Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)))	WT Docket No. 17-84

COMMENTS OF CPS ENERGY

The City of San Antonio, acting by and through the City Public Service Board ("CPS Energy") submits these comments in response to the Federal Communications Commission's *Notice of Proposed Rulemaking* ("*NPRM*") and *Notice of Inquiry* ("*NOI*") in the above-captioned proceeding. In this docket, the Commission seeks comment on numerous far-reaching proposals intended to "reduce pole attachment costs and speed access to utility poles" by telecommunications and broadband service providers.[1] The Commission suggests that these proposals will remove barriers to broadband deployment and will thereby encourage broadband service providers to accelerate deployment of broadband facilities and introduce more competitive broadband services.

CPS Energy files these comments for the limited purposes of: (1) addressing the Commission's proposals to eliminate or further reduce the capital costs that utilities can properly recover under its Section 244(e) telecommunications pole attachment rate formula[2] thereby increasing the existing subsidies to the communications industry at the expense of electric

---

1 *NPRM*, at ¶ 3.

2 47 U.S.C. § 224(e).

consumers; and (2) clarifying and correcting the record with respect to the CPS Energy One-Touch Make-Ready ("OTMR") process.

I. INTRODUCTION AND INTEREST OF CPS ENERGY

CPS Energy is the largest municipally owned utility ("MOU") in the country providing combined electric and natural gas services to approximately 804,675 electric customers and 343,754 gas customers as of January 31, 2017. The utility has a long history of service in San Antonio spanning one hundred fifty-seven (157) years, initially operating as a private utility under the name of City Public Service Company. This year, the City of San Antonio will celebrate seventy-five (75) years of owning the electric and gas utility, the service area of which spans the City of San Antonio, thirty (30) other municipal jurisdictions in and around the greater San Antonio metropolitan area, and unincorporated portions of Bexar and surrounding counties. CPS Energy has the exclusive authority to provide electricity to retail customers within its service area by a certificate of convenience and necessity issued by the Public Utility Commission of Texas in 1976, but is subject to competition with regard to the delivery of retail gas service.

Since its inception in 1942, CPS Energy has been guided by an independent Board of Trustees vested with the authority to manage all the operational and financial affairs of the combined electric and gas utility system, subject to the San Antonio City Council's power to set rates, issue municipal utility bonds, and exercise the power of eminent domain. CPS Energy has an exemplary record of sound financial management as evidenced by the maintenance of some of the industry's highest debt ratings.[3]

---

[3] As of January 31, 2017, CPS Energy's senior lien bonds were rated as AA+ (Fitch), Aa1 (Moody's), and AA (Standard & Poor).

With regard to electric distribution poles, CPS Energy currently owns approximately 355,341 poles according to its property records. However, a service-area-wide inventory of poles and pole attachments is underway and should be completed by the end of 2017. At its completion, the inventory will reveal a more accurate count of poles and attachments on poles owned by CPS Energy. Within CPS Energy's service area, Southwestern Bell Telephone Company d/b/a AT&T Texas ("AT&T") is the primary telephone company and Charter Communications ("Charter") is the incumbent cable company. CPS Energy and AT&T enjoy a long history of sharing pole facilities under joint use pole agreements. Besides AT&T, Charter is CPS Energy's largest pole attaching entity. In total, CPS Energy has executed pole attachment agreements applicable to wire attachments with twenty-five (25) entities, of which twenty (20) are communications providers, and the remaining five (5) are private or public entities, such as commercial parks or university campuses that operate internal communications networks using CPS Energy poles.[4]

Given the increasing and varied demands for pole use by a large number of disparate communications providers in the San Antonio area, CPS Energy has established Pole Attachment Standards ("Standards") that are contractually enforceable to govern access to and use of CPS Energy poles. Applicable to all communications providers for attachment of communications facilities and small cell wireless installations, these Standards provide for a non-discriminatory, uniform, consistent, and streamlined approach for access to and use of CPS Energy poles, facilitate

---

[4] Effective July 31, 2016, all CPS Energy pole attachment agreements were terminated and attaching entities with wire facilities on CPS Energy poles were requested to execute new agreements subject to its Pole Attachment Standards. Several attaching entities have not executed new agreements, including two (2) communications providers and nine (9) entities operating internal communications networks.

the delivery of a variety of today's communication services, and implement processes for future technologies consistently with the safe and reliable operation of CPS Energy facilities.

In developing its Standards, CPS Energy has sought to balance the competing needs and interests of multiple and varied communications providers to access and utilize CPS Energy's distribution infrastructure, while at the same time recognizing that the core purpose and function of this infrastructure is for CPS Energy's safe and reliable distribution and delivery of electric services to CPS Energy customers. Hence, the use of CPS Energy's poles or other facilities must at all times ensure the continued operational integrity, safety, and reliability of CPS Energy's facilities, electric services, personnel, and the general public. It is through this lens that CPS Energy offers these comments.

II. THE FCC SHOULD NOT REVISE ITS RULES WITH RESPECT TO THE TREATMENT OF CAPITAL COSTS

A. MOUs Generally Not Subject to Section 224

As an MOU, CPS Energy is not subject to the Commission's Section 224 pole attachment regulations. That is so because 47 U.S.C. Section 224 imposes federal pole attachment requirements only upon entities that meet the definition of "utility" in Section 224(a)(1), and the term "utility" is defined to exclude local governments, cooperatives, and railroads:

> The term "utility" means any person whose rates or charges are regulated by the Federal Government or State and who owns or controls poles, ducts, conduits or rights of way used, in whole or in part, for any wire communications. *Such term does not include* any railroad, any person who is cooperatively organized, or *any person owned by the federal government or any State.*

47 U.S.C § 224(a)(1) (emphasis added). Section 224(a)(3), in turn, defines "State" as "any State, territory, or possession of the United States, the District of Columbia, or *any political subdivision, agency, or instrumentality thereof.*" *Id.* (emphasis added.)

Despite this statutory exemption, CPS Energy has a significant interest in any Commission proposals to change the manner in which pole attachment rates are calculated. Section 54.204(c) of the Texas Utilities Code specifically incorporates by reference the Commission's Section 224(e) telecommunications pole attachment rate formula and establishes that rate as the highest rate that municipal utilities may charge certificated telecommunications providers seeking to make communications attachments under the statute.[5]

B. Capital Expenses Not Recovered Via Make-Ready Fees

The Commission's suggestion that utilities should exclude virtually all of their own capital costs in constructing or replacing poles from the calculation of pole attachment rates is a bad business practice. Such a change is unwarranted and would simply extend an additional subsidy to cable and telecommunications companies at the expense of electric ratepayers. Eliminating the ability of utilities to recover capital costs would also run counter to the cardinal principle of utility law that it is inappropriate to subsidize competitive services through revenues extracted from captive ratepayers.[6] Furthermore, there is no evidence to suggest that the Commission's proposed measures are likely to have any appreciable impact on broadband deployment, adoption, or use.

---

5 While CPS Energy contends that the Texas legislature intended that subsequent revisions to the pole attachment rate formulas by the FCC be would not be applicable to Texas municipal utilities, this issue is nevertheless the subject of on-going litigation. *See generally, CPS Energy v. Public Utility Comm'n of Tex.*, 2017 Tex. App. LEXIS 1622 (Tex. App. – Austin 2017, motion for reh'g pending).

6 For example, the National Association of Regulatory Utility Commissioners' Guidelines for Cost Allocations and Affiliate Transactions at 1, states that, in general, the "prevailing premise of these Guidelines is that allocation methods should not result in subsidization of non-regulated services or products ...." NARUC Guidelines, at 1, http://pubs.naruc.org/pub/539BF2CD-2354-D714-51C4-0D70A5A95C65.

In 2011, the Commission adopted a *Report and Order* that dramatically revised the manner in which pole attachment rates are calculated under its Section 224(e) telecommunications rate formula by reducing the amount of capital costs that utility pole owners are allowed to recover.[7] Specifically, the Commission amended the telecom formula to reduce the percentage of the fully allocated costs that utilities may recover based on the average number of attaching entities.[8]

The Commission took this step over the protests of pole owners and in the face of evidence that pole owners take the needs of attaching entities into account when making their pole investment decisions. The Commission based its decision almost entirely on the theory that "utilities typically would not install such extra capacity in advance purely to accommodate possible telecommunications carrier or cable attachers."[9] That theory is at odds with over thirty (30) years of operational practice at CPS Energy.

Now, the Commission proposes to further reduce or entirely eliminate the ability of utilities to recover a portion of their capital costs in pole attachment rates. The Commission provides no evidence to support the need for such a drastic rule change other than the mathematical certainty that such a formula change would reduce pole attachment rates. CPS Energy strongly urges the Commission to reconsider this proposal as unwarranted and contrary to the public interest.

---

7 *Report and Order, In the Matter of Implementation of Section 224 of the Act*, WC Docket No. 07-245, released April 7, 2011.

8 In 2015, the Commission further revised these rules to address the applicable percentage of fully allocated costs for poles with 2, 3, 4, or 5 average attaching entities. *Order on Reconsideration, In the Matter of Implementation of Section 224 of the Act*, WC Docket No. 07-245, released November 24, 2015.

9 *2011 Report and Order* at ¶ 188.

As a threshold matter, this proceeding is ostensibly aimed at streamlining and reducing "barriers" to broadband deployment. The Commission's action in the *2011 Report and Order* effectively reverse-engineered the telecommunications rate formula so that it would yield an attachment rate that is essentially the same as the Commission's cable rate formula, which has been in effect virtually unchanged since the enactment of the 1978 Pole Attachment Act. There can be no real suggestion that the Commission's cable rate yields a rate that deters or acts as a barrier to cable deployment, and thus it is not reasonable to assume, without empirical evidence, that this same rate is deterring telecommunications or broadband deployment in any material way.

Undoubtedly, many communications providers would prefer to have lower pole attachment rates, but that is not a sufficient reason to revise the pole attachment rate formula at the expense of electric utilities and their consumers. These same providers would also presumably prefer to pay lower prices for other inputs to their businesses; however, the Commission has no justification or authority to lower the cost of equipment, labor, or other inputs. In this case, the FCC has authority to act, but no evidentiary justification to support such action. Moreover, there is no reason to believe that lowering costs would actually lead to more deployment or that lower costs would be passed through to consumers. Indeed, it is more likely that providers will simply keep the savings.

More fundamentally, the Commission is mistaken in its assumption that utilities do not take the need to accommodate third-party attachments into consideration when they undertake capital expenditures. This is simply not true.

First, for at least the past thirty years most electric utility distribution poles have had a minimum of three users – the electric utility, a telephone provider and a cable company. Indeed, the Commission's own rules assume that in non-urbanized areas the average number of attaching

entities is three, and in urbanized areas, the average number is five.[10] As sound practice, utilities anticipate the need to accommodate attachments by third-parties. To do anything but anticipate communications uses of poles is to invite otherwise unnecessary pole replacement and other work. Further, the Commission's assumption that all of these additional costs are somehow captured during the make-ready process ignores the fact that the make-ready process only imposes a cost if necessary to make a change to accommodate the new attachment. For example, if a utility purchases a pole with sufficient size for the 40-inch safety space that is necessary to accommodate communications attachments, no additional cost will be reflected in make-ready costs to the attaching party.

At bottom, in determining the sizes of new poles to be installed at CPS Energy, the majority of poles are installed with sufficient capacity to accommodate at least two (2) communications attachments, and often three. This standard has been in place at CPS Energy since at least 1984. Additionally, CPS Energy's specifications for steel poles include the requirement for two or three sets of pre-drilled holes to accommodate communications attachments. For well over thirty (30) years, CPS Energy has installed taller poles than necessary for its own needs recognizing the uses of its poles by multiple third-party communications providers.[11] It would be inefficient and nonsensical to do otherwise, given the prevalence of communications attachments on its utility poles.

---

10 47 C.F.R. § 1.1417(c)

11 To the limited extent that CPS Energy installs distribution poles that do not contain any third-party attachments, they are almost always of a smaller size and class than the poles that it routinely purchases for the majority of its system.

The Commission's assumption that utilities would install poles only tall enough to meet their own needs and leave it to new attaching entities to pay for replacement poles if their attachments could not be accommodated, suggests that utilities use no foresight in their operations about pole replacement and utility infrastructure. CPS Energy plans and constructs its electric distribution networks to ensure long term reliability, and cost issues aside, the preference of CPS Energy is not to expend time and resources constantly replacing and rearranging poles when those activities can be economically avoided.

Moreover, CPS Energy does not seek to impose unnecessary costs on communications providers by making them constantly install new larger poles. CPS Energy is highly supportive of the widespread availability of affordable cable, broadband, and telecommunications services and works with these providers to ensure that the necessary infrastructure is available to meet their needs. Contrary to the Commission's assumption, it is precisely because utilities such as CPS Energy design and deploy their distribution systems taking into account the existence of third-party attachments, that the true costs of the pole need to be fully-allocated among all attaching entities, and this necessarily includes the capital costs of the pole.

Finally, as a practical matter, the Commission's proposal to preclude pole owners from recovering their capital costs would also be counterproductive. Under such a rule, utilities would indeed have the incentive to purchase the smallest poles that would serve their own purposes, leaving it to attaching entities to pay for larger poles. Of course, few potential attaching entities would be willing or able to incur such costs, and in the end, if taken to its logical conclusion, the Commission's proposal would result in fewer and more expensive pole attachments than would occur in the absence of its proposal. Indeed, this goes directly against the Commission's objective of finding "ways that the Commission can eliminate or significantly reduce the need for make-

ready work,"[12] as well as the Commission's proposal that utilities "reserve[e] space on new poles for new attachers."[13]

For all of these reasons, the Commission should not further limit a utility's recovery of capital costs in the telecommunications rate formula, if such costs have not been paid by a third-party attaching entity through the make-ready process.

III. CPS ENERGY'S OTMR PROCESS

The Commission seeks comment on the merits of developing OTMR processes, under which the attaching entity may obtain significant cost and time savings by having a single qualified contractor move/rearrange existing attachments within the communications space to accommodate the new attachment, thereby avoiding the attendant time and costs of each separate entity with an existing attachment, sequentially rearranging its own facilities.

As the Commission notes in the *NPRM*, CPS Energy has worked with industry stakeholders to develop an innovative OTMR process that cost-effectively and efficiently facilitates access to poles in a manner that protects the legitimate interests of CPS Energy, new entrants, and existing attaching entities. In discussing CPS Energy's OTMR process contained in CPS Energy's Pole Attachment Standards, the Commission inadvertently referenced a website link to a prior version of CPS Energy's Standards, which were superseded effective January 1, 2017. The current version of the Standards is attached to these initial comments as Exhibit A and can be found at https://www.cpsenergy.com/en/developers-builders/customer-engineering/pole-attachment-services.html?linkvar=PoleAttachments.

---

12 *NPRM/NOI*, at ¶ 11.

13 *Id.*

CPS Energy also seeks to clarify that while the Commission referenced the fact that CPS Energy's Standards provide for a 21-day period for CPS Energy to review a completed pole attachment application, a condition precedent for CPS Energy completing its review within that time frame is that the applicant is responsible for including make-ready engineering design documents as part of the application. This is an important requirement that allows CPS Energy to move forward in its review of applications on the accelerated schedule that providers are seeking.

In addition, this requirement gives attaching entities control of the make-ready engineering design process, allowing a degree of freedom to control costs and have upfront cost estimates for any required make-ready electrical construction work. Given the volume of requests for pole attachments that CPS Energy has experienced, and that the surge in requests that the Commission expects nationwide as broadband deployment intensifies, this requirement frees the utility from the burden of redirecting limited labor resources away from electric distribution system work to pole attachment engineering design. This requirement properly aligns the burden of pole attachment make-ready engineering design work with the entity responsible for causing the burden.

IV. CONCLUSION

CPS Energy urges the Commission to refrain from further reducing the capital costs that utilities can properly recover under its Section 224(e) telecommunications pole attachment rate formula, which would only result in increasing the existing subsidies to the communications industry at the expense of electric customers and without any guarantee that savings will be passed to consumers. Further, in considering the adoption of an OTMR process, the Commission should recognize the value of having pole attachment applicants submit make-ready engineering design documents as part of a complete application. Such requirement serves to give the applicant some

degree of control over engineering design costs and the ability to predict any make-ready electrical construction costs associated with accommodating an attachment on an existing pole. This requirement allows the utility to shorten the time period for review of a complete pole attachment application.

Respectfully submitted,

CPS ENERGY

By: _____

Gabriel Garcia
Director and Senior Counsel

Carolyn Shellman
Chief Legal and Administrative Officer

P.O. Box 1771
Mail Drop 110905
San Antonio, Texas 78296-1771
Telephone: (210) 353-2033
Facsimile: (210) 353-6340
Email: ggarcia1@cpsenergy.com

June 15, 2017