

ORCAS POWER & LIGHT COOPERATIVE

December 22, 2016

David W. Danner, Chairman
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
Olympia, Washington 98504-7250

RE: CenturyLink Submarine Fiber Optic Cable Conflict

Dear Chairman Danner:

I want to thank you and your staff for taking time to meet and discuss the concerns we raised on behalf of Orcas Power & Light Cooperative (OPALCO). As we discussed, OPALCO plans on replacing a key submarine cable between Lopez and San Juan Island in the summer and fall of 2017. We remain concerned that CenturyLink's fiber-optic cable trespasses over our existing submarine cable, impeding our ability to maintain our critical infrastructure and threatening large scale outages throughout San Juan County, Washington.

Enclosed with this letter are some of the photographs that we reviewed with you at our meeting that demonstrate the current degraded and vulnerable condition of CenturyLink's fiber-optic cable (see Exhibits 1-9). We are aware of the investigation that the WUTC conducted beginning in 2013 when CenturyLink's original fiber-optic cable was severed. We believe the existence of the trespassing fiber-optic cable (see Exhibit 10: Letter to CenturyLink from the Department of Natural Resources), as well as its current condition on the San Juan Island shoreline merits further investigation by the WUTC. CenturyLink's main operating fiber-optic cable to San Juan County serves our county's critical Public Safety Answering Point (PSAP), located on San Juan Island. This badly frayed and worn fiber-optic cable is CenturyLink's sole submarine cable that serves San Juan Island. WUTC requires that CenturyLink provide an annual maintenance report for their communications facilities in San Juan County. The attached photos clearly indicate a disconnect between CenturyLink's report and the actual condition of their underwater facilities. The importance that this essential infrastructure be monitored, serviced and well-maintained cannot be overstated for San Juan County residents.

OPALCO obtained all of its permit authorizations from Federal, State and Local permitting authorities to replace our submarine cable. We have secured contractors and purchased replacement cables. All of this has been at great cost to our utility and required long lead times. We are concerned that a delay by CenturyLink in removing its fiber-optic cable will disrupt this schedule, cause further delay, increase costs and create potential harm to the environment.

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Given the precarious nature of CenturyLink's sole operating cable in this location, we strongly suggest that CenturyLink develop wireless (i.e. microwave) contingency plans to avoid another large scale communication outage similar to what we experienced in 2013.

Again, we appreciate the time you have taken to listen to OPALCO's concerns. Should you have any further questions, do not hesitate to contact me.

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
Ms. Susan Anderson, CenturyLink sue.anderson@centurylink.com
Mr. Douglas 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
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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

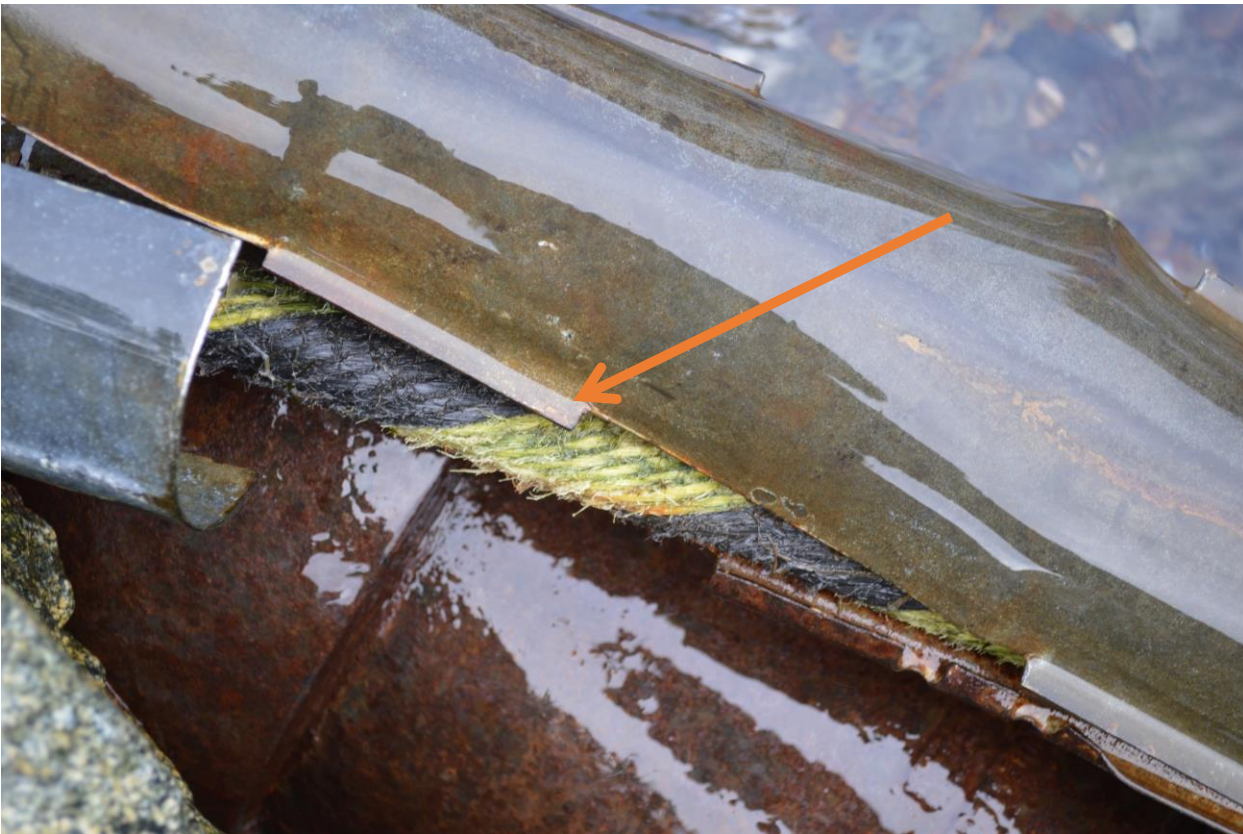


Exhibit 7

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

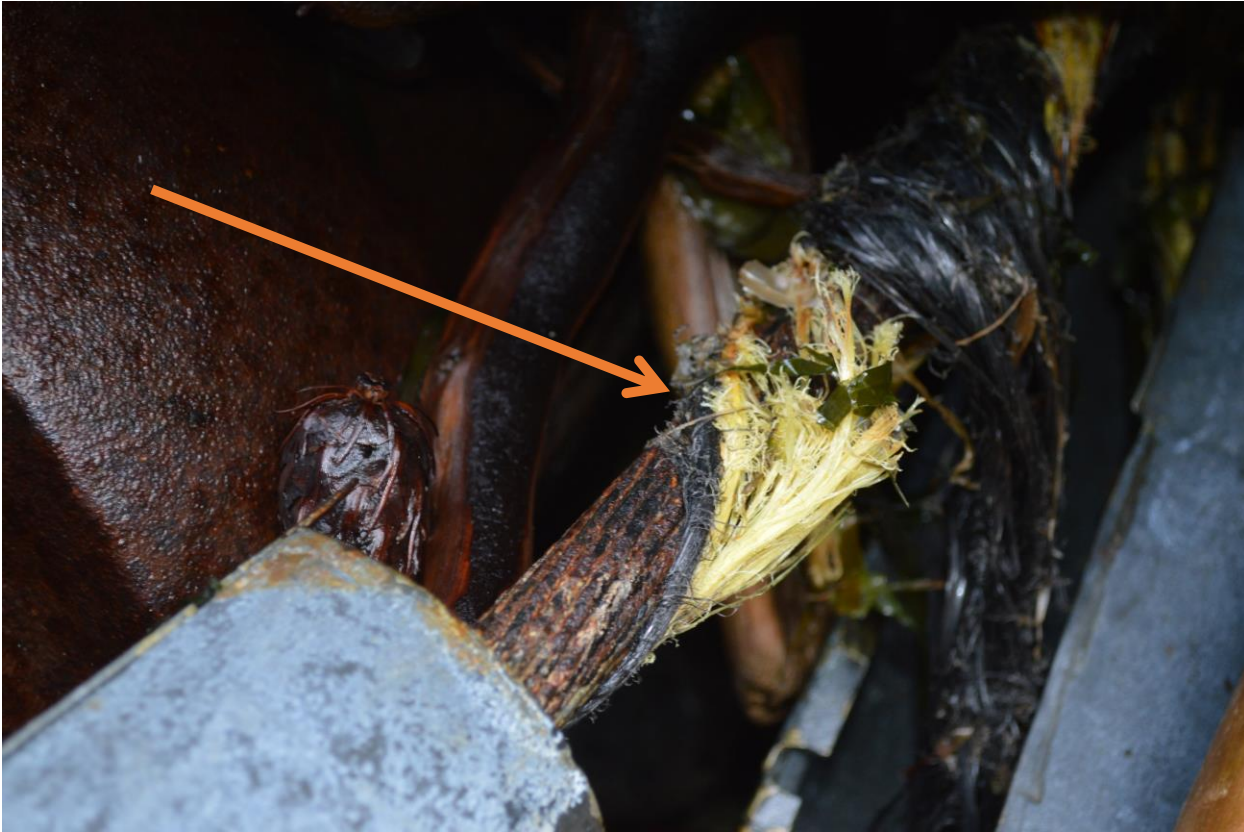


Exhibit 10



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. J. B. 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.

SAN JUAN ISLAND

END OF ROV SURVEY 85 FEET OF WATER

SUMITOMO AS BUILT 1994

FURAKAWA AS BUILT

CENTURY LINK ROV SURVEY 1-16-2015

2829.40'

PIRELLI JACOBSON AS BUILT 1999 CENTURY TEL

CENTURY LINK CROSSES SUMITOMO

PIRELLI JACOBSON AS BUILT 1999 CENTURY TEL

CENTURY LINK



LOPEZ ISLAND

