March 10, 2005

Via E-Filing and US Mail

Public Utility Commission of Oregon
550 Capitol St., NE, No. 215
P.O. Box 2148
Salem, OR 97308-2148

Attention: **Commission Filing Center**:

Re: UM-1087 – PGE Comments

Enclosed is the original signed document and one copy for filing.

If you have any questions or require further information, please call me at (503) 464-8858 Please direct all formal correspondence and requests to the following e-mail address pge.opuc.filings@pgn.com.

Sincerely,

/s/: Barbara W. Halle
Assistant General Counsel

Encls.

cc: Service List

G:\MS-WORD\MMD\Cvr Ltr - Comments.doc

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1087

CENTRAL LINCOLN PEOPLE'S UTILITY DISTRICT,	)	
	)	
Complainant,	)	COMMENTS OF PORTLAND GENERAL ELECTRIC COMPANY
	)	
v.	)	
VERIZON NORTHWEST INC.,	)	
	)	
Defendant.	)	

Portland General Electric Company ("PGE") appreciates the opportunity to comment as an interested party on the proposed contract that was part of Order No. 05-042 issued on January 19, 2005. As a general matter, PGE wishes to point out that its comments will be directed at the specific language and methodologies contained in the proposed contract, but in doing so it assumes that the aim of this docket is not to create a single contract standard for what is just and reasonable under Oregon law, and that other contracting parties will be free to include other terms and conditions in their contracts as long as they meet applicable regulatory and statutory standards.

With regard to one specific matter, PGE believes that the contract should contain a section that addresses violations of the National Electrical Safety Code: who is responsible for correcting them, in what time frame, who bears the cost, and what happens if corrections are not made in a timely manner. As this could be added to the contract in a number of different ways, PGE has not included this comment below, where we will discuss individual sections as they appear in the proposed contract.

FOURTH WHEREAS CLAUSE

As the State of Oregon regulates pole attachments, should the parties to a contract decide that federal law is going to apply to specific issues, they should specify which law and which issues in the contract language.

ARTICLE I

A definition of "attachment" should be added, or at least a reference to the Oregon statute, ORS 757.270(1). Also, it should be made clear here that this contract only covers attachments to distribution poles of the utility.

ARTICLE III

Section 3.1. The federal regulations suggest 45 days as a reasonable time period within which a utility should respond to requests to attach to its poles. Oregon law is silent on the subject. PGE believes that 30 days, as the proposed contract designates, might be reasonable in the best case scenario, but there should be a contingency plan built in for circumstances where additional time is needed to process the requests correctly, such as if the utility has to process a large number of requests at the same time. Also, there should be a time frame specified for the requesting party to remove its attachment if the application is denied, and a right of the utility to remove the attachment and recover its related costs if that time frame is not met. This paragraph should also address the situation where an application is deemed accepted if notice is not received within the requisite time period, but a safety violation is caused by the attachment. In that event, the licensee should have a specific time, after notice, to remove its equipment from the pole or correct the violation. Finally, the reference to "all relevant evidence" in the last sentence concerning denial of an application should be eliminated, since at the application stage no one is in the evidence-gathering mode – the word "information" should be adequate.

Section 3.2. There should be a reference to the licensee's right to move facilities to a replacement pole without having to make a separate application for doing so.

Section 3.5a. The reference to an estimate of the cost of making changes should be eliminated, since the utility would not have this information at the time notification is made.

ARTICLE V

Section 5.1. It should be clear in this section that the yearly rental fee is assessed at the time the authorization for the attachment is granted.

Section 5.2. Given that one of the purposes of charging interest on late payments is to encourage paying invoices on time, the interest rate should be "the greater of" the maximum rate permitted by law or 18 percent per annum.

ARTICLE VI

Section 6.1. Given that the pole owner has both the responsibility for maintaining the pole in a safe manner and the right to recover its costs, PGE believes that this section should be rewritten to state that the pole owner has the right to periodically adjust the rates for attachments, but that the licensee has a right to protest those rates. There should be a process specified for this, which should include the OJUA if they will have a role in dispute resolution according to OPUC rules.

ARTICLE IX

Section 9.3. In the first sentence, the words "and disposal" should be added before the comma at the end of the phrase "plus the cost of removal".

Section 9.6. All references to pole top extension fixtures should be eliminated. For safety reasons, this option is not applicable.

Section 9.7. PGE believes that it is reasonable for a pole owner to include some tree trimming costs in the category of "maintenance expense" that is included in rental rates. The costs for tree trimming to facilitate pole access should be shared proportionately by all parties attaching because they all benefit from it.

Section 9.9. It is not clear what is meant by the "pro-rata" expense of non-routine inspections. How is this to be divided? PGE believes that contracts should not be written to discourage inspection activity, and that the pole owner should be able to recover all costs of both routine and non-routine inspections. This is consistent with OAR 860-028-0110(6) and (8) which permits pole owners to recover their actual costs. Further, it should not matter whether non-complying attachments are found during the inspection; the licensee should bear its share of the costs regardless of the outcome.

Section 9.10. PGE believes that it is not reasonable to spread the costs of this Occupancy Survey in annual rent unless it is a system wide survey that is performed for the pole owner. In such event, it would not be appropriate for an individual licensee to participate in the selection of the contractor who will perform the survey work.. If the survey just applies to this individual licensee, then the cost should be billed to, or shared with, just this licensee.

ARTICLE X

Section 10.2. In the fifth sentence, the word "topping" should be added to the phrase "setting, *topping* or lowering poles…"

Section 10.4. This section should contain specific language to allow the pole owner to recover costs for resetting the pole in the same hole, as well as in a different hole.

Section 10.5. This treatment program probably should be subject to new or revised regulations that the Commission might subsequently enact.

Section 10.7. This section should specify that the chemicals for treatment shall be chosen by the pole owner.

ARTICLE XI

Section 11.1. PGE believes the pole owner should also be indemnified by the licensee if a governmental entity assesses costs, damages or penalties against the pole owner that arise from a licensee's failure to move its equipment in a timely manner.

Section 11.2. The words "all of" should be inserted in front of the words "its Equipment".

Section 11.3. All of the second sentence after the word "procedures" should be deleted. Once a party takes ownership of a pole, it should be responsible for disposal of that pole in accordance with whatever governmental requirements are applicable at the time of disposal.

ARTICLE XIII

Section 13.2. This section should be subject to the ordinances or standards published by a local government addressing such criteria.

Section 13.3. PGE believes that the more appropriate way to handle the issue of which contractors are approved to work on the utility's poles is for the utility to provide a list of approved contractors to the licensee from whom the licensee can pick when work must be done by someone other than the utility.

ARTICLE XV

Section 15.4. This section should contain a reference to the procedure to be used if the licensee disputes an invoice that it receives, including appropriate timelines for response and payment. Alternatively, this language could be placed in all sections where invoices are mentioned.

ARTICLE XVIII

Section 18.4. PGE believes that any dispute over what constitutes an equitable apportionment of the costs of this work should be handled by whatever dispute resolution process the parties choose for the contract generally.

ARTICLE XXV

Section 25.3. A new section should be added here which states that in the event the contract is silent on specific processes and penalties, existing rules and regulations of the Commission should apply.

ATTACHMENT A

RENTAL RATE WORKSHEET

As stated in the first paragraph of these comments, PGE assumes that the rate calculation proposed in Attachment A is based specifically on CLPUD's circumstances, and is not intended to dictate the only way to calculate rates for all pole owners. Some pole owners are private companies, and some are publicly owned; some track their costs in a very detailed manner, and some lump certain types of costs together for their own accounting purposes. Different types of pole owners will have different taxes and tax credits applicable to them. Also, to the extent that a pole owner is regulated by the Commission, it will have an authorized rate of return which is established by the Commission and gets factored into pole attachment rates. PGE believes that it is reasonable for any pole owner to be able to recover all of its costs of making poles available to licensees that are permitted under Oregon law, taking into account the differences such as those described above.

PGE wishes to address one specific matter mentioned on page 15 of Order No. 05-042. Costs that are included in carrying charges are never fully recovered by the pole owner, because

a portion of those costs will always be born by the pole owner. To the extent certain costs are incurred because of licensee attachments, such as the salaries of the people involved with "joint use issues" or pole maintenance and operation, the proportion of those costs that can specifically be so attributed should not be incorporated in the carrying charges, but should be recovered directly from licensees either through direct charges or separate components of the rental rate. This is more consistent with OAR 860-028-0110(6) and ORS 757.282(1).

Respectfully submitted,

Barbara W. Halle, OSB No. 88054
Assistant General Counsel
Portland General Electric Company
121 SW Salmon Street, 1WTC-13
Portland, Oregon 97204

CERTIFICATE OF SERVICE

I certify that I have caused to be served the foregoing Portland General Electric Company's Comments of Portland General Electric Company in OPUC Docket No. UM 1087 by First Class U.S. Mail, postage prepaid and properly addressed for mailing, to the persons on the attached list, and by electronic mail to those persons on the electronic service list maintained by the OPUC.

Dated this 11th day of March, 2005.

PORTLAND GENERAL ELECTRIC COMPANY

By______________________________________

Barbara W. Halle, OSB # 88054
Associate General Counsel
Portland General Electric Company
121 SW Salmon Street, 1WTC1300
Portland, OR 97204
Telephone: 503-464-8858
Fax: 503-464-2200

STEPHANIE S ANDRUS DEPARTMENT OF JUSTICE REGULATED UTILITY & BUSINESS SECTION 1162 COURT ST NE SALEM OR 97301-4096 stephanie.andrus@state.or.us	PAUL DAVIES CENTRAL LINCOLN PUD PO BOX 1126 NEWPORT OR 97365-0090 pdavies@cencoast.com
PATRICK G HAGER PORTLAND GENERAL ELECTRIC 121 SW SALMON ST 1WTC0702 PORTLAND OR 97204 patrick.hager@pgn.com	BROOKS HARLOW MILLER NASH LLP 601 UNION ST STE 4400 SEATTLE WA 98101-2352 brooks.harlow@millernash.com
HONG HUYNH MILLER NASH LLP 3400 US BANCORP TOWER 111 SW FIFTH AVE PORTLAND OR 97204-3699 hong.huynh@millernash.com	TIMOTHY J O'CONNELL STOEL RIVES LLP ONE UNION SQUARE 600 UNIVERSITY ST STE 3600 SEATTLE WA 98101-3197 tjoconnell@stoel.com
V DENISE SAUNDERS PORTLAND GENERAL ELECTRIC 121 SW SALMON ST 1WTC1301 PORTLAND OR 97204 denise.saunders@pgn.com	CHARLES M SIMMONS MACPHERSON GINTNER GORDON & DIAZ PO BOX 1270 NEWPORT OR 97365 charles@mggdlaw.com
RENEE WILLER VERIZON NORTHWEST INC PO BOX 1100 BEAVERTON OR 97075 renee.willer@verizon.com	