoint agree that all disputes not resolved at the senior management level, as described in Paragraph 1 of this Memorandum of Understanding, shall be resolved as follows:

First, the Parties shall attempt to resolve the matter through mediation. Either Party may initiate mediation by notice in writing to the other Party. Within five business days following the receipt of such notice, the other Party will provide a list of three possible mediators. The Party requesting mediation will choose one mediator. Mediation will then be scheduled within 30 days. If mediation results in an agreed resolution, the resulting agreement shall be the final and binding resolution of the matter.

Second, if the matter is not resolved by mediation, the Parties may, by mutual agreement, submit the matter to arbitration. Arbitration will proceed by each Party selecting one representative to a three member arbitration panel. The selection will be communicated to the other Party within ten (10) days of the request for arbitration. Within fourteen (14) days, the two arbitrators will then select a mutually agreeable individual to serve as the third member of the panel. Arbitration will be scheduled within thirty (30) days of the notice of the choice of the third arbitrator, unless a longer period is agreed to by both

Parties. A final decision shall be made in writing, shall be based on a two-thirds vote of the panel members and shall constitute the final and binding resolution of the matter. The arbitration shall be heard in Concord, New Hampshire, unless the Parties agree otherwise.

Third, if the dispute is not resolved by mediation or submitted to arbitration, the Parties shall have all of their respective rights at law and in equity to resolve the matter before a court or regulatory agency having jurisdiction, including, without limitation, the Commission. The Electric Company and FairPoint agree that the Commission has jurisdiction over disputes arising out of this Memorandum of Understanding, the JOA and the IOP.

**12. Approval by the New Hampshire Public Utilities Commission**


The Electric Company and FairPoint agree that it is a condition of the effectiveness of this Memorandum of Understanding that it be approved in its entirety by the Commission as a condition of the Commission's approval of the Merger. Each of the Parties agrees to fully support, through its filings, testimony and other proceedings in Commission Docket No. DT 07-011, the approval of this Memorandum of Understanding by the Commission, as representing the good faith negotiated resolution of the issues and concerns raised in said Docket by the Electric Company with respect to post closing operations by FairPoint and the intent of FairPoint to fully and adequately address those issues and concerns upon FairPoint's completion of the Merger. As a result, and subject to the Commission's approval of the terms hereof, the Electric Company hereby supports the Commission's approval of the Merger. However, the Electric Company does not waive its rights as to any disputed claims under any other agreement or on any other basis.

*[The remainder of this page intentionally has been left blank.  
Signature pages follow.]*



IN WITNESS WHEREOF the parties have executed this Memorandum of Understanding as of the day and year first above written.

FAIRPOINT COMMUNICATIONS, INC.

By:   
Peter G. Nixon, President

PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE

By: \_\_\_\_\_  
Gary A. Long, President and  
Chief Operating Officer

IN WITNESS WHEREOF the parties have executed this Memorandum of Understanding as of the day and year first above written.

FAIRPOINT COMMUNICATIONS, INC.

By: \_\_\_\_\_  
Peter G. Nixon, President

PUBLIC SERVICE COMPANY OF  
NEW HAMPSHIRE

By: *Gary A. Long*  
Gary A. Long, President and  
Chief Operating Officer