

JOHN SPELLMAN
Governor



WC 10-101
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Robert W. Bratton, Chairman
Mary D. Hall, Commissioner
A. J. "Bud" Pardini, Commissioner

STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Highways-Licenses Building • Olympia, Washington 98504 • (206) 753-6423 • (SCAN) 234-6423

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APR 26 2010

January 10, 1985

Federal Communications Commission
Office of the Secretary

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JAN 14 1985

ENFORCEMENT DIVISION

Federal Communications Commission
Attention: Margaret Wood, Esq.
Room 6206
1919 M Street, N.W.
Washington, D. C. 20554

Dear Ms. Wood:

We have in place effective regulations which fulfill Section 224(c) of the Communications Act, 47 U.S.C. §224(c). A copy of the authorizing statute is attached. In addition, I have attached a copy of our current procedural rules, which apply to pole attachments.

We will need to correct these rules in order to accommodate the terms of Section 224(c)(3)(B). We are in the process of accomplishing that change.

Sincerely,

Robert W. Bratton
Chairman

the project) _____ (type of project) _____ located at _____ (location) _____, the anticipated total construction cost of which is _____ (anticipated cost of construction) _____?"

(2) If the financing authority is intended to finance the acquisition of all or a portion of the project from another party, the proposition shall read substantially as follows:

"Shall _____ (name of applicant) _____ be authorized to spend _____ (dollar amount of financing authority requested) _____ to acquire the _____ (name of project) _____ (type of project) _____ located at _____ (location) _____, the anticipated total acquisition cost of which is _____ (anticipated cost of acquisition) _____?"

[1981 2nd ex.s. c 6 § 6 (Initiative Measure No. 394, approved November 3, 1981).]

80.52.070 Approval of request for financing authority. A request for financing authority pursuant to this chapter shall be considered approved if it receives the approval of a majority of those voting on the request. [1981 2nd ex.s. c 6 § 7 (Initiative Measure No. 394, approved November 3, 1981).]

80.52.080 Priorities. In planning for future energy expenditures, public agencies shall give priority to projects and resources which are cost-effective. Priority for future bond sales to finance energy expenditures by public agencies shall be given: First, to conservation; second, to renewable resources; third, to generating resources utilizing waste heat or generating resources of high fuel-conversion efficiency; and fourth, to all other resources. This section does not apply to projects which are under construction on December 3, 1981. [1981 2nd ex.s. c 6 § 8 (Initiative Measure No. 394, approved November 3, 1981).]

80.52.900 Severability—1981 2nd ex.s. c 6. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 2nd ex.s. c 6 § 10 (Initiative Measure No. 394, approved November 3, 1981).]

80.52.910 Effective dates—1981 2nd ex.s. c 6. "Section 8 of this act shall take effect immediately. The remainder of this act shall take effect on July 1, 1982. Public agencies intending to submit a request for financing authority under this act are authorized to institute the procedures specified in **section 5(4) of this act prior to the effective date of this act. [1981 2nd ex.s. c 6 § 11 (Initiative Measure No. 394, approved November 3, 1981).]

Reviser's note: *(1) "Section 8 of this act" is codified as RCW 80.52.080.

** (2) "section 5(4) of this act" is codified as RCW 80.52.050(4).

(1981 Ed.)

Chapter 80.54

ATTACHMENTS TO TRANSMISSION FACILITIES

Sections	Definitions.
80.54.010	Regulation of rates, terms, and conditions—Criteria.
80.54.020	Commission order fixing rates, terms, or conditions.
80.54.030	Criteria for just and reasonable rate.
80.54.040	Exemptions from chapter.
80.54.050	Adoption of rules.
80.54.060	Uniform attachment rates required within utility service area.
80.54.070	

80.54.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Attachment" means any wire or cable for the transmission of intelligence by telegraph, telephone, 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 telegraph, telephone, 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.

(2) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, other than a utility, which is authorized to construct attachments upon, along, under, or across the public ways.

(3) "Utility" means any electrical company, telephone company, or telegraph 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. [1979 c 33 § 1.]

80.54.020 Regulation of rates, terms, and conditions—Criteria. The commission shall have the authority to regulate in the public interest the rates, terms, and conditions for attachments by licensees or utilities. All rates, terms, and conditions made, demanded, or received by any utility for any attachment by a licensee or by a utility must be just, fair, reasonable, and sufficient. [1979 c 33 § 2.]

80.54.030 Commission order fixing rates, terms, or conditions. 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 utility in connection with attachments are unjust, unreasonable, or that the rates or charges are insufficient to yield a reasonable compensation for the attachment, the commission shall determine the just, reasonable, or 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 commission shall consider 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. [1979 c 33 § 3.]

80.54.040 Criteria for just and reasonable rate. A just and reasonable rate shall assure the utility the recovery of not less than all the additional costs of procuring and maintaining pole 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 used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities. [1979 c 33 § 4.]

80.54.050 Exemptions from chapter. Nothing in this chapter shall be deemed to apply to any attachment by one or more electrical companies on the facilities of one or more other electrical companies. [1979 c 33 § 5.]

80.54.060 Adoption of rules. The commission shall adopt rules, regulations and procedures relative to the implementation of this chapter. [1979 c 33 § 6.]

80.54.070 Uniform attachment rates required within utility service area. Notwithstanding any other provision of law, a utility as defined in RCW 80.54.010(3) and any utility not regulated by the utilities and transportation commission shall levy attachment rates which are uniform for all licensees within the utility service area. [1979 c 33 § 7.]

**Chapter 80.58
NONPOLLUTING POWER GENERATION
EXEMPTION**

Sections
80.58.010 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.

80.58.010 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility. The generation of power by a nonpolluting, renewable energy source by an individual natural person not otherwise engaged in the business of power generation is declared to be exempt from all statutes and rules otherwise regulating the generation of power: *Provided*, That such an individual is hereby authorized to provide such power to the utility servicing the property on which the power is generated and the servicing utility is hereby authorized to accept such power under such terms and conditions as may be agreed to between the parties. [1979 ex.s. c 191 § 11.]

Severability—1979 ex.s. c 191: See RCW 82.35.900.

**Chapter 80.62
HEAT SUPPLIERS**

Sections
80.62.010 Legislative intent.
80.62.020 Definitions.
80.62.030 Limited jurisdiction over heat suppliers.
80.62.040 Regulations and fees.
80.62.050 Operating permit, issuance of.
80.62.060 Contracts with customers—Terms, app commission.
80.62.070 Basis for approval of rates.
80.62.080 Continuing jurisdiction of commission.
80.62.900 Expiration date, exception.
80.62.910 Severability—1983 c 94.

80.62.010 Legislative intent. The legislature finds that traditional utility regulation may pose barriers to: (1) The widespread and rapid utilization of Washington's geothermal heat resource for district heating purposes; and (2) the efficient use of biomass and waste heat sources for district heating purposes. The legislature further finds that it may be necessary to protect the interests of the public in securing adequate heating services from these sources at reasonable cost. Therefore, it is the intent of the legislature and the purpose of this chapter to create a streamlined permitting system which will encourage development and efficient utilization and distribution of heat while continuing to provide reasonable consumer protections. [1983 c 94 § 1.]

80.62.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Biomass materials" means organic materials that are primarily waste materials and the conversion of such materials can be used to generate heat directly.

(2) "Geothermal heat" means the natural thermal energy of the earth.

(3) "Heat" means thermal energy.

(4) "Heat source" includes but is not limited to: (a) generators of waste heat; (b) geothermal wellhead springs; (c) combustion of biomass materials; or (d) collection of solar heat.

(5) "Heat supplier" means any private person, partnership, association, or corporation engaged or proposing to engage in developing, producing, transmitting, distributing, delivering, furnishing, or selling to or for the public heat from a heat source for any beneficial use other than electricity generation.

(6) "Commission" means the utilities and transportation commission.

(7) "Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of cogeneration by a person or corporation.

(8) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel energy source.

(9) "Waste heat" means the thermal energy released to the environment from an industrial process, cogeneration, or other process. [1983 c 94 § 2.]

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

May 3, 1985

IN REPLY REFER TO:

Robert W. Bratton, Chairman
Washington Utilities and Transportation
Commission
Highways-Licenses Building
Olympia, Washington 98504

Gentlemen:

The Commission is again updating its list of states which have certified that they regulate pole attachment rates, terms, and conditions to insure that all certifications comply with amended Section 1.1414 of the Commission's Rules, 47 C.F.R. §1.1414. That Section was recently amended to implement certain provisions of the Cable Communications Policy Act of 1984. Report and Order in MM Docket No. 84-1296, FCC 85-179 (released April 19, 1985). Among the amendments is new Section 1.1414(a)(3), 47 C.F.R. §1.1414(a)(3), which provides that a state regulating pole attachments must certify to this Commission that

It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state)

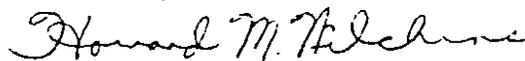
With the exception of a statement about methodology, your certification already includes all of the required information. Accordingly, if your state's rules and regulations include a specific methodology which has been made publicly available in the state, please so certify to the Commission by May 30, 1985.

Receipt of such information by May 30, 1985, will permit the Commission to retain your state on our certification list. Therefore, your prompt attention and cooperation are appreciated.

Please address your certification and any inquiries to:

Federal Communications Commission
Attention: Margaret Wood, Esq.
Room 6206
1919 M Street, N.W.
Washington, D.C. 20554
Telephone (202) 632-4890

Sincerely,



Howard M. Wilchins
Deputy Chief, Enforcement Division

Enclosure

Part 1 of Chapter I of Title 47 of the Code of Federal Regulations was amended to read as follows:

A. Part 1 - Practice and Procedure.

1. Section 1.1414 is amended by revising paragraphs (a)(1) and (a)(2) and adding new paragraphs (a)(3) and (e) to read as follows:

§1.1414 State certification.

- (a) If the Commission does not receive certification from a state that:
- (1) It regulates rates, terms and conditions for pole attachments;
 - (2) 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; and,
 - (3) It has issued and made effective rules and regulations implementing the state's regulatory authority over pole attachments (including a specific methodology for such regulation which has been made publicly available in the state), it will be rebuttably presumed that the state is not regulating pole attachments.

* * * * *

- (e) Notwithstanding any such certification, jurisdiction will revert to this Commission with respect to any individual matter, unless the state takes final action on a complaint regarding such matter:
- (1) within 180 days after the complaint is filed with the state, or
 - (2) within the applicable periods prescribed for such final action in such rules and regulations of the state, if the prescribed period does not extend beyond 360 days after the filing of such complaint.

JOHN SPELTMAN
Governor



Robert W. Bratton, Chairman
Mary D. Hall, Commissioner
A. J. "Bud" Pardini, Commissioner

STATE OF WASHINGTON

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Highways-Licenses Building • Olympia, Washington 98504 • (206) 753-6423 • (SCAN) 234-6423

May 28, 1985

RECEIVED

MAY 30 1985

ENFORCEMENT DIVISION

Ms. Margaret Wood
Federal Communications Commission
Room 6206
1919 M Street NW
Washington, D. C. 20554

Re: Pole Attachment Certification

Dear Ms. Wood:

Attached is a copy of chapter 80.54 Revised Code of Washington relating to attachments to transmission facilities. By its terms, the Washington Utilities and Transportation Commission is authorized to establish fair, just, and reasonable rates for pole attachments upon the complaint of any licensee or the affected utility. The statute goes on to define the criteria for just and reasonable rates. While it gives the Commission rulemaking authority to implement the chapter, we perceive the law to be explicit and self-executing. For that reason, when the statute was initially enacted, the Commission merely adopted a rule requiring any complaints filed under RCW 80.54.030 to be formal so that the matter could proceed to resolve any disputed issues.

To give effect to the recent congressional mandate, we have now amended our rule to provide that any matter raised under the governing statute will be resolved by final order no later than 360 days after its filing. That amendment has recently become effective, and the entire rule (WAC 480-08-050) is enclosed.

The Revised Code of Washington is a published and publicly disseminated document, as is the Washington Administrative Code. In addition, the rules are published as a

Ms. Margaret Wood
May 28, 1985
Page two

matter of course in the Washington Register, and rulemaking proposals are forwarded by the Commission to all known interested parties. The formal complaint methodology is one covered by both state law and Commission rule. The mechanism for resolution of disputes is a procedure known to or readily ascertainable by any potentially interested person.

We trust the foregoing will be of some assistance in continuing the certification of this state to deal with pole attachment matters.

Very truly yours,

A handwritten signature in cursive script, reading "Sharon L. Nelson", followed by a horizontal line extending to the right.

Sharon L. Nelson
Chairman

SLN:JRC:bln

the project) _____ (type of project) _____ located at _____ (location) _____, the anticipated total construction cost of which is _____ (anticipated cost of construction) _____?"

(2) If the financing authority is intended to finance the acquisition of all or a portion of the project from another party, the proposition shall read substantially as follows:

"Shall _____ (name of applicant) _____ be authorized to spend _____ (dollar amount of financing authority requested) _____ to acquire the _____ (name of project) _____ (type of project) _____ located at _____ (location) _____, the anticipated total acquisition cost of which is _____ (anticipated cost of acquisition) _____?"

[1981 2nd ex.s. c 6 § 6 (Initiative Measure No. 394, approved November 3, 1981).]

80.52.070 Approval of request for financing authority. A request for financing authority pursuant to this chapter shall be considered approved if it receives the approval of a majority of those voting on the request. [1981 2nd ex.s. c 6 § 7 (Initiative Measure No. 394, approved November 3, 1981).]

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Reviser's note: *(1) "Section 8 of this act" is codified as RCW 80.52.080.

** (2) "section 5(4) of this act" is codified as RCW 80.52.050(4).

Chapter 80.54

ATTACHMENTS TO TRANSMISSION FACILITIES

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utility or licensee, as well as the interest of the customers of the utility upon which the attachment is made. [1979 c 33 § 3.]

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Chapter 80.58

NONPOLLUTING POWER GENERATION EXEMPTION

Sections

80.58.010 Nonpolluting power generation by individual—Exemption from regulation—Authorization to contract with utility.

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Severability—1979 ex.s. c 191: See RCW 82.35.900.

Chapter 80.62 HEAT SUPPLIERS

Sections

80.62.010	Legislative intent.
80.62.020	Definitions.
80.62.030	Limited jurisdiction over heat suppliers.
80.62.040	Regulations and fees.
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(1) "Biomass materials" means organic materials that are primarily waste materials and the conversion or use of such materials can be used to generate heat directly.

(2) "Geothermal heat" means the natural thermal energy of the earth.

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(4) "Heat source" includes but is not limited to: (a) Generators of waste heat; (b) geothermal wells or springs; (c) combustion of biomass materials; or (d) collection of solar heat.

(5) "Heat supplier" means any private person, company, association, or corporation engaged or proposing to engage in developing, producing, transmitting, distributing, delivering, furnishing, or selling to or for the public heat from a heat source for any beneficial use other than electricity generation.

(6) "Commission" means the utilities and transportation commission.

(7) "Cogeneration facility" means any machinery, equipment, structure, process, or property, or any part thereof, installed or acquired for the primary purpose of cogeneration by a person or corporation.

(8) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source.

(9) "Waste heat" means the thermal energy released to the environment from an industrial process, electric generation, or other process. [1983 c 94 § 2.]