

Central Lincoln PUD & Northern Wasco County PUD
Comments at Public Hearing
November 8, 2006

Good Morning.

CL and NW wanted to first thank Staff for their hard work in this phase of the rulemaking. We also wanted to thank OJUA, which has done a creditable job in resolving many issues. CL and NW will likely agree with many of OJUA's or Staff's resolutions in our written comments.

Today, we want to cover four issues.

1. Rental Rates & Permit Fees

CL and NW's key objective in this rulemaking is to achieve rental rate rules that:

- Are transparent and minimize disputes,
- Are fair to our consumers, who invest in these poles, and
- Do not result in cross subsidies, even among pole attachers

We therefore seek rules that permit ready calculation of a uniform rental rate. Some joint users are more prolific than others, and it does not seem fair to us that the costs they impose should be spread to all joint users. We prefer to charge individual attachers through permit fees for the costs they uniquely impose on us, rather than spreading those costs to all attachers via rental rates. Therefore, we prefer the Staff rule 860-028-0110(6), which defines what is in rental rates and what will be in permits fees. We are mindful of the need to keep clear records so that we can demonstrate that costs have been fully recovered, but not double recovered, through this process.

Regarding the Staff's proposed rental rate formula, CL and NW believe that the traditional Staff rental rate calculation bears reconsideration. It appears that Staff proposal applies a kind of FCC-based "cable rate" to all pole users, cable AND telecommunications. The original FCC cable rate was intended

to result in a subsidy of cable television, and so to apply that formulation to both cable and telecommunications is really an unwarranted subsidy.

It is difficult to understand the policy justification for having consumers of electricity, an essential service, subsidize consumers of non essential services such as cable television or telecommunications services. We don't think this result is compelled by Oregon's statute. At a minimum, it is time for the Oregon Commission to reexamine the statute and adopt a rule that is fair to pole owners' customers.

Toward that end, CL and NW support the rental rate calculation proposal submitted by Idaho Power Company. Alternatively, we could support outright adoption of the FCC telecommunications rate, which at a minimum result in a fair sharing of costs by telecommunications providers, if not yet by cable companies.

2. Cost of Money

The Oregon statutes require the Commission to provide "just compensation" to pole owners for attachments. The statutes also direct the Commission to establish rental rates taking into account the customers of pole owners as well as the customers of joint users.

We recognize that determining what is "just compensation" for consumer owned utilities may not be a familiar task to the Commission, but it is one that is necessary. We think that the Commission should know that consumer owned utilities finance operations with more variability than do IOUs, which tend to follow regulator preferences. Some have a great deal of debt, some have almost none. Many occasionally revenue finance capital investment. None of this means that the "cost of money" to a consumer owned utility is free, or that joint users should have access to it free of charge or at unduly lower costs.

CL and NW are working with other consumer owned utilities to develop a single rule that would result in a fair and calculable determination of "just compensation" for all the state's consumer owned utilities, whether coops, municipal utilities, or public utility districts. We do not propose a specific rule regarding a consumer owned utilities' "cost of money" today, but will address this in written comments once our discussions have concluded.

3. Transmission Tower v. Transmission Pole v. Distribution Pole

There are two separate issues regarding transmission facilities for pole attachments. The first is whether these rules govern access to transmission towers. The second is under what terms and conditions the rules should govern access to transmission poles.

Beginning first with the Oregon statute [[ORS 757.270(1)]], it reads:

Attachments are “installed upon any pole or [...] right of way, duct, conduit, manhole or handhole or **other similar facility or facilities** owned or controlled, in whole or in part [...]” by utilities.

The first question is whether “any similar facility” could encompass transmission towers such that access is mandated by statute. I think it does not. There’s no legislative history in Oregon that I could find that addresses this issue. So, we have only the Oregon statutes to look at. Are transmission towers, which are megastructures conveying electricity in interstate commerce often at extremely high voltages, similar in kind to “poles, handholes, conduits, etc?” This interpretation defies common sense. The Commission should not apply to transmission towers the same rules that will govern access to 40-foot wooden distribution poles.

The second question is whether these rules should cover transmission poles. CL & NW have no problem with granting nondiscriminatory access to transmission poles, and think that is probably required by the Oregon statute. For many practical reasons, however, CL and NW think that pole owners should be permitted to allow access to transmission poles at separately calculated rental rates, based on the costs of transmission poles, and under separate contracts.

Consumer owned utilities have adopted the practice of sizing distribution poles in anticipation of pole attachment requests. In other words, distribution poles intentionally have extra capacity for pole attachments, and processing requests for these attachments is fairly straightforward. We think the OJUA application process rules (in OAR 860-028-0100) are probably going to be workable for distribution poles.

Transmission poles, on the other hand, are engineered poles. They are designed and installed to carry only the loading the electric utility planned

for it to carry. There is no excess capacity for pole attachments. So, when a joint user requests access to the transmission pole, processing the request requires some individual evaluations and engineering. This work cannot be accomplished in the time frames and under the rules we are establishing in 028-0100.

We urge that the Commission adopt rules that permit separate rental rates and separate contracts governing terms and conditions of access for transmission poles.

4. Wireless Issues

CL and NWCPUD agree with Oregon Staff and probably also with other pole owners that wireless issues were raised very late in this docket. Wireless attachments raise many issues related to service continuity, safety, pole engineering, and cost recovery that simply were not contemplated by any of the parties when AR 506 began. CL and NW therefore support OJUA and Staff on this matter: the Commission should open a new separate docket to consider wireless issues and not try to piggyback these issues in this docket.

Certificate of Service

I certify that I have this day served the foregoing document upon all parties of record in AR 506 and AR 510 by delivering a copy in person or by mailing a copy properly addressed with first class postage prepaid, or by electronic mail pursuant to OAR 860-13-0070, to all parties or attorneys of parties listed on the Commission's service list in this matter.

Dated this 17th day of November, 2006.

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