

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE**

IN THE MATTER OF THE ADOPTION OF )  
REGULATIONS GOVERNING NOTICE TO BE )  
GIVEN BY REGULATED UTILITIES TO THE ) PSC REGULATION DOCKET NO. 23  
COMMISSION OF THE INTENT TO INCUR )  
SHORT-TERM INDEBTEDNESS )  
(OPENED APRIL 11, 1989) )

IN THE MATTER OF THE APPLICATION OF )  
VERIZON ELAWARE INC., FOR A WAIVER )  
OF THE NOTICE REQUIREMENTS IN PSC ) PSC DOCKET NO. 05-001  
REGULATION DOCKET NO. 23 )  
(FILED FEBRUARY 27, 2005) )

**ORDER NO. 6602**

This 26<sup>th</sup> day of April, 2005, the Commission determines and Orders the following:

1. In 1990, this Commission adopted a regulation that, after a certain threshold, precludes any public utility from issuing or borrowing any short-term debt unless the utility provides prior written notice of such issuance or borrowing to this Commission. See "Requirements for Notice to the Commission Concerning the Intent to Incur Certain Short Term Indebtedness" (adopted by PSC Order No. 3118 (Jan. 19, 1990); eff. Mar. 1, 1990).<sup>1</sup> For purposes of this regulation, "short-term debt" is defined as debt due in one year or less and not otherwise subject to Commission pre-approval under the provisions of

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<sup>1</sup>Hereafter called the "Reg. Dckt. 23 regulation:" Cf. 16 U.S.C. § 824(e) (similar provision under Federal Power Act requiring regulated utility to provide prompt post-issuance regulatory notice of issuance of short-term debt).

26 Del. C. § 215(a).<sup>2</sup> The notice requirement is triggered when the amount of the contemplated new short-term debt, after being added to the utility's then outstanding short-term debt, will total an amount exceeding ten percent of the utility's total capitalization. The notice must be given at least fifteen days in advance of the issuance, but can be provided via a quarterly or annual report, forecasting the utility's anticipated short-term debt requirements.<sup>3</sup>

2. Things have changed since 1990 when the Reg. Dckt. 23 regulation was adopted. On the financing side, the General Assembly and Governor have authorized public utilities to file for Commission approval of three-year financing plans, thus lifting the burden for the utility to obtain individual approval for each capital (stock or long-term debt) issuance. 26 Del. C. § 215(e) (2004 Supp.). And, on the telecommunications regulatory side, the General Assembly adopted the "Telecommunications Technology Investment Act" ("TTIA"), an alternate regulatory plan for electing telecommunications carriers. 26 Del. C. §§ 704-711 (2004 Supp.). Under the TTIA, certain services may be found "competitive" (and, hence, not price regulated) while the prices for "basic services" would be determined - not by "cost-of-service" rate proceedings - but through a "price cap" formula, with

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<sup>2</sup>When the contemplated short-term debt will be used to repurchase or retire long-term securities previously approved by the Commission such issuance is excluded from the definition of "short-term debt" subject to the notice requirement.

<sup>3</sup>In urging adoption of the regulation in 1990, Staff asserted that the regulation was a "notice" requirement that neither contemplates nor requires Commission approval for the utility to incur the proposed short-term debt. The purpose, Staff said, was "to provide 'early warning' of the use of short-term debt instruments to purchase major assets without Commission knowledge or approval of such financing." Hrg. Exam. Rpt. at pp. 9 & 10 (Nov. 13, 1989) (accompanying PSC Order No. 3118 (Jan. 16, 1990)).

price changes geared to annual fluctuations in a national price index. 26 Del. C. §§ 704-711 (2004 Supp.). Under such "price cap" regime - which shifts the focus to the "prices" of services and not the "earnings" of the utility - questions concerning the impact of particular utility financings (and the risks of over-capitalization) have less significance: the utility's regulated rates are constrained by the pricing formula regardless of the utility's security obligations.

3. Verizon Delaware Inc. ("VZ-DE") has, since 1994, chosen to be regulated under the TTIA. Its prices for regulated basic services are constrained by the TTIA's "price cap index."<sup>4</sup> Moreover, since 1995, VZ-DE has filed three-year financing plans under § 215(e) related to the issuance of contemplated long-term debt securities.

4. On February 7, 2005, VZ-DE filed a letter application asking the Commission to waive the requirements of the Reg. Dckt. 23 regulation as it applies to short-term debt issuances by VZ-DE. In its letter, VZ-DE reports that as an operating subsidiary of the corporate parent Verizon Communications Inc., it does not issue (to the market) short-term debt in its own name; rather, it accesses short-term debt funds via a Verizon centralized funding entity which serves all of Verizon's local operating subsidiaries. Moreover, VZ-DE

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<sup>4</sup>The rules adopted under the TTIA do require VZ-DE to submit some reports about its costs in providing lesser- or non- regulated services. See "Rules and Regulations for Implementing the Telecommunications Technology Investment Act" §§ 3.9(4), (5); 3.10(4), (5) (adopted by PSC Findings, Opinion, and Order No. 4821 (June 9, 1998)). The TTIA Rules use a "total service incremental costs" methodology to determine the initial price for new basic services and to detect the possibility of cross-subsidization of various types of services. Id. at § 7.0.

emphasizes that, under the TTIA, its regulated rates are no longer determined on a cost-of-service basis and that it uses three-year financing plans to obtain Commission approval for its long-term security issuances. Given these factors, VZ-DE argues, its continued compliance with the notice of short-term debt obligations imposed by the Reg. Dckt. 23 regulation, serves no needed purpose. Accordingly, VZ-DE asks that the requirement to provide such notices now be lifted from it.

5. Staff recommends that VZ-DE's request be granted. According to Staff, given that VZ-DE is no longer subject to the traditional rate base/rate of return rate methodology - which requires a detailed analysis of the company's capitalization - there is no continued necessity for VZ-DE to provide the notice of short-term debt transactions called for by the Reg. Dckt. 23 regulation.

6. The Commission accepts Staff's recommendations. As noted above, the Commission's role of overseeing an entity's capitalization is significantly diminished under a "price cap" regime of regulation, such as the TTIA.<sup>5</sup> Moreover, the Commission notes that the requirement of the Reg. Dckt. 23 regulation is only to provide notice; it is not a mandate that the utility obtain prior Commission approval for its short-term issuance. In the context of a utility regulated under a "price cap" regime, it is not clear what benefits accrue from such

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<sup>5</sup>Recently, the Commission accepted a three-year financing plan filed by VZ-DE that simply posited various financings of up to \$125 million to occur through the year 2007. That plan suggested that the timing and amount of such long-term issuances would be controlled by factors including its "current and expected short-term debt issues." The plan also noted that the proceeds from such contemplated long-term securities would be used to refinance both maturing long-term debt and maturing short-term notes payable.

prior notice of short-term debt.<sup>6</sup> Finally, one premise for the Reg. Dckt. 23 rule was apparently to allow the Commission to monitor situations where a utility would use short-term debt to finance asset acquisitions and thus render Commission approval of any later superceding long-term debt obligation largely superfluous.<sup>7</sup> Yet now, the provisions of § 215(e) minimize the Commission's need to scrutinize each long-term issuance.<sup>8</sup>

7. Consequently, the Commission will no longer enforce the requirements of the Reg. Dckt. 23 regulation, pertaining to notices of short-term debt issuances, against VZ-DE. Such non-enforcement will continue so long as VZ-DE remains subject to price regulation under the TTIA. At the time in the future when VZ-DE might no longer be subject to such price-cap regulation regime, the Commission will then decide the need for VZ-DE to then comply with the notice requirements of the Reg. Dckt. 23 regulation. Until such time as the Commission makes such a determination, VZ-DE need not provide notices of short-term debt issuances as required by the rule adopted in Regulation Docket No. 23.

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<sup>6</sup>Historically, VZ-DE has submitted to the Commission, on an annual basis, an overall summary of its (and its parent's) financial positions. Those documents usually include an overview of outstanding long- and short-term securities.

<sup>7</sup>Cf. Diamond State Tel. Co. v. Public Service Commission, 367 A.2d 644, 648 (1976) (suggesting approval authority under § 215 for long-term securities was meant to police stock issuances for inadequate consideration or for another illegal purpose).

<sup>8</sup>See n. 5 above.

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

1. That, for the reasons set forth in the body of this Order, the Commission will no longer enforce the notice requirements of the "Requirements for Notice to the Commission Concerning the Intent to Incur Certain Short Term Indebtedness," as adopted in PSC Order No. 3118 (Jan. 16, 1990), against Verizon Delaware Inc. Such non-enforcement shall continue so long as Verizon Delaware Inc., remains subject to price regulation under 26 Del. C. §§ 704-711. Verizon Delaware Inc., need not provide notices of short-term debt issuances as defined and required in that regulation until the Commission might hereafter direct.

2. That the non-enforcement set forth in ordering paragraph 1 shall not alter any obligations of Verizon Delaware Inc., under the provisions of 26 Del. C. § 215. In addition, such non-enforcement shall not preclude the Commission from requiring Verizon Delaware Inc., to provide, upon request, reports related to its short-term debt issuances if the Commission might find such a report necessary, or appropriate, in its regulation of Verizon Delaware Inc.

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

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae  
Chair

/s/ Joshua M. Twilley  
Vice Chair

