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September 28, 2006

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

Oregon Public Utility Commission
550 Capitol Street NE, Ste 215
Salem, OR 97301-2551

Attention: Vikie Bailey-Goggins, Administrator
Regulatory and Technical Support

RE: **Docket No. AR-506**
PacifiCorp's First Set of Comments Regarding Division 28

Dear Ms. Bailey-Goggins,

Pursuant to the procedural schedule established in this rulemaking docket, as modified by the Administrative Law Judge's Ruling on the Issues List for Division 28, PacifiCorp respectfully submits for filing, five (5) copies of its First Set of Comments to Staff's proposed rules changes to OAR 860-028 et seq.

Very truly yours,

Andrea L. Kelly
Vice President, Regulation

cc: Service List AR-506

Enclosures

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

AR 506

**In the Matter of a Rulemaking to Amend)
and Adopt Permanent Rules in OAR 860,)
Division 24 and 28, Regarding Pole)
Attachment Use and Safety)**

**PACIFICORP'S
FIRST SET OF
COMMENTS
REGARDING
DIVISION 28
September 28, 2006**

Pursuant to the procedural schedule established in this rulemaking docket, as modified by the Administrative Law Judge's Ruling on the Issues List for Division 28, PacifiCorp respectfully submits its First Set of Comments to Staff's proposed rules changes to OAR 860-028 et seq.

PacifiCorp commends the Commission for initiating this process and supports, in large part, the Commission Staff's efforts to establish more comprehensive joint use rules that accommodate competitive changes in the market and ensure that Oregon's utility lines and facilities are operated, and maintained in a safe and efficient manner.

BACKGROUND

PacifiCorp provides low-cost electricity to over 1,600,000 customers in its 136,000 square mile service territory, which includes Utah, Oregon, Wyoming, Washington, Idaho, and California. PacifiCorp serves over 540,000 customers in Oregon. The provision of electric service to these commercial, industrial and residential customers requires a vast infrastructure of electric distribution and transmission lines.

PacifiCorp's distribution system in Oregon transmits power from the company's substations and delivers it to commercial, industrial and residential customers. The electricity is transmitted over a network of pole lines and underground cable, including over 350,000 distribution poles in Oregon.

PacifiCorp's key concerns when operating its electric distribution network are the reliable provision of electric service and the safety of the public and PacifiCorp's employees. At the same time, PacifiCorp is required by law to provide other parties access to the communication space on its distribution network facilities so that those companies may provide various services, such as telephony and cable television, to their customers in Oregon. In order to continue to provide electric service safely and efficiently, while also facilitating the provision of these other services via access to PacifiCorp's pole plant, PacifiCorp supports the efforts of the Commission to promulgate and maintain rules that deter and mitigate illegal and unsafe attaching practices; provide clear guidance to all parties regarding attachment rules, rates and procedures; and provide just compensation to pole owners for the use of their poles, and thereby a fair reduction in the revenue requirement for retail electric rates.

COMMENTS

OAR 860-28-0020 (3)

Issue: Should the Staff's proposed definition of "Carrying Charge" be modified to include the concept of an adjustment for inflation?

Answer: No, please see answer to OAR 860-28-0110 (2). PacifiCorp supports the definition of "carrying charge" as proposed by Staff.

Issue: Should the Staff's proposed definition of "Carrying Charge" be based upon Federal Communications Commission-approved Federal Energy Regulatory Commission Account 364 only?

Answer: No. The carrying charge is one component of the rate and it is not necessary to further complicate the rate methodology by limiting this component of the rate to the Federal Energy Regulatory Commission account 364. PacifiCorp supports the Staff's definition of "carrying charge" as proposed.

OAR 860-208-0020 (3) (e) (B)

Issue: Should rate of return be defined as return on equity, return on debt, or weighted average cost of capital?

Answer: Rate of return should be defined as the weighted average cost of capital.

PacifiCorp's proposed changes to rule language:

(3) (e) (B) For a public utility, the cost of money is equal to the rate of return on investment, defined as weighted average cost of capital, authorized by the Commission in the pole or conduit owner's most recent rate or cost proceeding.

Discussion of PacifiCorp's proposed changes:

PacifiCorp recommends defining the rate of return as the weighted average cost of capital. The reference to "rate of return on investment" in the existing rule should be clarified with this additional language, as it is consistent with standard regulatory usage and it more accurately represents the owning utility's cost of money.

OAR 860-028-0020 (10)

Issue: Should the Staff's proposed definition of "Licensee" be modified?

Answer: Yes.

PacifiCorp's proposed changes to rule language:

(10) "Licensee" has the meaning given in ORS 757.270 or ORS 759.650 when operating a wireline telecommunication or CATV system. ~~"Licensee" does not include a government entity.~~

Discussion of PacifiCorp's proposed changes:

PacifiCorp believes that further clarifying the type of service being provided allows the rules to be consistent with the intent of the Telecom Act of 1996 as it relates to pole attachments. Additionally, PacifiCorp recognizes that government entities are excluded by statute and does not feel that it is necessary to further exclude them in the definition of licensee.

OAR 860-028-0020 (11)

Issue: Should the Staff's proposed definition of "Make ready work" be modified?

Answer: PacifiCorp supports the new definition of "Make ready work" as proposed by the Commission Staff.

OAR 860-028-0020 (17)

Issue: Should the Staff's proposed definition of "Pattern" be modified?

Answer: Yes.

PacifiCorp's proposed changes to rule language:

(17) “Pattern” as used in 860-028-0230, means repetitive actions by the licensee or applicant, each of which constitutes a course of behavior that results in a single material breach of a contract, or permits, or in frequent a violation of OAR 860-028-0120, occurring within one contact rental billing period. The number of such violations constituting a pattern, will be equal to or greater than 5 percent of actions required of the licensee or applicant under the terms of the contract or permit or by OAR 860-028-0120.

Discussion of PacifiCorp’s proposed changes:

By establishing a threshold in the definition of pattern, PacifiCorp believes that its proposed definition provides guidance to pole owners and assists in achieving uniformity in the application of 860-028-0230. Uniform interpretation and application of the rules should also reduce the ambiguity and potential disputes that frequently arise from the current definition of pattern.

OAR 860-028-0020 (19)

Issue: Should the Staff’s proposed definition of “Permit” be modified?

Answer: No, PacifiCorp supports the new definition of “Permit” as proposed by the Commission Staff.

OAR 860-028-0020 (20)

Issue: Should the Staff’s proposed definition of “Pole Cost” be modified?

Answer: No. PacifiCorp supports the new definition of “Pole Cost” as proposed by the Commission Staff.

OAR 860-028-0020 (22)

Issue: Should the Staff's proposed definition of "Preconstruction Activity" be modified?

Answer: No, PacifiCorp supports the new definition of "Preconstruction Activity" as proposed by the Commission Staff.

OAR 860-028-0020 (25)

Issue: Should the Staff's proposed definition of "Service Drop" be modified or clarified?

Answer: Yes.

PacifiCorp's proposed changes to rule language:

(25) "Service drop" means each single connection from a distribution facilityies to the end-user. ~~a single family, duplex, or triplex residence or similar small commercial facility.~~ Each service drop is considered a separate attachment on the pole.

Discussion of PacifiCorp's proposed changes:

PacifiCorp feels it is important to clarify this definition to remove the ambiguity and establish uniformity, so that a service drop is acknowledged as a separate attachment on a pole, particularly where the customer service drop would be the applicant's first attachment on that pole; or where the customer service drop would be outside of the space already used by another attachment of that same applicant. In these situations the service drop is using space on the pole, just like any other wire-line attachment, and should be treated the same. Additionally, PacifiCorp recommends clarifying the definition to state that a service drop is a connection to the end-user, regardless of the type of facility that the connection serves.

OAR 860-028-0020 (31)

Issue: Should the Staff's proposed definition of "Threshold Number of Poles" be modified?

Answer: PacifiCorp believes that Staff's proposed rule is a good start and that formulation of the final rule will benefit from further discussions in upcoming workshops.

OAR 860-028-0020 (32)

Issue: Should the Staff's proposed definition of "Unauthorized Attachment" be modified?

Answer: Yes.

PacifiCorp's proposed changes to rule language:

(32) "Unauthorized attachment" means an attachment that does not have a permit. ~~and a governing agreement.~~

Discussion of PacifiCorp's proposed changes:

PacifiCorp believes that the sole determining factor in defining the status of an attachment should be based upon the existence, or lack thereof, of a permit between the attacher and the owner. Including the reference to "a governing agreement" is unnecessary and merely complicates the situation.

OAR 860-028-0070 (4) (e) (B-D)

Issue: Proposed wordsmithing of OAR 860-028-0070 (4) (e) (B) for clarification.

Answer: Recommend striking sections B, C and D.

PacifiCorp's proposed changes to rule language:

~~(4) (e) (B) If the licensee is the party submitting the complaint, the licensee must request the data and information required by this rule from the owner. The owner must supply the licensee the information required in this rule, as applicable, within 30 calendar days of the receipt of the request. The licensee must submit this information with its complaint.~~

~~(4) (e) (C) If the owner does not provide the data and information required by this rule after a request by the licensee, the licensee will include a statement indicating the steps taken to obtain the information from the owner, including the dates of all requests.~~

~~(4) (e) (D) No complaint by a licensee will be dismissed because the owner has failed to provide the applicable data and information required under subsection (4) (d) (C) of this rule.~~

Discussion of PacifiCorp's proposed changes:

Upon review of these requirements, PacifiCorp believes that the proposed language is confusing and raises issues of confidentiality, particularly with respect to the process that is to be followed when a licensee seeks to request data from the pole owner in order to file a complaint. Specifically, PacifiCorp is concerned that it, as a pole owner, might be asked to supply confidential data to a licensee, prior to the filing of a complaint and, therefore, outside the scope of a docketed proceeding within which context PacifiCorp could otherwise seek a protective order. PacifiCorp also finds it troublesome that such information could be requested and then the information would be produced to a licensee regardless of whether the licensee ever files a complaint. PacifiCorp has no objection to providing data within the context of a docket, but would not support having to produce such data outside of a formal docket. Because the Staff's proposed language

contemplates a process before a docket is established, PacifiCorp requests that subsection B and the related subsections C and D be stricken.

OAR 860-02-0100 (1)

Issue: Should government entities be required to have permits for attachments?

Answer: Recommend striking subsection (1).

PacifiCorp's proposed changes to rule language:

(1) ~~As used in this rule, "applicant" does not include a government entity.~~

Discussion of PacifiCorp's proposed changes:

Similar to its explanation associated with the definition of "Licensee" (OAR 860-028-0020 (10)), PacifiCorp recognizes that government entities are excluded by statute and does not believe that it is necessary to explicitly exclude them in this section concerning the attachment process and requirements.

OAR 860-028-0100 (4)

Issue: Should the timelines be in calendar days or business days? What should applicable timelines be?

Answer: PacifiCorp believes use of "calendar days" would be more consistent.

PacifiCorp also recommends changing this particular rule to 45 calendar days.

PacifiCorp's proposed changes to rule language:

(4) An owner will reply in writing or electronically to the applicant as quickly as possible, but no later than ~~30 business~~ 45 calendar days from the date the application is

received. The owner's reply must state whether the application is approved, approved with modifications or conditions, or denied.

Discussion of PacifiCorp's proposed changes:

To maintain consistency with the industry standards, PacifiCorp recommends changing the default response time to 45 calendar days instead of 30 business days. This change will also allow for consistency within the proposed rules by defining each notification period in calendar days.

OAR 860-028-0100 (4) (d)

Issue: Should there be presumptive approval if permits are not responded to within a certain period of time?

Answer: No.

Issue: Is there a risk to safety and reliability, if applicant is allowed to begin construction under presumptive approval?

Answer: Yes.

PacifiCorp's proposed changes to rule language:

~~(4) (d) If the owner does not provide the applicant with notice that the application is approved or denied within 30 business days from its receipt, the application is deemed approved and the applicant may begin construction and will notify the owner within 30 business days of completion of construction.~~

Discussion of PacifiCorp's proposed changes:

In order for the pole owner to preserve the safety and reliability of its system it is critical that an applicant receive approval prior to beginning construction. Lack of approval from

the pole owner does not absolve the owner of its responsibility to maintain the poles in a safe manner and continue providing reliable service. As long as the pole owner has a duty to its customers to provide safe and reliable service, no applicant should be granted an unlimited license to begin construction without a permit. The potential risk posed to the system, whether due to the construction itself or the additional load on the pole, is significant enough that the Staff and the Commission should err on the side of caution. Therefore, PacifiCorp respectfully recommends striking this section.

OAR 860-028-0100 (6)

Issue: Should applicant be able to have input on who performs electrical make-ready work?

Answer: No.

Issue: Does pole owner have say on hiring and firing these workers?

Answer: Yes.

PacifiCorp's proposed changes to rule language:

~~(6) For good cause shown, if an owner can not meet an applicant's time frame for attachment or those established by this rule, preconstruction activity and make ready work may be performed by a mutually acceptable third party.~~

Discussion of PacifiCorp's proposed changes:

PacifiCorp respectfully recommends striking this section. PacifiCorp recognizes that there may be instances in which the owner will not be able to meet an applicant's time frame. However, allowing a licensee to hire a third party to perform the necessary construction, which could include pole replacements and/or work on electric facilities, is

not a solution that PacifiCorp finds acceptable. It is important that the pole owner retain control over the construction/modification of its own electric facilities, to ensure compliance is maintained with the owner's electrical construction standards.

OAR 860-28-0110 (2)

Issue: Should the rental rate be adjusted for inflation?

Answer: Yes. Rather than adjusting single components of the rate, such as the carrying charge, PacifiCorp recommends allowing adjustment to the whole rate.

PacifiCorp's proposed changes to rule language:

(2) The pole attachment rental rate, per foot, is computed by multiplying the pole cost by the carrying charge and then dividing the resultant product by the usable space per pole. The rental rate per pole is computed as the rental rate per foot multiplied by the licensee's authorized attachment space. The rental rate shall be adjusted for inflation to account for the time-delay with the data used to calculate the rate and the effective date of the rate.

Discussion of PacifiCorp's proposed changes:

Due to notification periods that may exist in individual contracts between owners and Licensees and the fact that owners must use the past year's expenses when calculating the rental rates, it is appropriate to allow an adjustment for inflation when calculating the pole owner's expenses. Inflation allows the owner to more closely recover the actual costs being incurred. Determination of the appropriate index to be used for the inflation adjustment should be addressed at an upcoming workshop.

OAR 860-028-0110 (5)

Issue: Should prepayment be required for the work specified in Rule 860-028-0100, or for all “make ready work”?

Answer: PacifiCorp supports the language as proposed by the Commission Staff.

OAR 860-028-0115 (1)

Issue: Should an owner be responsible for maintaining towers for joint-use?

Answer: No.

PacifiCorp’s proposed changes to rule language:

(1) An owner must establish, maintain, and make available to occupants its joint-use construction standards for attachments to its distribution poles, ~~towers~~, and for joint space in conduits. Standards for attachment must apply uniformly to attachments by all operators, including the owner.

Discussion of PacifiCorp’s proposed changes:

The U.S. Court of Appeals for the Eleventh Circuit, in *Southern Company vs. Federal Communications Commission*, clearly established that Congress intended to limit the Pole Attachment Act (as modified by the 1996 Telecommunications Act) to local distribution facilities, and that the scope of the Act does not extend to a utility's "interstate electric transmission towers and facilities." The Federal Communications Commission later acknowledged that the Federal Communications Commission’s regulatory power does not extend to a utility’s interstate electric transmission towers and facilities, in the *Omnipoint Corporation v. PECO Energy Company*, DA 03-857, released March 25, 2003. Given that “towers” are transmission facilities regulated by the Federal Energy

Regulatory Commission, rather than local distribution facilities regulated by the Oregon Public Utility Commission, PacifiCorp respectfully submits that the reference to towers, in this particular rule, should be deleted, and the term “distribution” should be inserted to reflect the intent of the Act.

OAR 860-028-0115 (3) (a)

Issue: Is section (3), of OAR 860-028-0115, redundant with other rules?

Answer: Yes.

PacifiCorp’s proposed changes to rule language:

~~(3) (a) An owner must promptly respond with a reasonable plan of correction for any violation of the Commission Safety Rules if notified in writing of a violation requested by an occupant.~~

Discussion of PacifiCorp’s proposed changes:

PacifiCorp recommends that this subsection be stricken as it conflicts with the proposed requirements in Division 24. By removing this subsection, the Commission is limiting the potential disputes that may arise between the requirements in Division 24 and Division 28.


General Comments

PacifiCorp supports the substitution, or insertion, of the word “calendar” in front of the word “days” throughout the whole of Division 28. This will allow for consistency and remove any ambiguity in the application and enforcement of the rules by all parties.

CONCLUSION

PacifiCorp looks forward to reviewing the comments and proposals of others, participating in the workshops, and the opportunity to comment further as this proceeding continues.

Respectfully submitted this 28th day of September, 2006,



Scc Cece L. Coleman
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CERTIFICATE OF SERVICE

AR 506

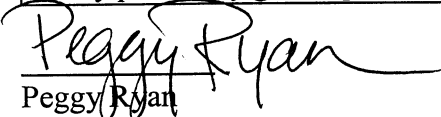
I certify that I have, this day, served PacifiCorp's First Set of Comments Regarding Division 28, dated September 28, 2006, upon all participants of record in this proceeding by electronic mail as indicated on the attached service list.

Dated at Portland, Oregon, this 28th day of September, 2006.

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