BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF DELMARVA POWER & LIGHT, D/B/A CONECTIV POWER DELIVERY, AND FIBERTECH NETWORKS, LLC, FOR APPROVAL OF A POLE ATTACHMENT AGREEMENT (FILED APRIL 13, 2004)	)	PSC DOCKET NO. 04-136
IN THE MATTER OF A COMPLAINT FILED BY FIBER TECHNOLOGIES NETWORKS, LLC, VS. DELMARVA POWER & LIGHT COMPANY, D/B/A CONECTIV POWER DELIVERY, CONCERNING TERMS OF A POLE ATTACHMENT AGREEMENT FILED ON APRIL 13, 2004 (FILED APRIL 16, 2004)	)	PSC COMPLAINT DOCKET NO. 327-04

ORDER NO. 6407

This 4th day of May 2004, the Commission determines and Orders the following:

1. On April 13, 2004, Delmarva Power & Light Company, d/b/a Conectiv Power Delivery ("Conectiv"), filed with the Commission a Master License Agreement for Pole Attachments between Conectiv and Fiber Technologies Networks, LLC ("Fiber Tech"), dated March 10, 2004. The Agreement contains negotiated annual attachment rates per pole and per foot of conduit use to be used to compute annual payments. The Agreement is for an initial three-year term. The Commission docketed this filing as PSC Docket No. 04-136.

2. On April 16, 2004, Fiber Tech filed a formal complaint with this Commission. The Complaint names Conectiv as the Respondent. In this Complaint, Fiber Tech alleges that it has contracted with a business in Delaware to build a fiber-optic network by August 2004, which will require it to attach a portion of its network to

approximately 21 miles of poles owned and controlled by Conectiv. Fiber Tech further alleges that Conectiv is denying it access to Conectiv's poles by imposing unreasonable and discriminatory rates, terms, and conditions on Fiber Tech for such access. Fiber Tech also alleges that Conectiv's actions are in violation of the Pole Attachment Agreement recently filed with the Commission and docketed as PSC Docket 04-136.

3. The Complaint and the Pole Attachment Agreement are subject to the Commission's jurisdiction under 26 *Del. C.* §201(a) and 47 U.S.C. §224(c), since Delaware has certified that it has rules and regulations that regulate pole attachments.

4. The Complaint alleges that this Commission's rules state that the rates, terms, and conditions offered by a pole owner to an attaching entity must be just and reasonable, non-discriminatory and give consideration to the interests of the subscribers of the attaching entity, as well as the interests of the consumers of the public utility (PSC Regulation Docket No. 16, §7.1.3).

5. Fiber Tech alleges that Conectiv is not providing Fiber Tech access to Conectiv's poles in a manner that is just, reasonable, or non-discriminatory, which will have adverse affects on the interests of its shareholders, as well as Conectiv's ratepayers in the State of Delaware. Accordingly, it seeks to bring this action under the Commissions regulations governing tariffs, which set forth rates, terms and conditions for the attachment to any pole, duct, conduit, right-of-way, or other similar facilities of any public utility to

halt the alleged illegal, unreasonable, and discriminatory conduct of Conectiv.

6. Fiber Tech has requested that it be granted interim and temporary relief on an expedited basis to construct a temporary network on Conectiv's poles. It alleges that the network needs to be operational by August 15, 2004 and that it will require eight weeks to install and test the network. Fiber Tech seeks to commence the installation no later than May 31, 2004. As part of its relief, Fiber Tech requests that it be allowed to deploy its network using temporary attachments to preserve the status quo and insure the effectiveness of any Commission decision regarding Conectiv's construction standards, cost allocation practices, and charges.

7. Pursuant to Rule 15(b) of the Commission's Rules of Practice and Procedure, the Secretary of the Commission has served on Conectiv a copy of the Complaint filed by Fiber Tech suggesting that the two dockets, PSC Complaint Docket No. 327-04 and PSC Docket No. 04-136, be consolidated for purposes of consideration by the Commission. In addition, because Fiber Tech has requested interim relief on an expedited schedule, the Commission Staff has proposed a procedural schedule, which would bring the matter before the Commission on an expedited basis by May 31, 2004.

8. The Commission requested that all parties be present at its May 4, 2004 meeting to discuss the proposed schedule and any objections to it, at which time the Commission heard from all interested parties with regard to the proposed schedule and the need for expedited relief. Because the Commission feels that there is an

allegation of the possibility of the loss of a major customer by the Complainant, the grounds for an expedited hearing in this proceeding are justified. In addition, the consolidation of the two dockets, as proposed by Staff, would be administratively efficient.

Now, therefore, **IT IS ORDERED:**

1. That PSC Complaint Docket No. 327-04 and PSC Docket No. 04-136 shall be consolidated for purposes of consideration by the Commission.

2. That sufficient reason exists for Conectiv to file an answer in less than 20 days, as provided for in the Commission's Rules of Practice 15 and 16. Accordingly, Conectiv's answer shall be filed on or before May 10, 2004.

3. That, by May 19, 2004, the parties are to file any supporting testimony and/or documents related to the interim relief requested. A hearing well be held before the Commission on May 25, 2004.

4. That, pursuant to 26 *Del. C.* §502 and 29 *Del. C.* ch. 101, William F. O'Brien is designated as Hearing Examiner for this matter and instructed to review the materials submitted by the parties in this proceeding and to assist the Commission in its deliberations at the hearing on May 25, 2004, as well as to assist the Commission in drafting any Order that may result from said hearing. In addition, as to those matters that are not subject to Fiber Tech's interim relief request, the Hearing Examiner is instructed to conduct such hearings, including evidentiary hearings, as may be necessary to afford Staff, Conectiv, and the other parties a fair opportunity to present evidence

concerning those issues described in the Complaint and Conectiv's Answer. Hearing Examiner O'Brien shall, on the basis of the evidence presented, recommend proposed findings and conclusions for consideration by the Commission concerning those issues. The Hearing Examiner is specifically delegated the authority to grant or deny a petition seeking leave to intervene and also to determine under 26 *Del. C.* §102(a), the form and manner of public notice to be given concerning the future proceedings in this matter.

5. That James McC. Geddes, Esquire is designated as Rate Counsel for this matter. Conectiv is hereby placed on notice that it will be liable for the cost of this proceeding, pursuant to 26 *Del. C.* §114(b).

6. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary and proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary