

BEFORE

THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Rulemaking to)	
Consider Adoption of Rules to)	
Implement RCW ch. 80.54 Relating)	Docket No. U-140621
to Attachments to Transmission)	
Facilities.)	

**RESPONSE OF FRONTIER COMMUNICATIONS NORTHWEST INC. TO
COMMENTS ON SECOND DRAFT RULES GOVERNING ACCESS TO UTILITY
POLES, DUCTS, CONDUITS AND RIGHTS-OF-WAY**

I. Introduction

Frontier Communications Northwest Inc. (“Frontier”) appreciates this opportunity to respond to comments submitted on the Commission’s second draft rules governing access to utility poles, ducts, conduits, and rights-of-way. Overall, Frontier believes that the various comments raised legitimate concerns about the proposed rules. However, as explained below, Frontier believes that certain concerns expressed by Puget Sound Energy, Inc. (“PSE”) are misplaced and that the Commission should not adopt the PSE’s various recommended revisions.

II. The Commission’s proposed rate formula is fully compensatory and will not result in cross-subsidization as PSE claims.

PSE repeatedly claims that the Commission’s proposed rules will “create cross subsidies benefiting attachers.”¹ Quite simply, this assertion is incorrect.

As the PSE recognizes, the Commission’s proposed rules would adopt the FCC’s cable rate formula.² Critically, the U.S. Supreme Court has upheld the constitutionality of attachment

¹ *Comments of Puget Sound Energy, Inc. on Proposed Rules Rulemaking Relating to Attachments to Transmission Facilities Docket No. U-140621*, dated February 6, 2015 (“PSE Comments”), p. 2; 10-11, 16-20.

² *Id.*, p 18.

rates calculated under the cable rate formula, noting that it could not “seriously be argued, that a rate providing for the recovery of fully allocated cost, including the actual cost of capital, is confiscatory.”³ Moreover, the FCC has specifically examined whether the cable rate formula results in cross subsidies and determined that it does not. According to the FCC, rates calculated using “the cable rate [formula] ... are fully compensatory to utilities because these rates meet or exceed incremental cost, and satisfy all constitutional compensation requirements.”⁴ In light of these facts, the FCC found that no cross-subsidization occurs when utilizing the cable rate formula: “Under economic and legal principles, a given service is not subsidized by other services if the rate for the service produces revenues that cover all of the costs caused by the service.”⁵

Simply put, the PSE’s repeated assertion that the Commission’s proposed pole attachment rules will result in cross subsidies lacks merit and should be ignored.

III. PSE’s proposed revisions to the draft rules add unnecessary complexity or address supposed concerns that do not actually exist.

The PSE Comments also included also included numerous proposed revisions to the draft rules. As a general matter, these revisions would add unnecessary complexity to the Commission’s draft rules, seek to address concerns that do not actually exist, or attempt to increase the fees that PSE can charge for pole attachments. Frontier offers the following specific comments to certain PSE proposals:

WAC 480-54-010(1)- PSE seeks to add a sentence to the definition of “attachment” that would allow a pole owner to deny access to a wireless antenna based upon “radiation exposure

³ *Federal Communications Commission v. Florida Power Corp.*, 480 U.S. 245, 253-54 (1987).

⁴ *In the Matter of Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, FCC 11-50, ¶ 183 (FCC 2011).

⁵ *Id.*, ¶184.

limits or concerns.”⁶ This sentence is unnecessary since WAC 480-54-030(1) would already allow the denial of an attachment request for safety reasons.

WAC 480-54-020(2)- PSE proposes that the term “carrying charge” include “other costs incurred pursuant to this Chapter.”⁷ This proposal, which appears aimed at costs incurred as a result of providing access to poles, is inconsistent with the overall definition of the term which relates to “the costs the owner incurs to own and maintain poles, ducts, or conduits without regard to attachments.”

WAC 480-54-020(9)- PSE requests that the Commission add a sentence to the definition of “make-ready work” that addresses the costs an owner may include when billing for such work. The proposed sentence is unnecessary for two reasons. One, billing for make-ready work is already expressly addressed in WAC 480-54-030. Two, a detailed description of the costs for make-ready work is unnecessary as the industry has already developed generally accepted standards on this issue.

WAC 480-54-020(18)- PSE proposes additional language about who may take measurements to determine the usable space on a pole and under what conditions. Frontier knows of no other regulatory body that has implemented such language, nor can it think of any reason why such language would be necessary.

WAC 480-54-030(2)- PSE would insert a sentence that would only allow the parties to dispute the reasonableness of a rate, term, or condition prior to the execution of the agreement. This proposal would directly conflict with WAC 480-54-070(4), which would allow a party to challenge the reasonableness of a rate, term, or condition after the execution of an agreement.

⁶ PSE Comments, Attachment A, p. 2.

⁷ Id.

WAC 480-54-030(3), (4), (5), (9), (10), and (11), 040(1) through (3), 050(1) and (3), and 060(4) and (5)- PSE offers proposed revisions to these provisions that would set out in excruciating detail various fees that it could charge with respect to attachments on its poles. These proposed fees appear aimed not at cost recovery, but at revenue enhancement for owner utilities. Moreover, these detailed proposals are unnecessary as their already exists a detailed body of law under the Federal Pole Attachment Act respect to the costs that a pole owner can recover from attaching entities.

IV. Conclusion

Frontier reiterates its appreciation of the Commission's efforts establish uniform and consistent rules governing the rates, terms, and conditions for pole attachments.

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Respectfully submitted,

FRONTIER COMMUNICATIONS NORTHWEST INC.



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