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May 30, 2014

Via Electronic Mail

Steven V. King
Executive Director and Secretary
Washington Utilities & Transportation Commission
1300 S. Evergreen Park Drive S. W.
P.O. Box 47250
Olympia, Washington 98504-7250

Re: Docket No. U-140621 - Comments of Avista Utilities

Dear Mr. King,

Avista Corporation, dba Avista Utilities (Avista or Company), submits the following comments in accordance with the Washington Utilities and Transportation Commission's (Commission) Notice of Opportunity to Submit Written Comments (Notice) issued in Docket U-140621.

On April 22, 2014, the Commission filed with the Code Reviser a Preproposal Statement of Inquiry (CR-101) to consider adoption of rules to implement RCW ch. 80.54, relating to attachments to transmission facilities.¹ The Commission filed the CR-101 under Docket U-140621.

Federal law requires the Federal Communications Commission (FCC) to regulate attachments to utility poles unless a state certifies that it regulates such attachments.² The

¹ Although RCW 80.54 references attachments to "Transmission" facilities, pole attachment regulations at the FCC and elsewhere are limited to lower-voltage electric distribution facilities, not high-voltage transmission facilities. Transmission towers and poles are different than distribution poles, and should be exempt from any pole attachment rules.

² 47 U.S.C. § 224(c).

Washington legislature elected to assert jurisdiction over attachments to transmission facilities by enacting RCW ch. 80.54. The statute authorizes the Commission “to regulate in the public interest the rates, terms, and conditions for attachments by licensees or utilities,”³ and requires the Commission to adopt implementing rules, regulations, and procedures.⁴

On February 25, 2014, the Commission entered Order 01 in Docket UT-140024, denying the petition of PCIA – The Wireless Infrastructure Association to initiate a rulemaking to adopt rules to implement RCW ch. 80.54. The Commission concluded that it should initiate its own, more comprehensive rulemaking proceeding. This is that proceeding.

PCIA in its rulemaking petition proposed that the Commission adopt the most recent set of FCC rules regulating pole attachments (47 C.F.R. § 1.1401 through 1.1424). In addition, the Public Utility Commission of Oregon (OPUC) has adopted rules governing pole and conduit attachments (OAR 860-028-0000 through 03100). The Commission proposes to use the FCC and OPUC rules as the starting point for developing its own rules to govern attachments to transmission facilities in Washington.

Avista appreciates the opportunity to provide the following initial comments in this proceeding:

I. Introduction

Avista currently has a successful program to accommodate communications attachers. We process hundreds of route requests annually from communications companies seeking to install wires and other facilities on distribution poles within our service area, and we accommodate those requests in a timely manner. The Company understands that communications services ultimately benefit many of the same customers that we serve, and communications companies to our knowledge have not registered dissatisfaction or complaints with our current attachment process.

Avista’s primary focus is on safety and the proper application of safety codes and other operating standards. Although we expect communications attachers to comply, that is often not the case, and non-compliant attachments are of great concern to us.

³ RCW 80.54.020.

⁴ RCW 80.54.060.

II. FCC Regulations Are Problematic

The FCC's April 2011 Pole Attachment Order creates significant safety and operational issues for utilities, including those associated with make-ready deadlines, wireless attachments above energized electric facilities, liability issues, unauthorized attachment and safety violation concerns, and temporary attachments. A number of utilities requested reconsideration of these safety and operational rulings and those reconsideration requests are still pending. The Order also reduced annual pole attachment rental rates which served to further increase the subsidy to communications attachers at the expense of electric utility ratepayers. Indeed, the FCC pole attachment regulation has caused so much concern that several utilities earlier this year asked Congress to remove FCC jurisdiction entirely, and that request is still pending.

III. Oregon's Rules, If Significantly Modified, Could Be Helpful

Avista's initial review of Oregon's pole attachment rules identified certain provisions that would be helpful and some that would not. The Company believes that allowing sanctions against communication attachers for having no contract or permit, violating existing contracts, or not resolving code violations in a timely manner, has the potential to reduce unauthorized attachments, safety violations, and other contract violations dramatically. We support Oregon's approach in having two different attachment rates for "compliant" versus "non-compliant" attachers. However, as stated below, we believe that the overall attachment rates in Oregon, like those of the FCC, are set below the costs of such attachments to the utility's system as discussed below. Finally, we believe that the establishment of a Joint Use Association of pole owners and attachers would help encourage cooperation and resolve conflicts informally.

There are two aspects of the Oregon rules that concern Avista. First, Oregon's decision to regulate the rates, terms and conditions of the joint use relationship between electric and ILEC pole owners would interfere with an electric utility's ability to operate and create conflict and unwarranted complications. We also believe that this would complicate existing joint use contracts between pole owners and ongoing negotiations.

Second, Oregon's rules would be problematic for all parties to the extent they might require extensive and continuous safety inspections. Avista's current program to inspect poles and attachments has been successful and efficient in identifying safety concerns. Oregon's Division 28 pole attachment rules are designed to work in conjunction with Division 24 safety rules, which mandate inspections by pole owners and attachers on a ten-year cycle, with significant oversight by OPUC Staff. Rather than burden already-stretched personnel and budgets, we believe that reductions in unauthorized attachments and safety violations can be achieved with our current method of inspection that includes ongoing facility upgrades to accommodate joint use requirements, inspection of major corridors and construction oversight of all new communication cable installations. Avista is also in the process of removing communication facilities left abandoned by joint use companies within our more rural service territories in order to mitigate public safety concerns.

IV. FCC and Oregon Pole Attachment Rentals Are Too Low

In general, FCC and Oregon pole attachment formulae allow utility pole owners to recover less than 10% of their annual pole costs from third party attachers. For this very low fee, communications companies gain access to a fully-constructed pole distribution corridor that enables them to provide service to their customers. Regulated attachment rates may be as low as \$12 per year per pole, while a cable company could charge \$1800 per year (based on \$150 per month) for triple play service (cable, phone, Internet).

We believe that other pole attachment rate formulae provide a more balanced approach to pole attachments, including those approved by Washington state courts for the City of Seattle and for Pacific PUD. Additionally, other states have adopted better, and fairer, calculations, including Indiana, Delaware and Maine. We urge the Commission to consider these alternatives in order to avoid having electric ratepayers (including many who may not receive these communications services) from subsidizing cable and phone companies.

V. Conclusion

Protecting the public and all line workers (power and communications alike) is Avista's most important issue. Utilities need to maintain control over the safety, engineering and reliability of their facilities, and the Commission's pole attachment regulations should promote that objective.

Avista appreciates the opportunity to provide these comments, and we look forward to participating in the workshop scheduled for July 28, 2014, and the issues related to this topic. If you have any questions regarding these comments, please contact me at 509-495-4975 or at linda.gervais@avistacorp.com.

Sincerely,

/s/Linda Gervais/

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