PUGET SOUND ENERGY
The Energy To Do Great Things

Puget Sound Energy
P.O. Box 97034
Bellevue, WA 98009-9734
PSE.com

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Filed via WUTC Web Portal

Mr. Steven V. King
Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, Washington 98504-7250

Re: Comments of Puget Sound Energy, Inc. on Proposed Rules
Rulemaking Relating to Attachments to Transmission Facilities
Docket No. U-140621

Dear Mr. King:

Puget Sound Energy, Inc. ("PSE") thanks the Washington Utilities and Transportation Commission ("Commission" or "WUTC") for the opportunity to provide comments on its proposed rules relating to attachments to transmission facilities. PSE outlines its proposals for changes to the proposed rules below.

Broadly, PSE has major concerns that the changes in these proposed rules prioritize expediency for attachers ("licensees", "occupants" and "requesters" in the proposed rules) over safety and reliability of the electric system by creating burdensome requirements for pole owners. The requirements imposed by the proposed rules will strain internal PSE resources and increase costs. The proposed rules also appear to create cross subsidies benefitting attachers since the proposed rules only provide for cost recovery of certain costs by the pole owners and do not make clear who will bear other costs which may result in cost shifting to benefit attachers and burdening PSE's electric customers. In addition, PSE has not been able to cite a number of the proposed changes in the January 6, 2015, version of the proposed rules back to comments in the docket. PSE seeks greater clarity and reasoning for several of the proposed changes, especially changes that may result in a less safe and reliable electric system and impose costs on PSE customers to the benefit of those that would attach to PSE's poles. Therefore, PSE requests that all changes in the January 6, 2015, proposed rules be individually explained and tied back to the specific record in this rulemaking.

Overlashing

The changes that PSE finds most unworkable in the January 6, 2015, proposed rules were made to WAC 480-54-020(11) regarding overlashing. The first major concern with this subsection (11) is the requirement under WAC 480-54-020(11) that removes the requirement that an occupant submit an application to overlash additional wires or cables. The proposed rules simply require the occupant to provide ten days' notice to which the utility must respond to within seven days. Removing applications and creating arbitrary timelines compromise a pole owner's ability to adequately assess the impacts of the overlashing on the safety and reliability of the utility electric system. Applications for overlashing often cover many miles[(1)] and require a team of engineers and inspectors to conduct thorough inspections (pole integrity for example) and perform calculations (pole loading for example) to determine if the utility electric system will remain safe and reliable (as required by WAC 480-100-148). Removing the application process and creating arbitrary timelines not only will compromise the PSE engineer's ability to determine if the electric system will remain safe and reliable, it will compromise the ability to assess whether the existing attachments are safely installed in the communication space. PSE interprets the current proposed rules in this subsection (11) to limit the engineer's ability to place a hold on a request when he or she determines that the existing system will not support the overlashing or if the existing attachments are not compliant with working safety rules. The proposed rules also require modification to prohibit overlashing by an occupant for a third party.

The second major concern with subsection (11) is that the proposed provisions regarding overlashing do not clarify who bears the increased cost of the pole owner's review process. The expedited and arbitrary seven day timeline to conduct reviews will require PSE to add significant additional staff and resources (such as space and vehicles). PSE proposes that the cost of the new large staff and resources be reflected in a fee paid by the occupant requesting overlashing.

Overlashing without an application should be limited to light weight and small diameter conductors and the notice should require the weight per foot and diameter. Overlashing should not be allowed to be installed on existing slack-spans or where the poles carry electrical voltage of 34.5 kV or greater. The occupant should be required to modify all attachments to comply with the National Electric Safety Code (NESC) (and face fines or penalty charges if they fail to identify and/or correct any non-compliant condition).

In addition, there is no mention of liability for damages caused by overlashing. PSE would propose that the occupant be liable for all damages if the actual overlashing differs from the overlashing proposed in the occupant's notice or fails to meet applicable rules and codes. Finally, this notice provision seems to conflict with RCW 70.54.090 which would make the occupant doing an overlashing following a notice guilty of a

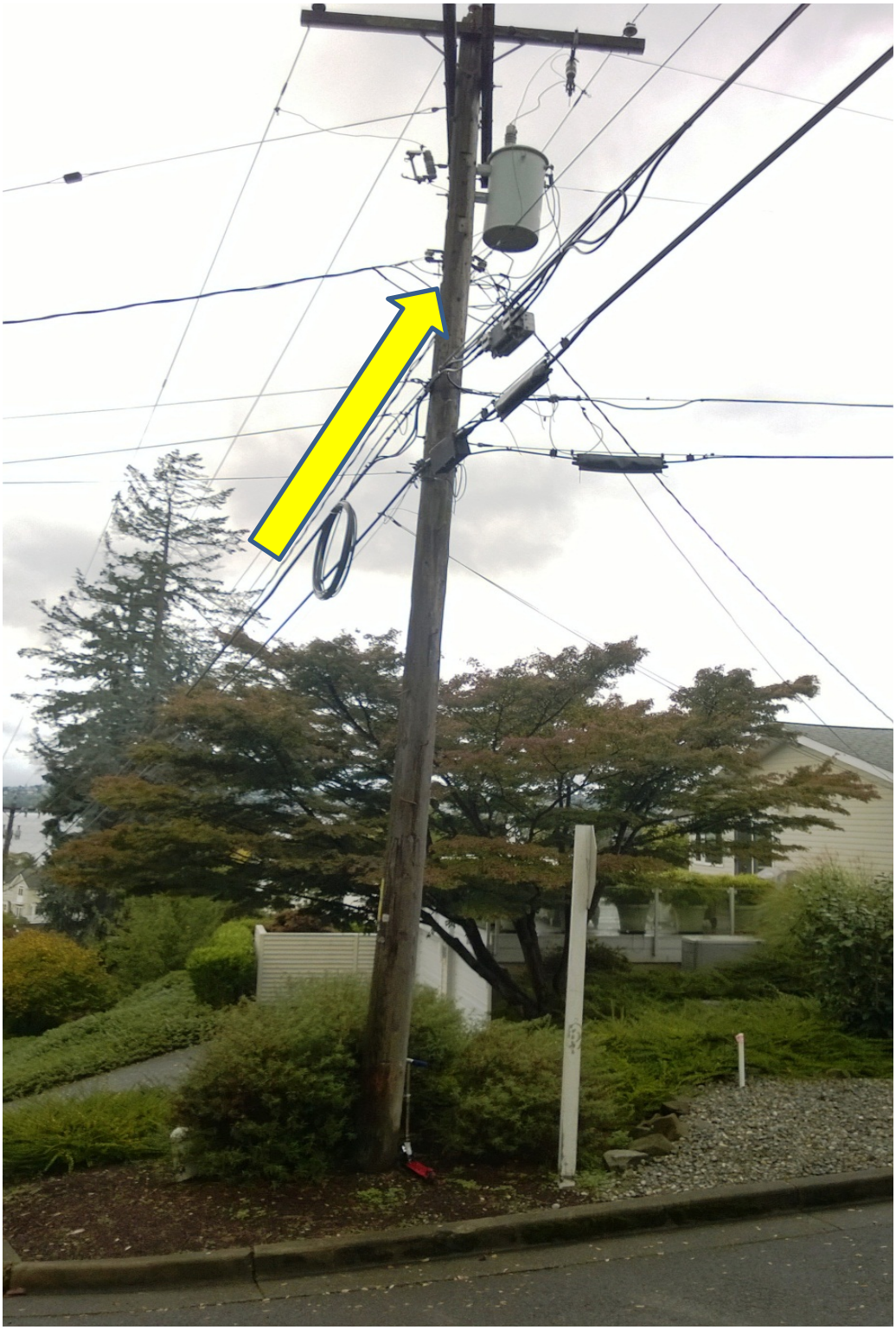
[(1)] At the present time PSE has many requests for overlashing, including a request for 3,419,000 aerial feet that involves approximately 17,095 poles, a request for approximately 27 miles of overlashing or approximately 500 poles and a request for overlashing on all present lines in the city of Mercer Island (estimated at 500 poles). In 2014 PSE had requests for overlashing that involved 8,023 poles. The overlashing requests in 2015 will likely exceed 20,000 poles.

misdemeanor. While PSE does not believe subsection (11) is necessary, if the Commission decides to include the subsection, PSE would propose that the subsection be revised as follows:

> WAC 480-54-030 (11) Except for existing slack spans or where the poles include electrical circuits energized at 34.5 kV or greater, 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 30 or fewer poles with the owner's consent, but the occupant must provide the owner with 10 days prior written notice. Overlashing for a third party or affiliate is prohibited. The notice must identify the affected poles by number and describe the additional communications wires or cables in sufficient detail, including weight per foot and number of conductors to enable the owner to determine any impact of the overlashing on the poles or other occupants' attachments. The notice must be accompanied by a fee that is sufficient to allow the owner to recover its costs of reviewing the application and determining if the proposed overlashing can be allowed and of preparing the response to the notice. Such fee may be on a per affected pole basis. The occupant may proceed with the overlashing described in the notice unless the owner provides a written response, within seven days of receiving the occupant's complete notice, prohibiting the overlashing as proposed. Any such denial must be based on the owner's reasonable judgment that the notice is incomplete or that the overlashing would have a significant adverse impact on the poles or other occupants' attachments. The owner may establish policies that allow overlashing by notice only for certain weights and number or diameter of conductors. The denial must describe the nature and extent that the notice is incomplete or of that impact~~,~~. Upon request of occupant and agreement to pay the costs of preparation of a report the owner shall provide a report that includes ~~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 overlashing. The parties must negotiate in good faith to resolve the issues raised in the owner's denial. The cost of such negotiations shall be paid by the occupant. Should an occupant's actual overlashing differ from the overlashing described in the notice or not be in accordance with applicable rules and codes, the occupant shall be liable for all damages, including, but not limited to, repairs, loss of revenue and legal costs, resulting from the overlashing and the owner may remove the overlashing at the occupant's expense. An owner cannot be found in violation of WAC 480-100-148 due to an overlashing.

Because of the 10-day notice and other provisions included in the January 6, 2015 proposed rules, PSE is extremely concerned that there is a belief that overlashing involves only a minor addition that will not or should not impact the integrity of the pole owners system and that existing attachments meet the NESC. While a minor impact or existing NESC compliant attachments may sometimes be the case, it is not always the case as very clearly illustrated by the following picture (Figure 1) and those pictures in Attachment "B" to this letter. Each and every pole affected by overlashing needs to be evaluated by the pole owner to insure that the supporting poles are capable of the additional load by inspection and calculations. See Figure 2 which clearly illustrates that overlashing can be of numerous and very large bundles which should require application followed by inspection and calculations. See Attachment B for a picture of a pole that has been impacted by overlashing. In PSE's case, WAC 480-100-148 requires that PSE ensure that its system is in a condition that will enable it to furnish safe, adequate, and efficient service and also undertake those efforts that are reasonable under the circumstances to avoid interruptions of service.

Figure 1: Both communications attachments are too close to power. Lowest power is the bottom of the drip loop. Overlashing had occurred one week prior to this picture being taken.



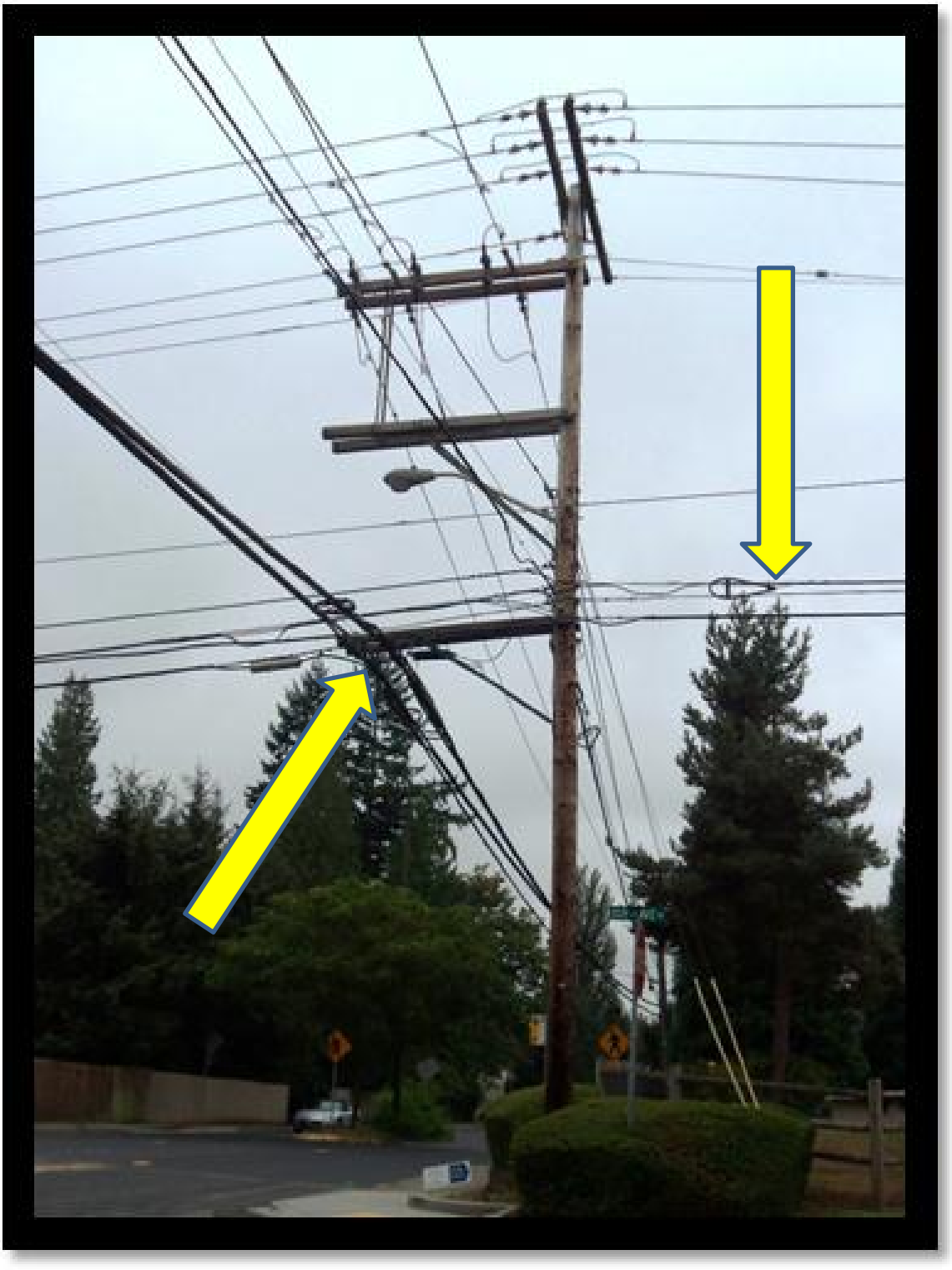


Figure 2. Note amount of overlashing and size of overlashed conductor bundles and installation of stand-off bracket and the impact on the pole.

Make Ready Work

The second major concern with the changes reflected in the January 6, 2015, proposed rules that PSE finds particularly demanding are the changes to the definition of "make-ready work" in WAC 480-54-020(9). PSE reiterates from its October 8, 2014, comments that this definition be modified to remove the requirement to replace existing poles with taller poles. To the best of PSE's knowledge, no other jurisdiction in the country includes pole replacement in make-ready work. Retaining the pole replacement requirement in the definition of make-ready work combined with the new overlashing provisions make occupants a special class taking precedence over all other work done by the utility to support existing and new customers. Make-ready work should be coordinated with all other work of a pole owner, including connecting new customers and restoration of service following an outage. Similar to proposed overlashing rules, this proposed make-ready work definition will require separate crews and additional engineers for review. The requirement to replace existing poles with taller poles as part of make-ready work should be deleted.

If the rules contain provisions to include pole replacement with taller poles in the make-ready work definition, that language should clearly state that the occupant requesting attachment or overlashing bears the entire cost, not PSE's customers. Further, the language should make clear that make-ready work should not be given preference, but instead be scheduled in the normal course of business of the pole owner. Finally, the increase in the number of poles[(2)] will require increased working capital, the cost of which should be paid by the occupant(s). PSE suggests the following language:

> WAC 480-54-020 (9) "Make-ready work" means engineering or construction activities necessary to make a pole, duct, conduit, or other support equipment available for a new attachment, attachment modifications, or additional attachments. Such work may include rearrangement of existing attachments, ~~installation of additional support for the utility pole, or creation of additional capacity, up to and including replacement of an existing pole with a taller pole~~. The owner may agree to include the installation of additional support for the utility pole, or creation of additional capacity, by means up to and including replacement of an existing pole with a taller pole in make-ready work on a case by case basis. Make-ready work costs are non-recurring costs and are not included in carrying charges. The owner may include all costs of make-ready work, including, but not limited to, costs of working capital (providing the owner has agreed to replace an existing pole), liability insurance, engineering, overheads, permits, traffic control, materials, legal costs, taxes, and supervision in the charges to the requester for make-ready work.

PSE has further comments and suggestions in several other areas of the proposed rules amending Chapter 480-54 WAC. PSE has attached a redline that includes all of its suggested revisions to Chapter 480-54 WAC. Below, PSE explains it's reasoning and concerns that correspond to the attached redline changes.

[(2)] In the last five years PSE has averaged about 5,000 pole sets a year, for all reasons, and PSE has processed an average of 4,300 attachment requests per year. The failure rate based on a structural analysis that PSE performs on every pole with conductors exceeding 50,000 volts is approximately 25%. Based on the requests for overlashing that PSE currently has this could mean replacement of 4,524 poles for just the current requests for overlashing, let alone the additional replacements required due to failure, storms and attachment requests.

WAC 480-54-010: The purpose and interpretation do not reflect the entities to which the rules apply. PSE has inserted a suggested subsection (3) in the attached draft rules to cover this aspect.

WAC 480-54-020 – Deleted definition of "Attacher": PSE does not understand the reasoning behind deletion of this definition while adding the definition of "Occupant" meaning only a portion of the former "Attacher" definition and "Requester" for another portion. This seems to add confusion and an unnecessary level of complexity.

WAC 480-54-020(1) – Definition of "Attachment": The addition of "antenna" to this definition is problematic as there does not appear that any consideration was given to the fact that, unlike a wire or cable, an antenna is a radiating piece of equipment and as such involves exposure limits that do not exist with wire and cable attachments. The exposure limits may impact the safety of communication and electrical workers. PSE has inserted a suggested sentence to address this issue in the attached draft rules.

WAC 480-54-020 – PSE proposes an added definition of "Coordinate" to clarify its meaning in order to address the concerns with WAC 480-54-030(6) (see those comments below).

WAC 480-54-020(4), (5), and (7) – These are definitions of "Conduit", "Duct" and "Inner Duct" which when combined with the definition of "Occupied Space" presume that the owner can still use a conduit or duct itself or for another attachment. The separation required between utilities for safety often prohibits such joint use. Therefore, the definition of occupied space has been revised along with adding to WAC 480-54-060 to clarify that the entire cost of conduit, duct and inner duct shall be used when appropriate.

WAC 480-54-020(6) – Definition of "Facility" or "Facilities": The addition of "one or more" when the terms being defined include the plural "Facilities" and all the words defining the terms are already plural seems confusing and misleading unless a specific purpose was envisioned, upon which PSE would like to reserve the right to comment. PSE has suggested deletion of "one or more" in the attached draft rules.

WAC 480-54-020 – Deleted definition of "Facility utility": PSE believes that deleting this term and changing this term to "Owner" is more descriptive, but is concerned about the clarity of the new term and has suggested revisions to the term "owner" as reflected in the attached draft rules.

WAC 480-54-020(8) – Definition of "Licensee": PSE does not understand the reason and cannot speculate why "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" was deleted from this definition. These examples gave the reader an understanding of the meaning. Are other types of entities envisioned as licensees? If so, PSE would like to know what types are envisioned and would like to reserve the right to comment. PSE has suggested revisions addressing these concerns to the definition in the attached draft rules.

WAC 480-54-020(9) – Definition of "Make-ready work": The January 6, 2015, version reflects one of the most problematic changes in the Chapter. Please see PSE's comments on pages 3 and 4 of this letter and the suggested changes reflected in the attached draft rules.

WAC 480-54-020(10) – Definition of "Net cost of a bare pole": PSE notes that this definition, as indicated by the term "bare pole", excludes the cost of cross-arms and appurtenances but that cross-arms and appurtenances have been added to the definition of "usable space". PSE's concerns regarding the change to the definition of usable space are detailed below. PSE has suggested revisions to this definition to clarify its meaning.

WAC 480-54-020(11) – Definition of "Occupant": As mentioned above, regarding the deletion of the definition of "attacher", PSE finds this unclear and confusing since the definition makes PSE as well as any "utility" or "licensee" an "occupant" on PSE's poles. The term "occupant" is then used, for example in WAC 480-54-030 to mean just a licensee which is confusing when there is the defined terms "requester", "licensee" and "utility". The definition has been revised in the attached draft rules to address these concerns and to simplify and clarify the definition.

WAC 480-54-020(12) – Definition of "Occupied space": What is the basis for the addition of "that is rendered unusable for any other attachment" to this definition? This does not appear to add to the meaning but rather makes the definition very unclear. The added presumption that occupied space is one half of a duct in a duct or conduit does not take into account that the other one half may not be able to be used by the owner due to rules or code regulating the separation of utilities. In addition, the definition needs to be clarified that an attachment may utilize more than one foot. Please see the attached draft rules which reflect specific changes that PSE feels need to be made.

WAC 480-54-020(13) – Definition of "Overlashing": PSE is not proposing any changes to this definition except for clarity, but wants to call attention to its objections to the January 6, 2015, proposed draft of WAC 480-54-030(11) and its comments on pages one and two of this letter and the changes reflected in the attached draft rules.

WAC 480-54-020(14) – Definition of "Owner": As mentioned in the comment regarding the deleted definition of "facility utility" PSE is concerned about the changes to this definition when compared to the former definition of "facility utility". The changes appear to allow another electric utility the right to attach to PSE's facilities since the definition includes "to or in which an occupant maintains or seeks to make attachments". As mentioned above the revised definition of "occupant" includes both utilities and licensees. This is confusing when reading WAC 480-54-030 which appears to state that an owner is not obligated to allow another electrical company to attach. It appears that the intent of these changes is to grant the right to attach to all electric "utilities" ("utilities" in this sentence does not mean the same as the defined term "utilities" in these rules, but rather all entities that distribute electricity) that are cooperatives, or are organized or owned by a federal, state or local government, or a subdivision of state or local government. If that is the case it should be clearly stated and electric companies as

defined in RCW 80.04.010 should be given an appropriate amount of time to research and respond to this change. If it is not the case, changes to the definitions of licensee, and occupant, at a minimum, need to be made and suggested changes are reflected in this letter and the attached draft rules. Also the definition of "Owner" has been rewritten in the attached draft rules to eliminate the implication that the owner is responsible to maintain the attachments made to its poles.

WAC 480-54-020(15) – Definition of "Pole": This definition has been rewritten in the attached draft rules to eliminate the implication that the owner is responsible to maintain the attachments made to its poles.

WAC 480-54-020(16) – Definition of "Requester": As mentioned several other places this definition may need some revision or as described herein and in the attached draft rules the terms licensee and utility used in the definition need to be clarified.

WAC 480-54-020(18) – Definition of "Usable space": Usable space is universally recognized to refer to "vertical" space on a pole; therefor PSE does not understand the addition of "including cross-arms and extensions" which are typically horizontal. Since this is unclear and confusing, PSE would like to reserve the right to comment further regarding this addition following receipt of an explanation and reasoning behind this addition. As mentioned above the definition of "net cost of a bare pole" does not include cross-arms and extensions (appurtenances). Further, this rule provides for measurements to be taken to determine usable space but does not describe who is responsible to take such measurements and who pays the cost of such measurements. PSE has suggested the changes to this definition in the attached draft rules to address these concerns.

WAC 480-54-020(19) – Definition of "Utility": Inclusion of the definition in RCW 80.04.010 of "telecommunications company" appears to include all communications companies that have poles, towers or conduits, and gives attachment rights to all other utilities and licensees. PSE would like clarification that these rules would therefore apply to all communications companies including wireless companies and tower companies? As mentioned above regarding the definitions of "licensee" and "occupant", PSE has concerns about these definitions and therefore has suggested changes in the attached draft rules to clarify the meaning of "utility".

WAC 480-54-030(1): The definitional changes in the January 6, 2015, version of the proposed rules require PSE and other electrical companies (as defined in RCW 80.04.010) to provide access and perform make-ready work for entities including cooperatives, and competing electrical entities that are organized or owned by a federal, state or local government, or a subdivision of state or local government. PSE's suggested changes to the draft rules are attached, but in order to draw attention to these comments the suggested changes to this section are also included below:

> (1) An owner shall provide other utilities or licensees with nondiscriminatory access for attachments to or in any pole, duct, or conduit the owner 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 <u>or any entity that is a cooperative electric entity or an electrical entity that is organized or owned by a federal, state or</u>

> local government, or a subdivision of state or local government. Nondiscriminatory in the preceding and following sentences means only that the owner cannot discriminate between coincident requesters. An owner 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~~ of make-ready work ~~to increase the capacity of the pole~~ to accommodate an additional attachment. When the owner agrees to replace a pole in order to provide additional capacity or for reasons of safety or reliability such replacement shall be scheduled on a nondiscriminatory basis will all other work scheduled by the utility.

Additionally, PSE requests that the reasoning for removing "insufficient capacity" from the rights currently provided under federal law to pole owners be provided so that PSE may comment further. This change appears to conflict with WAC 480-54-010(2). PSE does not refuse replacement of a pole to provide additional capacity to support attachment. Is there any evidence that a rule such as this dictating that pole owners must provide additional capacity necessary? The suggested changes in the attached draft rules, and as shown above, remove this requirement from the owner's obligations.

Finally, PSE feels that requiring a pole owner to replace poles for a third party as make-ready work has the very real chance of negatively impacting PSE's work to provide service to new electrical customers or restore service to existing customers, and thus additionally impacting PSE's SAIDI and SAIFI measurements. PSE has accommodated attachments to an average of over 4,000 poles per year over the last four years. As evaluation of structural load is added to the review of vertical space in the evaluation of attachment requests, the number of poles requiring replacement is expected to increase. This represents the significant possibility of third party work driving the scheduling of PSE construction activities to the detriment of service to new and existing customers. The suggested changes in the attached draft rules, and as shown above, reflect changes to remove this concern that service to PSE's customers will be degraded.

WAC 480-54-030(3): As mentioned in the comments on the first page of this letter regarding cost shifting , this provision appears to shifts costs to PSE's electric customers by requiring review of applications without compensation. Further, there is no mention of liability for damages. Therefore PSE would propose that the occupant be liable for all damages if the actual attachment differs from the attachment described on the application or if the attachment fails to meet applicable rules and codes and that there be a fee to recover the costs of processing applications. Since PSE is an electric company the application for attachment should fall under WAC 480-100-108. In order to preserve the safety and reliability of the electric system unauthorized attachments should be discouraged. To discourage attachments without application or prior to approval of an application, PSE suggests that owners be allowed to levy a penalty. Finally, PSE proposes an addition to describe the actions that may occur should attachments be made without permission. These suggested changes are shown in the attached draft rules and below:

> (3) Except for overlashing requests as described in subsection (11) below, a utility or licensee must submit a written application to an owner to request access to its facilities and such

> application will be treated in a nondiscriminatory manner with all applications for service received by an electric company under the provisions of WAC 480-100-108. The owner may survey the facilities identified in the application and recover the costs of that survey, the costs of processing the application and all other related costs, including costs of preparing a denial letter along with all overheads and applicable taxes from the requester. The cost recovery by the owner may be in the form of a fee which must accompany the application or through a bill following completion of processing of the application and survey. The owner must complete any such survey and respond in writing to requests for access to the facilities identified in the application within 45 days from the date the owner 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 owner to identify and evaluate the facilities to or in which the requester seeks to attach. If attachments are made prior to approval of the application or without submitting an application, that do not meet applicable rules or codes, or that differ from the attachments described on the application, the requestor/occupant shall be responsible for all costs and damages related so such attachments, including but not limited to any loss of revenue, attachment removal costs and any legal costs incurred by the owner. If an attachment is made without making application to the pole owner, or an attachment be made prior to approval of an application, the owner may assess a penalty of an amount not to exceed $500.00 per attachment.

WAC 480-54-030(4): This section does not take into account denial of an incomplete application or provide for recovery of the costs to prepare a report regarding reasons for denial of attachment for each pole, duct or conduit. Changes in the attached draft rules address these deficiencies.

WAC 480-54-030(5): This section contains several specific timelines which do not seem appropriate and are cumbersome. The 14 days to provide an estimate and 30 days to respond do not take into account that it takes much more time to prepare an estimate than it does to respond to an estimate. Also, that this requirement appears to assume that pole owners have no other work and exist primarily to respond to attachment requests by third parties.

PSE notes that the ability to request payment in advance of performing make-ready work has been removed and requests the basis and reasoning for that removal. PSE charges for other construction work in advance in accordance with its line extension policy; this appears to make the requestor in a superior class to PSE's new and existing electric customers that request service or changes. In addition, should the requester decide not to proceed with the requested attachment, there is no provision for PSE to recover its costs of providing the estimate. Again, this creates a superior class as compared to PSE's new and existing electric customers who are required to pay for the costs of an estimate if a job is cancelled.

The timelines as presently proposed will mean that PSE will have to prepare the estimate within 14 days (typically this work takes at least this long or longer for requests for service from new electric customers) and then stand-by for up to 30 days waiting for the requester's review.

The specificity of the withdrawal of an estimate appears to require the pole owner to provide a separate notice of withdrawal rather than simply stating that estimates are valid for 30 days at the time the estimate is made. This adds additional cost, without a

mechanism for recovery. Please refer to the attached draft rules (also shown below) for specific changes necessary to address these comments.

> (5) To the extent that it grants the access requested in an application, the owner's written response must inform the requester of the results of the review of the application. Within 30~~14~~ days of providing its written response, the owner must provide an estimate of charges to perform all necessary make-ready work, including the costs of completing the estimate. The owner's estimate may be delayed until all costs invoiced to the requester are paid. The owner shall recover all costs preparation of the estimate and cost recovery by the owner may be in the form of an application fee which must accompany the application or through a bill following completion of processing of the application and survey.
>
> (a) The requester must accept or reject an estimate of charges to perform make-ready work within 14~~30~~ days of receipt of the estimate and make payment to the owner the costs of estimate preparation and the make-ready work, if requested, in advance of initiation of the make-ready work.
>
> (b) An owner may notify the requester with the estimate that an ~~withdraw an outstanding~~ estimate of charges to perform make-ready work is valid for a specific time period not less than ~~any time after~~ 30 days from the date the owner provides the estimate to the requester~~if the requester has not accepted that estimate~~. Further, the estimate for make-ready work shall expire if make-ready work does not commence when scheduled by the owner due to delays caused by the requester or 90 days whichever is later.

WAC 480-54-030(6): The term "coordinate" is used in this section without definition. PSE would like to know the reason for its addition and the intent. PSE would like to reserve comment on the reason and intent until following receipt of such information. More specifically, does "coordinate" extend beyond the current practice of providing notice through the current joint notification system? PSE believes it is an unwarranted burden to require a pole owner to further "coordinate" the work of a third party beyond that of providing notification to the existing attached entities. This is another example of allowing third party work to drive the workload of the pole owner. Also, the rule does not specifically state who shall bear the cost of the coordination. A definition of "coordinate" has been added in the attached revised rules to address these concerns.

In addition, this section does not take into account the changes needed for pole replacement. Nor does it take into account real world delays due to storms, emergencies, restoration of service and other work on the plate of the owner. Please refer to the attached revised rules for specific changes necessary to address these issues.

WAC 480-54-030(6)(a)(ii): This timeline has not been changed to account for the addition of pole replacement to make-ready work. The 60 day timeline ignores the real world timelines for replacement of poles. For example, the current lead time on pole orders is 56 days, right-of-way construction permitting averages 30 to more than 90 days depending on the time of year and jurisdiction and scheduling crews at some times during the years is 28 to 56 days out. In other words the real timeline for pole replacement is between 114 and 202 days. These timelines exclude the impact of unplanned events such as storms or other natural events involving interruption of service and damage to facilities and the additional timeline required for obtaining designed and engineered poles. In other words, in order to meet these timelines a separate set of employees, crews and pole

inventory is necessary. To address these concerns PSE has suggested changes removing the obligation to install poles as part of make-ready work and changes to this subsection which are shown below and in the attached draft rules.

> (ii) Set a date for completion of make-ready work that is no later than 60 days after the notice is sent. If the owner has agreed to replace a pole, the date set for completion shall be set on a nondiscriminatory basis with all other work scheduled by the owner, including other make-ready work. For good cause shown, or mutual agreement, the owner may extend completion of the make-ready ~~by an additional 15 days~~ following notice to the requester. The owner shall not be held responsible for violation of any rules (including, but not limited to, WAC 480-100-133 and 480-100-148) because of its responsibilities to complete make-ready work. Delays in other work caused by make-ready work shall be considered and excluded from any service quality or similar program ordered by the Commission.

WAC 480-54-030(6)(a)(iii): PSE wants to clarify that it does not have employees that are qualified to make changes to attachments and that work needs to be completed by the occupant in most cases. If PSE should make a change to an attachment or be required by rules to make changes to attachments it should be able to do so without incurring any liability. Finally, this subsection does not provide which party bears the costs to make changes to attachments, which PSE believes that the occupant should bear. Please see the suggested changes to this subsection to clarify these facts and remove these concerns which are shown below and included in the attached draft rules.

> (iii) State that any occupant with an existing attachment may modify the attachment consistent with the specified make-ready work before the date set for completion of that work. The owner can require an occupant to modify an existing attachment if the owner does not have employees that are qualified to modify the attachment. Should the occupant fail to modify the attachment, the owner may remove the attachment and shall not be liable for any damage or loss to the occupant and recover the costs of such work from the occupant.

WAC 480-54-030(6)(a)(iv): The timeline suggested is not necessary due to the necessary changes suggested to WAC 480-54-030(6)(a)(ii). In addition, the make-ready work should not be a separate class of customers, but rather be scheduled in a coordinated nondiscriminatory way with all other work of the pole owner. Please see suggested changes that are necessary to this subsection below and in the attached draft rules.

> (iv) State that the owner may assert its right to ~~15~~ additional days to complete the make-ready work when such additional days are necessary in order to allow the make-ready work to be completed on a non-discriminatory basis, to obtain necessary materials or to allow the owner to respond to emergencies, storms or other natural disasters or outages. The owner shall inform the requester of the number of additional days needed as provided in WAC 480-100-108.

WAC 480-54-030(6)(b)(ii): The same comments as for WAC 480-54-030(6)(a)(ii) apply. Note that PSE is recognized as one of the leading utilities in the nation for co-location of wireless facilities. Has any evidence been provided to show that completion of work in a timely manner is a problem? This appears to be trying to solve a problem that does not exist. As noted above, PSE requests that all individual changes reflected in the January 6, 2015, version of WAC 480-54 be explained and tied back to the specific

record in this rulemaking along with the reasoning behind making each of the changes. Please refer to the attached draft rules for the specific changes that PSE suggests for this subsection.

WAC 480-54-030(6)(b)(iii): The same comments as for WAC 480-54-030(6)(a)(iii) apply to this section as well as the suggested changes in the attached draft rules.

WAC 480-54-030(6)(b)(iv): The same comments as for WAC 480-54-030(6)(a)(iv) apply to this section as well as the suggested changes in the attached draft rules.

WAC 480-54-030(7): This provision provides that the time periods apply to make-ready work for all requests for access for up to 100 poles. Unless pole replacement is deleted from make-ready work, PSE asks for the reasoning behind requiring that electric utilities replace poles within the time lines included in WAC 480-54 and explain the need that these pole replacements, because of the timelines, take precedence over other work of the electric utility. PSE reserves the right to comment further after the reasoning has been explained.

PSE asks that the basis for the 30 day time period in subsection (c) be explained along with reference to the record supporting the time period. If pole replacement is included in make-ready work, the timelines for multiple requests must be extended to address the size of some continuing projects.

PSE suggests specific changes to the revised WAC 480-54-030(7)(c) in the attached draft rules which make the arbitrary timelines more workable and do not require PSE to perform make-ready work in preference to other work such as storm restoration and connection of new electric services.

WAC 480-54-030(8)(b): This section provides that the pole owner 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. PSE is unclear what this sentence means. Does "nondiscriminatory basis" mean that the utility schedules all work, including work for new and existing electric customers and make-ready work on a nondiscriminatory basis; or does it mean that PSE must create a premium class of service requests for those requesting attachment and supply service to that premium class on a non-discriminatory basis; or does it mean that work for new and existing electric customers takes precedence over make-ready work and that for all jobs classed as make-ready work be scheduled on a nondiscriminatory basis? WAC 480-100-108, Application for service, requires that the utility provide applicants with a date to expect service and goes on to provide for changes to that date. This provision does not include such a provision and appears to conflict with WAC 480-100-108. Nor does the proposed rule clarify who is to pay the cost of the required notices. Simply requiring that all work be scheduled on a non-discriminatory basis with all other work of the owner eliminates the need for detailed and cumbersome timelines in the rules when existing requirements already exist. Please see the suggested changes shown below and in the attached draft rules.

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

WAC 480-54-030(8)(c), (d) and (e): New provisions – PSE proposes that these provisions be added to address natural disasters, pole replacements and non-payment by requesters and for cost recovery. These are necessary changes to allow pole owners to effectively continue with their core business. Please see the new provisions shown below and in the attached draft rules.

(c) Time periods shall be extended by the number of days that the owner needs to respond to a natural disaster and by the time necessary so that all time periods are applied on a nondiscriminatory basis with all other work performed by the owner.

(d) Where the owner has agreed to a pole replacement, time periods shall be consistent with the time periods required for all other work performed by the owner and shall allow sufficient time to obtain materials.

(e) Time periods shall not start until the owner has received payment for all amounts due and the requester has complied with all requests to relocate or remove an attachment.

(f) In the event of repeated failure on the part of an attaching entity or licensee to abide by the terms of these rules or agreements negotiated with owners, an owner may place a hold on the processing of new applications until such time as the attaching entity or licensee is in compliance.

The provisions of WAC 480-100-108(4)(a) apply to notices of changes in time periods. The cost of all notices shall be included in the rate for pole attachments.

WAC 480-54-030(9) and WAC 480-54-030(10): The timelines laid out in these two sections are burdensome and will require a dedicated group to follow and schedule. The cost of meeting these requirements should be borne by the entity requesting an attachment to poles. PSE requests that if there is evidence in the record of this docket, that such evidence be cited to demonstrate if there is a problem with scheduling work and thus justifies that such explicit timelines need to be codified. Further, PSE asks for a demonstration of evidence for how the number of days was derived in each of these sections. The timeline requires that 105 days pass prior to the requester being able to obtain a bid from a contractor to complete the work. In addition, these sections are confusing in that both sections use the same words: “from a list of contractors the owner has authorized to work on its poles” to describe contractors that are authorized to complete a survey and contractors that are authorized to perform make-ready work within the communications space. An electric utility is not authorized or qualified to work on communication facilities, likewise a communication company is not authorized or qualified to work on electric utility facilities. The communication companies should be responsible for making changes to their attachments and for providing a list of qualified contractors to the electrical utility which the electric utility can then screen and authorize to work on attachments in the communication space, in addition to the communication

company. The communication company or contractor should be required to abide by the NESC and request outages or switching from the pole owner when necessary. Such switching or outages should only occur in accordance with other scheduled work and in accordance with applicable WAC rules.

These sections do not provide for the review of work done by contractors acting on the behalf of requesters nor do they address the costs and liability associated with the use such a contractor. In addition to changes in (9) and (10), PSE suggests a new subsection (10)(c) be added to address these deficiencies. That new section (10)(c) is shown below and in the attached draft rules.

> (c) If the requester hires a contractor to perform the survey or the make-ready work within the communication area, the requester shall be responsible for all costs of such survey or work including costs due to accidents and the owner's legal costs related to the contractors work or accident or injury to the contractor's employees or any member of the public. The requester is responsible to insure that the contractor does not work above the communications area and complies with all work rules, permits and standard practices.

WAC 480-54-030(11): See PSE's comments regarding overlashing in the first three pages of this letter and elsewhere. By not incorporating PSE's suggested changes, the costs related to review overlashing notices is expected to be such that no requester/occupant will desire to overlash, provided that the pole owner is allowed to recover the costs from the requester/occupant rather than pass the costs on to electric customers.

WAC 480-54-040(1): This section is confusing and does not provide for cost recovery. Does this section mean that an owner is not required to maintain a list of contractors until it has failed to meet the deadlines specified in WAC 480-54-030? Cost recovery should include the cost of training and reviewing the work practices of the contractors on a regular basis to insure that their work will not compromise the safety or reliability of the electric distribution system. The costs of this training and review should be included in the cost of pole attachments. Please see the attached draft rules which reflect suggested revisions to this rule.

WAC 480-54-040(2): This section should specify that the cost of hiring a contractor for survey or make-ready work in the communication area will be paid by the requester. Further, this section should provide that any improvements made to the owner's poles require that the owner be compensated for federal income taxes based on the fair market value of the improvement. In addition, this section should provide that the requester bear all liability related to the contractor and pay any and all legal costs incurred by the pole owner related to work done by the contractor hired by the requester. Please see the attached draft rules for suggested revisions.

WAC 480-54-040(3): This section does not provide for cost recovery by the pole owners for the cost of an owner representative/inspector to accompany the contractor. Please see the attached draft rules which provide for a pass through of costs to the requester.

WAC 480-54-050(1): This section provides for occupants to share costs but does not provide the pole owner or the requester (for work done pursuant to WAC 480-54-040(2)) a mechanism to recover the costs such as cost for accounting, tracking, billing and determining the costs to be allocated to each occupant. Please see the attached draft rules which clarify this rule and provide for a pass through of costs to the requester.

WAC 480-54-050(2): This section assumes that only what is normally recognized as make-ready work (i.e. rearrangement of existing facilities) is involved. Nor does it recognize that much of make-ready work can only be performed by the occupants themselves. How does this section apply when a replacement of a pole is included in make-ready work? In addition it should be made clear that the utility or licensee is not also the requester in this section. Please see the attached draft rules which suggested changes and provide for a pass through of costs.

WAC 480-54-050: Comparing to the original proposed rules, the section following WAC 480-54-050(2) was deleted in the January 6, 2015, proposal - PSE would like to know the reason for deleting this section, and where in the record is the basis for the deletion. If it is re-instated cost recovery of accounting, records and billing needs to be addressed.

WAC 480-54-050(3): This section uses the terms “utility” or “licensee” rather than occupant which is confusing. It is also unclear if the same party is the requester in this rule, nor does the rule state who shall bear the costs required to be incurred by the rule. Please see the attached draft rules with suggested changes for clarity and pass through of costs.

WAC 480-54-050(4): PSE requests an explanation of the difference in timelines and a citation to the basis in the record for these timelines. The attaching entity has 20 days while the pole owner has only 7 days yet these provisions do not appear in WAC 480-07. WAC 480-07-620 provides for emergency adjudicative proceedings but those are primarily limited to actions to resolve dangerous conditions or that involve public safety. This proceeding does not appear to fit under that provision, but more likely under WAC 480-07-370(1)(a) formal complaints, which give the respondent 20 days rather than just 7 days. This section does not provide for notice to interested parties or the public which should be of concern. Finally, this section should not apply when the pole owner is removing its poles for any reason, including but not limited to conversion to underground and abandonment. Please see the changes in the attached draft rules which are needed to clarify and make this rule consistent with WAC 480-07.

WAC 480-54-050(5): This section should include a provision that non-payment of charges for attachment is sufficient evidence to demonstrate abandonment. We note that the occupant has 20 days to file a response in this section while the pole owner only had 7 days to file a response in WAC 480-54-050(4). No explanation of this difference has been provided. This provision should provide for recovery of the costs to remove attachments by including those costs in the rate for pole attachments. Please see the changes in the attached draft rules which are needed to address these concerns and provide for pass through of the costs incurred by pole owners due to this rule.

WAC 480-54-050(5): In addition, this section does not address the larger problem of failure to transfer existing attachments from poles that have been replaced to new poles in a timely manner. Lack of clear rules around this issue creates a safety hazard for the public and utility employees. That safety hazard also creates a cost for the pole owner in increased insurance premiums and/or self-funded insurance. The rules should provide for the pass through of the cost of the increased insurance premium and/or self-funding of insurance to the occupants. Failure to transfer attachments to new structures and removing abandoned attachments from structures so they can be removed from the rights-of-way is a long standing problem, with individual instances numbering in the thousands. This proposed rule appears to create an extremely unwieldy and time consuming process affecting all parties (pole owners, attaching entities and Commission Staff). Penalty charges and/or the ability to place a hold on processing new attachment requests as a result of failure to transfer existing attachments would be a far more effective and less time consuming and burdensome measure.

The majority of instances where transfer or removal of attachments does not take place in a timely manner involve the sort of work requiring specialized skills and coordination of operating conditions that reside only with the occupant (owner of facilities attached). PSE already has entered into agreements allowing transfer of "simple" attachments that belong to some of the entities that attached to PSE poles. This problem lies with installations that are not "simple".

Finally, should the owner be authorized to remove an occupant's abandoned attachments the owner should bear no liability for damage to the occupant's equipment or system and for any other reason, including but not limited to, loss of revenue. Also, non-payment of attachment fees should be sufficient evidence of abandonment. Please see the proposed WAC 480-54-050(6) and (7) in the attached draft rules which address these concerns.

WAC 480-54-060: These provisions regarding rates for attachments do not appear to differ from the FCC rates presently charged by PSE, providing that the changes to the definition of "usable space", as commented on above, have no impact on this calculation. If the intent is to modify this calculation, PSE requests that the changes be explicitly described and that PSE be allowed to comment on the changes. As PSE has mentioned several times in these comments, there are many provisions in the January 6, 2015, proposed rules that do not specifically provide for recovery of the cost of compliance by the pole owners. PSE believes that it should be clear that the rules do not shift costs attributable to attaching entities to the electric and gas customers of PSE. Therefore, this section needs to specifically address, include and provide for the inclusion of costs related to attachments, applications, notices and other related costs of compliance with Chapter 480-54 WAC that are not otherwise paid by the occupant or requester in the attachment rate. To this end PSE has included new sections, WAC 480-54-060(4), (5) and (6) which are shown below and included in the attached draft rules.

> (4) All costs incurred by pole owners resulting from Chapter 480-54 WAC, including, but not limited to costs of applications, notices, tracking, accounting, information technology applications, legal costs, losses, and all other costs that are not paid by an occupant or requester

shall be included in the calculations in subsections (2) and (3) above such that he owner recovers the costs, including carrying costs and taxes.

(5) Should an occupant overlash without submitting a notice, or overlash following denial of a notice by the pole owner, or install an attachment without the pole owner's permission, the pole owner may recover all costs, including, but not limited to, review, pole replacement, legal costs and documentation. With an unauthorized attachment the presumption shall be that the attachment has been in place for 6 years and the pole owner may bill the authorized or unauthorized occupant for 6 years of attachment.

(6) The pole attachment rates in subsection (2) above calculate the rate for 1 foot. An actual attachment shall be deemed to be a minimum of 1 foot but the pole owner and occupant may agree that each attachment occupies a space that is a multiple of 1 that is greater than 1.

WAC 480-54-070(2): PSE questions the need for such specificity in this section. PSE's electric customers have the right to file a formal complaint but WAC 480-100-173(2)(b) simply says: (2) Applicants , customers, or their representatives may file with the commission: (b) a formal complaint against the utility as described in WAC 480-07-370, Pleadings-General." It seems like these provisions are attempting to create a special class of customers out of the requesters and occupants. PSE believes that the current record in this docket does not provide a basis for this proposed change. Please also see the suggested changes in the attached draft rules that will simplify this rule.

WAC 480-54-070(2)(a): This section should include a provision that eliminates nuisance complaints for denials that are justified. For example, denial of an attachment based on a notice or application that is incomplete should not be the subject of a formal complaint. Please see the suggested changes in the attached draft rules that will address this concern.

WAC 480-54-070(3): This section can be clarified which is proposed in the attached draft rules.

WAC 480-54-070(5): This section is not necessary as it is duplicative of WAC 480-07-370(1)(a)(ii). Further, this section is different from WAC 480-07-370(1)(a)(ii)**.** Please explain why this is section is necessary, where the support for this section is reflected in the record and why a special class needs to be created out of requesters and occupants when filing a formal complaint. Please see the suggested change in the attached draft rules that will address this concern.

WAC 480-54-070(7): This provision appears to allow for retroactive rate making which has not generally been the policy applied in this state. Any refunds or charges should be limited to the period starting with the date of filing of the formal complaint not the effective date of the rule. Please see the attached draft rules for changes that address this concern.

SUMMARY

In summary, PSE believes that proposed rules must be fair with respect to cost recovery and balanced with respect to prioritization for attachers, licensees, occupants and requesters over the safety and reliability of the electric system. PSE advocates that to

achieve such fairness and balance, a rewrite is required and that another round of written comments be allowed on that rewrite. PSE stresses that the provisions related to overlashing cannot be implemented without major changes or the requesters will face enormous costs. The inclusion of pole replacement in make-ready work also needs to be eliminated as it will create a high probability for third-party work to drive construction scheduling of pole owners; and for requesters and occupants it will create higher costs due to the specialized and dedicated personnel necessary in order to meet the timelines. PSE believes by not making cost recovery clear, that the current proposed rules shift costs attributable to attaching entities to the electric and gas customers of PSE. The proposed rules must be revised to provide for fair recovery of all costs related to pole attachments and all costs related to complying with Chapter 480-54 WAC from the requesters and occupants. PSE believes that the current proposed rules appear to create a new special class for pole attachment work which trumps all other work of the pole owner, such as responding to outages due to storms. The proposed rules must be revised to provide for balanced prioritization of necessary work and to allow PSE to meet its SAIDI and SAIFI requirements.

Please find attached, as Attachment "A" a revised Chapter 480-54 WAC that reflects the changes the PSE feels are necessary to make the Chapter usable and acceptable by all parties.

If you have any questions about the comments contained in this filing, please contact Lynn Logen, Supervisor Tariffs at 425-462-3872.

Sincerely,

Ken Johnson
Director, State Regulatory Affairs

Cc: Simon J. ffitch, Public Counsel
Sheree Carson, Perkins Coie