
HOUSE BILL 2533

State of Washington

60th Legislature

2008 Regular Session

By Representatives McCoy, Chase, and Quall

Prefiled 01/07/08. Read first time 01/14/08. Referred to Committee on Technology, Energy & Communications.

1 AN ACT Relating to attachments to utility poles of locally
2 regulated utilities; and amending RCW 23.86.400, 24.06.600, 35.21.455,
3 35A.21.125, and 54.04.045.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 23.86.400 and 1996 c 32 s 1 are each amended to read
6 as follows:

7 (1) As used in this section:

8 (a) "Attachment" means the affixation or installation of any wire,
9 cable, or other physical material capable of carrying electronic
10 impulses or light waves for the carrying of intelligence for
11 telecommunications, information services as defined in 47 U.S.C. Sec.
12 153(20), or television, including, but not limited to ~~((cable, and))~~,
13 any or all related devices, apparatuses, or auxiliary equipment,
14 whether within or without the licensee's allocated space, upon any pole
15 owned or controlled in whole or in part by one or more locally
16 regulated utilities where the installation has been made with the
17 necessary consent.

18 (b) "Licensee" means any person, firm, corporation, partnership,

1 company, association, joint stock association, or cooperatively
2 organized association, which is authorized to construct attachments
3 upon, along, under, or across public ways.

4 (c) "Locally regulated utility" means an electric service
5 cooperative organized under this chapter and not subject to rate or
6 service regulation by the utilities and transportation commission.

7 ((+e)) (d) "Nondiscriminatory" means that pole owners may not
8 ((arbitrarily)) differentiate without good cause among or between
9 similar classes of ((persons)) licensees approved for attachments.

10 (2) All rates, terms, and conditions made, demanded, or received by
11 a locally regulated utility for ((attachments to)) allocated space on
12 its poles for the placement of licensees' attachments must be just,
13 fair, reasonable, nondiscriminatory, and sufficient. ((A locally
14 regulated utility shall levy attachment space rental rates that are
15 uniform for the same class of service within the locally regulated
16 utility service area.

17 (3) ~~Nothing in~~) A just and reasonable rate shall assure the
18 locally regulated utility the recovery of not less than all the
19 additional costs of procuring and maintaining pole attachments nor more
20 than the actual capital and operating expenses, including just
21 compensation, of the locally regulated utility attributable to that
22 portion of the pole, duct, or conduit used for the pole attachment,
23 including a share of the required support and clearance space, in
24 proportion to the space used for the pole attachment, as compared to
25 all other uses made of the subject facilities and uses that remain
26 available to the owner or owners of the subject facilities. Decisions,
27 rules, and regulations adopted by the utilities and transportation
28 commission pursuant to chapter 80.54 RCW apply to the locally regulated
29 utility.

30 (3) Except in extraordinary circumstances, a locally regulated
31 utility must respond to a licensee's request to attach within forty-
32 five days. A request to attach may only be denied on a
33 nondiscriminatory basis (a) where there is insufficient capacity and
34 (b) for reasons of safety, reliability, and generally applicable
35 engineering purposes.

36 (4) Any dispute between the locally regulated utility and a
37 licensee, including, but not limited to, disputes over a specific
38 request to attach or over any rate, term, or condition sought by the

1 locally regulated utility or a licensee for attachments, must first be
2 presented to the governing board of the locally regulated utility for
3 resolution. If the dispute is not resolved by or before the governing
4 board of the locally regulated utility within forty-five days from the
5 date the dispute is presented to the governing board, either the
6 licensee or the locally regulated utility may initiate a complaint
7 proceeding before the utilities and transportation commission.

8 (5) Whenever the utilities and transportation commission shall
9 find, after hearing had upon complaint by a licensee or by a locally
10 regulated utility, that the rates, terms, or conditions demanded,
11 exacted, charged, or collected by any locally regulated utility in
12 connection with attachments are unjust, unreasonable, or that the rates
13 or charges are insufficient to yield a reasonable compensation for the
14 attachment, the commission shall determine the just, reasonable, or
15 sufficient rates, terms, and conditions thereafter to be observed and
16 in force and shall fix the rates, terms, and conditions by order. In
17 determining and fixing the rates, terms, and conditions, the commission
18 shall consider the interest of the customers of the attaching locally
19 regulated utility or licensee, as well as the interest of the customers
20 of the locally regulated utility upon which the attachment is made.

21 (6) Except as provided in subsections (2), (4), and (5) of this
22 section, this section shall not be otherwise construed or is not
23 intended to confer upon the utilities and transportation commission any
24 authority to exercise jurisdiction over locally regulated utilities.

25 **Sec. 2.** RCW 24.06.600 and 1996 c 32 s 2 are each amended to read
26 as follows:

27 (1) As used in this section:

28 (a) "Attachment" means the affixation or installation of any wire,
29 cable, or other physical material capable of carrying electronic
30 impulses or light waves for the carrying of intelligence for
31 telecommunications, or information services as defined in 47 U.S.C.
32 Sec. 153(20), or television, including, but not limited to ((~~cable,~~
33 ~~and~~)), any or all related devices, apparatuses, or auxiliary equipment,
34 whether within or without the licensee's allocated space, upon any pole
35 owned or controlled in whole or in part by one or more locally
36 regulated utilities where the installation has been made with the
37 necessary consent.

1 (b) "Licensee" means any person, firm, corporation, partnership,
2 company, association, joint stock association, or cooperatively
3 organized association, which is authorized to construct attachments
4 upon, along, under, or across public ways.

5 (c) "Locally regulated utility" means ~~((an—[a]))~~ a mutual
6 corporation organized under this chapter for the purpose of providing
7 utility service and not subject to rate or service regulation by the
8 utilities and transportation commission.

9 ~~((e))~~ (d) "Nondiscriminatory" means that pole owners may not
10 ~~((arbitrarily))~~ differentiate without good cause among or between
11 similar classes of ~~((persons))~~ licensees approved for attachments.

12 (2) All rates, terms, and conditions made, demanded, or received by
13 a locally regulated utility for ~~((attachments to))~~ allocated space on
14 its poles for the placement of licensees' attachments must be just,
15 fair, reasonable, nondiscriminatory, and sufficient. ~~((A locally~~
16 ~~regulated utility shall levy attachment space rental rates that are~~
17 ~~uniform for the same class of service within the locally regulated~~
18 ~~utility service area.~~

19 ~~(3) Nothing in)~~ A just and reasonable rate shall assure the
20 locally regulated utility the recovery of not less than all the
21 additional costs of procuring and maintaining pole attachments nor more
22 than the actual capital and operating expenses, including just
23 compensation, of the locally regulated utility attributable to that
24 portion of the pole, duct, or conduit used for the pole attachment,
25 including a share of the required support and clearance space, in
26 proportion to the space used for the pole attachment, as compared to
27 all other uses made of the subject facilities and uses that remain
28 available to the owner or owners of the subject facilities. Decisions,
29 rules, and regulations adopted by the utilities and transportation
30 commission pursuant to chapter 80.54 RCW apply to the locally regulated
31 utility.

32 (3) Except in extraordinary circumstances, a locally regulated
33 utility must respond to a licensee's request to attach within forty-
34 five days. A request to attach may only be denied on a
35 nondiscriminatory basis (a) where there is insufficient capacity and
36 (b) for reasons of safety, reliability, and generally applicable
37 engineering purposes.

1 (4) Any dispute between the locally regulated utility and a
2 licensee, including, but not limited to, disputes over a specific
3 request to attach or over any rate, term, or condition sought by the
4 locally regulated utility or a licensee for attachments, must first be
5 presented to the governing board of the locally regulated utility for
6 resolution. If the dispute is not resolved by or before the governing
7 board of the locally regulated utility within forty-five days from the
8 date the dispute is presented to the governing board, either the
9 licensee or the locally regulated utility may initiate a complaint
10 proceeding before the utilities and transportation commission.

11 (5) Whenever the utilities and transportation commission shall
12 find, after hearing had upon complaint by a licensee or by a locally
13 regulated utility, that the rates, terms, or conditions demanded,
14 exacted, charged, or collected by any locally regulated utility in
15 connection with attachments are unjust, unreasonable, or that the rates
16 or charges are insufficient to yield a reasonable compensation for the
17 attachment, the commission shall determine the just, reasonable, or
18 sufficient rates, terms, and conditions thereafter to be observed and
19 in force and shall fix the rates, terms, and conditions by order. In
20 determining and fixing the rates, terms, and conditions, the commission
21 shall consider the interest of the customers of the attaching locally
22 regulated utility or licensee, as well as the interest of the customers
23 of the locally regulated utility upon which the attachment is made.

24 (6) Except as provided in subsections (2), (4), and (5) of this
25 section, this section shall not be otherwise construed or is not
26 intended to confer upon the utilities and transportation commission any
27 authority to exercise jurisdiction over locally regulated utilities.

28 **Sec. 3.** RCW 35.21.455 and 1996 c 32 s 3 are each amended to read
29 as follows:

30 (1) As used in this section:

31 (a) "Attachment" means the affixation or installation of any wire,
32 cable, or other physical material capable of carrying electronic
33 impulses or light waves for the carrying of intelligence for
34 telecommunications, information services as defined in 47 U.S.C. Sec.
35 153(20), or television, including, but not limited to ((cable, and)),
36 any or all related devices, apparatuses, or auxiliary equipment,
37 whether within or without the licensee's allocated space, upon any pole

1 owned or controlled in whole or in part by one or more locally
2 regulated utilities where the installation has been made with the
3 necessary consent.

4 (b) "Licensee" means any person, firm, corporation, partnership,
5 company, association, joint stock association, or cooperatively
6 organized association, which is authorized to construct attachments
7 upon, along, under, or across public ways.

8 (c) "Locally regulated utility" means a city owning and operating
9 an electric utility not subject to rate or service regulation by the
10 utilities and transportation commission.

11 ~~((e))~~ (d) "Nondiscriminatory" means that pole owners may not
12 ~~((arbitrarily))~~ differentiate without good cause among or between
13 similar classes of ~~((persons))~~ licensees approved for attachments.

14 (2) All rates, terms, and conditions made, demanded, or received by
15 a locally regulated utility for ~~((attachments to))~~ allocated space on
16 its poles for the placement of licensees' attachments must be just,
17 fair, reasonable, nondiscriminatory, and sufficient. ~~((A locally~~
18 ~~regulated utility shall levy attachment space rental rates that are~~
19 ~~uniform for the same class of service within the locally regulated~~
20 ~~utility service area.~~

21 ~~(3) Nothing in))~~ A just and reasonable rate shall assure the
22 locally regulated utility the recovery of not less than all the
23 additional costs of procuring and maintaining pole attachments nor more
24 than the actual capital and operating expenses, including just
25 compensation, of the locally regulated utility attributable to that
26 portion of the pole, duct, or conduit used for the pole attachment,
27 including a share of the required support and clearance space, in
28 proportion to the space used for the pole attachment, as compared to
29 all other uses made of the subject facilities and uses that remain
30 available to the owner or owners of the subject facilities. Decisions,
31 rules, and regulations adopted by the utilities and transportation
32 commission pursuant to chapter 80.54 RCW apply to the locally regulated
33 utility.

34 (3) Except in extraordinary circumstances, a locally regulated
35 utility must respond to a licensee's request to attach within forty-
36 five days. A request to attach may only be denied on a
37 nondiscriminatory basis (a) where there is insufficient capacity and

1 (b) for reasons of safety, reliability, and generally applicable
2 engineering purposes.

3 (4) Any dispute between the locally regulated utility and a
4 licensee, including, but not limited to, disputes over a specific
5 request to attach or over any rate, term, or condition sought by the
6 locally regulated utility or a licensee for attachments, must first be
7 presented to the governing board of the locally regulated utility for
8 resolution. If the dispute is not resolved by or before the governing
9 board of the locally regulated utility within forty-five days from the
10 date the dispute is presented to the governing board, either the
11 licensee or the locally regulated utility may initiate a complaint
12 proceeding before the utilities and transportation commission.

13 (5) Whenever the utilities and transportation commission shall
14 find, after hearing had upon complaint by a licensee or by a locally
15 regulated utility, that the rates, terms, or conditions demanded,
16 exacted, charged, or collected by any locally regulated utility in
17 connection with attachments are unjust, unreasonable, or that the rates
18 or charges are insufficient to yield a reasonable compensation for the
19 attachment, the commission shall determine the just, reasonable, or
20 sufficient rates, terms, and conditions thereafter to be observed and
21 in force and shall fix the rates, terms, and conditions by order. In
22 determining and fixing the rates, terms, and conditions, the commission
23 shall consider the interest of the customers of the attaching locally
24 regulated utility or licensee, as well as the interest of the customers
25 of the locally regulated utility upon which the attachment is made.

26 (6) Except as provided in subsections (2), (4), and (5) of this
27 section, this section shall not be otherwise construed or is not
28 intended to confer upon the utilities and transportation commission any
29 authority to exercise jurisdiction over locally regulated utilities.

30 **Sec. 4.** RCW 35A.21.125 and 1996 c 32 s 4 are each amended to read
31 as follows:

32 (1) As used in this section:

33 (a) "Attachment" means the affixation or installation of any wire,
34 cable, or other physical material capable of carrying electronic
35 impulses or light waves for the carrying of intelligence for
36 telecommunications, information services as defined in 47 U.S.C. Sec.
37 153(20), or television, including, but not limited to ((cable, and)),

1 any or all related devices, apparatuses, or auxiliary equipment,
2 whether within or without the licensee's allocated space, upon any pole
3 owned or controlled in whole or in part by one or more locally
4 regulated utilities where the installation has been made with the
5 necessary consent.

6 (b) "Licensee" means any person, firm, corporation, partnership,
7 company, association, joint stock association, or cooperatively
8 organized association, which is authorized to construct attachments
9 upon, along, under, or across public ways.

10 (c) "Locally regulated utility" means a code city owning and
11 operating an electric utility not subject to rate or service regulation
12 by the utilities and transportation commission.

13 ~~((e))~~ (d) "Nondiscriminatory" means that pole owners may not
14 ~~((arbitrarily))~~ differentiate without good cause among or between
15 similar classes of ~~((persons))~~ licensees approved for attachments.

16 (2) All rates, terms, and conditions made, demanded, or received by
17 a locally regulated utility for ~~((attachments to))~~ allocated space on
18 its poles for the placement of licensees' attachments must be just,
19 fair, reasonable, nondiscriminatory, and sufficient. ~~((A locally~~
20 ~~regulated utility shall levy attachment space rental rates that are~~
21 ~~uniform for the same class of service within the locally regulated~~
22 ~~utility service area.~~

23 ~~(3) Nothing in))~~ A just and reasonable rate shall assure the
24 locally regulated utility the recovery of not less than all the
25 additional costs of procuring and maintaining pole attachments nor more
26 than the actual capital and operating expenses, including just
27 compensation, of the locally regulated utility attributable to that
28 portion of the pole, duct, or conduit used for the pole attachment,
29 including a share of the required support and clearance space, in
30 proportion to the space used for the pole attachment, as compared to
31 all other uses made of the subject facilities and uses that remain
32 available to the owner or owners of the subject facilities. Decisions,
33 rules, and regulations adopted by the utilities and transportation
34 commission pursuant to chapter 80.54 RCW apply to the locally regulated
35 utility.

36 (3) Except in extraordinary circumstances, a locally regulated
37 utility must respond to a licensee's request to attach within forty-
38 five days. A request to attach may only be denied on a

1 nondiscriminatory basis (a) where there is insufficient capacity and
2 (b) for reasons of safety, reliability, and generally applicable
3 engineering purposes.

4 (4) Any dispute between the locally regulated utility and a
5 licensee, including, but not limited to, disputes over a specific
6 request to attach or over any rate, term, or condition sought by the
7 locally regulated utility or a licensee for attachments, must first be
8 presented to the governing board of the locally regulated utility for
9 resolution. If the dispute is not resolved by or before the governing
10 board of the locally regulated utility within forty-five days from the
11 date the dispute is presented to the governing board, either the
12 licensee or the locally regulated utility may initiate a complaint
13 proceeding before the utilities and transportation commission.

14 (5) Whenever the utilities and transportation commission shall
15 find, after hearing had upon complaint by a licensee or by a locally
16 regulated utility, that the rates, terms, or conditions demanded,
17 exacted, charged, or collected by any locally regulated utility in
18 connection with attachments are unjust, unreasonable, or that the rates
19 or charges are insufficient to yield a reasonable compensation for the
20 attachment, the commission shall determine the just, reasonable, or
21 sufficient rates, terms, and conditions thereafter to be observed and
22 in force and shall fix the rates, terms, and conditions by order. In
23 determining and fixing the rates, terms, and conditions, the commission
24 shall consider the interest of the customers of the attaching locally
25 regulated utility or licensee, as well as the interest of the customers
26 of the locally regulated utility upon which the attachment is made.

27 (6) Except as provided in subsections (2), (4), and (5) of this
28 section, this section shall not be otherwise construed or is not
29 intended to confer upon the utilities and transportation commission any
30 authority to exercise jurisdiction over locally regulated utilities.

31 **Sec. 5.** RCW 54.04.045 and 1996 c 32 s 5 are each amended to read
32 as follows:

33 (1) As used in this section:

34 (a) "Attachment" means the affixation or installation of any wire,
35 cable, or other physical material capable of carrying electronic
36 impulses or light waves for the carrying of intelligence for
37 telecommunications, information services as defined in 47 U.S.C. Sec.

1 153(20), or television, including, but not limited to ((cable, and)),
2 any or all related devices, apparatuses, or auxiliary equipment,
3 whether within or without the licensee's allocated space, upon any pole
4 owned or controlled in whole or in part by one or more locally
5 regulated utilities where the installation has been made with the
6 necessary consent.

7 (b) "Licensee" means any person, firm, corporation, partnership,
8 company, association, joint stock association, or cooperatively
9 organized association, which is authorized to construct attachments
10 upon, along, under, or across public ways.

11 (c) "Locally regulated utility" means a public utility district not
12 subject to rate or service regulation by the utilities and
13 transportation commission.

14 ((+e)) (d) "Nondiscriminatory" means that pole owners may not
15 ((arbitrarily)) differentiate without good cause among or between
16 similar classes of ((persons)) licensees approved for attachments.

17 (2) All rates, terms, and conditions made, demanded, or received by
18 a locally regulated utility for ((attachments to)) allocated space on
19 its poles for the placement of licensees' attachments must be just,
20 fair, reasonable, nondiscriminatory, and sufficient. ((A locally
21 regulated utility shall levy attachment space rental rates that are
22 uniform for the same class of service within the locally regulated
23 utility service area.

24 ((3) Nothing in)) A just and reasonable rate shall assure the
25 locally regulated utility the recovery of not less than all the
26 additional costs of procuring and maintaining pole attachments nor more
27 than the actual capital and operating expenses, including just
28 compensation, of the locally regulated utility attributable to that
29 portion of the pole, duct, or conduit used for the pole attachment,
30 including a share of the required support and clearance space, in
31 proportion to the space used for the pole attachment, as compared to
32 all other uses made of the subject facilities and uses that remain
33 available to the owner or owners of the subject facilities. Decisions,
34 rules, and regulations adopted by the utilities and transportation
35 commission pursuant to chapter 80.54 RCW apply to the locally regulated
36 utility.

37 (3) Except in extraordinary circumstances, a locally regulated
38 utility must respond to a licensee's request to attach within forty-

1 five days. A request to attach may only be denied on a
2 nondiscriminatory basis (a) where there is insufficient capacity and
3 (b) for reasons of safety, reliability, and generally applicable
4 engineering purposes.

5 (4) Any dispute between the locally regulated utility and a
6 licensee, including, but not limited to, disputes over a specific
7 request to attach or over any rate, term, or condition sought by the
8 locally regulated utility or a licensee for attachments, must first be
9 presented to the governing board of the locally regulated utility for
10 resolution. If the dispute is not resolved by or before the governing
11 board of the locally regulated utility within forty-five days from the
12 date the dispute is presented to the governing board, either the
13 licensee or the locally regulated utility may initiate a complaint
14 proceeding before the utilities and transportation commission.

15 (5) Whenever the utilities and transportation commission shall
16 find, after hearing had upon complaint by a licensee or by a locally
17 regulated utility, that the rates, terms, or conditions demanded,
18 exacted, charged, or collected by any locally regulated utility in
19 connection with attachments are unjust, unreasonable, or that the rates
20 or charges are insufficient to yield a reasonable compensation for the
21 attachment, the commission shall determine the just, reasonable, or
22 sufficient rates, terms, and conditions thereafter to be observed and
23 in force and shall fix the rates, terms, and conditions by order. In
24 determining and fixing the rates, terms, and conditions, the commission
25 shall consider the interest of the customers of the attaching locally
26 regulated utility or licensee, as well as the interest of the customers
27 of the locally regulated utility upon which the attachment is made.

28 (6) Except as provided in subsections (2), (4), and (5) of this
29 section, this section shall not be otherwise construed or is not
30 intended to confer upon the utilities and transportation commission any
31 authority to exercise jurisdiction over locally regulated utilities.

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