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June 29, 2015

**Via FedEx and Electronic Submission**

Washington Utilities & Transportation Commission  
Attn: Steve King  
1300 S. Evergreen Park Drive S.W.  
Olympia, WA 98504-7250

Re: *In the Matter of the Formal Complaint by Frontier Communications Northwest Inc.  
against Puget Sound Energy, Inc. Regarding Unjust and Unreasonable Utility Pole  
Attachment Rates*

Dear Mr. King,

Enclosed please find Frontier Communications Northwest Inc.'s Formal Complaint against Puget Sound Energy, Inc., with said enclosures.

Please do not hesitate to contact us should you have any questions.

Best regards,



Stephanie E. L. McCleery

Enclosures

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of the Formal  
Complaint by Frontier  
Communications Northwest Inc.  
against Puget Sound Energy, Inc.  
Regarding Unjust and Unreasonable  
Utility Pole Attachment Rates

Docket No.

FRONTIER'S FORMAL COMPLAINT  
AGAINST PUGET SOUND ENERGY

**Introduction and Relief Requested**

1. This is a Formal Complaint by Frontier Communications Northwest Inc. (“Frontier”) against Puget Sound Energy, Inc. (“PSE”) regarding PSE’s unjust and unreasonable utility pole attachment rates. PSE, a utility company, is the Plaintiff in a case currently pending before the Washington Superior Court for King County that alleges that Frontier, an incumbent local exchange telecommunications company, owes fees pursuant to a Pole Attachment Agreement (“Agreement”) between the parties. That Agreement allows both parties to attach equipment to each other’s utility poles, for a fee. The parties dispute how that fee should be calculated. The parties have explicitly recognized the WUTC’s jurisdiction in the body of their Agreement. The WUTC has primary jurisdiction over this dispute, and Frontier has moved the Court to dismiss or stay this lawsuit and to refer the issues herein to the WUTC. This Complaint asks the WUTC to assume jurisdiction over the issues and resolve the dispute.

**The Parties**

2. Complainant Frontier is a Washington corporation with its principal place of business in Snohomish County, Washington. Frontier provides a variety of telecommunications services to customers in Washington and Oregon. Frontier owns utility poles, some wholly and

some fractionally with a third party (in this instance, the Snohomish County PUD), and uses these poles to deliver services to its customers. Frontier leases space on utility poles owned by PSE, and in turn rents space to PSE on some of its wholly- and fractionally-owned poles. The full name and addresses of the Complainant and the Complainant's attorneys are:

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3. Respondent PSE is a Washington corporation with its principal place of business in King County, Washington. PSE owns utility poles throughout its service territory for the purposes of transmitting and distributing electricity to customers. PSE rents space on some of its utility poles to Frontier, and leases space on Frontier's wholly- and fractionally-owned poles.

The full name and addresses of the Respondent and the Respondent's attorneys are:

Puget Sound Energy, Inc.  
P.O. Box 97034  
Bellevue, WA 98009

James F. Williams, WSBA # 23613  
JWilliams@perkinscoie.com  
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Perkins Coie LLP  
1201 Third Ave., Suite 4900  
Seattle, WA 98101  
(206) 359-8000

### **Jurisdiction**

4. Both parties conduct and transact business in Washington and both are explicitly regulated by the WUTC.

5. This dispute falls squarely within the authority of the WUTC, which is charged with "regulat[ing] in the public interest the rates, terms, and conditions for [utility pole] attachments." RCW 80.54.020.

6. The WUTC has statutory authority to resolve the parties' dispute over pole attachment fees. Under its general powers and duties, the WUTC "shall . . . regulate . . . the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation." RCW 80.01.040. Furthermore, the WUTC is legislatively mandated to regulate "the rates, terms, and conditions for [pole] attachments by licensees or utilities." RCW 80.54.020.

7. This dispute is directly within the WUTC's mandate because it involves a disagreement over the rates, terms, and conditions of the parties' Pole Attachment Agreement.

8. The WUTC has special competence to resolve disputes related to the fairness of pole attachment fees. The Washington legislature has recognized the WUTC's expertise by tasking the agency with determining the reasonableness of pole attachment "rates, terms, and conditions." RCW 80.54.030.

9. The WUTC is currently in a rule-making cycle regarding some of the specific issues in this case. *See* Third Draft Rules Governing Access to Utility Poles, Ducts, and Conduits, Docket U-140621 (March 24, 2015).

10. Given the WUTC's experience and familiarity with its own regulatory scheme, the agency's expertise should be applied to determine whether the fees are just and reasonable.

11. Litigating this dispute as an ordinary breach of contract claim, as PSE intends, would ignore the legislative criteria that the WUTC must follow in determining a "just and reasonable rate" for pole attachments. RCW 80.54.040.

12. As noted *supra*, the WUTC is in the process of adopting additional pole attachment rules directly addressing the core issue in this dispute: the fairness of a party being treated as owning an entire utility pole for purposes of rate calculations when, in fact, it only owns a portion of the utility pole, thereby artificially lowering the net cost per pole in rate calculations.

13. After accepting rounds of comments from a variety of interested parties (including comments from both PSE and Frontier), and drafting multiple revisions, the current

draft of proposed rules clarifies that “poles” in attachment agreements should be calculated based on proportional ownership.

14. The WUTC has drafted rules that explain what constitutes “[a] fair, reasonable, and sufficient rate for attachments,” and actually set a specific formula for determining such a rate that takes into account the effect of partial ownership of poles.

15. The parties have explicitly recognized the jurisdiction of the WUTC over their Pole Attachment Agreement. (*See* Section 6.1.2.)

### **Statement of Facts**

16. PSE is a Washington electric utility company that provides retail electric service. It owns utility poles throughout its service territory that it uses to distribute electricity to customers.

17. Frontier is a Washington telecommunications company that provides telephone and other communications services to customers throughout Washington. It also owns utility poles throughout its service territory.

18. Frontier wholly owns some of its poles, but jointly owns approximately 70,000 poles with a local utility company (the Snohomish County PUD).

19. On August 1, 2002, PSE and Verizon Northwest, Inc. (“Verizon”) entered into a Pole Attachment Agreement that allowed each party to attach equipment to the other party’s utility poles. In exchange, the parties charge each other a rental rate.

20. The rental rate is calculated, in part, by the number of “distribution poles” a party owns, however the term “distribution poles” is not a defined term in the Agreement.

21. On July 1, 2010, Frontier Communications Corporation purchased all outstanding shares of Verizon Northwest, Inc. and then changed the name to Frontier Communications Northwest Inc.

22. This complaint involves the proper method for calculating pole rental rates under the Agreement.

23. The Agreement is silent on how the term “distribution poles” should be calculated in the annual rate calculation.

24. In April 2013, Frontier discovered that the parties had been miscalculating the number of distribution poles that Frontier owns, leading to over a half-million dollar windfall for PSE.

25. Frontier fractionally owns over 70,000 poles jointly with Snohomish County Public Utility District No. 1. For those 70,000 poles, Frontier owns only 45 percent of each pole.

26. PSE’s interpretation of “distribution poles” under the Pole Attachment Agreement fails to account for Frontier’s fractional ownership of those 70,000 utility poles.

27. Verizon, Frontier and PSE had mistakenly treated those poles under the Pole Attachment Agreement as being fully owned by Frontier.

28. This error resulted in PSE paying a significantly lower pole attachment rental rate than it should have, in the amount of \$624,472. Frontier notified PSE of this under-billing.

29. After several discussions with PSE about this billing issue, Frontier offset approximately half of the total amount PSE had been under-charged from subsequent payments due to PSE under the Agreement.

30. PSE filed a lawsuit on February 8, 2015, asserting two claims for breach of contract, one claim for anticipatory breach, and one claim for declaratory judgment. It disagrees with Frontier’s interpretation of the term “distribution poles.” PSE contends that the 70,000 utility poles that Frontier fractionally owns should be treated as if they are wholly owned by Frontier.


31. The parties’ have a duty under the Agreement to mediate disputes prior to litigation. Mediation efforts have been unsuccessful, and Frontier is seeking to dismiss or stay the King County Superior Court action so that the parties’ rate dispute can properly proceed before the WUTC.

**Relief Requested**

32. Frontier respectfully requests the Commission find the following:
- a. that PSE has refused, and continues to refuse, to pay a just and reasonable pole attachment rate to Frontier;
  - b. that PSE has unjustly enriched itself at Frontier's expense;
  - c. that PSE has been undercharged for attachments to Frontier poles by approximately \$624,472;
  - d. that a pole attachment rate calculation formula that does not account for fractionally owned utility poles is inherently unjust and unreasonable;
  - e. that the pole attachment rate calculation formula in the parties' Agreement must account for fractionally-owned utility poles; and,
  - f. any other relief the Commission deems appropriate.

DATED this 29th day of June, 2015.

K&L Gates LLP


By:  \_\_\_\_\_  
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Communications Northwest Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on June 29, 2015 a true and correct copy of the foregoing **FRONTIER'S FORMAL COMPLAINT AGAINST PUGET SOUND ENERGY** was submitted via Electronic Service, via the Washington Utilities and Transportation Commission's web portal and served upon the parties addressed below via email and first class mail:

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**POLE ATTACHMENT AGREEMENT**

**between**

**PUGET SOUND ENERGY, INC.**

**and**

**VERIZON NORTHWEST INC.**

**Dated August 1, 2002**

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~~POLE ATTACHMENT AGREEMENT~~

**FOR**

**VERIZON NORTHWEST INC.**

This Agreement, dated as of August 1, 2002, is made by and between Puget Sound Energy, Inc., a Washington corporation ("Puget"), and Verizon Northwest Inc., a Washington corporation, ("Verizon"). In this Agreement, Puget and Verizon are sometimes referred to individually as a "Party" and collectively as the "Parties"; references to "User" or "Owner" refer to either Party interchangeably as the context may require.

**RECITALS**

- A. Puget operates an electric system, including a distribution system, within the State of Washington. Verizon operates a communications distribution system within the State of Washington.
- B. The Parties often use utility poles to support wires, cables, equipment and other items constituting part of their respective distribution systems.
- C. The Parties desire to cooperate in the joint use of their respective utility poles.

**AGREEMENT**

Puget and Verizon agree as follows:

**Section 1 Scope and Definitions**

**1.1 Scope**

This Agreement governs all attachments of a Party's Equipment to any Pole owned in whole or in part by the other Party which are now existing or hereafter made with the consent of such other Party.

**1.2 Definitions**

When used in this Agreement with the initial letter capitalized, the following terms shall have the following specified meanings:

"AAA" means the American Arbitration Association.

"Abandoned Pole, Abandonee, Abandoner, Abandonment Notice, Abandonment Date and Abandoner Indemnities" shall have their respective meanings specified in Section 7.

"Annual Rate" shall have its meaning specified in paragraph 6.1.1.

"Another" and "Another's Equipment" shall have their respective meanings specified in paragraph 10.1.

"Application" means either a written or electronic communication substantially in the form of a NJUNS Ticket or the Application for Attachment attached hereto, as Appendix II, including the information required by paragraph 2.2.

"Consent" means, with respect to a Party, either a written or electronic notification or communication sent by such Party which expressly gives the Party's affirmative consent to and approval of the matter for which the Party's consent is required.

"Defaulting Party" shall have its meaning specified in Section 14.

"Dispute" shall have its meaning specified in paragraph 16.16.

"Equipment" means the crossarms, wires, cables, cable clamps, guys, brackets, equipment, equipment enclosures, transformers, terminals, streetlights, meters, and all other items related to a Party's distribution system within the State of Washington.

"JAMS" means the Judicial Arbitration and Mediation Services, Inc.

"Joint Audit" shall have its meaning specified in Section 5.

"Joint Owner" means, with respect to a Pole, one of the Parties that has a partial ownership interest in a Pole.

"Joint Pole" means a Pole owned in whole or in part by a Party to which Equipment of the other Party is attached.

"Indemnitees" means, with respect to a Party, that Party and its successors and assigns, and the respective directors, officers, employees, agents, and representatives of such Party and its successors and assigns.

"NJUNS" means the National Joint Utilities Notification System or a substantially comparable electronic communication system that both Parties agree, in writing, to use.

"NJUNS Ticket" means the electronic communication provided by NJUNS, or its equivalent, used by both Parties to communicate activities and dates related to a Pole.

"Normal Joint Pole" means a forty (40) foot, fully treated, wood Pole, classified by the American National Standards Institute as a class three (3) Pole.

"Owner" means, with respect to a Pole, the Party that owns in whole or in part the Pole.

"Pole" means a utility pole located within the State of Washington owned in whole or in part by a Party.

"Puget's Annual Rate and Puget's Annual Rental Rate" shall have their respective meanings specified in paragraph 6.1.1.

"Replacing Party" means the Party replacing, relocating, or removing a Pole.

"Sole Owner" means, with respect to a Pole, the Party that owns in whole the Pole.

"Verizon's Annual Rate and Verizon's Annual Rental Rate" shall have their respective meanings specified in paragraph 6.1.2.

"Term" means the term of this Agreement specified in paragraph 14.

"Terminating Party" shall have meaning specified in Section 14.

"User" means, with respect to a Pole, the Party that has, or desires to have, its Equipment attached to the Pole that is owned in whole or in part by the other Party.

"Value-In-Place" means the then current cost that would be incurred to replace a Pole, reduced to reflect ordinary wear and tear, all determined in accordance with methods established and consistently applied by the Parties. For purposes of determining Value-In-Place, the cost to replace a Pole shall include, but not necessarily be limited to, the following:

The cost to remove the replaced Pole; the cost of a replacement Pole; the cost to furnish all labor, equipment, tools, materials, handling, engineering, supervision, services, transportation and other items to install the Pole; the cost to replace anchors and grounding material for the Pole; the cost of acquiring and maintaining all permits, licenses, franchises, and other rights associated with the Pole; and a reasonable allowance for overhead, general administrative and other indirect costs.

"Work" means any attaching, moving, maintaining, repairing, replacing or removing of any Equipment related to a Joint Pole; any installing, relocating, maintaining, repairing, replacing or removing of a Joint Pole; and any other work by a Party or any of its contractors or suppliers of any tier in connection with a Joint Pole or any Equipment related to a Joint Pole.

## **Section 2 Attachments**

### **2.1 Restriction**

The User shall not attach any Equipment to any Pole without the Owner's prior Consent. Such Consent shall not be unreasonably withheld in the case of a Pole owned by both Parties. In the case of a Pole in which the User has no ownership interest, the Owner may withhold its Consent for any or no reason whatever, subject to the applicable Federal or State law, rule, or regulation. This Agreement shall not in itself constitute any such Consent. The User shall, upon the Owner's request, promptly remove any Equipment attached to any Pole without the Owner's Consent.

The User may install service drops to unpermitted Poles without the Owner's prior Consent provided that the Application for the newly installed service drop is received by the Owner within ten (10) days following the date the service drop was installed. An Application for a newly installed service drop is not required on Poles for which the Owner has previously granted Consent for attachment of User's Equipment.

### **2.2 Application**

A Party desiring to attach any of its Equipment, other than service drops, to any Pole owned in whole or in part by the other Party shall submit to the other Party an Application therefor. Each Application shall describe in detail:

- (a) the User's Equipment to be attached;
- (b) the Owner's Poles that will be affected by the attachment;
- (c) the amount of space desired by the User on each of the Owner's Poles that will be affected by the attachment;
- (d) the proposed location of the User's Equipment on the Owner's Poles that will be affected by the attachment;
- (e) the approximate dates on which the User will make the attachment;  
and
- (f) the action that the User proposes in order to satisfy the obligations under paragraph 2.4 below to accommodate the additional strain that will be imposed upon the Owner's Poles that will be affected by the attachment.

Each Application shall also include working sketches and such other information (for example, with regard to the proposed nature, appearance, circuit arrangement, line sags and location of the User's Equipment) as the Owner may reasonably request. The Owner shall endeavor to process and respond to each Application submitted by the User within thirty (30) calendar days after the Owner's receipt of such Application.

### **2.3 Making an Attachment**

If the Owner gives its Consent to attachment of the User's Equipment, the User shall make the attachment only in strict accordance with:

- (a) the Application therefor;
- (b) any conditions or qualifications set forth in the Owner's Consent thereto; and
- (c) the provisions of this Agreement.

### **2.4 Guys and Anchors**

If existing anchors are adequate in size and strength to support the Equipment of both Parties, the User may attach its guys to such existing anchors at no cost. If existing anchors are not adequate, the User shall at its sole expense install all anchors necessary to support the additional strain imposed on any Pole by attachment of the User's Equipment. Guys shall be installed at the sole expense of the Party requiring such guys. If the Owner installs or replaces any guys or anchors to support the additional strain imposed on any Pole by attachment of the User's Equipment, the User shall reimburse the Owner on demand for the entire costs of such installation or replacement (including, but not limited to, the cost of installing or transferring guys to such anchors).

### **2.5 Removal of User's Equipment**

The User may at any time remove any or all of its Equipment from any Joint Pole. The User shall give the Owner written or electronic notice of any removal of the User's



Equipment from any Joint Pole. The date on which the NJUNS Ticket is closed shall be the effective date that the User's Equipment has been removed from said Pole.

## **2.6 Specifications for Attachments**

Each Party shall endeavor to use all attachments of its Equipment to any Joint Pole in accordance with all applicable:

- (a) laws, ordinances, rules, regulations, orders, licenses, permits, and other requirements of governmental authorities; and
- (b) the Owner's standard practices, specifications, rules and regulations, a copy of which will be provided by the Owner to the User upon request.

## **Section 3: Installing, Replacing, Relocating and Removing Joint Poles; Transfers**

Whenever a Party plans to install, replace, relocate, or remove a Joint Pole, such Party shall notify the other Party of its intentions by issuing a NJUNS Ticket. Each Party shall update the NJUNS Ticket in a timely manner when such Party's scheduled task on said NJUNS ticket has been completed. Information in the NJUNS Ticket may be augmented by paper records, such as maps and work sketches, and by oral communications.

If Verizon installs, replaces, relocates, or removes a Joint Pole, Verizon shall ensure that all activities required to be performed by qualified electrical workers, in accordance with the Washington Administrative Code, are, in fact, performed by such workers.

### **3.1 Installing, Replacing, Relocating and Removing Joint Poles**

#### **3.1.1 Notice**

If the Sole Owner of a Joint Pole desires to install, replace, relocate, or remove such Pole, such Sole Owner shall provide the User advance written or electronic notice of such Work. Further, the Sole Owner shall provide the User, to the extent necessary to accommodate the requirements of the User's existing Equipment, a reasonable opportunity to participate in the design, engineering and other planning of any additional, replacement or relocated Joint Pole as well as the Work related to the installing, replacing, relocating or removing of any Joint Pole. The User shall fully cooperate with the Sole Owner regarding and be solely responsible for any attaching, moving, relocating or removing of (or other Work related to) the User's Equipment required to effectuate the expeditious, efficient and orderly installing, replacing, relocating or removing of a Joint Pole by the Sole Owner. If the Sole Owner gives the User at least thirty (30) days' advance written or electronic notice of Work to be performed by the User following the date all third parties have vacated the Joint Pole, the User will reimburse the Sole Owner according to Appendix III for all costs incurred by the Sole Owner as a result of any failure of the User to timely perform such Work.

#### **3.1.2 Pole Placed in Same Hole**

If the Joint Pole to be replaced has User's Equipment, such as risers, attached, then the Sole Owner will position the replacement Pole in the same hole as the replaced Pole previously occupied if feasible.

### **3.1.3 Pole Size**

The Sole Owner shall provide a Pole of height, strength, class, and at a location suitable for attachment of the User's Equipment; provided, however, that in the case of installation or replacement requiring additional or extraordinary measures to provide a location suitable for the User's Equipment, such User shall reimburse the replacing Party for expenses associated with such measures.

### **3.1.4 Jointly Owned Poles**

If the Replacing Party desires to replace, remove, or relocate a Joint Pole of which such Replacing Party is not the Sole Owner, the Replacing Party shall provide the other Party advance written or electronic notice of such Work. Further, the Replacing Party shall provide the other Party, to the extent necessary to accommodate the requirements of the other Party's existing Equipment, a reasonable opportunity to participate in the design, engineering, and other planning of any replacement or relocated Joint Pole. The other Party shall fully cooperate with the Replacing Party regarding, and be solely responsible for, any attaching, moving, relocating, or removing of (or other Work related to) the other Party's Equipment required to effectuate the expeditious, efficient and orderly replacing, relocating, or removing of a Joint Pole by the Replacing Party. If the Sole Owner gives the User at least thirty (30) days' advance written or electronic notice of Work to be performed by the User following the date all third parties have vacated the Joint Pole, the User will reimburse the Owner for all costs incurred by the Owner as a result of any failure of the User to timely perform such Work.

## **3.2 Transfer of Equipment to the New Pole**

### **3.2.1 Puget Transfers Verizon's Equipment**

If Puget replaces an existing Joint Pole, Puget will transfer its Equipment to the replacement Pole. Puget may also transfer Verizon's Equipment with Verizon's prior approval. The physical transfer shall be made at the sole risk and expense of Verizon. If Puget transfers Verizon's Equipment to the replacement Pole in conjunction with the time Puget is transferring its own Equipment to the replacement Pole, Verizon shall reimburse Puget for any and all costs and expenses incurred in connection with such transfer in accordance with Appendix III, "First Trip Costs," which may be amended from time to time.

### **3.2.2 Puget Does Not Transfer Verizon's Equipment**

If Puget replaces a Joint Pole and Puget does not have Verizon's approval or is otherwise unable to transfer Verizon's Equipment to the replacement Pole, then Puget may remove the upper portion of the replaced Pole at a point approximately one (1) foot above the highest communications attachment and Verizon shall reimburse Puget in accordance with Appendix III. When Verizon has transferred its Equipment to the replacement Pole, Verizon shall remove the topped, replaced Pole (back-fill and restore the surface of the ground) and deliver the replaced Pole to the nearest Puget yard for disposal. Along with each such delivered Pole, Verizon shall supply to Puget a written record showing Puget's Pole number.

Puget shall reimburse Verizon in accordance with Appendix III for such Work. Verizon shall promptly update the NJUNS Ticket.

If Verizon fails, after thirty (30) days notice on the NJUNS Ticket from Puget following the removal of all third party attachments to the Pole, to transfer its Equipment from the replaced Pole to the replacement Pole and perform such other Work as described in this section 3.2.2, Puget may have such Work performed by a licensed contractor competent to perform such Work and charge Verizon costs for such Work in accordance with Appendix III, "Return Trip Costs."

### **3.3 Pole Removal**

If the Sole Owner of a Joint Pole desires to remove such Pole, such Sole Owner shall provide the User advance written or electronic notice of such Work. Further, the Sole Owner shall provide the User, to the extent necessary to accommodate the requirements of the User's existing Equipment, a reasonable opportunity to participate in the design, engineering and other planning of any Work related to the removing of any Joint Pole.

## **Section 4 Expense of Installing, Replacing, Relocating and Removing Poles**

### **4.1 General**

The Sole Owner of a Joint Pole shall maintain such Joint Pole in a safe and serviceable condition and in accordance with the requirements of the NESC and shall replace, reinforce, or repair such Pole should it become defective.

Except as otherwise expressly provided in this Agreement, the installation, replacement, relocation, and removal of any solely owned Pole shall be at the sole expense of the Sole Owner.

### **4.2 User's Sole Requirements (Installing Additional Joint Poles)**

In the case of installing an additional Joint Pole (such as an interset or midspan Pole) solely to accommodate the requirements of the User:

- (a) the Sole Owner of the new Pole shall bear the cost of the Pole, the crossarms, guys, anchors, and associated hardware items; and
- (b) the User shall bear the cost for all labor, tools, materials handling, engineering, and other ancillary items to install the Pole; and
- (c) the User shall bear the cost of attaching the Sole Owner's Equipment to such Pole.

### **4.3 User's Sole Requirements (Owner Replaces Existing Joint Poles)**

In the case of the Sole Owner replacing an existing Joint Pole solely to accommodate the requirements of the User:

- (a) the Sole Owner shall bear the cost of the Pole, the crossarms, guys, anchors, and associated hardware items; and

(b) the User shall bear the cost for all labor, tools, materials handling, engineering, and other ancillary items to install the Pole; and

(c) the User shall bear the cost of transferring the Sole Owner's Equipment from the replaced Pole to the Replacement Pole.

#### **4.4 User's Sole Requirements (User Replaces Existing Joint Poles)**

If the User of an existing Joint Pole, having received the prior approval of the Sole Owner, replaces such Joint Pole with a new Joint Pole, the Parties shall jointly determine the costs to be recovered by the User. If the User of an existing Joint Pole replaces such Pole without the prior approval of the Sole Owner, the User shall bear the full cost of replacement.

#### **4.5 Taller or Stronger Poles**

In the case of installing a Joint Pole (whether an additional Joint Pole or to replace an existing Joint Pole) that is taller or stronger than a Normal Joint Pole, the following shall apply:

(a) If the height or strength in excess of the height or strength of a Normal Joint Pole is solely to accommodate the requirements of the User, then the User shall pay to the Owner an amount equal to the difference between the Value-in-Place of such Joint Pole and the Value-in-Place of a Normal Joint Pole, determined at the time of such installation; and

(b) If the height or strength in excess of the height or strength of a Normal Joint Pole is to satisfy the requirements of both Parties, then:

(i) if Puget is the Sole Owner, Verizon shall pay to Puget an amount equal to forty percent (40%) of the difference between the Value-in-Place of such Joint Pole and the Value-in-Place of a Normal Joint Pole, determined as of the time of such installation; or

(ii) If Verizon is the Sole owner, Puget shall pay to Verizon an amount equal to sixty percent (60%) of the difference between the Value-in-Place of such Joint Pole and the Value-in-Place of a Normal Joint Pole, determined as of the time of such installation.

#### **4.6 Maintenance of Joint Poles**

In connection with a Party's inspection or treatment program for wood decay of any of its own Poles, such Party may, at its option and with the prior consent of the other Party, so inspect and treat any Joint Poles owned by the other Party which are located in the same geographic area as the inspecting Party's Poles. Such other Party agrees to accept the results of inspections performed in accordance with agreed-upon Joint Pole testing and maintenance procedures; such results include but are not limited to the determination to replace Poles, where such replacement is shown by the inspection to be necessary. The other Party releases each of the inspecting Party's Indemnitees from any responsibility or liability arising out of any inspection or treatment under this paragraph; this release shall apply regardless of any act, omission, fault, negligence, or strict liability of any of the inspecting Party's Indemnitees.

#### **4.7 Cross Arms**

In the case of installing, maintaining, and owning a cross arm for communication conductors on a solely owned Pole, the Sole Owner of the Pole shall bear the cost to provide, install, and maintain the cross arm. In the case a Pole owned in part by both Parties, Puget shall provide, install, and maintain the cross arm for communication conductors and administer attachments on the cross arm.

#### **4.8 Replacement of Joint Poles Owned by Both Parties**

##### **4.8.1 Replacing a Serviceable Pole**

The Replacing Party replacing a serviceable Joint Pole owned by both Parties shall:

- (a) bear the cost to provide and install the replacement Pole; and
- (b) remove and dispose of the replaced Pole, backfill and restore the surface of the ground; and
- (c) reimburse the other Party for the cost of transferring such other Party's Equipment from the replaced Pole to the replacement Pole, except that, in the case of a relocation required by a governmental authority, each Party shall bear the cost of transferring its Equipment from the replaced Pole to the replacement Pole.

##### **4.8.2 Replacing a Defective or Damaged Pole**

The Replacing Party replacing a defective or damaged Joint Pole owned, in part, by both Parties shall provide to the other Party an itemized invoice for the cost of the replacement Pole, its installation, and the cost to remove the replaced Pole and to back-fill and restore the surface of the ground. The Parties shall share in such costs with Puget paying sixty percent (60%) and Verizon paying forty percent (40%) of such costs. Each Party shall bear the cost of transferring its Equipment from the replaced Pole to the replacement Pole.

##### **4.8.3 Costs for Replacing a Pole**

In the cases described in 4.8.1 and 4.8.2 above, the Replacing Party shall provide the other Party a NJUNS Ticket. If the other Party fails, after thirty (30) days notice on the NJUNS Ticket from the Replacing Party, to transfer its Equipment from the replaced Pole to the replacement Pole, the Replacing Party may at the other Party's expense, have such Work performed by a licensed contractor competent to perform such Work.

#### **4.9 Relocating Existing Poles**

In the case of relocating an existing Pole solely to accommodate the requirements of the User, the User shall reimburse the Owner for all costs of such relocating.

#### **4.10 Ownership**

Each Party hereby reserves all rights with respect to each Joint Pole to which it is an Owner. Other than pursuant to Section 7 hereto, a Party shall not acquire or increase any ownership interest in a Joint Pole to which the other Party is an Owner by virtue of

replacement, relocation or maintenance performed on such Joint Pole, or any payments made by a Party to the other Party with respect thereto.

#### **4.11 Hazardous Waste Disposal Expenses**

The Parties acknowledge that during the period covered by this Agreement, an agency of the federal, state or local government may classify chemicals used as a preservative or other treatment of the Poles as hazardous waste or toxic waste requiring special disposal procedures. The Party that is the Sole Owner of a given pole at the time of disposal shall bear the full cost of any special disposal procedures. The cost of any special disposal procedures shall be split between the Parties with Puget paying sixty percent (60%) and Verizon paying forty percent (40%) for any poles that are jointly owned by both Parties.

### **Section 5 Audits**

The process of comparing a Party's Joint Pole records and the Equipment attached thereto with what is actually found in the field and correcting such records to reflect what was found in field is known as an audit. An audit conducted by both Parties simultaneously, in concert, and for an area agreed to by both Parties, is known as a "Joint Audit."

#### **5.1 Joint Audits Preferred**

The purpose of a Joint Audit is to correct any deficiencies in each Party's records regarding the Equipment attached to the Joint Poles and the ownership of such Joint Poles. The Parties agree that Joint Audits should be performed at least every eight (8) years..

#### **5.2 Joint Audits**

While participating in a Joint Audit, each Party shall cooperate with the other Party to identify and resolve any difference in their respective records. A Joint Audit may be conducted on all or any portion of the Joint Poles and the Equipment attached thereto. If any such Joint Audit discloses differences, discrepancies, or omissions in the records of the Parties, the Parties shall endeavor to quickly resolve and correct such differences, discrepancies, or omissions to the satisfaction of both Parties.

Any differences, discrepancies, or omissions in the Parties' records resulting from the Joint Audit that, if corrected, would result in the payment of fees by one Party to the other Party shall be limited to five (5) years back rent without interest. Such fees, if any, shall be paid immediately.

For any Joint Audit currently underway at the beginning of the Term of this Agreement, neither Party shall be liable for back rent payable to the other Party if any such liability should be found as a result of the Joint Audit.

#### **5.3 Unilateral Audits**

If more than eight (8) years has elapsed since the commencement of the field work of the last previous Joint Audit, then either Party may, at its option and cost, conduct an audit of all or any portion of the Joint Poles and the Equipment attached thereto. If any such audit discloses that the other Party has failed to pay any fees or other amounts properly payable hereunder, such other Party shall immediately pay to the auditing Party the full amount of

such deficiency, plus interest thereon in accordance with paragraph 6.3. If the deficiency disclosed by such audit exceeds ten percent (10%) of the total fees properly payable by the audited Party for the period of time covered by the audit, such Party shall immediately pay or reimburse all costs incurred by the auditing Party to conduct the audit.

## **Section 6      Payments**

### **6.1      Annual Rate**

#### **6.1.1      Rate Schedules**

The term "Annual Rate" shall mean the annual charge in effect from time to time for one Party's use of the other Party's solely owned Poles as calculated in accordance with the formulas set forth in Appendix IV. The formula in Schedule 1 of Appendix IV applies to those Joint Poles owned solely by Puget. The formula in Schedule 2 of Appendix IV applies to those Joint Poles owned solely by Verizon. The Annual Rate formula for each Party in effect on the date of this Agreement is set forth in Appendix IV.

The formulas in Schedules 1 and 2 of Appendix IV provide the means to adjust the Annual Rate by inserting the then current values into the elements of the formulas. The formulas, their elements, and their calculations shall not be revised during the Term of this Agreement except as provided in paragraph 6.1.2

#### **6.1.2      Revision of the Annual Rate Formula**

Notwithstanding the foregoing paragraph 6.1.1, the formulas to determine the Annual Rate shown in Schedules 1 and 2 of Appendix IV may be revised during the Term by mutual agreement between the Parties or by the imposition of a revision by the WUTC or other governmental authority with jurisdiction in such matters.

#### **6.1.3      Effective Date of Revisions to the Annual Rate**

Except for the provision in this paragraph 6.1.3, any revisions to the Annual Rate formulas in Appendix IV shall be effective on a date agreed to by both Parties or on the date imposed by the governmental authority with jurisdiction in such matters.

### **6.2      Annual Fees**

#### **6.2.1      Fees Paid to Puget**

As soon as practicable after each April 30 occurring after the date of this agreement, Puget shall determine, as of such April 30:

- (a) the number of Joint Poles owned by Puget; and
- (b) the Annual Rate for each Joint Pole owned by solely Puget calculated in accordance with Schedule 1 of Appendix IV.

Verizon shall pay to Puget for the calendar year (i.e. January 1 through December 31) which includes such April 30, above, an amount equal to the Annual Rate

(determined in accordance with paragraph 6.2.1 (b)) multiplied by the number of Joint Poles solely owned by Puget.

#### **6.2.2 Fees Paid to Verizon**

As soon as practicable after each April 30 occurring after the date of this agreement, Verizon shall determine, as of such April 30:

- (a) the number of Joint Poles owned by Verizon to which Puget has primary attachments;
- (b) the number of Joint Poles owned by Verizon to which Puget has secondary attachments; and
- (c) the Annual Rate for each Joint Pole owned solely by Verizon calculated in accordance with Schedule 2 of Appendix IV.

Puget shall pay to Verizon for the calendar year (i.e. January 1 through December 31) which includes such April 30, above, an amount equal to the Annual Rate (determined in accordance with paragraph 6.2.2 (b)) multiplied by the number of Joint Poles solely owned by Verizon.

#### **6.3 Payment Terms**

All amounts payable by one Party to the other pursuant to this Agreement shall be paid within thirty (30) days after the owing Party's receipt of a correct invoice from the billing Party, supported by such documents and information as the owing Party may reasonably request to verify the invoice. A Party performing any Work, the expense of which is to be borne by the other Party, shall submit its invoice therefor promptly after completion of such Work; any such invoice shall be supported by a detailed itemization of such expense and such other information as the owing Party may reasonably request to verify the amount owing.

Any amounts not paid when due under this Agreement shall bear interest, compounded daily, at the rate of one-and-one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the date due until the date paid. Payment of such interest shall not excuse or cure any breach of or default under this Agreement.

#### **6.4 Addresses for Invoices**

Unless otherwise directed by Verizon, Puget shall submit all of its invoices for payments by Verizon by mailing to the following address:

Verizon Northwest Inc.  
Attn. Joint Use Mailstop WA0103NP  
PO Box 1003  
Everett, WA 98206-1003

Unless otherwise directed by Puget, Verizon shall submit all of its invoices for payment to Puget by mailing to the following address:



Puget Sound Energy, Inc.  
Attn. Joint Facilities Administrator  
PO Box 90868 GEN-02W  
Bellevue, WA 98009-0868

## **Section 7 Abandonment of Joint Poles**

### **7.1 Notice**

If the Owner of a Joint Pole, whether a Sole Owner or Joint Owner (the "Abandoner"), desires at any time to abandon the use of and ownership interest in that Joint Pole (the "Abandoned Pole") to the User or other Joint Owner (the "Abandonee") of the Abandoned Pole, the Abandoner shall give the Abandonee written or electronic notice, such as a NJUNS Ticket ("Abandonment Notice"). The Abandonee may reject the transfer of title by so designating in its response to the Abandonment Notice within thirty (30) days from the date of the Abandonment Notice.

The Abandonment Notice must state:

- (a) the Abandoner's intention to abandon the use and ownership of the Abandoned Pole to the Abandonee;
- (b) the date (the "Abandonment Date"), not less than thirty (30) days after the date on which the Abandonment Notice is sent by the Abandoner, by which the Abandoner intends to remove all of its Equipment from the Abandoned Pole; and
- (c) a description of any attachment of Another's Equipment to the Abandoned Pole ("Another" and "Another's Equipment" are defined below in paragraph 10.1).

### **7.2 Transfer of Title**

Title to the Abandoned Pole shall automatically transfer from the Abandoner to the Abandonee at the close of business on the Abandonment Date provided that:

- (a) the Abandoner has removed all of its Equipment from the Abandoned Pole on or before the Abandonment Date, and
- (b) the Abandonee has not removed all of its Equipment from the Abandoned Pole prior to the Abandonment Date.

The NJUNS Ticket shall serve as evidence of transfer of title. Any attachments by Another shall be governed by the license agreement between the new Sole Owner and the Another as of the close of business on the Abandonment Date.

### **7.3 Indemnity**

If title of an Abandoned Pole is transferred to the Abandonee, the Abandonee shall release, defend, indemnify and hold harmless the Abandoner, its successors and assigns and the respective directors, officers, employees, agents and representatives of the Abandoner and its successors and assigns (collectively, the "Abandoner Indemnitees") from all claims, losses, harm, costs, liabilities, damages and expenses (including, but not limited to,

reasonable attorneys' fees) arising after the date of such transfer on account of the placement or otherwise in connection with the Abandoned Pole. To the fullest extent permitted by applicable law, this release, defense, indemnity and hold harmless shall apply regardless of any act, omission, fault, negligence, or strict liability of any of the Abandoner Indemnites.

## **Section 8 Performance of Work**

### **8.1 General**

Each Party shall furnish all personnel, supervision, labor, transportation, tools, equipment, materials and other items for performance of its Work under this Agreement. Each Party shall perform its Work in accordance with its own methods in an expeditious, efficient, safe, orderly and workmanlike manner. Each Party shall ensure that all personnel who perform its Work shall be fully experienced and properly qualified to perform the same.

### **8.2 Protection of Property and Persons**

Each Party shall take appropriate precautions to prevent bodily injury (including death) to persons and damage to any property or environment arising in connection with such Party's performance of Work or any attachment of such Party's Equipment to a Joint Pole. Such precautions may include, but are not necessarily limited to, the erection and maintenance of barricades, signs, flags, flashers and other safeguards. Any Party performing Work shall, prior to such performance, inspect the site of such Work and all materials, tools, equipment (including, but not limited to, the Equipment), Poles and other items related to such Work to discover any conditions involving a risk of bodily injury to persons or a risk of damage to any property or environment and shall be solely responsible for the discovery of and protection against any such conditions.

### **8.3 Restoration**

All property (including, but not limited to, Poles and Equipment) damaged in connection with a Party's performance of Work shall be promptly repaired, replaced or otherwise restored by or at the expense of such Party to at least as good quality and condition as existed prior to such damaging.

### **8.4 Electric Circuits**

Prior to performing any Work, Verizon shall satisfy itself as to the nature of the electric circuits attached to the Poles to which such Work relates. Verizon shall ensure that such circuits continue in normal operation at all times during performance of Work by Verizon. Verizon shall take all precautions which are necessary to prevent bodily injury (including death) and property damage resulting from such circuits in the course of performing its Work.

### **8.5 Communication Circuits**

Prior to performing any Work, Puget shall satisfy itself as to the nature of the communication circuits attached to the Poles to which such Work relates. Puget shall ensure that such circuits continue in normal operation at all times during performance of Work by

~~Puget. Puget shall take all precautions which are necessary to prevent bodily injury (including death) and property damage resulting from such circuits in the course of performing its Work.~~

#### **8.6 Emergencies**

In the event of an emergency, a Party may, after making a reasonable attempt to contact the other Party, replace a damaged Pole, relocate the other Party's Equipment, and take such other action affecting the Equipment and Joint Poles owned by the other Party as the Party taking such action deems appropriate under the circumstances, all at the risk of the other Party if the other Party is not present to make such transfers. The Party replacing the Pole and transferring the other Party's Equipment will submit an itemized invoice for the cost of the materials and work performed. Ownership of the Pole will remain with the original Owner or Owners.

The Party performing the work shall inform the other Party if the work is temporary in nature.

#### **8.7 Ground Wires**

In the case of a Joint Pole, a Party may connect the ground wires of its Equipment to the other Party's pole grounds where such connections are required by the National Electric Safety Code.

#### **8.8 Cooperation and Coordination**

Each Party acknowledges and anticipates that its Work may be interfered with and delayed on account of the concurrent performance of Work by the other Party. Each Party shall fully cooperate with the other Party and coordinate its own Work with the other Party's Work so as to minimize any delay or hindrance of any Work.

#### **8.9 Defects in Other Work**

A Party whose Work depends upon the results of Work by the other Party shall, prior to commencing its Work, notify the other Party in writing or electronically of any actual or apparent deficiencies or defects in such other Party's Work that render such other Party's Work unsuitable.

#### **8.10 Liens**

Each Party shall timely pay all (and shall promptly secure the discharge of any liens asserted by any) persons and entities furnishing labor, equipment, materials or other items in connection with its Work.

#### **8.11 Inspection**

All Work and Equipment attached to any Joint Pole shall at all times be subject to inspection and testing by either Party.

#### **8.12 Work Areas**

Each Party shall at all times keep its work areas cleared of rubbish, refuse and other debris and in a neat, clean, sanitary and safe condition. Upon completion of any of its Work,

such Party shall promptly remove all rubbish, refuse and other debris and all of its equipment and surplus materials.

## **Section 9 Equal Opportunity**

### **9.1 Compliance**

Each Party shall comply with Executive Order No. 11246, Executive Order No. 11701, the Vietnam Era Veterans' Readjustment Act of 1972 and the Rehabilitation Act of 1973, and all orders, rules and regulations promulgated thereunder (including, but not limited to, 41 CFR Part 60-1, 41 CFR Part 60-250 and 41 CFR Part 60-741), all as the same may have been or may be amended.

### **9.2 Incorporation**

The "equal opportunity clause" of 41 CFR Section 60-1.4(a), the "Affirmative Action Obligations for Disabled Veterans and Veterans of the Vietnam Era" clause of 41 CFR Section 60-250.4 and the "Affirmative Action for Handicapped Workers" clause of 41 CFR Section 60-741.4 are by this reference incorporated in this Agreement.

### **9.3 Certification**

Each Party certifies that segregated facilities (within the meaning of 41 CFR Section 60-1.8) are not and will not be maintained or provided for such Party's employees and that such Party will not permit its employees to perform their services at any location under such Party's control where segregated facilities are maintained. Each Party shall obtain a similar certification from any of its subcontractors, vendors or suppliers performing Work as required by 41 CFR Section 60-1.8.

## **Section 10 Attachments by Another**

### **10.1 General**

A Party may permit (by lease, license or otherwise) any cable television company, any telecommunications carrier, any municipal corporation or other governmental authority, or any other person or entity ("Another") to attach any crossarms, wires, cables, cable clamps, guys, brackets, equipment, equipment enclosures, transformers, street lights, circuits (e.g., fire alarm, police alarm and traffic signal circuits) or other items (collectively, "Another's Equipment") to any Joint Pole owned solely by such Party. Such Party shall not have any authority by virtue of this Agreement to permit attachment of Another's Equipment to any Joint Pole with respect to which such Party is not the Sole Owner except as provided for in paragraph 10.5 below.

### **10.2 Making an Attachment**

The Party who permits attachment of Another's Equipment to a Joint Pole as provided for in paragraph 10.1 shall be responsible for the administration of the agreement granting such permission and shall be entitled to any and all revenues under such agreement. Further, such Party shall ensure that the attachment is made in strict accordance with the provisions of this Agreement (other than Section 11). Further, the provisions of this

Agreement (other than Section 11) shall apply to any such attachment as if the Another was the Party permitting the attachment and the Another's Equipment was such Party's Equipment.

### **10.3 Rearrangements of Equipment**

The Party permitting attachment of Another's Equipment shall bear any costs associated with any resulting rearrangement of the other Party's Equipment.

### **10.4 Indemnity**

The Party permitting the attachment of Another's Equipment shall release, defend, indemnify and hold harmless the Indemnitees of the other Party from all claims, losses, harm, costs, liabilities, damages, and expenses (including, but not limited to, reasonable attorneys' fees) arising in connection with such attachments of Another's Equipment to any Joint Pole. To the fullest extent permitted by applicable law, this release, defense, indemnity and hold harmless shall apply regardless of any act, omission, negligence, or strict liability of any of the Indemnitees of the other Party.

### **10.5 Jointly Owned Poles**

In the case of Joint Poles that are owned in part by both Parties, Puget may permit the attachment of Another's Equipment to any such Joint Pole. Puget shall be responsible for the administration of the Agreement, granting Consent to Another, and collecting any and all rental fees under such agreement. Puget shall pay to Verizon thirty-three percent (33%) of any such rental fees collected. Further, Puget shall ensure that the Another's attachment is made in strict accordance with the provisions of this Agreement (other than Section 11) and that the provisions of this Agreement (other than Section 11) shall apply to any such attachment as if the Another were Puget and the Another's Equipment were Puget's Equipment.

## **Section 11 Damage to Property or Injury to Persons**

### **11.1 Release and Indemnity**

Each Party releases and shall defend, indemnify and hold harmless the other Party and the other Party's Indemnitees from all claims, losses, harm, liabilities, damages, costs, and expenses (including, but not limited to, reasonable attorney's fees for third-party personal injury and property damage) arising out of or in connection with any negligence, misconduct or other fault of the indemnifying Party or the performance or nonperformance of the indemnifying Party's obligations under this Agreement. To the fullest extent permitted by applicable law, the foregoing shall apply regardless of any fault, negligence, strict liability or product liability of any indemnified Party or Indemnitee and to any claim, action, suit or proceeding brought by any employees of either Party. However, neither Party shall be required to so defend, indemnify or hold harmless such indemnified Party or Indemnitee for any claim, loss, harm, liability, damage, cost or expense to the extent the same is caused by or results from the negligence of such indemnified Party or Indemnitee.

## **11.2 Notice of Claims**

Each Party shall promptly notify the other Party of all material claims asserted against it arising in connection with interruption or loss of service by it or damage to any property or bodily injury (including death) to any persons, which service, damage or injury is related to any Joint Pole or any Equipment attached to any Joint Pole. Each Party shall, if requested by the other Party, cooperate with and permit participation by the other Party in any negotiations, settlement, action, suit or proceeding related to any such claims.

## **11.3 Waiver of Certain Immunities, Defenses and Protections Relating to Employee Injuries**

In connection with any action to enforce a Party's obligations under Section 10.4 or 11.1 with respect to any claim arising out of any bodily injury (including death) to an employee of such Party, such Party waives any immunity, defense or protection under any workers' compensation, industrial insurance or similar laws (including but not limited to, the Washington Industrial Insurance Act, Title 51 of the Revised Code of Washington). This Section 11.3 shall not be interpreted or construed as a waiver of a Party's right to assert any such immunity, defense or protection directly against any of its own employees or such employee's estate or other representatives.

## **Section 12 Insurance**

### **12.1 Workers' Compensation**

Each Party shall ensure that, with respect to any persons performing its Work, such Party or its contractors or suppliers maintain in effect coverage or insurance in accordance with the applicable laws relating to workers' compensation and employer's liability insurance (including, but not limited to, the Washington Industrial Insurance Act), regardless of whether such coverage or insurance is mandatory or merely elective under the law.

### **12.2 Policy Provisions**

Each Party shall ensure that any policies of insurance that it carries as insurance covering property damage related to any Joint Pole or any Equipment attached to a Joint Pole shall contain a waiver of the insurer's right of subrogation against the other Party Indemnitees. Further, each Party shall ensure that any policies of insurance that it carries as insurance covering liability for property damage or bodily injury (including death) contains a waiver of subrogation against the other Party Indemnitees, names the other Party Indemnitees as additional insureds or includes broad-form contractual coverage.

### **12.3 Evidence**

Upon request, each Party shall furnish to the other Party Certificates of Insurance as provided for in Appendix I or evidence of self-insurance satisfactory to the other Party.

## **Section 13 Taxes**

Each Party shall pay (or reimburse the other Party on demand for) all taxes, assessments, levies, duties, excises and governmental fees imposed upon, allocable to or

measured by the value of such Party's Equipment. The Owner shall pay all taxes, assessments, levies, duties, excises and governmental fees imposed upon, allocable to or measured by the value of Joint Poles, provided that the User shall reimburse the Owner for all taxes, assessments, levies, duties, excises and governmental fees imposed upon, allocable to or measured by the value of Joint Poles to which none of the Owner's Equipment is attached.

## **Section 14 Term**

### **14.1 Duration**

The term of this Agreement (the "Term") shall commence on the date of this Agreement and shall automatically terminate upon the first of the following to occur:

(a) Upon any one (1) year anniversary of the commencement of the Term, provided that either Party has given the other Party written notice of termination at least nine(9) months but not more than twelve (12) months prior to such anniversary; or

(b) written notice of termination is given by one Party (the "Terminating Party") to the other Party (the "Defaulting Party") in any event that:

- (i) the Defaulting Party fails to pay when due the full amount of any fee or other payment payable under this Agreement to the Terminating Party and the Defaulting Party further fails to pay such amount within ten (10) days after the Terminating Party gives the Defaulting Party written notice of such failure;
- (ii) the Defaulting Party breaches or defaults under this Agreement and further fails to cure such breach or default within thirty (30) days (or within such longer period as may reasonably be required to cure such breach or default) after the Terminating Party gives the Defaulting Party written notice of such breach or default; or
- (iii) the Defaulting Party becomes insolvent, makes an assignment for the benefit of creditors or becomes the subject of any petition or order in bankruptcy whether voluntary or involuntary, or in any other proceeding under any bankruptcy, insolvency or receivership law.

### **14.2 Removal of Equipment**

Upon termination of the Term, the User shall promptly remove all of its Equipment from the Joint Poles. If the User shall fail to remove all of its Equipment from the Joint Poles within one (1) year after the termination of the Term, the Owner may, after ten (10) days' advance written notice to the User of the Owner's intention to do so, remove and dispose of the User's Equipment at the User's sole risk and expense.

## **Section 15 Corrections of Noncompliances**

### **15.1 General**

The Parties agree that all Equipment attached to any Joint Pole and all Work performed shall be in compliance with the then current edition of the National Electric Safety Code.

If a Party directs the other Party to correct defective or noncomplying Work or to otherwise comply with the requirements of this Agreement and such other Party thereafter fails to comply or indicates its inability or unwillingness to comply, then the directing Party, upon ten (10) day's advance written or electronic notice to the other Party of its intention to do so, may correct (or cause to be corrected) the defect or noncompliance or otherwise achieve compliance by the most expeditious means available to it (by contract or otherwise) at the other Party's sole risk and expense.

### **15.2 Nonexclusive Remedy**

The rights of a directing Party to make corrections and otherwise achieve compliance at the other Party's sole risk and expense are in addition to any and all other rights and remedies available to such Party under this Agreement or otherwise by law and shall in no event be construed or interpreted as obligating the directing Party to make any correction of defective or noncomplying Work or to otherwise achieve compliance with this Agreement. Further, the other Party's obligations shall not be interpreted or construed as being reduced in any way because of any corrections or other obligations performed (or caused to be performed) by the directing Party or the directing Party's rights to perform (or cause to be performed) the same.

## **Section 16 Miscellaneous**

### **16.1 Notices**

Any notice, request, authorization, consent, direction, or other communication under this Agreement (except as provided in paragraph 6.2) shall be given in writing and (a) with respect to routine communications for which a provision of this Agreement expressly provides for written or electronic notice, be delivered by e-mail, facsimile or as provided in (b), below, or (b) with respect to all other communications, be delivered in person or by first class U.S. mail, properly addressed and stamped with the required postage, in each case to the intended recipient as follows:

If to Puget:            Puget Sound Energy, Inc.  
                                  Attn. Joint Facilities Administrator  
                                  PO Box 90868    GEN-02W  
                                  Bellevue, WA 98009-0868

If to Verizon:        Verizon Northwest Inc.  
                                  Attn. Joint Use Mailstop WA0103NP  
                                  PO Box 1003  
                                  Everett, WA 98206-1003



Either Party may change its address specified above by giving the other Party notice of such change in accordance with this paragraph 16.1. All notices, requests, authorizations, directions, or other communications by a Party shall be deemed delivered when mailed as provided in this paragraph 16.1 or personally delivered to the other Party.

### **16.2 Records**

Each Party shall provide to the other Party access during normal business hours to all of its records that relate to the Joint Poles, the Equipment attached to any Joint Pole, or this Agreement for examination, reproduction and audit by such other Party and, if required for such other Party's utility purposes or by law, for public record. Notwithstanding the foregoing, records associated with legal proceedings or claims shall be produced only upon mutual consent of the Parties or pursuant to discovery requests under the Rule of Civil Procedure applicable to the Superior Court proceedings.

### **16.3 Regulatory Approvals**

If this Agreement and any ownership transfers of Poles or other property pursuant to this Agreement are subject to, and conditioned upon, approval by the WUTC, then the Party subject to the jurisdiction of the WUTC will promptly submit this Agreement to the WUTC and both Parties will actively support and take such additional action as may reasonably be required to promptly obtain such WUTC approval.

### **16.4 Assignment**

A Party shall not assign or otherwise transfer, voluntarily or by operation of law, any interest in this Agreement, any Joint Pole or any of its Equipment attached to any Joint Pole, except:

(a) to any mortgagee, trustee or secured party, as security for bonds or other indebtedness, now or hereafter existing, of such Party or pursuant to any foreclosure or exercise of any power sale by any such mortgagee, trustee or secured party (or any transfer in lieu of such foreclosure or exercise), provided that upon any such assignment or transfer the person or entity acquiring the interests of such Party pursuant to the assignment or transfer assumes all of the obligations of such Party under this Agreement;

(b) to any person or entity into or with which such Party is merged or consolidated or to which such Party transfers substantially all of its assets, provided that upon any such assignment or transfer the person or entity acquiring the interests of such Party pursuant to the assignment or transfer assumes all of the obligations of such Party under this Agreement;

(c) to any government or municipal corporation or to any subdivision or agency of a government or municipal corporation, provided that upon any such assignment or transfer the person or entity acquiring the interests of such Party pursuant to the assignment or transfer assumes all of the obligations of such Party under this Agreement; or

~~(d) to any other person or entity with the Consent of the other~~  
Party.

#### **16.5 Successors and Assigns**

Subject to the restrictions on assignments described in paragraph 16.3, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the successors, assigns and legal representatives of the respective Parties.

#### **16.6 Attorneys' Fees**

In the event of any action to enforce this Agreement, for interpretation or construction of this Agreement or on account of any breach of or default under this Agreement, the prevailing Party in such action shall be entitled to recover, in addition to all other relief, from the other Party all reasonable attorneys' fees incurred by the prevailing Party in connection with such action (including, but not limited to, any appeal thereof).

#### **16.7 No Partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties or to impose any partnership obligations or liability upon either Party. Further, except as otherwise expressly provided in this Agreement, neither Party shall have any right, power or authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.

#### **16.8 Nonwaiver**

A Party's failure to insist upon or enforce strict performance by the other Party of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

#### **16.9 Survival**

The obligations imposed upon the Parties under Sections 5, 6, 7, 10, 11, 12, 13, 14, 15 and 16, and all provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Agreement, shall survive the completion, termination or cancellation of this Agreement.

#### **16.10 Entire Agreement**

This Agreement sets forth the entire agreement of the Parties, and supersedes any and all prior agreements, with respect to the attachment of Equipment to the Joint Poles. This Agreement shall be construed as a whole. All provisions of this Agreement are intended to be correlative and complementary.

#### **16.11 Amendment**

No change, amendment, or modification of any provision of this Agreement shall be valid unless set forth in a written amendment to this Agreement signed by both Parties.

### **16.12 Implementation**

Each Party shall take such action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.

### **16.13 Invalid Provision**

The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

### **16.14 Headings**

The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

### **16.15 Applicable Law**

This Agreement, and all questions concerning the capacity of the Parties, execution, validity (or invalidity) and performance of this Agreement, shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington.

### **16.16 Disputes**

Any action, dispute, claim or controversy between or among the parties, whether sounding in contract, tort or otherwise, other than a matter within the regulatory authority of the Washington Utilities and Trade Commission or other governmental authority with proper jurisdiction, (a "Dispute"), shall, at the option of either Party, and at such Party's expense, be submitted to mediation, using either the American Arbitration Association ("AAA") or Judicial Arbitration and Mediation Services, Inc. ("JAMS") within thirty (30) days of the date on which the alleged events occurred to form the basis of the Dispute. If mediation is not used, or mediation fails to resolve the Dispute within 30 days from the date AAA or JAMS is engaged, then the parties may, at their option, initiate any and all appropriate legal action to resolve the Dispute. Notwithstanding the foregoing, the Parties shall act in good faith and use commercially reasonable efforts to resolve any Dispute prior to the initiation of mediation under this paragraph 16.16.

**Section 17 Signatures**

<p style="text-align: center;"><b>Verizon</b></p> <p>Verizon Northwest Inc.</p> <p>By: <u><i>Karen G. LaBonte</i></u> Karen G, LaBonte</p> <p>Its: Director – Network Engineering &amp; Planning, Pacific Region</p> <p>Date Signed: <u>12/2/02</u></p> <p>Address: Attn. Joint Use Mailstop WA0103NP PO Box 1003 Everett, WA 98206-1003</p>	<p style="text-align: center;"><b>Puget:</b></p> <p>Puget Sound Energy, Inc.</p> <p>By: <u><i>Jerry Ferencz</i></u> Jerry Ferencz</p> <p>Its: Director of Delivery Services</p> <p>Date Signed: <u>12/05/02</u></p> <p>Address: Attn. Joint Facilities Administrator PO Box 90868 GEN-02W Bellevue, WA 98009-0868</p>
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**APPROVED AS TO FORM**  
*[Signature]*  
11/22/2002

## LIST OF APPENDICES

Appendix I	Insurance Certificate referred to in paragraph 12.3
Appendix II	Application for Attachment referred to in paragraph 2.2
Appendix III	Transferring Communication Equipment referred to in paragraph 3.2
Appendix IV	Schedules 1 and 2

# Appendix I

## Insurance Certificate

## Appendix II

Application or  
Job Number

Date

TO:

PUGET SOUND ENERGY

FROM LICENSEE:

REPRESENTATIVE

NAME

ADDRESS

EMAIL/PHONE #

Please grant permission to occupy your poles in accordance with the conditions set forth in Pole Attachment Agreement, dated \_\_\_\_\_.

Application for rental on \_\_\_\_\_ poles

Termination for rental on \_\_\_\_\_ poles

### DESCRIPTION OF WORK:

CABLE

Overlashing

new cable

POLES

PSE Universal maps attached with requested poles highlighted.

Licensee's work sketch showing at least 95% of PSE grid numbers is attached.

List of grid numbers is attached.

POWER SUPPLIES

\_\_\_\_\_ will be installed. Pole list is attached and power supply specifications are included.

Failure to supply requested information may delay acceptance of the application.

Application or notification accepted.

Billing of new contacts to be effective \_\_\_\_\_

LICENSOR PUGET SOUND ENERGY

BY

PSE Engineer

Date

## Appendix III

### Transferring Communication Equipment

FIRST TRIP COSTS - Cost of performing transfer work while Puget is in the process of doing its own work.

Crossarms, all types	\$ 45.00
Anchor strand or overhead guy	45.00
Sidewalk anchor guy and pipe	55.00
Drop wire (no splicing)	45.00
Service Conduit	95.00
Messenger and cable bolted to pole or cable arm (no splicing)	50.00
Messenger dead-end	65.00
Cable riser (including pipe and molding - no splicing)	95.00
Cable terminal (no splicing)	55.00

RETURN TRIP COSTS - Cost of performing transfer work when Puget must return to the job site. The following amounts include travel time.

Crossarms, all types	\$ 135.00
Anchor strand or overhead guy	135.00
Sidewalk anchor guy and pipe	165.00
Drop wire (no splicing)	150.00
Service Conduit	285.00
Messenger and cable bolted to pole or cable arm (no splicing)	135.00
Messenger dead-end	195.00
Cable riser (including pipe and molding - no splicing)	285.00
Cable terminal (no splicing)	165.00

Topping Charge	if one User attached	105.00
	if two or more Users attached	50.00

Verizon's lower & haul fee	250.00
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## Appendix IV

### Schedule 1

#### Computation of Annual Rate for Poles Owned by Puget Sound Energy, Inc.

<b>A.</b>	<b>Net Investment Per Bare Pole (PV)</b>		
	(1) Investment in poles, towers, and fixtures (FERC Account 364)	\$ _____	
	(2) Less depreciation reserve associated with Item (1)	(\$ _____)	
	(3) Less deferred federal income taxes associated with item (1)	(\$ _____)	
	(4) Net investment in poles, towers, and fixtures	\$ _____	
	(5) Ratio of bare pole total pole	0.85	
	(6) Value of all bare poles	\$ _____	
	(7) Easements (FERC Account 360 not including substations)	\$ _____	
	(8) Combined value of bare poles and easements	\$ _____	
	(9) Total number of distribution poles	_____	
			\$ _____ (PV)

<b>B.</b>	<b>Annual Carrying charge (CC)</b>		
	(1) Net pole depreciation	_____ %	
	(2) Administrative and general expenses	_____ %	
	(3) Maintenance	_____ %	
	(4) Taxes	_____ %	
	(5) Cost of capital (overall rate of return authorized by WUTC in latest PSE rate case)	_____ %	
			\$ _____ (CC)

<b>C.</b>	<b>Use Ratio per Pole (PV)</b>		
	(1) Usable space on pole, in feet	13.5	
	(2) Effective space occupied by Verizon, in feet	2.0	
			\$ _____ (PR)

<b>D.</b>	<b>Annual Pole Attachment Rate</b>		
	(PV) X (CC) X (PR)		\$ _____

# Appendix IV

## Schedule 2

### Computation of Annual Rate for Poles Owned by Verizon

A.	<u>Net Investment Per Bare Pole (PV)</u>		
	(1) Investment in poles, towers, and fixtures (ARMIS Account 2411)	\$ _____	
	(2) Less depreciation reserve associated with Item (1)	(\$ _____)	
	(3) Less deferred federal income taxes associated with item (1)	(\$ _____)	
	(4) Net investment in poles, towers, and fixtures	\$ _____	
	(5) Ration of bare pole total pole	0.95	
	(6) Value of all bare poles	\$ _____	
	(7) Easements	\$ _____	
	(8) Combined value of bare poles and easements	\$ _____	
	(9) Total number of distribution poles	_____	
			\$ _____ (PV)

B.	<u>Annual Carrying charge (CC)</u>		
	(1) Net pole depreciation	_____ %	
	(2) Administrative and general expenses	_____ %	
	(3) Maintenance	_____ %	
	(4) Taxes	_____ %	
	(5) Cost of capital (overall rate of return authorized by WUTC in latest Verizon rate case)	_____ %	
			\$ _____ (CC)

C.	<u>Use Ratio per Pole (PV)</u>		
	(1) Usable space on pole, in feet	13.5	
	(2) Effective space occupied by Puget attachments, in feet		
	(a) Primary Poles	7.5	
	(b) Secondary Poles	2.0	
	(3) Use Ratio		
	(a) Primary Poles		55.556% (PR)
	(b) Secondary Poles		14.815% (PR)

D.	<u>Annual Pole Attachment Rate</u>		
	(PV) times (CC) times (PR)		
	(a) Primary Poles		\$ _____
	(b) Secondary Poles		\$ _____

AMENDMENT NO. 1  
TO  
POLE ATTACHMENT AGREEMENT  
BETWEEN  
VERIZON AND PUGET SOUND ENERGY AND LIGHT

The parties agree to the amendment to the contract dated August 1, 2002 as follows:

6.2.3 Net Billing. Without changing any obligations of the Parties and with prior Verizon concurrence, Puget may, in rendering invoices to Verizon pursuant to Section 6 of this Agreement, calculate an amount payable from Verizon to Puget which offsets the amounts payable by Puget to Verizon pursuant to paragraph 6.2.2.

Puget:

Puget Sound Power & Light Company

By 

Date Signed 11/4/04

Verizon:

Verizon Northwest Inc.

By 

Susan Schmatz

Verizon Network Engineering Manager

Date Signed 11/11/04