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**Barbara W. Halle**  
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July 15, 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 the Application for Reconsideration of Order No. 05-583 of Portland General Electric Company 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,

A handwritten signature in black ink, appearing to read "BWHalle", written in a cursive style.

BWH:am

cc: UM 1087 Service List

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1087

CENTRAL LINCOLN PEOPLE’S	)	
UTILITY DISTRICT	)	
	)	
Complainant,	)	APPLICATION FOR
	)	RECONSIDERATION OF
v.	)	ORDER NO. 05-583 OF
	)	PORTLAND GENERAL
VERIZON NORTHWEST INC.,	)	ELECTRIC COMPANY
	)	
Defendant.	)	

Under ORS 756.561 and OAR 860-014-0095, Portland General Electric Company (“PGE”) hereby petitions the Public Utility Commission of Oregon (“Commission”) for Reconsideration of its Order No. 05-583 (“Order”) dated May 16, 2005.

**I. Introduction**

On May 22, 2003, Central Lincoln People’s Utility District (“CLPUD”) filed a Petition for Removal of Pole Attachments which was a complaint against Verizon Northwest, Inc. (“Verizon”). On June 18, 2003, Verizon filed an Answer to Petition, Counter-Complaint, and Application for Waiver against CLPUD. PGE filed a Motion to Intervene in this docket on July 15, 2003, which was conditionally granted on July 17, 2003.

On January 19, 2005, the Commission issued Order No. 05-042, denying CLPUD’s Petition and granting Verizon's Counter-Complaint. In Order No. 05-042, the Commission adopted a proposed contract governing pole attachments between Verizon and CLPUD and asked the parties to file technical comments and negotiated amendments to the proposed contract. PGE actively participated in this process, filing comments on March 11, 2005, and

responsive comments on March 25, 2005. The Order was issued by the Commission on May 16, 2005, and served electronically and via U.S. Mail on May 19, 2005. Under OAR 860-014-0095, any party may file an application for rehearing or reconsideration within 60 days from the date of service of an order.

PGE hereby requests that the Commission reconsider the Order on the grounds that (1) the Order contains an error of law; and (2) the Order should make clear that the Commission did not intend by this order to establish a single standard by which all pole attachment agreements should be judged, but rather that the Commission will continue to evaluate whether pole attachment agreement terms are fair and reasonable on a fact-specific, case by case basis unless and until it establishes generally applicable rates, terms and conditions by rule.

## **II. The Order Included an Error of Law**

On Page 4 of the Order, in the paragraph discussing Section 3.5 of the proposed contract, the Commission rejected CLPUD's proposed language on the grounds that "that proposal squarely violates federal law, specifically 47 USC § 224(i)". PGE respectfully disagrees with this statement. 47 USC § 224(c) exempts states which meet the requirements outlined in 47 USC § 224(c)(2)-(3) from federal regulation under 47 USC § 224. Oregon has certified with the Federal Communications Commission ("FCC") that it meets the statutory requirements for a state exemption from federal regulation under 47 USC § 224. See FCC, States That Have Certified That They Regulate Pole Attachments, 7 FCC Rcd 1498 (released Feb. 21, 1992) Once a state is certified, the FCC has no jurisdiction to regulate the rates, terms and conditions concerning pole attachments, such as the apportionment of the costs of providing space, access standards, etc. that are outlined in subsections (d) through (i) of 47 USC § 224. It is not a reasonable interpretation of the statute that Congress would have provided a means for a state to

assume authority over rates, terms and conditions for pole attachments, and then effectively remove that authority later in the same statute by dictating the standards that must be applied to those rates, terms and conditions.

The reasonableness of CLPUD's proposed language should be decided by the Commission based on the standards that it adopts to carry out the requirements of ORS 757.270 *et seq.* While the Commission may certainly use the provisions in Section 224 of the federal law as guidance, when a pole owner can demonstrate a sound basis for charging a licensee for certain costs, the Commission should judge that proposed language against the Oregon statutory standards.

Therefore, the language in the Order should be modified to eliminate the reference to a violation of 47 USC § 224(i), and the Commission should provide an explanation for accepting or rejecting CLPUD's proposed language based on the Commission's application of the standards in ORS 757.270 *et seq.*

### **III. The Order Requires Clarification**

The Order helped resolved particular contractual issues between Central Lincoln PUD and Verizon Northwest Inc., the original parties to the complaint. The Order was based upon the application of the law to the specific facts and circumstances of those two parties. The order does not state, nor should it be read to mean, that it was intended to establish the only rates, terms and conditions that are legally enforceable in the state of Oregon. Indeed, the Commission did not choose to consider the comments filed by other parties in the docket on the grounds that they were generic and not relevant to resolving the discrete contractual issues between Verizon and Central Lincoln. Order No. 05-583 at 3. Depending upon a pole owner's ability to account for its costs directly related to allowing licensees to attach to its poles, as well as the individual

parties' circumstances, there are likely to be other rates, terms and conditions that meet the statutory standards.

Unfortunately, since the Order was issued, PGE has been notified that some licensees are interpreting the Order to mean that rates, terms and conditions in a pole attachment contract different from those in the contract between Central Lincoln and Verizon are unenforceable.

According to ORS 757.285, there is a presumption that rates, terms and conditions set by private agreement are just, fair and reasonable. Consequently, unless the Commission has ruled on the rates, terms and conditions in a particular agreement, it is not appropriate to look to the Order to determine whether such agreement meets the statutory standard. The Commission can choose to establish more general standards regarding pole attachments, but that should be done in a rulemaking that would be applicable to all pole owners and licensees.

Therefore, PGE requests that language be added to the Order to make clear that the rates, terms and conditions of the contract adopted by the Order are not the only rates, terms and conditions that meet the standard of ORS 757.270 et.seq. and that the Commission will decide whether a contract is just, fair and reasonable on a case by case basis unless and until it establishes more generally applicable rates, terms and conditions by rule.

#### **IV. PGE's Application Meets the Requirements of OAR 860-014-0095**

This Application meets the requirements of OAR 860-014-0095. Under this rule, the Commission may grant reconsideration if, among other reasons, the applicant shows that there is an error of fact or law in the order which is essential to the decision, or if good cause exists for further examination of a matter essential to the decision. OAR 860-014-0095(3)(c) - (d). PGE has met these two requirements by outlining the specific error of law in the Order and by

demonstrating that there is good cause for concern that lack of clarification could hamper contract enforcement.


PGE's Application meets the specific requirements of OAR 860-014-0095(2). PGE has specified the portions of the order that we contend are erroneous or incomplete; the portion of the record, laws, rules or policy of the Commission relied upon to support the Application; the changes in the Order which the Commission is requested to make; and how these requested changes will alter the outcome. OAR 860-014-0095(2)(a)-(d).

**V. Conclusion**

PGE respectfully applies to the Commission to reconsider its Order No. 05-583 to correct an error of law and to provide further clarification regarding the general applicability of the rates, terms and conditions in the contract approved in this docket.

Dated this 15<sup>th</sup> day of July, 2005.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that I have caused to be served the foregoing Application for Reconsideration of Order No. 05-583 of Portland General Electric Company in OPUC Docket No. UM 1087 by First Class U.S. Mail, postage prepaid and properly addressed for mailing, and by electronic mail, to the following parties:

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Dated this 15<sup>th</sup> day of July, 2005.

PORTLAND GENERAL ELECTRIC COMPANY

By 

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