

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7064

Petition of Jerome Shedd and Lindi Bortney vs. Verizon)
New England Inc., d/b/a Verizon Vermont, in re: billing)
dispute concerning charges for telephone service)
installation at their property located in Ripton, Vermont)

Order entered: 7/25/2005

I. INTRODUCTION

This case involves a dispute between Jerome Shedd and Lindi Bortney ("Petitioners") and Verizon New England Inc., d/b/a Verizon Vermont ("Verizon"), concerning the invoice for special construction work done by Verizon at the Petitioners' residence in Ripton, Vermont. In this proposed decision, I conclude that Verizon overstated the amount of hours actually spent on the Petitioners' job and recommend that Verizon refund the difference to the Petitioners.

II. Background and Procedural History

On February 7, 2001, Ted Lylis, on behalf of the Petitioners, filed a petition ("Petition") with the Vermont Public Service Board ("Board") requesting a hearing regarding a dispute with Verizon about work to be done on the Petitioners property.¹ The Petition was forwarded to Verizon and the Department of Public Service ("Department") in hope that the matter could be resolved informally. Following the completion of the work by Verizon, the Board was informed, in January of 2005, that the dispute could not be resolved informally and the matter was set for hearing.

On April 14 and June 2, 2005, I held a technical hearing in this matter.

1. The Petition states that Mr. Lylis, a builder working on the Petitioners' property, had been authorized to act on behalf of the Petitioners who at the time, resided in New York

III. FINDINGS

Based upon the evidence of record, I hereby report the following findings to the Board in accordance with 30 V.S.A. § 8.

1. In July of 2001, the Petitioners entered into a contract with Verizon for Non-Tariffed Reimbursable Construction to be done at the residence of the Petitioners. Verizon Exh. 3.
2. The contract describes the work as consisting of removing one telephone pole, removing existing telephone cable between two poles and anchoring the remaining pole for the purpose of placing the telephone utilities underground to the Petitioners' residence from that pole. The contract includes an estimated 22 hours of labor (16 hours of line labor and 4 hours of splice labor) at a rate of \$111.02 per hour for a total of \$2,442.44. Verizon Exhs. 2 and 3; Pet. Exh. 2.
3. The Petitioners pre-paid the contract amount in full in August of 2001. Pet. Exh. 9 at 1.
4. The work was completed by two Verizon technicians over a two-day period on August 24 and August 30, 2001. The technicians spent one hour on-site on August 24, 2001, and 30 minutes on-site on August 30, 2001. The technicians worked a total of 9.5 hours over the two days including travel, preparation and on-site labor. Tr. 5/2/05 at 29, 32 (Lylis), at 80 (Shedd); tr. 6/2/05 at 21-22 (Shedd); Pet. Exh. 9 at 1.
5. Verizon's time and material reporting documents ("time sheets") indicate a total of 10 man hours (two men at five hours) working on the Petitioners' job on August 24, 2001, and six man hours (two men at three hours) for a total of 16 hours over two days. Verizon Exh. 6 at 1.
6. Verizon's tariff does not specify rates for special construction projects and requires only that charges for special construction projects be based on cost. Verizon Exh. 1.
7. Verizon's hourly labor rate for this project is comprised of technician salaries and overhead. Pet. Exh. 15 at Attachment 4.²

2. Verizon originally submitted portions of this exhibit stamped as proprietary. However, the information was later admitted into evidence by the Petitioners without objection from Verizon. Because Verizon did not object to admission of this evidence and has not filed a motion for confidential treatment of this information, I conclude that Verizon does not believe this evidence requires confidential treatment.

8. On October 25, 2001, Verizon billed the Petitioners for 20 hours of labor for a total of \$1582.74. The twenty hours was comprised of sixteen technician hours at an average rate of \$74.005 for a total of \$1,184.08 and four engineering hours at a rate of \$99.665 for a total of \$398.66. Verizon also issued a refund check to the Petitioners in the amount of \$859.70. Pet. Exh. 15 at 1 and Attachments 4 and 5.

9. The Petitioners subsequently returned the refund check to Verizon. Exh. Pet. 12.

IV. DISCUSSION

Verizon argues that it has billed the Petitioners for the correct amount of costs incurred to accomplish the Petitioners' project. In support of its invoiced charges, Verizon has submitted time sheets completed by the linemen who worked on the job, detailed descriptions of the work involved, and a breakdown of the associated labor and overhead costs. See Verizon Exh. 6 and Pet. Exh. 15. Verizon points out that there are a variety of tasks and associated costs that are required for such projects in addition to the time actually spent on-site by the linemen. Tr. 5/2/05 at 73-74 (O'Conner). Therefore, Verizon argues that it has provided adequate support for the time and rates billed to Petitioners. Verizon also states that it is willing to re-issue a refund check in the amount of \$859.70 because the job took less time than originally estimated. Tr. 6/2/05 at 32.

The Petitioners contend that Verizon has overcharged them. Based upon their personal observations of the Verizon technicians on the job site for only one and a half hours, the Petitioners argue that they were billed for hours in excess of those actually spent on the job. Tr. 5/2/05 at 29, 32 (Lylis), at 80 (Shedd). The Petitioners also argue that Verizon's labor rates are unreasonably high and they should not be required to pay any indirect overhead included in Verizon's labor rates. Tr. 6/2/05 at 21-22. Therefore, the Petitioners argue that they should have been billed for approximately 9.5 hours at a labor rate of \$46.08 and are due a refund of the additional amount paid to Verizon. *Id.* This calculation includes two man hours for preparation and disposal, four and a half man hours for travel from Rutland to Ripton, and three hours on-site work over a two-day period. *Id.* It also apportions the time for preparation, disposal and travel among the various jobs performed by the technicians on the same two days. *Id.*

The Department argues that Verizon has not provided sufficient evidence of the hours billed to the Petitioners' job. Tr. 6/2/05 at 33-35 (Lackey). The Department also argues that there is no cost study to support the corporate overhead rates charged by Verizon. *Id.* at 34. The Department also believes that the estimate of charges presented by the Petitioners is reasonable. *Id.* at 34-35.

A utility enjoys a presumption that its expenditures are reasonable. Docket No. 5132, Order of 5/15/87, at 79. However, the Board noted that:

The presumption is rebuttable, . . . and it is rebutted if an adverse party adduces evidence sufficient to support a finding contrary to the effect of the presumption. . . . The utility is then left with the task of persuading the Board . . . of the reasonableness of its expenditures through the presentation of evidence of the ordinary sort.

Id. at 79-80.

The Board further noted that shifting the burden of persuasion to the utility is "justified by the utility having the best access to the facts." *Id.* at 88.

"Not having the best access to the facts means that it would be unreasonable to require the challenging party to prove its position by a preponderance of the evidence . . ."

Id.

In the instant case, Verizon has billed the Petitioners for twenty man-hours of time for specific work done at the Petitioners' residence. The Petitioners have challenged the reasonableness of these charges by presenting evidence. The Petitioners witnessed two Verizon technicians on the job site for total of an hour and a half over a two-day period. Tr. 5/2/05 at 29, 32 (Lylis), at 80 (Shedd). The Petitioners do not believe it is reasonable for a job that required an hour and a half of on-site labor to produce 20 billable hours. Exh. Pet. 9 at 1. Therefore, the Petitioners have rebutted the presumption that Verizon's charges were reasonable.

Since Verizon has the best access to the facts in the case, the burden clearly lies with Verizon to prove that its charges were reasonable. Verizon has produced the time sheets filled out by the two technicians responsible for the work at the Petitioners' residence.

The time sheets consist of a series of coded line items allocating a portion of the hours spent on the job to various tasks. For example, line 2 of the August 24, 2001, sheet indicates that the linemen spent one half-hour each on removal of cable. *See* Pet. Exh 15. All of the entries are

in one-hour or half-hour intervals and indicate 10 hours spent by both men on the Petitioners' job on August 24, 2001, and six hours spent on the job on August 30, 2001. Each daily time sheet accounts for exactly eight hours worked per day by the technicians. The time sheets indicate that the technicians worked on two different jobs, including the Petitioners' job, on August 24, 2001, and three jobs on August 30, 2001.

However, the time sheets do not include several key pieces of information. The time sheets do not indicate the time the technicians arrived at the work site, the time spent on site or the time the technicians left the site for the day. The time sheets also provide no information on travel time to and from the job site, time for loading or unloading vehicles or special equipment, disposing of waste, or even lunch breaks. Verizon states that all of these "discrete activities" are somehow included in the time allotted to the work operations identified on the time sheets. However, Verizon has offered no testimony or other evidence as to how the technicians factor these elements into the times reported on the time sheets, nor has it supplied any documentation of the time devoted to the work that occurred off site. The time sheets may be a useful accounting tool for Verizon, but they are inadequate corroboration of the work performed on this job. This is troubling in that the technicians were witnessed to be on the job site for only three of the 16 technician hours billed. Without any evidence to rebut the witness accounts of the time the technicians spent on the job site or support the time devoted to "discrete activities," I am unable to find that the amount of hours Verizon billed were actually worked on this job.

In addition to the sixteen technician hours billed, Verizon also billed the Petitioners for four hours of engineering time. Pet. Exh. 15 at Attachment 4. However, Verizon has not supplied any work product or other information to support the validity of this charge. In fact, Verizon admits that there is no information, other than the invoice itself, related to this charge. Pet. Exh 15 at 1. In addition, the contract between Verizon and the Petitioners did not include any engineering labor. Therefore, it would be unreasonable to hold the Petitioners responsible for engineering work for which they had not contracted and Verizon cannot document.

The Petitioners have set forth their own estimate of the hours that should be allocated to this job. Tr. 6/2/05 at 22 (Shedd). The estimate includes time for preparation and disposal activities, transit time and work performed on the job site. *Id.* at 18-22. Because Verizon has

failed to provide sufficient evidence to document the amount of hours spent on the Petitioners' job, I find by a preponderance of the evidence that the estimate of 9.5 hours for the work provided by the Petitioners is reasonable. I conclude that the Petitioners' estimate allocates an adequate amount of time for the work performed given the amount of time spent on-site by Verizon technicians and the amount of travel and other activities likely associated with this job.

Verizon charged the Petitioners approximately \$74 per hour for the sixteen technician hours billed to this job. Pet. Exh. 15 at Attachment 4. The rate includes approximately \$31 of Vermont corporate overhead. *Id.* Both the Petitioners and the Department argue that this rate is unreasonable. Tr. 6/2/05 at 20-21 and 34, 52 (Shedd) (Lackey). Verizon argues that it is entitled to recover its costs, which include corporate overhead, when it performs special construction projects. Tr. 6/2/05 at 28 (Porell).

Verizon's tariff states that for types of construction, not otherwise provided for in its tariff, "charges based on cost apply." Verizon Exh. 1 at 1. The tariff provides no other guidance as to the types or amounts of overhead that may be included in Verizon's costs. While both the Petitioners and the Department believe that the corporate overhead charged by Verizon is unreasonable, they have provided no evidence in support of this assertion. The Department was aware of the special construction rates charged to the Petitioners at least as early as 2000, but chose not to request an investigation into Verizon's special construction rates. Tr. 6/2/05 at 66. Therefore, while Verizon's corporate overhead rates may be high relative to salaries and direct overhead, there is no basis to conclude that these charges are unreasonable.

While there is no evidence to suggest that Verizon's special construction rates are unreasonable, there is currently no mechanism in place to ensure that these rates are cost based. In addition, Verizon's special construction rates are also subject to great fluctuations over short time periods. Verizon initially estimated a rate of \$111.02 per hour for the Petitioners' job, but two months later billed only approximately \$74 per hour for the work. Verizon Exh. 3 and Pet. Exh. 10.³ These fluctuations will make it difficult for customers to predict the actual cost of special construction projects. Therefore, I recommend that the Board open an investigation into

3. Verizon attributes this difference to changes in overhead. Tr. 6/2/05 at 60-61 (Porell). However, it seems unusual that the overhead rate would change so drastically over a two-month period.

determining a mechanism that would ensure that Verizon's special construction rates are cost based and predictable.

V. Conclusion

For the foregoing reasons, I conclude that the Petitioners should be required to pay Verizon \$703.01 for the work performed. This is based on an estimate of 9.5 hours charged to the job at a rate of approximately \$74. The Petitioners have already paid Verizon \$2,442.44. Therefore, I recommend that Verizon be required to refund the Petitioners \$1,739.43.

The Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 18th day of July, 2005.

s/Gregg Faber

Gregg Faber
Hearing Officer

VI. BOARD DISCUSSION

In response to the Hearing Officer's Proposal for Decision ("PFD"), comments were filed by both Verizon and the Petitioners. The Petitioners continue to argue that the overhead rate Verizon charges for special construction is unreasonable and that they, therefore, should not be required to pay this portion of Verizon's charges. Conversely, Verizon argues that its rates for special construction, including the overhead components, are reasonable and that an investigation into these rates is, therefore, unnecessary.

Based on our review of the evidence presented in this proceeding, we accept the recommendations of the Hearing Officer, except that we will not open an investigation into Verizon's special construction rates at this time. We share the concerns of the Hearing Officer regarding the basis for Verizon's special construction rates. However, we feel it is necessary to acquire additional information about these rates prior to opening an investigation into this matter. Therefore, we shall require Verizon to file a report detailing the number of residential special construction projects and the rates and costs for each of those projects completed in calendar year 2005. The report shall include a breakdown showing the labor and overhead cost components of the rates charged for each project and the invoices sent to each customer.⁴ The report shall be filed within 45 days of the end of the 2005 calendar year. Based on this additional information, the Board will determine whether it is necessary to proceed with an investigation or require additional information regarding Verizon's special construction rates.

4. If this filing becomes overly voluminous, Verizon may contact the Clerk of the Board in order to schedule a viewing of the records by Board personnel at Verizon's offices.

VI. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendations of the Hearing Officer are adopted, with the exception as noted in the Board's Discussion, above.
2. Verizon shall issue a refund to the Petitioners in the amount of \$1,739.43, within 30 days of the date of this Order.
3. Verizon shall file a report detailing the number of residential special construction projects and the rates and costs for each of those projects competed in calendar year 2005, within 45 days of the end of the 2005 calendar year.

DATED at Montpelier, Vermont, this 25th day of July, 2005.

s/James Volz)	PUBLIC SERVICE BOARD OF VERMONT
)	
)	
s/David C. Coen)	
)	
s/John D. Burke)	

OFFICE OF THE CLERK

Filed: July 25, 2005

Attest: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.