

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
Albany on November 17, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair  
Patricia L. Acampora  
Gregg C. Sayre  
Diane X. Burman

CASE 15-M-0687 - Petition of Orange and Rockland Utilities, Inc.  
For Authority Under Section 70 of the Public  
Service Law to Transfer Joint Use Poles to  
Frontier Communication Corporation.

ORDER APPROVING TRANSFER OF JOINT USE POLES  
SUBJECT TO MODIFICATIONS

(Issued and Effective November 18, 2016)

BY THE COMMISSION:

INTRODUCTION

On November 20, 2015, Orange and Rockland Utilities, Inc. (Orange and Rockland) filed a petition requesting authorization to transfer its ownership of 1,064 joint use poles to Frontier Communications Corporation (Frontier) for a purchase price of \$1,665,179. Frontier will assume all rights, title and obligations to the joint use poles to be transferred, except for the electric appurtenances attached to the poles. Orange and Rockland states that the proposed transfer effectuates the contractual intentions of both parties. In this order, the Commission authorizes, subject to the conditions discussed herein, Orange and Rockland to transfer its ownership of certain joint use poles to Frontier.

BACKGROUND

Orange and Rockland and Frontier are parties to an agreement governing the use and ownership of utility poles jointly used by Orange and Rockland and Frontier.<sup>1</sup> The Pole Agreement provides that 60% of the joint use poles are to be owned by Orange and Rockland and 40% of the joint use poles are to be owned by Frontier. The Pole Agreement was intended to ensure that each company and its ratepayers bear its fair share of the costs to install and maintain jointly used poles on which each utilities facilities are attached. According to the Pole Agreement, if either party becomes deficient in its ownership of joint use poles by more than 2.5%, such deficient party shall purchase, from the other party, the number of joint use poles required to eliminate the ownership deficiency. As of November 1, 2015 the ratio of joint use pole ownership was 63.92% Orange and Rockland and 36.08% Frontier, thus necessitating a transfer of 1,064 joint use poles. The Pole Agreement specifies that the purchase price for joint use poles will be the seller's average cost of the joint use poles. Orange and Rockland's net book cost<sup>2</sup> of the poles to be transferred is \$1,870,329. However, in negotiating the transfer with Orange and Rockland, Frontier indicated that its net book cost of poles of comparable vintages to the joint use poles to be transferred is \$1,460,029. Orange and Rockland and Frontier agreed to a purchase price halfway between the Companies' respective book values.

Furthermore, the Pole Agreement requires that when a disparity in the ownership of joint use poles exists, the

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<sup>1</sup> The Joint Use Agreement (Pole Agreement) was entered into by Orange and Rockland and Continental Telephone Company of Upstate New York, Inc. in 1978. Frontier is the successor to Continental.

<sup>2</sup> The net book cost is the original cost less the accumulated depreciation.

deficient party will pay a carrying charge with respect to those poles.<sup>3</sup> A disparity in ownership has existed throughout the term of the Pole Agreement with Frontier being deficient in the ownership of joint use poles. Since calendar year 2009 Frontier has been in arrears with respect to the carrying charges billed by Orange and Rockland under the Pole Agreement. According to Orange and Rockland, through the end of 2013, Frontier owes Orange and Rockland an outstanding balance of \$1,601,352.<sup>4</sup>

In October of 2015, Orange and Rockland and Frontier reached an agreement (Settlement Agreement) to resolve the disparity in the ownership of poles and to address arrears associated with the carrying charges. Specifically, Frontier agreed to purchase 1,064 joint use poles for a purchase price of \$1,665,179. In addition, Frontier agreed to pay Orange and Rockland a pole parity imbalance payment of \$1,291,124 to absolve Frontier of any past amounts due to Orange and Rockland for joint-use pole ownership imbalances through December 2014. As a result of the Settlement Agreement, Orange and Rockland wrote-off \$310,229 in accounts receivables from Frontier.

Additionally, the companies agreed to terminate the Pole Agreement as of the effective date of the Settlement Agreement. They also agreed that, effective January 2017, Frontier will make quarterly payments to Orange and Rockland for Frontier's share of the reasonably forecasted annual pole costs

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<sup>3</sup> The carrying charges represent the revenue requirement associated with ownership and maintenance of the jointly used poles.

<sup>4</sup> Orange and Rockland did not bill or collect carrying charges for calendar year 2014 or 2015 as it attempted to negotiate a resolution to its dispute with Frontier. Orange and Rockland estimated the carrying charges owed to Orange and Rockland by Frontier for calendar year 2014 and 2015 to be approximately \$476,000 and \$500,000 respectively.

for new poles and replacement poles.<sup>5</sup> In addition, if in lieu of ownership, Frontier chooses to attach facilities to Orange and Rockland owned poles, Frontier will pay pole attachment fees to Orange and Rockland on a quarterly basis.

PETITION

Orange and Rockland requests authorization to transfer 1,064 joint use poles located in Orange and Sullivan counties to Frontier at a sale price of \$1,665,179. As previously indicated, the net book cost of the poles to be transferred is \$1,870,329. By agreeing to sell the poles at this lower sale price, Orange and Rockland will under-recover the net book cost of these assets by \$205,190. Orange and Rockland states that it agreed to this lower sale price, at least in part, as a way to avoid costly litigation. Orange and Rockland proposes to account for the sale of the poles as a retirement and credit the depreciation reserve for the amount received from Frontier. As a result of this proposed accounting, Orange and Rockland would reflect the under recovery of its net book cost of the transferred poles of \$205,150, as a reduction to its accumulated depreciation reserve.

Orange and Rockland states that the transfer is in the public interest because each company and its ratepayers will bear a fair share of the cost required to install and maintain the joint use poles on which each company's facilities are attached. Further, Orange and Rockland indicates that transfer of ownership of the joint use poles will not result in any change in either companies' operations and will not result in adverse environmental impacts.

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<sup>5</sup> Frontier's and Orange and Rockland's agreement regarding prospective pole use arrangements is not at issue in this proceeding and the Commission makes no determination regarding that agreement in this order.

LEGAL AUTHORITY AND STANDARD OF REVIEW

Public Service Law §70 requires that Orange and Rockland must obtain written consent from the Commission before transferring the poles to Frontier because the original cost of the poles exceeds \$100,000. The Commission has the responsibility to ensure the transfer is in the public interest and will not adversely affect Orange and Rockland's operations or its ability to serve its ratepayers. Moreover, the Commission must make certain that both the disposition of the proceeds from the sale and the associated ratemaking treatment are reasonable and equitable.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on December 16, 2015 [SAPA No. 15-M-0687SP1]. The time for submission of comments pursuant to the Notice expired on February 1, 2016. No comments were received.

DISCUSSION AND CONCLUSION

Having reviewed Orange and Rockland's petition the Commission authorizes the Company to transfer the ownership of 1,064 joint use poles to Frontier. The Commission, however, does not approve Orange and Rockland's proposed accounting for the sale.

Orange and Rockland and Frontier were parties to the Pole Agreement governing the use and ownership of jointly used utility poles. According to the Pole Agreement, if either party became deficient in its ownership of joint use poles such deficient party shall purchase from the other party the number of joint use poles that are required to eliminate the deficiency. The transfer of these joint use poles eliminates a

deficiency in ownership by Frontier. Further, it ensures that each company's ratepayers only bear their fair share of the costs related to ownership of the joint use poles.

The Pole Agreement specified that the purchase price for joint use poles to be the seller's average cost of the joint use poles. However, Orange and Rockland indicated that the average cost of the joint use poles to be transferred is \$1,870,329, or \$205,150 more than the proposed purchase price of \$1,665,179. As described above, Orange and Rockland proposed to reduce the depreciation reserve by the resulting loss, \$205,150. All else being equal, this treatment will contribute to a depreciation reserve deficiency, which Orange and Rockland could seek to recover from its' ratepayers.

Furthermore, the Pole Agreement specifies that when a disparity in the ownership of joint use poles exists, the deficient party will pay a carrying charge with respect to those poles. A disparity in ownership has existed throughout the term of the Pole Agreement with Frontier being deficient in the ownership of joint use poles. As previously discussed, Orange and Rockland stated that Frontier was in arrears with respect to the carrying charges owed to Orange and Rockland under the Pole Agreement with an outstanding balance of \$1,601,352 through the end of 2013.

Orange and Rockland agreed to accept a pole parity imbalance payment of \$1,291,124 which absolved Frontier of any past amounts due to Orange and Rockland and resulted in Orange and Rockland writing-off \$310,229 in accounts receivable from Frontier.

Orange and Rockland states that it settled for the lower payment of carrying charges in arrears rather than taking legal action against Frontier to collect the carrying charges owed to it under the Pole Agreement because legal action would

be expensive and time consuming. These decisions by Orange and Rockland have led it to forgo at least \$515,379 it states is owed by Frontier. While Orange and Rockland has written off \$310,299 of this amount, it still seeks to recover \$205,150 from ratepayers by reflecting that loss in the depreciation reserve.

As discussed above, Frontier and Orange and Rockland have had ongoing disputes under the Pole Agreement since at least 2009. It appears that both parties to the Pole Agreement have mismanaged that contractual relationship. This apparent mismanagement was not in the public interest. Orange and Rockland's ratepayers should not be harmed as a result of that mismanagement. Accordingly, Orange and Rockland, not its ratepayers, should bear the \$205,150 loss. If the Companies consummate the sale, Orange and Rockland shall charge the \$205,150 loss from the sale of the poles to non-utility accounts.

The Commission orders:

1. Orange and Rockland Utilities, Inc.'s petition is granted, with modifications, consistent with the discussion in the body of this order.
2. Orange and Rockland Utilities, Inc. is required to file with the Secretary, within 60 days of the issuance of this order, the accounting entries recording the transfer of the joint use poles to Frontier, and the entries effectuating the write-off of the difference between the net book cost and the purchase price.
3. In the Secretary's sole discretion, the deadlines set forth in this order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least one day prior to the affected deadline.

4. This proceeding is closed pending compliance with the above Ordering Clauses.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS  
Secretary