

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

UM 1087

CENTRAL LINCOLN PEOPLE'S
UTILITY DISTRICT,

Complainant,

v.

VERIZON NORTHWEST, INC.,

Defendant.

VERIZON'S RESPONSE TO PGE'S
APPLICATION FOR
RECONSIDERATION

Intervenor Portland General Electric Company ("PGE") has filed an Application For Reconsideration of Order No. 05-583 (the "Application"). The Application seeks reconsideration of the Commission's determination of the issues surrounding Section 3.5 of the Pole Attachment Agreement (the "Agreement") between Central Lincoln People's Utility District ("CLPUD") and Verizon Northwest Inc. ("Verizon"). The Application also seeks clarification of the status of that Agreement as approved by the Commission.

The Application should be denied in both respects.

1. Section 3.5

PGE argues that the Commission erred by rejecting CLPUD's proposed revision to Section 3.5 of the Agreement on the grounds that it "squarely violates federal law." See Application at 2-3. PGE's argument is not well taken.

Preliminarily, PGE appears to have no objection to the other instances when the Commission has looked to federal law, e.g., Order No. 05-583 at 2-3 (adopting federal method to transition parties from a disputed contract to a new Commission-approved contract). PGE articulates no rationale why the Commission should not be guided by federal law when there is no contrary requirement under Oregon law.

1 Moreover, PGE reads too much into the Order if it suggests that the Commission held
2 that it was bound by 47 U.S.C. § 224(i). Rather, the Commission observed that “as noted by
3 Verizon, [CLPUD’s] proposal squarely violates federal law, specifically 47 U.S.C. § 224(i).”
4 Order No. 05-583 at 4. Verizon never suggested that the Commission was bound by Section
5 224(i). Rather, Verizon suggested that the Commission should follow the principles
6 articulated in the Pole Attachment Act:

7 Moreover, the principles expressed in federal law should be
8 followed by the Commission. If pole attachers are to be granted
9 non-discriminatory access to the available space on a pole owner’s
10 pole, they should not be charged when sometime thereafter the
11 pole owner desires to make additional use of that facility. Doing
so would render pole attachers efficient use of the right-of-way
completely untenable; if their existing attachments would be, for
all practical purposes, at the sufferance of any further use of the
facility by the pole owner.

12 Verizon’s Responsive Technical Comments, at 7. It was these comments with which the
13 Commission agreed in the Order. The Order requires no revision.

14 Finally, PGE’s Application is not well taken in a final material respect. The
15 Commission was correct to follow federal law on this issue. No party has ever cited any
16 Oregon law suggesting that a pole owner should be able to foist off on an attacher the cost for
17 rearranging pre-existing proper attachments just because the pole owner intends to make
18 some new use of the pole. As the Commission expressly noted, federal law explicitly bars
19 such conduct. In this regard, however, federal law is merely a specific application of the
20 general principle that pole attachers should have non-discriminatory access to poles and
21 conduits. Permitting pole owners to unilaterally impose re-arrangement costs on pole
22 attachers would not be consistent with non-discriminatory access. The Commission’s
23 adoption of federal law on this issue was clearly correct.

24 **2. Use of Verizon’s Agreement**

25 The Application requests that the Commission issue some clarification, that the
26 Agreement it approved in Order 05-583 is not binding on any other entity. Verizon never


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1 suggested that the Agreement approved by the Commission in this case should in any sense
2 be a mandatory model for any other party. That does not suggest, however, that normal
3 principles arising from the interpretation of Commission precedent should not apply.

4 The Commission has determined that the Agreement approved in this case is just and
5 lawful. Parties should be able to refer to that precedent, just as they would rely on any other
6 decision from this Commission. Recognizing that voluntarily negotiated agreements are
7 presumed reasonable, ORS 757.285, other parties throughout Oregon should be entitled to
8 use this Agreement just as they would any other Commission precedent—no more, but
9 certainly no less. PGE’s Application should be denied.

10 Respectfully submitted this 25 day of JULY, 2005.

11 STOEL RIVES LLP

12 
13 Timothy J. O'Connell
14 Attorneys for Verizon Northwest Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have this 25th day of July, 2005, served the true and correct original, along with the correct number of copies, of the foregoing document upon the Public Utility Commission of Oregon, via the method(s) noted below, properly addressed as follows:

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P. O. Box 2148	<input type="checkbox"/>	U.S. Mail (1 st class, postage prepaid)
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Facsimile: (503) 378-6163	<input type="checkbox"/>	Facsimile
puc.filingcenter@state.or.us	<input checked="" type="checkbox"/>	Email

I hereby certify that I have this 25th day of July, 2005, served a true and correct copy of the foregoing document upon the parties noted below via email and U.S. mail:

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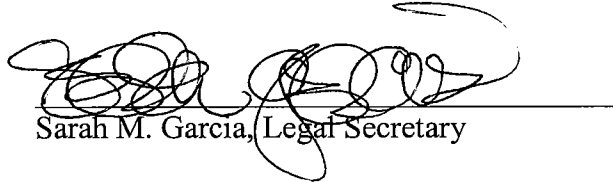
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I declare under penalty under the laws of the State of Washington that the foregoing is correct and true.

DATED this 25th day of July, 2005, at Seattle, Washington.



Sarah M. Garcia, Legal Secretary