



1 **Q: Have you had an opportunity to review the rebuttal testimony submitted by**  
2 **PacifiCorp's witnesses in this proceeding?**

3 A: Yes I have.

4 **Q: Are there any points that you would like to make in response to that rebuttal**  
5 **testimony?**

6 A: Yes, there are just a few items that I would like to address briefly. From reading the  
7 rebuttal testimony, it appears to me that PacifiCorp has either misunderstood or  
8 mischaracterized a lot of my testimony. In addition, there are some puzzling  
9 contradictions within PacifiCorp's own testimony that I would like to address.

10 **Q: Can you provide an example of these contradictions?**

11 A: Certainly. In my prior rounds of pre-filed testimony, I explained in detail why some  
12 of PacifiCorp's money making goals are in conflict with good joint use practices and  
13 that all parties must cooperate to make joint use to work. I further explained that the  
14 sort of punishment program PacifiCorp has implemented generates ill will and  
15 actually discourages cooperation.

16 It does not surprise me that PacifiCorp does not agree with my recommendation that  
17 there should be no unauthorized attachments fees assessed against Comcast.  
18 However, based on the rebuttal testimony, it appears that PacifiCorp is taking a  
19 different approach to justify the penalty. On page 21, lines 5-12 of her testimony,

1 Ms. Fitz Gerald breaks from PacifiCorp's earlier reliance on safety and loading  
2 concerns as justification of the fees by contending that the case is about "business  
3 terms negotiated by two large companies in a joint use relationship." However, and  
4 as I have indicated previously, I have reviewed the relevant materials in this  
5 proceeding and I can see no place where Comcast agreed to a \$250 unauthorized  
6 attachment fee. I do not think that PacifiCorp's reliance on the old (1999) agreement  
7 (that PacifiCorp is struggling to revive in its testimony) justifies this fee.  
8 Furthermore, I haven't seen anything that would suggest that the companies have  
9 "negotiated" any terms related to that fee. What I have seen is that PacifiCorp has  
10 made demands unilaterally to which Comcast was forced to succumb last year to  
11 continue its upgrade.

12 Perhaps most important, PacifiCorp's claims fail to address the core issue: virtually  
13 all the attachments that PacifiCorp is claiming are unauthorized were made before the  
14 1999 agreement took effect; before the so-called 1997/1998 "base line" audit; and  
15 before Ms. Fitz Gerald took charge of joint use in 1996. Gary Goldstein and Rodney  
16 Bell, who have been around the Salt Lake City area longer than any of the PacifiCorp  
17 employees involved here, discuss this in their rebuttal testimony.

18 **Q: Do you believe that PacifiCorp has abandoned its earlier claims that safety is the**  
19 **driving factor behind the penalties?**

1 A: No, PacifiCorp continues to make claims that safety is a factor, but I do not believe  
2 that this is reflected in PacifiCorp's approach to joint use.

3 **Q: What do you mean?**

4 A: On page 22, line 15, Ms. Fitz Gerald goes back to talking about safety, saying that  
5 "[u]nauthorized use places additional burdens on PacifiCorp's essential facilities and  
6 places the integrity, reliability and safety of PacifiCorp's electric system at risk."  
7 However, if the \$250 penalty were not in the picture, it would be much easier to  
8 accept Ms. Fitz Gerald's statement at page 23, line 3 that "PacifiCorp is acting in the  
9 public interest in its development and enforcement of safe and reliable joint use  
10 practices and pole plant management." As I've already stated, the \$250 penalty  
11 (which is the equivalent of greater than 53 years back rent) is not reasonable. It is my  
12 view that penalties and PacifiCorp's other punitive practices are much more likely to  
13 turn all pole users *against* PacifiCorp than to encourage cooperation.

14 To be clear, I have neither stated, nor implied, that reasonable permitting  
15 requirements, inspections, safety standards and cost allocations are not appropriate. I  
16 do believe, however, that any plan must be sensible and workable.

17 **Q: You have devoted a good bit of effort in your testimony so far addressing safety  
18 considerations, correct?**

19 A: Yes I have, and frankly I'm glad I did.

1 **Q: Why?**

2 A: Because as I predicted, or perhaps “feared” is a better word, the many millions of  
3 dollars in unauthorized attachment overcharges will likely be only the tip of the  
4 iceberg. From what I can tell, PacifiCorp will expect Comcast to pay significant  
5 amounts of money in connection with plant clean-up. Right after Ms. Fitz Gerald  
6 proclaimed at page 23, lines 3-6 that PacifiCorp was defending its policies and  
7 practices on public interest grounds, she stated that “[t]he correction of safety  
8 violations throughout PacifiCorp’s pole plant is the next phase of the system-wide  
9 improvement being implemented by PacifiCorp for joint use management.” I have  
10 already demonstrated that PacifiCorp was neither following nor imparting reasonable  
11 joint use standards to the inspectors performing the safety audits on Comcast plant. I  
12 have also shown numerous instances where PacifiCorp *itself* created violations, as  
13 well as attempted to define as violations things that are not (the 12 inches separations  
14 issue between communications is one of many such examples).

15 Perhaps worst of all, PacifiCorp has stated that it intends to fine parties where it  
16 detects safety violations, but refuses to acknowledge that it has actually created  
17 violations with communications facilities without giving the notice required under  
18 Paragraph 2.8 of the (now-expired) 1999 agreement. With this shaky foundation, I’m  
19 very concerned that what Ms. Fitz Gerald calls a “system-wide improvement” will be  
20 a fiasco. If this happens, PacifiCorp’s “plant safety” will become, bluntly stated, a  
21 giant black hole.

1 **Q: PacifiCorp has stated, including at page 23, line 12 of Ms. Fitz Gerald’s rebuttal**  
2 **testimony that “there are no ‘profits’ associated with joint use operations.” Do**  
3 **you agree with that assessment?**

4 A: As I understand PacifiCorp’s position, it seeks to recover from Comcast and other  
5 attachers, 100% of its costs through permit fees, make-ready fees, engineering fees,  
6 inspection fees, pole rental, construction fees and the like. It is very important to  
7 remember that PacifiCorp generates all this revenue completely separate from  
8 unauthorized attachment penalties. My question then is, if PacifiCorp collects 100%  
9 of its costs, wouldn’t the \$10,000,000 in unauthorized attachment penalties be profit?  
10 At a minimum, and as explained below, it creates a surplus.

11 Whether the surplus is treated as “profit” to the power company and its shareholders  
12 or as an offset for electric service is not something that I have been asked to testify  
13 about. But, the following example will show that there is recovery of much more  
14 than the utility’s actual costs. If the over-recovery goes to the company’s  
15 shareholders, my understanding is that this would be considered profit. If it operates  
16 as an offset to electric service, it seems that would be subsidy by the communications  
17 industry to PacifiCorp’s electric business. In any case, you don’t need to be an  
18 economist or a financial or rate expert to see some pretty interesting arithmetic in play  
19 here.

1 Because I found Ms. Fitz Gerald’s testimony to be confusing, I thought it would be a  
2 useful exercise to look at the cost data that PacifiCorp offered in Exhibit PC 2.5 with  
3 its initial testimony. I have summarized this information in the table below.

| District      | Joint Use Poles | "Cost"              | Per-Pole Average |
|---------------|-----------------|---------------------|------------------|
| Layton        | 15,619          | \$170,301.62        | \$10.90          |
| American Fork | 19,791          | \$197,183.58        | \$9.96           |
| Ogden         | 35,789          | \$401,935.48        | \$11.23          |
| Evanston      | 1,936           | \$ 31,616.15        | \$16.33          |
| Kemmerer      | 2,864           | \$ 59,003.94        | \$20.60          |
| <b>Totals</b> | <b>75,999</b>   | <b>\$860,040.77</b> | <b>\$ 11.32</b>  |

4  
5 As you can see, the average per-pole cost of the audit should be \$11.32 based on data  
6 collected across all five districts. This \$11.32 rate is calculated taking the total cost  
7 of the audit, which PacifiCorp identifies as \$860,040.77 and dividing it by the total  
8 number of poles audited, which PacifiCorp identifies as 75,999. However, rather than  
9 using the per-pole average cost, PacifiCorp calculated the average district level rates  
10 and then took an average of those averages. In other words, instead of dividing the  
11 total cost by the total number of poles, PacifiCorp has added together each of the  
12 district averages (\$10.90 for Layton; \$9.96 for American Fork; \$11.23 for Ogden;  
13 \$16.33 for Evanston; \$20.60 for Kimmerer)<sup>1</sup> and divided that number by five (the

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<sup>1</sup> I believe that PacifiCorp’s Exhibit PC 2.5 contained an error by transposing the per-pole average costs of Evanston and Kemmerer. I have corrected that error in my table on this page, and referenced what I believe are the correct amounts for those two districts here.

1 number of districts). The effect is that the higher cost districts, which have fewer  
2 poles, artificially inflate the rate by about \$2.50 per pole to reach the \$13.81 (the  
3 correct number is actually \$13.80!) that PacifiCorp is currently charging. These  
4 calculations are expressed as follows:

- 5 • PacifiCorp's artificially inflated rate:  $(10.90 + 9.96 + 11.23 + 16.33 + 20.60) / 5 =$   
6 13.80
- 7 • A true per-pole average of costs:  $\$860,040 / 75,999 = 11.32$

8 Now, consider the effect: taking the rate PacifiCorp is currently charging, \$13.80, if  
9 we multiply that by the 75,999 poles in these five districts, PacifiCorp is poised to  
10 recover \$1,049,546.19 in audit charges. However, according to PacifiCorp's Exhibit  
11 2.5, it has only incurred \$860,040.77 in audit costs. The difference yields a  
12 \$189,505.00 surplus or profit to PacifiCorp. I am not a financial analyst, but it only  
13 takes an application of simple math to uncover the flaws inherent in PacifiCorp's  
14 calculations.

15 **Q: At page 23, line 17 of her rebuttal testimony, Ms. Fitz Gerald objects to your**  
16 **characterization of PacifiCorp's past permitting practices as lacking uniformity.**  
17 **Do you have any comments on that?**

18 A: Yes. When I made that statement, I was referring specifically to page 81, lines 8-22  
19 of her deposition in this proceeding where she stated that there were no joint use field



1 personnel until 2002, and that PacifiCorp relied on linemen, estimators and  
2 servicemen instead. These are exactly the types of people Comcast's Rodney Bell  
3 told me (and testified) that he worked with in the past on joint use issues.

4 **Q: Ms. Fitz Gerald also objects to your testimony insofar as it relates to the 15,000**  
5 **poles that PacifiCorp "lost" and was asking Osmose to "find." Do you have any**  
6 **comments on that?**

7 A: Yes. This issue can be disposed of easily by a quick review of the Osmose bid  
8 proposal that Comcast obtained during discovery. Here is an excerpt (the Osmose  
9 document containing this passage is attached to this sur-rebuttal testimony Exhibit 1),  
10 which might provide more insight:

11 PacifiCorp has identified a large numbers (sic) of PacifiCorp owned poles  
12 that are incorrectly labeled as leased poles in the FastGate databases. This  
13 adversely affects the collection of information on the Joint Use data  
14 collection project. Currently in the Salt Lake City Metro Cost Center  
15 PacifiCorp there are approximately 15,000 poles are (sic) listed as other  
16 utility poles. Of these almost half are PacifiCorp owned and incorrectly  
17 identified as other utility (or referred to as leased poles).

18  
19 In its bid materials, Osmose proposes a resolution to PacifiCorp's lost pole problem.

20 In addition, Ms. Fitz Gerald's explanation on page 24, lines 13-17 that PacifiCorp  
21 places a PacifiCorp pole tag on another utility's pole to identify electric equipment on  
22 that pole is puzzling. It is my understanding that the tags PacifiCorp places on other  
23 utilities' poles contain the identical map string and pole number protocols that

1 PacifiCorp uses in showing its own pole ownership. I certainly have never known a  
2 utility to identify places where it has put its electric facilities by placing a pole  
3 ownership tag on the pole. The best way to note that electric equipment is on the pole  
4 is simply to look up at it. In any case, it is not difficult to understand that there is  
5 confusion and controversy regarding ownership issues. I do not believe Ms. Fitz  
6 Gerald's explanation does much to clarify these problems.

7 **Q: Were there issues in the rebuttal testimony of other PacifiCorp witnesses that**  
8 **you would like to address?**

9 A: Yes. Brian Lund, on page 1, line 13 of his testimony, implies that I am dismissive of  
10 safety concerns. That is incorrect. One of the main purposes of my testimony, and  
11 indeed of my work in the joint use area, is to communicate the importance and the  
12 credibility of the National Electrical Safety Code as the industry standard in this  
13 country. PacifiCorp has created, and I believe continues to create, many safety  
14 violations. The starting point for really coming to grips with safety issues is to  
15 acknowledge that this is the case, and take steps to try to minimize the instances of  
16 that going forward and cleaning up those that are already out there today. It is not  
17 good business, or good engineering practice, in my opinion, for PacifiCorp to portray  
18 Comcast as the wrongdoer without accepting any responsibility for PacifiCorp's own  
19 violations. Additionally, I don't think it is right for PacifiCorp to claim that  
20 overloading fiber optics places the grid in jeopardy and that Comcast's extra fiber-  
21 optic cable is the proverbial straw that breaks the camel's back. I have seen no proof

1 that this is the case, and nothing PacifiCorp has presented in its testimony has  
2 changed my view.

3 **Q: On pages 8 through 10 of Ms. Fitz Gerald's testimony, she states that**  
4 **PacifiCorp's rule that Comcast can attach one day before submitting an**  
5 **application does not apply to overlashes, but is limited to new attachments. Can**  
6 **you comment on this?**

7 A: Yes. From what I can gather, Ms. Fitz Gerald is taking the position that it is okay to  
8 attach one day before applications for initial attachments, but that for overlashes,  
9 Comcast must file an application and then wait for an approval. This doesn't make  
10 sense to me. Basically, this rule would make it very difficult and time consuming for  
11 an attacher to complete an upgrade. It is my understanding, both from talking to  
12 Comcast personnel and reading the testimony in this case, that it can take anywhere  
13 from 3 to 18 months for PacifiCorp to process applications. It would take Comcast an  
14 extraordinarily long time to upgrade its plant if it had to wait this long for each  
15 permit.

16 It also doesn't make sense from an engineering perspective. Presumably,  
17 PacifiCorp's concern with overlashing is that it creates a potential loading problem.  
18 However, a cable operator's initial attachment creates more of a load on the pole than  
19 the subsequent overlashes. If a pole can withstand the initial load of a steel strand

1 and cable assembly, the addition of a fiber optic conductor is unlikely to cause  
2 overloading.

3 Paragraph 2.2 of the 1999 Agreement is complex and confusing. Ms. Johnson's  
4 email to Sheryl Pehrson dated October 29, 2002, is also open to interpretation. The  
5 email states that "AT&T has permission to attach within one day." Read together, I  
6 find the email and agreement to be imprecise and contradictory. "Within one day"  
7 could mean a day before or a day after.

8 **Q: Do you have parting thoughts?**

9 A: Yes. The parties need a fresh start and a clean slate. First, the penalty aspect of  
10 PacifiCorp's joint use program needs to be eliminated from the equation entirely.  
11 Second, we need an audit process in which PacifiCorp *and* Comcast can become real  
12 stakeholders; there should not be any more unilaterally imposed terms. Third, there  
13 needs to be a set of mutually acceptable engineering guidelines. In my opinion this  
14 should be the NESC. Fourth, each company needs to categorize NESC issues for  
15 which it (honestly) bears responsibility and rank them according to severity. True  
16 safety hazards should be addressed first while more minor or technical issues should  
17 be resolved as lesser priorities. Finally, when PacifiCorp sets new poles, the  
18 engineering should take into account the needs of all joint users. The new pole  
19 should be tall enough so that PacifiCorp has enough space for its *bona fide*

1 development plans, but in such a way that all electric plant is kept out of the  
2 communications worker safety zone.

3 I strongly believe that if the parties are going to reach the point where they can have a  
4 dispassionate dialogue to deal with these issues in a professional, clinical manner,  
5 there should be no penalties for so-called unauthorized attachments, no finger-  
6 pointing or blaming communications companies as the scapegoat for plant problems.  
7 All engineering and clearance issues should not be presumed to be caused by  
8 communications, and there should be no fines for NESC violations.

9 **Q: Does that conclude your testimony?**

10 A: Yes it does.