

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1087

CENTRAL LINCOLN PEOPLE'S	)	
UTILITY DISTRICT,	)	
	)	
Complainant,	)	RULING
v.	)	
	)	
VERIZON NORTHWEST INC.,	)	
	)	
Defendant.	)	

**DISPOSITION: MOTION FOR SANCTIONS DENIED; MOTION  
*IN LIMINE* DENIED**

On October 5, 2004, Central Lincoln Public Utility District (CLPUD) filed a motion for sanctions against Verizon Northwest Inc. (Verizon), and a motion *in limine* to exclude Verizon testimony. A telephone conference was set for October 6 to resolve the motions prior to the hearing, scheduled to begin October 7, 2004. Verizon appeared in person, and CLPUD, Oregon Cable Telecommunications Association, and Staff appeared by telephone. For the reasons set forth below, both motions are denied.

***Motion for Sanctions***

In its motion for sanctions, CLPUD moved to strike the opening and responsive testimony of witness Veronica Mahanger on behalf of Verizon as a sanction for failing to properly respond to CLPUD's second set of data requests. According to CLPUD, it served the data requests on July 22, 2004, and did not hear from Verizon until an e-mail was sent on August 10 stating that Verizon needed more time to respond. CLPUD next attempted to contact Verizon on September 13. On September 21, Verizon stated that Ms. Mahanger no longer worked for Verizon, and on September 29, Verizon responded to the data requests. According to CLPUD, Verizon objected to 15 out of the 22 data requests as irrelevant, and otherwise referred to prefiled testimony without further elaboration.

Verizon responded that it had severed its relationship with Ms. Mahanger, and as soon as that occurred, it contacted CLPUD. In light of the discontinued relationship, Verizon responded to CLPUD's data requests to the best of its ability.

Specifically, it was unable to answer CLPUD's inquiries regarding Ms. Mahanger's testimony due to an ongoing dispute. Verizon also contends that it had no notice that CLPUD objected to the responses to its data request, and that CLPUD's certification under OAR 860-014-0070(2) is in error.

Ms. Mahanger's testimony was submitted in January and February of 2004. CLPUD did not submit its data requests until July 2004. The deadline for a response was August 5, 2004, but CLPUD did not notify the Commission that it had not received a response in a timely manner. In fact, CLPUD let more than a month pass, from August 10 until September 13, before it again contacted Verizon for a response, and still did not contact the Commission. On the eve of the hearing, CLPUD now moves, not for a motion to compel a response so that it may better present its case, but for a motion for sanctions to eliminate most of the testimony presented by the opposing party. CLPUD's last minute motion to strike the testimony of Ms. Mahanger is denied.

***Motion in limine to exclude Ms. Mahanger's testimony***

In addition, CLPUD moves for an order prohibiting the introduction of Ms. Mahanger's testimony because she will be unavailable for cross-examination. It also presses for an order barring any witness who did not prefile testimony, especially any witness who would adopt Ms. Mahanger's testimony. Verizon told CLPUD on September 21, 2004, that Ms. Mahanger no longer worked for Verizon. CLPUD argues that it "will be seriously prejudiced" if it is forced to cross-examine a new witness without an opportunity to investigate that witness and that it should not have to delay the relief that it is seeking because Verizon failed to produce its witness. Further, it asserts that Ms. Mahanger was not credible in parts of her testimony, and that it is unfairly hindered in not being able to impeach her credibility. CLPUD states that Verizon should have subpoenaed Ms. Mahanger to avoid this problem.

Verizon states that it is surprised to learn that CLPUD objects to another witness sponsoring Ms. Mahanger's testimony. Verizon states that it had earlier talked with CLPUD and that CLPUD had stated that it had no problem with a substitute witness appearing on behalf of Verizon. Verizon offered to delay the hearing so that CLPUD could further investigate the witness. Verizon states that, if CLPUD had objected to the new witness, it would have called the Commission for a status conference and attempted to make other arrangements. Verizon concedes that a new witness will not be able to adopt every portion of Ms. Mahanger's testimony, and notes that it may hurt its case. However, Verizon asserts that the new witness will be able to offer the testimony based on the witness' own knowledge of the industry. The new witness will also be subject to cross-examination.

It is regrettable that Ms. Mahanger is not available for hearing, but Verizon may offer another witness who may swear under oath to the prefiled testimony. I agree with CLPUD that certain events to which Ms. Mahanger testified were based on her direct experience, such as attempts to contact Mr. Gintner, and a new witness could not also testify to that without a basis for that testimony. However, most of Ms. Mahanger's testimony involves

the review of documents, assumptions based on experience in the industry, and mathematical calculations. There is no reason why another person with similar experience and ability cannot submit such testimony. The motion to exclude Ms. Mahanger's testimony is denied. The parties are reminded that a witness must testify under oath in submitting, and supporting, testimony.

Dated at Salem, Oregon, this 6th day of October, 2004.

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Christina M. Smith  
Administrative Law Judge