

August 16, 2005

Via Electronic Filing and U.S. Mail

Oregon Public Utility Commission
Attention: Filing Center
550 Capitol Street, N.E., Suite 215
Salem, Oregon 97308-2148

Re: AR 506: In The Matter of a Rulemaking to Amend and Adopt Permanent Rules
in OAR 860, Division 028 Regarding Pole and Conduit Attachments

Enclosed for filing in the above-captioned docket is Verizon Northwest Inc.'s Reply to
PacificCorp's Response to the issues lists filed by Verizon.

If you have any questions, regarding this filing, please contact me at 503-645-7909.

Sincerely,

Renee M. Willer
Verizon Regulatory Manager

c: AR 506 Service List

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

AR 506

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|--|---|----------------------------|
| In the Matter of a Rulemaking to Amend and |) | Reply to PacifiCorp’s |
| Adopt Permanent Rules in OAR 860, |) | Response to Issues List of |
| Division 028 Regarding Pole and Conduit |) | Verizon Northwest Inc. |
| Attachments |) | |

Verizon Northwest Inc. (“Verizon”) replies to the responsive comments filed by PacifiCorp dated August 4, 2006, to the issues lists filed by Verizon, as well as Qwest Corporation (“Qwest”) and the Oregon Joint Use Association (“OJUA”). In its response, PacifiCorp requests that the Commission disregard issues raised by Verizon, Qwest and OJUA regarding the adoption, amendment, or repeal of rules 860-028-0120 through 860-028-0200 (“Sanction Rules”). For the reasons set forth in this Response, PacifiCorp’s request should be rejected.

PacifiCorp claims that the Sanction Rules are outside the scope of this rulemaking because consideration of them would violate requirements governing Notices of Proposed Rulemaking (ORS 183.355). (PacifiCorp at 1.) That is not the case. The Notice of Proposed Rulemaking issued in this case provided sufficient notice to the public and other interested persons that the Sanction Rules could be considered, as required by ORS 183.335(1). For example, the “Rule Caption” of the notice refers to “rules governing attachments to utility poles, conduits and facilities.” The Sanction Rules are, of course, within the rules governing attachments to utility poles, conduits and facilities (Chapter 28, governing “Pole and Conduit Attachments”). Thus, the public was put on notice that the Sanction Rules, as part of the rules governing utility poles, conduits and facilities, could be considered in this docket. Moreover, the legal and regulatory authority cited in

the Notice of Proposed Rulemaking pursuant to ORS 183.335(2) applies to Chapter 28 generally, and thus to the Sanction Rules.

PacifiCorp also contends that the Rule Summary limits this proceeding to “owner-occupant contracts, the dispute resolution processes, and attachment installation practices.” (PacifiCorp at 2.) In making this contention, PacifiCorp omits a critical clause in the last sentence of the Rule Summary. The full sentence states: “This phase will address owner-occupant contracts (i.e., presumptively reasonable rates, terms, conditions), dispute resolution processes, and attachment installation practices and other provisions.” (Emphasis added.) “Other provisions” in the Chapter 28 rules include the Sanction Rules.

Moreover, PacifiCorp’s response ignores numerous statements in the “Need for the Rules(s)” section of the Notice of Proposed Rulemaking that relate to the Sanction Rules.¹ For example, that section refers to: “Increasing issues related to . . . unfair costs between utility facility owners and occupants before the Legislature and the Public Utility Commission indicate a need for clear and more comprehensive regulations for joint use attachments.” One such issue is implementation of the Sanction Rules. The Need for the Rule(s) section also states that:

In 1999, the Legislature enacted House Bill 2271 directing the Commission to establish rules for accommodating changes in the utility industries while maintaining safe and efficient utility poles, rights of way, and attachment installation practices. In response to this legislation, the Commission conducted rulemaking proceeding and adopted sanctions and rental rate reduction rule to promote better safety and joint use cooperation by pole owners and occupants.

¹ The “Need for the Rule(s)” section of the notice includes various broad statements about the scope of the proposed rulemaking. For example, it states that “[t]he second phase will cover mandatory dispute resolution processes and hearing costs and guidelines for owner-occupant contract provisions, attachment installation practices, and other joint use matters.” (Emphasis added).

Thus, the Sanction Rules were referred to directly in the section on the “Need for the Rule(s).” That section also went on to refer to a Commission decision in a pole attachment case involving Verizon:

Later, in early 2005, Commission Order No. 05-042 (Docket UM-1087, Central Lincoln vs. Verizon) called for rulemaking to focus on attachment dispute resolution processes, costs, and other issues. (Emphasis added.)

That decision, in turn (at page 20), states in pertinent part:

But we anticipate opening a rulemaking docket after the close of this case to clarify our rules relating to how contractual disputes should be brought before the Commission, how costs of such disputes should be allocated, the role of the JUA, and other issues to better implement ORS 757.270 through 757-290. (Emphasis added.)

The Sanction Rules attempted to implement one such statutory provision (ORS 757.271), and thus are part of the rules that the Commission contemplated addressing in this rulemaking.

Thus, there are numerous statements in the section of the notice addressing the “Need for the Rule(s)” that demonstrate that interested persons are on notice that the Sanction Rules could be addressed in this proceeding.

Even the section of the notice entitled “Documents Relied Upon, and where they are available” advises persons that the Sanction Rules could come up in this proceeding. Included in the documents listed under item 8 are two rounds of industry responses from four workshops (available at http://www.puc.state.or.us/PUC/admin_rules/workshops/Workshops.shtml). Those industry comments make numerous references to issues regarding the repeal or modification of the Sanction Rules.

For example, the comments filed by Verizon, Charter Communications, Oregon Cable Telecommunications Association and Qwest all specifically raise issues and concerns about the Sanction Rules. Also, a document filed by the Commission Staff found on the same website (responding to OJUA Clarification Questions in a document dated February 9, 2004) addresses the improper use of sanctions.

The bottom line is that there are numerous references in the Notice of Proposed Rulemaking (as well as in the informal processes leading to that notice) that the Sanction Rules may be considered in this docket. Accordingly, all persons who may be interested in this proceeding are on notice that the Commission may address the Sanction Rules in this proceeding. If the Commission chooses to amend or repeal the Sanction Rules, under ORS 183.335(2)(d), it must provide a copy of the rules that it proposes to adopt, amend or repeal (or an explanation of how the person may acquire a copy of the rule), as well as all changes to the rule by striking through material to be deleted and underlining all new material (or by any other method that clearly shows all new and deleted material) at least 28 days before the effective date of the amended rule to persons who have requested notice pursuant to subsection (8) of ORS 183.335. There is, however, no reason that such a notice had to be included in the Notice of Proposed Rulemaking commencing this proceeding.

Therefore, Verizon respectfully submits that the Commission should deny PacifiCorp's request to prohibit any discussion related to the Sanction Rules.

In the alternative and only in the event the Commission decides that consideration of the Sanction Rules was not properly noticed, Verizon requests the Commission amend and re-issue its Notice of Proposed Rulemaking to note specifically that it may amend or repeal rules 860-028-0120 through 860-028-0200.

Dated: August 16, 2006

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CERTIFICATE OF SERVICE

I hereby certify that I served a copy of Verizon's Northwest Inc.'s reply to PacificCorp's Issues List in Docket AR 506, by US Mail and electronic mail, to the parties on the attached service list.

Dated this 16th day of August, 2006

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