



ORCAS POWER & LIGHT COOPERATIVE

December 22, 2016

Ms. Susan Anderson
Vice- President, Operations
CenturyLink
1600 7th Avenue
Seattle, Washington 98191

Re: CenturyLink's Fiber Optic Cable (San Juan Islands)

Dear Ms. Anderson:

I am writing once again regarding the ongoing, continuing trespass by CenturyLink across Orcas Power & Light Cooperative's ("OPALCO") submarine cable in San Juan County, Washington. As you know, OPALCO has the right to maintain and replace our submarine cables without interference from CenturyLink facilities. CenturyLink has known of OPALCO's impending submarine cable replacement project (scheduled for 2017), as well as its fiber optic cable trespass for many years now and has only recently started a permitting and coordination process.

I recently had the opportunity to meet with the Chair of the Washington Utilities & Transportation Commission (WUTC), Dave Danner, and his staff. We discussed OPALCO's concerns regarding CenturyLink's fiber-optic cable, the fact that it continues to trespass over OPALCO's authorized submarine cable, and the possible impacts to your customers in San Juan County due to the trespass. I have included photographs of CenturyLink's fiber-optic submarine cable landing site on San Juan Island with this letter (see exhibits 1-9 attached), and have shared those photographs with the WUTC.

With 2017 quickly approaching, OPALCO remains concerned about CenturyLink's ability to remove the fiber optic cable laying across OPALCO's existing submarine cable. I have also attached a copy of the Department of Natural Resources ("DNR") letter to CenturyLink dated June 21, 2016 confirming that CenturyLink is trespassing across OPALCO's submarine cable. DNR further found that at the time, CenturyLink had no valid, operating easement for its own fiber-optic cable. The lack of an authorizing easement for a key piece of infrastructure serving San Juan County is a concern, even beyond its direct impact to OPALCO's submarine cable. This is especially the case since many customers rely upon this fiber-optic cable for a variety of services, including E911.

The attached photographs were recently taken at the cable landing site on San Juan Island, San Juan County. Even a quick review of these photos shows that CenturyLink's main operational fiber-optic

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cable to San Juan County – servicing our County’s critical Public Safety Answering Point - is badly frayed and worn. CenturyLink has no redundancy in this marine crossing and the stakes – for residents of San Juan County – are high. The importance that this essential infrastructure be monitored, serviced and well-maintained cannot be overstated for San Juan County residents. Further, the photographs show that your fiber-optic cable and conduit crosses over and is lashed to OPALCO’s submarine cable without the required separation and encroaches on our ability to maintain our cable. OPALCO has not granted CenturyLink any right of use, access or license to use our conduit/cable for any purpose. Accordingly, this letter is also a further notice to CenturyLink that any such encroachments constitute a trespass, and until a written agreement is reached, if any, all encroachments and trespasses are unauthorized, and must be immediately removed.


In CenturyLink’s last letter of November 1, 2016, there is concern regarding the removal of the mineral oil from the existing submarine cable. This is required by state and federal permitting authorities. The plan to remove the mineral oil has been prepared in conjunction with both state and federal permitting agencies, and approved by those agencies. The work will be conducted outside the aquatic environment.

Our project cannot be delayed without serious consequence. Beyond the cost implications of delaying the project, which would be an unfair burden to our co-op membership, our existing submarine cable is at the end of its life and in a vulnerable condition. Our close monitoring shows a delay to the construction windows beyond 2017 could result in oil release within the cable and degradation that could make removal more costly and difficult. I would appreciate an update from CenturyLink regarding the status of its permit applications, and the likelihood that CenturyLink will complete its work so as not to delay OPALCO’s contractors.

Given the dilapidated condition of your sole operational fiber-optic cable in this crossing, I would like an opportunity to review and discuss CenturyLink’s contingency plans in the event its fiber-optic cable is severed (i.e. wireless microwave). This concern is heightened because the attached photographs reveal ongoing wear and tear that appears to threaten the integrity of your fiber-optic cable.

I know providing continuity of service to San Juan County customers is important to CenturyLink. It is something we share, as your customers are OPALCO’s members and ratepayers. Having a direct and open discussion regarding contingency plans, as well as replacement of each company’s respective submarine cables is crucial for maintaining the essential services San Juan County residents depend upon. I have been trying to arrange this discussion with you for several years, and appreciate the recent attention CenturyLink has demonstrated. I will make myself and our staff available for any and all necessary meetings. Your attention to this important matter is appreciated.

Sincerely,



Foster Hildreth,
General Manager

Enclosures:

- Exhibits 1-9: Photographs of CenturyLink submarine cable landing site on San Juan Island
- Exhibit 10: Department of Natural Resources letter to Century Link (June 21, 2016)

cc:

Ms. Maxine L. Moreau, CenturyLink maxine.moreau@centurylink.com

Mr. Brian Stading, CenturyLink brian.stading@centurylink.com

Mr. Dough Patterson, CenturyLink douglas.patterson@centurylink.com

Ms. Brenda Werden, DNR brenda.werden@dnr.wa.gov

Ms. Mary Huff, DNR mary.huff@dnr.wa.gov

Congressman Jeff Morris, WA State House of Representatives jeffmorris@energyhorizonllc.com

Congresswoman Kris Lytton, WA State House of Representatives kristine.lytton@leg.wa.gov

Senator Maria Cantwell, U.S. Senate docs@cantwell.senate.gov

Senator Patty Murray, U.S. Senate docs@murray.senate.gov

Office of Congressman Rick Larsen thomas.boucher@mail.house.gov

Office of Governor Inslee keith.phillips@gov.wa.gov

Office of Senator Kevin Ranker andrew.taylor@leg.wa.gov

Mr. David Danner, Chairman, WUTC ddanner@utc.gov

Mr. Phillip Jones, Commissioner, WUTC pjones@utc.gov

Mr. Rick Hughes, San Juan County Council rickh@sanjuanco.com

Mr. Jamie Stephens, San Juan County Council jamies@sanjuanco.com

Mr. Bill Watson, San Juan County Council billw@sanjuanco.com

Mr. Randy Gaylord, San Juan County Prosecutor randyg@sanjuanco.com

Exhibit 1

CenturyLink Fiber Optic Cable Sharing Culvert without Separation or Approval



Exhibit 2

CenturyLink Fiber Optic Cable Lashed to Electric Cable without Separation or Approval



Exhibit 3

CenturyLink Fiber Optic Cable Exposed 1



Exhibit 4

CenturyLink Fiber Optic Cable Exposed 2



Exhibit 5
CenturyLink Fiber Optic Cable Exposed 3



Exhibit 6
CenturyLink Fiber Optic Cable Conduit Collapse and Crossing Over Electric Cable 1

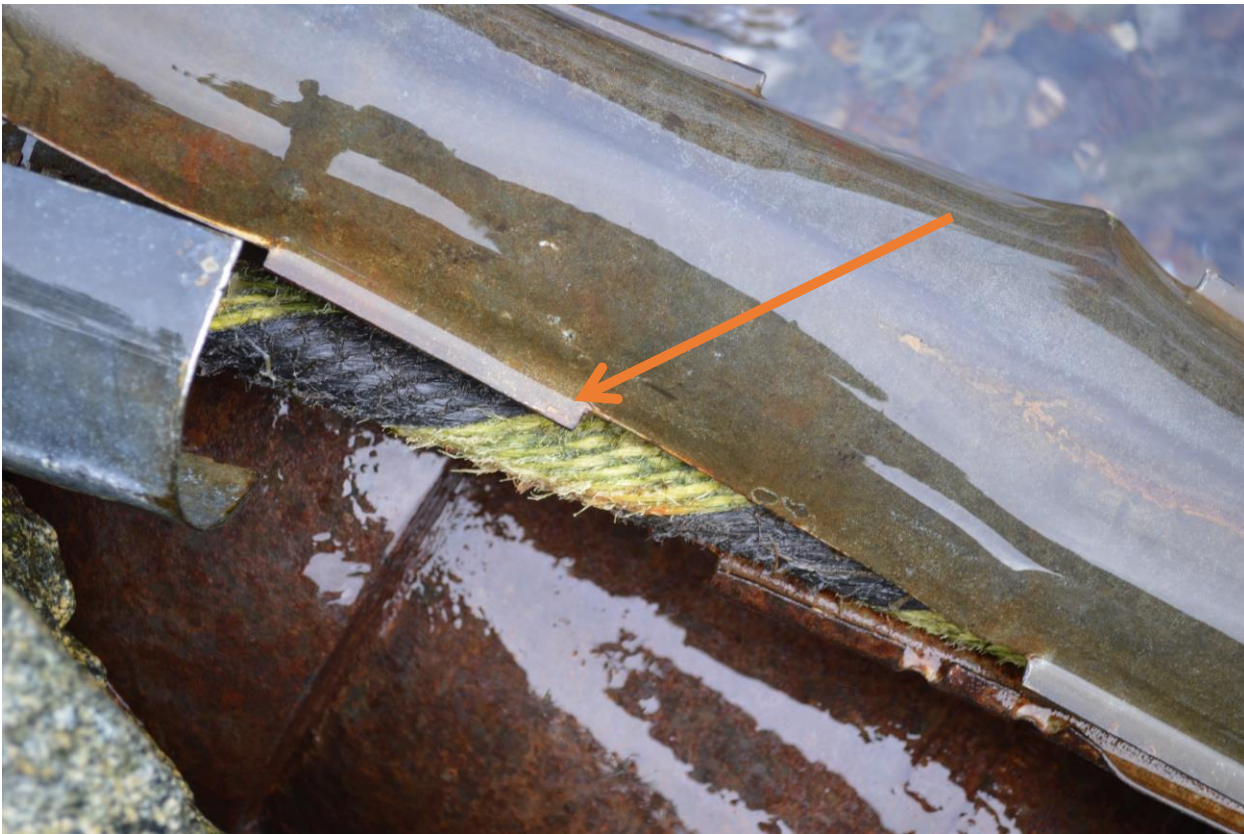


Exhibit 7

CenturyLink Fiber Optic Cable Conduit Collapse and Crossing Over Electric Cable 2



Exhibit 8

CenturyLink Fiber Optic Cable Exposed at Tidal Zone / Lashed to Electric Cable without Approval



Exhibit 9

CenturyLink Fiber Optic Cable Fray with Exposed and Rusting Armor Wire

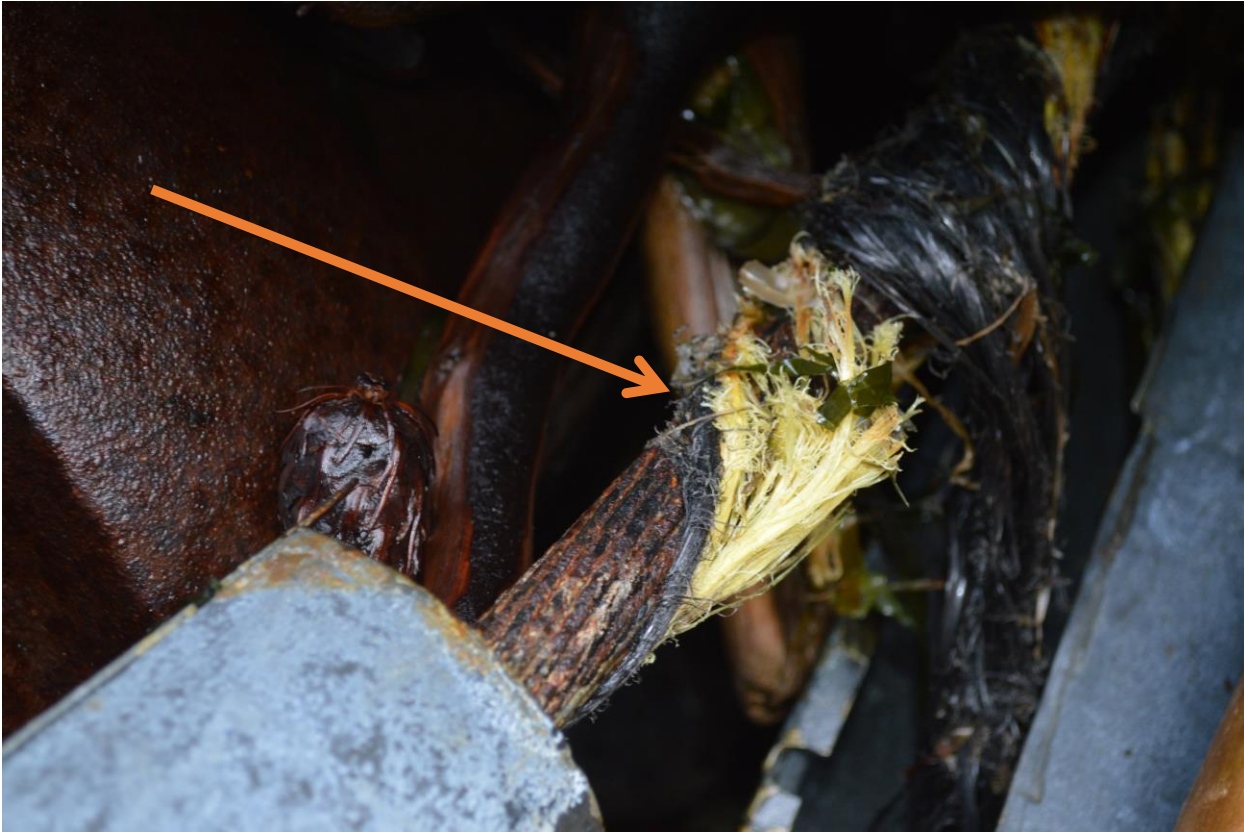


Exhibit 10



WASHINGTON STATE DEPARTMENT OF
Natural Resources
Peter Goldmark - Commissioner of Public Lands

Caring for
your natural resources
... now and forever

PROCESSED
51-051371 + 51-074695
C... FILE
FILED FILE

June 21, 2016

Donni Fields
Network Reak Estate Coordinator
CenturyTel of Washington, Inc.
West Region
6700 Via Austi Parkway
Las Vegas, NV 89119

CERTIFIED MAIL
7011 2000 0001 2395 2032

Subject: Notice of Suspected Default and Suspected Trespass: Fiber Optic Cables Located on State-owned Aquatic Land, Easement 51-051371 and Application 51-074695

Dear Ms. Fields:

As you know, the Washington State Department of Natural Resources (DNR) has been concerned about two (2) fiber optic cables located on State-owned aquatic lands (SOAL) in San Juan County, Washington.

1. One of the cables was laid in 1980, and authorization was granted under DNR easement 51-051371 to CenturyTel of Inter Island Inc. dba CenturyLink. The contract was issued on March 28, 1981, and included a thirty (30) year term. It is DNR's understanding that this cable is no longer active.
2. In 1999, CenturyTel laid a second cable in the same area, which is currently in use. CenturyTel applied for a separate use authorization for this cable, and DNR assigned file number 51-074695 to the application, but an easement was never issued as CenturyTel did not provide all requested documents needed to complete the process.

The original location of both cables is shown on a CenturyTel "as laid" survey conducted by Pirelli Jacobson, Inc., in 1999. DNR understands that portions of both cables now occupy areas of SOAL which are outside of the "as laid" survey area, and are encroaching upon an easement issued by DNR to Orcas Power and Light Cooperative (OPALCO) for an oil-filled submarine cable (see enclosed map of approximate cable encroachment area). OPALCO possesses an easement right to protect, maintain and replace their cables as needed, and they have submitted project plans for work on their cable to begin within the next year. OPALCO has notified DNR that CenturyTel's fiber optic cables are infringing on their easement, and likely to interfere with their project.

At this time, DNR's concerns are fourfold:

1. CenturyTel is using and occupying areas of SOAL without proper authorization.
2. CenturyTel's cables are encroaching on OPALCO's easement, and this could interfere with OPALCO's project work.
3. Because CenturyTel's cables are not secured in their present location, they could damage the aquatic environment.
4. CenturyTel's unsecured cables could damage OPALCO's cable, which could bring even greater harm to the aquatic environment.

Since one of CenturyTel's fiber optic cables has an aquatic lands use authorization (easement) and one does not, the remainder of this letter outlines the legal differences between the two situations, and what specific actions CenturyTel needs to take in order to come into compliance with the State.

Legal Status

1. **Easement 51-051371.** CenturyTel's contract with the State requires CenturyTel to obtain authority from State to utilize state lands for any purpose whatsoever beyond the easement area. Since the cable is currently outside of its location of record without authorization from State, CenturyTel is hereby notified of State's suspected default. Section 15 provides you sixty (60) days to cure the default, which means re-securing the cable in its authorized location. Alternatively, if the cable is no longer needed, then per Section 18 of your contract, you are required to remove it completely from SOAL.
2. **Application 51-074695.** Because the newer cable is not under an authorization, it is in trespass on SOAL. Accordingly, WAC 332-30-127 (enclosed) provides DNR the authority to charge CenturyTel unauthorized use and occupancy (U&O) fees. The amount of the fee for your unauthorized cable has not been determined but would be 160% of fair market value. DNR plans to begin assessing daily U&O fees starting August 21, 2016, to facilitate CenturyTel's prompt cooperation in completing the application process for a new use authorization. Your first payment will be due on September 10, 2016.

Actions Required by CenturyTel

As I have previously conveyed to you by phone and email, DNR has been working for nearly three months to obtain correct point of contact information at CenturyTel to discuss the contractual status of both cables and to obtain specific information about CenturyTel's plan to address the unsecured wayward cables. I appreciate the assistance you have provided to date. At this time, DNR directs CenturyTel to do the following in order to cure the default on easement 51-051371 and resolve the trespass with application 51-074695:

Ms. Donni Fields
June 21, 2016
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1. Within fifteen (15) days of the date of this letter, provide a preliminary plan, with key milestone dates, for removing both of the wayward cables from OPALCO's easement and properly securing them, at least temporarily.
2. Within sixty (60) days of the date of this letter:
 - a. Provide a detailed plan for relocating the unused fiber optic cable authorized under easement 51-051371 to its location of record, or removing it from SOAL.
 - b. For the cable addressed in application 51-074695 that is still in use, provide a completed JARPA with Attachment E, along with a preliminary Record of Survey that depicts the intended permanent location for the cable.

Thank you in advance for your prompt attention to this matter. If you have any questions regarding this notice, please contact me at 360-854-2836.

Sincerely,



Brenda Werden, Land Manager
Orca-Straits District

Enclosure(s)

c: TRO/District file

WAC 332-30-127

Unauthorized use and occupancy of aquatic lands (see also RCW 79.105.200, 79.125.200)

- (1) Aquatic lands determined to be state-owned, but occupied for private use through accident or without prior approval, may be leased if found to be in the public interest.
- (2) Upon discovery of an unauthorized use of aquatic land, the responsible party will be immediately notified of his status. If the use will not be authorized, he will be served notice in writing requiring him to vacate the premises within thirty days. If the law and department policy will permit the use, the occupant is to be encouraged to lease the premises.
- (3) The trespassing party occupying aquatic lands without authority will be assessed a monthly use and occupancy fee for such use beginning at the time notification of state ownership is first provided to them and continuing until they have vacated the premises or arranged for a right to occupy through execution of a lease as provided by law.
- (4) The use and occupancy fee is sixty percent higher than full fair market rental and is intended to encourage either normal leasing or vacation of aquatic land.
- (5) In those limited circumstances when a use cannot be authorized by a lease even though it may be in the public interest to permit the structure or activity, the fair market rental will be charged and billed on an annual basis.
- (6) The use and occupancy billing is to be made after the use has occurred and conveys no rights in advance. Payment is due by the tenth of the month following the original notification, and if not received, a notice is to be sent. If payment is not received within thirty days of this notice and monthly thereafter by the tenth of each month during the period of the use and occupancy lease or if the improvement has not been removed from the aquatic land, an unlawful detainer action against the party in trespass will be filed along with an action to collect past due rental.

