
**Technology, Energy &
Communications Committee**

HB 1857

Brief Description: Regulating utility pole attachments.

Sponsors: Representatives McCoy, Kessler, Haler, Rodne, Crouse, Wallace, Grant, Morris, Hudgins and Seaquist.

Brief Summary of Bill

- Authorizes the Washington Utilities and Transportation Commission (WUTC) to resolve disputes between licensees and public utility districts concerning the rates, terms, and conditions of a pole attachment.
- Specifies that the WUTC shall resolve disputes by determining what is a just, fair, reasonable, or sufficient rate for the attachment on a per pole basis.

Hearing Date: 2/13/07

Staff: Kara Durbin (786-7133).

Background:

Pole attachments generally

Gaining access to potential customers often requires telecommunications service providers to use poles, ducts, conduits, or rights-of-way that a competitor, another type of utility service provider, or a governmental entity may possess.

In Washington, attachment to poles owned by telecommunications or investor-owned 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 governing board.

Federal law

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Federal law requires the Federal Communications Commission (FCC) to regulate the rates, terms, and conditions for pole attachments by cable systems, unless a state has adopted its own program for regulating such pole attachments. 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."

The FCC's jurisdiction does not apply, however, to attachment to facilities owned by consumer-owned utilities, such as municipal utilities or public utility districts (PUDs), as the federal pole attachment statutes define "utility" to exclude consumer-owned utilities.

State law

In 1979, the Legislature enacted legislation authorizing the WUTC to regulate, in the public interest, the rates, terms, and conditions for pole attachments by licensees or utilities. All rates, terms, and conditions must be just, fair, reasonable and sufficient. While the WUTC may regulate pole attachment rates, terms, and conditions for investor-owned utilities, it has no regulatory authority over publicly-owned utilities such as PUDs, municipal utilities, or rural electric cooperatives.

In 1996, the Legislature enacted legislation pertaining to pole attachments made by consumer-owned utilities. It required that all pole attachment rates, terms, and conditions made, demanded, or received by a consumer-owned utility be "just, reasonable, nondiscriminatory, and sufficient." Rates must be uniform for the class of service throughout the utility's service area. The WUTC is specifically prohibited from regulating the activities of these consumer-owned utilities.

When a dispute arises regarding the rates, terms, or conditions of attachment to poles owned by a telecommunications company or an IOU, the aggrieved party can appeal to the WUTC for resolution of the dispute. If dissatisfied, a party to the dispute can appeal a decision of the WUTC to the courts.

When a dispute arises regarding the attachment 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 the city council or PUD's board of commissioners) or file a lawsuit.

Summary of Bill:

The Washington Utilities and Transportation Commission (WUTC) is directed to adopt procedures to hear and resolve licensee complaints concerning the rates, terms, and conditions made, demanded, or received by a public utility district (PUD) for pole attachments by licensees.

The requirement that rates for attachment space be uniform for the class of service throughout the utility's service area is removed.

The WUTC shall determine and fix just, fair, reasonable, or sufficient rates, terms and conditions for the attachments if the WUTC, after holding a hearing, finds either:

- (1) the rates, terms, or conditions demanded, exacted, charged, or collected by a PUD in connection with the attachments are unjust, unfair, unreasonable, or insufficient; or
- (2) the rates or charges are insufficient to yield a reasonable compensation for the attachments.

In determining and fixing the rates, terms, and conditions, the WUTC must consider the interest of the customers of the attaching licensee as well as the interest of the customers of the PUD upon which the attachment is made.

A just, fair, and reasonable rate must be determined on a per pole basis rather than a per attachment basis. The rate must allow a PUD to recover at least all of the additional costs of procuring and maintaining pole attachments, but not more than the utility's actual capital and operating expenses, including just compensation, attributable to the portion used for the pole attachment. This includes 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 that remain available to the owner or owners of the subject facilities.

"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, duct, conduit, manhole, or handhole, or other similar facilities 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.

"Licensee" is defined as any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, which is authorized to construct attachments upon, along, under, or across the public ways.

"Locally regulated utility" is defined as a PUD.

Appropriation: None.

Fiscal Note: Requested on February 12, 2007.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.