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March 2, 2005

VIA FEDERAL EXPRESS

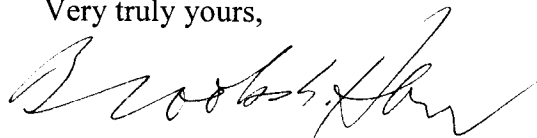
Public Utility Commission of Oregon
Attn: Filing Center
550 Capitol Street NE, #215
Salem, Oregon 97308-2148

Subject: OPUC Docket No. UM 1191

Attention: Filing Center

Enclosed, for filing, are an original and five copies of the Motion Of Bend Cable And Crestview Cable To Strike CEC's "Opposition" And, In The Alternative, Reply To Opposition in the above-referenced docket. Please return a conformed copy to us in the self-addressed, stamped envelope provided. Thank you.

Very truly yours,



Brooks E. Harlow

cc w/enc: All Parties of Record

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
DOCKET NO. UM 1191

QWEST CORPORATION,
Complainant,

v.

CENTRAL ELECTRIC COOPERATIVE,
INC.,
Defendant.

MOTION OF BEND CABLE AND
CRESTVIEW CABLE TO STRIKE CEC'S
"OPPOSITION" AND, IN THE
ALTERNATIVE, REPLY TO OPPOSITION

Intervenors Bend Cable Communications LLC, and California Oregon Broadcasting, Inc. d/b/a Crestview Cable Communications ("Intervenors") hereby move to strike "Defendant CEC's Opposition To Petition To Intervene By Bend Cable And Crestview Cable" filed herein on February 23, 2005 ("Opposition" or "Answer"). The two grounds for the motion to strike are: 1) CEC's pleading is not timely under the Commission's rules; and 2) the Opposition contains impertinent and irrelevant allegations that would, if considered, improperly broaden the scope of this proceeding.¹ In the alternative, if the opposition is not stricken, the Intervenors offer a brief reply.

¹ Intervenors further note that many, if not most, of the allegations in CEC's Opposition are disputed.

DISCUSSION

I. CEC'S "OPPOSITION" SHOULD BE STRICKEN ON BOTH PROCEDURAL AND SUBSTANTIVE GROUNDS.

A. CEC's "Opposition" should not be considered because it was not timely filed.

CEC styles its pleading as an "Opposition" to the Petition To Intervene. Under the Commission's rules, no such pleading exists. Intervenors assume that CEC intended to file an "answer" to the Petition To Intervene, which is permitted under the Commission's rules. *See* OAR 860-013-025. This motion to strike assumes that that is the substance of the Opposition.

Intervenors filed their Petition To Intervene in this docket on February 9, 2005. They served the Petition To Intervene on CEC by depositing it in the mail on that same date. *See* Attachment A hereto (Certificate of Service). Moreover, as a courtesy, Intervenors e-mailed a copy of the Petition To Intervene to counsel for CEC on the date of filing and service. *See* Attachment B. Pursuant to OAR 860-013-0070(2), service is deemed to have occurred on the date a pleading is "deposited in the mail." Thus, CEC was "served" with the Petition To Intervene on February 9, 2005. In addition, CEC had actual knowledge of the Petition To Intervene on that same date by virtue of the e-mail transmission.

Pursuant to OAR 860-013-0050(1)(a), the parties are afforded an opportunity to answer a petition to intervene. Such answers must be filed within ten days of the "service" of the petition to intervene. *Id.* Ten days following February 9 would have fallen on the weekend before Presidents' Day. Monday, the 21st was a federal holiday. Thus, CEC's Answer was due not later than February 22, 2005. CEC filed its Answer on February 23, 2005.² Accordingly, CEC's Opposition to the Petition To Intervene was untimely. The Answer and supporting affidavit should be stricken in their entirety.

² Moreover, CEC failed to serve two of the parties on the Commission's official service list—Amy Tykeson and Roger Harris—initially. However, this error was corrected by a supplemental service on February 24, 2005.

- B.** The bulk of CEC’s “Opposition” should be stricken because it raises matters entirely irrelevant to a petition to intervene and improperly broadens the issues in this docket.

If CEC’s Answer is not entirely stricken on procedural grounds, then the Answer and affidavit should largely be stricken on substantive grounds.

The Answer was supported by the Affidavit of Martin E. Hansen. Mr. Hansen’s affidavit should be stricken in its entirety, except for paragraph 10 and Exhibit 1. The affidavit recites alleged “facts” as well as conclusions regarding the negotiations between CEC and the Intervenors. CEC tries to give the Commission the impression that the Intervenors are negotiating in bad faith. The Intervenors emphasize that they vigorously dispute both the asserted facts and the conclusions.³ But more to the point, the specifics of Intervenors’ negotiations are not relevant to this docket, let alone to the petition to intervene. It is sufficient to note that the Intervenors are negotiating an agreement on parallel tracks with the CEC/Qwest negotiations. Whether any party is negotiating in bad faith or all parties are negotiating in good faith is irrelevant to the question of whether the Intervenors have an interest in this proceeding.

Similar to the affidavit, the Opposition pleading similarly alleges the supposed bad faith of the Intervenors in negotiations with CEC. In addition, the Opposition argues that Intervenors are seeking to “extort” a more favorable bargaining position from CEC by intervening. Apart from being irrelevant, such scandalous allegations have no place in a PUC proceeding. The Commission knows full well that it is an agency dedicated to advancement of the public interest, not a tool for extortion. The Commission will enter an appropriate order based on the facts and law presented to it, taken together with any policy initiative or clarification that it may deem to be in the public interest.

³ The specifics of the disputes will be left for another day, however. Delving into the Intervenors’ negotiations in this docket—as CEC attempts to do—would improperly and unduly broaden the scope of this proceeding. However, the Intervenors reserve their right to dispute the allegations at an appropriate time.

Under ORCP 21 E, a court may strike “any sham, frivolous, or irrelevant pleading” The Commission follows this rule as well. *See* OAR 860-011-0000(3). If the Commission does not strike the entire pleading on the procedural grounds noted above, the Commission should strike those portions of the Opposition containing improper and irrelevant allegations, including: from page 1, line 13 through page 3, line 20; and all but the last sentence of the Conclusion on page 4.

II. IF THE COMMISSION DOES NOT STRIKE CEC’S “OPPOSITION” TO THE PETITION TO INTERVENE ENTIRELY, IT SHOULD CONSIDER THE FOLLOWING BRIEF REPLY OF THE INTERVENORS

CEC fails to recognize that PUC cases are an inherently public process in which any party with sufficient interest may intervene. Much public policy is made through contested cases such as that brought by Qwest against CEC. In a complaint docket, the Commission not only can interpret and clarify the law, but indeed can announce policies and principles that govern in future cases. It would certainly be ironic, not to say contrary to the purpose of the regulatory scheme, if members of the public generally could intervene in cases, but parties involved in negotiations over the very same issues were somehow precluded from intervention.

While the details of Intervenor’s negotiations with CEC are irrelevant to this proceeding and to the petition to intervene in this proceeding, that fact of the negotiations establishes that both Bend Cable and Crestview Cable have a substantial interest in the outcome. First, every case establishes precedent to a greater or lesser degree. Moreover, CEC has stated on numerous occasions that it intends all of its pole attachers to sign the same agreement. *E.g.*, Hansen Affidavit, ¶ 11. Because CEC’s most recent proposed draft agreement provides that either party may terminate the agreement without cause upon 180 days notice,⁴ even if CEC reaches agreement with Intervenor in their current negotiations, it may not be very long at all before the outcome of the Qwest proceeding be felt. CEC can be expected to terminate the

⁴ Hansen Affidavit, Exhibit 1, § 2.

Intervenors' contracts and seek to impose on them the same form of agreement that flows from this docket.

CEC cannot seriously challenge Intervenors' interest in this docket. The Petition to Intervene should be granted.

DATED this 2nd day of March, 2005.

MILLER NASH LLP



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601 Union Street
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Telephone: (206) 622-8484

Attorneys for Intervenors
Bend Cable Communications, LLC and
Crestview Cable Communications

CERTIFICATE OF SERVICE

DOCKET NO. UM 1191

I hereby certify that a true and correct copy of the foregoing was sent by first-class mail, postage fully prepaid, enclosed in a sealed envelope, addressed to:

Lawrence Reichman
John P. (Jay) Nusbaum
Perkins Coie LLP
1120 NW Couch Street, 10th Floor
Portland, OR 97209
E-mail: LReichman@perkinscoie.com; JNusbaum@perkinscoie.com

Leslie Kelly
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Denver, CO 80202
E-mail: leslie.kelly@qwest.com

Michael T. Weirich
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Regulated Utility & Business Section
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Salem, OR 97301
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Martin E. Hansen
Francis Hansen & Martin, LLP
1148 N.W. Hill Street
Bend, OR 97701-1914
E-mail: meh@francishansenmartin.com

Bend Cable Communications, Inc.
Attention: Amy Tykeson
63090 Sherman Road
Bend, Oregon 97701

Crestview Cable Communications
Attention: Roger Harris
125 South Fir Street
Medford, Oregon 97501

Dated at Seattle, Washington this 2nd day of March, 2005.

Carol Munnerlyn
Secretary

ATTACHMENT A

CERTIFICATE OF SERVICE

DOCKET NO. UM 1191

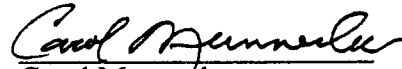
I hereby certify that a true and correct copy of the foregoing was sent by first-class mail, postage fully prepaid, enclosed in a sealed envelope, addressed to:

Lawrence Reichman
John P. (Jay) Nusbaum
Perkins Coie LLP
1120 NW Couch Street, 10th Floor
Portland, OR 97209
E-mail: LReichman@perkinscoie.com; JNusbaum@perkinscoie.com

Leslie Kelly
Qwest Communications International, Inc.
1801 California Street
Denver, CO 80202
E-mail: leslie.kelly@qwest.com

Martin E. Hansen
Francis Hansen & Martin, LLP
1148 N.W. Hill Street
Bend, OR 97701-1914
E-mail: meh@francishansenmartin.com

Dated at Seattle, Washington this 9th day of February, 2005.


Carol Munneflyn
Secretary

ATTACHMENT B

Munnerlyn, Carol J.

From: Munnerlyn, Carol J.
Sent: Wednesday, February 09, 2005 3:41 PM
To: 'PUC.filingcenter@state.or.us'; 'frances.nichols@state.or.us'; 'LReichman@perkinscoie.com'; 'JNusbaum@perkinscoie.com'; 'leslie.kelly@qwest.com'; 'meh@francishansenmartin.com'
Cc: Harlow, Brooks
Subject: Docket No. UM-1191 - Petition to Intervene

Attached is the Petition To Intervene Of Bend Cable Communications and Crestvoew Cable Communications. Hard copies are being mailed to all parties with overnight service to the Oregon PUC.



JM 1191 Petition to
Intervene....