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September 17, 2009

TIMOTHY J. O'CONNELL
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VIA E-MAIL FILING AND FEDERAL EXPRESS

Oregon Public Utility Commission
Attn: Filing Center
550 Capitol Street NE, Suite 215
Salem, OR 97301-2567

Re: Docket No.: UM 1431; Verizon's Motion to Enforce Commission Orders

Dear Commission:

Enclosed for filing are an original and three copies of Verizon's Motion to Enforce Commission Orders. If you have any questions regarding this filing, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "T. J. O'Connell".

Timothy J. O'Connell

TJO:dld
Enclosures

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1431

In the Matter of)
)
VERIZON COMMUNICATIONS INC.,)
and FRONTIER COMMUNICATIONS)
CORPORATION)
)
Joint Application for an Order Declining to)
Assert Jurisdiction, or, in the)
Alternative, to Approve the Indirect)
Transfer of Control of)
VERIZON NORTHWEST INC.)

**MOTION TO ENFORCE
COMMISSION ORDERS**

Verizon Communications Inc. (“Verizon” or “Applicant”) respectfully moves that the Commission enforce its prior orders establishing a protective order and limiting the participation of the International Brotherhood of Electrical Workers (“IBEW”) in this docket.¹ IBEW violated those orders by “using” discovery obtained in this proceeding to advocate its position in a proceeding in another state (Pennsylvania) in direct violation of the terms of the Highly Confidential Protective Order entered by the Commission in this case.² The IBEW also has sought to use discovery in this case to obtain labor related information that is not relevant to the limited role defined for it by the Commission when it was permitted to intervene in this case, and that appears to be requested for use in other contexts. The ruling limiting IBEW’s participation specified that the remedy for violating the terms of IBEW’s participation would be to terminate further participation in this case.³ In light of IBEW’s conduct, Verizon respectfully moves that

¹ Frontier Communications Corporation (“Frontier”) is not participating in this filing as the document at issue was a “highly confidential” document of Verizon that was not made available to Frontier, and which was improperly used by the IBEW in a proceeding before the Pennsylvania Public Utility Commission in which Frontier is not a party.

² Order No. 09-273 entered on July 17, 2009 (“Highly Confidential Protective Order”).

³ Limitation Ruling dated July 2, 2009 (“Limitation Ruling”).

the Commission enforce its orders and terminate IBEW's participation in this docket as provided in those prior orders.

1. IBEW violated the Highly Confidential Protective Order by using "Highly Confidential Information" for another purpose.

As shown in Attachment 1, the IBEW filed a pleading and a supporting affidavit with the Pennsylvania Public Utility Commission that described the contents of a document that the Applicant designated as highly confidential and provided to IBEW in response to a discovery request in this Oregon docket. Specifically, in paragraphs 3-6 of the pleading, IBEW explained that they obtained the document in question through discovery in Oregon, and described particular contents of the document. Those paragraphs refer to an affidavit provided by the IBEW's consultant expert ("Affidavit," also provided in Attachment 1) that further explains: (i) that IBEW received the document through discovery in Oregon; (ii) that the document was identified in this docket as confidential by the Applicant;⁴ and (iii) certain contents of the document in question to reach an (erroneous) conclusion about the applicability of Pennsylvania law. The pleading was signed by Mr. Scott Rubin, and the affidavit was signed by Mr. Randy Barber, both of whom executed the Superseding Highly Confidential Information Agreement that was Appendix B to the Highly Confidential Protective Order. Copies of those executed agreements are provided as Attachment 2 hereto.

The IBEW's action in Pennsylvania constitutes a clear violation of the Highly Confidential Protective Order, which requires that a party given access to Highly Confidential Information "may not use" such information "for any purpose other than the purposes of preparation for and conduct of this proceeding, and must take all necessary precautions to keep

⁴ The document was actually designated as "Highly Confidential."

the Highly Confidential Information secure.” Highly Confidential Protective Order ¶16.⁵ That IBEW used the document for another purpose and in another state is not subject to any reasonable dispute, and the IBEW’s pleading and affidavit make clear that their source of the document was discovery in this proceeding.

The IBEW recognized that the Highly Confidential Protective Order governed its treatment of this document because Mr. Barber’s affidavit noted that “Verizon claims that the entire document is confidential, so I cannot attach the specific page of the document or disclose specific information contained therein.” Affidavit ¶6. That view misses the point, as IBEW still made “use” of the designated information. Moreover, disclosure of the contents of a document as opposed to the actual document itself is a distinction without a difference. Oregon courts agree. For example, in *Johnson v. Eugene Emergency Physicians, P.C.*, 159 Or. App. 167, 974 P.2d 803 (1999), the court faced a plaintiff who had received highly confidential documents under a protective order similar to the one here in the respect that it expressly barred disclosure to any person “except for the limited purpose of trial preparation and to the extent introduced at trial.” 159 Or. App. at 169. The plaintiff nonetheless used the information as the basis for a complaint to a different administrative agency, without turning copies of the documents over to that agency. The court summarily rejected the plaintiff’s claims that she had not violated the protective order:

At the outset, we reject plaintiff’s argument that she did not violate the protective order because she did not reveal the documents. For plaintiff to argue that the order prevented disclosure of the documents but allowed disclosure of the contents of the documents defies the clear import of the order.

⁵ An identical provision is provided in the General Protective Order, Order No. 09-197 (entered June 8, 2009) at ¶12.

Id. at 171, n. 2. Similarly, here IBEW clearly used a document designated as highly confidential for a purpose other than preparation for and conduct of this proceeding: attempting to litigate a matter in another state.

2. The conditions set forth in the Limitation Ruling for termination of IBEW's limited participation in this docket are met.

IBEW's blatant violation of the Highly Confidential Protective Order, when considered with its other actions in this docket, warrant its dismissal under the terms set forth in the Limitation Ruling. In the Limitation Ruling, the Commission limited IBEW's participation in this docket in response to IBEW's misuse of a Washington regulatory docket to impermissibly attempt to extract labor concessions. Limitation Ruling at 2-3. Moreover, the Limitation Ruling also put IBEW expressly on notice of the remedy if it failed to abide by the limitations by noting that it would "entertain a motion by the Applicants to terminate IBEW's participation upon a showing that IBEW has attempted to use the regulatory process to influence the Applicants in areas beyond the scope of this proceeding." Limitation Ruling at 3. IBEW's actions in discovery and in the Pennsylvania filing collectively demonstrate that IBEW has done just that. For example, IBEW propounded discovery requests in this docket that appear designed to solicit information that could be used in the labor context. As shown in Attachment 3, the IBEW propounded discovery requests inquiring about such subjects as seniority levels of employees ("average length of time employed by Verizon"), the potential for lay-offs and even specific questions on collective bargaining agreement obligations (including 401(k) contributions, savings and other employee benefit plans). And the violation of the Highly Confidential Protective Order was an attempt to influence the Applicant in the Pennsylvania docket.

Given that the violation of the Highly Confidential Protective Order is a component of a pattern of abusive discovery practices intended to utilize obtained information in ways that exceed the scope of this docket (in matters related to labor and otherwise), dismissal of IBEW from this docket is warranted under the terms of the Limitation Ruling. That ruling specifically set the sanction of dismissal if it can be shown that “IBEW has attempted to use the regulatory process to influence the Applicants in areas beyond the scope of the proceeding.” Limitation Ruling at 3 (“A finding by the Commission that IBEW has acted in a manner inconsistent with this ruling shall be grounds for its dismissal from the case.”). Accordingly, the IBEW should be dismissed from this case under the terms of the Limitation Ruling.⁶

3. The Commission enforces its protective orders.

The Commission takes violation of protective orders protecting confidential information very seriously. For example, here is how the Commission reacted when faced with a party that disclosed information designated as confidential in violation of a protective order:

We are disturbed by this disclosure. The use and application of protective orders is essential to the orderly functioning of the Commission.... We are displeased that someone chose to violate our order rather than follow the proper procedure outlined therein. We expect to see ramifications of this unlawful action in future cases, as utilities may be reluctant to provide essential information to intervening parties for fear of leaks that will harm their competitive standing. We intend to

⁶ Termination of IBEW’s participation in this docket is consistent with the Oregon Rules of Civil Procedure. *See, e.g.*, ORCP 54(B)(1), which permits a defendant to move for a judgment of dismissal against any plaintiff who fails to prosecute or to comply with the rules of civil procedure or any order of court. And the factors considered by courts in certain instances (*see, e.g., Pamplin v. Victoria*, 319 Or. 429, 877 P. 2d 1196 (1994)) as to whether dismissal is warranted for a violation of discovery rules (*e.g.*, under ORCP 46(B)(2)) need not be considered here because the Commission already established the relevant sanction – dismissal – in the Limitation Ruling. Moreover, the courts have found that analysis of such factors (including findings of willfulness or bad faith) is unnecessary when dismissal will not result in a denial of a hearing on the merits. *See, e.g., Belinsky v. Clooten*, 214 Or. App. 172, 164 P.3d 1163 (2007). Obviously, in this context, a hearing on the merits of the Verizon/Frontier transaction will go ahead with the full participation of the Commission Staff, the Citizens Utility Board and a number of other parties even with the dismissal of IBEW. Indeed, that fact was likely a role in the Commission’s establishing in the Limitation Ruling the specific process for a motion to terminate IBEW’s participation in this docket.

investigate and determine how the protected documents were disclosed, and to take appropriate action.

In the Matter of Oregon Electric Utility Company, LLC, UM 1121, Order No. 05-114 (March 10, 2005) (“*Oregon Electric Utility Company*”). The Commission took particular umbrage because an unidentified party in that case violated the order rather than use the order’s procedures to challenge the confidentiality designation (which designation was later reversed). IBEW engaged in the same conduct here, as it chose to violate the protective order rather than utilize the provision in the order to challenge the highly confidential designation (Highly Confidential Protective Order ¶ 12) or otherwise reach out to Verizon.⁷

In *Oregon Electric Utility Company*, an (ultimately unsuccessful) investigation was needed because confidential information was leaked to the press by unidentified parties. Here no such investigation is needed, as the IBEW clearly used Highly Confidential Information obtained in this docket that the IBEW recognized is covered by the Highly Confidential Protective Order.

The IBEW’s violation of the Highly Confidential Protective Order will only add to the reluctance of utilities to share confidential information, as expressed by the Commission in *Oregon Electric Utility Company*. It also makes a mockery of the cooperation in sharing information that the Applicants have afforded IBEW in this docket (in response to over 280 discovery requests from IBEW alone) and the collaborative effort utilized to draft the relevant provisions of the Highly Confidential Protective Order. The IBEW took advantage of this


⁷ Indeed, IBEW even helped draft that provision of the Highly Confidential Protective Order (¶12). The Applicants sought IBEW’s comments on a draft protective order, and IBEW’s counsel requested that it be changed with regard to the burden of proof applicable to designation challenges. A change was made to the provision in response to IBEW’s input, and the draft protective order agreed upon by the parties was submitted to the Commission for approval. Notwithstanding its familiarity and role in drafting this provision on challenging confidentiality designations, IBEW made no use of it as to the document at issue here and instead simply violated the Highly Confidential Protective Order by making use of the document for other purposes.

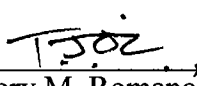
cooperative effort to use the Oregon discovery process to compile information impermissibly for other purposes.

Wherefore, Verizon respectfully requests that the Commission enforce its orders in this docket and terminate IBEW's participation in this docket as expressly provided under the terms of the Limitation Ruling and/or take any other action it deems appropriate given IBEW's abuse of the discovery process and violation of the Highly Confidential Protective Order.

Dated: September 17, 2009

Respectfully submitted,

By: 
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UM 1431
CERTIFICATE OF SERVICE

I hereby certify that I have this day served this document upon all of the following parties, as follows:

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DATED: September 17, 2009.



Debbie Dern

ATTACHMENT 1

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SCOTT J. RUBIN
ATTORNEY • CONSULTANT

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September 11, 2009

James McNulty, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

Re: Application of Verizon North Inc. for Any
Approvals Required Under the Public Utility Code
for Transactions Related to the Restructuring of
the Company to a Pennsylvania-Only Operation
and Notice of Affiliate Transaction
Docket Nos. Docket No. A-2009-2111330,
A-2009-2111331, and A-2009-2111337

Dear Secretary McNulty:

Enclosed for filing please find the original **Motion for Leave to Reply to Verizon's Opposition** of Communications Workers of America and International Brotherhood of Electrical Workers, Locals 1451, 1635, and 1637, in the above-referenced proceeding. The document was filed electronically with the Commission on this date.

The document has been served, by electronic mail and first-class mail, on all parties of record as shown on the attached Certificate of Service.

Sincerely,



Scott J. Rubin

Enclosure

cc: per Certificate of Service
Charles Rainey, Administrative Law Judge

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Verizon North Inc. for Any	:	
Approvals Required Under the Public	:	Docket No. A-2009-2111330
Utility Code for Transactions Related to	:	Docket No. A-2009-2111331
the Restructuring of the Company to a	:	Docket No. A-2009-2111337
Pennsylvania-Only Operation and Notice	:	
of Affiliate Transaction	:	

MOTION OF
COMMUNICATIONS WORKERS OF AMERICA AND
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
LOCALS 1451, 1635, AND 1637
FOR LEAVE TO REPLY TO
VERIZON'S OPPOSITION
TO PETITION FOR INTERLOCUTORY REVIEW

Pursuant to 52 Pa. Code §§ 5.103 and 5.302(d), the Communications Workers of America (“CWA”) and International Brotherhood of Electrical Workers, Locals 1451, 1635, and 1637 (“IBEW”) hereby move for leave to reply to Verizon North’s Opposition to the CWA/IBEW Petition for Interlocutory Review. In support of this motion, CWA and IBEW state as follows:

1. On September 8, 2009, Verizon North Inc. (“Verizon North”) filed its brief in opposition to CWA’s and IBEW’s Petition for Interlocutory Review.

2. In its brief, Verizon North states:

Verizon is a publicly held company with a myriad of shareholders who change daily as shares are traded, and none of whom holds more than 10% of Verizon’s stock, let alone the approximately 30% that would be needed to end up with 20% of Frontier’s stock. Indeed, the Unions do not claim that any one person or group will hold more than 20% of Frontier stock.

Verizon North brief, p. 5 (footnote omitted).

3. On the next day, September 9, 2009, in a related proceeding in Oregon, Verizon Communications Corp. (“Verizon”) (the ultimate parent company of Verizon North) provided for the first time to the undersigned counsel and the unions’ financial consultant a series of allegedly confidential documents that were filed by Verizon with the Federal Trade Commission on August 21, 2009, under the provisions of the Hart-Scott-Rodino Act.

4. Among the documents provided was a document from Verizon’s financial advisors to Verizon, dated April 20, 2009, which contains a page showing the largest shareholders in both Verizon and Frontier Communications Inc. (“Frontier”), along with the number of shares owned by each shareholder in each company. Affidavit of Randy Barber, attached hereto as Appendix A, ¶ 7.

5. Straight forward calculations using these data show that a group of ten Verizon stockholders collectively would own more than 20% of Frontier’s common stock if the proposed transaction between Verizon and Frontier is consummated. *Id.*, ¶ 11.

6. Thus, at least as early as April 20, 2009 – and certainly by August 21, 2009, when the information was filed with the Federal Trade Commission – Verizon had information showing that its actions on behalf of its stockholders would result in a small group of shareholders owning a controlling interest (20% of the common stock, as defined by this Commission’s policy statement at 52 Pa. Code § 69.901) in Frontier.

7. This is directly contrary to Verizon’s statement in its brief that no group would own more than 20% of Frontier’s common stock as a result of the proposed transaction.

8. CWA and IBEW, therefore, seek leave to have the Commission consider this newly provided information when the Commission rules on the CWA/IBEW petition for interlocutory review.

WHEREFORE, CWA and IBEW move the Commission to consider this newly provided information in ruling on the CWA/IBEW petition for interlocutory review and answer to a material question.

Respectfully submitted,



Scott J. Rubin (PA Sup. Ct. Id. 34536)
333 Oak Lane
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(570) 387-1893
scott.j.rubin@gmail.com

Counsel for CWA and IBEW

Dated: September 11, 2009

CERTIFICATE OF SERVICE

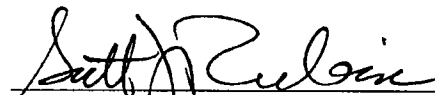
I hereby certify that I have this day served a true copy of the foregoing upon the following parties to this proceeding by first class mail and electronic mail.

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Scott J. Rubin

Dated: September 11, 2009

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Verizon North Inc. for Any :
Approvals Required Under the Public : Docket No. A-2009-2111330
Utility Code for Transactions Related to : Docket No. A-2009-2111331
the Restructuring of the Company to a : Docket No. A-2009-2111337
Pennsylvania-Only Operation and Notice :
of Affiliate Transaction :

AFFIDAVIT

1. My name is Randy Barber. I am a financial consultant who has been retained by the International Brotherhood of Electrical Workers (“IBEW”) and the Communications Workers of America (“CWA”).

2. I am employed by the Center for Economic Organizing and serve as its President. My office address is Suite 204, 6935 Laurel Avenue, Takoma Park, Maryland 20912.

3. I have worked as a financial consultant for more than 25 years. I specialize in complex financial and operational analyses of companies and industries, sometimes in the context of collective bargaining, other times in support of clients’ strategic or policy interests. Among the companies that I have analyzed in great depth are Alcatel, Avaya, AT&T, Boeing, Celestica, Columbia/HCA, Eastern Air Lines, Edison Schools, FairPoint Communications, Lucent Technologies, MCI, Oregon Steel, Sylvan Learning Systems, Texas Air Corporation, TIAA-CREF, United Air Lines, the United States Postal Service, and Wal-Mart. More broadly, I have provided clients with various analyses of such industries as aerospace manufacturing, air transport, for-profit education, newspaper publishing, off-road vehicle manufacturers, and telecommunications and internet access and content providers.

4. I have testified as an expert witness (either at trial or by deposition) in several regulatory proceedings, judicial proceedings, and arbitrations. These have included, for example, a class action law suit involving BTT, National Mediation Board Single Carrier proceeding, the Big Sky Airlines Bankruptcy, an Examiner’s Investigation into the Bankruptcy of Eastern Air Lines, and the state regulatory proceedings involving FairPoint Communications’ purchase of Verizon’s landline businesses in Northern New England. In addition, I have served as an expert financial consultant in various proceedings where it was not necessary for me to testify, such as an airline fitness investigation involving ATX, a cross-border airline merger investigation (American Airlines-Canadian Airlines), and a major CWA/AT&T arbitration.

5. I am the financial consultant for CWA and IBEW in state regulatory proceedings involving Frontier Communications' proposed acquisition of Verizon's landline operations in 14 states. To date, I have been assisting CWA and IBEW in conducting discovery in the regulatory proceedings in Illinois, Ohio, Oregon, and West Virginia.

6. On September 9, 2009, I received in discovery in the Oregon proceeding a document dated April 20, 2009, that was prepared for Verizon by its financial advisors, Barclay's and J.P. Morgan. The document also was provided by Verizon to the United States Federal Trade Commission on August 21, 2009, as part of Verizon's Hart-Scott-Rodino filing (identified therein as document 4(c)(41)). Verizon claims that the entire document is confidential, so I cannot attach the specific page of the document or disclose specific information contained therein.

7. Page 9 of the document provides a list of the largest shareholders in both Verizon and Frontier, along with the precise number of shares owned by each shareholder in each company. The page states that the source of the document is a database comprised of the latest available public information filed with the United States Securities and Exchange Commission.

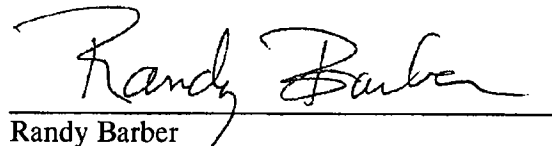
8. For each of the Verizon shareholders listed in this document, I have calculated the number of shares that the shareholder would receive in Frontier if this transaction is completed under the terms of the Agreement and Plan of Merger between Verizon and Frontier (dated as of May 13, 2009).

9. In performing this calculation, I used the lowest Frontier stock price (\$7.00 per share) under which Verizon's shareholders' interests in Frontier would be determined. I used this amount because it reflects the current value of Frontier's stock, which closed on September 10, 2009, at \$6.99 per share.

10. For those shareholders who also are listed as being among the largest holders of Frontier's stock, I added the current Frontier holdings to the Frontier stock the shareholder would receive from the proposed transaction.

11. The result of this calculation is that if the transaction is consummated at a price of \$7.00 per share, ten (10) Verizon shareholders collectively would own more than 20% of Frontier's common stock.

I have signed this Affidavit this 11th day of September, 2009, understanding that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).


Randy Barber

ATTACHMENT 2

SUPERSEDING HIGHLY CONFIDENTIAL INFORMATION AGREEMENT
DOCKET NO. UM 1431

I, Scott J. Rubin, as

- In-house attorney
- In-house expert
- Outside counsel
- Outside expert

in this proceeding for IBEW Local 89 (a party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Oregon that the following are true and correct:

- a. I have a need to know for the purpose of presenting my party's case in this proceeding and am not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and
- b. I have read and understand, and agree to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Superseding Highly Confidential Protective Order.

Scott J. Rubin
Full Name (Printed)

Scott J. Rubin
Signature

7/17/09
Date

Bloomsburg, PA
City/State where this Agreement was signed

self-employed
Employer

333 Oak Lane

Attorney
Position and Responsibilities

Bloomsburg PA 17815
Permanent Address

**SUPERSEDING HIGHLY CONFIDENTIAL INFORMATION AGREEMENT
DOCKET NO. UM 1431**

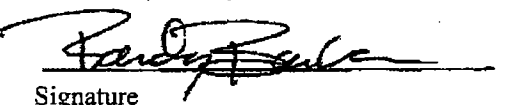
I, Randy Barber, as

- In-house attorney
- In-house expert
- Outside counsel
- Outside expert

in this proceeding for IBEW Local 89 (a party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Oregon that the following are true and correct:

- a. I have a need to know for the purpose of presenting my party's case in this proceeding and am not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and
- b. I have read and understand, and agree to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Superseding Highly Confidential Protective Order.

Randy Barber
Full Name (Printed)


Signature

July 18, 2009
Date

Takoma Park, MD
City/State where this Agreement was signed

Center for Economic Organizing
Employer

6935 Laurel Ave., # 204

President
Position and Responsibilities

Takoma Park, MD 20712
Permanent Address

ORDER NO. 09-197

**SIGNATORY PAGE
DOCKET NO. UM 1431**

III. Persons Qualified pursuant to Paragraph 3(e) and Paragraph 10-

I have read the General Protective Order, agree to be bound by the terms of the order, and will provide the information identified in paragraph 10.

By: Randy Barber 6/23/09
Signature & Printed Date

RANDY BARBER

By: _____
Signature & Printed Date

By: _____
Signature & Printed Date

By: _____
Signature & Printed Date

ATTACHMENT 3

July 6, 2009

Timothy J. O'Connell
Stoel Rives, LLP
600 University Street, Suite 3600
Seattle, WA 98101

Charles L. Best
Attorney at Law
1631 NE Broadway, Suite 538
Portland, OR 97232-1425

Gregory M. Romano
General Counsel – Northwest Region
1800 41st Street, WA0105GC
Everett, WA 98201

Kevin Saville
Associate General Counsel
2378 Wilshire Blvd.
Mound, MN 55364

Re: Docket No. UM 1431
IBEW Data Requests 1-41
Response Due by July 20, 2009

Gentlemen:

Please provide responses to the following requests for information. Contact the undersigned before the response due date noted above if the request is unclear or if you need more time. I also would appreciate receiving these responses (except for allegedly confidential information) in electronic form only in the document's original format.

I also would appreciate it if you could send one copy of your response to each question to the undersigned and to each of IBEW's consultants:

Randy Barber
Center for Economic Organizing
6935 Laurel Ave., Suite 204
Takoma Park, MD 20912
Voice: 301-270-0096
Email: rbatceo@aol.com

Susan Baldwin
17 Arlington Street
Newburyport, MA 01950
Voice: 978-255-2344
Email: smbaldwin@comcast.net

Thank you for your cooperation.