Portland General Electric Company
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Barbara W. Halle
Assistant General Counsel

March 25, 2005

Via Electronic Filing and U.S. Mail

Oregon Public Utility Commission
Attention: Filing Center
PO Box 2148
Salem OR 97308-2148

Re: CENTRAL LINCOLN PEOPLE'S UTILITY DISTRICT v. VERIZON NORTHWEST, INC.
OPUC Docket No. UM 1087

Attention Filing Center:

Enclosed for filing in the above-captioned docket is Portland General Electric's Responsive Comments for filing in the above-captioned docket. This document is being filed by electronic mail with the Filing Center.

An extra copy of this cover letter is enclosed. Please date stamp the extra copy and return it to me in the envelope provided.

Thank you in advance for your assistance.

Sincerely,

BWH:am

cc: UM 1087 Service List

Enclosure

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1087

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

Portland General Electric Company ("PGE") is providing these additional comments in response to other parties' initial comments on the proposed contract that was part of Order No. 05-042. PGE believes it is important to restate for the record that the point of this docket should not be to create a single contract standard for what is just and reasonable under Oregon law. Other contracting parties should be free to include other terms and conditions in their contracts as long as they meet applicable regulatory and statutory standards. PGE believes that it would be inappropriate to transform this docket, which was opened to resolve a complaint between two parties, into a docket which mandates one way to calculate rates or one acceptable set of terms and conditions which would be generally applicable to all pole owners and all attaching parties, no matter their individual circumstances. If the Commission wishes to do that, it should be done in the context of a *rulemaking*, where all affected parties can participate, offer comments and attempt to persuade others of the correctness of their positions.

Nonetheless, there are issues regarding the reasonableness of the contract under discussion here which relate to the application of the NESC, and of Oregon statutes and rules in

general, which may very well apply to other parties. In particular, PGE agrees with Staff that the requirement that all attachments and equipment comply with the NESC and jurisdictional regulations is a critical overriding provision that should be at the beginning of the contract, and probably has a place in every such contract. One of the primary purposes of the jurisdictional regulations is to provide incentives for the maintenance of safe utility poles in Oregon. To the extent that pole owners can recover all of their costs of maintaining their poles in a safe manner, they will have more of an incentive to do so, and so the Commission's purpose is more likely to be achieved. Reasonable pole attachment contracts, therefore, should generally reflect this philosophy.

As a final general point, PGE does not believe it is appropriate in the context of comments on the terms and conditions of a pole attachment contract that applies to poles in Oregon to include extensive discussion of federal law. The State of Oregon regulates the rates, terms and conditions for pole attachments as permitted by 47 U.S.C. 224(b)(l). The State of Oregon has given the authority to the Commission to promulgate rules for this purpose. ORS 757.273. The standard in ORS 757.273 is that the rates, terms and conditions be "just, fair and reasonable." ORS 757.282 further describes the criteria, and the Commission must apply these criteria in the event of a complaint. The federal law on this subject does not dictate the outcome, although it may provide the Commission with guidance. This should be kept in mind when reviewing the comments filed in this Docket. For example, the comment on page 7 of OCTA's Comments that pole owners are required to grant access to utility's right-of-way, including 'private easements', at no 'additional payment'", is simply not the law in Oregon, flies in the face of state property law, and should be disregarded.

With regard to comments on specific sections of the contract, PGE adds the following:

ARTICLE II

Section 2.2. While PGE agrees with OCTA that excluding certain poles based on voltage is not a useful distinction, PGE wishes to point out that the rental charges should be based on all poles on which attachments by third parties are permitted, not just those in FERC Account 364.

ARTICLE III

Section 3.1. PGE agrees with Verizon and CLPUD that using an electronic information exchange system for the permitting process is an efficient way to make the process work better for all concerned. However, parties should be free to use whatever information systems work best for their particular operations, including a system that a party develops itself.

Also, PGE agrees with Staff that the provision that would allow an application to be deemed approved if the pole owner is silent for a certain period of time is inconsistent with safety and regulatory requirements. Expanding the approval time should give the pole owner enough time to respond, and therefore makes the original language unnecessary.

Section 3.2. One point that should be added to the changes in this section is a requirement that the attaching party notify the pole owner promptly after the work is performed with details sufficient about what was done that the pole owner can update its records.

ARTICLE V

Section 5.2. PGE does not believe that an 18% interest rate is punitive. It is, however, a strong incentive for the attaching party to pay on time, and helps to insure that funds are more readily available to the pole owner to manage its pole plant in a safe manner.

Section 5.4. PGE agrees that the unauthorized attachment penalties in a contract should be tied to the Commission's regulations. PGE believes that the Commission has the authority to

set those penalties at a level that is likely to discourage such attachments. It does so in an open public process in which all interested parties can provide input, and is therefore likely to be an appropriate yardstick for what is reasonable.

ARTICLE IX

Section 9.9. As PGE stated previously, 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. If the pole owner can prove that certain costs are only associated with the administration of joint use activities, those costs should rightfully be born by the licensees, and not included in the calculation of the rental rate. Also, contrary to OCTA's assertion, the pole owner is entitled to recover the costs of non-routine inspections for non-compliance with the contract, not just for suspected safety violations, in accordance with ORS 757.271(2) ("The pole owner also may charge the licensee for any expenses incurred as a result of an unauthorized attachment or any attachment that exceeds safety limits established by rule of the commission.")

With regard to the inclusion of non-routine inspection costs in sanction amounts, PGE disagrees with Central Lincoln's interpretation of the applicable administrative rules. OAR 860-028-0110(6) refers to "special inspections" being a separate charge from the rental rates. Subsection (7) of that rule calls sanctions out as a charge for a specific purpose (i.e. violation of OAR 860-028-0120). If the Commission had intended the cost of "special inspections" to be included in the sanction amount, those two sections of the rule would have been combined. They were not, and so the contract should not be written as if they were.

ARTICLE X

Section 10.2. OCTA has commented with regard to this section that requiring an attaching party to incur costs to transfer its facilities when a pole owner makes changes in its

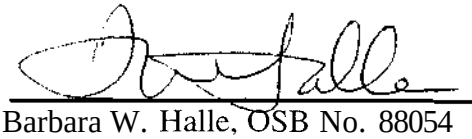
equipment for other than maintenance purposes would violate "the equitable cost allocation principles that are part and parcel of state and federal nondiscriminatory access requirements." However, as Oregon has not adopted the exact language of the cited federal statute in Oregon statutes and regulations, and there is nothing in the Oregon statutes or regulations that would preclude a pole owner from requiring an attaching party from moving its facilities at its own costs under such circumstances, OCTA's comment should not be given any weight. There is no legal requirement in Oregon that the pole owner bear the costs of moving a mere licensee's equipment in order to serve its customers and use its own pole safely. It is a reasonable condition of renting space on someone else's property that the attaching party bear the cost of moving its own equipment.

ARTICLE XVIII

With regard to the comments by OCTA concerning pole owner's costs, please see PGE's comments on Section 10.2, above.

Dated this 25th day of March, 2005.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I have caused to be served the foregoing Responsive 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 the following parties:

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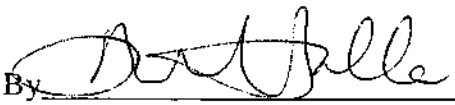
Dated this 25th day of March, 2005.

PORTLAND GENERAL ELECTRIC COMPANY

By 

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