



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

September 25, 2015

Public Utility Commission of Oregon
Attn: Filing Center
201 High Street S.E.
PO Box 1088
Salem, Oregon 97308-1088

Re: UE 300 – Investigation into Advice Filing No. 15-09, Rule C Customer Attachment to
Facilities
DOJ File No. 734700-GG1408-13

Dear Commission:

I am writing on behalf of the Oregon Department of Transportation (ODOT). ODOT previously filed objections and requested a hearing regarding Portland General Electric's (PGE or Company) proposed tariff on the basis that it violated the well-established common-law rule that utilities are required to bear the entire cost of relocating their facilities within a public right-of-way whenever required to do so by state or local authorities.¹ In response, the Company withdrew its proposed rule that public bodies be responsible for the cost of relocating utility facilities when relocation is required more than once in a two-year period. See Fourth Supplemental Filing at Section 7(B)(4). ODOT, however, continues to object to proposed tariff requirements related to advance payments, cost responsibility for work performed during non-Scheduled Crew hours, and Temporary Relocations, which are described below.

Enclosed is a redlined version of the Company's Fourth Supplemental Filing of Advice dated August 7, 2015 with ODOT's edits that address its concerns over the Company's latest filing. If ODOT and the Company resolve these remaining issues, ODOT would be pleased to withdraw its objections and its hearing request.

Tariff changes

2) Cost Responsibilities – Section 7(A)

ODOT objected to the Company's advance payment provision on the grounds that Oregon Accounting Manual Internal Control, Sections 116 and 119 prohibit the payment for goods or services that have not been received. Although Company advises that this satisfies the

¹ See *Northwest Natural Gas Co. v. City of Portland*, 70 Or App 647, 690 P2d 1099 (1984) ("Utilities locating facilities in a public right-of-way must bear the cost of relocation when required to do so by a government exercising its legitimate authority"); *Northwest Natural Gas Co. v. City of Portland*, 300 Or 291, 711 P2d 119 (1985) ("The general principle that utilities must bear the expense of utility relocation when such relocation is required to accommodate public works * * * has been adopted by this court").

good cause exception in the proposed tariff, ODOT's concerns remain. ODOT objects to an undefined good cause standard that leaves the Company with broad discretion to interpret its rule to require advance payment in the future. ODOT has added express language that the Company will not require advance payment from ODOT.

3) Requirements for Public Works Projects 7(B) (1)

Utilities that place their service lines, fixtures and other facilities on the state's right-of-way receive a permit from ODOT which prescribes reasonable requirements for the location, construction, operation, or maintenance of the lines, fixtures or facilities. *See* ORS 758.010; ORS 758.025 ODOT has added permits to the list of sources that may specify cost responsibility where it is the requesting party asking for the relocation of facilities.

4) Requirements for Public Works Projects 7(B) (3)

As noted above, utilities that place their service lines, fixtures and other facilities on the state's right-of-way receive a permit which prescribes requirements for the location, construction, operation, or maintenance of the lines, fixtures or facilities. *See* ORS 758.010. ODOT has added permits to the list of sources that specify when lines, fixtures or other facilities are to be moved.

5) Exceptions to General Rule in Section 7(A) – Sections 7(D) (1)

Although the caption of Section 7(D) indicates that it is an exception to the General Rule in Section 7.A., the text of the Section 7(D) (1) contains no such limitation. Rather the rule makes the requesting party responsible for all costs for all work performed outside Scheduled Crew hours, including loadings, subject to five exceptions. None of those exceptions apply to Public Works Projects. In the context of statutory construction, a statute's caption has no legal significance. *See* ORS 174.540; *Church v. Grant County*, 187 Or App 518, 526 n. 4, 769 P3d 759 (2003). While this rule does apply to tariffs, ODOT questions whether a substantive term should only be located in a caption and not in the body of the rule. ODOT added a sixth exception to the rule's text to clarify that any public body is not responsible for any additional costs that Company may incur for any relocation, removal or rearrangement of Facilities that meet the definition of a Public Works Project under Section 7(B) that occurs outside Scheduled Crew Hours.

6) Section 7(D) (2)

This rule provides that all work must be performed by the Company crews during Scheduled Crew Hours as specified in Section 7(D) (1) unless applicable regulations or ordinances specify otherwise. If work is performed during non-Schedule Work Hours, then the requesting party must pay for all costs incurred by the Company, including loadings, due to the work being performed in other than Scheduled Crew Hours. ODOT added permits to the list of sources that may specify the Company may be required to perform work outside Scheduled Crew Hours and not charge the requesting party.

7) Section 7(F) Temporary Relocations

ODOT added clarifying language to Section 7(F) to make clear that if a temporary relocation involves a Public Works Project under Section 7(B), the requesting party is not responsible for the costs of the temporary relocation.

Thank you for your attention in this matter.

Sincerely,



David B. Hatton
Senior Assistant Attorney General
Government Services Section

DBH:bw1/6812172-v1
Enclosure
cc: Service List

7. **Relocation, Removal, or Rearrangement of Facilities**

A. **Generally**

Unless the terms of a franchise agreement specifies otherwise, any relocation, removal or rearrangement of Facilities requested by a party, including but not limited to builders, developers, Customers or Customers' agents, that will be performed by the Company at the requesting party's expense even if the relocation, removal or rearrangement will be necessary to meet the requirements of the requesting party's permit from the governmental entity with jurisdiction over the project. Unless the Company believes good cause has been shown for a different timing for payment, the Company requires advance payment of a sum equal to the estimated original cost of any installed Facilities to be removed, less estimated salvage and less depreciation, plus estimated removal cost, plus any operating expense associated with the removal, rearrangement or relocation. Company will not require advance payment for any relocation, removal or rearrangement of Facilities requested by the Oregon Department of Transportation.

B. **Public Works Project**

The Company will bear the cost for relocation, rearrangement or removal of Facilities within the public right-of-way under the following circumstances unless an ordinance, state law, a franchise agreement, permit, or other a form of private agreement specifies different cost responsibilities:

- 1) The relocation, removal or rearrangement meets the definition of a qualifying Public Works Project. A qualifying Public Works Project is defined as a project or improvement that: (a) is located on, or requires changes to, the public right-of-way, or on land that will be dedicated as public right-of-way as part of the governmental approval process; and (b) meets one or both of the following criteria: (i) the majority of the funding for the project or improvement will come from governmental sources, including but not limited to system development charges paid to the local government entity and used as a credit toward the cost of the project or improvement; or (ii) the project or improvement is included in a ten year master plan, transportation systems plan, or comprehensive plan or System Transportation Improvement Plan adopted or approved through a public process by the governmental entity having jurisdiction over the public right-of-way.

(C)

(C)

Advice No. 15-09
Issued July 1, 2015
James F. Lobdell, Senior Vice President
Portland General Electric Company
P.U.C. Oregon No. E-18

Effective for service
on and after August 12, 2015
First Revision of Sheet No. C-12
Canceling Original Sheet No. C-12

- 2) The governmental entity having jurisdiction over the public right-of-way has coordinated with the Company and discussed the Public Works Project's scope and schedule in accordance with Oregon law ORS 758.025;
- 3) The Company's overall project can generally be scheduled during Scheduled Crew Hours (excluding load transfers which may need to be performed outside of normal work hours) unless applicable regulations, ~~or ordinances or permits~~ specify otherwise; and
- 4) ~~If the Public Works Project requires the Company to relocate all or part of the same Facilities relocated for a prior Public Works Project within two years of the relocation request or order for such prior Public Works Project, then Section (7)(A) will apply to the cost of the relocation related to the subsequent Public Works Project unless an applicable franchise agreement, state statute or city ordinance specifically states different cost allocations, or the relocation is necessitated by an event or circumstance beyond the reasonable control of the requester, including but not limited to Acts of God, earthquake, severe storm, flood, or other natural disaster.~~

(C)

C. **Easement**

Notwithstanding any language in this Rule to the contrary, the requesting party will bear the costs for permanently relocating Facilities that at the time of the request are located on a private easement granted to the Company or governed by some other private right granted to or obtained by the Company, regardless of status as qualifying Public Works Project or otherwise. A public utility easement ("PUE") for the use of public utility facilities that is granted to or managed by a city is not a private easement for the purposes of this Section C.

D. **Exception to General Rule in Section 7.A.**

- (1) If the necessary work can be performed by Company crews in a single trip to the requesting party's Premises during Scheduled Crew Hours (7:00 a.m. to 3:30 p.m., Monday through Friday, except Company recognized holidays) and subject to subsection (D)(2) below, the Company will bear the cost of relocation, rearrangement, or removal of overhead or underground Facilities on or adjacent to the Premises under any one of the ~~five~~six circumstances listed below:

(C)

- a. Such Facilities are idle, meaning not receiving Electricity Service for more than six months, except in the case of conversion from overhead to underground service; or
 - b. The location of such Facilities in the street area deprives the requesting party of reasonable ingress to or egress from the Premises, provided such Facilities are not on a property line or a property line extended plus or minus one foot. Generally, one driveway is considered reasonable ingress or egress; or
 - c. Such Facilities occupy space on the requesting party's Premises that will be used for an expansion of the requesting party's building or plant. In these cases, the Line Extension Allowance will apply for the expansion. Such line extension will be based on the annual kilowatt hours to be served by the Company at the rate listed in Rate Schedule 300. The Customer will bear the costs exceeding the Line Extension Allowance; or
 - d. The purpose is to relocate a meter to a more accessible location approved by the Company; or
 - e. Relocation of a service drop is the only work requested, subject to additional cost allocations specified in Rule I; or
 - f. Any relocation, removal or rearrangement of Facilities that meets the definition of a Public Works Project described in Section 7.B.
- e.
- (2) All work must be performed by the Company crews during Scheduled Crew Hours as specified in Section (D)(1) above, unless applicable regulations, or ordinances, or permit specify otherwise, and other than Scheduled Crew Hours are requested, the requesting party must pay for all costs plus loadings incurred by the Company due to the work being performed in other than Scheduled Crew Hours.

E. **Underground Conversions**

For underground conversions (i.e. overhead Facilities converted to underground facilities), unless OAR 860-022-0046 applies and the Company is required to collect the conversion costs from customers in accordance with the rule, the requesting party is also responsible for the conversion costs as that term is

(C)

Formatted: Tab stops: 2", List tab

Formatted: Indent: Left: 1.25", No bullets or numbering

(C)

defined in OAR 860-022-0046.

Advice No. 15-09
Issued July 1, 2015
James F. Lobdell, Senior Vice President

Effective for service
on and after August 12, 2015

F. **Temporary Relocations**

~~Except for temporary relocations for Public Works Project under Section 7.B, the~~ requesting party will bear the costs of the temporary relocation when, for clearance reasons or otherwise, the Company is required to temporarily move its Facilities, either because the Company cannot move its Facilities to the new permanent placement or the Facilities will be returned to their former location at a later point in time, unless a private agreement specifies different cost responsibilities, ~~or Section B applies.~~ A temporary relocation is defined as one where the Company expects at the time of the request or order that the initial relocation will be temporary and the Facilities will be subsequently moved to a permanent location.

(C)

(C)

8. **Service Restoration**

A. **Generally**

During a major outage due to events such as a major storm, the Company will follow priorities for service restoration as provided below. These restoration procedures are followed in order to restore service to the greatest number of Customers as quickly as possible with special consideration given to Customers that are critically essential to public welfare.

The Company maintains a list of critical Customers such as hospitals, airports, 911 dispatch centers, fire and police stations, water and sewage treatment plants, radio and television stations, newspapers and telephone exchanges. The Company will then repair other main distribution lines.

B. **Service Priority**

The priorities for service restoration are generally as follows:

1) **Protect Public Safety**

The Company will clear downed power lines and ensure that Facilities such as hospitals, fire and police departments, and utilities have power.

(M)

Issued July 1, 2015
James F. Lobdell, Senior Vice President

Effective for service
on and after August 12, 2015

2) **Repair Transmission Lines to Substations**

The Company will first make the necessary repairs to the transmission system connecting generation facilities to substations in order to ensure system stability. The Company will then make the necessary repairs to transmission lines, substations, and distribution facilities that connect substations to critical Customers. Next, the Company will continue to repair remaining transmission lines and substations after service is restored to critical Customers' service addresses.

3) **Repair Substations**

The Company will repair substations making it possible to restore service to large numbers of Customers.

4) **Repair Distribution Lines**

The Company will repair distribution lines serving critical Customers as well as lines that may be blocking streets or highways.

5) **Repair of Tap Lines**

After the Company repairs distribution lines, it will repair tap lines that serve smaller groupings, such as Residential Customers.

6) **Repair of Individual Service Connections**

The Company will repair individual service connections last. If Customer-owned equipment has been damaged, such as the meter base, a licensed electrician must repair it before the Company can restore service. Such repairs are the responsibility of the Customer.

C. **Other**

The Company will not give priority restoration to any Customer, non-utility generator or ESS, but will employ the above process over the Company's entire territory served.

(M)

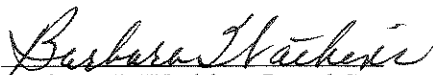
(M)

RULE C (Concluded)

CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of September 2015, I served a copy of the foregoing by causing a copy thereof to be sent by electronic mail to the parties listed below.

dockets@oregoncub.org
efiling@nwnatural.com
oregondockets@pacificcorp.com
greg@richardsonadams.com
stephanie.andrus@state.or.us
gbass@noblesolutions.com
kboehm@bkllawfirm.com
wendy@nwenergy.org
khiggins@energystrat.com
bob@oregoncub.org
judy.johnson@state.or.us
jkyler@bkllawfirm.com
brmullins@mwanalytics.com
tcp@dvclaw.com
nona.soltero@fredmeyer.com
sommer@oregoncub.org
mark.thompson@nwnatural.com
doug.tingey@pgn.com
pge.opuc.filings@pgn.com
david.tooze@portlandoregon.gov
bvc@dvclaw.com
sarah.wallace@pacificcorp.com
ben.walters@portlandoregon.gov
robert.fonner@state.or.us
alex.bejarano@portlandoregon.gov
heather.c.howe@odot.state.or.us
joseph.schaefer@jordanramis.com
kthomas@orcities.org
stephanie.andrus@state.or.us
Marvin.Hoffmam@state.or.us


Barbara J. Watkins, Legal Secretary to
Assistant Attorney General David B. Hatton
Oregon Department of Justice
barbara.j.watkins@doj.state.or.us