



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

April 18, 2002

Bruce Carroll
Property Services
Portland General Electric
121 SW Salmon St., 1 WTC-0401
Portland, OR 97204

Re: ODOT Zig Zag Project
DOJ File No.: 734-610-GG1162-01

Dear Mr. Carroll:

I am the Oregon Department of Justice, General Counsel attorney for the Oregon Department of Transportation (ODOT). ODOT requested that I respond to your letter of April 2, 2002, concerning relocation of Portland General Electric (PGE) power lines necessitated by this project.

ODOT disagrees with your position that it is responsible for any portion of the costs that would be incurred in relocation of the power lines. It is irrelevant whether that relocation would be to another overhead location or underground. The PGE lines are located on the right of way of ODOT's highway under the permission of ODOT and the U.S. Forest Service. Part of the terms of that permission is that when highway needs make the relocation of those lines necessary, then such relocation is at the sole cost of the utility. You cite ORS 758.010 as authority for your position, but fail to read the statute in its entirety. The right of utilities to construct its facilities along public roads is subject to the needs of the public road system.

“Such lines, fixtures and facilities shall not be constructed as to obstruct any public road or navigable stream. And, . . . the Department of Transportation [has] authority to designate the location upon roads under its jurisdiction . . . where lines, fixtures and facilities may be located, and may order the location of any such line, fixture or facility to be changed when such governing body or department deems it expedient.”

Therefore, it is not an issue of ODOT taking away PGE's rights by modifying a road. Those rights are subject to the needs of the state highway system, and thus the line is subject to relocation when a portion of that system is modified, improved, reconstructed, or otherwise modified. The state highway system needs are tantamount when a utility facility is allowed under ORS 758.010, ORS 374.305 *et seq.*, and OAR Chapter 734, Division 55; and PGE must

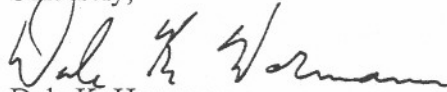
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adjust its facilities accordingly. This includes relocation at its own expense. Indeed, there is no "right", if there is no space; and any "right" is contingent upon noninterference with the highway needs.

If there were adequate highway right of way for the safe placement of the pole lines, then ODOT would allow such relocation. Since there apparently is not adequate area with the highway right of way, then PGE has the choice of locating elsewhere. It is not ODOT's fault that the Forest Service won't allow overhead power lines on the property abutting the highway right of way. If that leaves placing the utilities underground as the only option, then that option is necessitated by the facts of the situation, NOT by any requirement of ODOT. So, whether PGE tariffs and PUC regulations obligate those requiring undergrounding of utilities to pay for the costs doesn't matter. ODOT is not requiring undergrounding. It is only requiring relocation so that it can construct its highway project. If undergrounding is the option PGE chooses, or even if it is the only option available, that does not make ODOT responsible for the costs. The conditions under which PGE is allowed to have these facilities on the right of way of the highway make these costs PGE's responsibility.

ODOT declines to participate in the costs of putting the PGE facilities underground. It hopes to continue to work with PGE on the schedule for relocation so that its highway project is not delayed. If you have any further questions, please feel free to contact Kevin Bracy, Floyd Harrington, or me. Thank you.

Sincerely,



Dale K. Hormann
Assistant Attorney General
Government Services Section

DKH:jaw/GENB6627
c: Kevin Bracy, ODOT
June Carlson, ODOT
Matt Caswell, ODOT
Floyd Harrington, ODOT



Portland General Electric Company
4245 Kale Street NE • Salem, Oregon 97305

Kevin Bracy
ODOT Project Leader
Region 1 - Metro East
123 NW Flanders
Portland OR 97209

2 April, 2002

Re: Zig Zag Project

Dear Mr. Bracy:

Portland General Electric (PGE) has been directed by the Oregon Department of Transportation (ODOT) to relocate existing overhead power lines from about Station 27+400 to 29+280 in Zig Zag. ODOT had requested from the Forest Service a corridor width that would have allowed relocating PGE'S overhead utilities; however, through negotiations with the Forest Service, that corridor was reduced and the proposed guardrail plan was removed. These changes do not allow for relocating overhead utility service that meets Federal Safety guidelines.

Under normal circumstances, PGE could purchase necessary easement corridor or, if needed, begin condemnation for an easement. But since the adjoining land is federally owned, these are not options. The Forest Service has stated they will not allow utility overhead pole lines on their property on either side of ODOT's road widening project.

PGE has the statutory right to construct and maintain its facilities free of charge in the public roads, including Highway 26. (ORS 758.010) Although ODOT may require PGE to change the location of its facilities on such roads, it cannot take away PGE's rights by modifying a road in such a way that eliminates any location where PGE might safely place its facilities. For this project, ODOT does not allow PGE to relocate pole lines in the clear zone and, therefore, we must go underground.

In general, state policy specifies the costs of undergrounding utility facilities be shared between the entity requiring the undergrounding and PGE. PGE tariffs and Oregon Public Utility Commission (OPUC) rules require that certain costs, such as those for trenching, excavation, backfilling and conduits and vaults are generally born by the entity requiring the undergrounding.

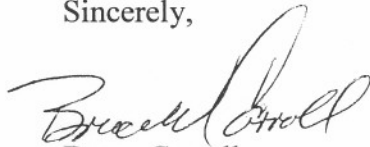
To try and resolve this issue so as not to impede the early stages of this project, PGE is asking ODOT to contribute to the trenching costs. The state's share of the expenses, in accordance with OPUC guidelines would relate to the cost of the distribution portion subject to undergrounding.

Estimated Trench cost for 13 kV line	\$538,000.00
Estimated Conduit cost for 13 kV line	\$77,656.00
Estimated Vault costs of 13 kV line	\$27,600.00

In addition, PGE will be relocating the underground 24 kV transmission line that is now outside the pavement boundary. If we do not relocate this line now, it will be under the new pavement, which would make accessing and repairing this line very difficult in the future. PGE will bear the additional charges to place the 24 kV line in the trench.

Thank you for your time and consideration of these issues. Please call me so we can discuss this in more detail.

Sincerely,



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