

October 8, 2014

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

Washington Utilities and Transportation Commission
1300 S. Evergreen Park Drive S.W.
P.O. Box 47250
Olympia, WA 98504-7250

Attention: Steven V. King
Executive Director and Secretary

**RE: Docket U-140621 – Rulemaking to Consider Adoption of Rules to Implement RCW
Ch. 80-54 Relating to Transmission Facilities--Comments of Pacific Power & Light**

Dear Mr. King:

In accordance with the Notice of Opportunity to File Written Comments (Notice) issued September 8, 2014, Pacific Power & Light Company (Pacific Power or Company), a division of PacifiCorp, provides the comments responsive to the Notice.

On April 22, 2014, the Washington Utilities and Transportation Commission (Commission) filed with the Code Reviser a Pre-proposal Statement of Inquiry (CR-101) to consider adoption of rules to implement RCW ch. 80.54, relating to attachments to transmission facilities. The Commission received written comments from various interested stakeholders on this CR-101 on May 30, 2014. In addition, Commission staff held a workshop with interested stakeholders on July 28, 2014. As a result of the written comments and the stakeholder workshop, Commission staff developed draft rules for review and comment by interested persons. The Company provides the following general comments below, along with red-lined edits and comments to the draft rules included as Attachment A.

PacifiCorp administers joint use attachments to its poles in six states, accommodating over 300 attaching entities. Five of the six states have self-certified to the Federal Communications Commission (FCC) its jurisdiction over regulation of pole attachments. PacifiCorp owns approximately 1.1 million distribution poles in these six states with roughly 100,000 of them accommodating nearly 60 attaching entities in the state of Washington. The Company reiterates its position as provided in comments submitted May 30, 2014 in this docket. Pacific Power has been successfully negotiating joint use agreements with occupants in Washington for some time without serious dispute. Any newly-developed rules should allow some flexibility for negotiations, provided there is no discrimination between similarly-situated occupants. Pacific Power continues to be concerned about the use of “transmission” facilities throughout the draft rules. While RCW ch. 80.54 is titled “Attachments to Transmission Facilities,” the Commission could be clear about the type of facilities covered by the rules. To electric utilities, “transmission” refers to high voltage

power lines and facilities necessary to support them. The Commission's jurisdiction would be over electric utilities' "distribution" facilities. To avoid confusion, it may be helpful to specify distribution facilities throughout the rules.

Pacific Power appreciates the Commission's efforts to draft rules for attaching to poles in Washington. Based on experience in other states, the Company offers observations about the proposed rules.

450-54-020

Section 450-54-020 contains definitions to be used throughout the rules. Pacific Power proposes a number of revisions to more closely reflect actual practice and to provide clarity. The Company proposes eliminating "attacher" and its definition in the entirety and replacing with "occupant." "Occupant" is more commonly used and the proposed definition more closely relates to the state of affairs.

Pacific Power proposes eliminating "facilities" and the corresponding definition. Including it seems duplicative of other definitions. The Company also proposes changing the term "facility utility" to "owner." "Facility" could be confusing. "Owner" would clearly define responsibility for any attachments and/or facilities and would be consistent with terminology commonly used throughout other regulatory and industry settings.

For the definition of "licensee," Pacific Power proposes a slight revision to clarify that there may be situations where electric utilities are attached to communication companies' facilities through reciprocal agreements. The Company also proposes modifications to the definition of "make-ready work" for clarification and to indicate make-ready costs are not covered through rental rates.

The Company proposes modifying the definition of "occupied space" for clarification and to simplify certain calculations. Pacific Power also proposes modifications to the definition of "pole" to clarify that only distribution poles are covered by the rules.

Pacific Power has alphabetically reordered the definitions based on newly suggested terms.

450-54-030

Section 450-54-030 addresses provision of access to poles and conduits, and make-ready work responsibilities. Generally, the rules appear to require owners to estimate costs and perform make-ready work on behalf of all occupants. This is a significant deviation from current operational practice and could pose unnecessary operational and legal risk and liability. Typically, owners perform work on their own facilities and occupants perform work on their own facilities to ensure appropriately qualified workers are performing required tasks and the work is performed consistent with labor agreements and construction standards. The Company proposes revisions to clearly define make-ready work responsibilities.

As currently drafted, subsections (1) and (2), would require a pole owner to grant an occupant permission to use rights-of-way. Owners occupying rights-of-way or other easements typically do not have permission from the underlying landowner to grant third party use. Occupants are required to seek permission from the underlying land owners before attaching. Pacific Power recommends removal of the right-of-way access from the rules.

Subsection (3) currently requires owners to conduct surveys of facilities identified in applications as desirable for attachments. Surveys tend to be costly and time-consuming. In practice, surveys by owners may not be required to evaluate applications. Owners may use other means to determine whether an application can be approved. In many situations, licensees provide sufficient information through the application process to allow Owners to perform a desktop review. Additionally, licensees perform their own pre-engineering studies to determine their own attachment requirements. Further, it may be customary to perform post-construction inspections rather than extensive pre-attachment evaluations for established licensees in good standing. Surveys should not be mandatory, rather should be at the discretion of the owner to avoid unnecessary costs and delays to the parties involved.

Subsection (5)(a) sets forth requirements for payment of estimated make-ready work, those wanting to place attachments to submit payment of estimated make-ready costs before the owner withdraws the estimate. In practice, Pacific Power typically performs any necessary make-ready work on its facilities and bills the licensee after the work is completed. Other owners may require pre-payment. Existing practice appears to be working. Pacific Power proposes revisions to this section to be consistent with current practice. The recommended changes will also allow parties the flexibility to determine appropriate payment arrangements between themselves.

Subsection (6) appears to address administration of make-ready work among all occupants on or in facilities. As currently drafted, the rules reflect a process that is burdensome to owners and inconsistent with operational practice. Current operational practice appears to be working. Pacific Power proposes changes to the rules to clarify the requirements of the pole owner with respect to administering and performing make-ready work to better align with industry practices. Of particular note, subsection (6)(a)(v) allows an attaching entity to hire a contractor to perform certain make-ready work if the pole owner does not complete it within a certain timeframe. The Company proposes adding a notice requirement to allow the pole owner to implement any safety measures required. Pacific Power also proposes deleting the reference to subsection (f) in subsections (6)(a)(ii) and (6)(b)(ii), which does not appear in the proposed rules.

Subsections (7) and (8) contain time periods and thresholds for adjusting time periods for the completion of make-ready work. Based on Pacific Power's experience, it is likely that all parties subject to the rules will need flexibility in scheduling and completing make-ready work. Changes are needed to reflect feasibility and industry practices.

Subsection (9) allows a licensee to use a contractor for survey and make-ready work under certain circumstances. The Company offers minor clarifications to show who is authorized to perform surveys and make-ready work and when they may do so.

480-54-040

Section 480-54-040 sets forth owner responsibilities for maintaining a list of authorized contractors for make-ready work. Electric utilities typically do not perform work in the “communications” space. Any contractor lists maintained by electric utilities will be comprised of contractors authorized to perform work on or near electric lines and may not be authorized to perform work in the “communications” space. As currently written, subsection (1) appears to require owners to maintain contractor lists for work in the “communications” space. Pacific Power proposes revisions to clarify responsibilities for maintaining certain contractor lists.

480-54-050

Section 480-54-050 contains provisions for allocating costs for modifying existing attachments on poles or in conduit. In section 480-54-050 extensive changes and clarifications are needed to subsections (1), (2) and (3) involving allocation of costs for pole modifications to better align with federal and other state regulations as well as industry practices. Subsection (1) deems the utility and all licensees and occupants to benefit from modifications if they modify their own attachments after receiving notice of other pending modifications. This pronouncement does not distinguish modifications required to correct non-conforming attachments. Requiring entities with conforming attachments to share in the cost of modifications required to correct non-conforming attachments shifts costs away from the cost causer and places an unfair burden on those with conforming attachments. Similarly, subsection (3) requires owners or licensees to share in the cost of modifications if they install attachments after the modifications. This does not distinguish modifications required to address non-conforming attachments. Additionally, the burden of administering this cost sharing would outweigh the benefits.

The Company also proposes adding a provision addressing abandoned attachments. Most of the time, owners, licensees and occupants reach agreement on how to address what happens to attachments in the event a licensee or occupant becomes insolvent or otherwise closes business. However, there have been situations where licensees are uncooperative in providing adequate measures to protect against costs associated with abandoned attachments. The Company proposes including a provision establishing a collaborative effort to determine, on a case-by-case basis, the appropriate way to resolve issues with such abandoned attachments.

480-54-070

Section 480-54-070 contains a complaint process as part of dispute resolution. Subsection (4) allows parties to execute an attachment agreement and afterwards bring a complaint alleging unreasonable rate, terms or conditions. This will discourage good faith negotiations and does not account for concessions that may be made during those negotiations. Pacific Power recommends deleting the provision in its entirety. Subsection (7) would allow the Commission to order a refund or payment if it finds rates to be unreasonable. It would be prudent to limit the refund or repayment to the time period the rates were charged.

Docket U-140621
Washington Utilities and Transportation Commission
October 8, 2014
Page 5

Pacific Power looks forward to participating in the stakeholder workshop on October 28, 2014, and in further discussions in efforts to develop fair and balanced rules for Washington.

Informal questions concerning this filing may be directed to Natasha Soares, Director, Regulatory Affairs & Revenue Requirement, at (503) 813-6583.

Sincerely,

A handwritten signature in cursive script that reads "R Bryce Dalley" followed by a date "10/08".

R. Bryce Dalley
Vice President, Regulation

ATTACHMENT A

480-54-010 Purpose and Interpretation

- (1) This chapter implements RCW Ch. 80.54 “Attachment to Transmission Facilities.”
- (2) To the extent that these rules contain provisions that are the same as Federal Communications Commission rules governing pole attachments, the commission will consider Federal Communications Commission and federal court interpretation of those rules as persuasive authority in construing the comparable provisions in this chapter.

480-54-020 Definitions

- ~~(1) “Attacher” means any utility or licensee with an attachment to a facility utility’s pole, duct, conduit, or right of way or that is granted the right to make such an attachment.
“Occupant” means any licensee, government entity, or other entity that constructs, operates, or maintains attachments on poles or within conduits.~~
- (21) “Attachment” means any wire or cable for the transmission of intelligence by telecommunications or television, (including cable television), light waves, or other phenomena, or for the transmission of electricity for light, heat, or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telecommunications, electrical, cable television, or communications right of way, duct, conduit, manhole or handhole, or other similar facilities owned or controlled, in whole or in part, by one or more utilities, where the installation has been made with the consent of the one or more utilities.
- (23) “Communications space” means the usable space on a utility pole below between the lowest space used to attach electrical wires electrical attachment. The communications workers safety zone and above the vertical space for meeting ground clearance requirements under the National Electrical Safety Code are not considered part of this space.
- (34) “Conduit” means a structure containing one or more ducts, used for any telecommunications, cable television, electrical or communications conductors or cables, owned or controlled, in whole or in part, by one or more utility.
- (45) “Duct” means a single enclosed raceway for conductors, cable, or wire.
- ~~(6) “Facilities” means poles, ducts, conduits, rights of way, manholes or handholes, or similar facilities.~~
- ~~(7) “Facility utilityOwner” means the utility that owns or controls the facilities poles, ducts, conduits, manholes, handholes, or other similar facilities to or in which an attacher maintains or seeks to make attachments.~~
- (58) “Inner duct” means a duct-like raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables.

~~(69)~~ —“Licensee” means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, ~~other than a utility,~~ that is authorized to construct attachments upon, along, under, or across the public ways, including a provider of telecommunications service, radio communications service company, as defined in RCW 80.04.010, any cable television service company or personal wireless services company.

~~(74)~~ “Make-ready work” means ~~work required to modify engineering or construction activities necessary to make a pole, duct, conduit, or right-of-way other support equipment available for a new attachment, attachment modifications, or to enable the facility to accommodate one or more additional attachments facilities.~~ Such work may include rearrangement of ~~existing attachments, installation of additional support for the utility pole, or creation of additional capacity, up to and including replacement of an existing pole with a taller pole.~~ Make-ready work costs are non-recurring costs and are not contained in carrying charges.

~~(8)~~ ”Occupant” means any licensee, government entity, or other entity that constructs, operates, or maintains attachments on poles or within conduits.

~~(94)~~ —“Occupied space” means that portion of the pole, duct, or conduit used for or rendered unusable due to the attachment, which is presumed to be a minimum of one foot. The owner may authorize additional attachment occupied space in increments of six (6) inches.

~~(10)~~ “Owner” means the utility that owns or controls poles, ducts, conduits, manholes, handholes, or other similar facilities to or in which an attacher maintains or seeks to make attachments.

~~(112)~~ “Pole” or “utility pole” means any pole that carries distribution lines and is owned by a utility an above ground structure on which a facility utility maintains attachments.

~~(123)~~ “Unusable space” with respect to utility poles means the space on the pole below the usable space, including the amount required to set the depth of the pole and the ground clearance space.

~~(134)~~ —“Usable space,” ~~with respect to poles,~~ means the space on a ~~utility~~ pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment, and which includes space occupied by the ~~facility utility~~ owner, or. ~~With respect to conduit, “usable space” means capacity within a conduit that is available or that could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable, and associated equipment for telecommunications or cable services, and which includes capacity occupied by the facility utility owner.~~

~~(445)~~ “Utility” means any electrical company or telecommunications company as defined in RCW 80.04.010, and does not include any entity cooperatively organized, or owned by federal, state, or local government, or a subdivision of state or local government.

480-54-030 Duty to provide access; make-ready work; timelines

- (1) An ~~facility utility owner~~ shall provide other utilities or licensees with nondiscriminatory access for attachments to or in any pole, duct, or conduit, ~~or right-of-way~~ the ~~facility utility owner~~ owns or controls. An ~~facility utility owner~~ may deny such access on a nondiscriminatory basis where there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles.
- (2) All rates, terms, and conditions made, demanded, or received by any utility for any attachment by a licensee or by a utility must be fair, just, reasonable, and sufficient. Parties may mutually agree on terms for attachment to or in poles, ducts, or conduits, ~~or rights-of-way~~ that differ from those in this chapter. In the event of disputes submitted for commission resolution, any party advocating rates, terms, or conditions that vary from the rules in this chapter bears the burden to prove those rates, terms, or conditions are fair, just, reasonable, and sufficient.
- (3) A utility or licensee must submit a written application to an ~~facility utility owner~~ to request access to its ~~facilities pole or conduit~~. The ~~facility utility owner~~ ~~must~~ may survey the ~~facilities pole or conduit~~ identified in the application. The owner ~~must~~ and respond in writing to ~~such requests for access to those facilities~~ within 45 days from the date the ~~facility utility owner~~ receives a complete application, ~~except as otherwise provided in this section~~. A complete application is an application that provides the information necessary to enable the ~~facility utility owner~~ to ~~survey~~ evaluate the ~~facilities pole or conduit~~ to or in which the requester seeks to attach.
- (4) ~~—If the facility utility owner denies the request for access in whole or in part, the facility utility owner's written response to the application must include an explanation of the reasons for the denial. Such a response must include all relevant evidence and information supporting the denial.~~
- (5) ~~—To the extent that it grants the requested access, the facility utility owner's written response must inform the attacher licensee of the results of the review of the application, including but not necessarily limited to a notification that the facility utility has completed a survey of the facilities identified in the application. Within 14 days of providing its written response, the facility utility owner must provide an estimate of charges to perform all necessary make-ready work on or in the owner's facilities pole or conduit.~~
 - (a) An ~~attacher licensee~~ ~~may~~ must ~~accept or reject~~ an estimate of charges to perform make-ready work within 14 days of receipt of the estimate. ~~and submit payment to the facility utility owner any time after receipt of the estimate but before the facility utility owner withdraws the estimate.~~
 - (b) An ~~facility utility owner~~ may withdraw an outstanding estimate of charges to perform make-ready work beginning 14 days after the ~~facility utility owner~~ provides the estimate to the ~~attacher licensee~~.

(6) ~~Upon receipt of payment of the estimated charges for its make-ready work, the~~ facility utility owner shall provide written notice to all known entities known occupants with existing attachments on or in the pole or conduit facilities that may be affected by the owner's make-ready work. To the extent make-ready work is required of other occupants, the licensee shall be solely responsible for coordinating with those occupants.

(a) For attachments in the communications space, the notice shall:

(i) ~~Specify where and what make-ready work the owner will be performed on or in its own facilities pole or conduit.~~ Specify where and what make-ready work the owner will be performed on or in its own pole or conduit.

(ii) ~~Set a date for completion of owner's make-ready work that is no later than 60 days after the notice is sent (or 105 days in the case of applications involving more than 50 poles larger orders, as described in subsection (f) of this section).~~ Set a date for completion of owner's make-ready work that is no later than 60 days after the notice is sent (or 105 days in the case of applications involving more than 50 poles larger orders, as described in subsection (f) of this section). For good cause shown, the ~~facility utility owner~~ facility utility owner may extend completion of the make-ready work by an additional 15 days.

(iii) ~~State that any licensee is to coordinate with any entity occupant with an existing attachment, may the need to modify that their attachment(s) consistent in order for licensee to attach with the specified make-ready work before the date set for completion of that work.~~ State that any licensee is to coordinate with any entity occupant with an existing attachment, may the need to modify that their attachment(s) consistent in order for licensee to attach with the specified make-ready work before the date set for completion of that work.

(iv) ~~State that the facility utility owner may assert its right to 15 additional days to complete the its own make-ready work.~~ State that the facility utility owner may assert its right to 15 additional days to complete the its own make-ready work.

(v) ~~State that if owner's make-ready work is not completed by the completion date set by the facility utility owner (or 15 days later if the facility utility owner has asserted its right to 15 additional days), the attach licensee requesting access may hire an authorized contractor from the owner's list of approved contractors to complete the owner's specified make-ready work, upon providing owner written notification 10 days prior to before proceeding.~~ State that if owner's make-ready work is not completed by the completion date set by the facility utility owner (or 15 days later if the facility utility owner has asserted its right to 15 additional days), the attach licensee requesting access may hire an authorized contractor from the owner's list of approved contractors to complete the owner's specified make-ready work, upon providing owner written notification 10 days prior to before proceeding.

(vi) ~~State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work.~~ State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work.

(b) For wireless antennas or other attachments on poles in the space above the communications space, the notice shall:

(i) ~~Specify where and what make-ready work the owner will be performed on or in its own pole or conduit.~~ Specify where and what make-ready work the owner will be performed on or in its own pole or conduit.

(ii) ~~Set a date for completion of make-ready work that is no later than 90 days after notice is sent (or 135 days in the case of applications involving more than 10 poles larger orders, as described in subsection (f) of this section).~~ Set a date for completion of make-ready work that is no later than 90 days after notice is sent (or 135 days in the case of applications involving more than 10 poles larger orders, as described in subsection (f) of this section). For good cause shown, the ~~utility owner~~ utility owner may extend completion of the make-ready work by an additional ~~15~~ 30 days.

(iii) ~~State that any entity with an existing attachments in the electric space may will have modify their attachments modified consistent with the specified make-~~ State that any entity with an existing attachments in the electric space may will have modify their attachments modified consistent with the specified make-

ready work by the electric utility or an authorized contractor from the electric utility's list of approved contractors before the date set for completion of that work.

(iv) State that the facility utilityowner may assert its right to 15 additional days to complete the make-ready work.

(v) State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready work.

(7) For the purpose of compliance with the time periods in this section:

(a) ~~An facility utilityowner shall apply the timeline described in subsections (b) through (e) of this section to all requests for access to up to 3050 poles or 0.5-1 percent of the facility utilityowner's poles, ducts, or conduits, or rights of way in Washington, whichever is less as applicable.~~

~~(b) A facility utility may add 15 days to the survey period described in subsection (b) of this section to all requests for access to between 300 and 3000 poles or between 0.5 and five percent of the facility utility's poles, ducts, conduits, or rights of way in Washington, whichever is less as applicable.~~

~~(c) A facility utility may add 45 days to the make ready work periods described in subsection (e) of this section to all requests for access to between 300 and 3000 poles or between 0.5 and five percent of the utility's poles, ducts, conduits, or rights of way in Washington, whichever is less as applicable.~~

~~(eb) An facility utilityowner shall negotiate in good faith the timing of all requests for access that exceed 50 polesto more than 3000 poles or 5.1 percent of the utility's poles, ducts, or conduits, or rights of way in Washington, whichever is less as applicable.~~

~~(ec) An facility utilityowner may treat multiple requests from an attacher licensee as one request when the requests are filed within the same 30 day period. The applicable time period for completing the required survey (if performed) or make-ready work begins on the date of the last request the facility utilityowner receives from the attacher licensee within the 30 day period.~~

(8) An facility utilityowner may extend the time limits specified in this section under the following circumstances:

(a) Before offering an estimate of charges if the parties have no agreement specifying the rates, terms, and conditions of attachment; or

(b) During performance of make-ready work ~~if the facility utilityowner discovers unanticipated circumstances that reasonably require additional time to complete the work. Upon discovery of such circumstances, the facility utilityowner must immediately promptly notify, in writing, the requesting attacher licensee and other affected entities occupants with existing attachments, and shall include the reason for the additional time and date by which the facility utilityowner will complete the work. The facility~~

~~utilityowner~~ may not extend completion of make-ready work for a period any longer than reasonably necessary and shall undertake such work on a nondiscriminatory basis.

- (9) ~~If the facility utilityowner fails to complete a survey of the facilities specified in respond with the results of the~~ approve or deny an application within the established time frames established in this section, an ~~attacher~~ licensee requesting attachment in the communications space may hire an authorized contractor ~~from the owner's list of approved contractors, upon written notification to owner, to complete the survey, if applicable.~~ If the ~~facility utilityowner~~ does not complete ~~any its~~ required make-ready work within the established time frames ~~established in this section,~~ an ~~attacher~~ licensee requesting attachment in the communications space may hire an authorized contractor ~~from the owner's list of approved contractors, upon written notification to owner, to complete the make-ready:~~

(a) Immediately, if the ~~facility utilityowner~~ has failed to assert its right to perform any necessary make-ready work by notifying the requesting ~~attacher~~ licensee that it will undertake that work; or

(b) After 15 days from the end of the applicable time period authorized in this section if the ~~facility utilityowner~~ has asserted its right to perform make-ready work and has failed to timely complete that work.

480-54-040 Contractors for survey and owner's make-ready.

- (1) An ~~facility utilityowner~~ shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform surveys ~~(if necessary)~~ and its make-ready work ~~in the communications space~~ on its utility poles to provide to licensee in cases where the ~~facility utilityowner~~ has failed to meet deadlines specified in WAC 480-54-030.
- (2) If an ~~attacher~~ licensee hires a contractor for purposes specified in WAC 480-54-030, the ~~attacher~~ licensee must choose a contractor included on the ~~facility utilityowner's~~ list of authorized contractors.
- (3) ~~An attacher~~ licensee that hires a contractor for survey ~~(if necessary)~~ or owner's make-ready work shall provide the ~~facility utilityowner~~ prior written notice with a reasonable opportunity for an ~~facility utilityowner~~ representative to accompany and consult with the authorized contractor and the ~~attacher~~ licensee.
- (4) ~~Subject to commission review in a complaint proceeding, the consulting a~~ representative of an ~~electric facility utilityowner~~ may make final determinations, on a nondiscriminatory basis, on the attachment capacity of any pole, duct, or conduit, ~~or right-of-way~~ and on issues of safety, reliability, and generally applicable engineering principles.

480-54-050 Modification costs; notice; temporary stay, abandonment.

- (1) ~~The costs of the owner modifying its attachments equipment on a pole, duct, or conduit, or right of way shall be borne by all utilities and the licensee seeking approval to attach licenses that obtain access to the facility as a result of the modification and by all such along with entities occupants that directly benefit from the modification to remedy existing nonconforming attachments. Each such entity licensee and occupant shall share proportionately in the cost of the modification of the owner's pole or conduit facilities. A utility or licensee with a preexisting attachment to the modified facility shall be deemed to directly benefit from a modification if, after receiving notification of such modification, that entity adds to or modifies its attachment.~~
- (2) A utility or licensee with a preexisting conforming attachment(s) to a pole, duct, or conduit, ~~or right of way~~ shall not be required to bear any of the costs of the owner of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by the facility utility owner or attacher licensee.
- (3) ~~If a utility or licensee makes an attachment to the facility after the completion of a modification, that entity shall share proportionately in the cost of the modification if it enabled the added attachment.~~
- (4) An facility utility owner shall provide an attaching utility or licensee no less than 60 days written notice prior to removal of, termination of service to, or modification of (other than routine maintenance or modification in response to emergencies) any pole or conduit facilities on or in which the utility or licensee has attachments that are impacted affected by such removal, termination of service to, or modification.
- (5) A utility or licensee may file with the commission and serve on the facility utility owner a "Petition for Temporary Stay" of utility action contained in a notice received pursuant to ~~subsection (d)480-54-050(4) of this section~~ within 15 days of receipt of such notice. The petition must be supported by declarations or affidavits and legal argument sufficient to demonstrate that the petitioner or its customers will suffer irreparable harm in the absence of the relief requested that outweighs any harm to the facility utility owner and its customers and that the petitioner will likely be successful on the merits of its dispute. The facility utility owner may file and serve an answer to the petition within 7 days after the petition is filed unless the commission establishes a different deadline for an answer.
- (96) If an owner determines any attachment has been abandoned by a licensee or occupant, the owner may notify the commission of such abandonment. After such notification, the commission shall cooperate with the owner to develop a plan for the abandoned attachments. The commission shall take action when a utility or licensee abandons its attachments when notified by owner by ordering the removal of such abandoned attachments by the utility or licensee or by securing the funds to have abandoned attachments removed. The owner is shall not be held financially responsible for abandoned attachments facilities.

- (1) A fair, just, reasonable, and sufficient rate for attachments to or in poles, ducts, or conduits, ~~or rights of way~~ shall assure the utility the recovery of not less than all the additional costs of procuring and maintaining the attachments, nor more than the actual capital and operating expenses, including just compensation, of the utility attributable to that portion of the pole, duct, or conduit, ~~or right of way~~ used for the attachments, including a share of the required support and clearance space, in proportion to the space used for the attachment, as compared to all other uses made of the pole or conduit facilities, and uses which remain available to the owner or ~~owners~~ occupants of the pole or conduit facilities.

- (2) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to utility poles:

$$\text{Maximum Rate} = \text{Space Factor} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

Where

$$\text{Space Factor} = \frac{\text{Occupied Space}}{\text{Total Usable Space}}$$

- (3) The following formula for determining a fair, just, reasonable, and sufficient rate shall apply to attachments to utility ducts or conduits:

$$\begin{aligned} \text{Maximum Rate per Linear ft./m.} &= \left[\frac{1}{\text{Number of Ducts}} \times \frac{1 \text{ Duct}}{\text{No. of Inner Ducts}} \right] \times \left[\text{No. of Ducts} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right] \times \text{Carrying Charge Rate} \\ &\quad \text{(Percentage of Conduit Capacity)} \qquad \qquad \qquad \text{(Net Linear Cost of a Conduit)} \end{aligned}$$

simplified as:

$$\text{Maximum Rate Per Linear ft./m.} = \left[\frac{1 \text{ Duct}}{\text{No. of Inner Ducts}} \right] \times \left[\frac{\text{Net Conduit Investment}}{\text{System Duct Length (ft./m.)}} \right] \times \text{Carrying Charge Rate}$$

If no inner duct or only a single inner duct is installed, the fraction, “1 Duct divided by the No. of Inner Ducts” is presumed to be 1 / 2

480-54-070 Complaint

- (1) Whenever the commission shall find, after hearing had upon complaint by a licensee or by a utility, that the rates, terms, or conditions demanded, exacted, charged, or collected by any ~~facility utilityowner~~ in connection with attachments to its ~~pole or conduit~~ facilities are not fair, just, and reasonable, or by an ~~facility utilityowner~~ that the rates or charges are insufficient to yield a reasonable compensation for the attachment, the commission shall determine the fair, just, reasonable, and sufficient rates, terms, and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing the rates, terms, and conditions, the ~~C~~commission shall consider the interest of the customers of the ~~attacher~~ licensee, as well as the interest of the customers of the ~~facility utilityowner~~.
- (2) A utility or licensee may file a formal complaint if:
 - (1) An ~~facility utilityowner~~ has denied access to its poles, ducts, or conduits, ~~or rights-of-way~~ without an explanation of the reasons for denial;
 - (2) An ~~facility utilityowner~~ fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or
 - (3) The utility or licensee disputes the rates, terms, or conditions in an attachment agreement, the ~~facility utilityowner's~~ performance under the agreement, or the ~~facility utilityowner's~~ obligations under the agreement or other applicable law.
- (3) An ~~facility utilityowner~~ may file a formal complaint if:
 - (1) Another utility or licensee is unlawfully making attachments to or in the ~~facility utilityowner's~~ poles, ducts, or conduits, ~~or rights-of-way~~;
 - (2) Another utility or licensee fails to negotiate in good faith the rates, terms, and conditions of an attachment agreement; or
 - (3) The ~~facility utilityowner~~ disputes the rates, terms, or conditions in an attachment agreement, the ~~attacher's~~ licensee's performance under the agreement, or the ~~attacher's~~ licensee's obligations under the agreement or other applicable law.
- (4) The execution of an attachment agreement does not preclude ~~any challenge to the lawfulness or reasonableness of the rates, terms, or conditions in that agreement, provided that such challenge is brought within six months from the date the parties executed the agreement. Nothing in this section precludes an~~ ~~facility utilityowner~~ or ~~attacher~~ licensee from bringing any other complaint that is otherwise authorized under applicable law.
- (5) A complaint authorized under this section must identify all actions, rates, terms, and conditions alleged to be unjust, unfair, unreasonable, insufficient, or

otherwise contrary to applicable law and shall include sufficient data or other factual information and legal argument to support the allegations. The complaint also must include a copy of the attachment agreement, if any, between the parties.

- (6) ~~An attacher-licensee has the burden to prove its right to attach to the facility-utilityowner's poles, ducts, or conduits, or rights-of-way and that any rate, term, or condition the attacher-licensee challenges is not fair, just, and reasonable or otherwise violates any provision of RCW Ch. 80.54, this Chapter, or other applicable law. An facility-utilityowner bears the burden to prove that attachment rates are insufficient or that the facility-utilityowner's denial of access to its pole or conduit facilities is lawful and reasonable.~~
- (7) If the commission determines that the rate, term, or condition complained of is not fair, just, reasonable, and sufficient, the commission may prescribe a rate, term, or condition that is fair, just, reasonable, and sufficient. The commission may require the inclusion of that rate, term, or condition in an attachment agreement and to the extent authorized by applicable law, may order a refund or payment of the difference between any rate the commission prescribes and the rate that was previously charged, but not to exceed the time period the rates were charged.
- (8) If the commission determines that access to a pole, duct, or conduit, ~~or right-of-way~~ has been unlawfully or unreasonably denied or delayed, the commission may order the facility-utilityowner to provide access to that facility-pole, duct or conduit within a reasonable time frame and in accordance with fair, just, reasonable, and sufficient rates, terms, and conditions.