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STATE OF WASH.
UTIL. AND TRANSP.
COMMISSION

April 27, 1998

VIA MESSENGER

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

Re: Docket No. UT-970723

Dear Mr. Curl:

Enclosed are an original and nineteen (19) copies of the Comments of Puget Sound Energy, Inc. in the above proceeding. Also enclosed is a copy of our comments in electronic format.

Thank you for your assistance.

Very truly yours,

PUGET SOUND ENERGY, INC.

By Richard R. Rucker
Richard R. Rucker
Joint Facilities Administrator

RRR:acs
Enclosures

cc: Interested Parties

**DISK
AVAILABLE**

[BA981170.022]

**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.

STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION
COMMISSION

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Puget Sound Energy, Inc. ("PSE") hereby submits these additional comments in response to the Commission's March 31, 1998 Notice in the above proceeding.¹ In that Notice, the Commission referenced the actions of the Federal Communications Commission ("FCC") in issuing its Order No. 98-20 ("FCC Order") on February 6, and requested the parties to respond to the FCC rule and Commission Staff's stated intentions with respect to it.

According to the Commission's notice:

- (1) Commission Staff is inclined to adopt the FCC methodology, with a flash-cut rather than the five-year phase-in adopted by the FCC, and
- (2) Commission Staff tends to agree with paragraph 9 of the FCC Order that negotiated contracts should be "the primary means of setting attachment rates." (Commission notice at 1)

PSE appreciates the direction which the Commission Staff appears to be taking in the Notice, and PSE supports these recommendations by Staff. Adoption of the FCC methodology, particularly on a flash cut basis rather than through a phase-in, will finally allow pole owners a reasonable opportunity to start to more fully recover their costs of providing this service. Moreover, the preference for setting rates through negotiation is consistent with the policies underlying the Telecommunications Act of 1996 ("1996 Act"). Against this backdrop of

¹ Notice of Opportunity to File Comments ("Notice").

general support for the expressed intentions of Commission Staff in this proceeding, PSE's comments are directed at remaining technical issues raised by the FCC Order.

Comments on Remaining Issues

Implementation Date: The FCC Order provides a February 8, 2001 implementation date, with a five-year phase-in of the new rate methodology for cable service providers (but not telecommunications carriers). If Commission Staff's recommendation to adopt a flash-cut is adopted, it is not clear when the new rate will become effective. As stated in our comments of January 15, the FCC formula 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 reflected in rates promptly. PSE proposes that the rules adopted by the Commission in this proceeding provide for immediate implementation of the FCC rate methodology. Rates under existing contracts would not be affected; but prior to February 8, 2001, as those contracts expire, parties should be required to reflect the ratesetting formula adopted by the Commission in this proceeding (subject to the expressed preference for negotiated contracts as the primary means of setting attachment rates).

Related FCC Amendments: The FCC proceeding referenced in the Notice, CS Docket No. 97-151, pertains to pole attachment rate methodology. There are related FCC proceedings currently underway pertaining to access issues. The Commission should clarify that any action adopting the FCC decision in this rulemaking pertains only to the rate methodology issues resolved in the FCC Order. Any further modifications or development of additional rules would be subject to another rulemaking proceeding.

As noted in PSE's earlier comments, the Commission in this proceeding should not implement a wholesale adoption of Federal rules as such rules may be revised from time to time in the future. Additional rules should not 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,² 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. 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 regulation in Washington state.

Preserving Pole Owners' Rights:

1. Overlashing by the Same Attacher: The FCC Order encourages overlashing of an attacher's cable. In PSE's view, this is not acceptable unless it is properly engineered, does not cause the pole to degrade or fail prematurely, or does not create safety issues. Overlashing is only one of several options for minimizing the cost and disruption of construction in making a pole ready for an attaching utility. The FCC is considering whether it is appropriate to collect an additional fee in the case of overlashing by the same user, but has deferred that issue to another rulemaking. PSE submits that an additional fee is appropriate where additional costs are imposed by overlashing.

2. Overlashing by a Third Party, or Subleasing: The FCC Order supports overlashing by a third party which, in PSE's view, is tantamount to subleasing. 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, without PSE's prior written approval, under the form of Pole Attachment Agreement currently used by PSE. Third party overlashing raises issues never contemplated in the current agreements.

In PSE's view, third-party overlashing should be prohibited unless certain conditions can be satisfied:

² 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."

- The third party should be required to have an agreement both with the pole owner and with the host attaching entity. Unless there is an agreement in place, subleasing clouds the "number of entities attached" to determine the fee for an attachment. In addition, the pole owner must have a right to indemnification by the sublessee, which can be enforced only if an agreement is required between the pole owner and the sublessee.
- The third party should also be counted in computing the charge for unusable space, as provided in the FCC Order; since the third party is considered in computing the number of entities attached, then the third party should pay for its share of unused space.
- If PSE were to allow third party attachments, PSE would incur the cost of negotiating an agreement with the third party as well as the attendant costs of record keeping and billing. Consequently, the third party attacher should be billed for usable and unusable space just as any other attacher. Just because makeready costs are mitigated by using existing attachment points does not obviate the obligation to pay for the convenience of attaching to a pole.
- The pole owner must be in a position to secure the information necessary to assess pole loading issues.

3. Preapproval of Attachments: As noted in PSE's earlier comments, preapproval of attachments is a fundamental requirement for maintaining compliance with applicable engineering and safety standards, and a preapproval requirement should be an integral part of the regulations put in place by the Commission. (See PSE Comments of January 15 at p. 15)

Identity of Attacher as Cable Company or Telecommunications Carrier: Pole owners need to be able to determine whether an attacher is a cable service provider or a telecommunications carrier. It is a matter of some consequence since the cable service providers continue to enjoy subsidized, preferential rates. The regulations should ensure that the pole owner receives the necessary information to determine which rate applies. Attaching entities could be required to register with the Commission, for example, and thereby indicate their purported classification as either a cable service provider or telecommunications carrier.

Use of Ducts and Conduits: The use of an electric company's ducts and conduits for telecommunications facilities raises a number of troublesome issues. An electric company


places its ducts and conduits from vault to vault for pulling in electric cables and wires. Sharing a duct with a telecommunications carrier imparts a high risk to that carrier in the event the electric cable has a fault. High-voltage accidents could easily destroy large portions of a cable operator's or telecommunications carrier's system. Because of these safety concerns and exposure to liability arising from damage to CATV/communications systems, PSE has serious reservations about making its ducts and conduits available, and would prefer to do so only by negotiated contract where such issues can be specifically addressed. If access is required, the utility must be able to recover the costs associated with preserving the integrity of the electrical system and minimizing the danger of accidents or injury. It will likely be necessary for electrical workers to accompany communications workers into an electrical vault. The electrical worker's sole purpose would be to cover the exposed electrical parts with rubber blankets and barriers to protect the communications worker.

Rights-of-Way: The FCC has decided to adjudicate complaints regarding right-of-way issues on a case-by-case basis. (See paragraphs 120-121 of the FCC Order.) This does not provide much guidance on the issue, and may be an area appropriate for Commission action.

A related issue concerning rights of way is the authority of the Commission to address access issues under the current statutory language in Chapter 80.54 RCW. The reference to "rates, terms and conditions for attachments by licensees or utilities" in RCW 80.54.020 should be amended to include "access."

Respectfully submitted this 27th day of April, 1998.

PUGET SOUND ENERGY, INC.

By 
Richard R. Rucker
Joint Facilities Administrator

[BA981110.063]