



November 10, 1997

Mr. Steve McLellan
Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 S. Evergreen Park Drive S.W.
Olympia, WA 98504-7250

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COMMUNICATIONS SECTION

Re: Docket No. UT-970723

Dear Mr. McLellan:

Puget Sound Energy, Inc. ("PSE") hereby submits these comments in response to the Commission's Preproposal Statement of Inquiry on pole attachment issues. PSE appreciates the opportunity to submit these comments, and encourages the Commission's initiative on these issues. PSE is interested in the subject matter of this proposed rulemaking, and wishes to participate in the workshop on December 3, 1997 and to submit additional comments, as appropriate, in response to specific issues as they arise. Given the preliminary state of this proceeding, these initial comments will necessarily be general.

Jurisdiction and Federal Preemption

According to the Commission's Preproposal Statement, there is some "uncertainty as to whether Washington regulates pole attachment rates sufficiently to preempt Federal Communications Commission regulation of the subject." PSE urges the Commission to take the necessary action to preempt FCC jurisdiction over pole attachment rates in this state. 47 U.S.C. § 224(c) would seem to require the Commission to have "issued and made effective rules and regulations implementing the State's regulatory authority over pole attachments." A rulemaking on pole attachment rates therefore appears to be both timely and necessary.

State preemption of the FCC on these issues is appropriate. In PSE's view, issues regarding pole attachment rates are better addressed at the state level, given the Commission's existing regulatory oversight over the utilities with the poles

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(primarily telecommunications companies and investor-owned electric utilities). For these reasons, the Commission should not simply adopt the FCC methodology, but should evaluate whether that approach is appropriate for circumstances in this state. In addition, there are significant safety issues associated with pole attachments which are better addressed at the state level.

Appropriateness of Rulemaking

The Preproposal Statement notes that "[t]he lack of a prescribed methodology creates uncertainty and unpredictability resulting in unnecessary burdens on the Commission and affected companies." PSE agrees. Development of rules would be helpful to provide additional guidance to the owners of poles and users of poles regarding the parameters for rates, terms and conditions for pole attachments in this state. PSE's predecessor, Puget Sound Power & Light Company, was involved in a 1992 proceeding before the Commission involving a formal complaint by cable TV operators under Chapter 80.54 RCW. (Docket No. UE-91108) Had rules been in place to implement those statutes and provide more guidance to the parties on the Commission's policies on pole attachments, that complaint proceeding may not have been necessary. PSE therefore welcomes the Commission's efforts to develop rules implementing Chapter 80.54 RCW. As noted above, development of such rules is probably necessary to eliminate uncertainty about preemption of FCC jurisdiction.

Rate Issues

RCW 80.54.040 currently specifies a band within which pole attachment rates are reasonable. This band is defined at the lower end by incremental costs and at the upper end by fully allocated costs. Any rules adopted by the Commission should provide more guidance in establishing the parameters for reasonable rates and in defining the various elements that comprise the upper and lower bounds. So long as the rates mutually agreed upon by the contracting parties fall within that prescribed band, they should be determined to be just and reasonable. In applying the non-discrimination provisions of the statutes, the Commission should allow flexibility for pole owners to agree by contract to non-uniform rates, so long as the agreed-upon rates are within defined parameters.

The Commission should also consider whether or not fully allocated costs is a proper upper bound on this range. In PSE's view, rates which reflect the market value

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of the services provided may be appropriate and consistent with the "just compensation" requirements of RCW 80.54.040. As competition is introduced in the utility industry, it may be reasonable to subject the determination of pole attachment rate to market forces as well.

In addition, the Commission should consider in this proceeding how the costs of unusable space on a pole are treated. It may be appropriate to allocate these costs to all users of the poles, rather than having the pole owner bear the burden of that portion of the pole which is unusable. If necessary to accommodate concerns about rate shock, a phase in may be appropriate to begin assessing a share of the costs of this unusable space.

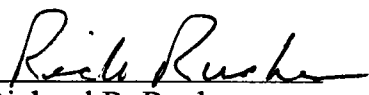
Access Issues

Another issue which should be addressed in this proceeding are the terms and conditions under which third parties may have access to poles, ducts or conduits. The demand for access is increasing as the number of competitors in the electric, CATV, and telecommunications industries increase, and access issues are becoming increasingly problematical. The Commission's rules should provide further guidance on how the competing demands for access are resolved. A pole owner should not be required to bear higher costs as a result of allowing attachments by others; any higher costs should be recoverable from users.

PSE appreciates the opportunity to participate in this proceeding. If the Commission or staff has any questions, please contact the undersigned at (206) 224-2219.

Very truly yours,

PUGET SOUND ENERGY

By: 
Richard R. Rucker
Joint Facilities Administrator

RRR:jmv