

BEFORE THE PUBLIC UTILITY COMMISSION OF OREGON

DOCKET NO. UM 1191

QWEST CORPORATION

Complainant,

v.

CENTRAL ELECTRIC COOPERATIVE, INC.,

Defendant.

QWEST'S REPLY TO DEFENDANT'S
AFFIRMATIVE DEFENSES

Pursuant to OAR 860-013-0035 and -0050, Complainant, Qwest Corporation ("Qwest"), hereby replies to Defendant's Affirmative Defenses as follows. To the extent not specifically admitted, Qwest denies each allegation in CEC's affirmative defenses.

1.

Qwest denies that the allegations set forth by CEC are relevant to this docket. This docket involves setting the rates, terms and conditions of the joint use agreement between Qwest and CEC. CEC's allegations that Qwest is subject to penalties for failing to have a joint use agreement with CEC – which Qwest denies – are the subject of litigation before the United States District Court for the District of Oregon and are not before the Commission. Nevertheless, Qwest is compelled to reply to the allegations set forth in CEC's "affirmative defenses."

2.

Qwest admits that CEC and one of Qwest's predecessors executed a joint pole use agreement in 1949. This agreement speaks for itself.

3.

Qwest denies the allegations of paragraph 3.

1 4.

2 Qwest lacks information or belief sufficient to admit or deny the allegations relating to
3 the timing and scope of CEC's pole audit. Qwest therefore denies the same. Qwest admits that
4 CEC sued Qwest in the late 1990's. Qwest denies the remaining allegations of paragraph 4.

5 5.

6 Qwest admits that the parties executed a settlement agreement in May 2001. No
7 responsive pleading is necessary to the allegations relating to the terms and conditions of the
8 settlement agreement because the document speaks for itself. Qwest specifically denies that it
9 had "until December 31, 2003 within which to negotiate and obtain a new joint pole agreement
10 with CEC" as a condition of the settlement agreement. Under the settlement agreement, both
11 parties were obligated to negotiate in good faith a new joint use agreement.

12 6.

13 No responsive pleading is necessary to the allegations relating to the terms and conditions
14 of the settlement agreement because the document speaks for itself. Qwest specifically denies
15 that the joint pole audit "was performed by both CEC and Qwest" and that it was intended "to
16 identify any new bootlegs that had occurred on behalf of Quest [*sic*] during the pendency of the
17 lawsuit." Qwest specifically denies that "627 additional bootleg contacts by Qwest were
18 discovered" in the summer of 2004. Qwest admits that it has made all required payments for the
19 627 disputed attachments. Qwest denies the remaining allegations of paragraph 6.

20 7.

21 Qwest denies the allegations of paragraph 7.

22 8.

23 Qwest admits that it received CEC's new "Standard Joint Use Agreement" in July 2004
24 and that it provided comments on CEC's new agreement to CEC on or about December 6, 2004,
25
26

1 despite CEC's unwillingness to negotiate the substantive terms of the agreement. Qwest denies
2 the remaining allegations of paragraph 8.

3 9.

4 Qwest lacks information or belief sufficient to admit or deny the allegations relating to
5 CEC's alleged negotiations with other companies, the reason for CEC's revisions to its "standard"
6 joint use agreement, and to whom CEC sent its revised joint use agreement. Qwest therefore
7 denies the same.

8 Qwest admits that it notified CEC of Qwest's challenge to the PUC's pole attachment
9 penalty rules on December 6, 2004. Qwest specifically denies that it used the challenge "as an
10 additional reason not to negotiate in good faith its joint pole agreement." Qwest informed CEC
11 of its challenge to the PUC's rules just days after Qwest received CEC's first notice that Qwest
12 allegedly had violated the PUC's pole attachment rules by purportedly not having a joint use
13 agreement in place. CEC's notice included a demand for penalties. Qwest informed CEC of the
14 challenge on the same day that Qwest sent CEC its revisions to CEC's contract to get a new joint
15 use agreement in place as soon as possible. (*See Exhibit 1.*)

16 Qwest did not use its challenge to the PUC's rules to avoid negotiating with CEC. On the
17 contrary, Qwest has continually sought to hasten negotiations with CEC so as to cure any alleged
18 default, which Qwest denies, within the timeframes set forth in the PUC's rules. CEC is the party
19 that has failed to negotiate in this case.

20 For example, in response to Qwest's attempts to negotiate back in early December, CEC
21 required all negotiations to go through its attorney, Martin Hansen, rather than allowing the
22 clients who are responsible for implementing the agreement negotiate it. CEC also issued a
23 veiled threat to Qwest that it would drag out negotiations through at least the end of the year,
24 ostensibly because CEC believed Qwest took too much time to respond to CEC's initially
25 proposed new joint use agreement, rather than the actual time it might take CEC to respond to
26 Qwest's proposed revisions. (Exh. 2.) The correspondence between the parties in the last two

1 months shows that CEC, not Qwest, repeatedly refused to negotiate with Qwest, which has led to
2 the present action.

3 Indeed, CEC did not respond to Qwest's revisions *at all* for over five weeks. During
4 those five and a half weeks, Qwest asked for CEC's response to the revisions, or an estimate of
5 when it might receive CEC's response, at least four times. (Exh. 3.) Under the PUC's
6 regulations, a party can reduce any penalties by curing any default within 60 days. CEC did not
7 provide a response to Qwest's revisions or an estimate. (Exh. 4.) In order to protect its rights,
8 Qwest also served a plan of correction as set forth in OAR 860-028-0170. The plan of correction
9 included Qwest's proposal to negotiate a final new joint use agreement with CEC within 60 days.
10 (Exh. 3 at 6.) Those are hardly the actions of a company that is trying to avoid negotiations
11 because of its challenge to the rules. CEC never responded to that plan of correction; instead, it
12 continues to assert that it is entitled to penalties for failure to have a joint use agreement.

13 Ultimately, CEC's complete failure to negotiate for more than a month after it first
14 claimed that Qwest was in violation of the PUC rules for failure to have a contract forced Qwest
15 to advise CEC that it had until January 14, 2005 to respond or Qwest would file a complaint with
16 the PUC to set the terms of the agreement. (Exh. 5.) On January 13, one day before the
17 deadline, CEC sent Qwest a different agreement without referencing Qwest's proposed revisions
18 to the prior draft. CEC labeled this agreement the "final version" and indicated that it would not
19 accept any revisions. (Exh. 6.) While Qwest was reviewing and revising that agreement, the
20 PUC issued Order No. 05-042 in Docket UM 1087. *See* paragraph 12, *infra*.

21 Qwest denies the remaining allegations of paragraph 9.

22 10.

23 Qwest admits that the PUC issued Order No. 05-042 in Docket UM 1087 on January 19,
24 2005, that the Order has an impact on joint pole agreements in Oregon, and that certain
25 provisions of the Order impact the fees charged in CEC's proposed joint use agreement, as well
26 as other provisions of CEC's proposed joint use agreement. Qwest admits that CEC obtained a

1 copy of PUC Order No. 05-042 "the week of January 24, 2005" because counsel for Qwest sent
2 counsel for CEC a copy of Order No. 05-042 on January 24, 2005.¹ (Exh. 7.) Qwest lacks
3 information or belief sufficient to admit or deny the allegations regarding CEC's alleged contact
4 with the PUC. Qwest therefore denies the same.

5 11.

6 Qwest specifically denies any allegation that CEC learned of Order No. 05-042 on
7 January 28, 2005 because counsel for Qwest sent counsel for CEC a copy of Order No. 05-042
8 on January 24, 2005. (Exh. 7.) Qwest also specifically denies that CEC notified Qwest on
9 January 28, 2005 that certain revisions to CEC's joint use agreement may be made. Qwest lacks
10 information or belief sufficient to admit or deny the remaining allegations in paragraph 11 and
11 therefore denies the same.

12 Qwest states that CEC itself required all negotiations to go through its counsel, Martin
13 Hansen. Any delay caused by his alleged unavailability is solely the fault of CEC and cannot
14 excuse CEC's complete failure to respond to Qwest's inquiries as described in paragraph 12
15 below.

16 12.

17 Qwest denies the allegations in paragraph 12. Qwest told CEC several times that Qwest
18 would be required to file a complaint with the PUC if CEC continued to fail to negotiate in good
19 faith with Qwest. Although it had been stonewalled repeatedly by CEC and felt it had no choice
20 but to go to the PUC, after it became aware of Order No. 05-042, Qwest sent a letter to CEC on
21 January 24, enclosing the Order and asking CEC whether it would change its position and agree
22 to negotiate with Qwest given the PUC's ruling. Qwest did not ask for specific comments on a
23

24
25 ¹ Qwest inadvertently failed to enclose the order with the letter but sent it in PDF format to
26 counsel for CEC that same day, mere minutes after receiving an email from Mr. Hansen that he received
the letter without the attachment.

1 draft; it simply asked if CEC would be willing to negotiate. CEC did not respond to Qwest's
2 inquiry. (Exh. 7.) CEC also did not respond to Qwest's statements on January 24 and January 26
3 that Qwest would be forced to file a complaint with the PUC if CEC did not confirm that it
4 would negotiate with Qwest by Friday, January 28. (Exh. 8.) CEC had ample warning and
5 plenty of time to avoid this proceeding and did nothing.

6 13.

7 Qwest denies that it is improperly using the PUC to “extort an unfair negotiating
8 advantage with CEC.” Qwest has simply availed itself of the remedy provided for in Oregon law
9 for situations such as this one where the pole owner uses the threat of penalties as leverage to
10 obtain unjust and unreasonable contract terms, conditions, and rates. Moreover, Qwest was
11 required by CEC's inaction to file the Complaint to effectuate its cure of the alleged default, as
12 permitted by PUC regulations, to have a new joint use agreement in place.

13 Qwest is without information or belief sufficient to admit or deny the allegation that no
14 other companies negotiating with CEC have filed PUC complaints and therefore denies the same.

15 14.

16 Qwest admits that CEC notified Qwest that CEC believes the complaint was filed in bad
17 faith and that Qwest should withdraw the complaint. Qwest also admits that it has not withdrawn
18 the complaint.

19 15.

20 Qwest admits that it made revisions to CEC's "final version" of the proposed new joint
21 use agreement between the parties before and after the PUC issued Order No. 05-042, as that is
22 what a party normally does when it is attempting to negotiate. While many of Qwest's revisions
23 were intended to incorporate specific language or concepts from Order No. 05-042 into the
24 agreement, a number of Qwest's other revisions imported language from CEC's first and second
25 versions of the agreement, with some modifications. Qwest specifically denies that it has
26

1 somehow deprived CEC of the opportunity to make its own revisions to the agreement. For over
2 two months now, Qwest has been doing everything in its power to engage CEC in negotiations.
3 It even left the door open for negotiations to occur while this proceeding is pending. (Exh. 9.)
4 However, to date, Qwest has failed to receive a single indication from CEC that it would be
5 willing to negotiate. Thus, Qwest hopes that despite CEC's attempts to convolute and distract
6 from the facts, the PUC will recognize that CEC's complete failure to negotiate – or even
7 indicate a willingness to negotiate – is what precipitated this action and stands in the way of the
8 parties' reaching a new agreement.

9 Qwest denies the remaining allegations of paragraph 15.

10 16.

11 Qwest denies the allegations in paragraph 16. CEC has provided no legal basis for
12 dismissal of Qwest's Complaint or for the vague declaratory relief requested.

13 DATED: February 10, 2005.

14 **PERKINS COIE LLP**

15
16 By 

17 Lawrence H. Reichman, OSB No. 86083
18 John P. (Jay) Nusbaum, OSB No. 96378
19 Tel: 503-727-2000
20 Fax: 503-727-2222

21 Leslie Kelly (to be admitted pro hac vice)
22 Qwest Communications International Inc.
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25 Attorneys for Complainant Qwest Corporation
26

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December 6, 2004

VIA FACSIMILE (541-382-7068) and U.S. MAIL

Martin Hansen
Frances Hansen & Martin LLP
1148 NW Hill Street
Bend, Oregon 97701

Re: Central Electric Cooperative/Qwest

Dear Martin:


I am writing regarding your letter of December 1, 2004 concerning Qwest's alleged unauthorized pole attachments in 2004.

Above all, your letter indicates that there are a number of outstanding issues between CEC and Qwest that need to be resolved. One such issue is whether Qwest currently has a written contract with CEC specifying the general terms and conditions that apply to Qwest's attachments. There also is an issue as to whether the invoices and correspondence that CEC sent to Qwest in June 2004 constituted sufficient notice under OAR 860-028-0190. And finally, there is an issue as to whether the PUC penalties are valid. As you may know, Qwest is currently challenging the PUC penalties before the Oregon Court of Appeals.

Because the parties disagree on these and possibly other issues, Qwest is proposing that it and CEC engage the assistance of Magistrate Judge Thomas Coffin or another neutral arbiter to aid us in coming to a resolution. Mediation or a settlement conference would be quicker and more efficient than litigating this dispute, which is in the best interests of both of our clients.

Please let me know whether your client accepts Qwest's proposal.

Sincerely yours,



Jay Nusbaum

JPN:hmr

Cc: Leslie Kelly

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Perkins Coie LLP (Perkins Coie LLC in Illinois)

-----Original Message-----

From: Langston, Jay

Sent: Monday, December 06, 2004 11:20 AM

To: 'Spencer, Jeff'

Subject: Qwest License Agreement

Jeff,

I sent you a redlined version of your proposed contract last Thursday for your review. However, an issue came up this morning and I could not find my message to you. Therefore I am resending Qwest's redline agreement.

I left you a voice message this morning and would like to discuss a couple of issues with you.

Thanks for your assistance.

Jay Langston
303-707-5117

FRANCIS HANSEN & MARTIN, LLP

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Martin E. Hansen*
Gerald A. Martin
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meh@francishansenmartin.com

December 7, 2004

VIA FACSIMILE & REGULAR MAIL

Jay Nusbaum
Perkins Coie LLP
1120 NW Couch 10th Floor
Portland, OR 97209

Re: CEC vs. Qwest – 2004 Unauthorized Contacts

Dear Jay:

I am writing this letter concerning your client's contact with CEC in the last couple of days.

After I notified Qwest through your office that they owed CEC for the 2004 unauthorized contacts, Qwest representatives on Monday, December 6, 2004, contacted CEC and sent a proposed revision draft of the pole licensing agreement back to CEC. CEC has sent that proposed pole license agreement to Qwest many, many, many months ago. We never received any response from Qwest until yesterday. Obviously Qwest acknowledged that their unauthorized attachments without an existing licensing agreement has created a substantial PUC penalty.

I am pointing this out in case you were unaware of your client's recent contact with CEC. We are going to review the proposed license agreement now that we have finally received it back from Qwest. That process is entirely separate and distinct from the penalties that Qwest owes to CEC.

Please notify your client that CEC will work through its counsel on both of these issues and not directly. My client had received an e-mail from Jeff Langston at Qwest asking how to proceed on the negotiations for the license agreement. Tell Mr. Langston that whoever is in charge must work through my office on a license agreement.

Mr. Langston now appears concerned that there are only a few days left in 2004 to negotiate this license agreement. We cannot promise that these negotiations will be

Jay Nusbaum

Re: CEC vs. Qwest – 2004 Unauthorized Contacts

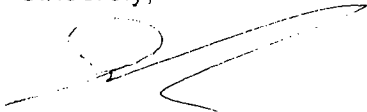
December 7, 2004

Page Two

concluded in 2004 given the months and months of delay caused solely by Qwest's failure to respond to our proposed license agreement when they first received it.

Call me if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Hansen', with a long, sweeping horizontal stroke extending to the right.

MARTIN E. HANSEN

MEH/Iko

cc: Al Gonzalez
Dave Markham

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December 7, 2004

VIA FACSIMILE (541-382-7068) and U.S. MAIL

Martin Hansen
Frances Hansen & Martin LLP
1148 NW Hill Street
Bend, Oregon 97701

Re: Central Electric Cooperative/Qwest

Dear Martin:

I received your letter sent earlier today regarding Qwest's current contract negotiations with CEC.

At the outset, I want to address the suggestion in your letter that there is something improper about Qwest's business group contacting CEC's business group as part of the parties' ongoing contract negotiations, and the statement in your letter that the current contact negotiations somehow are an "acknowledgement" of your client's position regarding the PUC sanctions. Neither is true. Indeed, Qwest finds it confusing that on the one hand, you emphasize the separateness of the license agreement review process and the alleged penalties CEC is seeking from Qwest, and on the other hand, insist that these two processes are so related that communication about them must go through counsel.

Nonetheless, although we disagree with your position, Qwest will honor CEC's wishes and conduct the remaining license agreement negotiations through you directly. To that end, please forward us CEC's comments on the current draft as soon as possible. We hope that your statement that CEC "cannot promise that these negotiations will be concluded in 2004" was not intended to suggest that CEC would fail to conduct these negotiations in good faith.

December 7, 2004
Page 2

Also, we still have not heard from you regarding Qwest's proposal to mediate the parties' pole attachment dispute. If we have not heard from you by noon tomorrow, we will go ahead and contact Judge Coffin.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jay Nusbaum", with a long, sweeping horizontal flourish extending to the right.

Jay Nusbaum

JPN:hmr

Cc: Leslie Kelly

Jay P. Nusbaum
PHONE: 503.727.2025
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December 8, 2004

VIA FACSIMILE (541-382-7068)

Martin Hansen
Frances Hansen & Martin LLP
1148 NW Hill Street
Bend, Oregon 97701

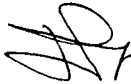
Re: Central Electric Cooperative/Qwest

Dear Martin:

It appears from your letter that CEC may be willing to consider mediation, albeit not in front of Judge Coffin. Qwest would like to hear what CEC has in mind, as it still believes mediation is in the best interests of both parties. If you can let me know when you will be able to get back to me regarding CEC's response to this option, Qwest will hold off on contacting Judge Coffin.

As for the contract negotiation, please send me CEC's comments on the draft sent to you by Qwest as soon as possible.

Sincerely yours,



Jay Nusbaum

JPN:hmr

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December 15, 2004

VIA FACSIMILE (541-382-7068) and U.S. MAIL

Martin Hansen
Frances Hansen & Martin LLP
1148 NW Hill Street
Bend, Oregon 97701

Re: Central Electric Cooperative/Qwest

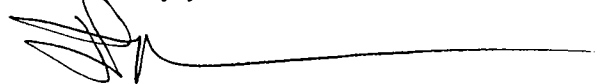
Dear Martin:

We have not heard from you regarding Qwest's proposal to mediate the issue of 2004 penalties for allegedly unauthorized attachments. Qwest is still willing to mediate the issue and looks forward to hearing from you.

In the meantime, in order to preserve its arguments should the parties be unable to resolve their dispute in mediation, Qwest hereby submits the attached plan of correction under OAR 860-028-0170. Please note that this submission is intended to preserve Qwest's rights. It does not constitute a waiver of Qwest's right to challenge the validity of the PUC's regulations, which Qwest expressly reserves.

I look forward to hearing from you regarding Qwest's mediation proposal and to receiving CEC's comments on the proposed joint use agreement.

Sincerely yours,



Jay Nusbaum

JPN:hmr

Cc: Leslie Kelly

Qwest Plan of Correction for Alleged PUC Rule Violations Related to Attachments to Poles of Central Electric Cooperative

By letter dated November 30, 2004, CEC claimed that Qwest is in violation of OAR 860-028-0130 and therefore is subject to the penalties set forth in that regulation. Without waiving its right to challenge this claim or resolve it in mediation, Qwest hereby submits a plan of correction pursuant to OAR 860-028-0130(2) in order to preserve its rights under OAR 860-028-0170.

Qwest disagrees with the alleged violations for one or more of the following reasons:

1. Qwest disagrees with CEC's claim that the parties do not have a contract. Paragraph 10 of the parties' May 2001 Settlement Agreement states:

The parties agree to exercise good faith in negotiating a joint use agreement to cover [the] period beginning January 1, 2004. If no agreement can be reached prior to January 1, 2004, despite the good faith of both parties, then this Agreement will terminate and any future joint use of the parties' poles will continue without a contract solely pursuant to the PUC's then-existing regulations...*It is further understood by both parties that if no agreement has been reached by January 1, 2004, then ... any penalties for attachments not authorized prior to the date shall be determined by the PUC's then-existing regulations....*"

Settlement Agreement ¶ 10 (emphasis added). Despite its reference to termination of the Settlement Agreement, Paragraph 10 includes written terms (indicated above in italics) that appear to govern the parties' relationship from January 1, 2004 forward in the absence of another contract, and/or when, like here, CEC did not engage in any effort to negotiate new a joint use contract prior to January 1, 2004. Because it appears that Paragraph 10 constitutes an operative written contract between the parties, penalties under OAR 860-028-0130 should not be allowed;

2. Qwest disagrees with CEC's contention that it first gave Qwest notice of Qwest's alleged violation, as required by OAR 860-028-0190, in June 2004. The first time Qwest received notice that CEC believed Qwest had violated PUC regulations was on November 30, 2004;
3. Qwest disagrees that the sanctions provided for in the PUC's regulations are valid and enforceable. As CEC is aware, Qwest is challenging the PUC's penalty rules in the Oregon Court of Appeals. Qwest also disagrees that the

PUC sanctions may lawfully be claimed under Qwest's agreement with CEC; and/or

4. Qwest disagrees that the number of poles on which CEC is claiming that Qwest has unauthorized attachments (627) is accurate. Qwest's own field verification is in the process of being completed, but early indications are that at least 18 of the 627 allegedly unauthorized attachments are not Qwest attachments.

Without waiving its rights to raise any of these disagreements in an appropriate forum, including mediation, Qwest will continue to negotiate in good faith with CEC to reach a new joint use agreement and will endeavor, with CEC's cooperation, to have such an agreement finalized within 60 days of November 30, 2004, the date on which Qwest received notice that CEC would be seeking sanctions pursuant to OAR 860-028-0130. Within four weeks from the date of this plan of correction, Qwest will validate the number of poles on which it has attachments and revise its permits for those attachments accordingly.

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December 23, 2004

VIA FAX AND U.S. MAIL

Martin Hansen
Frances Hansen & Martin LLP
1148 NW Hill Street
Bend, Oregon 97701

Re: Central Electric Cooperative/Qwest

Dear Mr. Hansen:

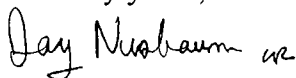
We have not yet received CEC's response to Qwest's revisions to the proposed joint use agreement, which Qwest sent in early December. Although we feel it would be more efficient for the clients to work through the issues themselves, as we stated in a recent letter, we are willing to honor your request that negotiations take place through you.

However, we are concerned about the amount of time that has passed since Qwest submitted its proposed revisions. As we have stated in the past, Qwest would like to execute a joint use agreement with CEC as soon as possible, especially given CEC's allegation that Qwest has violated the PUC's regulations by not having a contract in place. As I am sure you know, it is inappropriate for a pole owner to unreasonably delay approval of a joint use contract or seek to impose unreasonable terms and conditions using the threat of sanctions as leverage. CEC has stated that it will negotiate in good faith with Qwest, and we look forward to doing so and executing a new joint use agreement as soon as possible.

If CEC does not currently have its responses to Qwest's revisions ready, please at least let me know when Qwest can expect to receive them.

I look forward to hearing from you.

Sincerely yours,



Jay Nusbaum

JPN:hmr

Cc: Leslie Kelly

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December 7, 2004

VIA FACSIMILE & REGULAR MAIL

Jay Nusbaum
Perkins Coie LLP
1120 NW Couch 10th Floor
Portland, OR 97209

Re: CEC vs. Qwest – 2004 Unauthorized Contacts

Dear Jay:

I just received your letter of December 7, 2004. Please do not try to "create a record" to try to correct the many problems that Qwest faces.

Let me be clear. CEC will always conduct negotiations in good faith on all agreements including the Joint Pole Agreement. However, Qwest received our proposed draft of that agreement months ago and simply "blew it off". Qwest is totally at fault for not having an agreement in place. Qwest has not acted in good faith and you are well aware of that. For Qwest now to complain about CEC is preposterous in the extreme. Qwest is being penalized under the PUC regulations for two reasons, they are trespassing on CEC's property and they have totally ignored the Joint Pole Agreement that we sent them months ago. Qwest will have to live with the results of their conduct.

CEC will not negotiate this with Judge Coffin. The case before Judge Coffin is entirely closed. Last month Qwest paid the penalties as a result of their continued trespass under the case that was filed in Federal Court that was mediated by Judge Coffin. We will not accept Judge Coffin as a mediator in this dispute.

It appears I will have to file suit against Qwest in order to obtain payment under the PUC regulations. I am sending you this letter tonight given your precipitous attempt to create a record and then run to Judge Coffin without our permission. I had hoped to be able to talk to my client over the next few days before getting back to you with our means of resolving it. However, your letter this evening demonstrates Qwest's continued bad faith.


Jay Nusbaum
Re: CEC vs. Qwest – 2004 Unauthorized Contacts
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To summarize, CEC will negotiate in good faith the Joint Pole Agreement. However, the fact that Qwest sat on this agreement for months, and ignored CEC's request that such an agreement be negotiated will not create a "fire drill" at the end of the year for us to negotiate in a hurry.

Finally, Qwest's continued trespass on CEC's property will be dealt with under the PUC regulations.

Call me if you have any questions.

Sincerely,



MARTIN E. HANSEN

MEH/lko

cc: Al Gonzalez – enc.
Dave Markham – enc.

FRANCIS HANSEN & MARTIN, LLP

C. E. "Win" Francis
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December 8, 2004

VIA FACSIMILE & REGULAR MAIL

Jay Nusbaum
Perkins Coie LLP
1120 NW Couch 10th Floor
Portland, OR 97209

Re: CEC vs. Qwest – 2004 Unauthorized Contacts

Dear Jay:

I received your letter of December 8, 2004. Once again you are making assumptions. Why not wait until I tell you exactly what CEC's position is before making assumptions?

I can be clear on one matter. Your continuing "threats" to contact Judge Coffin on a case that he no longer has jurisdiction over does not instill in CEC the desire to mediate with Qwest. Judge Coffin retains jurisdiction over the old case only until such time as the Settlement Agreement was paid. That Settlement Agreement expired December 31, 2003. Judge Coffin has no jurisdiction on a new claim for new trespass under new law. Any attempt to waste time by contacting Judge Coffin will just guarantee CEC will follow litigation as the means for resolving this dispute.

Sincerely,



MARTIN E. HANSEN

MEH/lko

cc: Al Gonzalez – enc.
Dave Markham – enc.

Cec/qwest/Nusbaum/120804

FRANCIS HANSEN & MARTIN, LLP

C. E. "Win" Francis
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meh@francishansenmartin.com

December 27, 2004

VIA FACSIMILE & REGULAR MAIL

Jay Nusbaum
Perkins Coie LLP
1120 NW Couch 10th Floor
Portland, OR 97209

Re: CEC vs. Qwest – 2004 Unauthorized Contacts

Dear Jay:

I am responding to your letter of December 23, 2004. It is preposterous for Qwest, who totally ignored CEC's proposed Joint Pole Agreement for five months, to now claim that CEC is somehow delaying the execution of this agreement. Qwest has violated the PUC conditions and CEC has taken appropriate steps to enforce the sanctions appropriate against Qwest.

Qwest did nothing to make certain that a Joint Pole Agreement was in place starting January 1, 2004. Qwest was in violation from the beginning of 2004 for contacting CEC's poles without such an agreement in place. It is up to Qwest to make certain that such an agreement is in place. When CEC had received nothing from Qwest for nearly seven months, CEC proposed its own Joint Pole Agreement. That agreement was ignored by Qwest for five months.

Qwest's actions, regarding the Joint Pole Agreement, are simply the latest in Qwest's failure to follow either Joint Pole Agreements in the past or current PUC regulations. Qwest's liability for the year 2004 has now been established. Qwest's failure to propose a Joint Pole Agreement in January 2004 coupled with Qwest's inexcusable failure to enter into the Joint Pole Agreement proposed in July 2004 has exposed Qwest to the penalties provided for by the PUC regulations.

Many of the proposed changes Qwest requested in the CEC Joint Pole Agreement were requests made in bad faith by Qwest. We are reviewing the agreement to see what, if any, changes reasonably should be made to the agreement before its return to

Jay Nusbaum
Re: CEC vs. Qwest – 2004 Unauthorized Contacts
December 27, 2004
Page Two

Qwest. Again, it was incumbent upon Qwest in the first place to make certain that a Joint Pole Agreement was in place prior to January 1, 2004. Qwest will now face the consequences for its failure.

Call me if you have any questions.

Sincerely,



MARTIN E. HANSEN

MEH/iko

cc: Al Gonzalez – enc.
Dave Markham – enc.

Cec/qwest/Nusbaum/122704

Jay Nusbaum
PHONE: 503.727.2025
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January 7, 2005

By Fax and Mail

Martin Hansen
Frances Hansen & Martin LLP
1148 NW Hill Street
Bend, Oregon 97701

Re: Central Electric Cooperative/Qwest

Dear Martin:

I am writing to respond to your letter dated December 27, 2004. At the outset, I must reiterate that Qwest disagrees with your assertion that there is no contract between Qwest and CEC and, therefore, Qwest "was in violation" of the PUC's rules from the beginning of 2004 for contacting CEC's poles. Qwest believes the parties' settlement agreement continues to govern the terms and conditions associated with the parties' joint pole use. The settlement agreement states that it would terminate on January 1, 2004 "[i]f no agreement can be reached prior to January 1, 2004, despite the good faith of both parties." It is my understanding that CEC did not initiate negotiations for a new joint use agreement before January 1, 2004. Because arguably no good faith negotiations therefore could occur, the settlement agreement **did not** terminate, so the settlement agreement continues to govern the parties' joint use. Indeed, Qwest believes the agreement's terms apply regardless of CEC's lack of good faith. In short, the parties had, and continue to have, in place a "written contract that specifies general conditions for attachments on the poles of the pole owner." OAR 860-028-0120(1)(a).

Nevertheless, it is apparent that CEC desires a new joint use agreement. To that end, on July 20, 2004, CEC first sent its "standard" pole attachment agreement to Qwest. While Qwest is willing to accept many of CEC's "standard" terms, Qwest believes


January 7, 2005

Page 2

that some of the proposed terms are unreasonable and unjust and, therefore, are unacceptable. Accordingly, Qwest made some revisions and comments and returned the revised agreement to CEC in early December 2004. Although CEC has had the revised agreement for over a month, it has not responded to Qwest's proposed revisions. Nor have you stated when Qwest can expect to receive CEC's comments, as I asked you to do in my letter dated December 23, 2004.

As I have stated in the past, we believe it is in both parties' best interests to agree on a new contract as soon as possible so that their ongoing relationship is governed by undisputed terms and conditions. However, Qwest will not sit idly by while CEC holds the proposed agreement and claims that Qwest continues to place attachments without a contract. If the parties cannot negotiate new contract terms, then Qwest intends to submit the issue to the Oregon Public Utility Commission in a complaint proceeding. Because of your continued failure to respond to my inquiries regarding when Qwest will receive CEC's comments on Qwest's revisions, Qwest is forced to give CEC a deadline. Therefore, unless we hear from you by **5:00 p.m. on Friday, January 14, 2005**, Qwest will thereafter file a complaint with the Commission and ask the Commission to decide the terms and conditions of the parties' joint use agreement.

Sincerely yours,



Jay Nusbaum

JPN:hmr

Cc: Leslie Kelly
Lawrence Reichman

FRANCIS HANSEN & MARTIN, LLP

C. E. "Win" Francis
Martin E. Hansen*
Gerald A. Martin
Michael H. McGean
Gregory J. Stuman **

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francishansenmartin.com

January 13, 2005

VIA FACSIMILE & REGULAR MAIL

Jay Nusbaum
Perkins Coie LLP
1120 NW Couch 10th Floor
Portland, OR 97209

Re: CEC vs. Qwest – 2004 Unauthorized Contacts

Dear Jay:

Your letter of January 7, 2005 further demonstrates how really "out-of-touch" Qwest is with regards to its legal responsibilities in this matter.

It is your client Qwest who is in need of the legal right to utilize the property owned by the members of Central Electric Cooperative. Most companies would not think of occupying the commercial property of another company without having a lease agreement firmly in place from the outset. That has not been the case with Qwest.

Your letter ignores the fact that Qwest took no steps, as it was required to take, prior to January 1, 2004 to put into place a rental agreement between our two clients. Let's remember that your client should have commenced negotiations for a rental agreement immediately upon the execution of the settlement agreement in May of 2001. When your client waited over three years without proposing a rental agreement while still making attachments to CEC's system, CEC took it upon itself to propose a rental agreement for your client's occupancy of our system. Qwest then totally ignored that proposed rental agreement. It was not until CEC began to impose the penalties due under the settlement agreement that Qwest, over five months after receiving the rental agreement, even acknowledged the obligation Qwest had to respond to the proposed rental agreement. Qwest has absolutely no grounds to complain about any actions of CEC. Only when CEC determined that Qwest intended to continue its unlawful trespass on CEC's property without a rental agreement in place, did CEC decide to see if Qwest would step up to the plate and sign a rental agreement proposed by CEC. To no surprise of ours, Qwest once again failed to honor the most simple obligation of a tenant, to sign a rental agreement.

Jay Nusbaum
Re: CEC vs. Qwest – 2004 Unauthorized Contacts
January 13, 2005
Page Two

I enjoyed your attempts to breath life into the long ago terminated settlement agreement. I always find it amusing when a party that has no legal defense attempts to blatantly misquote and miscite a document it signed in an effort to totally change the meaning of a document. The settlement agreement between our two parties could not be clearer that it is fully terminated as of December 31, 2003. That point is made more than once in the same paragraph that you so crudely bludgeoned in order to make your argument that, as a result of the magnitude of Qwest's breach of its obligation to propose a rental agreement, that somehow the settlement agreement would rise from the dead.

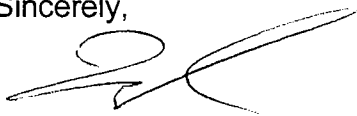
Let me review some facts that are obvious to us but have obviously have been overlooked by Qwest. Qwest has had since May of 2001 to propose and enter into a Joint Pole Agreement with CEC. Qwest did not lift a finger in all of those years to propose or even request a Joint Pole Agreement.

Qwest has had a Joint Pole Agreement in its hands since July of 2004. Qwest could have signed that Joint Pole Agreement back in July and it would not now be in violation of the PUC rules and regulations. Again, Qwest did absolutely nothing to sign that Joint Pole Agreement. Qwest now faces even more sanctions for its failure to have a pole agreement in place while still making attachments to CEC's property.

My client has been negotiating with other companies who have attachments to CEC's poles. As a result, we have found a few changes to our proposed agreement that we are willing to accept. While the first agreement proposed to Qwest is still acceptable to CEC, I am enclosing with this letter the final version of CEC's Joint Pole Agreement. As Qwest now enters its second year without a Joint Pole Agreement in place, and now that Qwest is facing CEC's claim for sanctions and penalties for its past trespass, I would strongly suggest you advise your client to execute this agreement to mitigate the damages that are already subject to our claim.

Call me if you have any questions.

Sincerely,



MARTIN E. HANSEN

MEH/lko

Enclosure

cc: Al Gonzalez
Dave Markham

Jay Nusbaum
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Fax: 503.727.2222
EMAIL: JNUSBAUM@perkinscoie.com



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January 24, 2005

By Fax (541.382.7068) and U.S. Mail

Martin Hansen
Frances Hansen & Martin LLP
1148 NW Hill Street
Bend, OR 97701

Re: Central Electric Cooperative/Qwest Joint Use Agreement

Dear Martin:

With your letter dated January 13, 2005, you enclosed a proposed form of a new joint use agreement that had been revised, in some cases substantially, from the first version Central Electric sent to Qwest. Your letter gave Qwest the choice of either signing the first proposed agreement or the enclosed draft, which you referred to as "the final version of CEC's Joint Pole Agreement." In other words, you stated that Central Electric continues to refuse to negotiate with Qwest. Accordingly, you left Qwest with no choice but to file a complaint with the PUC. Nevertheless, Qwest was prepared to send you a revised version of a joint use agreement that incorporated provisions from both your first and second versions, with some changes, before filing a complaint with the PUC.


Before we could finish compiling a revised draft, Qwest recently became aware of the OPUC's order in *Central Lincoln PUD v. Verizon*, Docket UM 1087. A copy of the order is attached for your convenience. Since the OPUC's order provides firm guidance on reasonable and just joint use terms and conditions, we are writing to ask whether Central Electric's position regarding negotiating with Qwest has changed in light of this order. Specifically, please let me know by 9:00 a.m. tomorrow morning whether Central Electric will accept revisions to its proposed new joint use contract along the lines of those set forth in Appendix A to Order No. 05-042 with some revisions and additions based on Central Electric's prior drafts. If, instead, Central Electric intends to stand by its prior statement that the version it sent on January 13 is the final and only version it is willing to accept, Qwest will proceed with filing its

[DOCUMENT.01]

Martin Hansen
January 24, 2005
Page 2

complaint with the OPUC to set the terms and conditions of a joint use agreement between the parties.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'JN', with a long horizontal flourish extending to the right.

Jay Nusbaum

JPN:jg

c: Leslie Kelly
Lawrence Reichman

Nusbaum, Jay

From: Martin Hansen [meh@francishansenmartin.com]
Sent: Monday, January 24, 2005 5:26 PM
To: Nusbaum, Jay
Cc: Martin Hansen (E-mail)
Subject: Your incomplete Fax.

Jay,

Your letter arrived by fax this afternoon. Contrary to your letter, you did not send any copies of the Puc order that you referenced.

Martin

Martin E. Hansen
Francis Hansen & Martin LLP
1148 N.W. Hill St.
Bend, OR 97701

541-389-5010
fax: 541-382-7068
meh@francishansenmartin.com

Nusbaum, Jay

From: Nusbaum, Jay
Sent: Monday, January 24, 2005 5:28 PM
To: 'Martin Hansen'
Subject: OPUC Order
Importance: High

My apologies for not including this with my earlier letter. If you have any problems with the attachment, the order is also available on the PUC's Web site.

Jay

Jay Nusbaum
Perkins Coie LLP
503.727.2025
JNusbaum@perkinscoie.com

Jay Nusbaum
PHONE: 503.727.2025
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January 26, 2005

By Fax (541.382.7068) and U.S. Mail

Martin Hansen
Frances Hansen & Martin LLP
1148 NW Hill Street
Bend, OR 97701

Re: Qwest/Central Electric Cooperative Joint Use Agreement

Dear Martin:

You have not responded to my letter dated January 24, 2005. Because Central Electric continues to refuse to negotiate and has demanded unjust, unfair, and unreasonable contract terms, Qwest must protect its rights and will file a complaint with the OPUC this Friday asking it to adopt the terms and conditions in the attached proposed new joint use contract between Qwest and Central Electric. This proposed contract incorporates provisions from Appendix A to OPUC Order No. 05-042 in Docket UM 1087, provisions from the first and second drafts you sent with changes, and some provisions proposed by Qwest.

Sincerely yours,

A handwritten signature in black ink, appearing to be 'JN', followed by a horizontal line extending to the right.

Jay Nusbaum

JN:hmr

Enclosures

c: Leslie Kelly
Lawrence Reichman

[13141-0273-000000/PA050260.063]

Jay P. Nusbaum
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January 28, 2005

VIA ELECTRONIC MAIL (meh@francishansenmartin.com)

Martin Hansen
Frances Hansen & Martin LLP
1148 NW Hill Street
Bend, Oregon 97701


Re: Central Electric Cooperative/Qwest

Dear Martin:

Because we received no response from you as to whether Central Electric would be willing to meaningfully negotiate the terms of a new joint use agreement with Qwest, Qwest had no choice but to file a complaint today with the Public Utility Commission in order to preserve and protect its rights. In its complaint, Qwest has asked the PUC to set the terms of a new pole attachment agreement. Attached is a courtesy copy of the complaint and exhibits.

Despite filing this complaint, Qwest continues to be willing to negotiate with Central Electric, and hopes that your client will consider this option. Although the parties have had their differences, Qwest remains committed to reaching a mutually-satisfactory new agreement should you and your client agree to participate meaningfully in the contract negotiation. In any event, we believe the parties should attempt to narrow the issues presented to the Commission for resolution at the hearing. I look forward to hearing whether your client would be amenable to either of these options.

Sincerely yours,



Jay Nusbaum

JPN:hmr

November 15, 2004
Page 2

Cc: Leslie Kelly
Lawrence Reichman

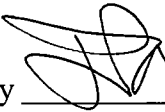
**CERTIFICATE OF SERVICE
UM 1191**

I hereby certify that on this day I served the foregoing **Qwest's Reply to Defendant's Affirmative Defenses** on the following persons by causing to be emailed and mailed a true copy thereof, contained in a sealed envelope, with postage prepaid, addressed to said persons at the following addresses and deposited in the post office at Portland, Oregon, on this day:

MARTIN HANSEN
FRANCIS HANSEN & MARTIN, LLP
1148 NW HILL ST
BEND OR 97701-1914
meh@francishansenmartin.com

DATED: February 10, 2005.

PERKINS COIE LLP

By  _____
Lawrence H. Reichman, OSB No. 86083
John P. (Jay) Nusbaum, OSB No. 96073

Attorneys for Qwest Corporation

AMENDED CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2005 I served the foregoing **Qwest's Reply to Defendant's Affirmative Defenses** on the following person by causing to be emailed and mailed a full, true and correct copy thereof contained in a sealed envelope with postage prepaid addressed to said to person at the following addresses and deposited in the post office at Portland, Oregon:

Martin Hansen
Francis, Hansen & Martin, LLP
1148 N.W. Hill Street
Bend, OR 97701-1914

I hereby certify that on February 18, 2005 I served the foregoing **Qwest's Reply to Defendant's Affirmative Defenses** by causing a full, true, and correct copy thereof contained in a sealed envelope with postage prepaid addressed to said to persons at the following addresses and deposited in the post office at Portland, Oregon:

Brooks Harlow
Miller Nash LLP
601 Union St., Ste. 4400
Seattle, WA 98101-2352

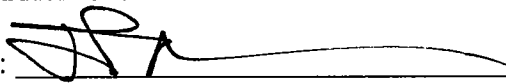
Amy Tykeson
Bend Cable Communications, Inc.
63090 Sherman Rd.
Bend, OR 97701

Michael T. Weirich
Department Of Justice
Regulated Utility & Business Section
1162 Court St. N.E.
Salem, OR 97301-4096

Roger Harris
Crestview Cable Communications
125 South Fir Street
Medford, OR 97501

DATED: February 18, 2005.

PERKINS COIE LLP

By: 
Lawrence H. Reichman, OSB No. 86083
John P. (Jay) Nusbaum, OSB No. 96378
Telephone: (503) 727-2000

Of Attorneys for Claimant

**CERTIFICATE OF SERVICE
UM 1191**

I hereby certify that on this day I served the foregoing **Amended Certificate of Service** on the following persons by causing to be mailed a true copy thereof, contained in a sealed envelope, with postage prepaid, addressed to said persons at the following addresses and deposited in the post office at Portland, Oregon, on this day:

MARTIN HANSEN
FRANCIS HANSEN & MARTIN, LLP
1148 NW HILL ST
BEND OR 97701-1914

BROOKS HARLOW
MILLER NASH LLP
601 UNION ST., STE. 4400
SEATTLE, WA 98101-2352


AMY TYKESON
BEND CABLE COMMUNICATIONS, INC.
63090 SHERMAN RD.
BEND, OR 97701

MICHAEL T. WEIRICH
DEPARTMENT OF JUSTICE
REGULATED UTILITY & BUS. SECTION
1162 COURT ST. N.E.
SALEM, OR 97301-4096

ROGER HARRIS
CRESTVIEW CABLE
COMMUNICATIONS
125 SOUTH FIR STREET
MEDFORD, OR 97501

DATED: February 18, 2005.

PERKINS COIE LLP

By  _____
Lawrence H. Reichman, OSB No. 86083
John P. (Jay) Nusbaum, OSB No. 96073

Attorneys for Qwest Corporation