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October 4, 2006

VIA ELECTRONIC FILING

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 AR 510**

Enclosed for filing are five (5) copies of PacifiCorp's first round of comments in the above referenced docket.

Very truly yours,

Andrea L Kelly by Cece L Coleman

Andrea L. Kelly
Vice President, Regulation
Enclosures

**BEFORE THE
PUBLIC UTILITY COMMISSION OF OREGON**

AR 510

**In the Matter of a Rulemaking to Amend)
Permanent Rules in OAR 860,)
Division 028, Relating to Sanctions for)
Attachments to Utility Poles and)
Facilities)**

**PACIFICORP'S
FIRST SET OF
COMMENTS
REGARDING
SANCTION RULES
October 4, 2006**

Pursuant to PacifiCorp's Motion for extension of time and the subsequent Memorandum, by the Administrative Law Judge, extending PacifiCorp's time to file initial comments in this rulemaking docket (AR 510), PacifiCorp respectfully submits its First Set of Comments in response to the proposed rules by the Oregon Joint Use Association (OJUA) provided with the Notice of Proposed Rulemaking initiating this docket.

BACKGROUND

PacifiCorp understands that this rulemaking was initiated by the Commission in response to a request from the Board of the Oregon Joint Use Association (OJUA). While the OJUA submitted an initial proposal for the Commission's consideration, and that submission "was widely supported by the industry", PacifiCorp was not amongst those supporters and does not believe that it is necessary to revise the sanction rules that are already in place. Nonetheless, PacifiCorp has further evaluated the proposal, prepared the comments below, and stands ready to participate in whatever process the Commission deems necessary and appropriate.

COMMENTS

PacifiCorp supports the Commission's authority to adopt and implement sanctions rules applicable to pole occupants who are not in compliance with the Oregon Administrative Rules, National Electric Safety Code (NESC), or individual contractual requirements. As the owner of the assets, the pole owner has a right to inspect and grant permits for the installation of equipment on its poles, and an obligation to ensure that the installation of equipment upon its poles is done in a safe manner without jeopardizing the safety of others or affecting the reliability of the various services supported by the pole.

Sanctions are applied for specific and verifiable contractual breaches or NESC violations. Any penalty imposed by the pole owner is intended to serve as a deterrent to the offending pole occupant, and to encourage the pole occupants to follow recognized state and national safety guidelines. The ability to avoid the imposition of sanctions lies squarely with each pole occupant who has the first opportunity to 1) properly engineer its facilities, 2) appropriately install its attachments, 3) adequately monitor its installations, 4) timely correct any violations that may subsequently arise, and 5) ensure compliance with all other applicable rules, including those established in the terms and conditions of their contract with the pole owner. While many parties are following the established safety rules, PacifiCorp supports the guidelines in Division 24 and Division 28 that encourage those that are non-compliant and also future pole occupants, to achieve and maintain compliance with applicable rules and regulations.

The current perspective, of some, seems to be that sanctions can be significantly reduced or completely deleted because everyone is playing by the rules now, and the current plant is being built in compliance with the Oregon Administrative Rules. This is

not a perspective that PacifiCorp can support based upon the results from inspections performed on installed equipment. PacifiCorp believes that it is because of the sanction rules, not in spite of them, that pole occupants have taken the initiative to gain compliance with and abide by the requirements of Division 24, Division 28 and the individual agreements they have signed.

PacifiCorp does not feel that it is appropriate to eliminate the ability of the pole owner to apply sanctions or to modify the sanction amounts to anything less than what is currently available under the existing administrative rules on sanctions. Oregon's sanction rules have proven themselves effective in improving safety compliance.

If the Commission determines that it is necessary and appropriate to move forward with this docket, then PacifiCorp supports simplifying the sanction rules by establishing a single, but stiff, flat rate penalty, in lieu of the progressive increases that are currently available to the pole owner. In addition to simplifying the process for imposing sanctions, PacifiCorp takes the following positions on the referenced rules proposed by the Oregon Joint Use Association Board included with the notice:

PROPOSED OAR 860-028-0140 (2) (a)

Issue: Should the occupant be eligible for a reduced sanction if the violation is self reported or discovered through a joint inspection?

Answer: No. PacifiCorp does not believe that there should be a reduced sanction if the pole occupant self-reports or if an unauthorized attachment is discovered through a joint inspection.

PROPOSED OAR 860-028-0150 (2) (a-b)

Issue: Should timeframes exist barring the pole owner from sanctioning the occupant after discovery of the violation?

Answer: No. PacifiCorp does not believe that timeframes, which limit the pole owner's ability to impose an applicable sanction, should be created. In order for a sanction to be effective, it is important to be able to apply the sanction when the violation is identified, not at a later, undetermined, date. The timeframes proposed by the Oregon Joint Use Association Board's rules included with the notice, would allow the pole occupant to install an unauthorized attachment or create an initial attachment violation, fix it within the proposed timeframe (potentially 180 days) or as part of a "plan of correction", and never suffer any consequences for creating the violation and jeopardizing public safety and service reliability. From PacifiCorp's perspective, the pole occupant always has a choice when carrying out its activities. It can choose to honor its commitments, or not. If the pole occupant makes a poor choice, which results in compromised safety and/or reliability on a pole, then the sanction should be imposed; otherwise there is no economic incentive to follow the established rules and put safety first. It should also be noted that the imposition of sanctions hinges on "discovery." The pole occupant is taking a calculated risk that the violation may not be discovered for many years, further supporting their cost/benefit case for making poor choices. Unless the sanction for the "discovered" violation is significant enough to encourage routine compliance, the effectiveness of the sanction is diminished.

OAR 860-028-0190

Issue: What data should be provided to the occupant with the notice of a violation?

Answer: PacifiCorp believes that as much data as possible should accompany the notice of a violation. However, if required to provide maps or other confidential data, PacifiCorp believes that the pole owner should not have to provide such information without just compensation or signed non-disclosure forms from the occupant.

GENERAL COMMENTS

As in PacifiCorp’s first round of comments in AR 506, PacifiCorp supports the change to or insertion of the word “calendar” in front of the word “days” throughout the sanction rules in Division 28. This will allow for consistency, and remove the ambiguity in the application and enforcement of the rules by all parties.

CONCLUSION

PacifiCorp believes that the current sanction rules are effective and that no changes are needed. Nonetheless, if this rulemaking moves forward, PacifiCorp would support a hefty flat-rate penalty, in lieu of the progressive increases in penalties that are currently available. 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 4th day of October, 2006,

Cece L. Coleman

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