

November 17, 2006

Oregon Public Utility Commission  
Attn: Filing Center  
PO Box 2148 Salem, OR 97308-2148

RE: Dockets AR 506 and 510 Division 28 Rules

The Oregon Rural Electric Cooperative Association (ORECA) representing 18 private, not-for-profit electric cooperatives in Oregon. The electric co-ops are small, almost exclusively rural utilities serving about 10% of Oregon electric utility customers in about 65% of the state. We wish to express our support for the comments made by the Oregon Joint Use Association (OJUA) in the final comments on Division 28 dealing with both pole rental rates and sanctions. We also support the OJUA and staff recommendation that rules regarding wireless attachments should be considered in a subsequent rule making where more time and focus can be given to wireless issues.

We are in agreement with most but not all of the OJUA draft language. We understand the OJUA is a collaborative process and must compromise in order to reach consensus. However, ORECA is responsible for representing the issues and concerns of the electric cooperatives as pole owners. We have the responsibility, by the PUC, to manage joint pole use of our poles. We believe it is vitally important that as pole owners we have the tools to accompany the responsibility of management of our poles. We also believe that as pole owners, we should be able to recover the full cost of renting pole space. Our consumer-owners should pay electricity rates that cover the cost of power and distribution – not subsidizing telecommunication customer rates. Recovering the full cost can only be accomplished by billing for the direct costs of the permit application process which includes inspections and make ready work. These should be separate from the rental rate formula. This is not only fair to the pole owners, but it is fair to the pole occupants in that costs follow the cost causer and are not unfairly distributed to all pole occupants.

We have some further comments primarily on the cost of money, full cost recovery and sanctions.

860-028-0020 (3)c regarding return on equity for consumer-owned utilities. We supported the original PUC staff proposal which equated the co-op cost of equity to the IOU cost of equity. This language was opposed by the Oregon Communications and Telecommunications Association (OCTA) and other pole occupants because co-ops are not-for-profit they have no cost of equity. We strongly disagree. Cooperatives have significant equity used to finance plant and equipment. The only difference between an IOU and a co-op equity is how it is raised. The

customers are the equity owners, similar to IOU's whose shareholders are the equity owners. They raise equity by the retention of margins and then return that equity over an extended period of time to the consumer-owners. The return of this capital to members of a cooperative has a cost to it that is comparable to an IOU return on equity. However, when co-ops provide services to non-members, the equity owners are identically situated as that of an equity owner in an IOU. The cooperative equity owners invest their capital and the third party pole attachment customers rent attachment space. ORECA believes that the equity owners of the cooperative are entitled to, and should be compensated for their investment similar to the equity owner of an IOU. Why should customers of a co-op be treated differently than customers of an IOU. The inability to recover a return on equity from the pole attachment customers is a direct subsidy of the pole attachment customers by the cooperative equity owners, which we have argued against in our previous comments. This is unjust and unreasonable under the Hope and Bluefield standards.

However, in the spirit of compromise, we are willing to accept the most recent staff recommendation as follows:

**860-028-0020 (3)c** "For a consumer-owned utility, the cost of money is equal to the weighted average of the utility's embedded cost of debt and the most recent cost of equity authorized by the Commission for ratemaking purposes for an electric company as defined in OAR 860-038-0005, minus 200 basis points. The assumed equity cost is also adjusted to reflect the actual capital structure of the Cooperative, Municipal Utility, or Peoples' Utility District. For each 1% difference in capital structure from that associated with the most recent cost of equity decisions, the assumed cost of equity is adjusted by a factor of 4 basis points".

We strongly disagree with the alternate staff proposal to base the cost of money on long-term debt plus 100 basis points. Using the debt method is not a fair method for co-op customers. Some cooperatives that have low growth may well have some old and very inexpensive RUS debt. Other cooperatives that are borrowing more and current capital to expand plant may have debt costs that are at the current market cost. Equity should always be valued at market, not some historical loan rate. The staff model does three things: 1. It allows the value of equity to float with changes in the marketplace; 2. It simplifies the process for all COU's, because this formula makes adjustment for capital structure differences that effect risk; 3. It provides certainty in the method of calculation.

The language in the Oregon statute (ORS 757.282(1)) says that rental rates shall be no higher than "actual capital and operating expense, including just compensation...attributable to the attachment. We believe "just compensation is a separate concept from "actual capital and operating expense", and the Legislature clearly intended that pole owners should be compensated for the use of the pole and be provided just compensation. The statute also says that the Commission in setting pole rental rates must be concerned with the interests of the consumers of the pole owners – including consumer owned utilities, as well as the consumers of the pole occupants. By not allowing a "reasonable return on equity" members of cooperatives will be subsidizing pole occupant customers – which we clearly have argued is unfair.

Currently electric cooperatives use a cost of equity in their pole rental formulas that will not change appreciably with the staff proposal.

#### **860-028-0050**

ORECA supports the staff proposal to include language as follows in 860-028-0050 (3) “An owner or occupant that is an operator of communication facilities must trim or remove vegetation that poses a significant risk to its facilities or through contact with its facilities poses a significant risk to a structure of an operator of a jointly used system”.

It is our belief that operators of communication facilities have a responsibility for vegetation management and staff’s proposed language clearly delineates their responsibility.

#### **860-028-0070**

We have a concern with the rule as drafted in both the staff and OJUA proposed language. It may have the unintended consequences of allowing pole occupants to use the “complaint” process unfairly by filing complaints regarding only one component of a contract and not bringing in the contract as a whole. This disregards the full contract negotiations which allow give and take on the part of both parties.

#### **860-028-0080**

In regard to “Costs of Hearings”, Oregon statutes authorize the Commission to recover costs of hearings “from the parties” in instances when a consumer-owned utility is involved and the order resulting from the hearing applies to the consumer owned utility. Nothing in the language of the statute supports excluding investor-owned utilities, telecommunications providers or cable television providers from responsibility for Commission costs of a hearing in which a consumer-owned utility is involved. This approach would assure that the Commission does not bill all costs of a hearing to an involved consumer-owned utility when other parties should be responsible for some of the Commission’s costs. We believe the Commission is charged with apportioning costs in an equitable manner. This again maintains our position that electric utility customers should not be required to subsidize telecommunications or cable customers. We support the Commissioners ruling on apportioning hearing costs in the Central Lincoln PUD, vs Verizon proceeding.

#### **860-028-0110**

We support the comments submitted by Central Lincoln PUD and Northern Wasco County PUD regarding pole rental rates for transmission poles. ORECA believes that transmission poles and towers are far different from distribution poles and transmission pole owners should be able to negotiate a rate reflecting the difference in costs for attachments.

In 860-028-0110 (4) ORECA supports the PUC staff’s recommendation that rental rates should not include attachment to support equipment and permit application processes. As stated in our introduction, these costs should be direct billed which will allow pole owners to receive full cost

recovery for these direct costs. Again, the costs should be paid by the cost causer. Including these costs in the rental rate formula does not provide pole owners with full cost recovery and penalizes other pole occupants.

### **860-028-0115**

ORECA supports staff's recommendation in 860-028-0050 (3). Tree trimming should be non-negotiable. All pole occupants should have a pro-active tree trimming program.

### **860-028-0120**

As a policy, we encourage use of the area outside useable space to continue to be negotiated by the parties.

## **AR 510 – Division 28 – Sanctions**

ORECA has an overall concern that pole owners are losing the ability to manage the poles for safety and reliability of service. We see the pendulum swinging from pole owners to pole occupants and this creates a problem in pole management. The current sanction rules have effectively brought our pole attachment program statewide into improved compliance. It has encouraged the financial incentives to insure that plant is being installed and maintained according to PUC safety rules. Financial consequences for disregarding the law and administrative rules has caused non-compliant pole occupants to “stand up and take notice” regarding their infractions – and in a timely manner. This was not the case pre HB 2271. However, if the financial consequences are not significant enough to get the attention of the irresponsible occupants, they can simply budget for sanction fees if the fees are less expensive than taking the steps to repair their violations. We are very concerned that licensees have gained the ability to avoid sanctions while retaining rental reductions. It doesn't help us get to compliance by having that concept go both ways.

In closing, we support the OJUA process and their product with a few exceptions. We encourage the Commission to maintain the OJUA compromise language at a minimum. However, we strongly encourage the Commission to support the concept of responsible pole management by providing the pole owners with the tools. We also encourage the Commission to find the path to a rental formula with direct costs billed to the cost causer to assure no subsidies between utility customers.

Oregon Rural Electric Cooperative Association

/s/ Sandy Flicker, Executive Director