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February 27, 2015

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 the comments filed by other parties on February 6, 2015, relating to the Commission’s revised draft rules issued January 6, 2015, (“Revised Draft Rules”) regarding attachments to transmission facilities. All section numbers in PSE’s comments below refer to the Revised Draft Rules.

Comments by Frontier Communications Northwest Inc. –

In regards to Frontier’s comments regarding **WAC 480-54-020 (2)** – Frontier and BCAW both propose to delete the term “*including*” in the definition of “Carrying Charge.” Frontier proposes to add in its place “which are limited to” while BCAW proposes to add the similar phrase “and are comprised of.” It is conceivable that some attachers down the road might try to argue that these limitations on the definition of “carrying charge” were intended to put a cap on the amount of costs of any kind that pole owners can recover from attaching entities. However, the five categories listed in the definition are intended only to help define the FCC annual attachment rate formula. In addition to the annual attachment rate, the FCC also allows pole owners to recover all of their out-of-pocket expenses incurred to evaluate and accommodate attachment requests.

These include all costs that pole owners would not be forced to incur except for the attachment request, such as application processing, make-ready work and engineering review. PSE therefore requests that the Frontier and BACW additions be deleted, and PSE recommends adding a section to the proposed rules that covers recovery of costs not associated with the annual attachment rate.

In regards to Frontier's comments regarding **WAC 480-54-020 (10)** – PSE does not agree with Frontier's proposed additions to the definition of "Net cost of a bare pole". There is no dispute or question regarding the applicable accounts used to provide cost data. It should be noted that the referenced accounts include cross-arms and appurtenances. Frontier's first proposed addition introduces confusion without providing any obvious benefit and both of the changes Frontier is proposing in this section get to a level of implementation detail that is not appropriate for the proposed Draft Rules, particularly within what is otherwise a straightforward definition. These proposed additions deal with matters that are better addressed by the WUTC outside of the Draft Rules if and when an issue is presented to the WUTC (similar to the approach PSE understands is taken at the federal level), and PSE requests that these additions be deleted.

Comments by PCIA – The Wireless Infrastructure Association –

In response to PCIA's comment regarding the **deletion of right-of-way from all rules** – during the October 28, 2014, workshop several parties explained that pole owners cannot, by the terms of their franchises and easements, extend those rights to third parties. PCIA comments that the RCW 80.54.010(1) definition of "attachment" includes "communications right-of-way," but fails to notice that it includes such right-of-way only where the installation has been made with the "consent of one or more utilities." Moreover, RCW 80.54.010(1) is simply a definition of "attachment" and does not grant any rights or privileges.

In regards to PCIA's comments regarding **WAC 480-54-020 (15)** – PSE feels that the Revised Draft Rules are sufficiently clear and that poles with a combination of distribution and transmission lines should not be eligible for inclusion in these rules due to concerns for safety of non-qualified workers making attachments or overlashing existing attachments, the time required to calculate stresses on those poles, along with the extended time required to engineer, obtain and replace poles that support high voltage transmission conductors.

In regards to PCIA's comments regarding **WAC 480-54-010(7)** – PSE believes that PCIA meant this comment to be in regards to WAC 480-54-030(7) while the number of poles is more manageable, this reduction is extremely necessary due to the inclusion of pole replacement in

make ready work. Even with the reduction to 100 poles, the costs for make ready work will still increase due to the need to obtain and qualified contractors on short notice to perform make ready work within the prescribed time lines. While the FCC may have decided that 300 poles are appropriate, *the FCC does not include pole replacement in make-ready work*. That difference should support a number even lower than 100. PSE notes that in Oregon the parties must negotiate make-ready work deadlines for work requiring more than 45 days to complete (Oregon Administrative Rules § 860-028-0100(5)). PSE also notes that PCIA states that the reduction from 300 to 100 poles “will have a serious negative operational impact on deployment.” PCIA and others have made repeated claims about deployment of communication infrastructure, however they have not provided any information, detailed plans, or financial commitments in support of that deployment. While PSE encourages the deployment of communication infrastructure through its present pole attachment policies, it feels that these claims should be supported by a firm commitment prior to making PSE’s customers responsible for much of the cost of that deployment.

In regards to PCIA’s comments regarding **WAC 480-54-070(4)** – This change is appropriate as it is conditioned upon execution of an agreement where the parties were aware of the dispute at the time they executed the agreement. Since the dispute already exists there is no need to delay the filing of a complaint with the Commission. This provision gives the parties an incentive to resolve differences prior to entering into an agreement.

In regards to PCIA’s comments regarding **WAC 480-54-070(6)** – PSE wonders why specific detailed rules for complaints are required for large for-profit business entities that wish to make attachments when electric and natural gas customers (including residential customers) simply are given the right to file “(a) An informal complaint as described in WAC 480-07-910, Informal complaints; or (b) a formal complaint against the utility as described in WAC 480-07-370, Pleadings-General.” (Quote from WAC 480-100-173(2) (a) and (b)).

Comments by BCAW – The Broadband Communications Association of Washington –

In regards to BCAW’s comments regarding **WAC 480-54-010(2)** – PSE notes that BACW’s proposed change to “Carrying charge” to replace the word “including” with the phrase “and are comprised of” could be confusing for the same reason as Frontier’s similar change discussed above. PSE made numerous comments regarding recovery of additional costs from the entities causing those costs to be incurred. Consistent with those comments as explained above, PSE feels that an additional section should be added to clarify that, apart from the annual rental, owners are also entitled to collect the considerable additional out-of-pocket costs they incur due

to pole attachments from the Licensee, Occupant, or Requester as appropriate. If such an additional provision is added, then it might also be appropriate to add in the “Purpose and Interpretation” section 480-54-010 some clear affirmation that the purpose of the rules is to allow for the recovery of all pole attachment-related costs, such as: *“The purpose of this chapter is to provide for the pass-through of all costs related to pole attachments to the Licensee, Occupant, or Requester, as appropriate.”*

In regards to BCAW’s comments regarding **WAC 480-54-020(1)** – please see PSE’s comments regarding PCIA’s comments regarding the deletion of right-of-way from all rules. PSE’s response to BCAW’s comments is the same as to PCIA’s comments and to emphasize the RCW 80.54.010(1) is limited to “communications right-of-way”. PSE’s rights-of-way for its electric and natural gas systems are not “communications right-of-way”. The assertion by BCAW (and PCIA) that inclusion of the term “right of way” to the definition of an attachment is crucial is not supported by facts. Almost all utility poles occupy jurisdictional rights of way or, when on private property, easements. In either case, the utility does not “own or control” the underlying ground space. The only exceptions are transmission corridors where, in addition to occupation by easement, a utility may own the underlying property. Transmission infrastructure is outside the purview of the FCC.

In regards to BCAW’s comments regarding **WAC 480-54-020(2)** – RCW 80.54.020 provides that “The commission shall have the authority to regulate in the public interest the rates, terms, and conditions for attachments by licensees or utilities. All rates, terms and conditions made, demanded, or received by any utility for any attachment by a licensee or by a utility must be just fair, reasonable and sufficient.” This creates certain obligations for the Commission which may not be able to be met by strict adherence to BCAW’s interpretation of the FCC rules. Therefore, the suggested change should not be accepted.

In regards to BCAW’s comments regarding **WAC 480-54-020(15)** – PSE supports BCAW’s suggested additional second sentence to the definition of “pole”.

In regards to BCAW’s comments regarding **WAC 480-54-030(11)** and BCAW’s proposed revision of **WAC 480-54-030(11)** – PSE is concerned about the safety of workers who are not qualified as electrical workers that are typically utilized by communication companies. PSE is also concerned by the comments by BCAW that explicitly propose cost shifting to PSE’s electric and natural gas customers: “Therefore, BCAW proposes language that would require the responsible party (*including the pole owner*) to pay for any make ready work (including pole change-outs) necessary to correct pre-existing non-compliant plant to accommodate the

overlashing and prevent unnecessary delays.” PSE asks why its customers should pay for correction of non-compliant attachments. The changes proposed by BCAW make it impossible for the pole owner to obtain sufficient information to determine if the overlashing will impact the safety, adequacy, efficiency, integrity or reliability of its electric distribution system as it is required to do by WAC 480-100-148.

The assertion by BCAW that a pole owner “*should already be in possession of any other information necessary*”, while at the same time insisting that the information they be required to provide be limited to pole location and a description of wire or cable to be over lashed, all within a 7 day evaluation period, is far from correct. Overlashing requests raise the same ice and wind loading and mid-span sag issues that other attachment requests raise. Pre-existing safety violations may exist on poles subject to overlashing to the same extent as with new attachment requests. In all cases, pole owners need to identify and correct safety violations that may already exist on the pole, and an analysis must be made to avoid (or correct) loading and mid-span sag issues. Sufficient time must be available to inspect the facilities and to complete this work. For these reasons, requests to overlash must go through the same application process as other attachment requests. There is also the issue of unpermitted attachments. As BCAW commented at the workshop, they do not support the pole inspection and audit requirements, as found in the Oregon rules, and getting attaching parties to agree to attachment audits is nearly impossible without the pole owner picking up the entire cost. Finally, there is the issue of non-compliance to applicable safety codes. As documented in the February 6, 2015, comments of PSE and Avista, non-compliant installations are found on a regular basis. With speed of deployment the primary driver for communications service providers and based on their past performance, there is little reason for confidence on the part of PSE that attaching parties will not continue to ignore compliance to applicable codes and design requirements when overlashing.

In regards to BCAW’s comments regarding **WAC 480-54-050(2)** – PSE appreciates BCAW’s comment that a pole owner that is an electric utility, such as PSE, does not perform rearrangement or replacement of attachments. PSE’s workers are not qualified to perform such communication related work, nor is PSE sufficiently reimbursed for pole attachments to incur the liability of performing such work. Therefore, the deletion of “the owner incurs to” is appropriate since PSE does not incur these costs. Relocation, rearrangement or replacement of pole attachments is accomplished through a joint use notification system. PSE also agrees with BCAW’s suggested revisions, with the exception of “or right-of-way” that are shown in italics on page 8 of their comments.

In regards to BCAW's comments regarding **WAC 480-54-070** – Please see PSE's comments in response to PCIA's comments regarding this section. This section could be simplified to read in the same manner as WAC 480-100-173(2) (a) and (b).

Comments by Avista Corp. –

In regards to Avista's comments regarding **WAC 480-54-020(1)** - PSE concurs that the definition of "Attachment" is problematic, especially when used in in WAC 480-54-060 and agrees that the phrase " , where the installation has been made with the consent of the one or more owners consistent with these rules." should be removed.

In regards to Avista's comments regarding **WAC 480-54-020(8)** – PSE agrees that the expanded universe is problematic as mirrored in PSE's February 6, 2015, comments. Absent any rule provision which allows for collection of deposits sufficient to defray the cost of removal and for unpaid electric service used, allowing any entity access to poles will be detrimental to other licensees and degrade the safe access to poles.

In regards to Avista's comments regarding **WAC 480-54-020(15)** and **WAC 480-54-010** – PSE concurs with the clarification that these Revised Draft Rules do not apply to poles which carry conductors above 50,000 volts for the reasons enumerated by Avista and by PSE in its comments regarding the comments of PCIA and BCAW above.

In regards to Avista's comments regarding **WAC 480-54-020(18)** – PSE agrees with Avista's comments regarding "usable space" for the reasons given by Avista and for the reasons reflected in PSE's February 6, 2015, comments.

In regards to Avista's comments regarding **pole replacement** and **WAC 480-54-030(1)** – PSE fully agrees with Avista's comments regarding make-ready work as reflected in PSE's February 6, 2015, comments. PSE calls attention to the recent case recently upheld by the U.S Court of Appeals for the 11th Circuit that Avista cites in its February 6, 2015, comments that clarify that pole replacements should not be included make-ready work to expand capacity. PSE also concurs with Avista's point that requiring pole replacement as a part of make-ready work will unreasonably detract from the ability of the electric utility to perform its obligation of providing safe, adequate, efficient and reliable service as required by WAC 480-100-148. The conflict created between including pole replacement in make-ready work and WAC 480-100-148 needs to be resolved. Finally, PSE agrees with Avista's comment that entities seeking attachment to poles have alternatives, such as placing their facilities underground or installing their own poles.

In regards to Avista's comments regarding **communication space** – PSE is totally aligned with Avista's comments regarding safety concern for communication and other workers if they are allowed to work outside the relative safety of the communication space. Additionally, PSE agrees that the list of authorized contractors should be authorized by the occupant, not the pole owner, since the pole owner is not able to approve contractors for work that is the responsibility of the occupant. PSE concurs with Avista's request to clarify the rule to add a provision specifying that the requester, not the pole owner, is responsible for any actions or inactions of any contractor hired by the requester, regardless of whether the owner has authorized the contractor to work on its poles and the following request for clarification of the Revised Draft Rules to allow the requester to notify the owner and hire a contractor to work within the communication space to perform make-ready work.

In regards to Avista's comments regarding **modification costs** – PSE concurs and supports adoption of Avista's suggested changes to WAC 480-54-060(6) as requiring PSE's electric customers to pay for work requested by a requester does not follow the Commission's long standing position that cost causers should bear the cost. PSE also concurs and supports changes suggested by Avista which will allow the pole owner to collect make-ready costs in advance. Should PSE perform make-ready work and not be paid for such work the cost of that work would likely fall on PSE's customers with no benefit to those customers.

In regards to Avista's comments regarding **overlashing** – PSE, in its February 6, 2015, comments, included pictures and explained why overlashing should not be allowed following only a permit and why additional information is necessary in order to allow PSE to comply with WAC 480-100-148. PSE is in agreement with Avista's comments of February 6, 2015, which are similar but include information regarding their experiences and their specific operational and safety concerns. PSE also shares Avista's concerns regarding overlashing by third parties. Additionally, PSE suggests that overlashing by third parties be considered an additional attachment and be subject to the same fees and conditions at any other attachment.

In regards to Avista's comments regarding **duct rates** – PSE did not include comments regarding this subject in its February 6, 2015, comments since PSE has very little communication facilities installed in its electric system conduits, but supports and agrees with Avista's comments. If a communication company is allowed to use an existing spare duct at a depreciated rate then that duct cannot be used for electrical facilities, resulting in the electric customers having to pay present day costs for engineering, permitting, excavation, backfill, materials, labor and restoration for a new conduit. In effect, this would create a cross-subsidy to the communication

company. Spare conduits are installed for use by the electric system to avoid future high costs of replacement or in locations where future replacement or addition will be virtually impossible. They have been paid for in rates by electric customers and should not then be given to a communication company for use at a reduced rate. The communication company's rate should be based on the estimated replacement cost of the duct and the term of the agreement to prevent cross subsidy.

In regards to Avista's comments regarding **filing complaints** – PSE has commented on this process in comments above regarding comments by PCIA and BCAW and concurs with Avista's comments, especially, that any refunds should only be back to the date that the complaint is filed.

In regards to Avista's comments regarding **sanctions** – PSE concurs with Avista's comments regarding sanctions. In addition, PSE repeats the proposal made in its February 6, 2015, comments regarding WAC 480-54-060 to add a new section (5) that would allow recovery of all costs incurred by the pole owner and a presumption that the attachment had been in place for six years.

Comments by AT&T Corp. and T-Mobile West LLC. –

In regards to comments by AT&T and T-Mobil regarding **WAC 480-54-020(14)** - As PSE noted in its February 6, 2015, comments, the definitions for "pole", "owner" and "utility" would appear to include poles and towers owned and operated by wireless carriers and the tower companies who support the carriers. The comments of AT&T and T-Mobile make it clear they consider the proposed rule changes as being onerous to pole owners and want to ensure that wireless carrier pole owners like themselves are exempted from the rules. As facility owners, therefore, AT&T and T-Mobile should understand and support the efforts of PSE and other electric utility pole owners to recommend changes to the proposed rules to make them less onerous.

In regards to comments by AT&T and T-Mobil regarding **WAC 480-54-070(1)** – both entities suggest that a special class be created in regards to complaints filed. As PSE has suggested elsewhere, new rules for complaints for occupants, licensees and requesters are not necessary when the Commission has existing procedural rules for the handling of complaints that are adequate for such things as denial of electric service or natural gas service to a customer.

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In regards to comments by AT&T regarding **WAC 480-54-070** – AT&T suggests addition of a new subsection to state that the Commission’s determinations do not preclude remedies under applicable law. Again, this seems unnecessary in light of WAC 480-07.

Comments by CenturyLink –

In regards to comments by CenturyLink regarding **WAC 480-54-060** – CenturyLink recommends that the gross cost of a bare pole be used when the net cost is negative due to certain reasons and asks that the Commission to clarify that the gross cost formula can be used. PSE agrees with this comment.

Comments by XO Communications Services LLC –

In regards to comments by XO regarding **WAC 480-54-030(1)** – XO is suggesting the addition of a provision to require make-ready work be performed to provide additional capacity in conduit if at reasonable effort and expense capacity can be made available. The term “reasonable effort and expense” is not defined and seems ripe for disagreement. In addition, the proposal does not provide which party is to pay the expense and which party is to perform the make-ready work. In addition there does not appear to be adequate protection for the customers who have paid for the original installation cost and depreciation expense of that conduit with the expectation that it could be used for emergency service or to provide additional reliability at a future time. Without that protection conduit owners will not install spare ducts or conduit when the trench is open and all entities will face higher costs due to excavation of new trenches in parallel to prior trenches. A communication entity can always install its own new conduit or duct.

Comments by Google, Inc. –

In regards to comments by Google regarding **Infrastructure Access** – Google ascribes the Commission’s Revised Draft Rules as acting “to encourage broadband network deployment and stoke competition among providers.” While that is an admirable goal, the Revised Draft Rules do not require, gauge, or measure or require the providers of broadband networks to insure the benefits or investments necessary to levy the cross-subsidies provided to those broadband network providers by the customers of the owners of poles and other facilities upon which attachments will be made. In regards to Google’s claim at page 2 of its comments that “[r]eady access to infrastructure at reasonable rates and terms is essential for construction of broadband networks.” PSE notes that efforts by larger corporations to deploy swiftly at as low a cost as

possible have already resulted in widespread safety and operational issues for electric utility pole owners. That situation is only getting worse as utility poles become more and more congested. Nowhere in Google's comments are safety concerns referenced.

In regards to comments by Google regarding **Facilitate New Entrants' Access to Infrastructure** – These comments would be better aimed at the local franchising authorities or to the legislature of the State of Washington than to require owners of facilities to solve this supposed problem.

In regards to comments by Google regarding **WAC 480-54-030(1)** – the proposal to add a 14-day turnaround time for a pole owner to provide “a plan for pole replacement” shows a misunderstanding of the reality of replacing electric distribution poles. PSE's earlier comments explained the timelines to be expected for the various components involved in replacing poles.

In regards to comments by Google regarding **WAC 480-54-050** – Google's proposal to require pole owners to replace poles that have been “improperly maintained” or “damaged in any way” would shift a considerable amount of the costs of Google's deployment from Google to utility ratepayers. These terms are of course too vague, and fail to recognize that “improper maintenance” and “damage” by and large do not result from pole owner activity but rather result from improper attachment practices and overloading.

Comments by Other Parties and by AT&T Corp., T-Mobile West LLC, CenturyLink, XO Communications Services LLC, and Google, Inc. not responded to above – The subject matter of the comments of other parties and other comments by AT&T Corp., T-Mobile West LLC, CenturyLink, XO Communications Services LLC, and Google, Inc. are similar to the comments that PSE has addressed above. Rather than include redundant comments here PSE offers to respond to any particular comment that the Commission or Commission Staff asks PSE to address.

SUMMARY

The Revised Draft Rules require another revision to address the issues regarding the safety and reliability of the electric distribution system, especially in regards to the provisions related to make-ready work, overloading and costs.

In addition to the major safety, reliability and cost concerns addressed above, PSE thinks that the Revised Draft Rules should focus on making attachments non-discriminatory between the

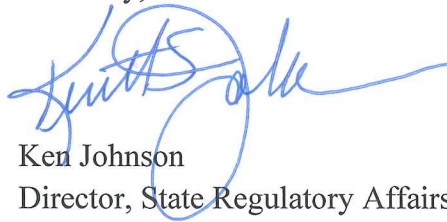
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attaching entities, and not unfairly cause pole owners to subsidize attachments and follow time lines that will impact service to their core business customers. The Revised Draft Rules place many obligations and costs on the pole owners, but lack provisions for recovery of those costs. The recovery of all costs caused by pole attachments and requests for pole attachments should be passed through to the requesters and occupants. None of those costs, as the Revised Draft Rules presently contemplate, should be paid by PSE's electric and natural gas customers in the form of a cross-subsidy.

PSE has already raised concerns with many overreaching revisions proposed in the Revised Draft Rules which seem to overlook important electric utility safety and operational concerns entirely. Incorporation of the additional changes being requested by communication attachers, which we have commented on above, will only serve to exacerbate the unreasonable position into which utilities such as PSE are going to be placed.

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

Sincerely,

A handwritten signature in blue ink, appearing to read "Ken Johnson", with a long horizontal flourish extending to the right.

Ken Johnson
Director, State Regulatory Affairs

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