

HOUSE BILL REPORT

ESSB 6554

As Passed House:

February 27, 1996

Title: An act relating to attachments to transmission facilities.

Brief Description: Providing for attachments to transmission facilities.

Sponsors: Senate Committee on Energy, Telecommunications & Utilities (originally sponsored by Senator Sutherland).

Brief History:

Committee Activity:

Energy & Utilities: 2/20/96, 2/21/96 [DP].

Floor Activity:

Passed House: 2/27/96, 97-0.

HOUSE COMMITTEE ON ENERGY & UTILITIES

Majority Report: Do pass. Signed by 9 members: Representatives Casada, Chairman; Crouse, Vice Chairman; Hankins, Vice Chairman; Patterson, Ranking Minority Member; Poulsen, Assistant Ranking Minority Member; Chandler; Kessler; Mastin and Mitchell.

Staff: Margaret Allen (786-7110).

Background: Access to potential customers often requires telecommunications service providers to use poles, ducts, conduits, or rights-of-way that a competitor, other kind of utility service provider, or a governmental entity may possess.

As described below, in Washington State attachments to poles owned by telecommunications or investor-owned electric utilities (IOUs) are regulated by the Washington Utilities and Transportation Commission (WUTC). Attachments to poles owned by consumer-owned utilities are regulated by the utility's legislative authority.

Current Regulatory Structure: Rates, Terms, and Conditions

Federal provisions. Federal law requires the Federal Communications Commission (FCC) to regulate the rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way, unless a state has elected to do so and meets various conditions.

Federal law defines "pole attachment" as "any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility."

In any event, FCC jurisdiction does not apply to attachments to facilities owned by consumer-owned utilities, such as municipal utility or public utility districts, as the federal pole attachment statutes define "utility" to exclude consumer-owned utilities.

State provisions. By enacting chapter 80.54 RCW, Washington elected to regulate the rates, terms, and conditions for attachments to poles owned by telecommunications companies and investor-owned utilities (IOUs).

State statutes define an "attachment" as "any wire or cable for the transmission of intelligence by telecommunications or television, including cable television, light waves, or other phenomena, or for the transmission of electricity for light, heat, or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telecommunications, electrical, cable television, or communications right of way, duct, conduit, manhole or handhole, or other similar facilities owned or controlled, in whole or in part, by one or more utilities, where the installation has been made with the consent of the one or more utilities."

State law requires attachment rates, terms, and conditions to be "just, fair, reasonable, and sufficient," and rates to be uniform within a utility service area. Similar to federal law, state provisions establish parameters for items that can be considered in setting attachment rates.

When a dispute arises regarding the rates, terms, or conditions of attachments to poles owned by telecommunications companies or IOUs, the aggrieved party can appeal to the WUTC. The WUTC regulates such disputes but, like the FCC, does not ordinarily set pole attachment rates. If dissatisfied, a party to the dispute can appeal a decision of the WUTC to the courts.

Consumer-owned utilities. State law currently does not regulate the rates, terms, and conditions of attachments to consumer-owned utility poles, such as those owned by municipalities, rural electric cooperatives, mutual corporations, and public utility districts. So, each municipality, rural electric cooperative, mutual corporation, or public utility district is free to adopt its own pole attachment provisions.

However, the Washington PUD Association developed a formula for setting annual pole attachment rates, referred to as the Annual Cost Ratio Methodology. That formula is the product of (1) the accumulated average pole value, times; (2) the annual cost ratio (which includes interest, depreciation, distribution operation and maintenance, administrative and general, and tax expenses), times; (3) the pole use

ratio (which takes into account the number of parties on a pole, and both the usable and nonusable space).

When a dispute arises regarding attachments to poles owned by a consumer-owned utility, the aggrieved party has no recourse through the WUTC, but can appeal to the utility's jurisdictional authority (such as city council or PUD board of commissioners) or file a lawsuit. Indeed, in 1995 an administrative law judge and the WUTC held the WUTC lacked jurisdiction over a complaint by cable companies against a PUD that jointly owned poles with a telecommunications company, despite the Commission's jurisdiction over the provision of telecommunications service and over attachments to IOU poles.

Access. The entry of new telecommunications service providers or the expansion of existing providers into the market depends, to some degree, on the availability of pole attachments under reasonable terms. Thus, competition among telecommunications service providers may be effectively limited if pole attachments are unavailable, or available only under unfavorable terms, and a telecommunications service provider is unable to obtain its own poles, ducts, conduits, or rights-of-way.

Telecommunications service providers that can reach potential customers only by attaching to poles owned by other companies or utilities want rates to be reasonable and for other terms and conditions of attachment to be nondiscriminatory.

Pole owners want attachment rates that allocate total pole costs, rather than solely the incremental cost of an additional attachment. Also, electric utilities are concerned that the demand for attachments may exceed scarce space.

Consumer-owned utilities want to maintain local control over attachment rates, terms, and conditions.

Summary of Bill: All pole attachment rates, terms, and conditions made, demanded, or received by a consumer-owned utility (including cooperatives, mutual corporations, municipalities, and public utility districts) must be just, reasonable, nondiscriminatory, and sufficient. Attachment space rental rates must be uniform for the same class of service within the utility's service area.

"Attachment" is defined as the affixation or installation of any wire, cable, or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

"Non-discriminatory" means pole owners may not arbitrarily differentiate among or between similar classes of persons approved for attachments.

The WUTC is expressly not authorized to regulate consumer-owned utilities.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This noncontroversial bill is the result of a collaborative effort between interested parties. Issues on which agreement could not be reached were deleted from the bill. The bill takes guidelines currently applicable to investor-owned utilities and applies the guidelines uniformly throughout the state. The bill embodies an important first step in making sure consumers get the benefits of competition.

Testimony Against: None.

Testified: Senator Sutherland, prime sponsor; Ron Main, Washington Cable Association; Collins Sprague, Washington Water Power; and Mark Greenberg, TRACER.