ATTACHMENT A
To PSE's April 17, 2015 Comments
In Docket No. U-140621

1) The safety risks posed by attachments to poles on which both electric transmission lines and electric distribution lines are attached, including but not limited to the provisions of the National Electric Safety Code or other industry standard guidelines that identify and quantify those risks and whether poles used *primarily* for electric distribution lines pose the same risks;

PSE Response: Safety Risks – the risks can be grouped into two general categories; clearance issues and loading issues.

Clearance distances are in place to protect communications workers who perform activities on poles which also support energized conductor. They are designed to prevent the possibility of non-qualified workers coming in contact with an energized component. There are several methods to address clearance issues.

- re-arrange electrical equipment to gain additional distance
- re-arrange communications attachments to make better use of communications space
- replace pole with taller pole to create additional space

Attachments made to utility poles are generally done in accordance to standards, which are based on the National Electric Safety Code (as incorporated into WAC rules). However pole owning electric utilities have historically experienced issues with communications companies not installing per these standards. For this reason PSE identifies existing violations an estimated 40 – 60% of the time for new applications coming in. This is one of the big concerns over allowance of over-lashing without permitting. Pole owners also have considerable experience with communications contractors being unfamiliar with NESC code requirements. PSE has made a point of opening up training to communications companies and their contractors to try to improve the problem. It is our belief, backed up by recent incidents, that the greatly accelerated timelines which communications companies are trying to meet are far more likely to result in an increase in violations, particularly when combined with the practice of using the lowest bidder from among their contractors. The group most at risk from these types of violations will be communications workers.

Loading issues have historically had low visibility, as it has long been utility practice to design their distribution networks to accommodate what was considered standard telephone and cable TV wire/strand. This was later updated to include a third attaching entity. Such practices were developed in an environment where the attaching entity performed their own engineering and was expected to note when a pole was inadequate to support their attachment. That is no longer the environment we work in. Issues with over loading of poles are the failure of the pole or supporting infrastructure (guys, anchors) and represent risk not only to all parties working on the pole, but the public as well. These risks range from property damage (ref. Malibu Canyon fire due to overloaded poles) to

fatalities. While it is rare for poles to fail from over loading alone, when combined with extreme weather conditions (high winds, ice), the risk for failure increases significantly. (Note: exact numbers are difficult to come up with, as few utilities perform failure analysis during such events. Restoration of service is always the primary objective. See attached Exhibit A, a PowerPoint presentation.)

2) The amount of time required to replace a pole (based on actual replacement data, rather than estimates);

   PSE Response: Time to replace a pole – this can vary, depending on the type of pole and installed facilities and location of the pole. Replacement of a standard distribution pole (40 foot tangent pole with single to three phase distribution wire and transformer) usually takes one day. However, permitting in some jurisdictions can delay the work significantly.

3) Whether the timelines in draft WAC 480-54-030 should be modified to apply to applications for attachment to up to 300 (rather than 100) poles on condition that the owner may complete any required pole replacement within a longer period of time than authorized for other make-ready work (and if so, a proposal for that longer period of time);

   PSE Response: Application size limits (# of poles) – No comments.

4) The fees that owners currently charge to process and respond to applications for attachments to poles, ducts, or conduits and the types of costs on which those charges are based:

   PSE Response: Application Fees & basis – Attached as Exhibit B to this Attachment A is a description of the basis of application fees that are charged for wireless applications. PSE has no response relating to other application fees as the timeline allowed and availability of necessary personnel to provide a response did not allow sufficient time.

5) The fees that owners currently charge to undertake make-ready work and the types of costs on which those charges are based;

   PSE Response: Make Ready Fees & basis – PSE currently uses a $600 per pole figure to provide customers with an idea of costs. Historical data indicates average costs are closer to $500 per pole.

6) The rates that owners currently charge occupants for attachment to the owners' poles, ducts, or conduits, and the types of costs included in the ARMIS or FERC accounts used to calculate attachment rates in compliance with the Federal Communications Commission (FCC) formula;

   PSE Response: Annual Fees – PSE charges all attaching entities according to the FCC Cable Rate formula - $ 10.69 per pole attachment per year.

7) The types of costs, if any, that an owner incurs in connection with attachments to its poles, ducts, or conduits that the owner cannot recover through an application fee, make-ready work charge, or attachment rate calculated and charged consistent with the FCC rules; and

PSE Response: As is reflected in PSE's February 6, 2015, comments to the proposed rules there are many costs that are not recovered through the charges for make-ready work and the attachment rate. One of the major costs where cost recovery was not provided for has been remedied in the third draft rules. That is recovery of the costs of processing applications and performing surveys that is now provided for in WAC 480-54-030(3) (third draft) which provides that the owner may recover from the requester the costs the owner actually incurs to process the application and to survey the facilities. However, it stops short of allowing all costs including the costs required by the WAC rule of preparing the response to the notice or application. Nor does the third draft provide for the recovery of the costs to process denials for incomplete applications and to prepare a report denying access and the costs of the required negotiations. The other costs that the rules do not allow or provide for pass through to the cost-causer are:

- all costs related to determining if overlashing can be allowed since no application is required
- costs of material damages resulting from overlashing
- costs of loss of revenue due to interruption of electric service caused by attachment or overlashing
- legal costs to collect damages caused by attachment or overlashing
- costs of removing attachments or overlashing installed improperly or without permission
- costs of increased working capital due to the need to carry a larger inventory of poles in order to respond to the timelines for make-ready work in WAC 480-54-030

Instead the Staff Recommendations indicate that these costs should be passed through to all attachers in the pole attachment rate, including the pole owner which creates a cross subsidy to the requesters.

In addition, the third draft rules do not specifically provide for recovery of the following costs from the cost causers, but instead spreads the costs to all attachers (including the pole owner which is a cross subsidy of the requester):

- WAC 480-54-020(13) only provides for recovery of one half of the cost of conduit when the other half is likely un-usable by the electric company due to code requirements.
- WAC 480-54-020(19) provides for measurements of the usable space but does not provide for the recovery of costs in making such measurements.
- WAC 480-54-030(4) requires owners to provide a written response to an application along with an explanation for denial of access, including all relevant information supporting the denial. This section does not provide for recovery of the costs of denial or the accompanying report; however the Staff Recommendation (page 7 of the comment matrix) is to recover these costs in the application fee, either by spreading to all requesters or by an adjustment of the application fee to the specific requester.
- WAC 480-54-030(5) defines make-ready costs as those costs that the owner "actually and reasonably incurs". This language is ripe for arguments as to what costs are "reasonably" incurred. RCW 80.54.020 provides that the Commission regulates rates, terms and conditions and that they be "just, fair, reasonable, and sufficient." RCW 80.54.030 provides that, after hearing upon complaint, that the Commission shall determine "just, reasonable, or sufficient rates, terms and conditions". To simply require that costs be "reasonably" incurred or that

costs be "reasonable" (see WAC 480-54-030(3)) does not follow the due process and decision making mandated by RCW 80.54.020 and RCW 80.54.030, it simply provides for a ready argument depending on the party's viewpoint. In addition, this definition does not make it clear that costs necessary to maintain a work force on stand-by to meet the time-lines is a reasonable cost, nor does it explicitly include similar costs of a work force and material inventory such as the costs of liability insurance, engineering, standards, labor overheads, cost of obtaining permits, cost of permits, costs of traffic control, legal costs, applicable taxes, accounting and record keeping costs, costs of computer systems to track and maintain records and perform billings. Based on the Staff Recommendation (page 7 of the comment matrix) PSE understands that these costs should all be included in the make-ready costs. If this is not correct PSE requests a clarification and explanation of how these costs are to be recovered.

- WAC 480-54-030(5) now (in the third draft) includes a definition of make-ready costs which would be more appropriately included in WAC 480-54-020.
- WAC 480-54-030(5)(a) now includes a provision that allows for billing for make-ready work prior to the owner undertaking the work. PSE appreciates this addition, however, it should be expanded to allow for a true-up to actual costs following completion of the make-ready work and for billing for the cost of providing the estimate, that is required by WAC 480-54-030(5) should the requester decide not to proceed (to the extent that the cost of the estimate is not included in the application fee).
- WAC 480-54-030(6) requires that the owner incur costs related to coordination of make-ready work with other attachers. There is no provision for recovery of those costs; however it is PSE's understanding from the Staff Recommendation (page 8 of the comment matrix) that these costs be included in the make-ready work estimate. If this is not correct PSE requests a clarification and explanation of how these costs are to be recovered.
- WAC 480-54-030(8)(b) requires that the owner incur costs of providing written notices to the requester and other affected occupants. There is no specific provision for recovery of those costs; however PSE understands from the Staff Recommendation (Page 8 of the comment matrix) that these costs should be included in the make-ready work estimate. If this is not correct PSE requests a clarification and explanation of how these costs are to be recovered.
- WAC 480-54-030(9) and WAC 480-54-030(10) require that the owner incur costs of either additional staffing to comply with special timelines for attachers. The recovery of the cost of the additional staffing, which may not always be needed, is to be included in the application fee or the make-ready work estimate as appropriate in accordance with the Staff Recommendation (Page 11 of comment matrix). If this is not correct PSE requests a clarification and explanation of how these costs are to be recovered.
- WAC 480-54-030(9) and WAC 480-54-030(10) allow for the use of outside contractors. In order for PSE to comply with WAC 480-100-148 it should inspect the work done by these contractors to verify that the system remains safe and reliable. Recovery of the cost of these inspections is not specifically provided for in the rules. PSE understands that these costs are to be included in the application fee or the make-ready work estimate as appropriate in accordance with the Staff Recommendation (Page 11 of comment matrix). If this is not correct PSE requests a clarification and explanation of how these costs are to be recovered.
- WAC 480-54-030(11) provides for overlashing without application but does not provide for cost recovery from the party giving the notice of PSE's review of the notice to determine any impact on the poles which PSE is required to do in order to comply with WAC 480-100-148. This rule also does not provide for recovery of costs for PSE to determine the impacts on

other attachments from the party giving notice. Instead, Staff Recommendation (page 12 of the comment matrix) provides that these costs are to be spread to all attachers (including the pole owner) through the attachment rate. This creates a cross subsidy from PSE's electric customers and all other attachers to the party requesting overlashing.

- WAC 480-54-040(1) requires that PSE develop and maintain a list of qualified contractors but does not specifically provide for cost recovery of the staff time to screen and inspect work done by these contractors. There would also be time required to train the contractors if no qualified contractors exist. The work needs to be inspected in order to comply with WAC 480-100-148. PSE understands from the Staff Recommendation (Page 13 of the comment matrix) that these costs should be included in the application fee or make-ready work estimate (as appropriate). If this is not correct PSE requests a clarification and explanation of how these costs are to be recovered.
- WAC 480-54-040(2) and (3) provide for contractors to perform survey and make-ready work. That work will include pole replacement, but the cost of income tax on the taxable contribution in aid of construction made when a pole is replaced is not mentioned. The cost of income tax should specifically fall on the requester, just as it does when a pole is installed for a line extension. Additionally, an owner representative may accompany the contractor, but the cost recovery for that owner representative is no provided for in the rule. An owner representative will be required in order for PSE to insure compliance with WAC 480-100-148. PSE understands from the Staff Recommendation (Page 13 and elsewhere in the comment matrix) that these costs should be included in the application fee or make-ready work estimate (as appropriate). If this is not correct PSE requests a clarification and explanation of how these costs are to be recovered.
- WAC 480-54-050(1) requires that the costs of make-ready work be shared between the requester and all existing occupants, however recovery of the costs of accounting, tracking, billing, collection and determining the amount of cost to be paid by each party is not provided for in the rule. PSE understands from the Staff Recommendation (Page 14 of the comment matrix) that these costs should be allocated to all attachers (including the pole owner which creates a cross subsidy from PSE's electric customers to the attachers).
- WAC 480-54-050(2) now provides that the occupant with a non-conforming attachment bear the costs, however it does not provide for recovery of the costs make-ready work on existing conforming attachments even if the requestor is the owner of the existing conforming attachment. It appears that the intent is to exclude these costs from the cost of make-ready work charged to the requester when existing attachments are conforming and instead make the owner bear these costs. Also, the issue of costs of liability for damages caused by attachment rearrangement is not provided for here or elsewhere.
- WAC 480-54-050(3) requires that the owner provide notice of modification, however the rule does not provide for recovery of the costs to provide the notice. Costs would include, but not be limited to: computer systems, tracking, production of notice, mailing of notice, staff to trigger notice, staff on stand-by in order to comply with timeline, overheads, computers, desks, notice production and mailing equipment, etc. PSE understands from the Staff Recommendation (Page 14 of the comment matrix) that these costs should be spread to all attachers (including the pole owner, which creates a cross subsidy from PSE's electric customers to the attachers).
- WAC 480-54-050(5) provides that an owner may file to remove abandoned attachments, however it stops short of provided for recovery of costs of the applications and removal, even

if such removal is required by a subsequent attachment request or in order to comply with WAC 480-100-148.

In summary, many parts of WAC Chapter 480-54 cause pole owners to incur costs and those same (or other) provisions do not specifically provide for the pole owner to recover the costs. These parts include, but are not limited to: -020(13), -020(19), -030(3),-030(4), -030(5), -030(5)(a), -030(6), -030(8)(b), -030(9), -030(10), -030(11), -040(1), -040(2), -040(3), -050(1), -050(2), -050(3), and -050(5). Instead the costs are to be included in the application fee or the cost of make-ready work (as appropriate) as supported by the Staff Recommendations in the comment matrix. The exceptions include WAC 480-54-030(11) where the costs are subsidized by all attachers through the pole attachment rate and in WAC 480-54-050 where the costs are shifted (in part) to all attachers. Both of these exceptions shift costs to the customers of the pole owners (in PSE's case to the electric customers) creating a cross subsidy for which there is no direct benefit as an electric rate payer.

8) The extent, if any, to which the FCC's Open Internet decision, *In re Protecting and Promoting the Open Internet*, GN Docket No. 14-28, FCC 15-24, Report and Order on Remand, Declaratory Ruling, and Order (March 12, 2015), affects the Commission's ability to adopt rules implementing RCW 80.54 or rules that vary from the FCC's own pole attachment rules.

PSE Response: PSE believes that the FCC's Open Internet decision should have no impact on the Commission's ability to adopt rules implementing RCW 80.54 or that vary from the FCC's own pole attachment rules in Section 224 of Title 47 of the federal code since the Open Internet decision relates to regulation of broadband internet services and not to pole attachments. PSE believes that the Commission's obligations related to rules for pole attachments are to follow RCW 80.54 which requires, in part, that the Commission "…shall assure the utility the recovery of not less than all the additional costs of procuring and maintaining pole attachments…" and to regulate the utility so that "…rates, terms, and conditions made, demanded, or received are just, fair, reasonable, ***and sufficien***t." (emphasis added)