

Gruman, Mark E.

From: Patrick W. Durick <pwd@pearce-durick.com>
Sent: Wednesday, December 07, 2011 3:15 PM
To: Gruman, Mark E.
Cc: dhogue@srt.com; Harrington, J.G. (JHarrington@dowlohnes.com); Zachary E. Pelham; Mary Lohnes (mary_lohnes@mimi.net); 'nancy_vogel@mimi.net'
Subject: RE: PU-11-153; Midcontinent Comm./Miss. Valley Comm., Inc.

Mark:

Midcontinent acknowledges receipt of the Complaint in this matter, PU-11-697, and waives service of the Complaint by the Commission.

Please let me know if you want this waiver in any other form.

Pat Durick



Patrick W. Durick

314 E. Thayer Avenue
Bismarck, ND 58501
T 701.223.2890 F 701.223.7865
www.pearce-durick.com

Note: This e-mail contains information from the law firm of Pearce & Durick that may be proprietary, confidential, or privileged. If you are not the intended recipient and have received this email in error, please delete it and contact me.

From: Gruman, Mark E. [mailto:mgruman@nd.gov]
Sent: Wednesday, December 07, 2011 1:55 PM
To: Patrick W. Durick; David Hogue
Cc: Fahn, Patrick J.
Subject: RE: PU-11-153; Midcontinent Comm./Miss. Valley Comm., Inc.

Good afternoon. I am not sure whether you had an opportunity to listen to our meeting this afternoon, but it was decided to schedule a hearing to hear Mr. Hogue's motion to dismiss on February 10, 2012 at 10:00 a.m. Because, procedurally, we are at a loss as far as notice, etc. we have determined to couch this motion hearing as a "complaint", pursuant to N.D. Admin 69-02-02. Because of this, various additional procedural protocols are connected with this decision, namely the requirement of the Commission to serve a copy of the complaint upon each party. N.D. Admin 69-02-02(5)(a). However, as you can see this can be waived by the Respondent (i.e., Mr. Durick).

If this course of action is acceptable, Mr. Durick, could you please convey to the Commission this waiver as soon as practical? As you can see we are eager to submit notice as soon as practical to be within the 45 day notice time limit.

As indicated before the treatment of this matter as a complaint was done so out of a lack of an alternative course of action presented. If this motion should be qualified under something else, then such information needs to be presented to Staff as soon as practical, so that we can continue to meet the notice requirement so articulated above as well as the March 2012 determination date.

Please let me know if you have any questions,

Mark Gruman
Legal Counsel
North Dakota Public Service Commission
701-328-2421

From: Gruman, Mark E.
Sent: Tuesday, December 06, 2011 8:29 AM
To: 'Patrick W. Durick'; David Hogue
Cc: Jeffcoat-Sacco, Illona; Fahn, Patrick J.; Harrington, J.G. (JHarrington@dowlohnes.com); Mary Lohnes (mary_lohnes@mmi.net); 'nancy_vogel@mmi.net'; Zachary E. Pelham
Subject: RE: PU-11-153; Midcontinent Comm./Miss. Valley Comm., Inc.

Thank you for your responses. Because Wednesday, December 7th is somewhat tight for Pat and I due to it being a Commission meeting day, our only availability in the short term would be from 9:00 to 10:00 a.m. on December 7th. We have set up a phone bridge for the phone conference. 701-328-0800. Participants dial 530213. Moderator dials 861925.

This is my understanding of the procedural history and associated timelines.

1. On June 14, 2011 Missouri Valley Communications, Inc. (Missouri Valley) received a bona fide request for negotiation from Midcontinent Communications (Midcontinent) for interconnection between Missouri Valley and Midcontinent in Williston, ND.
2. On November 14, 2011 Midcontinent filed with the North Dakota Public Service Commission (Commission) a Petition for Arbitration, along with an Affidavit of Service.
3. On November 21, 2011 Missouri Valley filed with the Commission a Motion to Dismiss the Petition for Arbitration and Brief in Support of Motion.
4. Pursuant to Rule 56(c) of the North Dakota Rules of Civil Procedure, Midcontinent is allowed 30 days to file with the Commission a responsive brief concerning Missouri Valley's November 21, 2011 motion.
5. Pursuant to 47 U.S.C. § 252(b)(3) and ND Admin. Rule 69-02-10-07, Missouri Valley has 25 days from November 14, 2011 to respond to Midcontinent's Petition for Arbitration, as well as provide such additional information as it wishes to the Commission.
6. Pursuant to 47 U.S.C. § 252(b)(4)(c), the Commission shall resolve each issue set forth in the petition and the response, and shall conclude the resolution of all unresolved issues, no later than 9 months after June 14, 2011.
7. As of the date of this email, Midcontinent has not provided to the Commission, within 15 days of November 14, 2011, names and qualifications of at least two qualified neutral arbitrators that are acceptable to all parties to the negotiation, pursuant to ND Admin. Rule 69-02-10-08.
8. In the event that neither Midcontinent nor Missouri Valley agree on the acceptability of arbitrators, both parties can submit to the Commission names and qualifications of at least two arbitrators that would be acceptable to that respective party. *Id.*
9. The Commission is required to appoint an arbitrator within twenty days after November 14, 2011, pursuant to ND Admin. Rule 69-02-10-09. This arbitrator shall be picked from the lists provided by the parties. ND Admin. Rule 69-02-10-09. If the parties are unable to comply with 69-02-10-08, the commission shall appoint an arbitrator it determines to be qualified. ND Admin. Rule 69-02-10-09.
10. Both Midcontinent and Missouri Valley agree to a 60 minute hearing before the Commission to argue their respective positions concerning Missouri Valley's November 21, 2011 motion to dismiss. Both parties are available the first week of January.

Therefore, at our upcoming conference call on scheduling issues, it appears that the following issues will need to be resolved.

1. Does either party intend to submit to the Commission suggested arbitrators for Commission consideration?
2. Scheduling a time for argument of Missouri Valley's November 21, 2011 motion.
3. Determining a time for final determination of Missouri Valley's November 21, 2011 motion.
4. Possible extension of the arbitration deadlines.
5. Other issues.

From: Patrick W. Durick [<mailto:pwd@pearce-durick.com>]

Sent: Monday, December 05, 2011 3:09 PM

To: Gruman, Mark E.; David Hogue

Cc: Jeffcoat-Sacco, Illona; Fahn, Patrick J.; Harrington, J.G. (JHarrington@dowlohnes.com); Mary Lohnes (mary_lohnes@mimi.net); 'nancy_vogel@mimi.net'; Zachary E. Pelham

Subject: RE: PU-11-153; Midcontinent Comm./Miss. Valley Comm., Inc.

Dear Mr. Gruman:

We agree with Missouri Valley as to the time constraints and procedure for disposing of the Motion to Dismiss. We could also be available anytime during the first two weeks of January for oral arguments.

With respect to scheduling we are not aware of any authority for a stay of the process for resolving interconnection issues as outlined in 47 U.S.C. § 252, as the statute sets specific deadlines both for an incumbent carrier's response to a petition for arbitration and for the Commission's ultimate decision. However, we are flexible and are agreeable to considering reasonable alternatives that provide the Commission with the time necessary to fully consider the issues presented by both the Motion to Dismiss and the unresolved interconnection issues subject to arbitration.

By way of alternatives for consideration we would propose proceeding with a normal schedule and either setting a date for a Commission decision on the motion that would be prior to the date that testimony would be due in the arbitration or alternatively having the Commission decide the motion at the end, along with any other legal arguments that the parties may make. In particular, we think the parties should be allowed to proceed with discovery while the motion is pending, and that an arbitrator should be designated in accordance with the Commission's normal schedule. If there's going to be some extra time in the schedule, it should come after a Commission decision on the motion and before the testimony is due in arbitration. We would be agreeable to extending the arbitration deadline by two or three weeks to accommodate such a change.

We would be available on Wednesday from 9:00 a.m. to 11:00 a.m. or 1:30 p.m. to 4:00 p.m. for a conference call on scheduling issues.

Thank you for your consideration on these matters.

Pat Durick



Patrick W. Durick

314 E. Thayer Avenue
Bismarck, ND 58501
T 701.223.2890 F 701.223.7865
www.pearce-durick.com

Note: This e-mail contains information from the law firm of Pearce & Durick that may be proprietary, confidential, or privileged. If you are not the intended recipient and have received this email in error, please delete it and contact me.

From: Gruman, Mark E. [<mailto:mgruman@nd.gov>]
Sent: Monday, December 05, 2011 1:40 PM
To: David Hogue; Patrick W. Durick
Cc: Jeffcoat-Sacco, Illona; Fahn, Patrick J.
Subject: RE: PU-11-153; Midcontinent Comm./Miss. Valley Comm., Inc.

Thank you Mr. Hogue. I will wait to hear back from Mr. Durick before responding further.

Mark Gruman

From: David Hogue [<mailto:dhogue@srt.com>]
Sent: Monday, December 05, 2011 11:16 AM
To: Gruman, Mark E.; pwd@pearce-durick.com
Cc: Jeffcoat-Sacco, Illona; Fahn, Patrick J.
Subject: RE: PU-11-153; Midcontinent Comm./Miss. Valley Comm., Inc.

Thanks Mr. Gruman.

Missouri Valley would expect oral argument not last longer than 60 minutes. Missouri Valley would propose that it follow the usual format of dispositive motions wherein Missouri Valley is granted time to explain its motion, followed by Midcontinent's opportunity to respond, and closed by Missouri Valley as the moving party. I am available the first week of January. I have conflicts on January 10 and 19.

I'm available at your convenience to discuss scheduling, but I have a conflict tomorrow am. Thank you.

From: Gruman, Mark E. [<mailto:mgruman@nd.gov>]
Sent: Friday, December 02, 2011 5:00 PM
To: dhogue@srt.com; pwd@pearce-durick.com
Cc: Jeffcoat-Sacco, Illona; Fahn, Patrick J.
Subject: PU-11-153; Midcontinent Comm./Miss. Valley Comm., Inc.

Gentlemen,

As you are well aware several issues are potentially ripe for review concerning this matter. In light of your recent filings, Staff was hoping to briefly discuss with you procedural scheduling issues to help insure appropriate compliance on our part.

It is Staff's understanding that the arbitration issue, and the PSC's obligations pursuant to N.D. Admin 69-02-10, are presently stayed, pending the outcome of Missouri Valley's motion for summary judgment. If you feel otherwise, please let us know.

Assuming that all parties are in agreement in this regard, the next matter concerns the scheduling of oral argument to hear Missouri Valley's Summary Judgment Motion. To begin, what is the expected length in time of the motion hearing? Additionally, if you could provide to us five or so dates that would be in conformance with your schedule, we would be most appreciative. As you can imagine, because fitting in a hearing date this December may not be realistic, January dates would be most appropriate.

Thank You. Illona will be gone for the duration of December. However, Mr. Fahn and I are available at your convenience if you would like to discuss these matters further.

Mark Gruman
Legal Counsel
North Dakota Public Service Commission
701-328-2421