

**UNITED STATES DISTRICT COURT
District of Maine**

**FRONTIER COMMUNICATIONS)
CORPORATION,)**

Plaintiff)

v.)

**BARRETT PAVING MATERIALS,)
INC., et al,)**

Defendants)

Civil No. 07-113-B-S

**ORDER AFFIRMING THE
RECOMMENDED DECISION OF THE MAGISTRATE JUDGE**

The United States Magistrate Judge filed with the Court on October 19, 2010, her Recommended Decision (Docket No. 253). Plaintiff filed its Objection to the Recommended Decision (Docket No. 255) on November 5, 2010. Defendant UGI Utilities, Inc. filed its Response to Plaintiff's Objection to the Recommended Decision (Docket No. 258) on November 18, 2010. In addition, Plaintiff filed an Appeal of the Magistrate's Recommended Decision (Docket No. 256). Defendant UGI Utilities, Inc. filed its Response to Plaintiff's Appeal (Docket No. 257).

I have reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; I have made a de novo determination of all matters adjudicated by the Magistrate Judge's Recommended Decision; and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in her Recommended Decision, and determine that no further proceeding is necessary.

1. It is therefore **ORDERED** that the Recommended Decision of the Magistrate Judge is hereby **AFFIRMED**.

2. It is hereby **ORDERED** that Plaintiff's Motion for Leave to Supplement Pleadings and Substitute Expert (Docket No. 247) is **DENIED**.
3. It is hereby **ORDERED** that Defendant UGI's Amended Motion for Summary Judgment (Docket No. 243) is **GRANTED**.
4. It is also hereby **ORDERED** that Plaintiff's Appeal of the Magistrate Judge's Recommended Decision (Docket No. 256) is **DENIED**.

/s/George Z. Singal

U.S. District Judge

Dated this 19th day of November, 2010.

Plaintiff

**FRONTIER
COMMUNICATIONS
CORPORATION**
formerly known as
**CITIZENS COMMUNICATIONS
COMPANY**

represented by **JOHN S. HAHN**
MAYER, BROWN LLP
1999 K STREET, N.W.
WASHINGTON, DC 20009
(202) 263-3000
Email: jhahn@mayerbrown.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MARTHA C. GAYTHWAITE
FRIEDMAN, GAYTHWAITE,
WOLF & LEAVITT
SIX CITY CENTER
PO BOX 4726
PORTLAND, ME 04112-4726
761-0900
Email: mgaythwaite@fgwl-law.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

BRETT R. LELAND , ESQ.
FRIEDMAN, GAYTHWAITE,
WOLF & LEAVITT
SIX CITY CENTER
PO BOX 4726
PORTLAND, ME 04112-4726
207-761-0900
Email: bleland@fgwl-law.com
ATTORNEY TO BE NOTICED

JEFFREY A. MEYERS
NELSON, KINDER, MOSSEAU &
SATURLEY, P.C.
99 MIDDLE STREET
MANCHESTER, NH 03101
603-647-1800
Email: jmeyers@nkms.com
TERMINATED: 08/28/2009
ATTORNEY TO BE NOTICED

RHETT PRESTON MARTIN
MAYER, BROWN LLP
1999 K STREET, N.W.
WASHINGTON, DC 20009
202-263-3404
Email: rmartin@mayerbrown.com
ATTORNEY TO BE NOTICED

V.

Defendant

**BARRETT PAVING
MATERIALS INC**
TERMINATED: 02/05/2009

represented by **DAVID B. VAN SLYKE**
PRETI, FLAHERTY, BELIVEAU,
PACHIOS & HALEY, LLP
PO BOX 9546
PORTLAND, ME 04112-9546
791-3000
Email: dvanslyke@preti.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JOHN P. MCVEIGH
PRETI, FLAHERTY, BELIVEAU,
PACHIOS & HALEY, LLP
PO BOX 9546
PORTLAND, ME 04112-9546
791-3000
Fax: 791-3111
Email: jmcveigh@preti.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MICHAEL KAPLAN
PRETI, FLAHERTY, BELIVEAU,

PACHIOS & HALEY, LLP
PO BOX 9546
PORTLAND, ME 04112-9546
791-3000
Email: mkaplan@preti.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

BEAZER EAST INC
TERMINATED: 02/05/2009

represented by **JEFFREY A. THALER**
BERNSTEIN, SHUR
100 MIDDLE STREET
P.O. BOX 9729
PORTLAND, ME 04104-5029
207-774-1200
Email: jthaler@bernsteinshur.com
ATTORNEY TO BE NOTICED

MICHAEL KAPLAN
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

**CENTERPOINT ENERGY
RESOURCES CORP**
TERMINATED: 09/22/2009

represented by **CHARLES T. WEHLAND**
JONES, DAY
77 WEST WACKER DRIVE
SUITE 3500
CHICAGO, IL 60601-1692
312-782-3939
Email: ctwehland@jonesday.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JOHN H. GRADY
JONES DAY
1420 PEACHTREE ST, N.E.
ATLANTA, GA 30309
404-521-3939
Email: jhgrady@jonesday.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

LAURA M. EARL
JONES, DAY
77 WEST WACKER DRIVE

SUITE 3500
CHICAGO, IL 60601-1692
312-782-3939
Email: learl@jonesday.com
TERMINATED: 04/06/2010
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

DAVID S. SHERMAN, JR
DRUMMOND WOODSUM
84 MARGINAL WAY
SUITE 600
PORTLAND, ME 04101-2480
207-772-1941
Fax: 207-772-3627
Email: dshermanecf@dwmlaw.com
ATTORNEY TO BE NOTICED

Defendant

DEAD RIVER COMPANY
TERMINATED: 07/22/2009

represented by **LESLIE LYON ANDERSON**
DEAD RIVER COMPANY
TWO MONUMENT SQUARE #900
PORTLAND, ME 04112-8577
207-773-5841
Email:
leslie.anderson@deadriv.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ROBERT S. FRANK
MAINE HEALTH
465 CONGRESS STREET
SUITE 600
PORTLAND, ME 04101-3537
207-775-7001
Email: Frankr1@mainehealth.org
TERMINATED: 07/02/2009
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

PAN AM RAILWAYS INC

represented by **ERIC L. HIRSCHHORN**
WINSTON & STRAWN, LLP
1700 K STREET, N.W.
WASHINGTON, DC 20006-3817

(202) 282-5706
Email: ehirschhorn@winston.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JOHN FEHRENBACH
WINSTON & STRAWN, LLP
1700 K STREET, N.W.
WASHINGTON, DC 20006-3817
(202) 282-5925
Email: jfehrenbach@winston.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

FREDERICK F. COSTLOW
RICHARDSON, WHITMAN,
LARGE & BADGER
P.O. BOX 2429
ONE MERCHANTS PLAZA, SUITE
603
BANGOR, ME 04402-2429
(207) 945-5900
Email: fcostlow@rwlb.com
ATTORNEY TO BE NOTICED

Defendant

**HONEYWELL
INTERNATIONAL INC**
TERMINATED: 02/05/2009

represented by **GREGORY A. BIBLER**
GOODWIN PROCTOR LLP
EXCHANGE PLACE
53 STATE STREET
BOSTON, MA 02109
(617) 570-1000
Email: gbibler@goodwinprocter.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PAUL E. NEMSER
GOODWIN PROCTOR LLP
EXCHANGE PLACE
53 STATE STREET
BOSTON, MA 02109
(617)570-1000
Email:
pnemser@goodwinprocter.com
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

ROBERT H. FITZGERALD

GOODWIN PROCTOR LLP

EXCHANGE PLACE

53 STATE STREET

BOSTON, MA 02109

(617)570-1000

Email:

rfitzgerald@goodwinprocter.com

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

FRANCIS G. KELLEHER

GOODWIN PROCTOR

EXCHANGE PLACE

53 STATE STREET

BOSTON, MA 02109-2881

617-570-1000

Email:

fkelleher@goodwinprocter.com

ATTORNEY TO BE NOTICED

MICHAEL KAPLAN

(See above for address)

ATTORNEY TO BE NOTICED

Defendant

**MAINE CENTRAL RAILROAD
COMPANY**

represented by **ERIC L. HIRSCHHORN**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

JOHN FEHRENBACH

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

CAROL I. EISENBERG

RICHARDSON, WHITMAN,

LARGE & BADGER

465 CONGRESS STREET

P.O. BOX 9545

PORTLAND, ME 04112-9545

(207) 774-7474

Email: ceisenberg@rwlb.com
TERMINATED: 12/04/2008

FREDERICK F. COSTLOW
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

**NORTH AMERICAN UTILITY
CONSTRUCTION COMPANY**
TERMINATED: 06/18/2009

Defendant

UGI UTILITIES INC

represented by **E. TUPPER KINDER**
NELSON, KINDER, MOSSEAU &
SATURLEY, P.C.
99 MIDDLE STREET
MANCHESTER, NH 03101
(603) 647-1800
Fax: 603-647-1900
Email: ekinder@nkms.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JAY VARON
FOLEY & LARDNER
3000 K STREET NORTHWEST
WASHINGTON, DC 20007
(202) 672-5300
Email: jvaron@foleylaw.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

CHRISTOPHER D. HAWKINS
NELSON, KINDER, MOSSEAU &
SATURLEY, P.C.
99 MIDDLE STREET
MANCHESTER, NH 03101
(603)647-1800
Email: chawkins@nkms.com
ATTORNEY TO BE NOTICED

JEFFREY A. MEYERS
(See above for address)

TERMINATED: 08/28/2009
ATTORNEY TO BE NOTICED

Defendant

**US ARMY CORPS OF
ENGINEERS**

TERMINATED: 04/20/2009

represented by **MICHELLE T. DELEMARRE**
U.S. DEPARTMENT OF JUSTICE
ADMIRALTY TRIAL DIVISION
P.O. BOX 14271
WASHINGTON, DC 20044-4271
(202) 616-4037
Email:
michelle.delemarre@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PERRY M. ROSEN
US DEPARTMENT OF JUSTICE
ENVIRONMENTAL DEFENSE
SECTION
PO BOX 23986
WASHINGTON, DC 20026-3986
202-353-7792
Email: perry.rosen@usdoj.gov
TERMINATED: 04/20/2009
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

STEPHEN E. CROWLEY
U.S. DEPARTMENT OF JUSTICE
ENVIRONMENTAL DEFENSE
SECTION
P.O. BOX 23986
WASHINGTON, DC 20026-3986
202-514-0165
Email: stephen.crowley@usdoj.gov
TERMINATED: 09/22/2008
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Intervenor

STATE OF MAINE

TERMINATED: 02/05/2009

represented by **MARY M. SAUER**
MAINE ATTORNEY GENERAL'S
OFFICE
SIX STATE HOUSE STATION
AUGUSTA, ME 04333-0006

(207)626-8579
Email: mary.sauer@maine.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Intervenor

**MAINE DEPARTMENT OF
ENVIROMENTAL
PROTECTION**
TERMINATED: 02/05/2009

represented by **MARY M. SAUER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Intervenor

STATE OF MAINE
TERMINATED: 07/22/2009

represented by **MARY M. SAUER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Intervenor

**MAINE DEPARTMENT OF
ENVIROMENTAL
PROTECTION**
TERMINATED: 07/22/2009

represented by **MARY M. SAUER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Counter Claimant

**BARRETT PAVING
MATERIALS INC**
TERMINATED: 02/05/2009

represented by **DAVID B. VAN SLYKE**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JOHN P. MCVEIGH
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MICHAEL KAPLAN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Counter Defendant

**FRONTIER
COMMUNICATIONS
CORPORATION**

represented by **BRETT R. LELAND , ESQ.**
(See above for address)
LEAD ATTORNEY

TERMINATED: 02/05/2009
formerly known as
CITIZENS COMMUNICATIONS
COMPANY

ATTORNEY TO BE NOTICED

JOHN S. HAHN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MARTHA C. GAYTHWAITE
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Counter Claimant

**HONEYWELL
INTERNATIONAL INC**
TERMINATED: 02/05/2009

represented by **GREGORY A. BIBLER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PAUL E. NEMSER
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ROBERT H. FITZGERALD
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

FRANCIS G. KELLEHER
(See above for address)
ATTORNEY TO BE NOTICED

V.

Counter Defendant

**FRONTIER
COMMUNICATIONS
CORPORATION**
TERMINATED: 02/05/2009
formerly known as
CITIZENS COMMUNICATIONS
CORPORATION
formerly known as
CITIZENS COMMUNICATIONS
COMPANY

represented by **BRETT R. LELAND , ESQ.**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JOHN S. HAHN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MARTHA C. GAYTHWAITE
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Counter Claimant

BEAZER EAST INC
TERMINATED: 02/05/2009

represented by **JEFFREY A. THALER**
(See above for address)
ATTORNEY TO BE NOTICED

V.

Counter Defendant

**FRONTIER
COMMUNICATIONS
CORPORATION**
TERMINATED: 02/05/2009
formerly known as
**CITIZENS COMMUNICATIONS
COMPANY**

represented by **BRETT R. LELAND , ESQ.**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JOHN S. HAHN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MARTHA C. GAYTHWAITE
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Counter Claimant

UGI UTILITIES INC

represented by **E. TUPPER KINDER**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JAY VARON
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

CHRISTOPHER D. HAWKINS
(See above for address)
ATTORNEY TO BE NOTICED

JEFFREY A. MEYERS

(See above for address)
TERMINATED: 08/28/2009
ATTORNEY TO BE NOTICED

V.

Counter Defendant

**FRONTIER
COMMUNICATIONS
CORPORATION**
formerly known as
**CITIZENS COMMUNICATIONS
COMPANY**

represented by **BRETT R. LELAND , ESQ.**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JOHN S. HAHN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MARTHA C. GAYTHWAITE
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

RHETT PRESTON MARTIN
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

DEAD RIVER COMPANY
TERMINATED: 07/22/2009

represented by **LESLIE LYON ANDERSON**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ROBERT S. FRANK
(See above for address)
TERMINATED: 07/02/2009
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Counter Defendant

**FRONTIER
COMMUNICATIONS
CORPORATION**
formerly known as

represented by **BRETT R. LELAND , ESQ.**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

CITIZENS COMMUNICATIONS
COMPANY

JOHN S. HAHN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MARTHA C. GAYTHWAITE
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

RHETT PRESTON MARTIN
(See above for address)
ATTORNEY TO BE NOTICED

ThirdParty Plaintiff

DEAD RIVER COMPANY
TERMINATED: 07/22/2009

represented by **LESLIE LYON ANDERSON**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ROBERT S. FRANK
(See above for address)
TERMINATED: 07/02/2009
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

ThirdParty Defendant

ROBINSON SPEIRS
TERMINATED: 07/22/2009

represented by **SAMUEL W. LANHAM , JR.**
LANHAM BLACKWELL, P.A.
470 EVERGREEN WOODS
BANGOR, ME 04401
(207) 942-2898
Email:
slanham@lanhamblackwell.com
TERMINATED: 07/22/2009
ATTORNEY TO BE NOTICED

ThirdParty Defendant

ELIZABETH H SPEIRS
TERMINATED: 07/22/2009

represented by **SAMUEL W. LANHAM , JR.**
(See above for address)
TERMINATED: 07/22/2009
ATTORNEY TO BE NOTICED

ThirdParty Defendant

ROBINSON SPEIRS, JR
TERMINATED: 07/22/2009

represented by **SAMUEL W. LANHAM , JR.**
(See above for address)
TERMINATED: 07/22/2009
ATTORNEY TO BE NOTICED

ThirdParty Defendant

MARY S PRICE
TERMINATED: 07/22/2009

represented by **SAMUEL W. LANHAM , JR.**
(See above for address)
TERMINATED: 07/22/2009
ATTORNEY TO BE NOTICED

ThirdParty Defendant

NANCY S DAWSON
TERMINATED: 07/22/2009

represented by **SAMUEL W. LANHAM , JR.**
(See above for address)
TERMINATED: 07/22/2009
ATTORNEY TO BE NOTICED

ThirdParty Defendant

JULIE ANN MACMANNIS
TERMINATED: 07/22/2009

represented by **SAMUEL W. LANHAM , JR.**
(See above for address)
TERMINATED: 07/22/2009
ATTORNEY TO BE NOTICED

Counter Claimant

PAN AM RAILWAYS INC

represented by **ERIC L. HIRSCHHORN**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JOHN FEHRENBACH
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

FREDERICK F. COSTLOW
(See above for address)
ATTORNEY TO BE NOTICED

Counter Claimant

**MAINE CENTRAL RAILROAD
COMPANY**

represented by **ERIC L. HIRSCHHORN**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JOHN FEHRENBACH
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

CAROL I. EISENBERG
(See above for address)
TERMINATED: 12/04/2008

FREDERICK F. COSTLOW
(See above for address)
ATTORNEY TO BE NOTICED

V.

Counter Defendant

**FRONTIER
COMMUNICATIONS
CORPORATION**

represented by **JOHN S. HAHN**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

MARTHA C. GAYTHWAITE
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

BRETT R. LELAND , ESQ.
(See above for address)
ATTORNEY TO BE NOTICED

JEFFREY A. MEYERS
(See above for address)
TERMINATED: 08/28/2009
ATTORNEY TO BE NOTICED

RHETT PRESTON MARTIN
(See above for address)
ATTORNEY TO BE NOTICED

ThirdParty Plaintiff

**MAINE CENTRAL RAILROAD
COMPANY**

represented by **ERIC L. HIRSCHHORN**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JOHN FEHRENBACH
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

CAROL I. EISENBERG
(See above for address)
TERMINATED: 12/04/2008

FREDERICK F. COSTLOW
(See above for address)
ATTORNEY TO BE NOTICED

ThirdParty Plaintiff

PAN AM RAILWAYS INC

represented by **ERIC L. HIRSCHHORN**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JOHN FEHRENBACH
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

FREDERICK F. COSTLOW
(See above for address)
ATTORNEY TO BE NOTICED

V.

ThirdParty Defendant

EDWARD BARRETT
*Individually and as City Manager for
the City of Bangor*

represented by **JOHN K. HAMER**
RUDMAN & WINCHELL
84 HARLOW STREET
P.O. BOX 1401
BANGOR, ME 04401
945-4400
Email: jhamer@rudman-
winchell.com
ATTORNEY TO BE NOTICED

PAUL W. CHAIKEN
RUDMAN & WINCHELL
84 HARLOW STREET
P.O. BOX 1401

BANGOR, ME 04401
(207) 992-2301
Email: pchaiken@rudman-
winchell.com
ATTORNEY TO BE NOTICED

ThirdParty Defendant

CITY OF BANGOR

represented by **JOHN K. HAMER**
(See above for address)
ATTORNEY TO BE NOTICED

PAUL W. CHAIKEN
(See above for address)
ATTORNEY TO BE NOTICED

ThirdParty Defendant

NORMAN HEITMANN
*Individually and as City Attorney for
the City of Bangor*

represented by **JOHN K. HAMER**
(See above for address)
ATTORNEY TO BE NOTICED

PAUL W. CHAIKEN
(See above for address)
ATTORNEY TO BE NOTICED