

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Adopting	)	DOCKET U-140621
	)	
Chapter 480-54 WAC	)	GENERAL ORDER R-582
	)	
Relating to Attachment to Transmission	)	ORDER ADOPTING RULES
Facilities	)	PERMANENTLY
	)	
.....	)	

1     **STATUTORY OR OTHER AUTHORITY:** The Washington Utilities and Transportation Commission (Commission) takes this action under Notice WSR # 15-15-170, filed with the Code Reviser on July 22, 2015. The Commission has authority to take this action pursuant to RCW 80.01.040, RCW 80.04.160, RCW 80.54.020, and RCW 80.54.060.

2     **STATEMENT OF COMPLIANCE:** This proceeding complies with the Administrative Procedure Act (RCW 34.05), the State Register Act (RCW 34.08), the State Environmental Policy Act of 1971 (RCW 43.21C), and the Regulatory Fairness Act (RCW 19.85).

3     **DATE OF ADOPTION:** The Commission adopts this rule to be effective on January 1, 2016.

4     **CONCISE STATEMENT OF PURPOSE AND EFFECT OF THE RULE:** RCW 34.05.325(6) requires the Commission to prepare and publish a concise explanatory statement about an adopted rule. The statement must identify the Commission’s reasons for adopting the rule, describe the differences between the version of the proposed rules published in the register and the rules adopted (other than editing changes), summarize the comments received regarding the proposed rule changes, and state the Commission’s responses to the comments reflecting the Commission’s consideration of them.

5     To avoid unnecessary duplication in the record of this docket, the Commission designates the discussion in this Order, including appendices, as its concise explanatory statement. This Order provides a complete but concise explanation of the agency’s actions and its reasons for taking those actions.

6 **REFERENCE TO AFFECTED RULES:** This Order adopts the following sections of the Washington Administrative Code:

Adopt	WAC 480-54-010	Purpose, interpretation, and application.
Adopt	WAC 480-54-020	Definitions.
Adopt	WAC 480-54-030	Duty to provide access; make-ready work; time-lines.
Adopt	WAC 480-54-040	Contractors for survey and make-ready work.
Adopt	WAC 480-54-050	Modification costs; notice; temporary stay.
Adopt	WAC 480-54-060	Rates.
Adopt	WAC 480-54-070	Complaint.

7 **PREPROPOSAL STATEMENT OF INQUIRY AND ACTIONS THEREUNDER:**

The Commission filed a Preproposal Statement of Inquiry (CR-101) on April 22, 2014, at WSR # 14-09-087. The statement advised interested persons that the Commission was considering entering a rulemaking to implement RCW ch. 80.54, relating to attachments to transmission facilities. The Commission also informed persons of this inquiry by providing notice of the subject and the CR-101 to everyone on the Commission's list of persons requesting such information pursuant to RCW 34.05.320(3) and by sending notice to all registered telecommunications companies, all regulated electric companies, the Commission's list of utility attorneys, and the Commission's list of telecommunications attorneys. The Commission posted the relevant rulemaking information on its website at [www.utc.wa.gov/140621](http://www.utc.wa.gov/140621). Pursuant to the notice, the Commission received written comments on May 30, 2014, and convened a workshop for interested stakeholders on July 28, 2014.

8 On September 8, 2014, the Commission issued a notice soliciting written comments from stakeholders on draft rules by October 8, 2014, and convened a second workshop on October 28, 2014. On February 6, 2015, the Commission received a second round of comments from stakeholders regarding revised draft rules, and responses to the second comments on February 27, 2015.

9 On March 24, 2015, the Commission issued a notice soliciting written comments from stakeholders on a third revised draft rules with opening comments by April 17, 2015, and reply comments by May 1, 2015.

- 10 On May 27, 2015, the Commission issued a Small Business Economic Impact Statement (SBEIS) questionnaire requesting responses concerning the cost impact of the rules on utilities and licensees by June 17, 2015. The Commission received comments from the Broadband Communications Association of Washington (BCAW); PCIA – The Wireless Infrastructure Association and the HetNet Forum, a membership section of PCIA (collectively PCIA); Pacific Power & Light Company (Pacific Power); Avista Corporation d/b/a Avista Utilities (Avista); and Puget Sound Energy (PSE).
- 11 **NOTICE OF PROPOSED RULEMAKING:** The Commission filed a notice of Proposed Rulemaking (CR-102) on July 22, 2015, at WSR # 15-15-170. The Commission scheduled this matter for oral comment and adoption under Notice WSR # 15-15-170 at 9:30 a.m., Thursday, September 17, 2015, in the Commission's Hearing Room, Second Floor, Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. The Notice provided interested persons the opportunity to submit written comments to the Commission by August 24, 2015.
- 12 **WRITTEN COMMENTS:** The Commission received written comments in response to the WSR # 15-15-070 Notice from Frontier Communications Northwest Inc. (Frontier), Integra Telecom of Washington (Integra), Avista, BCAW, Pacific Power, AT&T Corp., New Cingular Wireless PCS, LLC, and Teleport Communications America, Inc. (collectively AT&T), PCIA, and PSE. Summaries of all written comments and the Commission's responses are contained in Appendix A, attached to, and made part of, this Order.
- 13 **RULEMAKING HEARING:** The Commission considered the proposed rules for adoption at a rulemaking hearing on Thursday, September 17, 2015, before Chairman David W. Danner and Commissioner Ann E. Rendahl. The Commission heard comments from representatives of Pacific Power, PSE, PCIA, Avista, Frontier, AT&T, and BCAW. Most of those commenting emphasized points they raised in their prior written comments. Pacific Power, however, also advocated that the Commission revise staff's proposed modification of the language in proposed WAC 480-54-050(2) to delete "or owner's" in the last sentence so that an owner would not be solely responsible for the costs to move all occupants' attachments when general safety or operational requirements necessitated a change to the pole. PSE also requested that the Commission make any

rules it promulgates effective no sooner than January 1, 2016, to enable PSE to modify its processes and otherwise prepare to comply with the new rules.<sup>1</sup>

- 14 **SUGGESTIONS FOR CHANGE THAT ARE REJECTED/ACCEPTED:** Written and oral comments suggested changes to the proposed rules. The suggested changes and the Commission’s reason for rejecting or accepting the suggested changes are included in Appendix A. The Commission expands on its explanation for its actions on four of those suggested changes in the following paragraphs.
- 15 **JURISDICTION:** Proposed WAC 480-54-020 defines an “owner” as “the utility that owns or controls the facilities to or in which an occupant maintains, or a requester seeks to make, attachments.” A “utility,” in turn, is “any electrical company or telecommunications company as defined in RCW 80.04.010.” That statute defines a “telecommunications company” as any person or entity “owning, operating or managing any facilities used to provide telecommunications for hire, sale, or resale to the general public.” “Telecommunications” is the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means.” The definition of “owner,” consistent with Washington law, includes all telecommunications service providers and investor-owned electric companies.
- 16 PCIA and AT&T request that the Commission exempt commercial mobile radio service (CMRS) companies from the definition of “owner” in the proposed rules, claiming that the Commission lacks jurisdiction to regulate attachments to wireless company facilities. Washington statutes do not support this claim. The definition of “telecommunications” in RCW 80.04.010 expressly includes transmission of information by radio, which is the service CMRS companies provide. As telecommunications providers, these companies are “utilities” and “owners” within the contemplation of RCW 80.54.010.
- 17 The wireless carriers point to RCW 80.36.370(6), which provides that the Commission shall not regulate “[r]adio communications services provided by a regulated telecommunications company, *except that when those services are the only voice grade, local exchange telecommunications service available to a customer of the company* the commission may regulate the radio communication service of that company.” (Emphasis added.) PCIA and AT&T overlook that the Commission can regulate wireless carriers under certain circumstances. Although the Commission is not aware that those

---

<sup>1</sup> We address this request in paragraph 31 below.

circumstances currently exist, we are not willing to foreclose the possibility that they will arise in the future. More fundamentally, we question whether requiring a company to allow attachments to its utility facilities is regulation of that company's "service" within the contemplation of RCW 80.36.370(6).<sup>2</sup>

- 18 The Commission, however, does not intend to assert jurisdiction over CMRS providers by promulgating the proposed rules. We recognize that the Federal Communications Commission (FCC) has the primary responsibility to oversee the wireless industry, and we have no desire to challenge that agency's supremacy in this area. We also agree with PCIA and AT&T that the rules we are adopting were not developed with access to CMRS facilities in mind. Accordingly, we leave for another day and specific factual circumstances the issue of whether these rules could or should be construed to require access to wireless carrier facilities.
- 19 **POLE REPLACEMENT:** Proposed WAC 480-54-030(1) provides that utility pole owners may not deny a request for attachment to a pole due to lack of space if the requester is willing to pay all costs to replace the existing pole with a taller pole. Avista, Pacific Power, and PSE all object to this requirement. These companies concede that they currently undertake this work but contend that an obligation to do so exceeds the requirements in the FCC rules without sufficient evidentiary support, "would unreasonably diminish the ability of electric utility personnel to perform their primary obligation of providing safe and reliable electric service, and would result in communications attachments on electric utility poles taking precedence over electric utility operations."<sup>3</sup>

---

<sup>2</sup> Nor are we persuaded that a policy justification exists for categorically relieving CMRS providers from the obligation to allow attachments to their facilities. PCIA suggests that the rationale for that obligation is to provide competitors with access to monopoly service providers' infrastructure, but RCW 80.54 is not so limited. The statutory definition of "utility" includes all telecommunications companies, incumbents and competitors alike. The legislature's concern thus was more with the exclusivity of a utility's *facilities* than the service it offers. No municipality wants a plethora of poles along, or a collection of conduit under, its streets. The statute is designed to minimize such infrastructure as well as to facilitate service availability from multiple providers. To the extent that a CMRS carrier has constructed facilities to which requesters seek access, we do not believe that the service the carrier provides, without more, is a reasonable basis for denying such access.

<sup>3</sup> Comments of Avista at 2 (Aug. 24, 2015); *accord* Comments of PSE at 2 (Aug. 24, 2015). Pacific Power states only that it supports these comments and shares the concerns they raise with mandatory capacity expansions. Comments of Pacific Power at 2 (Aug. 24, 2015).

- 20 Unlike federal law, RCW ch. 80.54 does not authorize a pole owner to deny access for lack of capacity on the pole. Washington law provides only that “[a]ll rates, terms, and conditions made, demanded, or received by any utility for any attachment by a licensee or by a utility must be just, fair, reasonable, and sufficient.”<sup>4</sup> It is the current practice of Avista, Pacific Power, and PSE to replace existing poles and thereby create additional capacity for attachment if a requester is willing to pay all costs of that replacement. We are not persuaded that it is unreasonable to require these pole owners to do what they are already doing.
- 21 Nor have the electric utilities presented any information demonstrating how mandating their current practice would diminish their ability to provide safe and reliable electric service. The Commission takes very seriously any threat to safety and reliability of utility service. Accordingly, proposed WAC 480-54-030(8) provides additional time for pole owners to replace a pole if they cannot do so within the time frames specified due to circumstances beyond the owner’s control and in light of other system demands. Owners also may negotiate additional terms and conditions with requesters to be included in the attachment agreement the rules require. We find that this rule properly balances the needs of electric utility pole owners, attaching communications carriers, and the customers of all companies.
- 22 **OVERLASHING:** Proposed WAC 480-54-030(11) allows an occupant to attach or “overlash” an additional wire onto the occupant’s existing attachment to a utility pole without filing an application with the pole owner under limited circumstances. Avista, Pacific Power, and PSE all oppose this allowance as an unwarranted departure from the FCC’s rules. Avista focuses on safety concerns it alleges would result from overlashing without an application:

Overlashing new communication cable to cable already in place creates additional wind and ice load on the poles along with low sag issues, and these are serious safety concerns to pole owners. Moreover, without sufficient oversight and approval, cables that are no longer used are typically left in place rather than removed. Overlashing proposals can be more difficult to analyze for safety concerns than applications for new pole contacts, and while communication companies engineer for their own

---

<sup>4</sup> RCW 80.54.020.

circuitry, they historically fail to account for their own existing code violations and for safety impacts related to the new overlash construction.<sup>5</sup>

- 23 PSE also discusses safety, as well as liability issues, and contends that the proposed rules unreasonably favor pole occupants over owners:

The arbitrary timelines in the proposed rules compromise a pole owner's ability to adequately assess the impacts of the overlashing on the safety and reliability of the electric system and adds additional risk to the safety of the communication workers installing the overlashing. In addition, requiring only a notice instead of an application to overlash additional wires or cables prioritizes attachers needs over pole owners and reduces a pole owners ability to maintain a safe and reliable system. Finally, the proposed rules fail to include any language addressing liability for damages caused by attacher overlashing. PSE proposes that the attacher be liable for all damages if the actual overlashing differs from the overlashing proposed in the occupant's notice or fails to meet applicable rules and codes.<sup>6</sup>

- 24 We note as an initial matter than proposed WAC 480-54-030(11) is more restrictive of overlashing than the FCC or current practice. The FCC has determined that an occupant is not required to obtain the owner's consent prior to overlashing, although the owner is entitled to notice.<sup>7</sup> Stakeholder comments in this docket indicate that occupants currently are overlashing without the owner's prior consent and with minimal notice. The proposed rule's limit on the number of poles subject to overlashing in a given time period, the requirements for the content and timing of notice, and the ability of owners to prohibit overlashing in advance are all new safeguards that the electric utilities would not have if we simply adopted the FCC rules, as PSE advocates. This provision thus provides far more benefit than detriment to those utilities.

---

<sup>5</sup> Comments of Avista at 3.

<sup>6</sup> Comments of PSE at 3. Again, Pacific Power supports Avista's and PSE's comments and shares their concerns with overlashing. Comments of Pacific Power at 2.

<sup>7</sup> *In re Implementation of Section 703(e) of the Telecommunications Act of 1996*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd. 12,103, 12,144-45 (May 25, 2001).

- 25 We nevertheless repeat that the Commission considers safety of the electrical system to be critically important. Avista, Pacific Power, and PSE have not demonstrated that proposed WAC 480-54-030(11) imperils that system. That rule requires an occupant to notify the pole owner 15 business days in advance of the size, weight per foot, and number of wires or cables to be overlashed and to provide a map of the proposed overlash route. The occupant may not notice overlashing of more than 100 poles within any 10 business day period. The owner has 10 business days to inspect the proposed route and provide a written response and explanation if the owner prohibits the noticed overlashing.<sup>8</sup> The electric utilities have provided no information to demonstrate that these requirements are insufficient to enable an owner to determine whether the limited overlashing the proposed rule authorizes would pose a significant safety risk.
- 26 Several of the stated concerns, moreover, arise from how the overlashing is actually done, including failure to remove unused cable, the safety of the communications workers doing the overlashing, and liability for damages caused by the overlashing. Requiring occupants to submit an application, as the electric companies propose, would not remedy any of these issues. Rather, owners can and should negotiate terms and conditions in their attachment agreements to address such concerns. BCAW stated at the adoption hearing that all attachment agreements of which it is aware include provisions that do just that.
- 27 We find that proposed WAC 480-54-030(11) strikes the appropriate balance between the interests of pole owners and occupants. We encourage all parties to work cooperatively to ensure that their operations do not impact negatively the safety of the electrical system, the other networks whose facilities are attached to utility poles, and the personnel who work on those poles.
- 28 **MODIFICATION COSTS.** Consistent with cost causation principles, the proposed rules provide in WAC 480-54-050(2) that occupants with an attachment that conforms to applicable safety and legal requirements do not bear any of the costs to modify the pole or their attachment to remedy another occupant's safety violation. In response to BCAW's written comments, the Commission modifies the proposed language to clarify

---

<sup>8</sup> Although PSE characterizes these limitations as "arbitrary," we note that the proposed rule reflects Pacific Power's recommendation "limiting the number of poles identified for overlashing in a 10-day period to 100 poles and the number of notices submitted to no more than five." Pacific Power Comments at 1 (April 17, 2015). The Commission addressed PSE's and Avista's continued concerns with the time for review by extending that period in the proposed rule to 10 business (rather than calendar) days and lengthening the notice period to 15 business days.



that an owner similarly is not responsible for modification costs caused by another attaching entity.

29 At the adoption hearing, Pacific Power requested that the Commission further revise this provision to clarify that occupants should bear the costs to rearrange their attachments if the owner modifies the pole to conform to general safety requirements or as part of the owner's business operations. We agree that our intent was for each party with attachments on the pole to bear its own costs to rearrange those attachments to conform to generally applicable safety requirements, and we clarify the proposed rule accordingly. We do not agree, however, that occupants should pay to modify their attachments to accommodate measures the owner takes for its own benefit. Indeed, WAC 480-54-050(1) expressly provides to the contrary in the context of creating additional capacity on a pole. We thus do not accept this aspect of Pacific Power's proposal.

30 **COMMISSION ACTION:** After considering all of the information regarding this proposal, the Commission finds and concludes that it should adopt the rules as proposed in the CR-102 at WSR # 15-15-170 with the changes below as described more fully above and in Appendix A:

WAC 480-54-020	Definition of "carrying charge" – delete ", including" and replace with ". These costs are comprised of" (Frontier).
WAC 480-54-030(1)	Second sentence – delete "pole or otherwise" and replace with "pole and otherwise" (Pacific Power). <sup>9</sup>
WAC 480-54-050(1)	Third sentence – insert "within 60 days" before "after receiving notification" (Pacific Power).
WAC 480-54-050(2)	First sentence – add "that necessitated the modification" at the end of the sentence.  Third sentence –  Insert "or owner" after "An occupant";  Insert "or owner's" after "the occupant's";

---

<sup>9</sup> The substitution of "and" for "or" clarifies the Commission's intent that the requester must pay all make-ready costs associated with making more attachment space available on the pole and should not be construed to condition such payment on the existence of both pole replacement and other make-ready work.

Delete “as a result of creating capacity for a requester’s attachment or”;

Delete “or another occupant’s existing attachment made”;

Delete “bring that attachment” and replace with “bring another occupant’s or owner’s attachment”;

Add “to remedy a safety violation caused by another occupant or owner” at the end of the sentence;

Add a fourth sentence that states, “The owner and each occupant shall bear their own costs to modify their existing attachments if required to comply with applicable safety requirements if an owner or occupant did not create a safety violation that necessitated the modification.” (BCAW and Pacific Power).

WAC 480-54-060(3) Formulas:

Insert a division line between the number “1” and “Number of Ducts” on the lines below;

Insert a division line between “1 Duct” and “Number of Inner Ducts on the lines below;

Insert a division line between “Net Conduit Investment” and “System Duct Length (ft./m.)” on the lines below (corrects typographical errors).

31 **STATEMENT OF ACTION; STATEMENT OF EFFECTIVE DATE:** After reviewing the entire record, the Commission determines that WAC 480-54-010, WAC 480-54-020, WAC 480-54-030, WAC 480-54-040, WAC 480-54-050, WAC 480-54-060, and WAC 480-54-070 should be adopted to read as set forth in Appendix B, as rules of the Washington Utilities and Transportation Commission. Pursuant to RCW 34.05.380(2), we generally adopt rules to become effective on the thirty-first day after filing with the Code Reviser. PSE, however, states that it and other affected stakeholders would be better able to modify their existing processes and procedures to comply with the rules if they are not effective until the beginning of next year. We agree, and accordingly, we adopt the rules listed in this paragraph to take effect on **January 1, 2016**.

**ORDER**

32 **THE COMMISSION ORDERS:**

33 The Commission adopts WAC 480-54-010, WAC 480-54-020, WAC 480-54-030, WAC 480-54-040, WAC 480-54-050, WAC 480-54-060, and WAC 480-54-070 to read as set forth in Appendix B, as rules of the Washington Utilities and Transportation Commission, to take effect on January 1, 2016.

34 This Order and the rule set out below, after being recorded in the order register of the Washington Utilities and Transportation Commission, shall be forwarded to the Code Reviser for filing pursuant to RCW 80.01 and RCW 34.05 and WAC 1-21.

DATED at Olympia, Washington, October 21, 2015.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

PHILIP B. JONES, Commissioner

ANN E. RENDAHL, Commissioner

*Note: The following is added at Code Reviser request for statistical purposes:*

Number of Sections Adopted in Order to Comply with Federal Statute: New 7, amended 0, repealed 0; Federal Rules or Standards: New 0, amended 0, repealed 0; or Recently Enacted State Statutes: New 0, amended 0, repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, amended 0, repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, amended 0, repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, amended 0, repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, amended 0, repealed 0; Pilot Rule Making: New 0, amended 0, repealed 0; or Other Alternative Rule Making: New 0, amended 0, repealed 0.

**Appendix A**  
**(Comment Summary Matrix)**

**Appendix B**  
**[Chapter 480-54 WAC RULES]**