

**Small Business Economic Impact Statement (SBEIS)**  
**Attachment to Transmission Facilities Rulemaking**  
**Docket U-140621**  
**July 22, 2015**

**I. Introduction**

The Utilities and Transportation Commission (Commission) initiated a rulemaking in April 2014 in Docket U-140621 to consider rules to implement Chapter 80.54 of the Revised Code of Washington (RCW) establishing requirements for attachments to utility transmission facilities.

Over the past year, the Commission requested and received four sets of comments from stakeholders and held two stakeholder workshops. The draft rules are now sufficiently developed to publish them as proposed rules and proceed to the next phase of the rulemaking. When issuing a notice of proposed rules, agencies must provide a copy of the small business economic impact statement (SBEIS) prepared in accordance with Chapter 19.85 RCW, or explain why an SBEIS was not prepared. RCW 34.05.320(1)(k). The Commission has prepared this SBEIS in compliance with that requirement.

**II. SBEIS Requirements**

The Regulatory Fairness Act, codified in Chapter 19.85 RCW, provides that an agency must conduct an SBEIS “if the proposed rule will impose more than minor costs on businesses in an industry.” RCW 19.85.030(1). “‘Minor cost’ means a cost per business that is less than three-tenths of one percent of annual revenue or income or one hundred dollars, whichever is greater, or one percent of annual payroll.” RCW 19.85.020(2). An SBEIS is intended to assist agencies in evaluating the proposed rule’s impact on small businesses. A business is categorized as “small” under the Regulatory Fairness Act if the business employs 50 or fewer employees. RCW 19.85.020(3).

Agencies must determine whether compliance with a proposed rule has a disproportionate economic impact on small businesses in the affected industry. RCW 19.85.040(1). Agencies must compare the cost of compliance for small businesses with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the rule using either the cost per employee, the cost per hour of labor, or the cost per \$100 of sales revenue, as a basis for comparing costs. If they find such an impact, agencies must consider means to minimize the costs imposed on small businesses. RCW 19.85.030(2).

**III. SBEIS Evaluation Procedure**

The Commission has prepared an SBEIS for the proposed rules in Docket U-140621 to determine whether those rules would impose more than minor costs on the affected industries that disproportionately impact small businesses and, if so, to consider means to minimize costs to small businesses.

On May 27, 2015, the Commission mailed a notice to all stakeholders of the opportunity to respond to an SBEIS Questionnaire. The notice requested that the affected companies provide information concerning the cost impact of the latest draft rules. The Commission received economic impact comments from five stakeholders: Puget Sound Energy (PSE), Avista Corporation (Avista), Pacific Power & Light Company, PCIA-The Wireless Infrastructure Association and HetNet Forum, and the Broadband Communications Association of Washington. Only PSE and Avista attempted to quantify the economic impact of the proposed rules.

None of the five respondents to the SBEIS Questionnaire is a small business, purports to represent a small business, or provides data on the economic impact of the proposed rules on small businesses. The economic data PSE and Avista provided, moreover, demonstrates that the proposed rules will not impose more than minor costs on businesses in the utility industries the rules will affect.<sup>1</sup> Accordingly, no SBEIS is required. The Commission nevertheless has analyzed the data provided in light of the purpose of the rules and the cost of compliance asserted by the companies to ensure that the effect of the rulemaking is fair and does not impose an undue burden on affected companies.

#### **IV. Rulemaking History**

The Commission initiated this rulemaking in April 2014 by issuing a CR-101 Rulemaking Notice. The Commission has taken the following steps in pursuing this rulemaking:

- The Commission received comments on the CR-101 notice in May 2014 and conducted a workshop on July 28, 2014. The Commission evaluated those comments and the workshop discussion and prepared initial draft rules based, in part, on stakeholder input.
- The Commission issued a Notice of Opportunity to File Written Comments and a Notice of Workshop on September 8, 2014. The notice included a set of draft rules. The Commission received comments on the draft rules on October 8, 2014, and held a workshop for interested parties on October 28, 2014.
- After reviewing the comments and considering the workshop discussion, the Commission revised the draft rules and issued another Notice of Opportunity to File Written Comments on January 6, 2015. The notice included the second draft rules.
- The Commission received comments on the second draft rules in February 2015. After reviewing the comments, the Commission further revised the draft rules and issued

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<sup>1</sup> PSE and Avista are the only commenters that attempt to quantify the economic impact of the proposed rules. PSE estimates that impact at between \$1.5 million and \$2.6 million per year, far less than the statutory standard of .003 percent of that company's total annual revenues which were more than \$3 billion in 2014, while Avista's estimate is less than \$1.4 million, which is only .002 percent of its 2014 total revenues of more than \$677 million.

another Notice of Opportunity to File Written Comments on March 24, 2015. The notice included the third draft rules.

- The Commission received comments on the third draft rules in April and May 2015. The Commission evaluated those comments and made additional changes to the draft rules, which the Commission posted in this docket when it issued the SBEIS Questionnaire. The Commission is now ready to publish and circulate proposed rules in conjunction with filing a CR-102 with the Office of the Code Reviser.

## **V. Results of the SBEIS Analysis**

The Commission considered the general financial impact of complying with the proposed rules throughout the rulemaking process in response to comments that various stakeholders submitted. PSE and Avista also responded to the SBEIS Questionnaire and attempted to quantify the cost impact of the proposed rules on each of those companies. That impact generally falls into three categories: (1) Rates – reduced revenues as a result of lower rates these facility owners will be able to charge for attachments and higher rates these companies will have to pay to attach to other owners' facilities; (2) Additional personnel needed to review and process applications for attachments, renegotiate attachment agreements, and respond to complaints filed with the Commission; and (3) Increased investment in poles to ensure sufficient inventory to timely respond to attachment requests.

*Rates.* PSE and Avista estimate that the formula the Commission proposes to adopt for setting attachment rates will result in a reduction in the rates these companies currently charge and in higher rates than they pay to attach to some other owners' poles. The Federal Communications Commission (FCC) developed the attachment rate formula the Commission proposes to adopt, which has withstood multiple legal challenges. The Commission finds that the formula is well-established, results in appropriate cost recovery, and is consistent with the criteria for a just and reasonable rate the legislature established in RCW 80.54.040. Rates calculated using this formula will be fair, just, reasonable, and sufficient, and any loss of revenue or increased payments that result from charging these rates are neither undue nor have a disproportionate impact.

*Additional Personnel.* PSE and Avista estimate that the proposed rules will require them to hire additional personnel to review and process attachment applications within the required time frames, renegotiate attachment agreements to incorporate the new requirements, and respond to complaints that may be filed with the Commission. The proposed rules, however, authorize facility owners to recover all of these costs through a nonrecurring fee charged to the requester if those costs are not included in the carrying charges that are part of the annual attachment rate. Thus the entities attaching to the facilities, not the owners, will incur those costs.

*Increased Pole Inventory.* PSE and Avista estimate that the proposed rules will result in these companies increasing their pole inventory either to enable them to timely respond to requesters

willing to pay for a taller pole to be able to attach or allow the company to promptly replace poles for its own need for increased space due to other entities' attachments to the pole. Again, the requester, not the owner, bears the entire cost of replacing a pole for the requester's benefit even though the owner also reaps the benefit of owning a new pole. To the extent that an owner must pay to replace a pole to accommodate the owner's own need for increased space, the owner is in no worse position than a requester who must pay for a new pole when the existing pole lacks sufficient capacity for additional attachments. These costs, therefore, neither are undue nor have a disproportionate impact.

## **VI. Proposed Rules that May Create Costs**

The proposed rules are new, and each of them will create some compliance costs on all companies that own or attach to transmission facilities. The legislature, however, required the Commission to promulgate rules to implement the principles the legislature adopted in RCW 80.54, and the resulting costs are in keeping with that legislative mandate. The Commission's analysis of the issues raised in this rulemaking supports a determination that none of the proposed rules will disproportionately impact small businesses or any other stakeholders.

## **VII. Summary of Findings**

The Commission has reviewed the information provided by the two companies that attempted to quantify the cost impact of the proposed rules in response to the SBEIS Questionnaire, as well as information they and other stakeholders submitted throughout the rulemaking process. The Commission finds that the proposed rule changes will not impose more than minor costs on the affected electric and telecommunications industries. The Commission also finds that even those minor costs will not disproportionately impact small businesses or any other stakeholders.

## **VIII. Mitigation**

The proposed rules do not have a disproportionate economic impact on small businesses, and therefore the Commission did not need to consider any mitigation measures.

## **IX. Conclusion**

Chapter 19.85 RCW requires that an agency prepare an SBEIS to assess whether proposed rules would impose more than minor costs on businesses in an industry, in this case, electric and telecommunications companies, and whether any such costs disproportionately impact small businesses. Based on all information collected throughout the rulemaking process to date, the Commission has determined the proposed rules in WAC 480-54 are necessary and prudent to fulfill the agency's statutory responsibilities, the proposed rules will not impose more than minor costs to businesses, and those costs will not disproportionately impact small businesses.