

ATTACHMENT "A"

To

PSE's February 6, 2015, Comments in Docket No U-140621

Docket U-140621
January 6, 2015

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

REFLECTING

PSE's SUGGESTED CHANGES TO THE JANUARY 6, 2015, PROPOSED RULES
THE "DRAFT RULES" REFERRED TO IN PSE'S FEBRUARY 6, 2015, COMMENTS

480-54-010 Purpose ~~and~~, Interpretation and Application

- (1) This chapter implements RCW Ch. 80.54 "Attachment to Transmission Facilities."
- (2) The commission will consider Federal Communications Commission orders promulgating and interpreting its pole attachment rules and federal court decisions reviewing those rules and interpretations as persuasive authority in construing the provisions in this chapter.
- (3) The rules in this chapter apply to all owners, requesters, utilities, licensees, and occupants as such entities` are defined herein.

480-54-020 Definitions

- (1) "Attachment" means any wire, cable, ,or antenna for the transmission of intelligence by telecommunications or television, including cable television, light waves, or other phenomena, or for the transmission of electricity for light, heat, or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any duct, conduit, manhole or handhole, or other similar facilities owned or controlled, in whole or in part, by one or more owners, where the installation has been made with the consent of the one or more owners consistent with these rules. Where the attachment is an antenna, due to radiation exposure limits or concerns, the owner may deny attachment or make requirements for the attachment or its operation that are not consistent with these rules.
- (2) "Carrying charge" means all the costs the owner incurs to own and maintain poles, ducts, or conduits without regard to attachments, including the owner's administrative, maintenance, and depreciation expenses, overheads, commission-authorized rate of return on investment, other costs as incurred pursuant to this Chapter and applicable taxes. When used to calculate an attachment rate, the carrying charge may be expressed as a percentage of the net pole, duct, or conduit investment.
- (3) "Communications space" means the usable space on a pole below the communications workers safety zone and above the vertical space for meeting ground clearance requirements under the National Electrical Safety Code.

- (4) “Conduit” means a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.

Added: “Coordinate” means to provide notice through a joint notification system commonly used by all requesters and utilities.

- (5) “Duct” means a single enclosed raceway for conductors, cable, or wire.

- (6) “Facility” or “Facilities” means ~~one or more poles,~~ ducts, conduits, manholes or handholes, or similar structures on or in which attachments can be made that are owned by the owner.

- (7) “Inner duct” means a duct-like raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables.

- (8) “Licensee” means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, other than a utility, that is authorized to construct attachments upon, along, under, or across the public ways. A licensee is limited to providers of: telecommunications service, radio communications service as defined in RCW 80.04.010, cable television service and personal wireless services.

- (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, cost 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.

- (10) “Net cost of a bare pole” means (a) the original investment in poles, including purchase price of poles, ~~and~~ fixtures and appurtenances but excluding the cost of cross-arms and appurtenances to cross-arms, less depreciation reserve and deferred federal income taxes associated with the pole investment, divided by (b) the number of poles represented in the investment amount.

- (11) “Occupant” means any ~~requester utility or licensee~~ that has been granted the right to make an attachment and has made the ~~with an~~ attachment to an owner’s pole, duct, or conduit ~~or that is granted the right to make such an attachment.~~

- (12) “Occupied space” means that portion of the pole, duct, or conduit used for attachment ~~that is rendered unusable for any other attachment~~, which is presumed to be one foot on a pole and one half of a duct in a duct or conduit unless such attachment renders the duct or conduit unusable for other attachments or for use by the owner then it is presumed to be the entire duct or conduit. The minimum attachment is deemed to use one foot of occupied space; however, the owner may authorize additional occupied space in six (6) inch increments.
- (13) “Overlashing” means the tying of additional communications wires or cables to existing communications wires or cables which are existing attachmentmentsed to poles.
- (14) “Owner” means the utility that owns or controls the facilities to or in which an ~~occupant maintains or seeks to make~~ attachments can be made.
- (15) “Pole” means an above-ground structure on which an owner may accommodate ~~maintains~~ attachments. When the owner is an electrical company as defined in RCW 80.04.010, “pole” is limited to structures used to attach electric distribution lines.
- (16) “Requester” means a licensee or utility that applies to an owner to make attachments to or in the owner’s facilities.
- (17) “Unusable space” with respect to poles means the space on the pole below the usable space, including the amount required to set the depth of the pole. In the absence of measurements to the contrary, a pole is presumed to have 24 feet of unusable space.
- (18) “Usable space,” with respect to poles, means the vertical space on a pole, ~~including cross-arms and extensions~~, above the minimum grade level that can be used for the attachment of wires, cables, and associated equipment, and that includes space occupied by the owner. In the absence of measurements to the contrary, a pole is presumed to have 13.5 feet of useable space. With respect to conduit, “usable space” means capacity within a conduit that is available or that could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable, and associated equipment for telecommunications or cable services, and that includes capacity occupied by the owner. Only the owner can take measurements to determine the usable space. If a requester or occupant requests such measurements the requester or occupant making the request shall pay the estimated costs of taking the -measurements in advance of the measurements being taken. A representative of the occupant may accompany the pole owner while the pole owner takes measurements providing they remain within or below the communication space. If the owner desires to take the measurements the costs shall be included in the rate for pole attachments.
- (19) “Utility” means any electrical company or telecommunications company as defined in RCW 80.04.010, ~~but~~ does not include any electrical company that is an entity that is cooperatively organized, or owned by federal, state, or local government, or a subdivision of state or local government.

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

- (1) An owner 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 or any entity that is a cooperative electric entity or an electrical entity that is organized or owned by a federal, state, or 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 with all other work scheduled by the utility.
- (2) All rates, terms, and conditions made, demanded, or received by any owner for any attachment by a licensee or by a utility must be fair, just, reasonable, and sufficient. Parties may mutually agree on terms for attachment to or in poles, ducts, or conduits that differ from those in this chapter. In the event of disputes submitted for commission resolution, any party advocating rates, terms, or conditions that vary from the rules in this chapter bears the burden to prove those rates, terms, or conditions are fair, just, reasonable, and sufficient. Such a dispute must be submitted prior to the parties executing the agreement.
- (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 requester/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.

- (4) If the owner denies the request in an application for access, in whole or in part, for reasons other than an incomplete application, the owner's written response to the application must include an explanation of the reasons for the denial for each pole, duct, or conduit to which the owner is denying access. Upon request of requester and agreement to pay the costs of preparation of a report, the owner shall prepare and provide a report that ~~Such a response must~~ includes all relevant information supporting the denial.
- (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~~4 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~~3 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.
- (6) For requests to attach to poles, the owner must request ~~determine~~ the time period for completing the make-ready work from each known occupant and provide that information in a written notice (all costs of which shall be included in the rate for attachments) to the requester and all known occupants with existing attachments on the poles that may be affected by the make-ready work. The owner and the requester must coordinate the make-ready work with any such occupants as necessary.
- (a) For attachments in the communications space, the notice shall:
- (i) Specify where and what make-ready work will be performed.
- (ii) Set a date for completion of make-ready work that is no later than 60 days after the notice is sent. 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 work 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.

(iii) State that any occupant with an existing attachment may modify that 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.

(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.

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

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

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

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

(ii) Set a date for completion of make-ready work that is no later than 90 days after notice is sent. 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 work 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.

(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.

(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.

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

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

(a) The time periods apply to all requests for access to up to 100 poles or 0.5 percent of the owner's poles in Washington, whichever is less.

(b) An owner shall negotiate in good faith the time periods for all requests for access to more than 100 poles or 0.5 percent of the owner's poles in Washington, whichever is less.

(c) An owner may treat multiple requests from a single requester as one request when the requests are filed within the same ~~90~~ day period or are extensions of the same project. If the combined requests represent requests to access more than 100 poles (b) above applies. The applicable time period for completing the optional survey or required make-ready work begins on the date of the last request the owner receives from the requester within the ~~90~~ day period. Subsection (6)(a)(iv) applies to all time periods.

(8) An owner may extend the time periods specified in this section under the following circumstances:

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

(b) During performance of make-ready work if the owner or occupant discovers unanticipated circumstances that reasonably require additional time to complete the work the time to complete the work shall be extended. 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. However, the owner or occupant may not extend completion of make-ready work for a period any longer than reasonably necessary. The owner and occupant and shall schedule and undertake make-ready work on a nondiscriminatory basis with all other work performed by the owner, including other make-ready work.

(c) Time periods shall be extended by the number of days that the owner or occupant 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.

- (9) If the owner determines that a survey is necessary for responding to a request for attachment to poles and fails to complete a survey of the facilities specified in the application within the time periods established in this section, a requester seeking attachment in the communications space may hire a contractor from the list of contractors the owner has authorized to work on its poles to complete the survey. The owner may review the survey and if necessary complete spot checks or a new survey if spot checks indicate the need for a new survey following notice to the requester and within 30 days. The costs incurred by the owner for review, spot checks or a new survey shall be reimbursed by the requester.
- (10) If the owner or occupant does not complete any required make-ready work within the time periods established in this section, a requester seeking attachment in the communications space may hire a contractor from the list of contractors supplied by each licensee and approved by the owner that the owner has authorized to work on its poles

within the communication space to complete the make-ready within the communications space:

- (a) Immediately, if the owner has failed to assert its right to perform any necessary make-ready work by notifying the requester that the owner will undertake that work; or
- (b) After the end of the applicable time period authorized in this section if the owner has asserted its right to perform make-ready work and has failed to timely complete that work.

(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 contractor's 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.

(d) If the occupant or the occupant's or requester's contractor finds an attachment that does not meet National Electric Safety Code (NESC) requirements for separation between communication and electric facilities, the entity finding such violation of the NESC shall promptly stop work and notify the pole owner. The pole owner shall schedule switching or an outage to de-energize the electrical facilities in accordance with standard practices of the pole owner and in accordance with the WAC rules.

- (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. Overlapping 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 overlapping 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 cost of reviewing the application and determining if the proposed overlapping can be allowed and costs of preparing the response to the notice. Such fee may be on a per affected pole basis. The occupant may proceed with the overlapping described in the notice unless the owner provides a written response, within seven days of receiving the occupant's complete notice, prohibiting the overlapping as proposed. Any such denial must be based on the owner's reasonable judgment that the notice is incomplete or that the overlapping would have a significant adverse impact on the poles or other occupants' attachments. The owner may establish policies that allow overlapping 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 overloading. 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 overloading differ from the overloading described in the notice or not be in accordance with applicable rules and codes, the occupant shall be liable for all damages resulting from the overloading, including, but not limited to, repairs, loss of revenue and legal costs, and the owner may remove the overloading at the occupant's expense. An owner cannot be found in violation of WAC 480-100-148 due to an overloading.

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

- (1) When an owner has failed to meet deadlines specified in WAC 480-54-030 An owner shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys and make-ready work in the communication area on its poles ~~in cases where the owner has failed to meet deadlines specified in WAC 480-54-030.~~ The cost of developing such a list, training contractors and inspecting their work to insure that their work does not compromise the safety or reliability of the electric distribution system, shall be included in the cost of pole attachments.
- (2) If a requester hires a contractor for purposes specified in WAC 480-54-030, the requester must choose a contractor included on the owner's list of authorized contractors. The requester shall be responsible for all costs of the contractor and if improvements to the pole are made, must compensate the owner for federal income taxes based on the fair market value of any improvements. The requester shall be responsible for all legal costs of the owner resulting from the performance or nonperformance of the work done by the contractor or accidents, up to and including deaths caused as a result of the contractor's actions or inactions.
- (3) A requester that hires a contractor for survey or make-ready work must provide the owner with prior written notice and a reasonable opportunity for an owner representative to accompany and consult with the authorized contractor and the requester. The owner shall bill the requester for all costs related to an owner representative accompanying and consulting with the authorized contractor and requester.
- (4) Subject to commission review in a complaint proceeding, the consulting representative of an owner may make final determinations, on a nondiscriminatory basis, on the attachment capacity of any pole and on issues of safety, reliability, and generally applicable engineering principles.

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

- (1) The costs of modifying a pole, duct, or conduit shall be borne by the requester and all existing occupants that directly benefit from the modification. Each such occupant shall

share the cost of the modification in proportion to the amount of usable space the occupant occupies on or in the facility or perform the needed modification of their attachment. ~~A utility or licensee with a preexisting attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification, that occupant adds to its existing attachment or modifies that attachment to conform to its attachment agreement with the owner. The owner shall include the costs of all accounting, tracking, billing, switching, de-energizing lines, and determining the costs to be allocated to each occupant in the cost of pole attachments.~~

- (2) An occupant utility or licensee who is not the requester with a preexisting conforming attachment to a pole, duct, or conduit shall not be required to bear any of the costs the owner incurs to rearrange or replace the occupant's attachment if such rearrangement or replacement is necessitated solely as a result of creating capacity for an additional attachment. The cost of such rearrangement or replacement, if born by the owner, shall be included in the cost of pole attachments.
- (3) An owner shall provide an occupant attaching utility or licensee with written notice prior to removal of, termination of service to, or modification of (other than routine maintenance or modification in response to emergencies) any facilities on or in which the utility or licensee has attachments affected by such action. The owner must provide such notice as soon as practicable but no less than 60 days prior to taking the action described in the notice; ~~provided~~ that the owner may provide notice less than 60 days in advance if a governmental entity or landowner other than the owner requires the action described in the notice and did not notify the owner of that requirement more than 60 days in advance.
- (4) A utility or licensee may file with the commission and serve on the owner a "Petition for Temporary Stay" of utility action contained in a notice received pursuant to subsection (3) of this section ~~under the provisions of WAC 480-07-370(1)(a) within 20 days of receipt of such notice~~. The petition must be in accordance with WAC 480-07-370(1)(a) and be supported by declarations or affidavits and legal argument sufficient to demonstrate that the petitioner or its customers will suffer ~~irreparable~~ harm in the absence of the relief requested that outweighs any harm to the owner and its customers and that the petitioner will likely be successful on the merits of its dispute. The owner may file and serve an answer to the petition in accordance with WAC 480-07-370(1)(c)(iv) within 7 days after the petition is filed unless the commission establishes a different deadline for an answer.
- (5) An owner may file with the commission and serve on the occupant a petition for authority to remove the occupant's abandoned attachments. The petition must identify the attachments and provide sufficient evidence to demonstrate that the occupant has abandoned those attachments. Sufficient evidence that the occupant has abandoned the attachments is nonpayment of the fees for attachment for a period of 90 days or longer. The occupant must file an answer to the petition within 20 days after the petition is filed unless the commission establishes a different deadline for an answer. If the occupant does not file an answer or otherwise respond to the petition, the commission may authorize the owner to remove the attachments without further proceedings. If an owner is authorized to remove attachments, it may do so without incurring any liability

(including, but not limited, liability for damages and loss of revenue) to the occupant or any other party and may include all costs reasonably related to -removal in the rate for pole attachments. If costs of liability self-insurance or liability insurance premiums increase due to attachments that have not been transferred, the pole owner may include such costs in the pole attachment rate.

(6) An owner, upon replacing a pole that has attachments may require that the occupants remove or transfer their attachments to the new pole within 30 days. The owner, upon installation of a new pole may abandon the old pole, upon notice to the occupants and all costs and responsibilities related to the old pole will pass to the occupants. Should an occupant fail to remove or transfer their attachments to the new pole within 90 days and the owner has not notified the occupants it has abandoned the old pole, the attachment will be considered abandoned and the owner may either file with the commission for authority to remove the abandoned attachment in accordance with subsection (5) above, or refuse any future attachments to the occupant(s). If the occupant(s) refuse to pay the costs of removal all attachments of the occupant shall be classified as abandoned.

(7) An owner may not work on attachments unless authorized by the occupant and if the owner has personnel qualified to work on such attachments.

480-54-060 Rates

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

(2) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to poles:

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

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

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

480-54-070 Complaint

- (1) Whenever the commission shall find, after hearing had upon complaint by a licensee or by a utility, that the rates, terms, or conditions demanded, exacted, charged, or collected by any owner in connection with attachments to its facilities are not fair, just, and reasonable, or by an owner that the rates or charges are insufficient to yield a reasonable compensation for the attachment, the commission will determine the fair, just, reasonable, and sufficient rates, terms, and conditions thereafter to be observed and in force and fix the same by order entered within 360 days after the filing of the complaint. In determining and fixing the rates, terms, and conditions, the commission will consider the interest of the customers of the licensee or utility, as well as the interest of the customers of the owner.
- (2) A utility or licensee may file a formal complaint under the provisions of WAC 480-07-370 if:
 - (a) An owner has without a valid basis following receipt of a complete application, denied access to its poles, ducts, or conduits;
 - (b) An owner fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or
 - (c) The utility or licensee disputes the rates, terms, or conditions in an attachment agreement, the owner's performance under the agreement, or the owner's obligations under the agreement or other applicable law.
- (3) An owner may file a formal complaint under the provisions of WAC 480-07-370 if:
 - (a) Another utility or licensee is unlawfully making attachments to or in the owner's poles, ducts, or conduits;
 - (b) Another utility or licensee fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or
 - (c) The owner disputes the rates, terms, or conditions in an attachment agreement, the occupant's performance under the agreement, or the occupant's obligations under the agreement or other applicable law.
- (4) The execution of an attachment agreement does not preclude any challenge to the lawfulness or reasonableness of the rates, terms, or conditions in that agreement, provided that the parties were aware of the dispute at the time they executed the agreement and such challenge is brought within six months from the agreement execution date. Nothing in this section precludes an owner or occupant from bringing any other complaint that is otherwise authorized under applicable law.

- (5) A complaint authorized under this section must be in accordance with WAC 480-07-370 and contain the following:
- (a) A statement, including specific facts, demonstrating that the complainant engaged or reasonably attempted to engage in good faith, executive-level negotiations to resolve the disputed issues raised in the complaint and that the parties failed to resolve those issues despite those efforts.
 - (b) Identification of all actions, rates, terms, and conditions alleged to be unjust, unfair, unreasonable, insufficient, or otherwise contrary to applicable law;
 - (c) Sufficient data or other factual information and legal argument to support the allegations to the extent that the complainant possesses such factual information; and
 - (d) A copy of the attachment agreement, if any, between the parties.
- (6) Except as provided in WAC 480-54-030(2), a licensee or utility has the burden to prove its right to attach to or in the owner's poles, ducts, or conduits and that any rate, term, or condition the licensee or utility challenges is not fair, just, and reasonable or otherwise violates any provision of RCW Ch. 80.54, this Chapter, or other applicable law. Except as provided in WAC 480-54-030(2), an owner bears the burden to prove that attachment rates are insufficient or that the owner's denial of access to its facilities is lawful and reasonable.
- (7) If the commission determines that the rate, term, or condition complained of is not fair, just, reasonable, and sufficient, the commission may prescribe a rate, term, or condition that is fair, just, reasonable, and sufficient. The commission may require the inclusion of that rate, term, or condition in an attachment agreement and to the extent authorized by applicable law, may order a refund or payment of the difference between any rate the commission prescribes and the rate that was previously charged during the time starting on the date of filing of the formal complaint. ~~the owner was charging the rate after the effective date of this rule.~~
- (8) If the commission determines that access to a pole, duct, or conduit has been unlawfully or unreasonably denied or delayed, the commission may order the owner to provide access to that facility within a reasonable time frame and in accordance with fair, just, reasonable, and sufficient rates, terms, and conditions.