

TROUTMAN SANDERS LLP

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A LIMITED LIABILITY PARTNERSHIP

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March 19, 2004

Via E-Mail and Overnight Mail

Michael D. Woods
Senior Attorney
Comcast Cable Communications, LLC
183 Inverness Drive West
Suite 200 South
Englewood, Colorado 80112

Re: Comcast Cable Communications, Inc.'s Pole Attachment Applications

Dear Michael:

Gerit Hull has requested us to respond to your letter to him, dated March 17, 2004.

PacifiCorp disputes and rejects your allegation that PacifiCorp's decision to cease processing Comcast Cable Communications, Inc.'s ("Comcast's") pole attachment applications in Utah "is clearly in retaliation" for Comcast's decision to initiate litigation at the Utah Public Service Commission ("PSC"). PacifiCorp's decision to cease processing the applications is based solely on two reasons: (1) Comcast's repeated and willful failure to honor its express contractual payment obligations to PacifiCorp; and (2) grave concern for the safety and reliability of PacifiCorp's pole plant. PacifiCorp's decision is soundly based upon Utah and federal law, as well as the September 8, 2003 letter agreement ("Letter Agreement") between the parties.

First, Comcast has failed to pay approximately \$2 million in outstanding invoices, as referenced in Corey Fitz Gerald's March 3, 2004 letter to Patrick O'Hare. You contend that Comcast is justified in not paying contested charges, a position that violates PacifiCorp's rights under Utah law, which entitles an electric utility to charge fees that capture the cost of providing access. Utah Admin. Code R746-345-3 (2003). Although the federal law you cite is inapplicable to Utah, that law also supports PacifiCorp. *See* 47 U.S.C. §§ 224(d) and (e).

Moreover, the failure to pay the approximately \$2 million violates the express language of the Letter Agreement. In the Letter Agreement, Comcast agreed to the following:

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Upon execution of this Letter Agreement by Comcast...PacifiCorp shall immediately resume processing Comcast's applications for permission to install pole attachments on PacifiCorp's electric distribution facilities so long as...Comcast's payments of future charges invoiced by PacifiCorp do not exceed thirty (30) days past the due date stated on the invoice, going forward.

Comcast has violated the thirty (30) day provision in the paragraph quoted above, thereby entitling PacifiCorp to exercise its contractual right to cease processing Comcast's applications for attachment.

Second, over the past several months, PacifiCorp has discovered numerous examples of serious safety violations and unsafe installation practices committed by Comcast, including:

- On or about March 11, 2004, Comcast construction crews were discovered attaching fiber to PacifiCorp's infrastructure using a moving bucket truck. One crew member drove the truck while another crew member attached fiber from the bucket. This horrific incident occurred *after* Comcast was informed that the construction project had been shut down for improper construction practices.
- In many of its projects in Utah, Comcast has repeatedly attached fiber without first requesting permission from PacifiCorp. In addition to the thousands of unauthorized attachments identified in the litigation you reference in your letter, PacifiCorp has discovered repeated incidences where Comcast crews have engaged in unsafe construction practices that present a direct threat to public and worker safety as well as the reliability of PacifiCorp's distribution network. Examples include:
 - Attaching fiber within the 40" safety space mandated by the National Electrical Safety Code and attaching power supplies and service drops without the requisite ground clearance. *See Attachment 1.*
 - Attaching or overlashing fiber without submitting an application or performing necessary make-ready work. *See Attachment 2.*
 - Not taking necessary precautions to protect the safety of Comcast's contractors. *See Attachment 3.*
 - Attaching stand-off arms without proper clearance and attaching fiber over roadways without meeting minimum clearance requirements. *See Attachment 4.*

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The cessation of application processing appears to be the only means by which PacifiCorp can bring an end to Comcast's unsafe practices. This position is wholly justified by Utah law which states, in part, that ensuring the safety and reliability of a utility's pole plant is a prerequisite to any decision by the PSC to order a utility to grant access. Utah Code Ann. § 54-4-13(1) and (2). Federal law also supports a utility's right to protect its infrastructure. *See also* 47 U.S.C. § 224(f)(2) (a "utility...may deny a cable television system or any telecommunications carrier access...for reasons of *safety, reliability and generally applicable engineering purposes.*") (emphasis added).

The litigation before the Utah PSC will determine the propriety of any disputed charges. Should any of PacifiCorp's charges be invalidated, the disputed sums will be refunded to Comcast. Until that time, however, it is incumbent upon Comcast to pay PacifiCorp's invoices *as it has agreed in inducing PacifiCorp to process its applications.* Should Comcast seek to expand the scope of the litigation before the Utah PSC, PacifiCorp is prepared to document the myriad instances of unsafe practices and installations that have compelled it to protect its infrastructure and to seek relief of its own. PacifiCorp will also document Comcast's stubborn insistence on continuing to make attachments without first applying for and receiving PacifiCorp's permission. Indeed, Comcast's current conduct on this point greatly undermines its claim in the litigation that it has not and does not make unauthorized attachments.

Please contact me directly if you wish to discuss a sensible resolution to this matter.

Sincerely,



Charles A. Zdebski

cc: Gerit Hull, Esq.
J.D. Thomas, Esq.
Jerold Oldroyd, Esq.
Raymond A. Kowalski, Esq.

ATTACHMENT 1

Pole 11206002.0 265405



Pole 11206002.0 279200



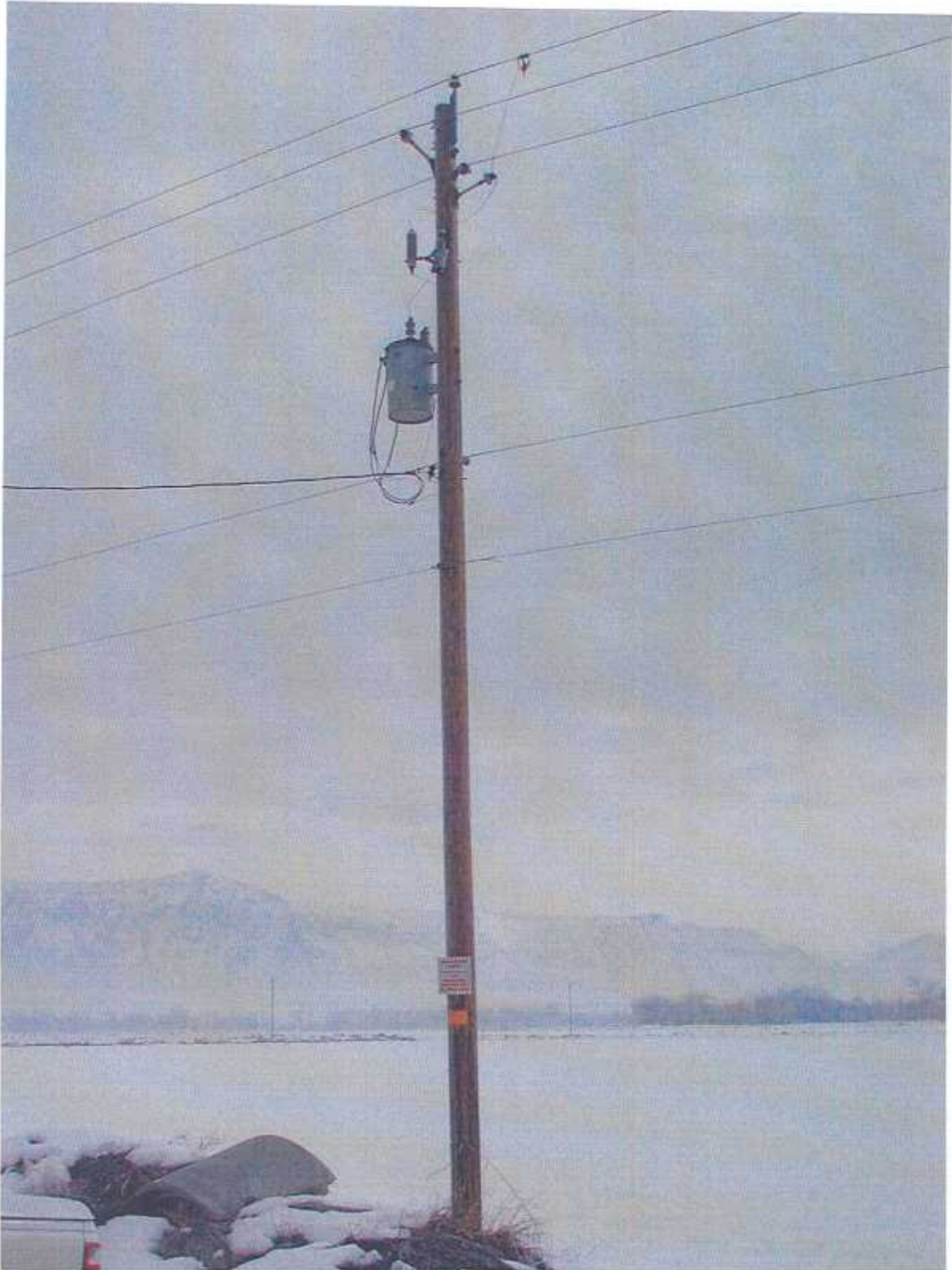
Pole 11206002.0 263400



Pole # 11206002.0 175503 and 175505



Pole 11206002.0 180201



ATTACHMENT 2

Pole 11206002.0 263403

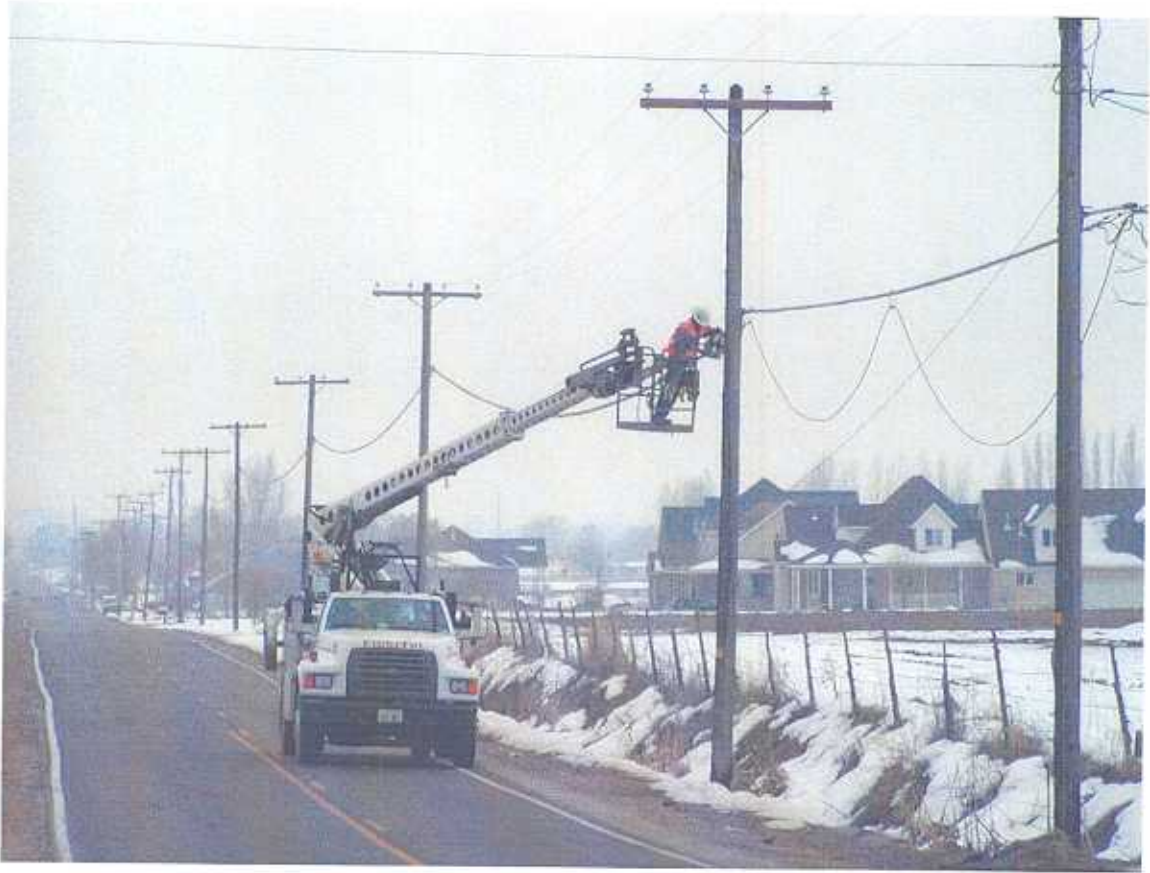


Pole 11206002.0 279904



ATTACHMENT 3

Pole 11206002.0 279904



ATTACHMENT 4

Pole 11206002.0 073801



Pole 11206002.0 190901

