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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 Third Draft 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 this opportunity to provide comments on its third draft proposed rules relating to attachments to transmission facilities. PSE also appreciates the comment matrix and responses complied by Commission staff and published with the March 24th notice. PSE outlines its proposals for changes to the third draft proposed rules below and provides comments regarding its concerns. Attached, as Attachment A, are PSE's responses to the eight topics on which the Commission requested comments and information in its March 24, 2015 notice.

PSE emphasizes any change to rules governing pole attachments must ensure the safety and reliability of the electric system. The company continues to have concerns that the third draft proposed rules continue to prioritize expediency for attachers ("licensees", "occupants" and "requesters" in the third draft proposed rules) over safety and reliability by creating unnecessary and burdensome requirements for pole owners. The requirements imposed by the third draft proposed rules will strain internal PSE resources, increase costs and result in PSE either significantly increasing staff or outsourcing the pole attachment program. Both of these actions will reduce the economic benefits to electric ratepayers from the existing pole attachment program.
In terms of costs, PSE appreciates the clarification that cost causers should pay some of the costs of applications and make-ready work through changes to WAC 480-54-030(3)

and WAC 480-54-030(5)(a). However, the third draft proposed rules appear to continue to create cross subsidies benefitting attachers by only providing cost recovery for certain costs by the pole owners and do not make clear who will bear other costs. This uncertainty may result in cost shifting that benefits attachers and burdens electric customers. RCW 80.54.020 provides that the rates, terms and conditions for attachments shall be just, fair, reasonable, and sufficient. PSE believes that the term "sufficient" means that fees and charges should reimburse PSE for all costs of providing attachments including overheads, taxes and costs incurred under the WAC rules. PSE's response to question (7) in Attachment A describes the costs that are not covered through the application fee or charges for make-ready work. Also, in the same response PSE discusses concerns regarding the use of the words "reasonable" and "reasonably" in WAC 480-54-030(3), WAC 480-54-030(5), and elsewhere. PSE continues to seek greater clarity for several of the third draft proposed rules, especially rules that may result in a less safe and less reliable electric system and impose costs on PSE customers to the benefit of those that would attach to PSE's poles.

Overlashing

The overlashing provisions included in the third draft proposed rules (WAC 480-54-030(11)) continue to create the most risk to the safety and reliability of PSE's electric system. PSE's first major concern is that the proposed rules under WAC 480-54-020(11) removes the requirement that an occupant submit an application to overlash **additional** wires or cables. The third draft 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 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). The current limit of 30 poles per notice represents approximately one mile of overlashing every 10 days from each requestor that will require inspection. Removing the application process and creating accelerated timelines compromise the PSE engineer's ability to determine if the electric system will remain safe and reliable. In addition, these provisions will compromise the PSE engineer's ability to assess whether the existing attachments are safely installed in the communication space. PSE interprets the third draft 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 third draft rules also require and propose that somehow the pole owner can negotiate the code-required

[(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.

separation or the findings of pole overloading (see WAC 480-54-030(11)(d) which requires negotiation of the reasons for refusal of overlashing). This code is in place for safety reasons and should made clear it is non-negotiable.

PSE appreciates changes made in subsection (11) of the third draft rules that prohibit overlashing of a third party's attachments without the owner's consent and the changes to describe what must be included in the notice. However, the changes stop short of allowing the pole owner to refuse overlashing for an incomplete notice or for notices exceeding the prescribed number of poles or timelines.

The second major concern with the draft overlashing rules under subsection (11) surrounds costs. The Staff Recommendation (page 12 of comment matrix) that states the costs of reviewing and responding to overlashing notices should be included in pole maintenance expenses (FERC Accounts 593 or 594.1) and spread to all attachments rather than having the cost-causer reimburse the pole owner for these costs. This system would create, in effect, a cross subsidy for overlashing. The pole owner's costs related to overlashing would then be recovered through a variable attachment rate charged to all attachers rather than charging a fixed rate for attachments that is adjusted periodically when the agreement is renewed. In addition to our safety concerns, the expedited seven day timeline to conduct reviews will require increased costs for PSE to add significant additional staff and resources (such as space and vehicles). PSE continues to advocate that the cost of the new large staff and resources be reflected in a fee paid by the occupant requesting overlashing. Absent such a change, PSE requests that the Commission order reflect that PSE is authorized to include costs related to overlashing in FERC accounts 593 or 594.1.

PSE continues to believe and advocate that in order to limit costs of attachment overlashing without an application (if allowed at all) the draft rules should limit overlashing to light weight and small diameter wires rather than incurring the cost of review and refusal of larger and heavier wires. Overlashing should not be allowed to be installed on existing slack-spans or for any safety reasons where the poles carry electrical voltage of 34.5 kV or greater.

For safety reasons, PSE also continues to advocate that the occupant should be required to modify all attachments to comply with the National Electric Safety Code (NESC). While the Staff Recommendation in the comment matrix (page 12) indicates that the costs of bringing attachments into compliance are addressed in subsection (6), PSE fails to find language that addresses this requirement in WAC 480-54-030(6). Subpart (a)(iii) of subsection (6) does require an occupant to bring an attachment into compliance with WAC 480-54 or the attachment agreement, but does not require compliance with NESC. This creates a safety concern for PSE.

In addition, there continues to be 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 performing an overlashing following a

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

(11) 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 poles with the owner's consent under the following circumstances:

(a) The occupant must provide the owner with 10 days prior written notice. The notice must identify no more than 30 affected poles and describe the additional communications wires, cables, or other equipment to be overlashed so that~~in sufficient detail to enable~~ the owner can determine any impact of the overlashing on the poles or other occupants' attachments. The notice must include, but not necessarily be limited to, the following information:

(i) The size, weight per foot, and number of wires, cables, conductors, or other equipment to be overlashed; and

(ii) Maps of the proposed overlash route and pole numbers, if available.

(b) An owner may treat multiple overlashing notices from a single occupant as one notice when the notices are filed within the same 10 day period. The applicable time period for responding to multiple notices begins on the date of the last notice the owner receives from the occupant within the 10 day period.

(c) 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 notice, prohibiting the overlashing as proposed. The occupant must correct any pre-existing violations of required separation of its existing attachments from other attachments or other requirements applicable to its existing attachments before overlashing additional wires, cables, or equipment on those attachments.

(d) ~~t~~The owner may refuse to permit the overlashing if the notice is incomplete or exceeds the number of poles within the stated time period without a determination of the impacts of overlashing. The owner may refuse to permit the overlashing described in the notice only if, in the owner's reasonable judgment, ~~that~~ the overlashing would have a significant adverse impact on the poles or other occupants' attachments. The refusal must describe the nature and extent of that impact, 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 refusal.

(e) A utility's or licensee's wires, cables, or equipment may not be overlashed on another occupant's attachments without the owner's consent and unless the utility or licensee has an attachment agreement with the owner that includes rates, terms, and conditions for overlashing on the attachments of other occupants.

(f) 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.

(g) Should an actual overlashing by an occupant or unauthorized party differ from the overlashing described in the notice, or be without 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 damages caused by an overlashing.

The 10-day notice provision and others included in the third draft rules leaves PSE concerned there is a misconception that overlashing involves only minor additions that will not impact the integrity of the pole or the owners system, and that existing attachments are always in compliance with the NESC. While some overlashing may have a minor impact, it is not always the case as very clearly illustrated by the following picture (Figure 1) and those pictures in Attachment B to PSE's February 6, 2015, comments in this docket. Each and every pole affected by overlashing needs to be evaluated by the pole owner to ensure that the supporting poles are capable of the additional load. This evaluation includes both physical inspection and calculations. Figure 2 below clearly illustrates that overlashing can include numerous and very large bundles which should require application. Attachment B to PSE's February 6, 2015 comments in this docket demonstrates a pole that has been impacted by overlashing. In PSE's case, WAC 480-100-148 requires that PSE ensure that its electric system can furnish safe, adequate, and efficient service and take reasonable efforts under the circumstances to avoid interruptions of service.

Finally, PSE notes that RCW 80.54.010(1) provides that attachments can only be made "…where the installation has been made with the consent of the one or more utilities." The provisions regarding overlashing in these third draft proposed rules may bypass this right granted by law.

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

PSE's second major concern with the third draft proposed rules surround the provisions in the definition of "make-ready work" in WAC 480-54-020(10) and the additional definition of "make-ready work costs" added to WAC 480-54-030(5). PSE reiterates from its October 8, 2014 and February 6, 2015 comments that this definition needs to be modified to remove the requirement to replace existing poles with taller poles within the timeline specified for make-ready work. To the best of PSE's knowledge, no other jurisdiction in the country includes pole replacement in make-ready work. Page 3 of the Staff Recommendation comment matrix points out that the FCC rules do NOT require pole replacement as part of make-ready work. The same Staff Recommendation relies on the fact that pole replacement as part of make-ready work is "consistent with current practice". PSE does replace poles, but that work is done and scheduled as part of all other work to ensure proper safety and reliability of the system. This includes pole replacements necessary to provide service to new electric customers. Pole replacement today is not estimated within 14 days and completed within 30 days as suggested by the third draft proposed rules. This accelerated timeline to replace poles would increase safety risk. PSE could reduce safety risk and potentially meet the proposed timelines by increasing costs to add a much larger staff or outsourcing the make-ready work for attachments at much higher costs. 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 the proposed overlashing rules in this draft, the proposed make-ready work definition will require separate crews and additional engineers for review or outsourcing of the work. For safety and cost reasons, the requirement to replace existing poles with taller poles as part of make-ready work should be deleted. Finally, the cost increases due to these requirements will also flow to PSE electric customers without any corresponding benefit, in effect creating an additional cross-subsidy to the occupants.

PSE appreciates that addition to WAC 480-54-030(5)(a) which clarifies that the requester must pay all costs of make-ready work. The language in WAC 480-54-030 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 notes that RCW 80.54.040 provides that the just and reasonable rate "…***shall*** assure the utility the recovery of ***not less than all*** the additional costs of procuring and maintaining pole attachments" (emphasis added). PSE suggests the following revised language:

[(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.

(10)"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.~~ ~~Make-ready work costs are non-recurring costs and are not included in carrying charges.~~ 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 or by replacing an existing pole scheduled with the pole-owners normal work.

(New)"Make-ready work costs" are non-recurring costs that are not included in carrying charges and are ~~must be~~ costs that the owner actually ~~and reasonably~~ incurs to provide the requester with access to the facility and the costs reasonably related to such costs, including, but not limited to, costs of working capital, liability insurance, engineering, overheads, permits, traffic control, materials, legal costs, taxes, and supervision. Make-ready work costs do not include the costs recovered from the requester as an application fee to process the application or survey the facilities identified in the application.

Comments on Specific Rule Provisions

PSE has further comments and suggestions in several other areas of the proposed third draft rules amending Chapter 480-54 WAC. PSE has attached a redline version, as Attachment B to these comments, 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.

WAC 480-54-020(5), (6), and (8) – 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 for the owner's purposes or to accommodate another attachment. The separation required between utilities for safety very often prohibits such joint use. Therefore, the definition of occupied space should be 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(7) – Definition of "Facility" or "Facilities": The use 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 suggests deletion of "one or more" in the third draft rules.

WAC 480-54-020(9) – Definition of "Licensee": PSE does not understand the reason "other than a commercial mobile radio service company" was added to this definition. The existing definition, without this addition, is almost word for word the same as the definition of licensee in RCW 80.54.010(2). PSE has concerns that entities not thought of as a typical licensee are included in this very broad definition. The definition allows businesses that wish to only resell their services at an unregulated profit while at the same time obtaining a subsidy from a pole owner. This definition of licensee should be modified to limit the licensee to those entities with radiating antenna or entities that are

licensed to broadcast in the appropriate frequency. PSE has proposed a revision to the definition to close this loophole.

WAC 480-54-020(10) – Definition of "Make-ready work": The third draft proposed rule definition reflects one of the most problematic provisions in the Chapter. Please see PSE's comments on pages 8 and 9 of this letter and the suggested changes reflected in the attached draft rules.

WAC 480-54-020(12) – Definition of "Occupant": With the addition of the defined term "attachment agreement" PSE suggests that the definition of Occupant include the requirement that the utility or licensee has entered into an attachment agreement.

WAC 480-54-020(13) – Definition of "Occupied space": The 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. PSE appreciates the Staff Recommendation (page 4 of the comment matrix) that allows the pole owner to add fractional attachments (for example six inches) and charge for those fractional attachments in addition to a standard one foot attachment.

WAC 480-54-020(14) – Definition of "Overlashing": PSE is not proposing any changes to this definition except for clarity, but wants to call attention to its objections in its January 6, 2015 comments and these comments.

WAC 480-54-020(15) – Definition of "Owner": PSE does not understand the justification for excluding the facilities of a commercial mobile radio service (CMRS) company from attachment when the same CMRS company is allowed to attach to the facilities of all other owners. PSE appreciates the revision to clarify that all other electric utilities cannot attach to PSE's poles without PSE's approval.

WAC 480-54-020(16) – Definition of "Pole": This definition needs to be rewritten to eliminate the implication that the owner is responsible to maintain the attachments made to its poles and that every pole has attachments.

WAC 480-54-020(17) – Definition of "Requester": PSE appreciates the addition to this definition which ties to RCW 80.54.010(1) since consent for attachment would be reflected in an agreement allowing attachment.

WAC 480-54-020(19) – Definition of "Usable space": PSE appreciates and concurs with the changes made in the third draft proposed rules.

WAC 480-54-030(1) - The definitional changes (to "Requester") in the third revised rules eliminate the requirement that PSE and other electrical companies (as defined in RCW 80.04.010) provide access and perform make-ready work for entities including electric 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 if the electric cooperatives or other competing electrical entities are considered requesters,

however, this provision does not limit pole attachments to requesters. PSE's suggested that the term "requester" be added to this section in order to draw attention to these comments. The suggested changes to this section are also included below:

> (1) An owner shall provide other requesters ~~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. Nondiscriminatory in the preceding and following sentences includes non-discrimination with other work the owner must do on the pole or work to provide new service or to maintain the owner's system. 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 and no evidence has been cited otherwise. 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(2) - In its February 6, 2015 comments PSE suggested that a customer must dispute the agreement prior to entering into the agreement. This suggestion was rejected by Commission Staff. In order preserve the pole owner's rights, PSE suggests an alternative which is that a complaint over an agreement has the effect of voiding the agreement as the pole owner may have made concessions in the agreement that it would not make knowing that the requester was going to file a complaint.

PSE points out that parties may mutually agree to terms that differ from those in WAC 480-54 (second sentence). The first sentence states that all rates, terms, and conditions made, demanded, or received by any owner must be fair, just, reasonable, and sufficient.

PSE interprets this to mean that when the parties mutually agree to terms that those terms are, de facto, fair, just, reasonable, and sufficient.

WAC 480-54-030(3) - PSE appreciates the clarification that the owner can recover the costs to process an application and complete a survey, including site visits to each pole and calculations regarding loading on the pole. However, PSE has concerns with the proposal that only costs that are "reasonable" and are "reasonably" incurred can be recovered. It should be sufficient to state that actual costs can be recovered, or actual costs related to the inspection and survey. To add "reasonable" and "reasonably" calls for a determination to be made and create a point to dispute for every application. Further, there is no mention of liability for damages except the Staff Recommendation (page 7 of the comment matrix) that violations of rules be addressed in a complaint proceeding, however, PSE cannot locate a provision in WAC 480-54 that specifically prohibits attachment without permission or of a nature that is different that reflected on the application. Therefore, PSE would propose that the occupant be liable for all damages if the attachment is: 1) made without permission; 2) the actual attachment differs from the attachment described on the application; or 3) if the attachment fails to meet applicable rules and codes. In order to preserve the safety and reliability of the electric system unauthorized attachments should be prohibited. To discourage attachments without application or prior to approval of an application, PSE believes that owners are allowed to charge the attachment fee for six years prior to discovery of the unauthorized attachment, just as PSE is required to do for unauthorized electric or natural gas usage. 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. The owner may recover from the requester the actual ~~reasonable~~ costs of and related to processing ~~the owner actually and reasonably incurs to process~~ the application. The owner may survey the facilities identified in the application and may recover from the requester the costs the owner actually ~~and reasonably~~ incurs that are necessary to conduct ~~of~~ that survey ~~from the requester~~. 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 pole owner may make changes necessary to accommodate the attachments at the expense of the requester. If attachments are made without application or approval by the pole owner, the pole owner shall assume that the attachment has been in place for six (6) years and bill the occupant for that time period.

WAC 480-54-030(4): PSE appreciates the Staff Recommendation (page 7 of the comment matrix) that provides for costs to refuse an application, including incomplete applications, be included in the application fee.

WAC 480-54-030(5): As commented earlier regarding WAC 480-54-020, the new definition of "make-ready work costs" should be included in the definitions section of the chapter. This section contains a confusing provision that obligates the owner to prepare an estimate of charges for make-ready work within fourteen days, but authorizes

inclusion of the costs to complete the estimate. How can the pole owner provide an estimate of costs without completing the estimate? This accelerated timeline will drive PSE to either increase costs by adding staff or outsourcing all pole attachment work.

PSE appreciates the re-introduction of the provision that allows the pole owners to charge in advance for all make-ready work. The timelines as presently proposed in the third draft proposed rules will require PSE to prepare an estimate within 14 days. Typically this type of work takes at least this long or longer for requests for service from new electric customers. The requester will have up to 30 days to review the estimate. The long review period will increase the costs of processing applications and performing make-ready work.

The specificity of the withdrawal of an estimate requires 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 also increases the cost of application review. The Staff Recommendation (page 7 of the comment matrix) does not provide any support for retaining the provision. PSE routinely provides estimates that expire following a set period of time. This prevents discrimination in pricing based on old estimates being brought forward many years later.

(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 14 days of providing its written response, the owner must provide a preliminary estimate of charges to perform all necessary make-ready work, including the costs of completing the estimate. Make-ready work costs are non-recurring costs that are not included in carrying charges and must be costs that the owner actually ~~and reasonably~~ incurs in order to provide the requester with access to the facility.

(a) The requester must accept or reject an estimate of charges to perform make-ready work within 30 days of receipt of the estimate. The rejection of an estimate cancels the estimate. The owner may require the requester to pay all estimated charges to perform make-ready work as part of acceptance of the estimate or before the owner undertakes the make-ready work.

(b) If an estimate is not accepted or rejected in accordance with subpart (a) ~~A~~An owner may withdraw an outstanding estimate of charges to perform make-ready work any time after 30 days from the date the owner provides the estimate or after 120 days the estimate shall expire.~~to the requester if the requester has not accepted that estimate.~~

WAC 480-54-030(6): This section establishes a fixed timeline for all make-ready work and does not take into account changes needed to accommodate the inclusion of pole replacement in make-ready work. Further, this section does not take into account real world delays due to storms, emergencies, restoration of service and other work. The timelines in the third draft proposed rules will likely drive the use of overtime work, increased staff or outsourcing. These are increase costs to attachers and PSE's electric customers and create another cross-subsidy benefiting attachers.

WAC 480-54-030(6)(a)(ii): This timeline has not been updated to reflect the inclusion 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 - 90 days (depending on the

time of year and jurisdiction), and scheduling takes 28 to 56 days. 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 disasters that create interruptions to service and damages to facilities, and the additional timeline required for obtaining designed and engineered poles. In other words, a separate set of employees, crews and pole inventory will be necessary to meet these timelines. This additional capacity will increase costs to attachers and to PSE's electric customers creating a cross-subsidy benefiting attachers. To address these concerns PSE suggests removing the obligation to replace poles as part of make-ready work and thereby eliminate this additional cost. The changes to this subsection are shown below. PSE notes that the Staff Recommendation (page 8 of comments matrix) reflects that parties can waive rules. PSE's experience is that only the Commission can waive the requirements of a rule. Therefore, PSE continues to include a provision, as shown below, that expressly allows for waiver.

Finally, adding staff or hiring a service provider to meet the accelerated timelines in the third draft proposed rules will require increased training. Performance or service quality may suffer for a short time while new staff or service provider personnel are trained and fully functioning. Therefore, PSE requests an explicit exemption from certain WAC rules and Service Quality Indices (SQI) for a period of time.

> (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.

WAC 480-54-030(6)(a)(iii): PSE appreciates the addition to require occupants to bring their attachment into compliance with the chapter 480-54 WAC and the attachment agreement. However, the requirements do not include compliance with codes (such as the NESC) and local ordinances. Further, it does not address unapproved attachments or overlashing. The proposed rules should make clear that PSE will not incur liability if it must make a change to an attachment or be required to do so by law. The existing attachment should be required to be modified as scheduled by the pole owner in order to meet the make-ready work schedule. Modifying at the completion of make-ready work will not allow the pole owner time to finish tasks necessarily completed after the attachment modification. Finally, the rule must address situations where an occupant fails to comply with the make-ready work schedule. PSE suggests extending the make-ready work timeline by the same number of days that the modification is delayed.

> (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 modification work. Any occupant with an existing attachment or unapproved attachment that does not comply with these rules, applicable codes, ordinances or laws or the

> occupant's attachment agreement with the owner must modify that attachment to bring it into compliance before the date set for completion of modification which is part of the make-ready work. The occupant or unapproved attachment owner shall be responsible for all costs incurred to bring its attachment into compliance. Should an occupant fail to comply with the schedule for make-ready work, the schedule shall be extended by the same number of days the occupant fails to comply.

WAC 480-54-030(6)(a)(iv): The timeline suggested will cause an increase in cost for occupants and requesters as well as PSE's electric customers due to the increase in staff or outsourcing of pole attachment work. According to Staff Recommendation (page 9 of comment matrix) the timeline is derived from FCC rules, however, FCC rules do not require pole replacement. The addition of pole replacements to make-ready work should, at a minimum, result in a vastly expanded timeline for make-ready work.

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 provision appears to be trying to solve a problem that does not exist. Many wireless co-locations require (or the requester requests) the installation of a significantly taller pole. Poles of this type typically have much longer lead times to acquire and require more extensive engineering to develop specifications and installation requirements.

WAC 480-54-030(6)(b)(iii): The same comments as for WAC 480-54-030(6)(a)(iii) apply to this section.

WAC 480-54-030(6)(b)(iv): The same comments as for WAC 480-54-030(6)(a)(iv) apply to this section.

WAC 480-54-030(7): The Staff Recommendation (page 10 of the comment matrix) states that the proposed time line is "reasonable and consistent with FCC rules." While the time line may be, FCC rules do not include pole replacement in make-ready work. The inclusion of pole replacements in make-ready work makes these timelines unreasonable. The timelines will increase costs to occupants, requesters and PSE electric customers due to the need to significantly increase staff or engage a service provider to handle all pole attachment responsibilities.

PSE suggests specific changes to the revised WAC 480-54-030(7)(c) in the attached draft rules which make the 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. These suggested changes may help hold attachment prices and costs of make-ready work closer to present levels.

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 now understands that "nondiscriminatory basis" is limited to work that must be performed on the pole. It does not mean that the utility schedules all work, including work for new and existing electric

customers and make-ready work 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 of the third draft proposed rules appears to conflict with WAC 480-100-108. This is another situation where PSE is faced with choosing between significant increases in staff or outsourcing pole attachment work. The timelines will increase costs to occupants, requesters and PSE electric customers due to the need to significantly increase staff or engage a service provider to handle all pole attachment responsibilities. The Staff Recommendation (page 10 of the comment matrix) states that this rule is "consistent with FCC requirements". Again, FCC rules do not include the requirement of pole replacement. The timeline must take into account the addition of pole replacement.

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. The Staff Recommendation is that these issues be "addressed in the attachment agreement". PSE would be uncomfortable negotiating or waiving any or all of Chapter 480-54 WAC provisions in the attachment agreement. As PSE stated earlier, PSE's experience is that only the Commission can grant waivers of the WAC rules. If this experience is incorrect, PSE asks that the matter of rule waivers between parties be addressed in the Commission order adopting these rules. These clarifications on rule waivers will assist pole owners in effectively executing their core business.

> (c) Time periods shall be extended by the number of days that the owner reasonably needs to respond to a natural disaster and by the time reasonably 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 occupants have complied with all requests to relocate or remove an attachment.
>
> (f) In the event of repeated failure on the part of an occupant, requester or licensee to abide by the terms of these rules or agreements negotiated with owners, an owner may file a complaint with the Commission and the failure to comply with these rules shall be prima facie evidence of failure to comply.

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 significant increase in staff or outsourcing of pole attachment work. The timelines will increase costs to occupants, requesters and PSE electric customers due to the need to significantly increase staff or engage of a service provider to handle all pole attachment responsibilities. PSE finds these sections confusing because both sections use the same words ("from a list of contractors the owner has authorized to work on its poles") to describe the different types of contractors. There are contractors authorized to complete a survey, contractors authorized to perform make-ready work within the communications space, and contractors authorized to perform make-ready work in the electrical space. An electric utility or electrical contractor is not typically authorized or qualified to work on communication facilities,

likewise a communication company or communication contractor is not typically authorized or qualified to work on electric utility facilities.

In addition, these sections do not provide for the review of work done by contractors acting on the behalf of requesters and do not address the costs and liability associated with the use such a contractor. The Staff Recommendation (page 11 of comment matrix) states that recovery of these costs should be addressed in the attachment agreement. Negotiating these costs in the attachment agreement makes it more difficult for the pole owner to recover costs, let alone a cost that is not addressed in these rules. 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): PSE's comments regarding overlashing in the first three pages of this letter and elsewhere address this section. The timelines for overlashing will increase costs to occupants, requesters and PSE electric customers due to the need to significantly increase staff or engage a service provider to handle pole attachment responsibilities. .

WAC 480-54-040(1): PSE mentioned in its February 6, 2015 comments that this section is confusing and does not explicitly provide for cost recovery. Cost recovery should include the cost of training and reviewing the work practices of the contractors on a regular basis to ensure 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. The Staff Recommendation (page 13 of the comments matrix) indicates that recoveries of all costs incurred by the pole owner under the provisions of WAC 480-54-040 are provided for in WAC 480-54-030. PSE respectfully requests that the Commission's order adopt and thereby memorialize the Staff Recommendation in order to clarify this point.

WAC 480-54-040(2): This section should specify that any improvements made by the requester's contractor to the owner's poles require that the owner be compensated for federal income taxes based on the fair market value of the improvement. Without such a provision, there will be a cost shift to PSE electric customers that will subsidize the requester. Such a cost shift appears to be prohibited by RCW 80.54.040 which requires that all the additional costs of pole attachments be recovered by the pole owner. In addition, this section should provide that the requester or the requester's contractor 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.

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. The Staff

Recommendation (page 13 of the comments matrix) indicates that the pole owner can recover all costs incurred under the provisions of WAC 480-54-040 and are provided for in WAC 480-54-030. PSE respectfully requests that the Commission's order adopt and thereby memorialize the Staff Recommendation in order to clarify this point.

WAC 480-54-050(1): PSE appreciates the clarification that requester should be responsible for all modification costs when no other party directly benefits from the modification. PSE proposes that there be a limitation placed on the amount of time after notification during which an occupant will be deemed to have received direct benefit of the modification. PSE interprets that under the current draft rules the occupant is deemed to have benefited any time after notification of modifying or adding to its existing attachment. The timeline should be set at a maximum of 30 days.

WAC 480-54-050(2): PSE appreciates the changes clarifying that the occupant with a non-conforming attachment is responsible for costs to make the attachment compliant with WAC 480-54. However, PSE cannot locate provisions in WAC 480-54 that deal with the specifics of attachment compliance. PSE suggests that the wording "applicable codes or regulations" be substituted for "with these rules". The third sentence should provide that the occupant *who is not the requester* shall not be required to bear any of the costs.

WAC 480-54-050(3): PSE appreciates the changes to clarify this rule. There should be an obligation placed on the occupant to remove or modify its attachment, as appropriate, based on the notice, within 10 days of the date of the action stated in the notice.

WAC 480-54-050(4): PSE, in its February 6, 2015, comments requested an explanation why the provisions of this rule did not comport with existing Commission provisions including WAC 480-07 regarding emergency adjudicative proceedings or formal complaints. The Staff Recommendation (page 14 of the comment matrix) states that a reference to a procedural rule is unnecessary. The reason for this appears to be because new procedural rules are proposed to be established in WAC 480-54 just to address requesters, licensees and occupants. This seems confusing when WAC 480-07 contains the balance of the Commission's procedural rules for adjudicative proceedings. PSE also noted in its February 6, 2015, comments that this section does not provide for notice to interested parties or the public. 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.

WAC 480-54-050(5): This section should include a provision that non-payment of charges for attachment is sufficient evidence to demonstrate abandonment. This provision should provide for recovery of the costs to remove attachments by including those costs in the rate for pole attachments if not paid by the occupant. The Staff Recommendation (page 14 of the comment matrix) indicates that costs are to be recovered through charges for make-ready work. PSE appreciates Staff's recommendation because it eliminates cost shifting to PSE's electric customer which PSE appreciates.

WAC 480-54-050(6): As stated in its February 6, 2015 comments, PSE suggested that the proposed subsection (6) does not address the larger problem of failure of occupants to transfer existing attachments from poles that have been replaced with 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 increased costs of 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 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. PSE notes that the Staff Recommendation (page 15 of the comment matrix) stating that the terms and conditions for transferring attachments to new poles should be addressed in attachment agreements. This appears to mean that this is a civil matter outside of the Commission's jurisdiction. However, RCW 80.54 appears to charge the Commission with regulating all of the terms and conditions made or demanded by a utility for attachment, not just those that promote the rights of requesters, licensees and occupants. In addition, RCW 80.54.040 charges the Commission to assure the utility recovery of not less than all of the addition costs of procuring and maintain pole attachments.

WAC 480-54-060: These provisions regarding rates for attachments do not appear to differ from the FCC rates presently charged by PSE. As PSE has mentioned several times in these comments, there are many provisions in the third draft proposed rules that do not specifically provide for recovery of the cost of compliance or actions necessarily undertaken 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 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. These new sections would allow Chapter 480-54 WAC to be in compliance with Chapter 80.54 RCW.

PSE notes that the Staff Recommendation (page 16 of the comment matrix) in regards to PSE's proposed WAC 480-54-060(4) which states that cost recovery is addressed throughout Chapter 480-54 WAC and that the rate formula is not a catch-all of costs. PSE's conclusion is that all costs not included in the rate formula should be included in either the application fee or charges for make-ready work. PSE requests that the Commission's order include the comment matrix to guide future interpretation of the rule and resolution of complaints.

PSE notes that the Staff Recommendation (page 17 of the comment matrix) in regards to PSE's proposed WAC 480-54-060(5) which states that remedies for violation of overlashing or other actions not authorized by the pole owner should be addressed in attachment agreements or the complaint procedures. This fails to recognize that unauthorized attachments exist (therefore it is not an attachment as defined in the third draft rules by an entity that is not an occupant as defined in the third draft rules.) Not including authority to recover costs related to unauthorized overlashing without a complaint adds costly process for the pole owner, occupant and the Commission when the rule, as suggested below, would authorize the cost recovery. Should the occupant feel that the costs are not appropriate, they could file a complaint with the Commission.

PSE notes that the Staff Recommendation (page 17 of the comment matrix) in regards to PSE's proposed WAC 480-54-060(6) which states that attachments may exceed one foot by fractions of a foot which is consistent with the Staff Recommendation regarding WAC 480-54-020(12) (page 4 of the comment matrix) and therefore deletes the proposed WAC 480-54-060(6) from these comments.

> (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 as an application fee or charges for make-ready work 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.

WAC 480-54-070(6): PSE appreciates the clarification in the burden of proof for complaints.

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. PSE notes that the Staff Recommendation (page 18 of the comment matrix) states that limiting the rate impact decision to date complaint was filed is inconsistent with FCC rules and Washington law and goes on to discuss the 6-month

limit on sign and sue to ensure prompt resolution. However, the last sentence of this subsection allows the rate impact decision to apply for an unlimited period.

WAC 480-54-080 (PROPOSED BY PSE): Even though PSE has accommodated all attachment requests in the past in a timely manner and is not aware of any complaints regarding its actions, these proposed rules represent a significant change and added complexity to the pole attachment process. PSE requests a new section to address the timing of implementation of these proposed rules. There are various provisions that will require PSE to develop a large new staff or select a service provider to conduct the pole attachment process. To develop a large new staff takes a considerable amount of time to advertise, select, hire, relocate and train, while at the same time acquiring the necessary space and equipment for the new employees. To select a service provider is equally or more time consuming as it would require the development and issuance of an request for proposals (RFP), legal time to write the RFP and then to negotiate the required contracts and finally for PSE or the service provider to locate and purchase or lease space, vehicles, stock inventory, provide work space for employees, etc. The time required for these processes should be long enough so that economic choices can be made but short enough to realize the Commission's desire to implement new rules. PSE suggests twenty-four months as a fair compromise of these objectives.

> WAC 480-54-080 Implementation of Chapter 480-54. Owners shall take the necessary actions to fully implement these rules within twenty-four months of the effective date of this rule.

SUMMARY

In summary, PSE believes that any proposed rules must first ensure the safety and reliability of the electric system. In addition, newly proposed rules for pole attachments be fair with respect to cost recovery and balanced with respect to prioritization for attachers, licensees, occupants and requesters. This fairness is prescribed in RCW 80.54.060 which requires that the Commission set rates, terms, or conditions demanded, exacted, charged, or collected that are just, reasonable, or sufficient and consider the interest of the customer of the attaching utility or licensee, ***as well as the interest of the customers of the utility upon which the attachment is made***. PSE advocates that for the proposed WAC 480-54 to prescribe working rules to allow pole owners achieve such fairness and balance, another rewrite is required and that another round of written comments be allowed on that rewrite.

PSE stresses that the provisions related to overlashing create safety risk and will likely result in the requesters facing a large increase in costs. The inclusion of pole replacement in make-ready work will require significant resources for PSE to hire and train staff or outsource the pole attachment process.

PSE believes by not making cost recovery clear to all parties, that the third draft rules shift costs attributable to attaching entities to the electric and gas customers of PSE as well as existing occupants. Proposed accelerated timelines in the draft rules will result in a significant increase in staff or outsourcing of pole attachment work. The resulting increase in staff or outsourcing of all pole attachment work will increase costs primarily

in the short run to requesters through increased costs for make-ready work. However, in the long run there will be an increase costs for occupants and PSE electric customers due to increased costs of attachments. The shifting of costs to all occupants due to overlashing, including PSE electric customers, also has a long term effect of increasing the cost of attachments (with no corresponding benefit to PSE electric customers). Finally, the Staff Recommendation column of the comments matrix indicates in many places that recovery of all costs incurred by the pole owner are provided for in the third draft rules. PSE respectfully requests that the Commission's order adopt the Staff Recommendation column of the comment matrix in order to clarify this point.

Finally, PSE urges the Commission to ensure a suitable implementation period due to the significant changes that these third draft rules propose
If you have any questions about the comments contained in this filing, please contact Lynn Logen, Supervisor Tariffs at 425-462-3872 or Nathan Hill, Regulatory Affairs Initiatives Manager at 425-457-5524.

Sincerely,

Ken Johnson
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Sheree Carson, Perkins Coie