



January 15, 1998

VIA HAND DELIVERY

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

Re: Docket No. UT-970723

Dear Secretary:

Puget Sound Energy, Inc. ("PSE") hereby submits an original and fifteen (15) copies of additional comments in response to the Commission's December 15, 1997 notice in the above proceeding. An electronic copy is also provided on a 3 1/2 inch, high density, floppy disk in WordPerfect version 5.1 format.

PSE appreciates the opportunity to participate in this proceeding. If the Commission or staff has any questions, please contact the undersigned at (206) 224-2219.

Very truly yours,

PUGET SOUND ENERGY, INC.

By: Richard Rucker
Richard R. Rucker
Joint Facilities Administrator

RRR:jmv
Enclosures

cc: Interested Persons on Service List

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WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

[07772-0652/BA980150.009]

**BEFORE THE WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION**

Proposed rulemaking to Adopt a Methodology
the Determination of Just and Reasonable Rates
for Attachments to Transmission of Facilities

Docket No. UT-970723

COMMENTS OF PUGET SOUND
ENERGY, INC.

Puget Sound Energy, Inc. ("PSE") hereby submits these additional comments in response to the Commission's December 15, 1997 notice in the above proceeding. In that notice, the Commission requested, among other things, to respond to the "white paper" filed with the Commission by TCI Cablevision of Washington, Inc. ("TCI"). In addition, commentors were asked to include responses to a number of specific questions.

I. OVERVIEW OF COMMENTS

PSE urges the Commission to reconsider the direction of this rulemaking proceeding. From the December 3, 1997 workshop, it appeared there was a strong push to adopt the FCC methodology unless compelling evidence showed such an outcome to be unacceptable. PSE submits that compelling reasons exist for the Commission to reject the FCC methodology championed by TCI if the following issues are considered:

- It is not necessary for the Commission to adopt the FCC methodology in order to preempt Federal jurisdiction over pole attachment rates. If the Commission chooses to adopt rules in this area, such rules should reflect and balance the interests in this jurisdiction.
- There is no basis for the apparent presumption that the FCC methodology is appropriate for summary adoption in this State. The interests and policy considerations inherent in the FCC's actions may be distinct from the public policy objectives of this Commission, which include consideration of local issues. Such issues include reliability of utility service, safety issues, and the ability of jurisdictional utilities to recover their costs of providing service so as not to disadvantage users of essential utility services.

- The requested rulemaking proceeding does not recognize the pole attachment rate methodology accepted by the Commission in a 1991 complaint proceeding brought by CATV operators. The settlement agreement in that proceeding ("Settlement Agreement") prescribed a pole attachment rate methodology that is to remain in effect until 2007.
- Adoption of the FCC methodology would potentially deny pole owners recovery of their costs of providing the service, thereby resulting in a subsidy favoring pole users--primarily CATV operators not within the jurisdiction of the Commission--at the expense of pole owners--primarily electric and telecommunications utilities that provide essential utility service under rates regulated by the Commission. PSE has an obligation on behalf of its electric customers to attempt to recover the costs in providing this service.
- This under-recovery in pole attachment costs would represent a transfer of wealth from the pole owners and their customers to pole users. This subsidy is justified neither by any evidence that a subsidy is necessary to advance any sound public policy objective nor financial information showing that a subsidy is necessary for the beneficiary of the subsidy to remain financially viable.

PSE encourages the Commission to weigh carefully the comments offered in this proceeding, and to view with skepticism the applicability of Federally-developed regulations to circumstances in Washington State. Those Federal rules were geared toward fostering the development of the telecommunications and cable industries. Replication of the Federal methodology in this State may lead to under-recovery of jurisdictional utilities' full costs of providing the service, to the detriment of utility customers (and, in PSE's case, its electric customers).

II. RESPONSES TO SPECIFIC QUESTIONS

In response to the specific questions raised by the Commission in its December 15, 1997 notice, PSE states as follows:

1. What is each party's preference regarding the FCC formula?

The FCC formula may be appropriate for use as a starting point to guide this Commission's analysis of pole attachment rates. There are significant differences, however, between the FCC's statutory authority and the constituencies and interests served by that agency versus the interests of this Commission in regulating pole attachment rates. Moreover,

this Commission has a greater concern for safety, reliability and cost of electric utility operations than does the FCC. The Commission should carefully consider these differences and craft appropriate rules which meet the needs of this state and still take adequate consideration of the interests of the companies regulated by the Commission.

2. Is there a cost basis for the FCC's formula, other than the policy reason?

The FCC's formula purports to be cost based, but the phase-in represents a departure from cost basis in favor of a stated Federal policy objective. Although the formula represents an acceptable starting point for development of pole attachment rates in this state, there are a number of decision points in applying the cost-based principles, and in many cases decision-makers could reach different conclusions about how these various issues should be resolved. In the FCC's case, the interests which it is balancing and the constituencies which it sees itself as serving may be different than the WUTC's. This Commission could reach different conclusions regarding many of the individual decisions in applying a cost-based methodology.

3. Should Washington adopt revisions to the proposed methodology on an on-going basis to mirror the FCC?

No. The Commission's interests may be different from the FCC's, and it would be inappropriate to adopt summarily any refinements or modifications to the FCC methodology without considering the appropriateness of such revisions to the circumstances in the State of Washington.

4. Should any established methodology be second to private contract negotiations?

Yes. Voluntarily negotiated agreements should be encouraged, consistent with the policies underlying the Telecommunications Act of 1996 ("1996 Act").

5. Should the transition rate for CLECs and cable companies mirror the FCC's contemplated five-year period (ending in 2006), or should there be a "flash cut" to the ILEC rate?

With TCI's apparent wish to abandon the methodology set forth in the Settlement Agreement, there should be a "flash cut" to the full cost ILEC rate. That is the rate which, by

its definition, comes the closest to allowing a pole owner to recover its cost of providing the pole attachment. Anything less than that rate represents a subsidy to a non-essential service, and a transfer of wealth from the owners of the poles and their customers to the users of the poles. Such a subsidy or transfer of wealth has not been justified for public policy reasons inasmuch as these pole users have not demonstrated that a subsidy is either necessary or appropriate.

6. Does GTENW propose the same cost methodology in Washington that it proposes in other states?

Not applicable to PSE.

III. DISCUSSION

A. It Is Not Necessary for WUTC to Adopt the FCC Methodology to Achieve Preemption of Federal Rules

There appears to be some confusion that the Commission may be required to adopt the exact FCC methodology in order to claim preemption of Federal regulation of pole attachments under the Federal Pole Attachment Act, 47 U.S.C. § 224(c). It is not necessary under the applicable statute for the state to mirror the FCC methodology in order to achieve preemption. To the contrary, the statute expressly divests the FCC of jurisdiction of the regulation of pole attachments within states that certify to the FCC that state regulation is taking place. See 47 U.S.C. § 224(c). The legislative history of the Federal Pole Attachment Act indicates that once a state certifies that it is asserting authority in this area--which Washington did in 1992--no further action is necessary by the state to effect preemption:

The bill as reported makes clear that the [FCC] shall be foreclosed from regulation with respect to pole attachments in any State which has so certified to the [FCC]. **Receipt of such a certification from the State shall be conclusive upon the [FCC].** The FCC shall defer to any State regulatory program operating under color of State law **Thus, if a State is regulating, or is prepared to regulate upon a proper request, the FCC is preempted.**

S. Rep. No. 580, 95th Cong., 2d Sess. 18, reprinted in 1978 U.S. Code Cong. & Admin. News 109, 125 (emphasis added).

Moreover, in Washington, there is a strong presumption against federal preemption of state law. Dept. of Labor and Indus. v. Common Carriers, Inc., 111 Wn.2d 586, 762 P.2d 348. Thus, even were the WUTC's pole attachment standards different than the FCC's pole attachment standards, the fact that 47 U.S.C. § 224(c) expressly authorizes state preemption of federal regulation indicates that states are authorized to enact their own standards independent of the FCC. Other states have established their own pole attachment standards without borrowing FCC standards. See, e.g. Central Illinois Public Service Co. v. Illinois Commerce Commission, 644 N.E.2d 817 (Ill. 1994) and Louisiana Cablevision v. Louisiana Public Service Commission, 493 So. 2d 555 (La. 1986).

B. There Is No Basis for the Apparent Presumption That the FCC Methodology Is Appropriate for Summary Adoption in This State

As noted above, the interests and policy considerations inherent in the FCC's actions may be distinct from the public policy objectives of this Commission. Unlike the FCC, this Commission is uniquely situated to consider local issues such as reliability of utility service, safety issues, and the ability of jurisdictional utilities to recover their costs of providing service so as not to disadvantage users of essential utility services. The legislative history of the Federal Pole Attachment Act suggests that wholesale adoption of the Federal formula was precisely what was sought to be avoided by enactment of the statute:

[N]o Federal formula could accommodate all the various local needs and priorities in an entirely satisfactory manner. . . . [F]amiliarity with the specific operating environment of the utilities and cable television systems within a State, as well as the needs and interests of State or local constituents, is indispensable to efficient and equitable regulation.

Furthermore, imposition of a Federal ratesetting formula on the States would discourage State regulation by leaving only ministerial functions to the State public utility commissions or other regulatory agencies of the States or localities. The committee wishes to facilitate

the replacement of FCC regulation in this area, not to vest within the [FCC] permanent nationwide pole attachment duties.

S. Rep. No. 580, 95th Cong., 2d Sess. 18, reprinted in 1978 U.S. Code Cong. & Admin.

News 109, 126 (emphasis added). The Senate Report goes on to state:

Ultimately, CATV pole attachment ratesetting involves equity considerations. . . . Considerations of equity should turn on the needs and interests of local constituents. Given the fact that State public service commissions or local regulatory bodies are better attuned to these needs and interests than a Federal agency, jurisdiction over CATV pole attachments should rest with non-Federal officials.

S. Rep. No. 580, 95th Cong., 2d Sess. 18, reprinted in 1978 U.S. Code Cong. & Admin.

News 109, 126.¹ Thus, it would be contrary to a stated objective of the Federal Pole Attachment Act for the Commission to summarily adopt the FCC rules without evaluating their appropriateness in light of local circumstances.

Moreover, there are different constituencies involved and different interests to be balanced at the FCC. The Federal regulations were geared toward fostering the development of the telecommunications and cable industries. Replication of the Federal methodology in this States may lead to under-recovery of jurisdictional utilities' costs of providing the service, which would disadvantage their customers. The FCC openly acknowledges that its decisions result in rates which do not allow for full recovery of the costs of providing pole attachment service. In its pending rulemaking on pole attachment rates, the FCC states its objective as promoting policies that eliminate "market entry-barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services." TCI apparently

¹ The Senate Committee report also stated that:

The Committee considers the matter of CATV pole attachments to be essentially local in nature, and that the various State and local regulatory bodies which regulate other practices of telephone and electric utilities are better equipped to regulate CATV pole attachments. Regulation should be vested with those persons or agencies most familiar with the local environment within which utilities and cable television system operate.

Id., at 124.

would include itself in the advantaged class of a small business or fledgling entrepreneur in seeking below-cost rates. Another example of openly acknowledged subsidization is the phase-in of the new rate formula over a five year period beginning in 2001. Thus the higher rates called for under the new formula would not be fully effective until 2006, thereby denying the pole owner the ability prior to that to recover what has been determined to be the actual costs of providing the service.

C. The Requested Rulemaking Proceeding Disregards the Pole Attachment Rate Methodology Accepted by the Commission in a 1991 Complaint Proceeding Brought by CATV Operators

Although it would appear from the "Pre-Proposal Statement of Inquiry" issued by the Commission on September 26, 1997, that the Commission was commencing this inquiry on its own motion, the actual origin of this proceeding is quite clear from the handouts at the December 3, 1997 workshop, which are captioned "**TCI Petition for Rulemaking on Pole Attachment**". Upon further investigation, it can be learned that on April 25, 1997, TCI filed a petition for rulemaking seeking adoption of specific rules, regulations and procedures to implement Chapter 80.54 RCW. Included in TCI's petition are five pages of argument supporting adoption of the specific proposal advanced by TCI. The TCI petition was not mentioned in the Commission's pre-proposal statement of inquiry, nor was a copy of it distributed at the December 3, 1997 workshop. No parties were put on notice that the matters at issue in this proceeding were those set forth in the TCI petition.² At the

² On this point, the Washington Administrative Procedure Act requires that parties be advised of the basis for commencing a rulemaking, and be given a reasonable opportunity to comment on the matters at issue. RCW 34.05.320(1)(e) requires that an agency notice include:

- (a) A title, a description of the rule's purpose, and any other information which may be of assistance in identifying the rule or its purpose;
...
- (c) A summary of the rule and a statement of the reasons supporting the proposed action;
...
- (e) The name of the person or organization, whether private, public or governmental, proposing the rule;

December 3, 1997 workshop, the representative of TCI was provided an extensive opportunity to state the basis for the relief requested, and other parties were put in the position of having to rebut the stated objective of the proceeding.

TCI's Petition fails to acknowledge the pole attachment rate settlement accepted by the Commission in a 1991 complaint proceeding brought by CATV operators against PSE's predecessor, Puget Sound Power & Light Company ("Puget"). In Docket No. UE-91108, two members of the Washington Cable Association, Northstar Cable, Inc. and Tele-View Systems, Inc., D/B/A Viacom Cable, commenced a complaint proceeding against Puget regarding the pole attachment rates and practices followed by Puget. That proceeding was resolved pursuant to a settlement agreement which prescribed a methodology for setting pole attachment rates to be followed by the parties through the year 2006. In the Commission's Third Supplemental order issued in that proceeding, the Commission accepted the Settlement Agreement and dismissed the complaint proceeding. A copy of the Commission order, which includes the Settlement Agreement as Attachment A thereto, is included with this filing as Exhibit A.

Paragraph 6 of the Settlement Agreement states that:

Neither the cable operators nor Puget shall seek or advocate a departure from this Agreement before any court or governmental body.

(Settlement Agreement, page 3.) Cable operators include the specific petitioners in that proceeding, Northstar Cable, Inc., and Tele-View Systems, Inc., d/b/a Viacom Cable. Since that proceeding, TCI has become a successor in interest to Viacom Cable, and thus would seem to be bound by the provisions of that settlement agreement.³ TCI's action in

It is curious that interested parties to this proceeding were not previously informed of the premise for this proceeding, or that it was commenced in response to a specific proposal in a petition containing several pages of arguments to which parties should have a reasonable opportunity to respond.

³ The representative for TCI in this proceeding, Paul Glist, was a signatory to that settlement agreement as representative to the cable operators involved in that proceeding.

commencing this rulemaking represents an effort to "seek or advocate a departure from [the settlement] agreement" before a governmental body, the WUTC.

The Settlement Agreement prescribes specific methodology to be followed in setting the rate for pole attachment charges for a 15-year period beginning in 1992 and ending in 2006. The methodology set forth in that agreement and accepted by the Commission in its Third Supplemental Order provides for a specific formula based on a utility's FERC Form 1, pole count, and company records. Each calendar year the Annual Rate is recalculated based on an updating of the information. By the terms of the Agreement, the Annual Rate established in accordance with the agreement apply to all cable television pole attachees, not just the particular Cable Operators which were parties to the complaint proceeding. The methodology in the Settlement Agreement provides considerable guidance on an acceptable approach for setting pole attachment rates. The same concerns cited by TCI in its Petition as the basis for this rulemaking led the parties to the Settlement Agreement to develop a specific formula and methodology to be in effect for a 15-year period.⁴

D. Adoption of the FCC Methodology Would Potentially Deny Pole Owners Recovery of Their Costs of Providing the Service. Any Rules Adopted by the Commission Must Provide the Pole Owner with an Opportunity to Recover All Its Costs Associated with Providing the Service

If the methodology accepted in the 1992 Settlement Agreement is abandoned in favor of rules establishing a ratesetting methodology, such rules should provide the pole owner with an ability to recover all of its costs associated with providing space on the pole for pole users. Exhibit B attached hereto sets forth the formula proposed by PSE for recovery of such costs.

⁴ TCI asserts in its Petition that this rulemaking proceeding is necessary in order to "conserve the Commission's resources and promote regulatory consistency" by adopting a specific ratemaking methodology. According to the Petition, "affected attaching companies need a consistent, administratively easy methodology to determine if the pole attachment rates charged are just and reasonable." TCI requested adoption of "a specific ratemaking methodology which relies on public information for rate development, allowing for routine, consistent rate development without creating cumbersome administrative processes."

One cost which is noticeable by its absence in the FCC rate is the utilities' investment in easements and rights-of-way. Neither the existing or the proposed FCC formula include Account 360, Land and Land Rights, even though the Act and the FCC rules implemented in Docket No. 96-98 mandate access to the utilities' easements and rights-of-way and even go so far as to require the utility to exercise its right of eminent domain to acquire rights for the telecommunication user, the costs of which would be booked to Account 360. The methodology under the 1992 Settlement Agreement authorized inclusion of Account 360 in that ratesetting formula, demonstrating a willingness to depart from the FCC methodology where warranted.

Other costs which can arguably be included in whole or in part in the rate formula are Accounts 580, 583, 588, 590, 594 and 595, all overhead distribution operation costs and parts of Accounts 360, 365, 367, 368, and 397, investment in distribution plant associated with poles.

E. No Basis Has Been Shown for Charging Rates Which Are Less Than the Costs of Providing the Service. Petitioner Has Not Shown that CATV Requires Any Such Subsidization in This State

Adoption of a rate formula which results in an under-recovery of costs is particularly unwarranted in the absence of a showing that a subsidy is necessary either to serve some public policy objective or to accommodate the financial needs of the beneficiary of the subsidy. In fact, the Federal Pole Attachment Act requires that the impact of pole attachment rates on profitability of CATV be considered, thereby allowing examination of financial information of the CATV industry. Under the Federal Pole Attachment Act, 47 U.S.C. § 224, jurisdiction to regulate the rates, terms and conditions of pole attachment agreements was granted in the first instance to the FCC. Under that federal law, however, states could preempt the FCC's authority by certifying to the FCC that they regulate the rates, terms and conditions for pole attachments, and in so doing have the authority to consider and do consider the interests of cable television subscribers, as well as the interests of utility

consumers. 47 U.S.C. § 224(c)(2) (emphasis added).⁵ The Washington legislature responded by enacting Chapter 80.54 RCW, which empowers the Commission to regulate the rates, terms and conditions for pole attachments. In order to comply with the terms of federal law, the Commission was expressly empowered to:

[C]onsider the interest of the customers of the attaching utility or licensee, as well as the interest of the customers of the utility upon which the attachment is made.

RCW 80.54.030.

Information regarding the financial returns earned by pole users is relevant to the issues in this proceeding, given the subsidy that would result from adoption of the FCC methodology. This information will enable the Commission to evaluate Petitioner's financial position and the ability of pole users to pay and/or recover pole attachment costs in cable TV subscriber rates. It is precisely this sort of information which is necessary for the Commission to discharge its statutory obligation to consider the interests of cable television subscribers. On this point, the legislative history of the Federal Pole Attachment Act states as follows:

Ultimately, CATV pole attachment ratesetting involves equity considerations. Decisions regarding the allocation of pole costs among users should reflect in some rough sense **the ability of cable subscribers and the utilities' customers to pay for costs which are passed along to them. Another significant equity consideration is the relative importance of each of the respective services to the communities served.**

⁵ The applicable portion of the Federal Pole Attachment Act states that:

Each State which regulates the rates, terms, and conditions for pole attachment shall certify to the Commission that--

- (A) it regulates such rates, terms, and conditions; and
- (B) in so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

47 U.S.C. S 224(c)(2).

S. Rep. No. 580, 95th Cong., 2d Sess. 18, reprinted in 1978 U.S. Code Cong. & Admin. News 109, 126 (emphasis added).⁶

The statutes governing pole attachment rates invite the sort of "equity considerations" mentioned in the legislative history above. States were to be given the "maximum flexibility to develop a regulatory response to pole attachment problems in accordance with perceived State or local needs and priorities."⁷ In this regard, both the Federal law (47 U.S.C. § 224(d)) and the Washington statute (RCW 80.54.040) define just and reasonable pole attachment rates according to a broad range defined by incremental costs at the low end and fully allocated costs at the high end. The ratesetting agency has substantial discretion to set rates anywhere within that range. Depending on the point selected within that range, there could be a considerable transfer of wealth to pole users.

F. Other Issues

1. No Basis Has Been Shown for Adopting a Rate Phase-In; Pole Attachment Rates Should Move Immediately to the Full Rate Found to be Fair, Just, Reasonable and Sufficient

Under the proposed FCC methodology, the new pole attachment rate formula would be phased in over a 10 year period. This phase-in is achieved by delaying the implementation for five years under Docket 97-98 and then phasing in the result of Docket 97-151 over five more years. In PSE's view, such a phase-in would be an arbitrary, unsubstantiated and confiscatory taking of pole owners' property as the full costs of providing the service would

⁶ The Senate Committee report also stated that:

The Committee considers the matter of CATV pole attachments to be essentially local in nature, and that the various State and local regulatory bodies which regulate other practices of telephone and electric utilities are better equipped to regulate CATV pole attachments. Regulation should be vested with those persons or agencies most familiar with the local environment within which utilities and cable television system operate.

Id., at 124.

⁷ S. Rep. No. 580, 95th Cong., 2d Sess. 17, reprinted in 1978 U.S. Code Cong. & Admin. News 109, 125. (emphasis added)

be unrecovered. The formula which results from the FCC rulemaking presumably reflects, and is designed to recover, all of the costs associated with providing the service. Those costs having been determined, there is no basis for not allowing those costs to be recovered promptly. Prompt implementation is warranted, if not required by law. Although TCI may claim that a phase in is necessary to remove entry barriers, any protection (i.e., subsidy) contemplated for "entrepreneurs and other small businesses" would be inappropriate if extended to TCI.

2. The Commission in this Proceeding Should Not Adopt Federal Rules "As Such Rules May be Revised from Time to Time in the Future"

It has been suggested in this proceeding that the Commission should not only adopt the FCC's currently existing standards for pole attachments, but should indicate that it will automatically adopt the FCC's standards for pole attachments "as such rules may be revised from time to time in the future." Additional rules should be adopted without undertaking an independent rulemaking process. Although the Washington Administrative Procedure Act, Ch. 34.05 RCW, does allow an agency to adopt federal standards without following all the prerequisites of a formal rulemaking in certain limited circumstances,⁸ it would be unwise to follow such a procedure in the case of pole attachment rates, where local interests may diverge from those considered at the Federal level. The subject matter of any state rules regulating pole attachments standards in Washington state is distinct from the conduct regulated by the FCC's standards on pole attachments. Abandoning formal rulemaking procedures would prevent the local input that is necessary in formulating pole attachment standards that is achieved by allowing all interested parties notice of the rule and an opportunity to be heard on the validity of the FCC standards as applied to pole attachment

⁸ See, e.g. RCW 34.05.310(4)(c); RCW 34.05.328(5)(a)(iii), where rulemaking requirements are waived where the federal standards "regulate[] the same subject matter and conduct as the adopting or incorporating rule."

regulation in Washington state. Formal rulemaking requirements exist in order to "provid[e] greater public access to administrative rulemaking and to promote consensus among interested parties." RCW 34.05.310(1). If the Commission adopts federal standards without a formal rulemaking, it contravenes the purpose of rulemaking and denies interested parties a forum to challenge the rules that directly affect them.

3. Technical Issues

a. The FCC's Proposed Treatment of Unusable Space and the Required Safety Clearance Should Not be Adopted

PSE opposes adoption of the treatment under the proposed FCC methodology of "unusable space" and "safety space". The FCC proposes a 2/3 allocation of unusable space. According to the FCC's Notice of Proposed Rulemaking, "a utility shall apportion the cost of providing space on a pole duct conduit or right-of-way other than the usable space among the entities so that such apportionment equals two-thirds of the cost of providing space allocated to such entity under an equal apportionment of such costs among all attaching entities." It would be simpler and more equitable to allocate all unusable space equally to all attachers. After all, each of the attachers is using the pole to gain minimum clearance from the ground. To say it costs more or less for one user to achieve that minimum clearance than another through inequitable cost allocation is unsupported.

Similarly, the FCC approach in allocating the costs of the required safety clearance should not be adopted. According to the FCC's Notice of Proposed Rulemaking, the FCC ascribes the need for the 40" space as follows:

The NESC requires a 40" safety space to minimize the possibility of physical contact by employees working on cable television or telecommunications attachments with the potentially lethal electric power lines. We tentatively conclude that the safety space emanates from a utilities requirements to comply with the NESC and should properly be assigned to the utility as part of its usable space.

TCI in its briefing paper in Attachment C-1 goes a step further and suggests that absent power on the pole no safety space is required and, therefore, it should be allocated to the utility. At the same time, however, if the utility were to install communication voltage conductor, it would be allowed to install the cable in the supply space without 40" safety separation by virtue of using a qualified worker to do the installation. In fact, some utilities put their communication wire up on the primary distribution arm. In PSE's view, the only purpose of the 40" safety space is to allow nonqualified workers (communication workers) to install and maintain communication equipment and to protect them from becoming injured, and the costs associated with this required clearance should be allocated accordingly.

b. Overlashing

Overlashing of a user's own cable may be acceptable, except when it is not properly engineered, causes the pole to degrade or fail prematurely, or creates safety issues. It is not acceptable to overlash another company's cable on the licensee's strand. This constitutes an unlawful transfer or assignment of rights which is strictly prohibited in the Pole Attachment Agreement without PSE's prior written approval. A grayer issue is two licensees colashing their cable to one strand. The utility must maintain the right to know the users of its poles and the affiliation of workers who will be accessing the property at each and every attachment.

c. Preapproval of attachments

Preapproval of attachments is a fundamental requirement for maintaining compliance with applicable engineering and safety standards. When the utility loses the ability to ensure that applicable engineering and safety standards are observed, then the reliability of the electric service is threatened. PSE is striving to maintain a high level of reliability in its electrical service, and this level of reliability should not be allowed to be compromised by unrelated uses of distribution property. A preapproval requirement should be an integral part of the regulations put in place by the Commission. Furthermore, preapproval of attachments is imperative for the utilities to maintain accurate record keeping and billing.

d. Map of facilities

Telecommunications and CATV companies should be required to maintain accurate maps of their facilities. This is essential in managing a multiple use infrastructure during natural disasters and in everyday maintenance. Some utilities have advocated an identification system whereby each attachment would be marked with the owner's name and number. This may meet with substantial opposition from the telecommunications companies for a variety of reasons, but we support the underlying need. We therefore propose that the attaching company be required to maintain accurate maps which can be provided on a confidential basis to the utilities for maintenance, emergency and administrative purposes.

IV. CONCLUSION

PSE appreciates the opportunity to submit these comments, and will continue to actively participate in hearings and workshops in the Commission's development of any pole attachment rules. PSE urges the Commission to weigh carefully the interests of Washington State and all of the utilities and their customer services regulated by the Commission as it continues in this inquiry.

Respectfully submitted this 15th day of January, 1998.

PUGET SOUND ENERGY, INC.


By 
Richard R. Rucker
Joint Facilities Administrator

EXHIBIT A

SERVICE DATE
JUL 28 1992

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NORTH STAR CABLE, INC., AND)
TELEOVUE SYSTEMS, INC.,)
d/b/a VIACOM CABLE,)
Complainants,)
vs.)
PUGET SOUND POWER & LIGHT)
COMPANY,)
Respondents.)
.)

DOCKET NO. UE-911008
THIRD SUPPLEMENTAL ORDER
COMMISSION DECISION AND
ORDER ADOPTING INITIAL
ORDER ACCEPTING SETTLEMENT
AGREEMENT AND DISMISSING
COMPLAINT

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A prehearing conference was held at Seattle, Washington on January 6, 1992, before administrative law judge Christine Clishe.

On July 7, 1992, the administrative law judge entered the Second Supplemental Order, Initial Order Accepting Settlement and Dismissing Complaint. It was served on all parties of record.

Twenty days have passed since the order was entered and no petition for administrative review has been filed by any affected party of record. In accordance with RCW 34.05.464 and WAC 480-90-780(7), the Commission accepts the findings of fact and conclusions of law, and adopts the Second Supplemental Order as its own for purposes of this proceeding.

O R D E R

IT IS HEREBY ORDERED That the Second Supplemental Order is affirmed and adopted for purposes of this proceeding. In so doing,

IT IS FURTHER ORDERED That the Settlement Agreement of the complainants and respondent is accepted; a copy of that Agreement is attached to this order and incorporated by this reference; and

IT IS FURTHER ORDERED That the complaint filed by complainants is dismissed.

DATED at Olympia, Washington, and effective this 28th day of July 1992.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION



SHARON L. NELSON, Chairman



RICHARD D. CASAD, Commissioner



A. J. PARDINI, Commissioner

NOTICE TO PARTIES:

This is a final order of the Commission. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-09-810, or a petition for rehearing pursuant to RCW 80.04.200 or RCW 81.04.200 and WAC 480-09-820(1).

SERVICE DATE
JUL - 7 1992

NOTE: An important notice to parties about administrative review appears at the end of this order.

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NORTH STAR CABLE INC., and)	
TELE-VUE SYSTEMS, INC., d/b/a)	
VIACOM CABLE,)	DOCKET NO. UE-911008
)	
Complainants,)	SECOND SUPPLEMENTAL ORDER
)	INITIAL ORDER ACCEPTING
vs.)	SETTLEMENT AND DISMISSING
)	COMPLAINT
PUGET SOUND POWER & LIGHT COMPANY,)	
)	
Respondents.)	
.....)	

This complaint against Puget Sound Power & Light Company was filed on September 4, 1991, in which complainants asked the Commission to resolve a dispute relating to the rates and conditions surrounding the attachment of television cables and other facilities to utility poles. The complainants alleged that respondent's pole attachment rates, terms, and conditions are unfair, unjust, and unreasonable.

A prehearing conference was held in this matter on January 6, 1992. U.S. West Communications, Inc. moved to intervene and that intervention was granted. Hearings were set for June 16, 17, and 18, 1992. The parties commenced discovery and some testimony was prefiled. In mid-May, complainants and respondent requested suspension of the discovery and hearing schedule so that they could draft a settlement agreement. With no party objecting to that request, the request was granted.

On June 16, 1992, complainants and respondent filed with the Commission a Settlement Agreement, which resolves the issues presented in the complaint. That Agreement is Attachment A of this Initial Order. Commission staff and intervenor U.S. West Communications do not oppose the settlement. That Settlement Agreement is not inconsistent with the public interest and should be accepted.

The Agreement of the parties is in full and complete settlement of their dispute and the complaint should be dismissed.

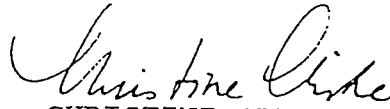
O R D E R

WHEREFORE, IT IS HEREBY ORDERED That the Settlement Agreement of the complainants and respondent shall be, and the same is hereby, accepted; a copy of that Agreement is attached to this order and incorporated by this reference; and

IT IS FURTHER ORDERED That the complaint filed by complainants shall be, and the same is hereby, dismissed.

DATED at Olympia, Washington, and effective this 7th day of July, 1992.

OFFICE OF ADMINISTRATIVE HEARINGS



CHRISTINE CLISHE
Administrative Law Judge

NOTICE TO PARTIES:

This is an initial order only. The action proposed in this order is not effective until a final order of the Utilities and Transportation Commission is entered. If you disagree with this initial order and want the Commission to consider your comments, you must take specific action within a time limit as outlined below.

Any party to this proceeding has twenty (20) days after the service date of this initial order to file a Petition for Administrative Review, under WAC 480-09-780(2). Requirements of a Petition are contained in WAC 480-09-780(4). As provided in WAC 480-09-780(5), any party may file an Answer to a Petition for Administrative Review within ten (10) days after service of the Petition. A Petition for Reopening may be filed by any party after the close of the record and before entry of a final order, under WAC 480-09-820(2). One copy of any Petition or Answer must be served on each party of record and each party's attorney or other authorized representative, with proof of service as required by WAC 480-09-120(2).

In accordance with WAC 480-09-100, all documents to be filed must be addressed to: Office of the Secretary, Washington Utilities and Transportation Commission, 1300 South Evergreen Park Drive S.W., PO Box 47250, Olympia, Washington, 98504-7250. After reviewing the Petitions for Administrative Review, Answers, briefs, and oral arguments, if any, the Commission will by final order affirm, reverse, or modify this initial order.

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ATTACHMENT A

RECEIVED

JUN 17 1992

OFFICE OF
ADMINISTRATIVE HEARINGS

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

NORTH STAR CABLE INC., and)
TELE-VUE SYSTEMS, INC.,)
d/b/a VIACOM CABLE,)
Complainants,)
v.)
PUGET SOUND POWER & LIGHT)
COMPANY,)
Respondent.)

Docket No. UE-911008
SETTLEMENT AGREEMENT

North Star Cable, Inc. and Tele-Vue Systems, Inc., d/b/a Viacom Cable (the "Cable Operators") and Puget Sound Power & Light Company ("Puget") ("the parties") hereby submit the following Agreement in full and complete settlement of this case.

WHEREAS, the Cable Operators commenced this proceeding by Complaint filed on September 4, 1991;

WHEREAS, the Complaint alleged that the \$8.76 per pole annual rental which Puget charges the Cable Operators for attaching their facilities to Puget poles is not just, reasonable, fair or sufficient under R.C.W. 80.54.030;

WHEREAS, Puget denied the allegations in an Answer filed on October 7, 1991;

1 WHEREAS, the Cable Operators, Puget, and Intervenor U.S.
2 West have all submitted testimony on the proper determination of
3 a just and reasonable rate under Washington law and policy;

4 WHEREAS, the parties have conducted extensive discovery
5 concerning the others' positions and proof;

6 WHEREAS, the parties have agreed that utility pole costs
7 should be allocated to the Cable Operators in general accordance
8 with the formula and presumptions developed by the Federal
9 Communications Commission under parallel Federal Statute and
10 Rules (47 U.S.C. § 224; 47 C.F.R. § 1.1401 et seq.), as applied
11 herein, and that the pole attachment rate produced thereby is
12 just, reasonable, fair and sufficient;

13 WHEREAS, Commission staff does not oppose the settlement of
14 this case,

15 NOW, THEREFORE, it is agreed as follows:

16 1. The Cable Operators and Puget agree that the maximum
17 annual rate per pole ("Annual Rate") shall be computed according
18 to the following formula, which is detailed in Exhibit A.

19 (A) Net Investment per bare pole, including
20 proportionate share of distribution right-of-way;
21 multiplied by

22 (B) Annual carrying charge, including net pole
23 depreciation; administration and general expenses;
24 maintenance; taxes; and cost of capital;
25 multiplied by

 (C) Use ratio per pole of 1/13.5 (7.407%), reflecting
the one foot leased to cable out of a total of 13.5
feet of usable space
equals

1 (D) Annual Rate for one foot of pole space

2 2. The Annual Rate effective January 1, 1992, shall be
3 \$6.61, derived as shown in Exhibit A;

4 3. The Annual Rate may be adjusted no more frequently than
5 once each calendar year after 60 days notice upon request of
6 either party by updating (A) Net Investment per bare pole and (B)
7 Annual carrying charges with the information in Puget's then
8 current FERC Form 1, pole count, and company records. Component
9 (C) shall not be adjusted.

10 4. The Annual Rate established in accordance with this
11 Agreement shall be applicable for all cable television pole
12 attachees. Nothing in this Agreement requires that such Rate, or
13 the methodology used in calculating it, have any applicability to
14 Agreements between Puget and other attachees to Puget poles.

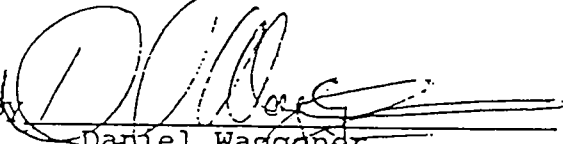
15 5. This Agreement is in full and final resolution of any
16 and all actual or potential claims between Puget and Cable
17 Operators with respect to pole attachment rates charged by Puget
18 prior to 1992. Without limiting the generality of the foregoing,
19 Cable Operators may not assert any claims with respect to the
20 pole attachment rates charged by Puget prior to 1992 or the
21 methods and components used in calculating such rates.


22 6. Neither the Cable Operators nor Puget shall seek or
23 advocate a departure from this Agreement before any court or
24 governmental body.
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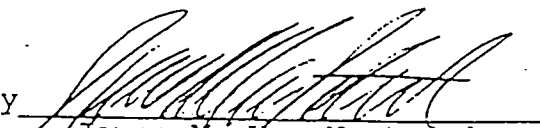
7. This Agreement shall remain effective from the date of Commission approval until January 1, 2007; provided, however, that this Agreement shall be void and of no force or effect in the event the Commission or other agency with jurisdiction over pole attachment rates issues any order or opinion, or adopts any administrative rule, which requires that Puget's pole attachment rates be set on a basis other than as set forth in paragraph 1 above.

NORTH STAR CABLE, INC. and
TELE-VUE SYSTEMS, INC d/b/a
VIACOM CABLE

By 
Daniel Waggoner
DAVIS WRIGHT TREMAINE

By 
Paul Glist
COLE, RAYWID & BRAVERMAN
Their Attorneys

PUGET SOUND POWER & LIGHT
COMPANY

By 
James M. Van Nostrand
PERKINS COIE

Its Attorney

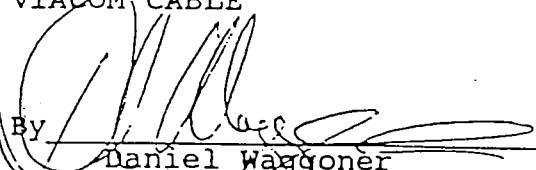
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3 **AGREEMENT**


4 This Agreement is made and entered into this 9th day of
5 June, 1992 by and between NORTH STAR CABLE, INC. and TELE-VUE
6 SYSTEMS, INC., d/b/a VIACOM CABLE (the "Cable Operators") and
7 PUGET SOUND POWER & LIGHT COMPANY ("Puget").

8 WHEREAS, in the course of proceedings in Docket UE-911008
9 the parties learned of improvements and clarification appropriate
10 under the form of pole attachment agreement between Puget and the
11 Cable Operators,


12 NOW, THEREFORE, the parties agree that the amendments and
13 clarification shown in Schedule 1 shall govern Puget's operating
14 practices; shall be incorporated into Puget's form of pole
15 attachment agreement for cable systems; and shall, on request of
16 any member of the Washington Cable Communications Association, be
17 included in existing pole agreements by amendment. Nothing in
18 this Agreement shall preclude Puget from modifying provisions of
19 Puget's form of pole attachment agreement which are unrelated to
20 (1) the issues in the above-referenced proceeding and (2) the
21 matters set forth in Schedule 1. Puget shall engage in good
22 faith negotiations over the terms of proposed modifications with
23 the Washington State Cable Communications Association.
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1
2 NORTH STAR CABLE, INC. and
3 TELE-VUE SYSTEMS, INC d/b/a
4 VIACOM CABLE

5 By 
6 Daniel Waggoner
7 DAVIS WRIGHT TREMAINE

8 By  (for)
9 Paul Grist
10 COLE, (RAYWID & BRAVERMAN
11 Their Attorneys

12 PUGET SOUND POWER & LIGHT
13 COMPANY

14 By 
15 Gary B. Swofford
16 Vice President Divisions
17 and Customer Service

1 Schedule 1

2 § 2.4 No application shall be refused unreasonably.

3 § 2.5 Anchors and guys necessary to support the additional
4 strain imposed on any Pole by attachment of the Equipment shall
5 be installed in accordance with practices and procedures agreed
6 upon by the parties. If pursuant to such practices and
7 procedures the installation of guys and anchors can be
8 accomplished at the least cost by Company (e.g., where such
9 installation can be performed simultaneously with the attachment
10 of cable), Company shall install such guys and anchors or
11 reimburse Puget for costs incurred by Puget for such
12 installation. Puget will otherwise be responsible for installing
13 guys and anchors.

14 Company shall bear any costs for rearrangement of telephone
15 lines.

16 § 5 Costs of a replacement pole shall be borne by Puget. Except
17 in cases of emergency, Puget shall provide twenty (20) days
18 advance notice of relocation, replacement or removal of any pole
19 to which Equipment is attached. Except for poles located in
20 jurisdictions requiring immediate removal of poles, such notice
21 shall give Company no fewer than thirty (30) days to
22 transfer its Equipment. If Company fails to transfer its
23 Equipment within the time prescribed in the notice, Puget may
24 transfer Company's Equipment at Company's expense. The rate for
25 such transfer of Equipment shall be as set forth in a separate
Schedule of Charges to be agreed upon by the parties.

§ 6.3 If the understatement is in excess of fifteen
percent (15%) of the number of Poles shown on the applicable
statement, Signee shall reimburse all reasonable costs incurred
by Puget to conduct the audit or inspection; provided, however,
that Puget shall have given Company sixty (60) days advance
notice of such audit or inspection in order to provide Company an
opportunity to participate in such audit or inspection. . . .

§ 7.1 The term is extended from 5 to 10 years.

§ 8.4 Such work shall not include makeready or rearrangements of
utility facility.

PUGET SOUND POWER AND LIGHT COMP.
 COMPUTATION OF ANNUAL POLE ATTACHMENT RATE
 FOR THE TWELVE MONTHS ENDED DECEMBER 31, 1991

EXHIBIT A

<u>A. Net investment per bare pole (PV)</u>		
1	Investment in poles, towers, and fixtures (FERC Account 364)	\$150,540,050
2	Less depreciation reserve associated with line 1	(47,046,800)
3	Less deferred Federal income taxes associated with line 1	(3,980,179)
4	Net investment in poles, towers, and fixtures	<u>99,513,071</u>
5	Ratio of bare pole to total pole	<u>85%</u>
6	Value of all bare poles	84,586,110
7	Easements (FERC Account 360 not including substations)	<u>3,814,924</u>
8	Combined value of all bare poles and easements	88,401,034
9	Total number of distribution poles	<u>322,307</u>
		\$274.28

<u>B. Annual carrying charge (CC)</u>		
1	Net pole depreciation	5.007%
2	Administration and general expenses	3.597%
3	Maintenance	5.859%
4	Taxes	7.907%
5	Cost of capital (overall rate of return authorized by WUTC in latest Puget rate case)	<u>10.16%</u>
		32.530%

<u>C. Use ratio per pole (PR)</u>		
1	Usable space on pole, in feet	13.5
2	Effective space occupied by Licensee attachments	<u>1</u>
		7.407%

<u>D. Annual pole attachment rate</u>		
PV * CC * PR		\$6.61

EXHIBIT B

Washington Utilities & Transportation Commission
Docket No. UT-970723
Comments of PSE

Exhibit B

The rate formula for pole attachments rates charged by electric companies shall be calculated as follows:

Net Cost of Bare Distribution Pole ("A") x Carrying Charges ("B") x Allocation of Pole Space ("C") = Annual Rate

- A. The **Net Cost of Bare Distribution Pole** component shall be calculated as follows:
1. Investment in distribution poles, 100% of AC 364, 30% of AC 365, 2% of ACs 367, 368, 369, and 10% of AC 397 (Percentages of ACs may vary based on utility and justification);
 2. Less Depreciation Reserve associated with line 1;
 3. Less Deferred Federal Income Taxes associated with line 1;
 4. Equals Net Investment in Distribution Poles for Joint Use;
 5. Times Ratio of bare pole to total pole;
 6. Equals Value of all Bare Distribution Poles;
 7. Plus non-substation investments in Account 360;
 8. Divided by Total number of Distribution Poles;
 9. Equals Net Cost of Bare Distribution Pole.
- B. The **Carrying Charges** component shall be calculated as follows:
1. Net Pole Depreciation
(Depreciation rate for Account 364) * (Gross pole investment/net pole investment)
 2. plus Administration and General Expenses;
(Total A&G expenses) / (net Electric Plant in Service)
 3. plus Maintenance
(sum of FERC ACs 580, 583, 588, 590, 593, 594.1 and 595) / (Value of all Bare Distribution Poles);
 4. plus Taxes
(Sum of FERC ACs 408.1, 409.1, 410.1, 411.4 Less 411.1) / (net Electric Plant in Service);
 5. plus Cost of Capital
(overall rate of return authorized by WUTC in latest general rate case);
 6. equals Total Carrying Charges.
- C. The **Allocation of Pole Space** component shall be calculated as follows:
1. Usable Space (space occupied on pole in feet / total usable space * total usable space / average height of pole) where each communication attachment occupies one foot and total usable space includes the safety space;
 2. plus Unusable Space (1 / average number of attachers * total unusable space / average height of pole) where total unusable space equals the difference between usable space and average height of pole;
 3. equals Allocation of Pole Space.