**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**

1. 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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1. 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:

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**Jurisdiction**

1. Both parties conduct and transact business in Washington and both are explicitly regulated by the WUTC.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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).
7. 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.
8. 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.
9. 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.
10. 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.
11. 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.
12. The parties have explicitly recognized the jurisdiction of the WUTC over their Pole Attachment Agreement. (*See* Section 6.1.2.)

**Statement of Facts**

1. 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.
2. 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.
3. Frontier wholly owns some of its poles, but jointly owns approximately 70,000 poles with a local utility company (the Snohomish County PUD).
4. 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.
5. 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.
6. 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.
7. This complaint involves the proper method for calculating pole rental rates under the Agreement.
8. The Agreement is silent on how the term “distribution poles” should be calculated in the annual rate calculation.
9. 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.
10. 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.
11. 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.
12. Verizon, Frontier and PSE had mistakenly treated those poles under the Pole Attachment Agreement as being fully owned by Frontier.
13. 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.
14. 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.
15. 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.
16. 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**

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

DATED this 29th day of June, 2015.



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**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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