

HARDY MYERS  
Attorney General



PETER D. SHEPHERD  
Deputy Attorney General

**DEPARTMENT OF JUSTICE**  
GENERAL COUNSEL DIVISION

March 11, 2005

Public Utility Commission of Oregon  
Attn: Filing Center  
550 Capitol Street, NE  
Suite 215  
PO Box 2148  
Salem, Oregon 97308-2148

**Re: UM 1087**

Dear Filing Center:

Enclosed for filing please find the Staff Comments re: the Contract.

Thank you for your attention.

Very truly yours,

Stephanie S. Andrus  
Assistant Attorney General

Enc.

c. Service List  
Jerry Murray

1                                   **BEFORE THE PUBLIC UTILITY COMMISSION**  
2                                                           **OF OREGON**  
3                                                           **UM 1087**

4 CENTRAL LINCOLN PEOPLE'S UTILITY  
5 DISTRICT,

STAFF COMMENTS RE: CONTRACT

6                                   Complainants,

7                                   v.

8 VERIZON NORTHWEST, INC.,

9                                   Defendant.

10                   Pursuant to the Commission's directive in Order No. 05-042, Staff of the Public Utility  
11 Commission of Oregon ("staff") provides these technical comments regarding the proposed  
12 contract between Verizon Northwest, Inc. and Central Lincoln People's Utility District that is  
13 attached to Order No. 05-402.<sup>1</sup>

14 **Comment No. 1.** Paragraph 13.1, on pages 12 and 13 of Appendix A should be renumbered as  
15 Paragraph 2.4.

16 **Rationale:** The requirement that all attachments and equipment comply with the National  
17 Electrical Safety Code (NESC) and jurisdictional regulations is a critical overriding provision to  
18 the contract terms and conditions. This statement needs to be placed in the introductory portion  
19 of the contract, not in the middle of document.

20 **Comment No. 2.** Paragraph 3.1 on page 4 of Appendix A should be modified as shown below:

21                   *3.1 Whenever Verizon desires to place its Equipment on any pole owned by the*  
22                   *District, it shall make written application therefore, specifying the Equipment, the*  
23                   *location of the poles in question, and the space desired on each pole. Said*  
24                   *application shall be made on a form acceptable to both Parties and shall be*  
25                   *directed to the District at the address specified in Article XXII of this Agreement.*  
                  *If the application is approved, the District shall, within ~~thirty (30)~~ forty five (45)*  
                  *days after receipt of this application, sign and return a copy of the application to*

26 <sup>1</sup> See Page 20, ordering that "[t]he parties shall file technical comments \* \* \* to the proposed contract and rates set out in Appendix A [of the order]."

1 *the Applicant. ~~If notice is not received from the District within thirty (30) days,~~*  
2 *~~the application shall be deemed approved and Verizon may proceed with the~~*  
3 *~~attachment.~~ If the application is rejected, the District shall, within said ~~thirty (30)~~*  
4 *~~forty five (45)~~ day period, provide oral or written notice of the rejection to*  
5 *Verizon and Verizon shall remove any equipment that may have been placed on*  
6 *the District's pole. Any denial of an application must be in writing and describe*  
7 *with specificity all relevant evidence and information supporting the denial and*  
8 *how such evidence and information relates to the lack of capacity, safety,*  
9 *reliability, or generally applicable engineering standards.*

7 **Rationale:**

- 8 a. Staff believes that 30 days is insufficient time to allow effective safety and engineering  
9 coordination before approval for an attachment is given by the pole owner. In the past in  
10 Oregon, there has been a lack of coordination and agreement between pole owners and  
11 occupants on new attachments that has resulted in numerous safety violations and conflicts.  
12 These violations and conflicts threaten public and worker safety and also reduce the cost  
13 efficiency of Oregon's rights of ways. To reverse this trend, new attachments must be  
14 carefully planned, designed and installed so that NESC violations and conflicts are  
15 prevented. This is true both for the pole owner and attacher. An approval period of 45 days  
16 is more appropriate and is consistent with FCC rules (see 47 CFR §1.1403). Why should  
17 approval time periods for this contract be more restrictive than FCC regulations, unless both  
18 parties can mutually agree that they can and will fully met this commitment in the future?
- 19 b. The fourth sentence in paragraph 3.1 should be deleted. This provision would encourage  
20 reckless behavior, creating both public and worker safety hazards. Verizon should not  
21 proceed with an attachment until it obtains approval from CLPUD. CLPUD should have the  
22 obligation as a responsible pole owner to respond to the attachment application with either  
23 written denial or approval. This requirement is necessary to ensure that the records of both  
24 the pole owner and attacher are complete in the event a dispute develops in the future.  
25 Further, if Verizon attaches without CLPUD agreement, this is a safety violation of NESC  
26 Rule 222. If CLPUC does not provide timely approvals or denials, then Verizon should file a  
complaint in accordance with the contract or PUC regulations.

1 **Comment No. 3.** Paragraph 5.4 on page 7 of Appendix A should be modified as shown below:

2 *5.4 If Verizon attaches Equipment to a pole without obtaining prior authorization*  
3 *from the District in accordance with this Agreement, the District may assess*  
4 *Verizon an authorized attachment charge per pole with an unauthorized*  
5 *attachment of ~~sixty (60)~~ **thirty (30)** times the rental fee for that year. Verizon*  
6 *shall receive a 60 percent reduction if PUC sanction rule provisions (OAR*  
7 *860-028-0140(2)) are met within sixty (60) days. The unauthorized*  
8 *attachment charge shall be payable to the District within ~~thirty (30)~~ sixty (60)*  
9 *days after receipt of the invoice for that charge.*

7 **Rationale:**

8 a. A sanction equal to sixty (60) times the rental fee is abusive in the context of this section, and  
9 is out of line with the PUC's sanction rules. A sanction this high should only be imposed by a  
10 pole owner on an occupant that has neither a contract with the owner, nor has received a specific  
11 permit to attach to a pole. Such penalties need to be high to discourage willful trespass. *See*  
12 OAR 860-028-0130.

13 b. A sanction equal to 30 times the rental fee is more appropriate for the conduct at issue, which  
14 is attaching to a pole without a permit, and is consistent with the provisions in the PUC's  
15 sanction rules (*see* OAR 860-028-0140). Further, in accordance with the PUC's rules, Verizon  
16 should also receive sanction discounts for responsible and timely correction of the unpermitted  
17 attachment. The sanction payments should be extended for 60 days to allow for appropriate  
18 permit application, corrections, and payment to take place per the provisions of OAR 860-028-  
19 0170.

20 **Comment No. 4.** Section 9.9 on page 9 of Appendix A should be modified to include  
21 requirements and deadlines for the correction of lines and equipment that do not meet the  
22 requirements of the contract, the permit, NESC or the Commission's safety regulations.

23 **Rationale:** While this subsection has provisions for performing inspections and recovery of  
24 inspection costs, it does not specify requirements and deadlines for the correction of lines and  
25 equipment that do not meet the requirements of the contract, the permit, the NESC, or the  
26

1 Commission Safety Rules. This subsection fails to discuss any penalty provisions such as those  
2 allowed in Oregon Administrative Rule (OAR) 860-028-0130 through 0180, or those provisions  
3 addressed in subsection 5.4, of this contract, regarding unauthorized attachment. Staff  
4 recommends the inclusion of requirements for deadlines to correct non-compliant lines and  
5 equipment, and the inclusion of penalty provisions for various non-compliance categories.

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1 **Comment No. 5:** The first line of paragraph 9.10 on page 9 of Appendix A should be modified  
2 as follows:

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4 *9.10 The District May conduct an Occupancy Survey anytime after the effective*  
5 *date of this Agreement and not more often than every fifth year, except for*  
*cause, subsequent to each such Occupancy Survey.*

6 **Rationale:** In optimal conditions, where all occupants are diligent in getting all required  
7 permits, a five-year period between occupancy surveys may be satisfactory. However, even with  
8 the penalty provision found in subsection 5.4, five years is a very long period when a needed  
9 review may be contractually blocked. To allow pole owners sufficient means to ensure that  
10 permitting requirements are being adhered to, Staff recommends the contract include a provision  
11 that allows owners to conduct occupancy surveys when there is cause to believe that permitting  
12 requirements are not being adhered to, *e.g.*, when a pattern of non-compliance has been observed  
13 and documented.

14  
15 DATED this \_\_\_\_\_ day of March 2005.

16 Respectfully submitted,

17 HARDY MYERS  
18 Attorney General

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20 \_\_\_\_\_  
21 Stephanie S. Andrus, #92512  
22 Assistant Attorney General  
23 Of Attorneys for Staff of the Public  
24 Utility Commission of Oregon

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of March 2005, I served the within STAFF COMMENTS RE: CONTRACT upon the parties listed below by electronic mail, and by then depositing in the United States Post Office at Salem, Oregon, a full, true and correct copy thereof addressed to:

	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 US BANCORP TOWER 111 SW FIFTH AVE STE 3400 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	

Oregon Public Utility Commission

and prepaying the postage thereon.

Stephanie S. Andrus, #92512  
 Assistant Attorney General  
 Of Attorneys for Staff of Public  
 Utility Commission of Oregon