

February 6, 2015

VIA ELECTRONIC FILING

Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Attention: Steven V. King
Executive Director and Secretary

RE: Docket No. U-140621 – Rulemaking to Consider Adoption of Rules to Implement RCW Ch. 80-54 Relating to Transmission Facilities--Comments of Pacific Power & Light

Dear Mr. King:

In accordance with the Notice of Opportunity to File Written Comments (Notice) issued January 6, 2015, Pacific Power & Light Company (Pacific Power or Company), a division of PacifiCorp, provides comments responsive to the Notice. The Company provides the following general comments below, along with suggested red-lined edits and comments to the draft rules included as Attachment A.

Pacific Power appreciates the Commission's efforts to draft rules for attaching to poles in Washington. The latest draft rules provide clarity on many issues discussed through comments and the workshop on the initial draft. Further clarity is needed to ensure all parties to the attachment process operate under a common understanding and to potentially avoid disputes. Based on experience in other states, the Company offers observations about the proposed rules.

450-54-020 Definitions

The Commission revised the definition of "make-ready work," which adds further details to the activities included in such work. The Company proposes modifying the definition of "Make-ready work" for consistency with Federal Communications Commission (FCC), Utah and Oregon rules that do not include pole replacements. The Company proposes the Commission clarify that make-ready work does not include pole replacements. Pole replacements, while they may be a viable solution to accommodate attachments in some cases, cannot be subject to make-ready work timelines due to the amount of work involved. Pole replacements require engineering design, securing permits from government bodies, performing underground locates, coordination of service outages and requisite notification to customers of the outages, and actual scheduling the work, which includes flaggers, heavy equipment and crews. After the pole is replaced, transfers of all occupants' attachments to the new pole must occur and the old pole must be

removed and the ground restored.

The Commission also revised the definition of “occupied space.” The Company proposes revisions to note that electric facilities and communications facilities cannot be within the same duct/conduit in accordance with the National Electric Safety Code (NESC). Additionally, the Company proposes revisions to clarify presumptions about measuring occupied space. Certain equipment can use more than one foot on a pole. Therefore, the rules should be flexible to allow the owner to be able to base rental calculations for the actual occupied space.

The Commission proposes adding a definition of “overlapping.” The Company proposes modifying this definition to clarify that overlapping is not allowed between third parties (e.g. an occupant overlaps another occupant's facilities).

The Commission revised the definition of “unusable space” to add a presumed measurement. Pacific Power proposes changes to the definition to allow the presumption to be rebuttable, consistent with a rebuttable presumption codified in the FCC and other states’ rules. Such rebuttable presumption standardizes rate formula components, reducing the likelihood for disputes.

The Commission revised the definition of “usable space” with minor modifications and added a presumed measurement for such space. Pacific Power proposes changes to the definition to ensure it is clear that both electric and communications cannot occupy same duct/conduit, consistent with the NESC. Additionally Pacific Power proposes the rebuttable presumption for usable space be consistent with that of the FCC and many other states, for the purpose of calculating contact rent, and does not take into consideration cross-arms and extensions.

450-54-030 Duty to provide access; make-ready work; timelines

The Commission proposes revisions to this section, which appear to further define responsibilities associated with the provisions of access, performance of make-ready work and the timelines for such preparations. Pacific Power offers a number of suggested modifications to enhance clarity or to align with current successful practices.

Subsection (1) now includes language requiring owners to allow access to a pole with insufficient capacity if the requester is willing to pay for a taller pole or “otherwise” undertake make-ready work to make space. This could be interpreted to equate pole replacement with make-ready work. The Company proposes modest changes to recognize that make-ready work and pole replacements are two different things. Make-ready work is performed on an existing pole. This is also consistent with the Company’s suggested revisions to the definition of “make-ready work.”

Subsection (5) requires owners to provide a written response to a granted application. Within 14 days of providing the written response, the owner must provide an estimate of charges to perform all necessary make-ready work including costs of completing the estimate. Pacific Power tracks costs for completing estimates but because of how employee time is recorded and accounted for, may not have complete costs for 45 to 60 days after providing the estimate. Pacific Power typically includes costs for preparing the estimate on the final bills for make-ready work. The Company proposes changes to allow flexibility for presenting final costs for preparing the estimate.

Subsection (6)(a)(v) requires owners to include a statement in notices for make ready work allowing requesters to perform the make-ready work if the owner does not do so by a date certain. As written, the rule allows requestors to complete make-ready work “within the communications space.” Make-ready work could be required on a pole owned by an electric company or a communications company and could be required within the communications space or within the electric space. Pacific Power proposes revisions consistent with this premise.

Subsection (9) addresses surveys and allows requestors to have surveys completed if an owner does not complete within a specific timeframe, but does not contain a requirement that the owner be notified. Pacific Power proposes adding language to require the requestor to notify the owner if the requestor intends to have a survey performed.

Subsection (10) allows a requestor to have make-ready work performed if the owner does not perform such make-ready work within a specific time frame and appears to only apply to make-ready work in the communications space. As already noted, poles may be owned by electric companies or communications companies and make-ready work could be required in either the communications space or the electric space. Further, the Company does not maintain a list of contractors who perform work in the communications space and would not know the attachment standards of the requestor or other occupants. The Company proposes revisions to be consistent with current successful practice.

Subsections 10(a) and (b) as written imply owners will be performing all make-ready work. Owners should only be responsible for their own make-ready work to avoid safety concerns and to ensure those causing the costs are the ones responsible for paying. The Company proposes modifications to clarify responsibility for make-ready.

Subsection (11) is new and allows for unfettered overlashing. There are significant safety and operational concerns with overlashing. Unchecked overlashing could lead to overloaded poles, particularly in areas prone to high winds and ice accumulation on lines, and causes clearance issues. Overlashing can be acceptable if parameters are established to mitigate safety and operational concerns. The Company proposes substantive changes in Subsection (11) to establish adequate conditions for overlashing. These revisions limit such activity in the absence of advance occupant’s application and owner’s advance approval to relatively lightweight and small-diameter conductors. These revisions also require the occupant to correct any of its existing nonconforming equipment at the time of overlashing so that the occupant’s equipment is made to comply with the NESC. Further, for the same safety reasons cited above, the Company proposes prohibiting overlashing without submitting an application on existing slack-spans (un-guyed spans), and on existing messengers attached to poles carrying voltages of 34.5kV or above (i.e. transmission voltage). Pacific Power proposes allowing an occupant overlash on such poles, submitting an application will allow the ability to evaluate the pole for loading and clearance.

Additionally, the rules appear to allow third-party overlashing without actually having an agreement in place with the owner. A third-party overlasher essentially occupies the same space as another attacher. Generally, the proposed rules require that each occupant be governed under an agreement with the owner. Without an agreement, there are no rates, terms or conditions that govern the attachments. The owner would have exposure to liability without the third-party meeting insurance, bond and indemnification obligations. There is no mechanism in the proposed

rules for invoicing more than one party for the same attachment space on a pole. Further, third parties often attach without communicating directly with the owner and often create clearance issues. The NESC requires clearances between the conductors, cable and equipment of one communication utility to another, anywhere in the span, to not be less than four inches, except by agreement between the parties involved (NESC Rule 235H (2)). The Company does not agree to allow two parties to have clearance less than four inches. Finally, third parties who overlash without working with the owner may make arrangements to pay an occupant for use of their attachments on an owner's poles. There is no governance of the dollar amount an existing occupant could seek from a third party, meaning third-party overlashers and occupants might reach attachment rental rate agreements outside of the regulated rate formula. Third-party overlashers must be held to the same requirements as other occupants to protect the owner and other occupants and the services they all provide.

480-54-040 Contractors for survey and make-ready

The Commission proposes revisions to this section, which governs use of contractors for make-ready and survey work. As written, owners would be required to maintain lists of contractors to perform work in the space on the poles not related to the owner's business. As noted above, Pacific Power does not maintain lists of contractors to perform work in the communications space because it is not Pacific Power's core business and Pacific Power does not know the attachment standards for the communications companies occupying its poles. The Company proposes revisions to subsection (3) consistent with this successful practice.

480-54-050 Modification costs; notice; temporary stay

The Commission proposes revisions to this section related to costs for modifying poles. This section appears to require all occupants who "benefit" from modifications to a pole to share in the costs and seems to suggest that any occupant on the pole at the time of modification, and potentially future occupants, benefit from all modifications. The rule further appears to require owners to parse out costs to all affected occupants. This would be burdensome to implement. This would require owners to collect costs from new occupants and divide that among other occupants every time a new occupant attaches. Without a cost-benefit analysis, it is difficult to determine whether this will be a worthwhile exercise. In the interest of fairness, only occupants existing at the time of modification should potentially share in the costs. The Company proposes revisions to apportion cost responsibility for modifications to existing occupants with nonconforming attachments at the time of a requestor's application. This would make such situations far easier to manage and brings all existing attachments into conformance.

The Company proposes deleting subsection (2) because it is covered in the nonconforming attachments language in Subsection (1).

Subsection (5) sets forth a process to address issues with abandoned attachments, which Pacific Power appreciates. The Company proposes a modest addition to clarify that the owner should not have to bear the cost of removing abandoned facilities.

The Company appreciates the opportunity to provide comments on the draft rules and looks forward to further participation in this rulemaking.

Informal questions concerning this filing may be directed to Natasha Siores, Director, Regulatory Affairs & Revenue Requirement, at (503) 813-6583.

Sincerely,

A handwritten signature in black ink that reads "R Bryce Dalley" with a stylized flourish at the end.

R. Bryce Dalley
Vice President, Regulation

ATTACHMENT A

Docket U-140621
January 6, 2015

**SECOND DRAFT RULES GOVERNING ACCESS TO UTILITY
POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY**

480-54-010 Purpose and Interpretation

- (1) This chapter implements RCW Ch. 80.54 “Attachment to Transmission Facilities.”
- (2) ~~To the extent that these rules contain provisions that are the same as Federal Communications Commission rules governing pole attachments, t~~The commission will consider Federal Communications Commission orders promulgating and interpreting its pole attachment rules and federal court decisions reviewing those rules and interpretations of those rules as persuasive authority in construing the ~~comparable~~ provisions in this chapter.

480-54-020 Definitions

- (1) ~~“Attacher” means any utility or licensee with an attachment to an owner facility utility’s pole, duct, or conduit, or right-of-way or that is granted the right to make such an attachment.~~
- (2) ~~“Attachment” means any wire, or cable, or antenna~~ “Attachment” means any wire, ~~or~~ cable, or antenna for the transmission of intelligence by telecommunications or television, including cable television, light waves, or other phenomena, or for the transmission of electricity for light, heat, or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any ~~telecommunications, electrical, cable television, or communications right-of-way,~~ duct, conduit, manhole or handhole, or other similar facilities owned or controlled, in whole or in part, by one or more ~~owners~~utilities, where the installation has been made with the consent of the one or more ownersutilities consistent with these rules.
- (2) “Carrying charge ” means the costs the owner incurs to own and maintain poles, ducts, or conduits without regard to attachments, including the owner’s administrative, maintenance, and depreciation expenses, commission-authorized rate of return on investment, and applicable taxes. When used to calculate an attachment rate, the carrying charge may be expressed as a percentage of the net pole, duct, or conduit investment.
- (3) “Communications space” means the usable space on a ~~utility~~ pole below the communications workers safety zone and above the vertical space for meeting ground clearance requirements under the National Electrical Safety Code~~below the space used to attach electrical wires.~~
- (4) “Conduit” means a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.

- (5) “Duct” means a single enclosed raceway for conductors, cable, or wire.
- (6) “Facility” or “Facilities” means one or more poles, ducts, conduits, ~~rights-of-way,~~ manholes or handholes, or similar structures on or in which attachments can be made ~~facilities~~.
- (7) ~~“Facility utility” means the utility that owns or controls the facilities to or in which an~~
~~attacher maintains or seeks to make attachments.~~
- ~~(8)~~ “Inner duct” means a duct-like raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables.
- ~~(89)~~ “Licensee” means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, other than a utility, that is authorized to construct attachments upon, along, under, or across the public ways, ~~including a provider of telecommunications service, radio communications service company, as defined in RCW 80.04.010, any cable television service company or personal wireless services company.~~
- ~~(94)~~ “Make-ready work” means engineering or construction activities necessary to make work required to modify a pole, duct, conduit, or other support equipment available for a new attachment, attachment modifications, or right-of-way to enable the facility to accommodate one or more additional attachments. Such work may include rearrangement of existing attachments, ~~or~~ installation of additional support for the utility pole, ~~or creation of additional capacity, up to and~~ Make-ready work does not including replacement of an existing pole with a taller or stronger pole. Make-ready work costs are non-recurring costs and are not included in carrying charges.
- (10) “Net cost of a bare pole” means (a) the original investment in poles, including purchase price of poles and fixtures and excluding cross-arms and appurtenances, less depreciation reserve and deferred federal income taxes associated with the pole investment, divided by (b) the number of poles represented in the investment amount.
- (11) “Occupant” means any utility or licensee with an attachment to an owner’s pole, duct, or conduit or that is granted the right to make such an attachment.
- ~~(12)~~ “Occupied space” means that portion of the pole, duct, or conduit used for attachment that is rendered unusable for any other attachment, which is presumed to be one foot on a pole and one half of a duct in a duct or conduit. The owner may authorize additional occupied space on a pole in increments of six (6) inches. Shared occupancy is not allowed within the same duct or conduit of both communications and electric facilities.
- (13) “Overlashing” means the tying of an occupant’s additional communications wires or cables to existing communications wires or cables attached to poles.

(14) “Owner” means the utility that owns or controls the facilities to or in which an occupant maintains or seeks to make attachments.

(152) “Pole” ~~or “utility pole”~~ means an above-ground structure on which an owner facility utility maintains attachments. When the owner is an electrical company as defined in RCW 80.04.010, “pole” is limited to structures used to attach electric distribution lines.

(16) “Requester” means a licensee or utility that applies to an owner to make attachments to or in the owner’s facilities.

(173) “Unusable space” with respect to utility poles means the space on the pole below the usable space, including the amount required to set the depth of the pole and the ground clearance space. There is a rebuttable presumption that a pole has 24 feet of unusable space.

(184) “Usable space,” with respect to poles, means the space on a utility pole above the minimum grade level ~~that which~~ can be used for the attachment of wires, cables, and associated equipment, and ~~that which~~ includes space occupied by the owner facility utility. There is a rebuttable presumption that a pole has 13.5 feet of useable space. With respect to conduit, “usable space” means capacity within a conduit that is available or that could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable, and associated equipment for telecommunications or cable services, and ~~that which~~ includes capacity occupied by the owner facility utility. Shared occupancy is not allowed within the same duct or conduit of both communications and electric facilities.

(195) “Utility” means any electrical company or telecommunications company as defined in RCW 80.04.010, and does not include any entity cooperatively organized, or owned by federal, state, or local government, or a subdivision of state or local government.

480-54-030 Duty to provide access; make-ready work; timelines

(1) An owner facility utility shall provide other utilities or licensees with nondiscriminatory access for attachments to or in any pole, duct, or conduit, ~~or right-of-way~~ the owner facility utility owns or controls, except that if the owner is an electrical company as defined in RCW 80.04.010, the owner is not obligated to provide access for attachment to its facilities by another electrical company.

An owner facility utility may deny such

access to specific facilities on a nondiscriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles; provided that in the case of poles, the owner may not deny access to a pole based on insufficient capacity if the requester is willing to compensate the owner for the costs to replace the existing pole with a taller pole or otherwise undertake make-ready work to increase the capacity of the pole to accommodate an additional attachment.

- (2) All rates, terms, and conditions made, demanded, or received by any ownerutility for any attachment by a licensee or by a utility must be fair, just, reasonable, and sufficient. Parties may mutually agree on terms for attachment to or in poles, ducts, or conduits, ~~or rights-of-way~~ that differ from those in this chapter. In the event of disputes submitted for commission resolution, any party advocating rates, terms, or conditions that vary from the rules in this chapter bears the burden to prove those rates, terms, or conditions are fair, just, reasonable, and sufficient.
- (3) Except for overlashng requests as described in subsection (11) below, a utility or licensee must submit a written application to an owner-facility-utility to request access to its facilities. The ownerfacility-utility must may survey the facilities identified in the application and recover the costs of that survey from the requester. The owner must complete any such survey and respond in writing to requests for access to ~~those~~ facilities identified in the application within 45 days from the date the ownerfacility-utility receives a complete application, except as otherwise provided in this section. A complete application is an application that provides the information necessary to enable the ownerfacility-utility to identify and evaluatesurvey the facilities to or in which the requester seeks to attach.
- (4) If the ownerfacility-utility denies the request in an application for access, in whole or in part, the ownerfacility-utility's written response to the application must include an explanation of the reasons for the denial for each pole, duct, or conduit to which the owner is denying access. Such a response must include all relevant ~~evidence and~~ information supporting the denial.
- (5) To the extent that it grants the access requested in an application~~access~~, the ownerfacility-utility's written response must inform the requesterattacher of the results of the review of the application, ~~including but not necessarily limited to a notification that the facility utility has completed a survey of the facilities identified in the application.~~ Within 14 days of providing its written response, the ownerfacility-utility must provide an estimate of charges to perform all necessary make-ready work. The costs of completing the estimate itself may be included on the final bill.
 - (a) The requester must~~An attacher may~~ accept or reject an estimate of charges to perform make-ready work ~~and submit payment to the facility utility any time after within 30 days of~~ receipt of the estimate ~~but before the facility utility withdraws the estimate.~~
 - (b) An owner-facility-utility may withdraw an outstanding estimate of charges to perform make-ready work any time after~~beginning 30~~14 days from the date~~after the~~ ownerfacility-utility provides the estimate to the requesterattacher ~~if the requester has not accepted that estimate.~~

(6) ~~Upon receipt of payment of the estimated charges for make-ready work, For requests to attach to poles, the owner must~~ facility utility shall determine the time period for completing the make-ready work and provide that information in a written notice to the requester and all known occupant entities with existing attachments on the poles ~~facilities that may be affected by the make-ready work. The owner and the requester must coordinate the make-ready work with any such occupants as necessary.~~

(a) For attachments in the communications space, the notice shall:

(i) Specify where and what make-ready work will be performed.

(ii) Set a date for completion of make-ready work that is no later than 60 days after the notice is sent ~~(or 105 days in the case of larger orders, as described in subsection (f) of this section)~~. For good cause shown, the ~~owner~~ facility utility may extend completion of the make-ready work by an additional 15 days.

(iii) State that any occupant entity with an existing attachment may modify that attachment consistent with the specified make-ready work before the date set for completion of that work.

(iv) State that the owner ~~facility utility~~ may assert its right to 15 additional days to complete the make-ready work.

(v) State that if make-ready work is not completed by the completion date set by the owner ~~facility utility~~ (or 15 days later if the owner ~~facility utility~~ has asserted its right to 15 additional days), the requester, after giving reasonable notice to the owner, attacher requesting access may hire an ~~authorized~~ contractor from the list of contractors the owner has authorized to work on its poles to complete the specified make-ready work ~~within the communications space~~.

(vi) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work.

(b) For wireless antennas or other attachments on poles in the space above the communications space, the notice shall:

(i) Specify where and what make-ready work will be performed.

(ii) Set a date for completion of make-ready work that is no later than 90 days after notice is sent ~~(or 135 days in the case of larger orders, as described in subsection (f) of this section)~~. For good cause shown, the owner ~~utility~~ may extend completion of the make-ready work by an additional 15 days.

(iii) State that any occupant entity with an existing attachment may modify the attachment consistent with the specified make-ready work before the date set for completion of that work.

(iv) State that the ownerfacility-utility may assert its right to 15 additional days to complete the make-ready work.

(v) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work.

(7) For the purpose of compliance with the time periods in this section:

(a) ~~A facility-utility shall apply to~~ The time periods ~~described in subsections (b) through (e) of this section~~ apply to all requests for access to up to ~~3100~~ 100 poles or 0.5 percent of the ownerfacility-utility's poles, ~~ducts, or conduits, or rights-of-way~~ in Washington, whichever is less ~~as applicable~~.

~~(b) — A facility-utility may add 15 days to the survey period described in subsection (b) of this section to all requests for access to between 300 and 3000 poles or between 0.5 and five percent of the facility utility's poles, ducts, conduits, or rights-of-way in Washington, whichever is less as applicable.~~

~~(c) — A facility-utility may add 45 days to the make-ready work periods described in subsection (c) of this section to all requests for access to between 300 and 3000 poles or between 0.5 and five percent of the utility's poles, ducts, conduits, or rights-of-way in Washington, whichever is less as applicable.~~

~~(be)~~ An owner-facility-utility shall negotiate in good faith the time periods ~~sing for~~ of all requests for access to more than ~~31000~~ 100 poles or 0.5 percent of the ownerutility's poles, ~~ducts, conduits, or rights-of-way~~ in Washington, whichever is less ~~as applicable~~.

~~(ce)~~ An owner-facility-utility may treat multiple requests from a single requester ~~attacher~~ as one request when the requests are filed within the same 30 day period. The applicable time period for completing the optional ~~required~~ survey or required make-ready work begins on the date of the last request the ownerfacility-utility receives from the requester ~~attacher~~ within the 30 day period.

(8) An owner-facility-utility may extend the time periods ~~limits~~ specified in this section under the following circumstances:

(a) Before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment; or

(b) During performance of make-ready work if the ownerfacility-utility discovers unanticipated circumstances that reasonably require additional time to complete the work. Upon discovery of such circumstances, the ownerfacility-utility must promptly ~~immediately~~ notify, in writing, the requester ~~ing attacher~~ and other affected occupants ~~entities~~ with existing attachments. ~~The notice must, and shall~~ include the reason for the extension ~~additional time~~ and date by which the ownerfacility-utility will complete the work. The ownerfacility-utility may not extend completion of make-ready work for a period any longer than reasonably necessary and shall undertake such work on

a nondiscriminatory basis.

(9) If the ownerfacility utility determines that a survey is necessary for responding to a request for attachment to poles and fails to complete a survey of the facilities specified in the application within the time periodframes established in this section, ~~an attacheer~~ requester seeking attachment in the communications space may, upon written notice to owner, hire ~~an authorized~~ contractor from the list of contractors the owner has authorized to work on its poles to complete the survey.

(10) If the ownerfacility utility does not complete ~~any-its~~ required make-ready work within the time periodframes established in this section, ~~an attacheer~~ requester seeking attachment in the communications space may, upon written notice to owner, hire ~~an authorized~~ contractor from the list of contractors the owner has authorized to work on its poles to complete the owner's make-ready ~~within the communications space~~:

(a) Immediately, if the ownerfacility utility has failed to assert its right to perform ~~any-its~~ necessary make-ready work by notifying the requester ~~ring attacheer~~ that the owner will undertake that work; or

(b) After ~~15 days from~~ the end of the applicable time period authorized in this section if the ownerfacility utility has asserted its right to perform its make-ready work and has failed to timely complete that work.

~~(11) An occupant need not submit an application to the owner if the occupant intends only to overlash additional communications wires or cables onto communications wires or cables it previously attached to poles with the owner's consent, but the occupant must provide the owner with 10 days prior written notice. The notice must identify the affected poles and describe the additional communications wires or cables in sufficient detail to enable the owner to determine any impact of the overlash on the poles or other occupants' attachments. The occupant may proceed with the overlash described in the notice unless the owner provides a written response, within seven days of receiving the occupant's notice, prohibiting the overlash as proposed. Any such denial must be based on the owner's reasonable judgment that the overlash would have a significant adverse impact on the poles or other occupants' attachments. The denial must describe the nature and extent of that impact, include all relevant information supporting the owner's determination, and identify the make ready work that the owner has determined would be required prior to allowing the proposed overlash. The parties must negotiate in good faith to resolve the issues raised in the owner's denial.~~

With the exception of construction on existing slack spans or on existing messengers attached to poles carrying voltages 34.5 kV and above, an occupant may overlash a total of one instance of up to a forty-eight (48) or less count fibers or coaxial cable of equivalent weight(s) on up to 100 poles without submitting a permit. For these specific instances of overlash, the occupant will provide owner with maps of the proposed overlash route and pole numbers, ten (10) business days before such overlash. Occupant must correct

any of occupant's existing non-compliant facilities at the time of the overlapping consistent with the NESC. If there is any make-ready work required by owner, or if overlapping already exists, then the occupant must submit an application and follow the timeframes/guidelines outlined in section 480-54-030(3). The occupant may proceed with the overlapping unless the owner provides a written response denying the overlapping within the ten (10) business days. Any such denial must describe the nature and extent of the adverse impact to the owner's poles or other occupants' attachments. No third-party overlapping allowed is expressly prohibited.

480-54-040 Contractors for survey and make-ready.

- (1) An owner facility utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and its make-ready work in the communications space on its utility poles in cases where the owner facility utility has failed to meet deadlines specified in WAC 480-54-030.
- (2) If an attachee requester hires a contractor for purposes specified in WAC 480-54-030, the requester attachee must choose a contractor included on the owner facility utility's list of authorized contractors.
- (3) An attachee requester that hires a contractor for owner's survey or make-ready work must provide the owner facility utility with prior written notice and a reasonable opportunity for an owner facility utility representative to accompany and consult with the authorized contractor and the requester attachee.
- (4) Subject to commission review in a complaint proceeding, the consulting representative of an owner electric facility utility may make final determinations, on a nondiscriminatory basis, on the attachment capacity of any pole, duct, conduit, or right-of-way and on issues of safety, reliability, and generally applicable engineering principles.

480-54-050 Modification costs; notice; temporary stay.

- (1) (1) The costs of modifying a pole, duct, or conduit, or right-of-way shall be borne by the requester all utilities and licensees that obtain access to the facility as a result of the modification and by all existing such occupants entities that directly benefit from whose nonconforming attachments are remedied by the modification. Each such occupant entity shall share proportionately in the cost of the modification in proportion to the amount-number of usable space the occupants occupies that are on or in the facility. A utility or licensee with a preexisting attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification, that occupant entity adds to its existing attachment or modifies that its attachment to conform to its attachment agreement with the owner.
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- (2) ~~A utility or licensee with a preexisting conforming attachment to a pole, duct, or conduit, or right-of-way shall not be required to bear any of the costs the owner incurs to rearrange or replace its attachment if such rearrangement or replacement is necessitated solely as a result of creating capacity for an additional attachment or the modification of an existing attachment sought by the facility utility or attacher.~~
- ~~(3) If a utility or licensee makes an attachment to the facility after the completion of a modification, that entity shall share proportionately in the cost of the modification if it enabled the added attachment.~~
- (34) ~~An owner facility utility shall provide an attaching utility or licensee no less than 60 days with~~ written notice prior to removal of, termination of service to, or modification of (other than routine maintenance or modification in response to emergencies) any facilities on or in which the utility or licensee has attachments affected by such action. The owner must provide such notice as soon as practicable but no less than 60 days prior to taking the action described in the notice; Provided that the owner may provide notice less than 60 days in advance if a governmental entity or landowner other than the owner requires the action described in the notice and did not notify the owner of that requirement more than 60 days in advance.
- (45) A utility or licensee may file with the commission and serve on the ~~owner facility utility~~ a “Petition for Temporary Stay” of utility action contained in a notice received pursuant to subsection (34) of this section within ~~2015~~ days of receipt of such notice. The petition must be supported by declarations or affidavits and legal argument sufficient to demonstrate that the petitioner or its customers will suffer irreparable harm in the absence of the relief requested that outweighs any harm to the ~~owner facility utility~~ and its customers and that the petitioner will likely be successful on the merits of its dispute. The ~~owner facility utility~~ may file and serve an answer to the petition within 7 days after the petition is filed unless the commission establishes a different deadline for an answer.
- (5) ~~An owner may file with the commission and serve on the occupant a petition for authority to remove the occupant’s abandoned attachments. The petition must identify the attachments and provide sufficient evidence to demonstrate that the occupant has abandoned those attachments. The occupant must file an answer to the petition within 20 days after the petition is filed unless the commission establishes a different deadline for an answer. If the occupant does not file an answer or otherwise respond to the petition, the commission may authorize the owner to remove the attachments without further proceedings. The owner will not be held financially responsible for abandoned attachments.~~

- (1) A fair, just, reasonable, and sufficient rate for attachments to or in poles, ducts, ~~or conduits, or rights-of-way~~ shall assure the ~~owner~~utility the recovery of not less than all the additional costs of procuring and maintaining the attachments, nor more than the actual capital and operating expenses, including just compensation, of the ~~owner~~utility attributable to that portion of the pole, duct, ~~or conduit, or right of way~~ used for the attachments, including a share of the required support and clearance space, in proportion to the space used for the attachment, as compared to all other uses made of the facilities, and uses which remain available to the owner ~~or owners of the facilities~~.
- (2) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to ~~utility~~ poles:

$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

$$\text{Where Space Factor} = \frac{\text{Occupied Space}}{\text{Total Usable Space}}$$

- (3) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to ~~utility~~ ducts or conduits:

$$\begin{aligned} \text{Maximum Rate per Linear ft./m.} &= \left[\frac{1}{\text{Number of Ducts}} \times \frac{1 \text{ Duct}}{\text{No. of Inner Ducts}} \right] \times \left[\frac{\text{No. of Ducts} \times \text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right] \times \text{Carrying Charge Rate} \\ &\quad \text{(Percentage of Conduit Capacity)} \qquad \qquad \qquad \text{(Net Linear Cost of a Conduit)} \end{aligned}$$

simplified as:

$$\text{Maximum Rate Per Linear ft./m.} = \left[\frac{1 \text{ Duct}}{\text{No. of Inner Ducts}} \right] \times \left[\frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right] \times \text{Carrying Charge Rate}$$

If no inner duct or only a single inner duct is installed, the fraction, “1 Duct divided by the No. of Inner Ducts” is presumed to be 1 / 2.

480-54-070 Complaint

- (1) Whenever the commission shall find, after hearing had upon complaint by a licensee or by a utility, that the rates, terms, or conditions demanded, exacted, charged, or collected by any ~~ownerfacility utility~~ in connection with attachments to its facilities are not fair, just, and reasonable, or by an ~~owner facility utility~~ that the rates or charges are insufficient to yield a reasonable compensation for the attachment, the commission ~~willshall~~ determine the fair, just, reasonable, and sufficient rates, terms, and conditions thereafter to be observed and in force and ~~shall~~ fix the same by order entered within 360 days after the filing of the complaint. In determining and fixing the rates, terms, and conditions, the ~~c~~Commission ~~willshall~~ consider the interest of the customers of the ~~licensee or utilityattacher~~, as well as the interest of the customers of the ~~ownerfacility utility~~.
- (2) A utility or licensee may file a formal complaint if:
 - (~~a~~1) An ~~owner facility utility~~ has denied access to its poles, ducts, or conduits, ~~or rights of way~~;
 - (~~b~~2) An ~~owner facility utility~~ fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or
 - (~~c~~3) The utility or licensee disputes the rates, terms, or conditions in an attachment agreement, the ~~facility utilityowner~~'s performance under the agreement, or the ~~facility utilityowner~~'s obligations under the agreement or other applicable law.
- (3) An ~~owner facility utility~~ may file a formal complaint if:
 - (~~a~~1) Another utility or licensee is unlawfully making attachments to or in the ~~facility utilityowner~~'s poles, ducts, or conduits, ~~or rights of way~~;
 - (~~b~~2) Another utility or licensee fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or
 - (~~c~~3) The ~~ownerfacility utility~~ disputes the rates, terms, or conditions in an attachment agreement, the ~~occupantattacher~~'s performance under the agreement, or the ~~occupantattacher~~'s obligations under the agreement or other applicable law.
- (4) The execution of an attachment agreement does not preclude any challenge to the lawfulness or reasonableness of the rates, terms, or conditions in that agreement, provided that the parties were aware of the dispute at the time they executed the agreement and such challenge is brought within six months from the agreement

execution date the parties executed the agreement. Nothing in this section precludes an owner facility utility or occupantattaeher from bringing any other complaint that is otherwise authorized under applicable law.

(5) A complaint authorized under this section must contain the following:

(a) A statement, including specific facts, demonstrating that the complainant engaged or reasonably attempted to engage in good faith, executive-level negotiations to resolve the disputed issues raised in the complaint and that the parties failed to resolve those issues despite those efforts.

(b) Identification of identify all actions, rates, terms, and conditions alleged to be unjust, unfair, unreasonable, insufficient, or otherwise contrary to applicable law;

(c) and shall include sSufficient data or other factual information and legal argument to support the allegations to the extent that the complainant possesses such factual information; and. The complaint also must include a

(d) A copy of the attachment agreement, if any, between the parties.

(6) Except as provided in WAC 480-54-030(2), a licensee or utilityAn attaeher has the burden to prove its right to attach to or in the facility utilityowner's poles, ducts, or conduits, or rights of way and that any rate, term, or condition the licensee or utilityattaeher challenges is not fair, just, and reasonable or otherwise violates any provision of RCW Ch. 80.54, this Chapter, or other applicable law. Except as provided in WAC 480-54-030(2), an ownerA facility utility bears the burden to prove that attachment rates are insufficient or that the ownerfacility utility's denial of access to its facilities is lawful and reasonable.

(7) If the commission determines that the rate, term, or condition complained of is not fair, just, reasonable, and sufficient, the commission may prescribe a rate, term, or condition that is fair, just, reasonable, and sufficient. The commission may require the inclusion of that rate, term, or condition in an attachment agreement and to the extent authorized by applicable law, may order a refund or payment of the difference between any rate the commission prescribes and the rate that was previously charged during the time the owner was charging the rate after the effective date of this rule.

(8) If the commission determines that access to a pole, duct, or conduit, or right of way has been unlawfully or unreasonably denied or delayed, the commission may order the ownerfacility utility to provide access to that facility within a reasonable time frame and in accordance with fair, just, reasonable, and sufficient rates, terms, and conditions.