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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of)
Investigation into Pole Attachments)

Docket No. 09-999-03

**OPPOSITION OF PACIFICORP TO
MOTION FOR CLARIFICATION**

PacifiCorp, dba Utah Power (“PacifiCorp”) submits this Opposition to the Motion for Clarification filed by Comcast Cable Communications, LLC (“Comcast”) on October 19, 2005.

INTRODUCTION

Comcast's motion is, in actuality, not a "motion," but is more in the nature of a petition or application for a modification to a Commission determination that is clear on its face. PacifiCorp shows below that Comcast's requested "clarification" is a request for redetermination of the Commission's stated policy that would have the effect of allowing attaching entities to avoid a substantial portion of the audit costs and shift them to electric utility customers. Comcast claims to be concerned about double-recovery of the audit costs by an electric utility, but PacifiCorp demonstrates below that safeguards exist to preclude that result. PacifiCorp contends that the Commission's original determination matches the audit costs with the cost causer and provides a cost-recovery and -allocation method that is fair to both the pole-owning utility as well as attaching entities.

I. Comcast's Petition

Comcast requests the Commission to "clarify" that its September 6, 2005, Direction Concerning Ten Issues Regarding the Pole Attachment Contract ("Direction") pertaining to the cost of conducting audits of pole attachments requires the pole owner to flow those costs through the maintenance accounts that go into the calculation of the annual pole attachment rental rate. In other words, Comcast requests a supplemental ruling that the pole owner may not add a separate line item to the rental invoice to cover the audit costs.

Comcast argues that, unless the audit costs are funneled into the rental rate through the appropriate rental formula accounts, there is a danger of double recovery of these costs

by the pole owner. It also argues that additional Commission oversight would be required to assure that over-recovery was not occurring.

II. The Commission's Determination Does Not Require Clarification

1. The Commission's Determination is Clear on its Face

As Comcast acknowledges, all interested parties – pole owners and attaching entities alike – have spent more than a year participating in technical conferences and filing briefs pertaining to every detail of pole attachment agreements. Based on this input, the Commission has already ruled on this matter. With regard to the audit costs, the Commission explicitly directed pole owners, attaching entities and the Division of Public Utilities to work together to develop a plan for:

- determining the type of activities that will be included in the audit;
- determining the estimated cost of the audit; and
- determining the appropriate means of converting the expected cost into a rental charge.

These tasks are to be accomplished before any audits are implemented and before the estimated costs are included in the rental rate. The Commission's directions are clear. They require no clarification.¹

2. The Commission Envisions a Prospective Method of Accounting for Audit Costs; Comcast Argues for a Retrospective Method

¹ Comcast's petition seeks reconsideration and modification, not clarification. To the extent that the Commission's September 6, 2005, Direction is considered an order of the Commission, the "Motion for Clarification" cannot be treated as a timely request for review or rehearing under Utah Code Ann. § 54-7-15 due to expiration of the 30-day time limit.

Further proof that Comcast is actually seeking a complete reversal of the Commission's determination lies in the nature of the relief requested. As indicated above, the Commission's Direction is prospective in nature and rests on the finding that the necessity for an audit is known and that its costs can be anticipated and estimated in advance. In fact, the Commission directs that these estimated costs must be collaboratively determined before an audit is implemented and before those costs are included in the rental rate. In other words, once the process directed by the Commission is completed, the estimated cost of the audit can be included in the rental rate and collected by the pole owner.

By contrast, Comcast would require that actual costs be incurred and booked to maintenance accounts, for eventual inclusion in the rental rate. This could only happen after the implementation of the audit and would result in future recovery of the historical cost of the audit, not current recovery of the estimated audit cost, as directed by the Commission. Thus, Comcast's request is that the Commission fundamentally change and rewrite its Direction No. 5 on audit costs, an action that hardly qualifies as a "clarification."

3. *Double Recovery Is Not a Valid Concern*

Comcast's principal argument rests on the assumption that audit costs are booked to maintenance accounts. If the estimated cost of the audit were separately billed in advance, as the Commission has directed, and then the actual costs of the audit were funneled into the rental rate through the maintenance accounts, the argument goes, then the pole owner would be compensated twice for the cost of the audit.

Comcast's premise is inaccurate, at least in the case of PacifiCorp. PacifiCorp books audit costs to accounts that are not used in the base rental rate formula. Moreover, if

Comcast truly wanted a clarification that would prevent over-recovery of audit costs, it could have merely requested the Commission to state that pole owners must take steps to assure that, when the estimated cost of the audit has already been included in the rental rate, the actual costs of the audit are not included in any accounts that go into the carrying charges that are picked up in the rental rate formula.

III. The Commission's Determination Matches the Audit Costs with the Cost-Causer

1. The Commission's Determination Best Serves Principles of Cost Causation

The function of the audit is to obtain information regarding attachments that have been placed on the pole owner's poles. This information is vital to assure that only authorized attachments have been placed on the poles and that the attaching entities are being billed for the actual number of attachments that they have placed on the poles. The audit would not be conducted but for the presence of the attaching entities' attachments on the poles. Given this fact, fundamental fairness requires two outcomes: (a) the attaching entity that causes this cost should pay for costs incurred with respect to its attachments; and (b) neither the pole owner nor its customers should bear the cost of the audit. The Commission's Direction accomplishes these results.

2. Comcast's Proposed Methodology Causes Electric Utility Customers to Subsidize the Cost of the Audit

Comcast's proposed audit-cost recovery methodology would actually allow attaching entities to avoid a substantial portion of the audit costs by shifting them to the electric utility customers. This happens by operation of the rental rate formula proposed in Section R746-345-5.B of the Commission's rules, which limits the rental rate to an allocation of costs

proportional to the ratio of space used to the space on the pole that can be used for attachments (the “space factor”).

Under the Commission’s proposed rules, the space on a pole used by a cable or telecommunications attachment is presumed to be one foot; the usable space on a pole is presumed to be 13.5 feet. In the rental formula, the rental rate is determined by multiplying the cost of the pole by the carrying charge rate and multiplying the product by the space factor. The space factor is one foot divided by the 13.5 feet of usable space, or 7.4%. In other words, under the Commission’s proposed rate methodology, the attaching entity pays for 7.4% of the annual cost of the pole and the pole owner pays for as much as 92.6% of the annual cost of the pole.²

Under Comcast’s proposed treatment for audit costs, the audit cost would enter the rental rate as part of the carrying charges related to maintenance, but, by operation of the rental rate formula, the attaching entity would reimburse the pole owner for only 7.4% of the costs that comprise those carrying charges, including the cost of the audit. This would effectively cause electric utility customers to absorb as much as 92.6% of the cost of the audit. This outcome flies in the face of principles of cost causation, fairness and common sense.

CONCLUSION

Despite Comcast’s arguments, the procedure adopted by the Commission in its Direction is the far better approach to handling the costs of pole attachment audits. For the reasons stated above herein, PacifiCorp respectfully urges the Commission to confirm that its

² If there were more than one attaching entity on a pole, the pole owner’s share would be reduced by 7.4% for each attaching entity.

September 6, 2005, Direction No. 5 permits a line item for collection of the estimated cost of a pole attachment audit to be added to the rental bill, following completion of the procedures directed by the Commission for collaboratively determining the audit activities, the estimated costs of the audit and the method for including the estimated costs in the rental rate.

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Certificate of Service

I hereby certify that on the _____ day of November, 2005, a copy of the **OPPOSITION OF PACIFICORP TO MOTION FOR CLARIFICATION** was hand-delivered or electronically mailed to:

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