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Via Electronic Mail

Steven V. King
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Washington Utilities & Transportation Commission
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Re: Docket No. U-140621 - Comments of Avista Utilities

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 File Written Comments (Notice) issued January 6, 2015 in Docket U-140621.

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

I. 480-54-020 DEFINITIONS

"Attachment"

Draft Rule 480-54-020(1) currently defines "Attachment" to mean only those attachments that have been made with the consent of an owner. Not all attachments are authorized. Defining Attachment to mean only authorized attachments is problematic when other provisions of the Draft Rules are considered. For example in Draft Rule 480-54-060, the rate provisions would not apply to unauthorized facilities attached to a pole, suggesting that no rate could ever be charged for such unauthorized facilities. Draft Rule 480-54-070(3) allows an owner to file a complaint if an entity has unlawfully made attachments to its poles, but this is inconsistent if "attachments" are defined as authorized attachments.

Avista therefore proposes that Draft Rule 480-54-020(1) be revised to remove the phrase, ", where the installation has been made with the consent of the one or more owners consistent with these rules."

Attachment Rights Should Not Extend Beyond Cable and Telecom Companies

Draft Rule 480-54-020(8) was revised so that any entity authorized to be in the public ways has a right to attach to electric utility poles and ILEC poles. This change would allow all of these entities, no matter how small, no matter their viability, and no matter what services (if any) they provide, to demand access to potentially hazardous electric distribution facilities with the full cooperation and assistance of electric utility pole owners, consistent with all other provisions of these rules, including make-ready deadlines and the ability to move existing attachers.

Avista respectfully requests that this universe of entities entitled to demand access be limited to cable television systems and telecommunications carriers, consistent with the federal Pole Attachment Act.[1] Pole space is limited on electric utility and other poles, and providing rights of access to every entity requesting access is an inefficient use of that space, increase safety risk, and tie up electric utility resources, all to the detriment of the cable systems and telecom carriers.

"Pole" Regulations Should Apply To Distribution Facilities, Not 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 very different than distribution poles, and should not be subject to Commission pole attachment rules.

We acknowledge that the definition of "Pole" in the Draft Rule 480-54-020(15) is limited to structures used to attach electric distribution lines. However, in some cases, distribution lines

[1] *See* 47 U.S.C. §224(f) ("(1) A utility shall provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it. (2) Notwithstanding paragraph (1), a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory 1 basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.")

are underbuilt below transmission lines, but this does not change the fundamental character of the transmission facility and it should still be considered a transmission pole. Transmission towers and poles are on average much taller than distribution poles, carry electric conductors of much higher voltage, are not commonly used for communications attachments, are regulated by the Federal Energy Regulatory Commission ("FERC"), and are subject to entirely different set of FERC Uniform System of Accounts than distribution facilities.

The reference in Draft Rule 480-54-010 to "Transmission Facilities" may infer that attachments to transmission poles are covered by the Draft Rules, when that does not appear to be the Commission's intent.

We believe to avoid this confusion, the Draft Rules should be clarified to state specifically that they do not apply to attachments to transmission facilities. We respectfully request that the Commission consider changing the second sentence of the Definition for "Pole" to read as follows: "When the owner is an electrical company as defined in RCW 80.04.010, 'pole' is limited to structures used to attach distribution lines and having a voltage rating of or below 34.5 kV."

"Usable Space" Should Not Include Cross-arms And Extension Arms

Draft Rule 480-54-020(18) was revised to include the space added by cross-arms and extensions to the amount of space that qualifies as "Usable space" under the rate formula. This change would require attaching entities to pay far less than even the very low FCC cable rate would allow.

Like the FCC cable-only rate formula, the rate formula specified at Draft Rule 480-54-060(2) would require annual bare pole costs to be allocated to attachers using a "space factor." The FCC formula space factor is calculated by dividing the space an attacher occupies on the pole by the total usable space on the pole. Like the FCC formula, the Draft Rule definition of "net cost of a bare pole" at 480-54-020(10) does not include cross-arms and appurtenances like extension arms. However, in contrast, Draft Rule 480-54-020(18) does not mirror the FCC formula which does not include cross-arms and extension arms in its definition of usable space.[2]

[2] *See* 47 C.F.R. §1.1402(c) ("With respect to poles, the term *usable space* means the space on a utility pole above the minimum grade level which can be used for the attachment of wireless, cables, and associated equipment, and

Cross-arms can add several feet of space to which attachers can install facilities. Including this additional space in the space factor calculation would result in a rate far lower than even the FCC cable rate, which appears to be the lowest pole attachment rate in the country.[3]

Avista therefore, requests that Draft Rule 480-54-020(18) be revised to remove cross-arms and extensions from the "Usable space" definition.

II. MAKE-READY WORK

Replacement of Existing Poles with Taller Poles

Draft Rule 480-54-030(1) revisions require pole owners to replace existing poles with taller poles as long as the new attacher is willing to pay the cost. Avista objects to this change for several reasons.

First, it is inconsistent with FCC rules. The federal Pole Attachment Act clearly allows utilities to deny access for lack of capacity:

> Notwithstanding paragraph (1), a utility providing electric service may deny a cable television system or any telecommunications carrier access to its poles, ducts, conduits, or rights-of-way, on a non-discriminatory basis where there is insufficient capacity and for reasons of safety, reliability and generally applicable engineering purposes.[4]

That utilities need not expand capacity to accommodate attaching entities has been upheld repeatedly by the U.S. Court of Appeals for the 11th Circuit. In *Southern Company v. FCC*, utility petitioners objected to the Commission's 1999 decision that "utilities must expand pole capacity to accommodate requests for attachment in situations where it is agreed that there is insufficient capacity on a given pole to permit third-party pole attachments."[5] The 11th Circuit held that the plain language of Section 224(f)(2) explicitly prevents the Commission from

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which includes space occupied by a utility."). The space must be "on a utility pole" not on cross-arms or extension arms.

[3] No court has ever reviewed such a low rate to determine whether it results in an unconstitutional taking of property without just compensation.

[4] 47 U.S.C. §224(f)(2) (2010).

[5] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996), *aff'd*, Order on Reconsideration, 14 FCC Rcd 18049 (1999) *rev'd in part, Southern Co. v. FCC,* 292 F.3d 1338, 1347 (11th Cir. 2002).

mandating pole replacements: "When it is agreed that capacity is insufficient, there is no obligation to provide third parties with access to that particular 'pole, duct, conduit, or right-of-way'".[6] The court further noted that "the FCC's attempt to mandate capacity expansion is outside of its purview under the plain language of the statute."[7]

Applying this judicial precedent, the FCC has indicated repeatedly that utilities need not expand capacity to accommodate attachers. In its April 7th, 2011 Pole Attachment Order, the Commission explained: "[A]s the court noted in *Southern Company*, mandating the construction of new capacity is beyond the Commission's authority . . . The 'terms and conditions' of pole attachment encompass the process by which new attachers gain access to a pole, and setting deadlines and remedies for that process in no way constitutes a mandate to expand capacity."[8] In its May 2010 Order, the Commission drew a clear distinction between using existing techniques to increase pole capacity and changing out a pole altogether: "Unlike requiring a pole owner to replace a pole with a taller pole, these techniques take advantage of usable space on the pole."[9] That Order stated further: "Utilization of existing infrastructure, rather than replacing it, is a fundamental principle underlying the Act."[10]

Second, requiring an expansion of capacity would unreasonably detract from the ability of electric utility personnel to perform their obligation of providing safe, reliable, electric service. Replacing poles with taller poles simply to accommodate communications attachers is a time-consuming process that utilities have historically been willing to allow, as long as electric utility operations and other considerations are not adversely affected. Mandating the replacement of poles with taller poles at the preference of communications companies would require electric utility operations to be considered second to those of communications

[6] *Southern Co.. v. FCC.*, 292 F.3d 1338, 1347 (11th Cir. 2002).

[7] *Id. See also Alabama Power Co. v. FCC*, 311 F.3d 1357, 1364 n. 8 (11th Cir. 2002) ("A panel of this court recently used this statutory exception as the basis for vacating an FCC rule which forced power companies to enlarge pole capacity at the request (and expense) of attaching cable and telecommunications companies. See Southern Company v. FCC, 293 F.3d 1338, 1346-47 (11th Cir. 2002). The panel could not reconcile the no-capacity excuse allowed under the statute with the forced build-out rules required under the FCC's regulations, and thus held the regulations to be ultra vires.")

[8] *In re Implementation of Section 224 of the Act: A National Broadband Plan for Our Future,* Report and Order and Order on Reconsideration, WC Docket No. 07-25 *et al.*, 26 FCC Rcd 5240, FCC 11-50 (April 7, 2011), at para. 95. (Hereafter, "April 2011 FCC Pole Attachment Order.")

[9] May 2010 Order, at 9.

[10] *Id.*

companies. While historically this has not been an issue, it is becoming a real issue now that wireless companies have begun seeking access.

Third, attaching entities have alternatives to pole replacements. For wireline attachments, facilities can always be placed underground. Attachers, in fact, often opt on their own to install their facilities underground to avoid the cost of pole replacements for those poles that lack sufficient capacity. Wireless companies, for their part, can reconfigure the design of their build-outs to make use of existing poles or set their own poles without requiring the replacement with much taller poles.

Communication Space

The term "make-ready work" is still defined broadly in Draft Rule 480-54-020(9) and is not limited to work in the communications space on the pole. As a result, these rules taken together could be interpreted to allow a contractor hired and supervised by a communications attacher to move electric facilities and even to install new poles to expand capacity and transfer energized electric facilities to the new pole, which poses serious safety concerns. These rules therefore are at odds with the latest changes to Draft Rules 480-54-030(6)(a)(v) and (10) that limits make-ready by an authorized contractor to make-ready work within the communication space and should be revised to comport with the restriction that contractors hired by communications attachers should be limited to make-ready work in the communications space. Draft Rule 480-54-040(1) removed the wording limiting make-ready work by a contractor to the communication space and we respectively request that reinstated.

Such modifications would be consistent with the FCC's April 2011 Pole Attachment Order, which clarified that the FCC's contractor rule allows attachers to "hire contractors to complete the work in the ***communications space***"[11] and do not allow communications companies to hire contractors to work in the electric space.

This requirement is very important. As explained more fully in Avista's October 8, 2014 comments in this rulemaking, it is inappropriate and potentially dangerous to allow a communications attacher, even through a qualified contactor, to make determinations about the

[11] April 2011 FCC Pole Attachment Order at ¶49 ("We adopt the proposal in the *Further* Notice and hold that, if a utility does not meet the deadline to complete a survey or make-ready established in the timeline, an attacher may hire contractors to complete the work in the communications space.")

capacity and integrity of an electric utility facility to support its communications attachments, or to rearrange, relocate or transfer potentially hazardous electric distribution facilities.

These changes proposed by Avista would clarify that a communications attacher could not hire a contractor to perform work in the electric space. But the Draft Rules also define electric utilities as attachers on ILEC poles, and electric utilities of course need to be able to perform make ready work in their electric space on ILEC poles. Accordingly, the Draft Rules should be further clarified to allow electric utilities to perform, or hire contractors to perform, surveys and make-ready work in the electric space on ILEC poles.

Draft Rule 480-54-030(10) would allow a requester to hire a contractor to perform make-ready in the communications space from the list of contractors the owner has authorized to perform work on its poles, and Draft Rule 480-54-040(1) would require the owner to maintain such a list.

Avista requests that the rules be clarified to add a provision specifying that the requester, not the owner, is responsible for any actions or inactions of any contractor hired by the requester, regardless of whether the owner has authorized the contractor to work on its poles.

In addition, Avista does not currently have a list of contractors that work in the communications space on the pole. The contractors Avista hires work only in the electric space.

Avista therefore requests clarification in these Draft Rules that the owner may maintain a list of contractors qualified to work in the communications space, but in the absence of such a list the requester can hire a contractor of its own to perform communications space work. Draft Rule 480-54-040(3) should also be revised to require the requester to notify owner and provide the owner an opportunity to consult with any contractor hired by the requester, not just a contractor from the owner's list. In addition, Draft Rule 480-54-030(10) should be revised to read: "If any required make-ready work in the communication space is not completed within the time period established in this section, …."

Draft Rule 480-54-030(6) would require owners like Avista to notify existing attachers of upcoming make-ready work and the deadlines for completing that work. As explained in its October 8, 2014 comments, however, Avista has created successful procedures allowing for a

new attacher to work directly with other entities on the pole with existing attachments.[12] This process has encouraged fewer trips to the pole and resulted in faster performance of make-ready work than what the Commission's proposed timelines would require, at least with respect to the usual size attachment requests that Avista has received.

Avista, therefore respectfully reiterates its comment that the Draft Rules be revised to allow the new attacher to waive any requirement that the pole owner provide the necessary notices to existing attachers. The notice requirement exists for the benefit of the new attacher, so if a better system exists for the new attacher, as it does with Avista's facilities, then the new attacher should be able to use it.

Modification Costs

Draft Rule 480-54-050(1) was revised to specify that modification costs should be borne by the requester and by all occupants that directly benefit, "in proportion to the amount of usable space the occupant occupies on or in the facility." Electric utilities, of course, occupy more space than do communications companies, and for this reason alone this revision would require electric utilities to bear a much greater share of the modification costs.

There is no rationale for requiring utilities to share a disproportionate amount of these costs based on the amount of space they occupy. If a utility and another existing occupant are each out of compliance by one foot, their share should be equal if the pole modification eliminates this lack of compliance. This allocation of modification costs based on the amount of new space occupied is consistent with the FCC's rules for sharing modification costs:

> With respect to the allocation of modification costs, we conclude that, to the extent the cost of a modification is incurred for the specific benefit of any particular party, the benefiting party will be obligated to assume the cost of the modification, or to bear its proportionate share of cost with all other attaching entities participating in the modification. If a user's modification affects the attachments of others who do not initiate or request the modification, such as the movement of other attachments as part of a primary modification, the modification cost will be covered by the initiating or requesting party. Where multiple parties join in the modification, each party's proportionate share of the total cost shall

[12] *See* Avista's October 8, 2014 Comments at 14.

> be based on the ratio of the amount of new space occupied by that party to the total amount of new space occupied by all of the parties joining in the modification. For example, a CAP's access request might require the installation of a new pole that is five feet taller than the old pole, even though the CAP needs only two feet of space. At the same time, a cable operator may claim one foot of the newly-created capacity. If these were the only parties participating in the modification, the CAP would pay two-thirds of the modification costs and the cable operator one-third.[13]

Avista therefore requests that Draft Rule 480-54-050(1) be revised to allocate modification costs based on the amount of new space occupied.

Draft Rule 480-54-030(6) was revised to remove the requirement that requesters pay for make-ready charges in advance. Even the FCC, however, allows pole owners to collect make-ready charges in advance: [14]

> 88. Based on the record before us, we decline to adopt the Utah rule or any other schedule of payment for make-ready work at this time. Although a staggered payment system might motivate pole owners to perform make-ready work more quickly, as some commenters point out, it would also unfairly expose them to a greater risk of non-payment for make-ready work necessary to accommodate attachers. The record contains little evidence that up-front payment is a barrier to telecommunications, cable, or broadband deployment, but, as the Coalition indicates, attaching entities frequently lose contracts for new business, change routes or ownership, go out of business, or experience other difficulties that cause make-ready costs to remain unpaid after work has been completed. In any of these situations, a utility might be unable to recover its costs if required to accept payment for make-ready work in stages. A staggered payment system would also administratively burden utilities and, in some cases, could actually delay the make-ready process. Moreover, up-front payment is both consistent with the way that utilities charge other customers for construction work, and either encouraged or required by a number of state tariffs.

For the same reasons, the Commission should reinstate the requirement for requesters to pay for make-ready construction before make-ready construction commences. Utility pole

[13] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, at ¶1211 (1996). (A CAP is a Competitive Access Provider now known as a CLEC, Competitive Local Exchange Carrier.)

[14] April 2011 FCC Pole Attachment Order at ¶88 (footnotes omitted).

owners are not financial institutions and should not be required to bear the risk of unpaid make-ready charges.

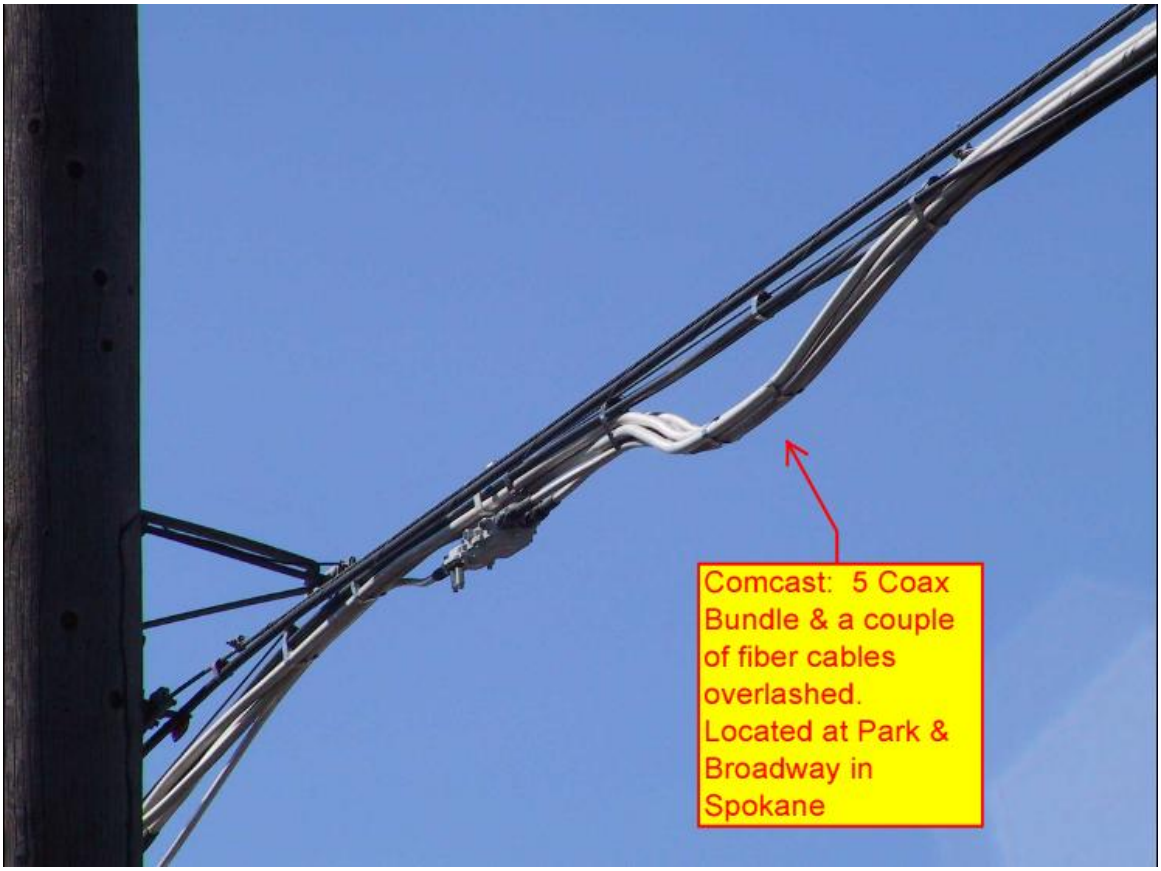
III. OVERLASHING

Overlashing is the practice whereby a service provider physically ties or otherwise attaches new wiring to wiring that already has been affixed to distribution poles. Overlashing creates additional wind and ice load on the poles and must be evaluated by pole owners prior to attachment. In addition to adding further load on the pole and anchors, overlashing creates additional sag mid-span, particularly during storms and extreme temperature conditions. The NESC contains midspan sag clearance requirements that must be evaluated using worst case conditions. Overlashing often includes the installation of riser cables extending from the communications space attachments to underground facilities, which affects the climbing space on poles. Also, without sufficient oversight and approval, cables that are dead and no longer used are typically left in place when they are overlashed and should be removed.

FCC rules recognize the potential burdens associated with overlashing and require attachers to pay for any make-ready costs associated with overloaded poles or excessive mid-span sagging: "For example, if the addition of overlashed wires to an existing attachment causes an excessive weight to be added to the pole requiring additional support or causes the cable sag to increase to a point below safety standards, then the attacher must pay the make-ready charges to increase the height or strength of the pole."[15] It is not possible for Avista to perform a loading study and analyze mid-span sags in a short-period of time, and that is why Avista requires parties requesting overlashing to follow the same application process as for new attachments.

Currently, because of these operational and safety concerns, Avista reviews and must approve all overlashing requests. However, even with Avista's requirement for application and approval of overlashing, attaching entities have engaged in unsafe overlashing. The following photographs are just a few examples of the problems that can be caused by unvetted overlashing on Avista's system.

[15] *In the Matter of Amendment of Commission's Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, at ¶77 (2001).


Comcast: 5 Coax Bundle & a couple of fiber cables overlashed. Located at Park & Broadway in Spokane


Pole 415923 at 9900 N Ivanhoe in Spokane. Shows Comcast TV sag in excess because of multiple overlashing


Comcast TV bundle so large it is tie-wrapped because the lasher would not fit over the bundle. Never went back and corrected. Also sags below others causing loading concerns. Ivanhoe span south of Graves in Spokane

The process of evaluating proposed overlashing takes far longer than the seven days specified in Draft Rule 480-54-030(11). In order to manage safely the limited space on poles for the benefit of all, it is very important that main line cable overlashing require a Route Application and design prior to construction in the same manner as new wireline construction.

Avista is not aware of any complaints that attachers may have with the Company's existing requirement that applications be submitted and approved for overlashing requests, and therefore not sure why the Draft Rules contain a restrictive 10-day notice and 7-day rejection requirement.

The Draft Rule should be revised to include advance approval of overlashing, as the Louisiana PSC recently did.[16]

[16] *See* Louisiana Public Service Commission, Docket No. R-26968 (General Order approved August 6, 2014), slip op. at 13, pole attachment rule 7 (Overlashing). Consistent with the importance of this practice, the Louisiana rules

Avista, therefore respectfully requests that overlashing be subject to the same application approval process as all new attachments to utility poles. In the alternative and at a minimum, Avista could operate safely with a rule allowing the first single cable overlash over a single existing cable to be made with only 15 days advance notice, as long as this first single cable overlash is of a size that is one-half inch or less diameter and .1 pounds cable weight per foot or less overlashed to an existing single cable of equivalent or lesser diameter and weight. Overall bundle size for both cables would not exceed 1-inch in diameter and .2 pounds cable weight per foot, plus the weight of the messenger. Such 15 days advance notice would have to include all detail required to evaluate the impact of the proposed overlashing, and be permitted only for overlashing involving a maximum of 100 poles in any 30-day period. In addition, if simple 15-day notice is permitted, a requirement should be added that all existing violations be fixed prior to such overlashing. All subsequent overlashing after this first overlash would need to be subject to the application and review process applicable to all proposed new attachments.

Existing attachers sometimes allow third parties to overlash the existing attacher's facilities. Third parties must be held accountable for their activities and their overlashing requests, like those of any overlasher, should be subject to Avista's application process for the reasons explained above. To protect utility pole owners, the Draft Rules should add a requirement that third party overlashers obtain an agreement with the pole owner. Like other pole attachment agreements, such an agreement with third party overlashers would have insurance, indemnification and liability provisions to protect pole owners and the general public.

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devote an entire section to overlashing, with provisions covering application, pre-construction inspections, denials of overlashing requests, cost reimbursement, and rental charges. Subsection (a) explains the application process as follows:

> a. Any Attacher wishing to overlash facilities must provide a Pole Owner with reasonable notice of its intent to overlash facilities by filing a written request with the Pole Owner identifying what existing and proposed facilities are to be attached and/or overlashed, all entities served by the overlash, all design information to perform pole loading analysis, where such facilities will be attached and/or overlashed, and when such facilities will be attached and/or overlashed. In the event of an emergency where a line must be replaced or repaired to restore service to customers and advanced notice is not feasible, the Attacher shall provide notice of overlashing as soon as reasonably practical.

In addition, the Commission should add a provision specifically making existing attachers liable for third party overlashing as if such overlashing were performed by the existing attacher itself, in accordance with the existing attacher's agreement.

IV. DUCT RATES

Draft Rule 480-54-060(3) would establish a regulated rate to cover attachments to underground utility ducts and conduits. However, as explained more fully in Avista's October 8 comments (at pp. 17-19), the rate formula cannot be logically applied to the area where Avista has historically allowed fiber cable in its underground duct banks located under the Spokane Downtown Network. Avista's downtown network was built around 80 years ago with no expectation that the Company would be required to allow other entities to install their facilities at regulated rates. Because of the age and complex nature of the downtown network's duct banks, Avista does not have a viable way to determine the total system duct length, and the accounting for the downtown network is blended across Avista's entire underground utility system. As a result, the proposed regulated rate formula would simply not work.

The downtown network is a unique and valuable system that Avista has already shared successfully with many companies in order to expand and enhance their fiber networks at critical hub points. Avista has a contractual flat rate for duct use within this downtown area that has not increased in over 15 years, and Avista's management of conduit access has worked safely, effectively and economically for a very long time. Avista therefore proposes that the Draft Rules be revised to eliminate any regulation of conduit rates. In the alternative, if the Commission decides to regulate conduit rates, Avista proposes that the current rates in existing agreements be preserved for five years, and that such rates thereafter be allowed to increase each year by no more than the Consumer Price Index.

V. FILING COMPLAINTS

Avista proposes two changes to the Draft Rules to assure the parties to existing agreements that had previously been negotiated have some certainty in their relationships and will not have those agreements subject to modification for an undetermined time period.

Draft Rule 480-54-070(4) requires that parties challenging the rates, terms or conditions in a newly negotiated agreement must file any challenge with the Commission within six months

from the date of execution. Avista proposes that Draft Rules 480-54-070(2) and (3) be modified in a similar way to apply to already-existing agreements, so that any complaint for a revised term or condition in an existing agreement must be brought within six months of the effective date of the rules.

Avista also proposes that Draft Rule 480-54-070(7) be modified to provide that any refunds ordered by the Commission should date back only to the date the complaint is filed.[17]

These changes would ensure that any party with a legitimate complaint may file that complaint in a timely manner, and will allow the parties to negotiate agreements and operate under existing agreements with the assurance that those agreements are valid and enforceable. This will allow the utility pole owners and attaching entities to budget effectively and operate efficiently with more certainty.

VI. SANCTIONS

Avista believes that allowing facility utilities to apply sanctions against communication attachers for having no contract or permit, for violating existing contracts, or for not resolving code violations or pole transfers in a timely manner, has the potential to reduce dramatically the number of unauthorized attachments, safety violations, and other contract violations by attachers.

Today, competitive dynamics in the communications world challenge the safe and reliable distribution of electricity over poles. Cable companies, CLECs and ILECs all compete for telephone, Internet and video customers. All are providing broadband services.

In today's competitive environment, speed to market and cost cutting are the forces driving the rollout of new communication services. Electric system safety, reliability and efficiency, on the other hand, may be in conflict with this environment.

Construction crews hired by cable companies and telephone companies often are paid to string cables over utility poles in a manner that rewards speed, not necessarily safety. Distance covered is the prime objective.

Communications attachers often appear to be inadequately trained with respect to National Electrical Safety Code ("NESC") compliance. Unlike electric companies, many cable

[17] This limitation is consistent with FCC rules until the FCC modified them in its April 2011 Pole Attachment Order. *See* April 2011 FCC Pole Attachment Order at ¶¶110-112. The FCC's new rule allows refunds back to the "applicable statute of limitations," whatever that may be. 47 C.F.R. §1.1410(a)(3).

companies, CLECs and emerging telecommunication service providers do not have established safety programs or qualified engineering and safety departments.

We believe that sanctions are necessary to allow facility utilities to enforce safety codes, design and engineering standards, and other provisions in pole attachment agreements. Without effective enforcement mechanisms, attachers find it too easy to avoid some of the more inconvenient, time-consuming and costly steps necessary to maintain a safe and reliable pole distribution system. Unauthorized attachments, safety violations, failure to timely transfer facilities, and other problems can be avoided and the entire process made more efficient if attaching entities understand the importance of compliance.

Easy access to electric distribution systems should not come at the expense of safety and reliability. The Commission's regulations should promote responsible behavior on the part of those who are granted mandatory access and balance the needs of both parties.

Avista, therefore proposes that the Draft Rules be modified to allow facility utilities to impose the following sanctions, which are consistent with those in effect in Oregon:[18] (1) for unauthorized attachments, $100 per attachment plus a five year back rental; (2) for violations of the NESC, $200 per violation; (3) for violations of existing contracts, $200 per violation; and (4) for attachments made without a contract, $500 per attachment. Avista proposes that, prior to imposing any sanctions, the facility utility provide the attacher with evidence sufficient to prove a violation has occurred.

[18] Or. Admin. R. §§ 860-028-0130, 0140(2), and 0150(1)-(2) (2008).

VII. CONCLUSION

Protecting the public and all line workers (power and communications alike) is one of Avista's primary goals and responsibilities. We strongly believe that in order to accomplish this, 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 any future workshops or discussions. 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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