

1 **BEFORE THE PUBLIC UTILITY COMMISSION**
2 **OF OREGON**

3 **AR 506 and AR 510**

4 In the Matter of

5 Rulemaking to Amend and Adopt Permanent
6 Rules in OAR 860, Divisions 024 and 028,
Regarding Pole Attachment Use and Safety.

FINAL COMMENTS OF IDAHO POWER

7
8 **I. Introduction**

9 In this second phase of AR 506 the Public Utility Commission of Oregon (“OPUC” or
10 the “Commission”) will adopt new Division 28 rules governing the terms and conditions for pole
11 attachments in Oregon. In so doing, the Commission will be called upon to consider the written
12 and oral comments of the stakeholders in order to weigh and balance the interests pole owners
13 and attachers -- telecommunications carriers, cable operators, and electric utilities -- and to issue
14 rules that best promote the policies of the State. In the process, Idaho Power Company (“Idaho
15 Power,” or “the Company”) asks that the Commission take care to consider the effect of its rules,
16 not only on the various companies and organizations that have participated this docket, but also
17 the customers of these companies. And in particular Idaho Power asks that the Commission
18 allow special consideration as to the effects of its rules on the electric utilities’ customers, who in
19 the end will be asked to bear whatever financial burden associated with pole attachments that is
20 imposed on their service providers.

21 **A. Pole Attachment Revenues Received by Investor Owned Utilities Serve to Offset**
22 **Customer Rates.**

23 During the workshops and at the November 8, 2006 hearing, advocates for the cable
24 operators and telecommunications carriers argued that the electric utilities are overcharging
25 licensees for their attachments in order to obtain “windfall profits” for the utilities and their
26 shareholders. This charge reflects a profound misunderstanding of the way in which the rates are

1 set for investor-owned utilities in Oregon. Indeed, a quick review of utility ratemaking will help
2 illustrate the critical point that the utilities and their shareholders do *not* accrue to the benefit of
3 regulated utilities and their shareholders, but rather serve to offset the amount their customers
4 pay in rates.

5 In Oregon, the Commission sets rates for regulated utilities based upon the amount of
6 annual revenue that the utility is entitled to receive as determined in the utility's last rate case.
7 This annual amount, or revenue requirement, is a function of the value of two components:

- 8 1. Annual operating expenses (which include operation and maintenance expenses;
9 depreciation; and various taxes); and
- 10 2. Return on Net Rate Base: (that is, the value of the plant (less depreciation, deferred
11 income taxes, etc.) multiplied by an Authorized Rate of Return).

12 Once the Commission has valued these two components, the Commission authorizes the utility
13 to obtain a specified amount of revenue based upon the following formula:

14
$$\text{Operating Expenses} + \text{Return on Net Rate Base} = \text{Revenue Requirement.}$$

15 The "revenue requirement" may be acquired in two ways: (1) energy sales, or (2)
16 revenues from "other operating operations." Types of "other operating revenues" include such
17 things as facilities charges, transmission services, substation rental equipment, etc. Pole
18 attachment fees (including fees from wireless companies) are also included as a type of "other
19 operating revenue."

20 Financially, it is a zero sum game; any dollar the utility receives from "other operating
21 operations" is one less dollar that can be charged for energy sales to utility customers.

22 For example, if a Commission authorizes a revenue requirement of \$1,000,000 and the
23 utility expects to earn \$100,000 from "other operating operations," they are authorized to
24 structure their retail tariffs to receive \$900,000 from energy sales. However, if the utility expects
25 to earn \$200,000 from "other operating operations," they would only be authorized to structure
26

1 their retail tariffs to receive \$800,000 from energy sales. Thus, the rhetoric about “windfall
2 profits” is totally unfounded..

3 A related concern raised by the cable operators and telecommunications carriers is that
4 the utilities are somehow being compensated several times over for their investment in utility
5 poles. Like the concern about “windfall profits” this concern about “double dipping” is based
6 upon a misunderstanding of basic ratemaking principles.

7 When a hard asset such as a utility pole is purchased, it becomes part of the utility’s “rate
8 base.” Once allowed into “rate base” the pole is paid for by the utility’s customers in accordance
9 with a depreciation schedule for such poles approved by the Commission. In other words, the
10 Commission will authorize the average life of a utility pole and include the cost in rates spread
11 over the average life of a pole. The pole will not be paid for until the end of the pole’s
12 depreciable life. Thus, assuming that the depreciation schedule adopted by the Commission is
13 sound, the rates paid by customers will reimburse the utility for the estimated costs associated
14 with its poles, plus an authorized rate of return—no more and no less..

15 Moreover, consistent with the previous discussion about “windfall profits,” the utilities’
16 customers are required to pay for a utility asset in its entirety over time unless there is another
17 non-utility user to help offset the costs. Any payment from non-utility sources helps offset the
18 utility customers’ contribution. Therefore, there is no duplication of compensation for utility
19 assets.

20 In summary, the utility and its shareholders *do not* receive “windfall profits” (or losses)
21 or double recovery from revenues received from pole attachment fees. Accordingly, the
22 Company’s overriding concern *is not* economic self-interest. Rather, the Company’s interest is
23 in finding a fair and balanced way of charging all users of the Company’s assets an appropriate
24 portion of the revenue requirement. In particular, the Company wishes to protect its energy
25 customers from being forced to shoulder costs more appropriately allocable to others.

1 **B. Idaho Power’s Rate Proposal is Consistent with Oregon Law And Would**
2 **Produce the Most Fair and Reasonable Result.**

3 In its Supplemental Comments, Idaho Power offered a rate proposal as an alternative to
4 the one offered by Staff. As explained in its comments and at hearing, Idaho Power offered its
5 alternative because it believes that Staff’s proposal would unfairly force electric utility customers
6 to bear the cost of space on the utility pole that is used for the benefit of the attachers.

7 In its second round comments, Staff notes that Idaho Power’s proposed rental rate
8 formula is more closely aligned with the FCC telecommunications formula, see 47 C.F.R. §
9 1.1409(e), than with the formula set forth in ORS 757.282, and that there may be a legal question
10 as to whether or not OPUC could adopt Idaho Power’s proposed formula in light of ORS
11 757.282. However, a careful reading of the statute reveals that Idaho Power’s rate proposal is
12 not only permissible under the Oregon law, but when compared to Staff’s proposal, is actually
13 more faithful to the statutory mandate.

14 Under Oregon law, pole owners are entitled to receive “just and reasonable rates” from
15 licensees. ORS 757.282(1) defines “just and reasonable rate” as:

16 *[N]ot less than all the additional costs of providing and maintaining pole*
17 *attachment space for the licensee nor more than the actual capital and operating*
18 *expenses, including just compensation, of the [pole owner] attributable to that*
19 *portion of the pole, duct or conduit used for the pole attachment, including a share*
20 *of the required support and clearance space in proportion to the space used for*
 pole attachment above minimum attachment grade level, as compared to all other
 uses made of the subject facilities, and uses that remain available to the owner or
 owners of the subject facilities. (Emphasis added).

21 In simple terms, the statute mandates that the rates adopted by the Commission should be not
22 less than the incremental cost of the attachment, nor more than the fully allocated pro rata cost of
23 the pole.

24 Both Staff and Idaho Power urge the Commission adopt “fully allocated” as opposed to
25 “incremental” rates. However, the difference between their respective proposals is their view of
26 what portion of the pole is “used for the pole attachment” under the statute. Specifically, Idaho

1 Power’s proposal considers the Communications Worker Safety Clearance Space
2 (“Communications Safety Space”) to be “*used*” by the licensee, and thus wholly allocable to
3 licensees when calculating rental rates. Consistent with this view, if there is only one attachment
4 on a pole, the licensee responsible for that attachment is responsible for 100% of the cost
5 attributable to Communication Safety Space; if there is more than one attachment, then the
6 licensees share the cost of the Communication Safety Space on a pro rata basis.

7 Staff on the other hand does not consider the Communication Safety Space to be “*used*
8 *for the pole attachment*” and thus allocates the costs associated with that space to *all* users of the
9 pole, including the utility. As a result, Staff’s proposal allocates to the pole owner the
10 overwhelming percentage of the cost of the pole, with an increasing amount to licensees as a
11 whole as the number of licensees increases.

12 The statutory language favors Idaho Power’s interpretation over the interpretation of
13 Staff. First, Idaho Power’s inclusion of the Communications Safety Space is consistent with the
14 final two clauses of 757.282(1) which directs the Commission to compare the space used by an
15 attachment in comparison to “all other uses of the subject facility,” and to the “uses that remain
16 available to the owner or owners of the subject facilities.” This language would suggest that any
17 space which becomes unusable by the utility should be allocated directed to the licensees, and
18 not to the utility.

19 Idaho Power’s interpretation makes sense. The Communications Safety Space exists
20 solely for benefit and protection of the employees of the licensees, who, unlike employees of the
21 pole owners, are not certified to operate near high voltage lines. Indeed, the Communications
22 Safety Space does not even exist until the first attachment is made. Before the attachment, that
23 space is available for pole owner’s use. After the first attachment is made, that space becomes
24 unavailable for use by the utility. It thus makes sense to include the cost of that space in the
25 portion of the pole that is “used for the pole attachment.”
26

1 In its Comments filed November 2, 2006, Embarq challenges Idaho Power’s allocation of
2 the Communications Safety Space to the licensees by arguing that “power companies benefit
3 from the safety space just as much as licensees, because without licensees, power companies
4 have no ability to generate rental fees.” Embarq appears to be arguing that without the safety
5 space, there would be no pole attachment revenue, so the utility really benefits from the safety
6 space. This reasoning turns the statute, and logic, on its head. Indeed, the logical extension of
7 Embarq’s argument is that the utility benefits from the portion of the pole on which the
8 attachment itself is made, thus rendering a portion of that attachment space attributable to the
9 utility. Embarq’s argument should be flatly rejected.¹

10 Embarq also argues that the “sliding rate scale” created by Idaho Power’s proposal would
11 create a recordkeeping nightmare. However, Embarq does not mention the fact that the FCC
12 formula also creates a “sliding rate scale.” The FCC administers that “sliding rate” by allowing
13 the utilities to charge a blended rate, based upon the average number of attachments.² Embarq
14 has produced no evidence to suggest that the FCC formula has been unworkable.

15
16 **C. The Commission Should Not Mandate Access to Transmission Poles and Towers**

17 Several of the cable operators and communications providers have suggested that
18 transmission towers and poles be included in the definition of facilities to which licensees may
19 attach. As a legal matter, Idaho Power concurs with PGE’s view that the legislature did not
20 intend to include these structures within its definition of “facilities” to which licensees have the
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23 ¹ Idaho Power’s rate proposal also corrects a flaw in Staff’s proposal by including the two feet of each pole reserved
24 for the two feet of “sag” of the licensees’ wires as “*used for the pole attachment.*” While the electric conductors of
25 the power utility sag between poles, it is not accurate to assume that because of this sag, in the absence of Licensees,
26 the electric utility cannot utilize all of the pole that is above the 18 foot minimum ground clearance. Certainly,
conductors would have to be attached at appropriate heights to accommodate sag and still maintain the minimum
ground clearance between poles, but this is not true for pole-mounted equipment such as risers, transformers,
reclosers, capacitors, etc. These items can be installed on the pole at minimum ground clearance height. When a
Licensee uses space above the minimum ground clearance to accommodate the sag of their cable, the electric utility
is no longer able to use this same space to install equipment that would benefit their rate payers.

² 47 CFR §1,1417(c).

1 right to attach. As a practical matter, Idaho Power would point out the difficulties inherent in
2 requiring non-discriminative access to transmission poles and towers.

3 Across Idaho Power's system, over half of all transmission poles and towers are located
4 on private property pursuant to privately negotiated easements. Moreover, over 80% of Idaho
5 Power's newly constructed transmission poles and towers are placed on private property. While
6 the Company always tries to negotiate allowance for joint use attachments, this is not always
7 possible, and accordingly, many of the easements for Idaho Power's transmission poles and
8 towers do not allow for joint use attachments.

9 Given these facts, Idaho Power is concerned about its ability to comply with a mandate to
10 provide non-discriminatory access to transmission poles and towers and recommends that the
11 Commission refrain from including these structures in the rules adopted in this proceeding.

12 13 **D. Correction to Rate Calculation**

14 Embarq correctly identifies an error in Idaho Power's depiction of the FCC Telecom
15 formula. In calculating resulting rates under the FCC formula, Idaho Power incorrectly omitted
16 the pole owner as an attaching entity in calculating the rental rate. When properly accounting for
17 the pole owner, the FCC Telecom formula yields rental rates that are significantly different than
18 those tabulated by Idaho Power. To remove confusion resulting from this error, the three tables
19 that appeared in Idaho Power's October 25, 2006 Comments have been revised and included
20 below.

21 Consistent with Idaho Power's October 25, 2006 Comments, tabulated costs that force
22 Electric Utility Customers to subsidize Licensees' services are shown bold. The revised tables
23 below correctly depict how, for all practical purposes, *both* the Staff's formula and the FCC
24 Telecom formula result in the subsidizing of Licensees' services.

Table 1: Space Used for Various Number of Joint Use Attachments

Joint Use Attachments	Space Remaining for Utility Customers' Benefit (ft)	Space Used for Attachments (ft)	Proportion of Useable Space Used for Attachments	Proportion of Useable Space Allocated for each Attachment
0	16	0	0.0%	0.0%
1	10.67	5.33	33.3%	33.3%
2	9.67	6.33	39.6%	19.8%
3	8.67	7.33	45.8%	15.3%
4	7.67	8.33	52.1%	13.0%
5	6.67	9.33	58.3%	11.7%
6	5.67	10.33	64.6%	10.8%
7	4.67	11.33	70.8%	10.1%
8	3.67	12.33	77.1%	9.6%
9	2.67	13.33	83.3%	9.3%

Table 2: Comparison of Joint Use Rental Rates per Attachment

Joint Use Attachments	Idaho Power Allocation Formula	OPUC Staff Formula	FCC Telecom Formula
0	\$0.00	\$0.00	\$0.00
1	\$16.66	\$4.69	\$11.25
2	\$9.89	\$4.69	\$7.92
3	\$7.64	\$4.69	\$6.25
4	\$6.51	\$4.69	\$5.25
5	\$5.83	\$4.69	\$4.58
6	\$5.38	\$4.69	\$4.11
7	\$5.06	\$4.69	\$3.75
8	\$4.82	\$4.69	\$3.47
9	\$4.63	\$4.69	\$3.25

November 17, 2006

VIA ELECTRONIC MAIL AND US MAIL

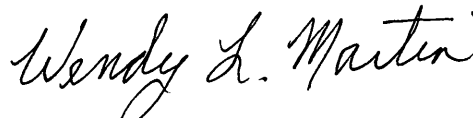
Filing Center
Oregon Public Utility Commission
550 Capitol Street NE #215
PO Box 2148
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Re: AR 506 and AR 510 – Idaho Power Company's
Final Comments

Dear Sir or Madam:

Enclosed for filing in the above-referenced docket are Idaho Power Company's Final Comments. Please contact me with any questions.

Very truly yours,



Wendy L. Martin

Enclosures

cc: AR 506 and AR 510 Service List

CERTIFICATE OF SERVICE

AR 506 and AR 510

I hereby certify that a true and correct copy of IDAHO POWER COMPANY'S FINAL COMMENTS was served electronically or via U.S. Mail on the following parties on November 17, 2006.

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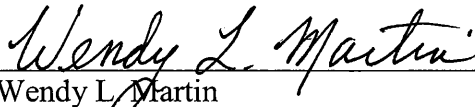
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