

**BEFORE THE PUBLIC UTILITY COMMISSION  
OF OREGON**

UM 1087

CENTRAL LINCOLN PEOPLE'S )  
UTILITY DISTRICT, )  
 )  
Complainant, )  
v. )  
 )  
VERIZON NORTHWEST, INC., )  
 )  
Defendant. )

MEMORANDUM

**DISPOSITION: SCHEDULE RESET**

The purpose of this memorandum is to memorialize the ruling made during the February 4, 2005, telephone conference held in this proceeding. Representatives from the Commission Staff, Portland General Electric Company, Oregon Cable Telephone Association (OCTA), Verizon Northwest, Inc., and Central Lincoln People's Utility District (CLPUD) participated in the conference, and representatives from Salem Electric and Oregon Joint Users Association (OJUA) listened to the call.

In Order No. 05-042, the Commission adopted a proposed contract governing pole attachments between Verizon and CLPUD and asked the parties to file technical comments and negotiated amendments to the proposed contract within 30 days. At the conference, OCTA requested that it be able to participate in discussion between Verizon and CLPUD as to negotiated provisions in the proposed contract. OCTA expressed concern that the contract between Verizon and CLPUD would have precedential effect in future Commission proceedings. Verizon and CLPUD objected to OCTA's participation in their negotiations. OCTA's request to participate in negotiations is denied. The proposed contract was presented based on the record in the contested case proceeding between Verizon and CLPUD. While the contract may show the Commission's thinking as to what is considered just and reasonable between the parties on this record, it is not the contract to be used between all parties in every instance.

Verizon offered to allow OCTA to view negotiated provisions so that OCTA would have an opportunity to comment on them and requested an extension of time for that purpose. OCTA requested two rounds of comments; Verizon did not object, but CLPUD did. OCTA's request for two rounds of comments is granted. Initial comments and negotiated proposals are due March 11, 2005, and replies are due March 25, 2005. In the second round of comments, parties may only reply to comments made in the first round; new arguments will not be considered. The Commission will issue a final contract 30 days after the final comments are submitted.

During the conference call, the parties were notified that a second conference call would immediately follow with members of OJUA to discuss the process used in UM 1087 and future actions to be taken with regard to pole attachment regulation. Several members of the OJUA had wanted to participate in the conference call with parties in UM 1087, but that participation was not appropriate because the OJUA was only an interested person in the proceeding. Verizon and OCTA objected to the second conference call, arguing that it was an *ex parte* contact under OAR 860-012-0015. That rule, however, defines *ex parte* communication as any direct communication made to an Administrative Law Judge "without notice to, or opportunity for rebuttal by, all such parties." Here, all parties had notice of the conference call, and OCTA even considered participating. Copies of the tapes of the call were provided upon request to OCTA, Verizon, and CLPUD.

During the second conference call, one person identified himself as Mike Wilson with the Oregon People's Utility District Association. He asked several questions related directly to Order No. 05-042, such as whether the contract was terminated, which I attempted to answer. After the telephone call, I realized he might have been the same Mike Wilson that testified on behalf of CLPUD. If that is the case, Mr. Wilson's failure to identify himself as a representative of a party was inappropriate. Regardless, my explanations were an attempt to describe the Commission's processes to those attempting to discern the future of pole attachment regulation from the case in UM 1087. The Commission's language in the order prevails and any extra explanations have no legal effect.

Dated at Salem, Oregon, this 9th day of February, 2005.

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Christina M. Smith  
Administrative Law Judge