

PUBLIC UTILITY DISTRICT No. 1 of Whatcom County

Agenda for the Regular Meeting of June 25, 2024
8:15 a.m. at the PUD Office
(In-person, Zoom, & Teleconference)

1. Call to Order | Pledge of Allegiance
2. Approval of Agenda (2 minutes)
3. Consent Agenda (5 min.)
 - a) Approval of the Minutes of the Special Meeting of June 21, 2024
 - b) Approval of the Minutes of the Regular Meeting of June 11, 2024
 - c) Approval of Claims for June 25, 2024
4. Public Comment (10 minutes – Individual speakers: 3 min.)
5. General Manager Report (10 min.)
6. Old Business (30 min.)
 - a) Broadband Update
 - b) Adjudication Update
 - c) Geothermal Update
7. New Business (20 min.)
 - a) Action Memo to Approve Pole Attachment Agreement with PSE
 - b) Action Memo to Approve Consor Work Order 2-Amendment 2
 - c) Action Memo to Cancel D Station Project Bids and Re-Bid
 - d) Discussion of July and August Work Sessions
8. Operations Report (10 minutes)
9. Commissioner Reports (10 minutes)
 - a) Upcoming Per Diem Requests
10. Public Comment (10 minutes– Individual speakers: 3 min.)
11. Executive Session: Discussion of Water Rights Adjudication (45 minutes)
12. Adjourn (Estimated 11:00 a.m.)

Notice:

All Commissioners will participate either in-person, via Zoom/internet or teleconference.

The public meeting can be accessed: In-person at location announced;

By internet: <https://us02web.zoom.us/j/82880152517>

Or telephone: Dial 1 (253) 215 8782 or 1 (253) 205 0468

Webinar ID: 828 8015 2517

Next Commission Meetings

July 9 and July 23, 2024 | 8:15 a.m. | Regular Meetings – District Office
1705 Trigg Road, Ferndale, WA 98248
or other location announced

Contact: Chris Heimgartner, General Manager (360) 384-4288 x 19
info@pudwhatcom.org
www.pudwhatcom.org

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AGENDA ITEM #3b

June 25, 2024

MINUTES OF THE REGULAR MEETING OF THE COMMISSION

June 11, 2024

1. Call to Order | Pledge of Allegiance

The regular meeting of the Board of Commissioners of Public Utility District No. 1 of Whatcom County was called to order at 8:15 a.m. by Commissioner Jaime Arnett. Said meeting was open to the public and notice thereof had been given as required by law. Those present included: Commissioner Todd Lagestee, Commissioner Atul Deshmane, Commissioner Jaime Arnett and Legal Counsel Peter Ruffato. Staff: General Manager Chris Heimgartner; Andrew Entrikin, Broadband Program Manager; Brian Walters, Assistant General Manager; Kurt Wank, Assistant General Manager; Annette Smith, Director of Finance; Stephanie Hooper, Accountant I; Rebecca Schlotterback, Contracts and Regulatory Compliance Manager; and Mike Macomber, IT/SCADA Technician..

Public attending:

Rick Maricle

Robin Dexter

Tyler McDevitt

Jack Wellman

2. Approval of Agenda

ACTION: Commissioner Deshmane made the motion to APPROVE THE AGENDA OF June 11, 2024 AS AMENDED. Commissioner Lagestee seconded the motion. Motion passed unanimously.

3. Approval of Consent Agenda

a) Approval of Meeting Minutes of the Regular Meeting of May 28, 2024;

b) Approval of the Claims of June 11, 2024;

ACTION: Commissioner Lagestee made the motion to APPROVE THE CONSENT AGENDA OF MAY 28, 2024. Commissioner Deshmane seconded the motion. Motion passed unanimously.

4. Public Comment – None made.

5. General Manager's Report

General Report, no action taken.

6. Old Business

a) Broadband Program Update

Entrikin provided an update on Point Roberts, and the requirements of the pending Notice of Funding Opportunity for the fall BEAD NOFO.

b) Adjudication Update

No update.

c) Geothermal Update

Routine Status Report.

7. New Business

a) **Approve Resolution 853, Cancellation of Warrant.** **ACTION:** Commissioner Lagestee made the motion to cancel the Warrant, Commissioner Deshmane seconded and the motion passed unanimously.

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b) Approve Resolution 854, New Engineering Manager Position. Action: Commissioner Deshmane made the motion to approve the resolution, Commissioner Lagestee seconded and the motion passed unanimously.

c) Approve Resolution 855, New HR/Communications Director. Action: Commissioner Arnett moved to approve the resolution, Commissioner Lagestee seconded and the resolution passed 2-1 with Commissioner Deshmane dissenting.

d) Approve Resolution 856, New Clerk of the Board/Records Position. Action: Commissioner Arnett moved to approve the resolution, Commissioner Lagestee seconded and the resolution passed 2-1 with Commissioner Deshmane dissenting.

e) Discussed June and July Commission Work Sessions. Action: First one moved to Ferndale HQ and set for June 21. Second one in Lynden. Time and Location of third pending discussions with Consultant.

f) Approve BPA Agreement 24TP-13341 – System Impact Study. Action: Commissioner Lagestee moved to approve the Agreement, Commissioner Deshmane seconded and the motion passed unanimously.

g) Approve Letter Agreement with ALA Renewable Energy – Green Hydrogen Project. Action: Commissioner Lagestee moved to approve the Letter, Commissioner Deshmane seconded and the motion passed unanimously.

8. Operations Report

Routine report.

9. Commissioner Reports

Deshmane:

- Ag Water Board, Climate impact Advisory Committee.

Arnett:

- Policy 2030, Blaine July 4 Parade.

Lagestee:

- Parade float, Adjudication update meeting w/Sitkin, Update website with Contact info.

10. Public Comment

No Public Comment.

11. Executive Session

No Executive Session was held.

12. Adjourn

There being no further business Commission President Arnett adjourned the meeting at 10:00 a.m.

Jaime Arnett, President/Commissioner

Atul Deshmane, Vice President/Commissioner

Todd Lagestee, Secretary/Commissioner

Commission Clerk Note:

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Video recordings of the Whatcom PUD Commission Meetings are available online at the following link on the PUD's Website: <https://www.pudwhatcom.org/the-commission/2024-agenda-packets-meeting-minutes-recordings/>

Action Memo

To: Commissioners Arnett, Deshmane and Lagestee
From: Andrew Entrikin, Director of Broadband & Power Supply
Date: June 25, 2024
Re: Pole Attachment Agreement Between Puget Sound Energy, Inc. and Public Utility District No. 1 of Whatcom County

Requested Action: APPROVAL OF POLE ATTACHMENT AGREEMENT BETWEEN PUGET SOUND ENERGY, INC. AND PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT.

Background: Pole attachment agreements (PAA's) are essential for organizations such as Whatcom PUD. Not only for power supply and internal SCADA system, but also for our efforts to provide wholesale telecommunications infrastructure to unserved areas of Whatcom County. This collective work requires the PUD to install and maintain equipment on PSE utility poles. Previously, Whatcom PUD had individual agreements for different sites, which created inconsistencies and administrative challenges. To address these issues, we have developed a comprehensive, county-wide agreement with PSE.

The new agreement provides a uniform set of terms and conditions for all pole attachments. It also reduces administrative overhead and simplifies the approval process for attachments. Finally, it ensures that all attachments meet current safety and regulatory standards.

Impact on Previous Agreements:

The new county-wide agreement will replace the following site-specific agreements:

1. Pole Attachment Agreements between PSE and Avista Communications of Washington, Inc, dated 4/1/2000
2. PSE and Public Utility District No.1 of Whatcom County dated 6/1/2002
3. PSE and Public Utility District No.1 of Whatcom County dated 4/27/2016

These agreements will be terminated upon adoption of the new county-wide agreement, and all future pole attachments will be governed by the new terms.

Fiscal Impact: All current (roughly 181) and future Whatcom PUD pole attachments will be subject to PSE's Annual Rental Fee found in Appendix III. Pole attachment fees are part of the PUD's current operations and maintenance budget.

Recommended Action: APPROVAL OF POLE ATTACHMENT AGREEMENT BETWEEN PUGET SOUND ENERGY, INC. AND PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY AND AUTHORIZE THE GENERAL MANAGER TO EXECUTE THE AGREEMENT.



POLE ATTACHMENT AGREEMENT

BETWEEN

PUGET SOUND ENERGY, INC.

AND

PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY

Date: _____

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**POLE ATTACHMENT AGREEMENT
FOR
PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY**

This Agreement, dated as of _____, is made by and between **Puget Sound Energy, Inc.**, a Washington corporation ("PSE"), and **Public Utility District No.1 of Whatcom County**, a Washington Public Utility District ("WHATCOM"). In this Agreement PSE and WHATCOM are sometimes referred to individually as a "Party" and collectively as the "Parties."

PSE and WHATCOM agree as follows:

SECTION 1. SCOPE AND DEFINITIONS

1.1 This Agreement governs all attachments of WHATCOM's fiber optic communications system (the "System") and related Equipment now or hereafter made in relation to any utility poles owned in whole by PSE (individually a "Pole", collectively the "Poles"), with or without PSE's consent.

1.2 PSE and WHATCOM agree that this Agreement replaces the existing agreements (Pole Attachment Agreements between PSE and Avista Communications of Washington, Inc, dated 4/1/2000; between PSE and Public Utility District No.1 of Whatcom County dated 6/1/2002; and between PSE and Public Utility District No.1 of Whatcom County dated 4/27/2016 ("Terminated Agreements").

1.3 When used in this Agreement with the initial letter capitalized, the following terms shall have the following specified meanings:

"Agreement" means this Pole Attachment Agreement between PSE and WHATCOM together with all exhibits attached hereto.

"Annual Rental Fee" means the fees described in the attached Appendix III.

"Arm" means any wood, fiberglass or steel extension from a Pole used to support Equipment.

"Assignment" as described in Section 24 of this Agreement.

"Attach" (or any conjugation thereof) means to affix, fasten or otherwise attach Equipment to a Pole, either directly or indirectly, including, without limitation, by overlashing or attaching any Equipment to other equipment, cables, attachments or devices affixed, fastened or otherwise attached to a Pole.

"Attachment" will have the meaning given to it on Section 2.1 of the Agreement.

"Attachment Application" a written or electronic application form(s) requesting permission to attach any Equipment to any Pole.

"Attachment Permit" or "Permitted Attachment" will mean a completed permit in the form of Appendix II attached hereto that has been duly and properly executed by PSE or an Attachment authorized in such permit.

"Calendar Year" means any period from January 1 through December 31 of any given year.

"Certificate of Insurance" means a standard ACORD certificate or documentation from an agent authorized by the insurer(s) demonstrating insurance carriers, policy numbers, effective dates, limits of liability and deductible amounts.

"Electronic Notice" will have the meaning given to it in Section 25.2 of the Agreement.

"Equipment" means any coaxial and fiber optic cables, messenger strand, conduit or risers, span guys, down guys, anchors, service drops, mainline, overlash (i.e., any conductor that is overlashed on an existing conductor after the initial permit), a configuration of equipment attached to the Pole that includes one or more of the following: power supplies, equipment enclosures, amplifiers and terminal boxes or other similar equipment, other attachments and related equipment made in relation to a utility pole.

"Event of Default" will have the meaning given to it in Section 7.1 of the Agreement.

"Facilities" means any poles, towers, arms, transformers, down guys and anchors, vaults, conduits, handholds, and/or electric system appendices.

"First Trip Costs" means any expenses and costs incurred by PSE for transfer of WHATCOM's Attachment(s) to a replacement Pole (at the same time PSE is transferring its own facilities to the replacement Pole).

"Indemnitees" means PSE, its successors and assigns, and the respective directors, officers, employees, and agents of PSE and its lawful successors and assigns.

"Make-ready" means any and all work relating to the installation of additional Poles, Poles of greater height or strength, additional guying, or re-arrangements of PSE's Equipment or the Equipment of any other party licensed by PSE to use the Poles as required in order for PSE to provide WHATCOM with access to the Poles.

"NESC" means, at any given point in time, the then-current version of the National Electric Safety Code.

"NJUNS" means the National Joint Utility Notification System or a substantially comparable electronic communication system agreed upon in writing by the Parties.

"Notice of Termination" means any one hundred-eighty (180) calendar day Written Notice by Party requesting Termination of the Agreement to non-terminating Party.

"Plan of Correction" means a mutually agreeable plan to correct any Unauthorized Attachment.

"Pole" will have the meaning given to it in Section 1.1 of the Agreement.

"PSE Pole Attachment Specifications" means, at any given point in time, the then current version of the specifications set forth in the attached Appendix V.

"Return Trip Costs" means any fee assessed by PSE to WHATCOM when PSE must return to job site to perform transfer work.

"System" will have the meaning given to it in Section 1.1 of the Agreement.

"Termination" cancellation and/or voidance of this Agreement or any Attachments made pursuant thereto.

"Termination of Attachment Notice" means any Written Notice by Party requesting Termination of the Attachment to non-terminating Party.

"Topping Fee" means any fee assessed by PSE to WHATCOM for removal of the upper portion of any replaced Pole in the event PSE does not transfer WHATCOM's Attachment(s) to the replacement Pole.

"Unauthorized Attachment" means any Attachment(s) to any Pole(s) by WHATCOM in violation of the terms and conditions of this Pole Attachment Agreement.

"Work" means any work relating to the attachment, maintenance, repair, relocation, replacement or removal of Equipment and other work performed by WHATCOM in connection with this Agreement, or the attachment of Equipment to Poles performed by WHATCOM in connection with this Agreement.

"Written Notice" will have the meaning given to it in Section 25.1 of the Agreement.

SECTION 2. ATTACHMENT

2.1 Any piece of Equipment that occupies space on a Pole will be considered an "Attachment." Any and all WHATCOM Attachments are subject to this Agreement. Attachments are limited to:

- coaxial and fiber optic cables
- messenger strand
- conduit or risers
- span guys
- down guys
- anchors
- service drops
- mainline
- a configuration of equipment attached to the Pole that includes one or more of the following: power supplies, equipment enclosures, amplifiers and terminal boxes or other similar equipment

2.2 WHATCOM shall not attach any Equipment to any Pole without PSE's prior written consent in accordance with paragraph 2.3 below, regardless of whether or not WHATCOM has a valid permit for Attachments previously attached on such Pole. This Agreement shall

not in itself constitute any such consent. Should WHATCOM fail to obtain a valid permit prior to attaching Equipment to any Pole, in accordance with Section 2.3, WHATCOM shall be liable for an Unauthorized Attachment in accordance with Section 6.

- 2.3** If WHATCOM desires to attach any Equipment to any Pole, WHATCOM shall submit to PSE an "Attachment Application", via the written application form in Appendix II or an "Electronic Notification" as outlined in paragraph 25.2. At a minimum, the pole Attachment Application shall include the information specified in Appendix II, which is attached and incorporated by reference. PSE retains sole discretion to modify the information required in the Attachment Application, upon thirty (30) days Written Notice to WHATCOM, and such modification shall be effective on the date referenced in the notification.

The Attachment shall be deemed installed on the date the Attachment Permit is approved. However, should WHATCOM fail to install an Attachment on a Pole for which an Attachment Permit has been granted within six (6) months from the approval date of the Attachment Permit, that Permit shall expire and no Attachment shall be made on that Pole by WHATCOM until a new Attachment Permit is granted.

If WHATCOM wishes to remove an Attachment, it must submit a "Termination of Attachment Notice" to PSE via "Electronic Notification" as outlined in paragraph 25.2. If WHATCOM wished to assign an Attachment to a third party, WHATCOM must comply with the requirement of Section 24 (Assignment). If WHATCOM does not submit a Termination of Attachment Notice (and thereafter timely remove the affected Attachment) or an assignment is not made in accordance with Section 24 (Assignment), prior to the beginning of a Calendar Year, the applicable Attachment Permit shall be considered active and WHATCOM shall be assessed the appropriate Annual Rental Fee.

An Attachment Permit does not relieve WHATCOM of obligations or liabilities due under this Agreement. Any Attachment made without an Attachment Permit or not in accordance with the specifications listed in the Attachment Permit shall be considered an Unauthorized Attachment.

- 2.4** Unless otherwise directed by PSE, WHATCOM shall submit each Attachment Application per current PSE process via NJUNS.

- 2.5** PSE may deny any Attachment Application for the following reasons:

- (a) insufficient capacity (when all potential accommodations have been reviewed by PSE and communicated to WHATCOM);
- (b) Facilities are necessary for PSE's sole utility business use;
- (c) WHATCOM's proposed Attachment violates the National Electrical Safety Code (NESC) or any other applicable code, law, rule or regulation, or unduly compromises safety;
- (d) WHATCOM's proposed Attachment threatens the reliability of PSE's system;
- (e) WHATCOM's proposed Attachment does not comply with general applicable engineering standards; or
- (f) WHATCOM's account is not in good standing.

In the event that PSE gives its written or electronic consent for any Equipment to be Attached to a Pole, WHATCOM shall Attach such Equipment only in strict accordance with:

- a) such Application;
- b) any conditions or qualifications set forth in PSE's consent; and
- c) the provisions of this Agreement.

WHATCOM shall have the right to make Attachments to PSE Facilities in accordance with the terms of the Attachment Permit and this Agreement. No application shall be deemed approved without Written Notice or Electronic Notice indicating approval from PSE.

2.6 WHATCOM shall reimburse PSE for any and all costs and expenses incurred by PSE in connection with the processing and review of each Application (including but not limited to the cost of identifying and estimating the cost of required changes under paragraph 2.7) and in connection with services performed by PSE at the request of WHATCOM (whether prior to or after the submittal of an Application), including, without limitation, any of the following:

- a) Field engineering review of proposed routes to identify potential problems with the proposed Attachment;
- b) Preparation and provision of drawings or other documents relating to the Poles or any facilities on the Poles;
- c) Engineering review of proposed Attachments to determine the consequences of additional strain on the Poles;
- d) Review of proposed routes to identify easement problems that may limit or preclude the proposed Attachment;
- e) Rights-of-Way services to obtain easements or other rights from private land owners to enable Equipment to be Attached to the Pole;
- f) Transmission poles with no communication attachment or distribution underbuild are not available to attach to;
- g) Transmission pole requests must have a structural pole analysis completed prior to review of approval of attachment at the cost of the applicant; and
- h) PSE may require distribution pole attachment requests have a structural analysis completed prior to review of approval of attachment at the cost of the applicant.

Amounts recoverable by PSE hereunder shall consist of fully allocated costs for labor (including but not limited to all payroll costs and overhead and all applicable engineering, supervision, and administrative overheads), transportation, employee expenses, attorney's fees, reprographic services, supplies, telephone service and other expenses. This paragraph 2.6 shall not obligate or be construed to obligate PSE to perform any service or to take any action whatsoever with respect to an Attachment, an Attachment Application, or any request made by WHATCOM.

2.7 WHATCOM understands and acknowledges that nothing in this Agreement grants or purports to grant to WHATCOM any right or interest of any kind in or to the real property on which any Pole is located and, subject to applicable law, WHATCOM is solely

responsible for seeking and obtaining all permits, licenses, easements, franchise rights and other rights required from the owner of the underlying property (including, without limitation, PSE) for WHATCOM to Attach, maintain, repair, relocate or remove any Equipment in relation to any Pole. In no event, however, shall such actions in any way limit or relieve WHATCOM of its obligations under Section 14 or any other provision of this Agreement.

- 2.8** If, in the judgment of PSE, the accommodation of any proposed Attachment requires the replacement of an existing Pole to provide adequate Pole facilities, PSE will inform WHATCOM of the required changes and the estimated cost of such changes based on PSE's engineering work standards. If WHATCOM desires to Attach such Equipment and so notifies PSE within thirty (30) days after PSE informs WHATCOM of the required changes and estimated cost, PSE shall perform such work and WHATCOM shall reimburse PSE for the entire expense thereby incurred. If WHATCOM decides that it does not wish to Attach such Equipment after receiving notification of the required change(s) and estimated cost(s) of such changes, WHATCOM may decline to do so; provided, however, that WHATCOM shall still be required to pay the reasonable cost(s) incurred by PSE with respect to providing the change information and estimated cost(s) for the proposed Attachment(s).
- 2.9** Unless otherwise directed by PSE, WHATCOM shall install guys and anchors necessary to support the additional strain imposed on any Pole by any Attachment in a manner satisfactory to PSE. If PSE installs or replaces guys or anchors to support the strain imposed by such Attachment, WHATCOM shall reimburse PSE for the entire cost and expense of such installation or replacement (including, but not limited to, the cost of installing or transferring guys to such anchors).
- 2.10** WHATCOM shall clearly identify all new Attachments at each Pole in distinctive color marking or number marking and as otherwise agreed to by the Parties. In the event that WHATCOM performs general maintenance to existing Attachments, or takes such other action affecting such existing Attachments, WHATCOM shall clearly identify such existing Attachments in distinctive color marking or number marking and as otherwise agreed to by the Parties.

In the event WHATCOM acquires another entity's Equipment, or enters this Agreement with existing Equipment on PSE Facilities, WHATCOM shall properly identify the newly acquired Equipment in distinctive orange marking and as otherwise agreed to by the Parties within twelve (12) months or within a mutually agreeable earlier timeframe.

If WHATCOM removes some or all of its Equipment from a Pole, WHATCOM shall remove all corresponding identification tags, pole tags, and any other method of identification from the Pole.

SECTION 3. MAINTENANCE

WHATCOM shall maintain all Equipment Attached to any Pole in good and safe condition. WHATCOM shall maintain current and accurate location maps and records of all such Attachments.

SECTION 4. EMERGENCIES

In the event of an emergency, PSE may relocate any Attachments and take such other action affecting such Attachments, as PSE deems appropriate in the circumstances. The Parties' respective emergency phone numbers are as follows:

Puget Sound Energy, Inc. | 1-888-225-5773
WHATCOM PUD | 360-739-2509 Electric Ops: On-call Cell

Each Party shall promptly notify the other of any change in such Party's emergency phone number.

SECTION 5. RELOCATION, REPLACEMENT, AND REMOVAL OF POLES

- 5.1** WHATCOM understands and agrees that PSE Facilities are essentially for PSE's exclusive use. PSE reserves the right at any time, without WHATCOM's knowledge or consent, to add to its Facilities, raise the voltage on its circuits or change their character or to remove, replace, or relocate the Facilities. In the event PSE modifies, removes, replaces or relocates its Facilities and such change requires WHATCOM to remove or relocate WHATCOM's Equipment, PSE shall provide WHATCOM with either Written Notice or Electronic Notice. WHATCOM shall relocate or remove its Equipment, at WHATCOM's sole expense, within thirty (30) days from the date of PSE's Written Notice or Electronic Notice requesting the relocation or removal of WHATCOM's Equipment. Following the thirty (30) days, at PSE's discretion, PSE may remove or relocate the Equipment and bill WHATCOM for the cost of such removal or relocation. If WHATCOM performs the removal or relocation work, WHATCOM shall be responsible for any liability or additional costs associated with removing the old Facilities and relocating them.
- 5.2** PSE may in an emergency, relocate, replace, or remove such Attachment and perform any other work in connection with such Attachment that may be required for the maintenance, relocation, replacement, or removal of said Poles, or the facilities thereon or which may be placed thereon, or for the service needs of PSE. All such work shall be performed at WHATCOM's sole risk and expense and WHATCOM shall reimburse PSE for the entire expense thereby incurred.
- 5.3** If, in the judgment of PSE, an existing Attachment on any Pole interferes with or prevents the attachment of any additional facilities of PSE or any other person or entity having a joint ownership interest with PSE in such Pole, and if such additional facilities could be attached to such Pole by removing the Attachment or by rearranging existing facilities thereon, PSE will so notify WHATCOM. Such notice shall state what rearrangement of facilities or Pole replacement and transfer of facilities is required to continue the accommodation of the Attachment. If WHATCOM desires to continue to maintain the Attachment on such Pole and so notifies PSE within thirty (30) days after PSE gives notice to WHATCOM, WHATCOM shall make such rearrangement at the sole risk and expense of WHATCOM. If WHATCOM does not so notify PSE prior to the end of such thirty (30) day period, PSE shall make such rearrangement at the sole risk and expense of WHATCOM, and WHATCOM shall reimburse PSE for the entire expense thereby incurred. If WHATCOM does not desire to continue to maintain the Attachment on such Pole, WHATCOM shall remove the Attachment from such Pole within thirty (30) days from the date of PSE's original notice to WHATCOM. If the Attachment is not removed from the

Pole at the end of the thirty (30) day period, PSE may remove the Attachment at WHATCOM's sole risk and expense and WHATCOM shall reimburse PSE for the entire expense thereby incurred.

- 5.4** If PSE replaces or relocates an existing Pole, PSE will be responsible for transferring its Facilities to the replacement Pole. PSE may, in its discretion, also transfer WHATCOM's Attachment(s) to the replacement Pole, provided that WHATCOM has given its prior approval. The physical transfer will be made at the sole risk and expense of WHATCOM. If PSE transfers WHATCOM's Attachment(s) to the replacement Pole at the same time PSE is transferring its own facilities to the replacement Pole, WHATCOM shall reimburse PSE for any and all costs and expense thereby incurred in connection with such transfer in accordance with Appendix IV, "First Trip Costs" which may be amended from time to time upon written notice to WHATCOM from PSE.

If PSE replaces or relocates an existing Pole on which there is an Attachment, and PSE does not have WHATCOM's approval or for any other reason does not transfer WHATCOM's Attachment(s) to the replacement Pole, then PSE may remove the upper portion of the replaced Pole approximately one (1) foot above the highest communication attachment and WHATCOM shall transfer its Attachment(s) to the replacement Pole within thirty (30) days and reimburse PSE the "Topping Fee" in accordance with Appendix IV, which may be amended from time to time. If WHATCOM fails after thirty (30) days' notice to transfer its Attachment(s) from the replaced Pole to the replacement Pole, PSE may have such work performed by a licensed contractor competent to perform such work, and PSE will charge WHATCOM for such work in accordance with Appendix IV, "Return Trip Costs".

- 5.5** PSE may, in its sole discretion, choose to install an Arm to support facilities on a Pole, whether such Pole is solely owned by PSE or is jointly owned by PSE and another owner. In such case, PSE may require WHATCOM to relocate any of its Attachments to the Arm in accordance with paragraph 5.2 above.
- 5.6** If at any time PSE determines, in its reasonable judgment, that a Pole is required for the sole use of PSE or is no longer suitable for attachment of WHATCOM's Equipment because of safety or the other factors set forth in Section 2.5, PSE may require WHATCOM to remove its Attachments from such Pole upon sixty (60) days' advance notice. In the event WHATCOM fails to remove its Attachments from the Pole within such sixty (60) day period, PSE may remove such Attachments at WHATCOM's sole risk and expense and WHATCOM shall reimburse PSE for the entire expense thereby incurred.

SECTION 6. FEES

- 6.1** WHATCOM shall pay PSE "Annual Rental Fees" when due, in accordance with and incorporated by reference as Appendix III. PSE may adjust the Annual Rental Fee payable by WHATCOM under this Agreement at any time and from time to time by notice submitted in accordance with Section 25.1
- 6.2** Payment from WHATCOM for Annual Rental Fees for each Calendar Year and all other PSE invoices are due within thirty (30) days of receipt of the invoice from PSE.

- 6.3** Annual Rental Fees for Attachments permitted on or after the beginning of the current Calendar Year shall be billed after the Attachment Permits for those attachments are approved by PSE; provided, however, that the foregoing will not relieve WHATCOM from any liability for Attachments made without PSE approval, including, without limitation, payment of any and all Annual Rental Fees with respect thereto. There shall be no abatement or reduction in such fees for Attachments in place for less than the full Calendar Year, for Attachments permitted but not yet actually made or Attachments that are acquired, assigned, or purchased by WHATCOM during the Calendar Year from another entity.
- 6.4** Fees for Transferring Communication Equipment (Appendix IV) may be adjusted by PSE from time to time. PSE shall provide to WHATCOM at least sixty 60 days prior Written Notice before the effective date of the new fees.
- 6.5** WHATCOM may overlash its Equipment onto existing Equipment owned by it and such overlash shall not be considered a separate Attachment for purposes of assessing the PSE Annual Rental Fee. WHATCOM must submit a new Attachment Application prior to overlash. Such overlash cable shall be subject to all other terms and conditions of the Pole Attachment Agreement including inspection by PSE prior to WHATCOM overlash.

In the event of an emergency or for general maintenance purposes, WHATCOM may overlash its Equipment without submitting a new Attachment Application prior to overlash. WHATCOM must promptly notify PSE pursuant to WHATCOM overlash. Such overlash cable shall not exceed four (4) Pole span lengths and shall be subject to all other terms and conditions of the Pole Attachment Agreement including inspection by PSE pursuant to WHATCOM overlash.

In addition, PSE may recover its administrative, engineering and inspection costs associated with approving WHATCOM's overlash. Under no circumstances shall WHATCOM overlash its Equipment onto existing Equipment that is not owned by WHATCOM, nor shall WHATCOM allow third parties to overlash its existing Equipment. PSE shall assume that the strand owner also owns the overlash Equipment, unless otherwise notified by WHATCOM or a third party. Any overlash that does not comply with this Section shall be considered an Unauthorized Attachment.

- 6.6** WHATCOM may attach guy wires to PSE anchors with PSE's prior approval according to paragraph 2.9 above using the method described in the PSE Attachment Specifications.
- 6.7** Unauthorized Attachments shall be addressed as follows:
- a)** within sixty (60) days of receipt of notice specifying the Unauthorized Attachment, WHATCOM shall correct the Unauthorized Attachment in accordance with this Agreement and send Written Notice to PSE of its compliance; or
 - b)** within thirty (30) days of receipt of notice specifying the Unauthorized Attachment, WHATCOM shall submit to PSE a mutually agreeable plan to correct the Unauthorized Attachment ("Plan of Correction") and thereafter WHATCOM complies with the plan, if accepted by PSE or with another plan approved by PSE. WHATCOM's Plan of Correction shall, at a minimum, set out the completion date, as well as reasons to support that date.

- c) Notwithstanding Section 6.7 (a & b) above, should PSE determine that the Unauthorized Attachment poses an immediate hazard, PSE may require a shorter period of time to correct the Unauthorized Attachment.
 - d) If WHATCOM has failed to meet the timeline specified in Section 6.7 (a or b) by sixty (60) days or more, PSE may
 - (i) Correct the Unauthorized Attachment and WHATCOM shall be liable for all costs associated with this correction, or
 - (ii) remove WHATCOM's Attachments and WHATCOM shall be liable for all costs associated with this removal.
- 6.8** If the rearrangement of PSE's Facilities or the Equipment of any other party licensed by PSE to use the Facilities are required in order for PSE to provide WHATCOM with access to the Facilities ("Make-ready"), the costs for such additional Facilities and Make-ready, including, but not limited to, special inspections, pre-construction, engineering, make ready, change out, rearrangement work, shall be at the sole expense of the WHATCOM, and WHATCOM agrees to pay all invoices when due.
- 6.9** For the purposes of this Agreement, an account is in good standing if all invoices are paid in accordance with Article 6 (Fees).

SECTION 7. DEFAULT AND REMEDIES

- 7.1** PSE expects WHATCOM to respond to PSE notices, including timely payment of invoices, and to remove abandoned Equipment, identify Equipment, and provide prior Written Notice of any proposed assignment of Equipment or entity. The occurrence of any one or more of the following events constitutes an "Event of Default" by WHATCOM:
- a) WHATCOM fails to pay any amount due under this Agreement within ten (10) days after receipt of Written Notice of such failure from PSE.
 - b) WHATCOM fails to provide prior Written Notice to PSE of intent to assign this Agreement or the Equipment attached to PSE Facilities.
 - c) WHATCOM assigns this Agreement, in violation of the terms and conditions of this Agreement, without prior written consent from PSE.
 - d) A petition is filed by or against WHATCOM under the Federal Bankruptcy Code or any similar law or statute of the United States or any state (and with respect to any petition filed against WHATCOM, such petition is not dismissed within sixty (60) days after the filing thereof) or WHATCOM is adjudged a bankrupt or insolvent, or receiver, custodian or trustee is appointed for WHATCOM or for any of the assets of WHATCOM which appointment is not vacated within thirty (30) days of the date of appointment, or WHATCOM becomes insolvent, is unable to pay its debts and they become due, or makes a transfer in fraud of creditors.
 - e) WHATCOM fails to perform or observe any other term or condition of this Agreement and such failure continues for thirty (30) days after Written Notice from PSE; provided, however that if such failure is capable of being cured, but not within such 30-day period, PSE may extend such period as approved in writing by PSE, so long as WHATCOM commences appropriate curative action and diligently prosecutes such cure to completion.

- 7.2 So long as an Event of Default applicable to this Agreement continues beyond the specified period or, if no period is specified, beyond thirty (30) days, PSE may terminate this Agreement without notice or demand except as expressly required above, revoke all PSE Attachment Permits issued to WHATCOM, and pursue any other remedy it may have under applicable law. In the event PSE terminates this Agreement pursuant to this Article, WHATCOM shall disconnect WHATCOM's Equipment from PSE Facilities within nine (9) months. Should WHATCOM fail to remove its Equipment within the nine (9) month period, or should WHATCOM fail to begin such removal promptly after termination and thereafter work diligently and continuously to effect such removal, PSE may remove WHATCOM's Equipment at WHATCOM's expense.

SECTION 8. PERFORMANCE OF WORK

- 8.1 The Attachment, maintenance, repair, relocation, replacement, and removal of Equipment and other work performed by WHATCOM in connection with this Agreement or the Attachment of Equipment to Poles is sometimes collectively referred to herein as the "Work."
- 8.2 WHATCOM shall furnish all personnel, supervision, labor, transportation, tools, equipment and materials for performance of the Work. WHATCOM shall expeditiously and efficiently perform the Work in accordance with the provisions of this Agreement. WHATCOM shall ensure that all personnel who perform its Work shall be fully experienced and properly qualified to perform the same. WHATCOM shall not hire any employee of PSE to perform any of the Work.
- 8.3 WHATCOM shall perform the Work in a workmanlike and skillful manner. WHATCOM shall ensure that the Work and the Equipment is in all respects (a) safe, (b) of first-class quality, (c) free from all faults and defects in workmanship, material and design, and (d) in conformance with such requirements of the current PSE Pole Attachment Specifications (Appendix V) and all laws and the regulations, orders and decrees of all lawfully constituted bodies and tribunals pertaining to Pole line construction, operation and maintenance, including without limitation, the requirements of the latest edition of the National Electrical Safety Code.
- 8.4 WHATCOM shall promptly and satisfactorily correct or replace any Work or Equipment found to be defective or not in conformity with the requirements of this Agreement (including, but not limited to, the requirements of paragraph 8.3). If WHATCOM fails or refuses to perform any Work required by this Agreement or to make any such corrections or replacements, PSE may perform such Work and make such corrections and replacements at WHATCOM's expense.
- 8.5 WHATCOM shall ensure that all personnel who perform the Work shall be fully experienced and properly qualified to perform the same. WHATCOM shall, if so requested by PSE, remove from performance of the Work any personnel whom PSE finds to be incompetent, careless or otherwise objectionable.
- 8.6 Whenever WHATCOM has knowledge of any actual or potential labor dispute involving its employees which may in any way affect, delay or arise in connection with or as a result of the performance of the Work or this Agreement, WHATCOM shall immediately notify and submit all relevant information to PSE.

- 8.7 WHATCOM shall, at all times, keep its work areas cleared of rubbish, refuse and other debris and in a neat, clean and safe condition. Upon completion of any portion of any of the Work, WHATCOM shall promptly remove all rubbish, refuse and other debris and all of its equipment and surplus materials.
- 8.8 WHATCOM shall give immediate attention to, and shall use its best efforts to promptly, courteously and equitably respond to, adjust and settle (without obligating PSE in any way), all complaints received by WHATCOM from third parties arising out of or in connection with performance of the Work. WHATCOM shall promptly notify PSE of all such complaints and any action taken (or to be taken) in connection therewith. In handling any complaints, WHATCOM shall use its best efforts to maintain and promote good public relations for PSE.

SECTION 9. PROTECTION OF PROPERTY AND PERSONS

- 9.1 WHATCOM shall take all precautions necessary to prevent bodily injury (including death) to persons and damage to any property or environment arising in connection with performance of the Work or the operation of the Equipment. Without limiting the generality of the foregoing, WHATCOM shall erect and maintain such barricades, signs, flags, flashers, and other safeguards as are required from time to time by PSE. WHATCOM shall inspect all goods, materials, tools, equipment, and other items to discover any conditions which involve a risk of bodily injury (including death) to persons, or a risk of damage to any property or environment, and shall be solely responsible for discovery and correction of, and protection against, all such conditions.
- 9.2 All property damaged, altered or removed in connection with WHATCOM's performance of the Work or the operation of the Equipment shall be promptly repaired, replaced or otherwise restored by WHATCOM to at least as good quality and condition as existed prior to such damaging, alteration or removal.
- 9.3 WHATCOM shall ensure that no utility (including all supply, disposal, distribution and communication systems, and all similar or related facilities, equipment and other property) is damaged, altered, removed or interrupted in connection with the performance of the Work or the operation of the Equipment. If WHATCOM requires the temporary shutoff of any of PSE's electric circuits or other elements of its or a third party's utility system, WHATCOM shall request PSE's approval thereof at least forty-eight (48) hours in advance of the time it requires the shutoff. WHATCOM shall perform the Work requiring the shutoff only after such approval has been obtained and on such days and at such hours as PSE may direct.
- 9.4 Prior to performing any of the Work, WHATCOM shall obtain from PSE all relevant information as to the nature of the electric circuits attached to the Poles to which such Work relates. WHATCOM shall ensure that such circuits continue in normal operation at all times during performance of the Work. Without limiting paragraph 9.1, WHATCOM shall take all precautions which are necessary to prevent bodily injury (including death) and property damage resulting from such circuits in the course of performing the Work.

SECTION 10. COOPERATION AND COORDINATION

- 10.1** WHATCOM acknowledges and anticipates that the Work may be interfered with and delayed from time to time on account of the concurrent performance of work by PSE or others. WHATCOM shall fully cooperate with PSE and others and coordinate the Work with such other work so as to minimize any delay or hindrance of any work.
- 10.2** If any part of the Work depends upon the results of other work by PSE or others, WHATCOM shall, prior to commencing such Work, notify PSE in writing of any actual or apparent deficiencies or defects in such other work that renders it unsuitable for performance of the Work. Failure of WHATCOM to so notify PSE shall constitute an acceptance by WHATCOM of such other work as suitable for performance of the Work, except as to latent defects which may subsequently be discovered in such other work.

SECTION 11. LIENS

WHATCOM shall timely pay all (and shall promptly secure the discharge of any liens asserted by any) persons and entities furnishing labor, equipment, materials or other items in connection with the Work. WHATCOM shall furnish to PSE such releases of claims and other documents as may be requested by PSE from time to time to evidence such payment (and discharge). If any such persons or entities are not timely paid (or if any of such liens are not promptly discharged), PSE may make such payments (and secure such discharge) at WHATCOM's expense and WHATCOM shall reimburse PSE for the entire expense thereby incurred.

SECTION 12. COMPLIANCE WITH LAWS

- 12.1** In the performance of the Work and this Agreement, WHATCOM shall comply and shall ensure that all contractors of any tier comply with all applicable:
- a)** Laws, ordinances, rules, regulations, orders, licenses, permits and other requirements, now or hereafter in effect, of any governmental authority;
 - b)** Industry standards and codes; and
 - c)** PSE Pole Attachment Specification, which is attached and incorporated by reference as Appendix V and may be modified by PSE from time to time.

WHATCOM shall furnish such documents as may be required to effect or evidence compliance. All laws, regulations, and orders required to be incorporated in agreements of this character are hereby incorporated herein by this reference.

- 12.2** If applicable, WHATCOM shall comply with Executive Order No. 11246, Executive Order No. 11701, the Vietnam Era Veterans' Readjustment Assistance Act of 1972 and the Rehabilitation Act of 1973, and all orders, rules and regulations promulgated thereunder (including, but not limited to 41 C.F.R. Part 60-1, 41 C.F.R. Part 60-250 and 41 C.F.R. Part 60-741), all as the same may have been or may be amended. The "equal opportunity clause" of 41 C.F.R. § 60-1.4(b), the "Affirmative Action Obligations for Disabled Veterans and Veterans of the Vietnam Era" clause of 41 C.F.R. § 60-250.4 and the "Affirmative Action for Handicapped Workers" clause of 41 C.F.R. § 60-741.4 are incorporated herein

by this reference. By signing the Agreement, WHATCOM certifies that segregated facilities (within the meaning of 41 C.F.R. § 60-1.8) are not and will not be maintained or provided for WHATCOM's employees and that WHATCOM will not permit its employees to perform Work at any location under WHATCOM's control where segregated facilities are maintained. WHATCOM shall obtain a similar certification from any of its subcontractors or suppliers as required by 41 C.F.R. § 60-1.8. This paragraph 12.2 shall apply only if and to the extent required by law or by any agreement now or hereafter entered into between PSE and the United States of America.

SECTION 13. TAXES

WHATCOM shall pay (except as otherwise required by law) all taxes applicable to or incurred in connection with the Work, the Equipment, or the System of which the Equipment constitutes a part.

SECTION 14. PERMITS AND PROTECTION OF EXISTING RIGHTS

- 14.1 WHATCOM shall obtain and comply (and shall ensure that all of WHATCOM's suppliers and subcontractors of any tier comply) with all permits, licenses, franchises, rights-of-way, easements and other rights required to perform the Work and operate the Equipment and the System in accordance with this Agreement. WHATCOM shall furnish to PSE such evidence thereof as PSE may request. Compliance with this paragraph 14.1 shall be the sole responsibility of WHATCOM and a continuing condition of the use of the Poles by WHATCOM.
- 14.2 WHATCOM shall release and defend, indemnify and hold harmless PSE, its successors and assigns, and the respective directors, officers, employees, and agents of PSE and its successors and assigns (collectively referred to hereafter as the "Indemnitees") from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or in connection with any violation (or alleged violation) of any contract, permit, license, franchise, right-of-way, easement or other rights of PSE that is based on or relates to any Attachment. Upon the request of PSE, WHATCOM shall immediately remove any Attachment that violates, is alleged to violate or, in the judgment of PSE, jeopardizes any contract, permit, license, franchise, right-of-way, easement or other rights of PSE. If WHATCOM fails to remove the Attachment within fifteen (15) days after PSE makes its request, PSE may remove the Attachment at WHATCOM's sole risk and expense and WHATCOM shall reimburse PSE for the entire expense thereby incurred.

SECTION 15. EXAMINATION OF RECORDS

WHATCOM shall promptly furnish PSE with such information related to the Work or the Equipment as may from time to time be requested by PSE. Until the expiration of three (3) years after the termination of the Term, PSE shall have access to examine all of WHATCOM's books, documents, papers and records which are related to the Work, the Equipment, or this Agreement.

SECTION 16. STATUS OF WHATCOM

- 16.1 WHATCOM represents and warrants that it is, and that at all times during the Term it shall

be properly authorized, licensed, organized, equipped and financed to perform the Work and to operate the Equipment and the System.

- 16.2** WHATCOM shall be and operate as an independent entity (not a contractor, agent or representative of PSE) in the performance of the Work and the operation of the Equipment and WHATCOM's System. In no event shall WHATCOM be authorized to enter into any agreements or undertakings for or on behalf of PSE or to act as or be an agent or representative of PSE.

SECTION 17. RELEASE, INDEMNITY, HOLD HARMLESS AND LIMITATION OF LIABILITY

- 17.1** WHATCOM releases and shall defend, indemnify and hold harmless the Indemnitees from any and all claims, losses, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising (whether before or after termination of the Term) out of or in connection with any Attachment, the performance of the Work, the operation of the Equipment or the System by WHATCOM, the enforcement of this Agreement by PSE, any default under or breach of this Agreement by WHATCOM or the acts or omissions of WHATCOM or any of its suppliers or subcontractors of any tier, the respective successors and assigns of WHATCOM or any such suppliers or subcontractors, the directors, officers, employees and agents of each of the foregoing, or anyone acting on WHATCOM's behalf in connection with this Agreement. To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless shall apply regardless of any act, omission, fault, negligence or strict liability of the Indemnitees; provided, however, that WHATCOM shall not be required to so indemnify any Indemnitee(s) against any claim, loss, cost, liability, damage or expense to the extent the same is caused by or results from the negligence of any Indemnitee(s). In connection with any action to enforce this Section 17, WHATCOM waives any immunity, defense, or protection under any workers' compensation, industrial insurance, or similar laws (including, but not limited to, the Washington Industrial Insurance Act, Title 51, of the Revised Code of Washington). PSE is willing to permit Attachments for the fees described in Section 6 only in consideration of and in reliance upon such release, indemnity and hold harmless. Consequently, such release, indemnity, and hold harmless shall be construed broadly in favor of the Indemnitees.

- 17.2** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, PSE SHALL NOT HAVE ANY LIABILITY TO WHATCOM FOR ANY: LOSS OF PROFIT OR REVENUE, LOSS OF USE OF THE EQUIPMENT OR THE SYSTEM, CLAIMS OF CUSTOMERS OF WHATCOM FOR SERVICE INTERRUPTIONS, OR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, ECONOMIC OR CONSEQUENTIAL DAMAGES, AS A RESULT OF OR RELATED TO THE EQUIPMENT, ANY ATTACHMENT, OR THIS AGREEMENT, WHETHER ARISING IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE, PRODUCT LIABILITY OR STRICT LIABILITY) OR OTHERWISE, EVEN IF PSE HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

SECTION 18. INSURANCE

- 18.1 Policies Required.** At all times during the term of this Agreement, WHATCOM shall keep in force and effect insurance policies as described below:

- 18.1.1 Workers Compensation and Employers' Liability Insurance.** Statutory workers' compensation benefits as required for all employees by Title 51 of the Revised Code of Washington. Employer's Liability Insurance, including Occupational Disease coverage, in the amount of \$1,000,000 for each accident, each employee, and policy limit. WHATCOM shall require subcontractors to obtain and maintain such insurance.
- 18.1.2 Commercial General Liability Insurance.** Policy will be written to provide coverage for, but not limited to, the following: premises and operations, products and completed operations, personal injury, blanket contractual coverage, broad form property damage, independent contractor's coverage with limits of liability not less than \$ 2,000,000 general aggregate, \$ 2,000,000 products/completed operations aggregate, \$ 2,000,000 personal injury, \$ 2,000,000 each occurrence.
- 18.1.3 Automobile Liability Insurance.** Business automobile policy covering all owned, hired and non-owned autos and commercial vehicles to be used in the performance of the Work. Limits of liability not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage.
- 18.1.4 Umbrella Liability Insurance.** Coverage is to be responsible in excess of the sum employers' liability, commercial general liability, and auto liability. Limits of liability not less than \$ 8,000,000 each occurrence/ \$ 8,000,000 aggregate.
- 18.1.5 Property Insurance.** Each party will be responsible for costs associated with maintaining their own property.
- 18.2 Qualification; Priority; Contractors' Coverage.** The insurer(s) must be authorized to do business under the laws of the state of Washington and have an "A- (VII)" or better rating by AM Best. Such insurance will be primary and non-contributory to any insurance carried by PSE. All contractors and all of their subcontractors who perform work on behalf of WHATCOM shall carry, in full force and effect insurance coverages of the type that WHATCOM is required to obtain under this Article 18 with the same limits.
- 18.3 Certificate of Insurance; Other Requirements.** Prior to execution of this Agreement and prior to each insurance policy expiration date during the term of this Agreement, WHATCOM will furnish PSE with a certificate of insurance (Certificate). PSE shall be given thirty (30) calendar days advance notice of cancellation or nonrenewal of insurance during the term of this Agreement. PSE, its successors and assigns, and their respective officers, directors, employees and agents (collectively, "Additional Insureds") shall be named as Additional Insureds under all of the policies, except workers' compensation, which shall be so stated on the Certificate of Insurance. All policies, other than worker's compensation, shall be written on an occurrence and not on a claims-made basis. WHATCOM shall obtain Certificates from its agents, contractors, and their subcontractors and provide a copy of such Certificates to PSE upon request.
- 18.4 Limits.** The limits of liability set out in this Article 18 may be increased or decreased by mutual consent of the parties, which consent will not be unreasonably withheld by either party, the in the event of any factors or occurrences, including substantial increases in the level of jury verdicts or judgements or the passage of state, federal, or other governmental compensation plans, or laws that would materially increase or decrease WHATCOM's exposure to risk.
- 18.5 Prohibited Exclusions.** No polices of insurance required to be obtained by WHATCOM or its contractors or subcontractors shall contain provisions that: (1) exclude coverage of liability assumed by this Agreement with PSE except as to infringement of

patents of copyrights of for libel and slander in program material, (2) exclude coverage of liability arising from excavating, collapse, or underground work, (3) exclude coverage from injuries to PSE's employees or agents, or (4) exclude coverage of liability for injuries or damages caused by WHATCOM's contractors' employees, or agents. This list of prohibited provisions shall not be interpreted as exclusive.

- 18.6 Deductible / Self-insurance Retention Amounts.** WHATCOM shall be fully responsible for any deductible or self-insured retention amounts contained in its insurance program and for any deficiencies in the amounts of insurance maintained. WHATCOM shall have no right to call upon or seek contribution from PSE for deductibles, self-insured retentions or insurance premiums associated with policies of insurance required herein.

SECTION 19. RISK OF LOSS

WHATCOM shall be responsible for and shall bear any and all risk of loss, deterioration, theft, vandalism or destruction of or damage to the System and anything used (or to be used or consumed) in connection with the Work.

SECTION 20. REIMBURSEMENT AND PAYMENT

PSE shall invoice WHATCOM for all amounts payable by WHATCOM to PSE under this Agreement (including, without limitation, the payments described in Section 6 and all reimbursable costs and expenses described elsewhere in this Agreement) as they become due. WHATCOM shall pay each such invoice in full within thirty (30) days after WHATCOM's receipt thereof.

SECTION 21. ATTORNEY'S FEES

The prevailing Party in any suit, action, or arbitration filed or held concerning this Agreement shall be entitled to recover, in addition to all other relief, its reasonable attorney's fees incurred in connection therewith, both at trial and on any appeal.

SECTION 22. LATE CHARGES AND INTEREST

- 22.1** WHATCOM acknowledges that late payment of any fee or other amounts due to PSE under this Agreement will cause PSE to incur certain administrative, processing accounting costs not otherwise contemplated by this Agreement, the exact amount of which will be extremely difficult, if not impossible, to ascertain. Accordingly, if any fee or other amounts shall not be received by PSE within thirty (30) days after such amounts shall first become due, WHATCOM shall pay to PSE a late charge, as liquidated damages and not as a penalty, equal to two percent (2%) of such overdue amounts as a reasonable estimate of the administrative, processing and accounting costs PSE will incur by reason of late payment by WHATCOM. Such late charge is intended to be in lieu of WHATCOM's liability for such costs, but shall not relieve or release WHATCOM from liability for any other costs or damages suffered by PSE by reason of late payment. Payment of such late charge shall in no event excuse or cure any default under or breach of this Agreement by WHATCOM.

22.2 In addition to any late charge under paragraph 22.1, WHATCOM shall pay to PSE interest, compounded daily, at the rate of one percent (1%) per month or the maximum rate permitted by applicable law, whichever is less, on any fees or other amounts not paid to PSE when due under this Agreement, from the date due until the date paid. Payment of such interest shall not excuse or cure any breach of or default under this Agreement by WHATCOM.

SECTION 23. NONWAIVER

The failure of PSE to insist upon or enforce strict performance by WHATCOM of any of the provisions of this Agreement, or to exercise any rights under this Agreement, shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.

SECTION 24. ASSIGNMENT; SUCCESSORS AND ASSIGNS

WHATCOM shall not assign, apportion, delegate or sublease any of its rights or obligations under this Agreement or assign this Agreement in whole or in part, by operation of law or otherwise, without the prior written consent of PSE, which consent shall not be unreasonably withheld. Any apportionment, delegation, sublease or assignment or purported apportionment, delegation, sublease or assignment without the prior written consent of PSE shall be voidable by PSE. In any event, no sublease or assignment of this Agreement shall relieve WHATCOM from any of its liabilities or obligations under this Agreement. Subject to the foregoing restrictions on assignments without the prior written consent of PSE, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the successors and assigns of the respective Parties hereto.

SECTION 25. NOTICES AND OTHER COMMUNICATIONS

25.1 Written Notice. As referenced elsewhere in this Agreement, PSE and WHATCOM shall provide notice, approval, consent, instruction, direction or other communication to each other in writing ("Written Notice"). The following notices, requests, demands and other communications hereunder shall be in writing, and shall be deemed given if personally delivered, sent via overnight delivery, or within five days of being deposited in the US Mail with appropriate postage:

- a) Notice of adjustment of the Annual Rental Fee (Appendix III).
- b) Notice of code violation: WHATCOM's Equipment fails to comply with the requirements of NESC.
- c) Notice of permit violation: WHATCOM's Equipment fails to comply with the requirements of Appendix V.
- d) Notice of termination of Agreement by either Party.
- e) Notice of failure to respond to an invoice.
- f) Notice in lieu of payment of an invoice.
- g) Notice of consent of assignment of Agreement to a third party.
- h) Notice of rearrangement of WHATCOM's Equipment by PSE.

- i) Notice of WHATCOM failure to perform or observe any other term or condition of this Agreement.

Written Notice shall be made to the following addresses and either Party may from time to time change such address by giving the other Party notice of such change in accordance with the provisions of this section:

If to:

Puget Sound Energy, Inc.: BOT-02, PO Box 97034, Bellevue, WA 98009 / Pole Services

Whatcom PUD: P.O. Box 2308, 1705 Trigg Road, Ferndale, WA 98248

25.2 Electronic Notice. As referenced in this Agreement, PSE and WHATCOM may provide notice to each other electronically ("Electronic Notice"). The following notices, requests, demands and other communications hereunder shall be in electronic format, via the Internet or NJUNS (National Joint Use Notification System); or other mutually agreed to Joint-Use Notification System:

- a) Attachment Applications
- b) Notice of denial or approval of Attachment Applications
- c) Notice of pole transfers or other work on PSE Facilities
- d) Other notifications and communications as approved by PSE
- e) Termination of Attachment Notice

SECTION 26. VOLUNTARY EARLY TERMINATION

Either Party shall have the right to terminate this Agreement or any Attachment/s made pursuant hereto, for any reason and at any time, upon providing the non-terminating Party with one hundred and eighty (180) calendar days prior Written Notice. Where WHATCOM or PSE exercises such right, WHATCOM will remove the impacted Attachments and Equipment from PSE's Facilities at WHATCOM's expense, within six (6) months from the date of Termination as specified in the Notice of Termination. WHATCOM will return the poles utilized by WHATCOM to their original condition, with the exception of normal wear and tear.

SECTION 27. SURVIVAL

The obligations imposed on WHATCOM under Sections 6, 11, 15, 17, 20, 21, 22, 23, 24, 25, 28, 29, and 30, and paragraph 7.2, and all provisions of this Agreement which may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Agreement, shall survive the completion, termination or cancellation of this Agreement.

SECTION 28. REGULATORY APPROVALS

This Agreement and any transfers of property pursuant to this Agreement are subject to the authority of regulatory agencies having jurisdiction over the Parties, or either of them, with respect thereto. Each Party shall promptly submit this Agreement to the regulatory agencies having such jurisdiction over such Party and shall take such additional action as

may reasonably be required to promptly obtain any required approvals or other action by such agencies.

SECTION 29. MISCELLANEOUS

- 29.1 The rights and obligations of the Parties hereunder shall be subject to and governed by this Agreement. This Agreement sets forth the entire agreement of the Parties, and supersedes any and all prior agreements, with respect to Attachments.
- 29.2 This Agreement may not be modified except by a writing executed contemporaneously herewith or subsequent hereto signed by both Parties.
- 29.3 Each Party shall take such action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.
- 29.4 The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.
- 29.5 The headings of sections and paragraphs of this Agreement are for convenience of reference only and are not intended to restrict, affect, or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

SECTION 30. APPLICABLE LAW

This Agreement shall in all respects be interpreted, construed, and enforced in accordance with the laws of the State of Washington.

WHATCOM Accepted and Agreed:
Public Utility District No.1 of Whatcom County

PSE /Accepted and Agreed:
Puget Sound Energy, Inc.

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Address:
P.O. Box 2308
1705 Trigg Road _____
Ferndale, WA 98248

Address:
BOT-2002
PO Box 97034
Bellevue, WA 98009
Attn: Pole Services

APPENDICES

- I Certificate of Insurance, referenced in § 18 of the Agreement
- II Pole Attachment Application, referenced at § 2.3 of the Agreement
- III Annual Rental Fee, referenced at § 6.1 of the Agreement
- IV Fees for Transferring Communication Equipment, referenced at § 5.4 of the Agreement
- V PSE Pole Attachment Specifications

Appendix I

INSURANCE REQUIREMENTS

**Attach Certificate of Insurance of
Puget Sound Energy, Inc. Mandatory Requirements**

Appendix II

APPLICATION FOR ATTACHMENT

Application or Job Number []

Date []

TO: Puget Sound Energy

Licensee:

Name:

Address:

Email/Phone #:

Please grant permission to occupy your poles in accordance with the conditions set forth in Pole Attachment Agreement, dated _____

- Application for rental on _____ distribution poles
- Application for rental on _____ transmission poles

DESCRIPTION OF WORK:

Overlashing []

New Cable []

- PSE Universal maps attached with requested poles highlighted.
- Licensee's work sketch showing PSE grid numbers is attached.
- Appendix A Attached
- Fiber Specs Attached
- Photos Attached (Optional up to 10 poles)

POWER SUPPLIES _____ Will be installed. Pole list is attached and power supply specifications are included.

Failure to supply requested information may delay acceptance of the application.

- Application or notification accepted.
- Billing of new contacts to be effective _____

LICENSOR PUGET SOUND ENERGY

BY _____
PSE Joint Use Coordinator Date _____

Appendix III

ANNUAL RENTAL FEE Computation of Annual Rate for Poles Owned by PSE

A.	Net Cost of Bare Pole Calculation	PV
	1. Gross Distribution Plant	
	2. Gross Pole Investment (Acct. 364)	
	3. Distribution Plant Accumulated Depreciation	
	4. Depreciation Reserve (Poles)	
	5. Gross Plant Investment (Electric)	
	6. Accumulated Deferred Taxes (Electric) (190, 281-3)	
	7. Accumulated Deferred Taxes (Accts. 190, 281-3) (Poles)	
	8. Net Pole Investment	
	9. Appurtenances Factor	0.85
	10. Net Pole Investment Allocable to Attachments	
	11. Total Number of Poles	
	Net Cost of a Bare Pole	
B.	Carrying Charge Calculation	CC
	1. Total General and Administrative	
	2. Gross Plant Investment (Electric)	
	3. Depreciation Reserve (Electric)	
	4. Accumulated Deferred Taxes (Electric) (190, 281-3)	
	Administrative Carrying Charge	
	5. Account 593 (Maintenance of Overhead Lines)	
	6. Investment in Accts. 364, 365 & 369	
	7. Depreciation (Poles) related to Accts. 364, 365 & 369	
	8. Accumulate Deferred Income Taxes for 364, 365 & 369	
	Maintenance Carrying Charge	
	9. Gross Pole Investment (Acct. 364)	
	10. Net Pole Investment	
	11. Depreciation Rate for Gross Pole Investment	
	Depreciation Carrying Charge	
	12. Taxes (Accts. 408.1 + 409.1 + 410.1 + 411.4 - 411.1)	
	13. Gross Plant Investment (Total Plant)	
	14. Depreciation Reserve (Total Plant)	
	15. Accumulated Deferred Taxes (Total Plant) (190, 281-3)	
	Taxes Carrying Charge	
	16. Rate of Return	
	Return Carrying Charge	
	Total Carrying Charge	
C.	Space Factor Calculation	PR
	1. Occupied Space	1
	2. Usable Space	13.5
	3. Space Factor	
D.	Annual Pole Attachment Rental Rate Calculation	
	1. Net Cost of a Bare Pole	(PV)
	2. Total Carrying Charges	(CC)
	3. Space Factor	(PR)
	Pole Attachment Rental Rate	(PR*CC*PR)

Appendix IV

FEEES FOR TRANSFERRING COMMUNICATIONS EQUIPMENT

FIRST TRIP COSTS – Fees for performing transfer work while PSE is in the process of doing its own work.

Crossarms, all types	\$ 145.00
Anchor strand or overhead guy	145.00
Sidewalk anchor guy and pipe	155.00
Drop wire (no splicing)	145.00
Service Conduit	195.00
Messenger and cable bolted to pole or cable arm (no splicing)	150.00
Messenger dead-end	165.00
Cable riser (including pipe and molding – no splicing)	195.00
Cable terminal (no splicing)	155.00

RETURN TRIP COSTS - Cost of performing transfer work when PSE must return to the job site. The following amounts include travel time.

Crossarms, all types	\$ 235.00
Anchor strand or overhead guy	235.00
Sidewalk anchor guy and pipe	265.00
Drop wire (no splicing)	250.00
Service Conduit	385.00
Messenger and cable bolted to pole or cable arm (no splicing)	235.00
Messenger dead-end	295.00
Cable riser (including pipe and molding – no splicing)	385.00
Cable terminal (no splicing)	265.00

TOPPING FEE \$125.00

Appendix V

POLE ATTACHMENT SPECIFICATIONS

Attached

Scope

This standard describes the requirements for vertical clearance of overhead conductors above ground, roadways, rail, and water.

Design Practice

Clearances for conductors that PSE owns and/or operates shall meet the requirements of WAC 468-34-290 and NESC 232.

Clearances shall be calculated with the conductor temperature and loading conditions that produce the maximum final sag.

See Standard 6450.3000 for information on conductor design temperature and design tensions.

See Standard 6550.6200 for information on how to measure conductor sag.

Joint Use Construction

In joint use construction, the lowest communication conductor shall be considered. Its required clearance, plus the required spacing between the communication and power conductors may force the power conductors to have more than the minimum amount of clearance.

New Construction

If the terrain will be altered under the power line that effect the grade (such as filling, repaving a street, installing sidewalks, or adding landscaping) the clearances required by this standard shall be increased so when the terrain is at final grade, the minimum clearances are met.

Clearance Requirements

Table 1 lists the requirements for most situations that will be encountered. In rare cases, the NESC may allow reduced clearances. If the conductor is at an elevation above 3000 feet and it operates at 115 kV or more, additional clearance is required.

Conductor-to-Ground Clearances

0700.3001

Table 1 Clearance requirements (all measurements are in feet)

	CONDUCTORS							
	Communications and common neutral	Insulated service or secondary	Uninsulated service or secondary	Primary 4.0 kV thru 34.5 kV	55	66	115	230
	GUYS							
	Guys for structures carrying 0 thru 300 V		Guys for structures carrying 301 thru 750 V	Guys for systems carrying 751 V thru 34.5 kV				
Interstate highways, state highways, and bridges on those highways (crossing).	24.0 *	24.0	24.0	4 and 15 kV = 30 34.5 kV = 32	34.0	34.0	34.0	34.0
Interstate highways, state highways, and bridges on those highways (longitudinal).	20.0	24.0	24.0	4 and 15 kV = 27 34.5 kV = 32	32.0	32.0	32.0	32.0
Municipal roads, streets, parking lots, alleys, private driveways, horse trails and areas subject to truck traffic (including farmland, orchards, pastures, and forests).	15.5	16.0	16.5	18.5	18.9	19.1	20.1	22.4
Railroad tracks (except electrified railroads using overhead trolley conductors). †	23.5	24.0	24.5	26.5	26.9	27.1	28.1	30.4
Pedestrian ways where vehicles are prohibited by regulation or permanent obstructions and not reasonably expected to be used by vehicles.	9.5	12.0	12.5	14.5	14.9	15.1	16.1	18.4
Water areas not suitable for sailboating or where sailboating is prohibited.	14.0	14.5	15.0	17.0	17.4	17.6	18.6	20.9

* This value is 20' for communications cables on joint use structures.

† The railroad company may require greater clearance than shown here.

Continued on next page

	CONDUCTORS							
	Communications and common neutral	Insulated service or secondary	Uninsulated service or secondary	Primary 4.0 kV thru 34.5 kV	55	66	115	230
	GUYS							
	Guys for structures carrying 0 thru 300 V		Guys for structures carrying 301 thru 750 V	Guys for systems carrying 751 V thru 34.5 kV				
Water suitable for sailboating (including lakes, ponds, reservoirs, tidal waters, rivers, streams, and canals), that are less than 20 acres.	17.5	18.0	18.5	20.5	20.9	21.1	22.1	24.4
Water suitable for sailboating, but greater than 20 acres, but less than 200 acres.	25.5	26.0	26.5	28.5	28.9	29.1	30.1	32.4
Water suitable for sailboating, but greater than 200 acres, but less than 2000 acres.	31.5	32.0	32.5	34.5	34.9	35.1	36.1	38.4
Water suitable for sailboating, and greater than 2000 acres.	37.5	38.0	38.5	40.5	40.9	41.1	42.1	44.4
Boat ramps and rigging areas.	The clearance shall be 5 ft greater than that required for the water area being served by the boat ramp or rigging area.							

These values are from NESC Table 232-1, except for the state highway clearance that is from WAC 468-34-290.

References

The following Puget Sound Energy documents apply to this standard:

- 6450.3000 Overhead Distribution Line Design
- 6550.6200 Conductor Sag Measurement

Sources

- IEEE C2-2017 NESC Rule 232 Vertical clearances of wires, conductors, cables, and equipment above ground, roadway, rail, or water surfaces
- WAC 468-34-290 Vertical clearance

Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Scope

This standard establishes the attachment, grounding, structural, and clearance requirements for communications cables and equipment attached to Puget Sound Energy-owned poles.

This standard does not address RF antenna equipment (see Standard 0700.8500).

In This Standard

This standard contains the following topics.

Topic	See Page
Definitions	1
Transmission Pole Loading	3
Cables	4
Guys and Anchors	4
Pole Drilling	6
Unused Facilities	6
Equipment Mounting	6
Risers	7
Underground Service Drops	9
Grounding Requirements	9
Clearance Requirements	10
Streetlight Clearances	15

Definitions

These are definitions of terms used in this standard. *Figure 1* illustrates these terms.

Term	Definition
Communication Worker Safety Zone	See Safety Space.
Communications Space	The space on a pole below the Communication Worker Safety Zone where communications lines are installed. The lower bound of the Communications Space is the lowest point on the pole where communications lines may be installed and maintain adequate pole-to-pole ground clearance.
Covered Streetlight Wire	Insulated streetlight conductor covered with protective molding.
Field Face Quadrant	The quarter section of a pole on the field side of the pole gain.

Continued on next page

Attachment and Clearance Requirements for Overhead Joint Utility Construction

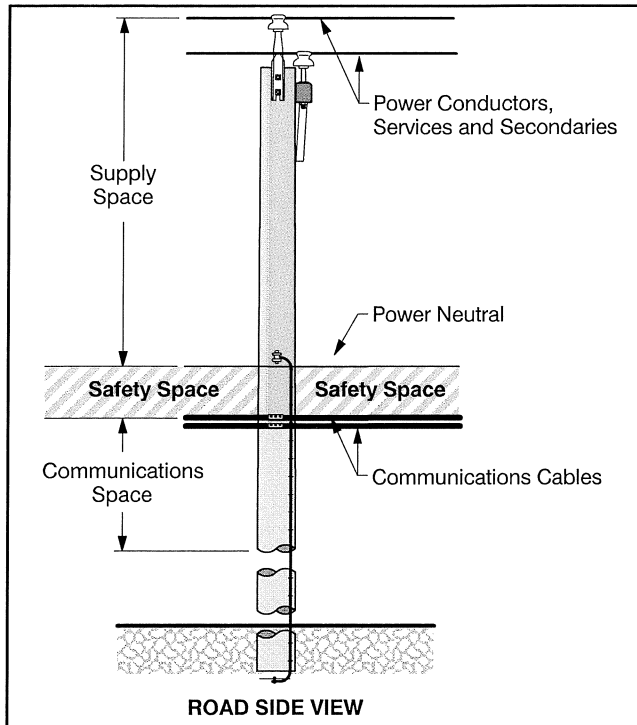
0700.8000

Definitions, *continued*

Term	Definition
Joint Utility	For the purposes of this standard, any entity (utility, public agency, communications company, or other) other than Puget Sound Energy that attaches to any Puget Sound Energy-owned facility.
Pole Face	The side or half of the pole that contains the pole gain.
Pole Gain	The notch in the pole that contains the pole manufacturing information. The pole gain is located 12 feet from the butt of the pole.
Road Face Quadrant	The quarter section of a pole on the road side of the pole gain.
Safety Space (or Communication Worker Safety Zone)	<p>The vertical space on a pole below the supply space and above the communications space. This space is intended to provide a safe working clearance for workers in the communications space. It is defined in the NESC, Section 235C4.</p> <p><i>NOTE:</i> The term “safety space” is used in this standard for purposes of clarity.</p>
Supply Space	<p>The space above the Communication Worker Safety Zone. Except for some streetlights, this is where electric supply equipment and electric supply lines (power lines) are installed.</p> <p>The Supply Space extends to the lower of:</p> <ul style="list-style-type: none"> ▪ 120 inches down from a 115 or 230 kV transmission line conductor. ▪ 96 inches down from a 19.9/34.5 kV primary line conductor. ▪ 84 inches down from a 2.4/4.0 kV and 7.2/12.47 kV primary line conductor. ▪ The lowest attachment point of a secondary or neutral conductor.

Figure 1

Space Allocation on a Pole



Approval Required

Joint utilities must receive written approval from Puget Sound Energy before attaching to Puget Sound Energy-owned poles. This includes overlashing cable to existing bundles on a strand. Joint utilities must also have a signed Joint Use Agreement with PSE. Joint Users must also refer to their Joint Use Agreement for any additional specific requirements. Signs are not allowed on Puget Sound Energy-owned poles.

Codes

All equipment and hardware shall be mounted on the pole in a way that provides adequate climbing and working space. In all cases, clearances and separations as required in the NESC shall be met, both at the pole and midspan.

All poles where attachments are made shall have sufficient structural capacity to support the loadings for all facilities attached. Poles should be reviewed for NESC strength compliance where new or modified facilities are proposed that would increase loading on the pole.

Transmission Pole Loading

PSE will structurally review all proposed attachments to PSE transmission poles. Attachment to transmission poles without distribution underbuild may not be approved.

Cables

Joint utilities' cables shall:

- Attach to the same side of the pole as the power neutral conductor.
- Be installed on the road side of the pole if the power neutral conductor is on a primary crossarm.
- Be tensioned or guyed so the angle of existing structures is not altered and the sag characteristics of the power conductors do not change. All unbalanced tensions must be guyed.
- Meet all applicable NESC clearances at the time of installation or alteration.

When present, PSE-owned fiber shall take the uppermost position on the pole.

Guys and Anchors

The following requirements apply to joint utilities' guys and anchors:

- Each company is responsible for installing the appropriate guying to balance the maximum horizontal tension of its cables/messengers. This includes at deadends, angles, taps, and other such locations. Service drops do not require guying unless deemed prudent by the attaching company.
 - Guys shall be installed with anchors provided and installed by the communications company. Existing PSE anchors may be used only with permission from PSE on a per location basis. Such requests may only be granted if:
 - The communication guy attachment is insulated or grounded.
 - The anchor has sufficient strength. PSE anchors have either 2 or 3 integral “eye” positions depending on the anchor type and this number of attachments shall not be exceeded. *Installing auxiliary eyes is also not permitted (see Figure 2).*
 - New anchors must be a minimum of 5 feet from existing PSE anchors and the pole (see Figure 3).
 - Crossing down guys or fastening two span guys together for ground clearance is not permitted.
 - Pole-to-pole span guying may not utilize a pole as an anchoring device unless a down guy meeting the requirements of this section is installed.
 - Guy markers shall be installed on all communication down guys.
 - Guys must be grounded or insulated.
-

Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Figure 2

This type of installation is not permitted! PSE anchors have either 2 or 3 integral “eye” positions depending on the anchor type and this number of attachments may not be exceeded.

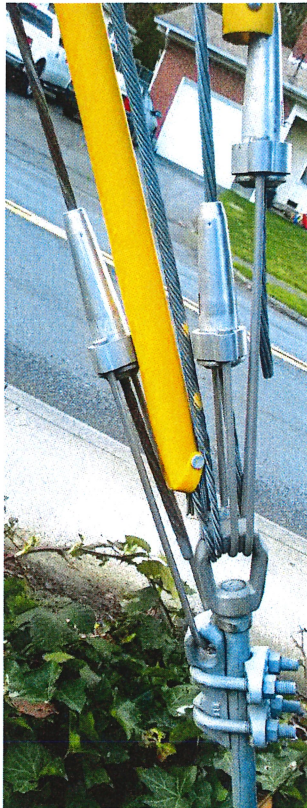
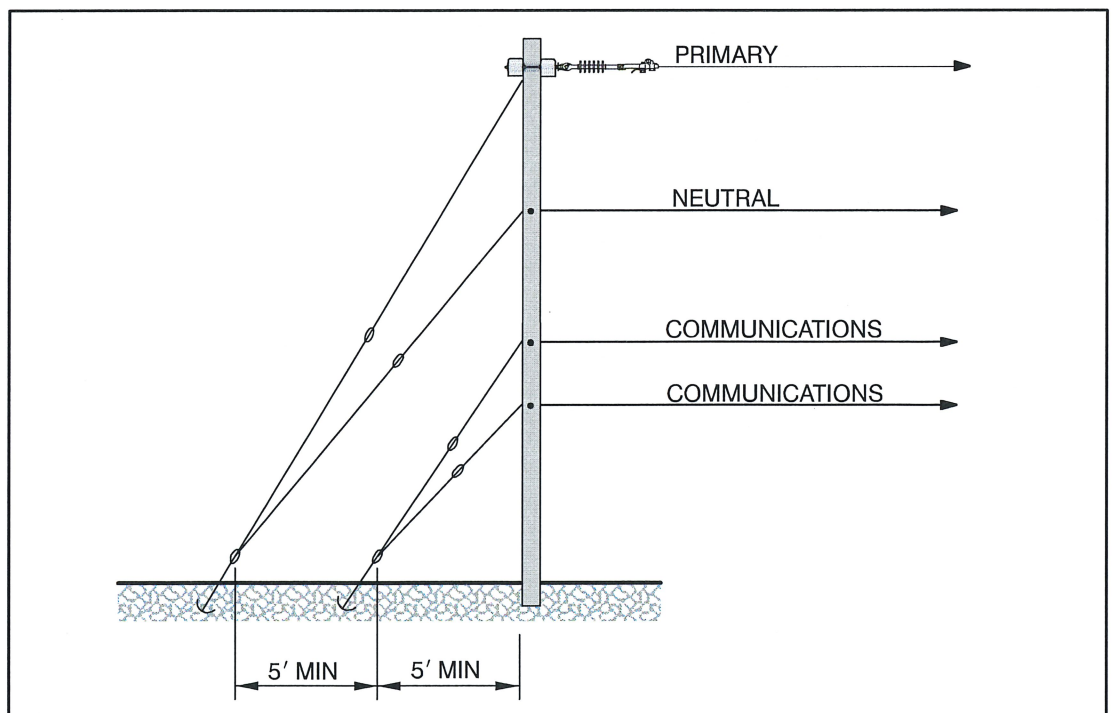


Figure 3

Anchor Placement



Pole Drilling

Existing holes shall be used for equipment mounting whenever possible.

When new holes must be drilled in wood poles, they shall be treated with PSE's current approved wood preservative. Treatment shall be applied using a pressure-type oil can or a bottle brush. All communication attachments on PSE steel poles must be banded to the pole unless factory predrilled holes are available. Field drilling is not allowed on steel poles unless approved by PSE on a per case basis.

Refer to PSE Standard 6450.7500 for field treatment requirements for wood poles.

Unused Facilities

Unused communication facilities that are not required for normal service, redundancy, or emergency use shall be removed.

Equipment Mounting

Joint utility-owned communications enclosures mounted more than 8 feet abovegrade on PSE-owned poles shall be no larger than 24 inches wide x 24 inches high x 18 inches deep (24" W x 24" H x 18" D). The joint utility shall provide and install all materials necessary to support a communications enclosure a minimum of **5 inches** from the face of the pole. If the enclosure is to be energized, then the joint utility shall also provide enough supply wire coiled at the weatherhead to reach the transformer secondary connections.

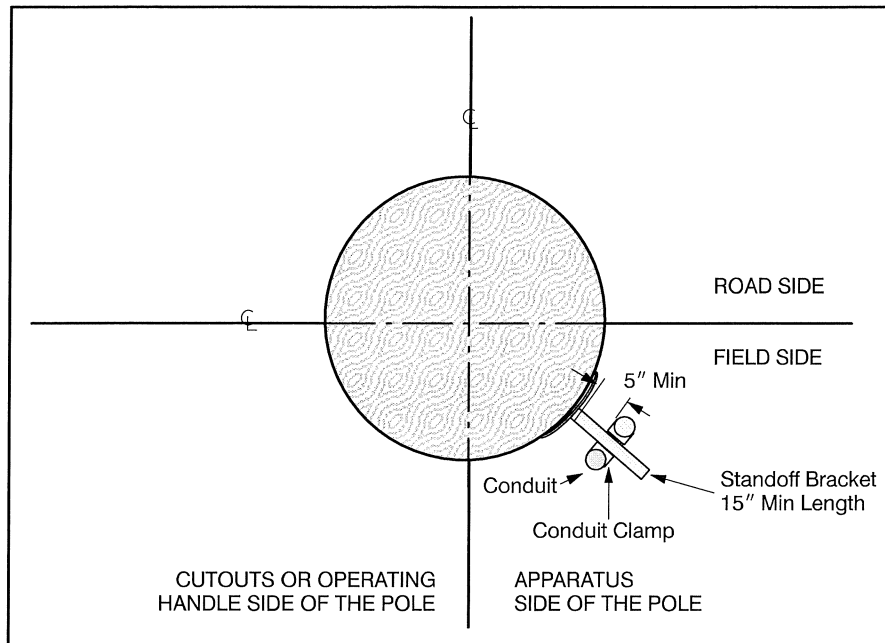
Communications enclosures shall be mounted directly above the pole gain. If this is not possible, they shall be mounted on the road face quadrant of the pole.

NOTE: A city or state electrical inspection is required before PSE connects communications power supply wires to power conductors.

Figure 4 illustrates the attachment requirements for risers and enclosures.

Figure 4

Attachment Requirements for Risers and Enclosures



Risers

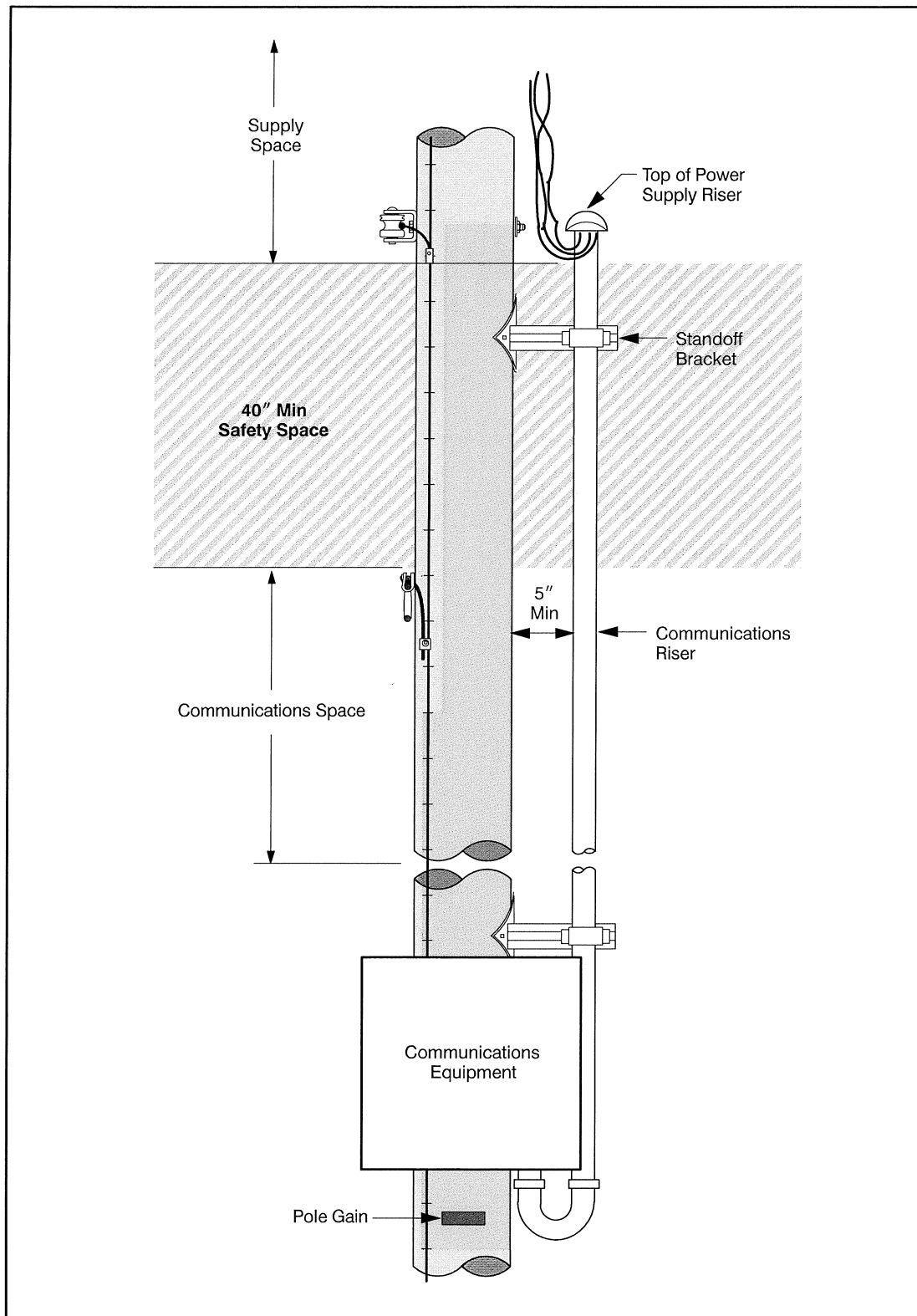
Communications risers shall be mounted:

- Where they will not interfere with climbing space or the operation of pole-mounted equipment. The best position is on the field face side of the pole (see *Figure 4*); the exact location will depend on the position of obstructions and the direction of the cable or conduit run.
- On standoff brackets and provide a minimum **5-inch** clearance from the pole. Existing standoff brackets shall be used when available. If new brackets are needed, the communications company shall provide and install them.
- High enough on the pole to ensure the 40-inch safety space requirement is maintained between the bottom of the drip loop and the top of the communications space (see *Figure 5*). The bottom of the drip loop shall be no lower than the lowest piece of pole hardware in the supply space.

Risers, *continued*

Figure 5

Attachment Requirements for Communications Risers



Underground Service Drops

Communications drops less than 1/2-inch in diameter may be attached directly to a pole under the following circumstances:

- They shall be securely attached, in accordance with NESC 239D, from the ground to the communications level, using staples or other means to ensure that the cables cannot be pulled away from the pole and become a tripping or snagging hazard to the public or anyone climbing the pole.
- To minimize climbing hazards, they shall only run vertically; they shall not wrap around the pole.
- All vertical runs shall be installed on the same quadrant of the pole. If there are existing conduit risers on the pole, the vertical runs shall be placed within the same quadrant as the existing riser(s).
- Any coils of spare cable will be attached to the pole no less than 8 feet abovegrade.
- Connection blocks will be mounted on the pole in the same quadrant as the drop and shall be no larger than 20 square inches.

Grounding Requirements

Metallic Messenger Bonding

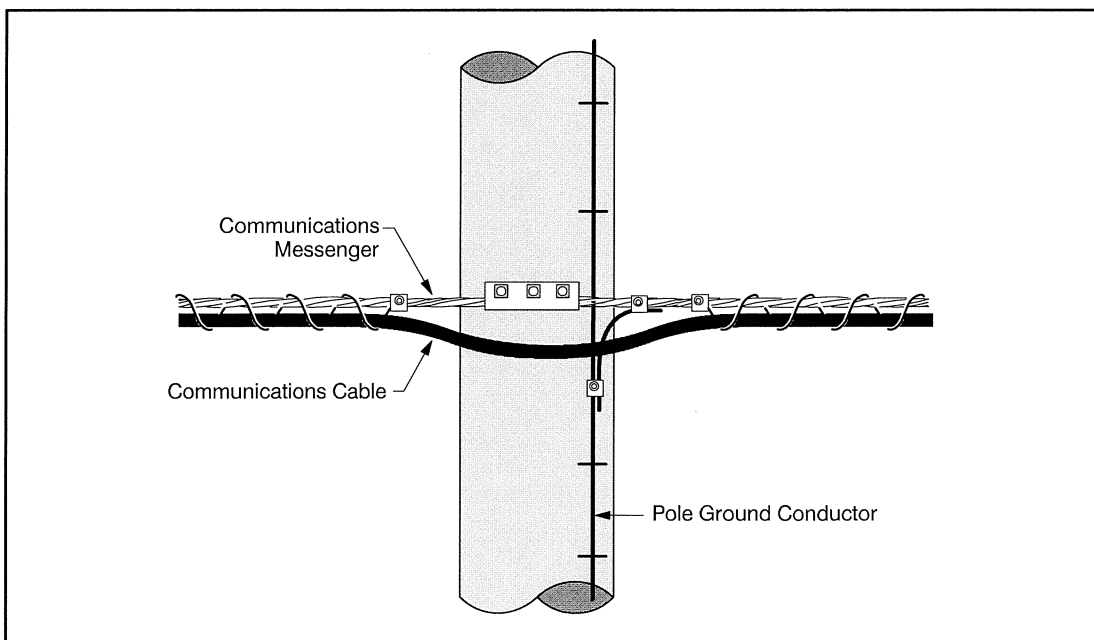
Communications metallic or conductive messengers may be bonded to the pole ground conductor, in accordance with NESC 97G, by the attaching company.

NOTE: Nonmetallic/nonconductive self-supporting messengers (i.e., Kevlar-type) do not require bonding.

Figure 6 illustrates how to construct the grounding.

Figure 6

Grounding Communications Messengers at Supports



Clearance Requirements

Transmission Clearances

PSE does not allow attachments to transmission poles above 100 kV unless the pole has distribution underbuild. For applications to transmission poles with existing distribution underbuild, PSE personnel will determine whether the attachment will be allowed and, if so, provide clearance requirements.

Distribution Clearances (up to and including 34.5 kV)

It is the responsibility of the joint utility to determine which clearance listed below applies, based upon the type of supply equipment or construction on the pole.

NOTE: All clearances are measured vertically.

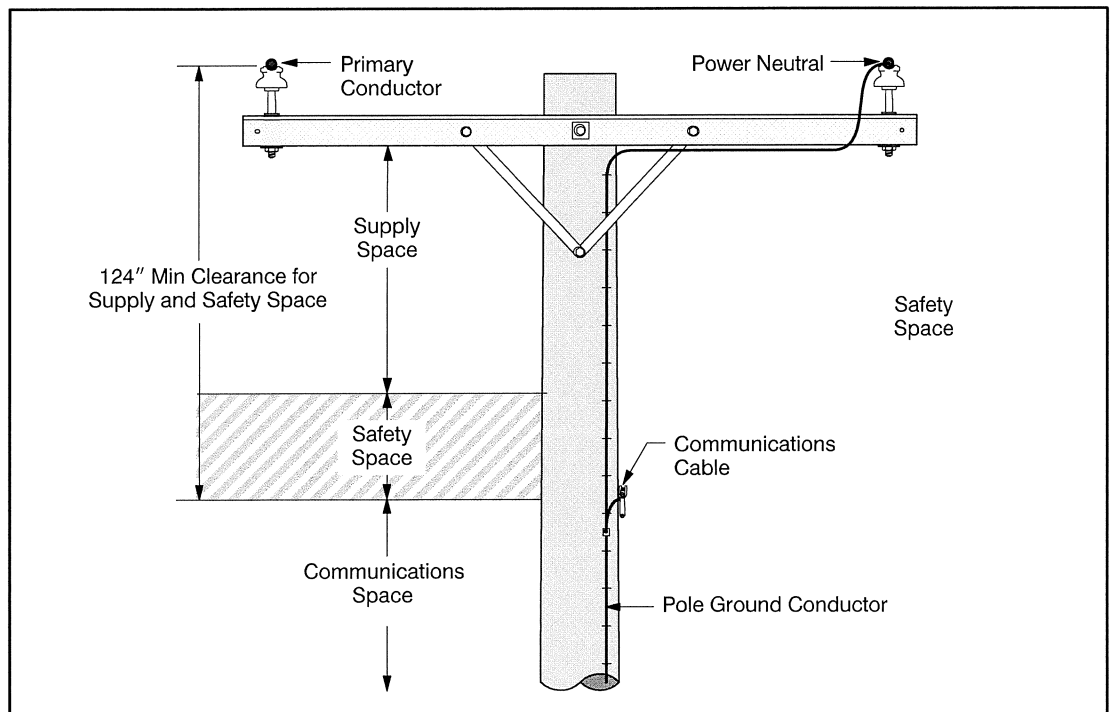
Clearance at Supports

The minimum clearance at supports between power company equipment and the top of the communications space depends upon the type of construction and equipment on the pole.

If ...	And ...	Then ...
All primary conductors are mounted on a crossarm at the same level (either single or double arm construction),	There is no additional power equipment mounted below the primary arm,	124-inch (10'-4") minimum clearance is required (<i>Figure 7</i> illustrates this clearance). NOTE: This clearance is measured from the tie wire or conductor clamp on the insulator to the top of the communications space. This distance encompasses the supply and safety space and provides room for future installation of supply equipment and/or service conductor.

Figure 7

Clearance Between Power Conductors and Communications Space



Attachment and Clearance Requirements for Overhead Joint Utility Construction

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Supply Equipment

If any of the following supply equipment is mounted on the pole, a minimum clearance of 40 or 30 inches is required, depending upon whether the supply equipment is ungrounded or grounded.

This clearance is measured from the *bottom of the lowest piece* of supply equipment to the top of the communications space.

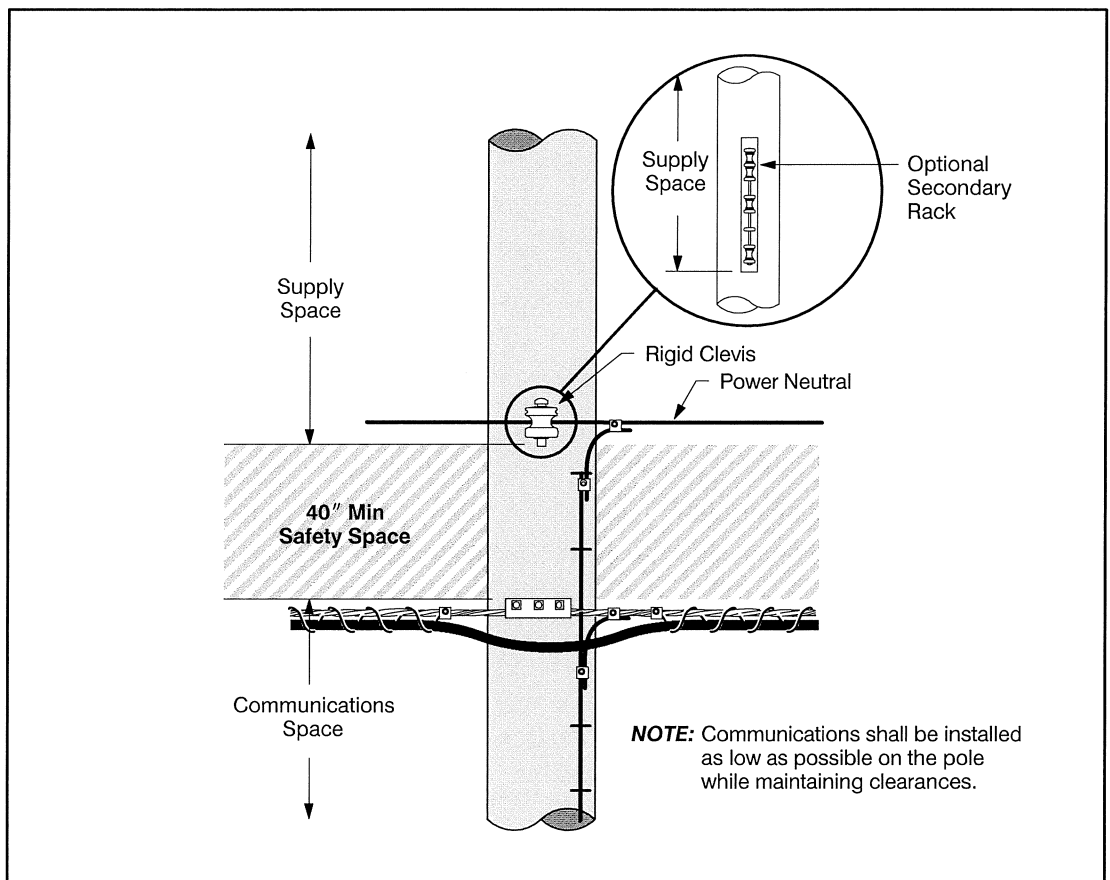
Ungrounded Equipment

Ungrounded equipment has a 40-inch clearance.

Equipment	See Illustration
Rigid clevis	Figure 8
Secondary rack	Figure 8
Exposed supply wire This does not apply to streetlight supply wire drip loops.	Figure 9 and Figure 10
Secondary crossarm brace	None

Figure 8

Clearance Between Ungrounded Supply Equipment and Communications Space



Clearance Requirements, *continued*

Figure 9 Clearance Between Supply Conductor Drip Loop and Communications Space

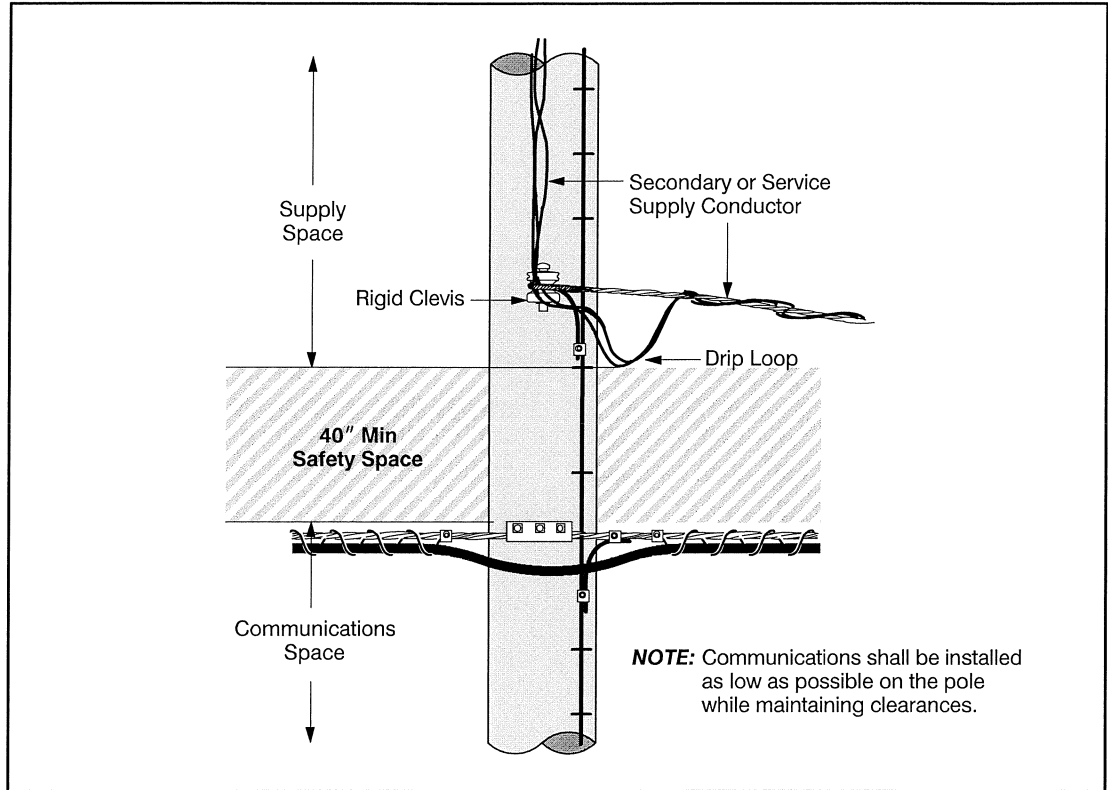
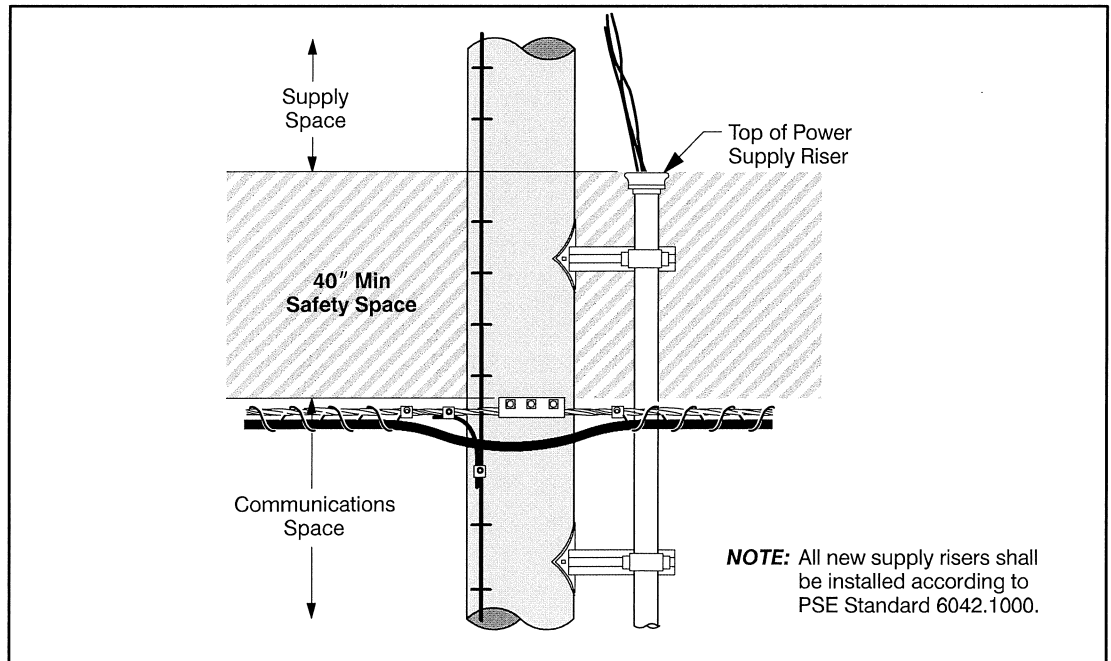


Figure 10 Clearance Between Top of Power Riser and Communications Space



Attachment and Clearance Requirements for Overhead Joint Utility Construction

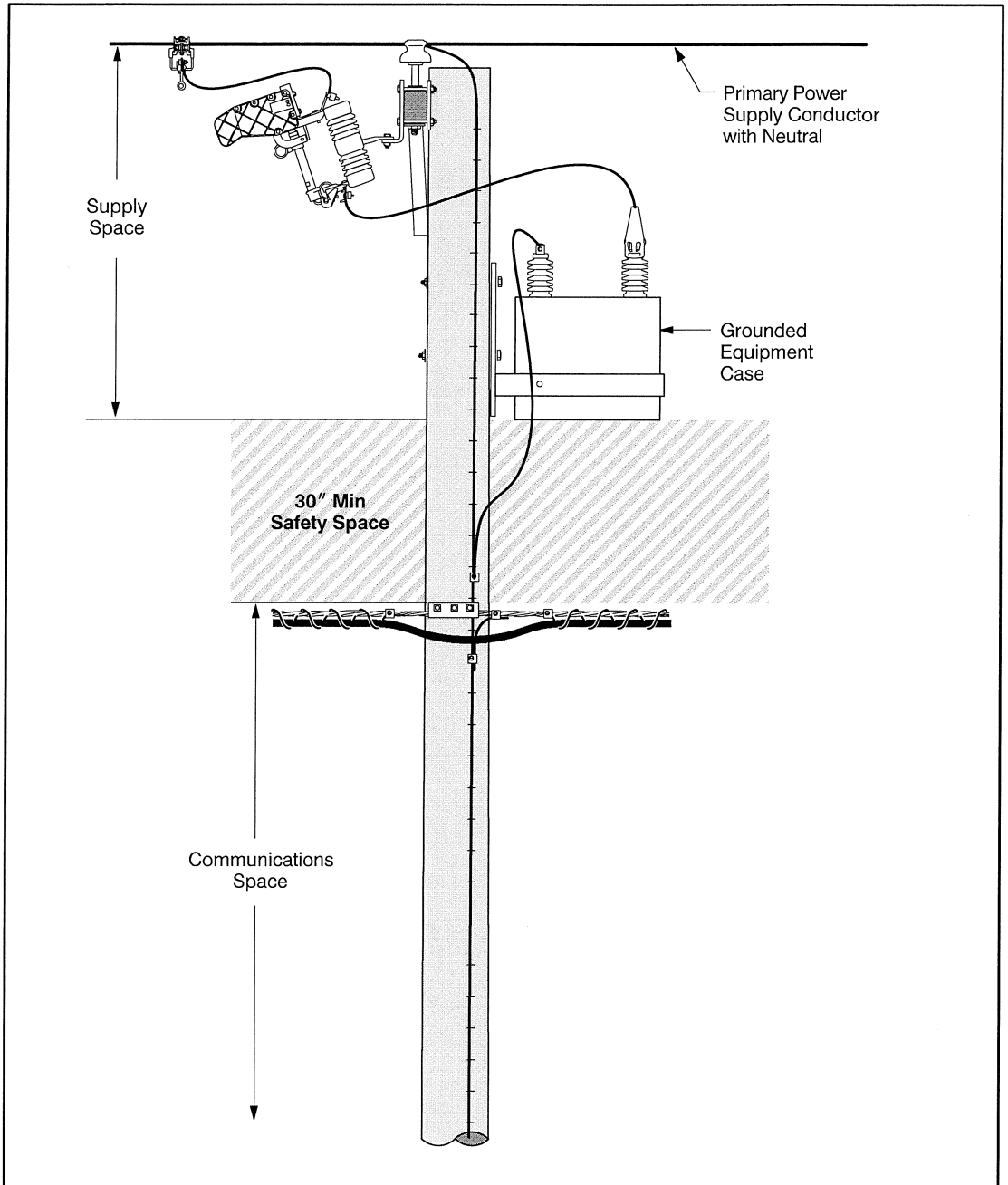
0700.8000

Grounded Equipment

Grounded equipment has a 30-inch clearance. *Figure 11* illustrates a typical (in this case a capacitor bank) equipment installations.

Figure 11

Clearance Between Grounded Supply Equipment and Communications Space



Attachment and Clearance Requirements for Overhead Joint Utility Construction

0700.8000

Clearance Requirements, *continued*

Midspan Clearance The minimum vertical clearance at any point in the span between power conductors and communications cables is **63, 40, or 30 inches**, depending upon the power line voltage. There are no horizontal clearance dimensions that can alleviate vertical clearance requirements between power conductors and communications cables jointly attached to PSE poles.

These midspan clearances must be met with the upper conductor (PSE) and the lower conductor (communications) at their final unloaded sag in the same ambient conditions and with the power conductor at its maximum design operating temperature (75°C for phase, 50°C for neutral, and 75°C for secondary).

NOTE: Meeting the midspan clearance requirements may require increasing the clearance distance at the supports (poles) beyond the minimum values.

Equipment	Voltage	Clearance
Primary supply conductors <i>Figure 12</i>	750 V to 34.5 kV	A 63-inch clearance is required.
Power neutral or triplex <i>Figure 13</i>	0-750 V	A 30-inch clearance is required
Open wire secondary	0-750 V	A 40-inch clearance is required

Figure 12

Midspan Clearance Between Primary Supply Conductors and Communications Cables

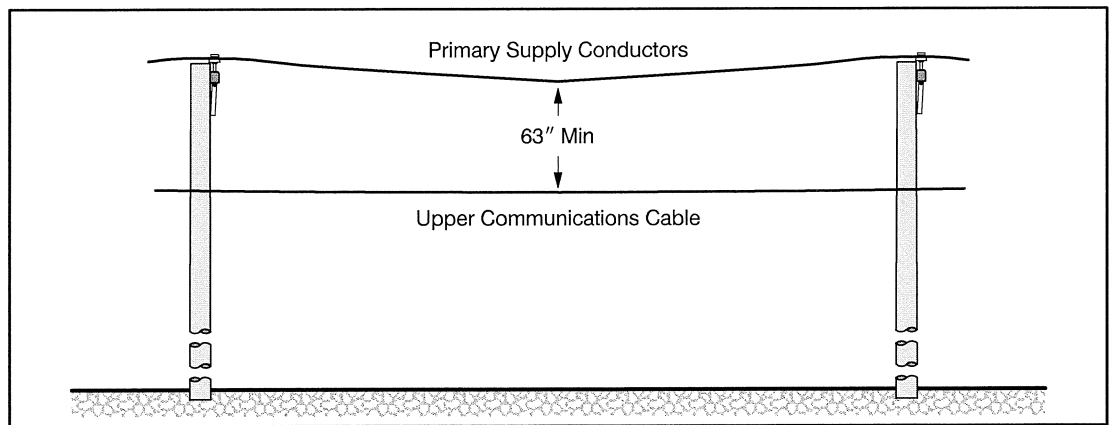
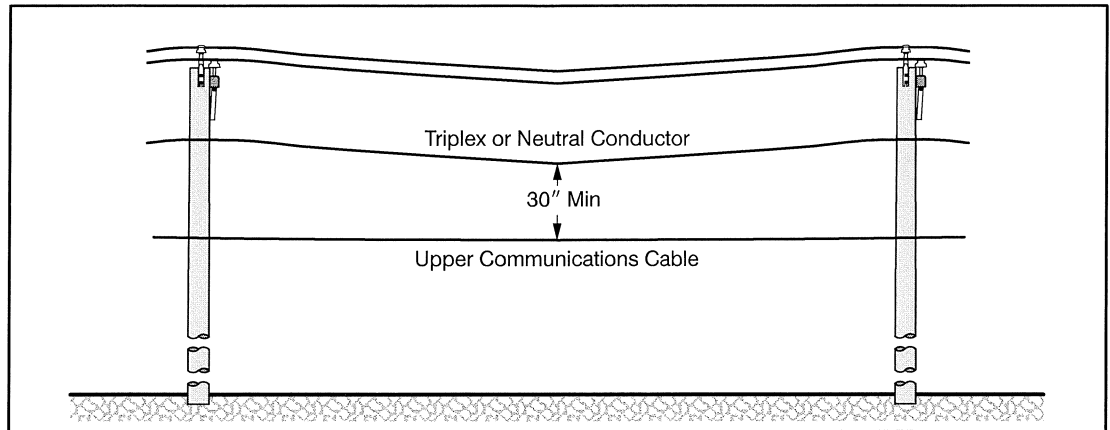


Figure 13

Midspan Clearance Between Secondary or Neutral Conductors and Communications Cables



Streetlight Clearances

Special clearances exist between streetlights and communications cables because:

- They may be installed anywhere on the pole, assuming all clearance requirements are met.
- Vertical runs of streetlight supply wire may or may not be covered with protective molding.

All clearances apply 360° around the entire pole.

Cables Installed Below Streetlights

When communication cables are installed below a streetlight on a pole, **all** of the following minimum clearance requirements shall be met:

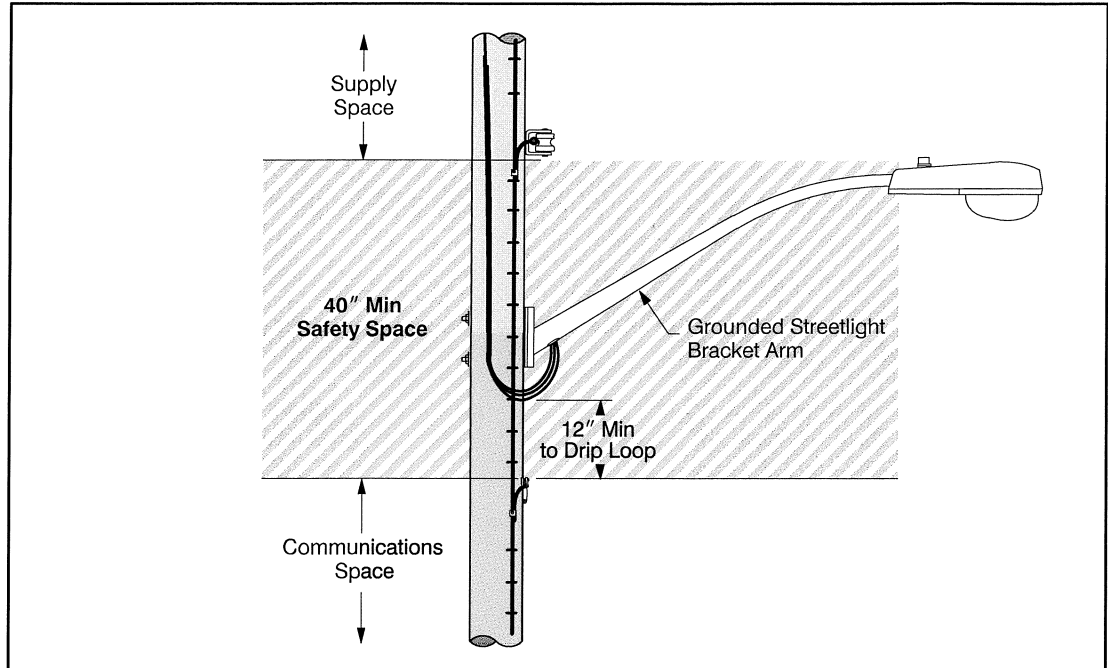
Between the bottom of . . .	This clearance is required
Drip loop of the streetlight supply wire and the top of the communications space.	12 inches *
Supply space and the top of the communications space.	40 inches

* This may be reduced to 3 inches if the loop is covered by a suitable nonmetallic covering that extends at least 2 inches beyond the loop.

Figure 14 illustrates these clearance requirements.

Streetlight Clearances, *continued*

Figure 14 Clearances for Communications Cables Installed Below Streetlights



Streetlights Installed Beneath Communication Conductors

Proper streetlight mounting heights may require that the bracket be installed beneath the communication conductors.

When this is the case, *all* of the following minimum clearance requirements shall be met:

Between . . .	This clearance is required
Top of the streetlight bracket and the bottom of the communications space.	20 inches
Bottom of the streetlight supply wire molding (where wire is exposed at drip loop) and the bottom of the communications space.	40 inches
Top of the streetlight supply wire molding (where wire is exposed) and the top of the communications space.	40 inches

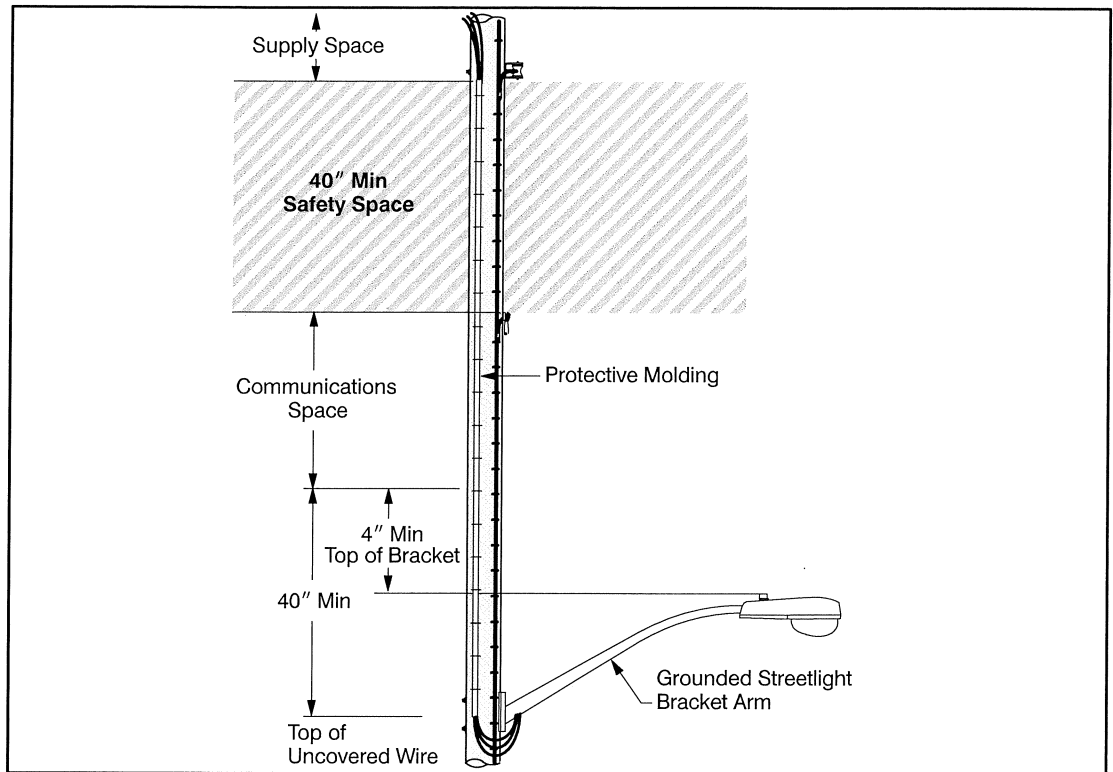
Figure 15 illustrates these clearance requirements.

CAUTION!

Communications cables shall not be installed above streetlights if the vertical run of streetlight supply wire is not covered with protective molding.

Figure 15

Clearances for Communications Cables Installed Above Streetlights



References

The following Puget Sound Energy documents relate to this standard:

- 0700.8500 RF Antenna Equipment on Power Poles
- 6042.1000 Conduit Riser
- 6450.3900 Wood Pole Information
- 6450.7500 Field Drilling, Roofing, and Treating Wood Poles and Crossarms

Sources

ANSI	O5.1	Wood Poles: Specifications and Dimensions
IEEE C2-2017	Rule 97G	Bonding of communication systems to electric supply systems
NESC	Rule 235	Clearance for wires, conductors, or cables carried on the same supporting structure
	Rule 235C4	Communication worker safety zone
	Rule 238	Vertical clearance between certain communications and supply facilities located on the same structure
	Rule 239D	Guarding and protection near ground

List of Changes for 0700.8000

Date	Description of Revisions
04/20/22	▪ Clarified that signs are not allowed on PSE’s poles.

Action Memo

To: Commissioners Arnett, Deshmane, and Lagestee
From: Kurt Wank – Assistant General Manager
Date: June 25, 2024
Re: Approve Amendment No. 2 to Work Order No.2 with CONSOR

Requested Action: APPROVE AMENDMENT NO.2 TO WORK ORDER NO.2 WITH CONSOR FOR ADDITIONAL ENGINEERING SERVICES FOR A COST NOT TO EXCEED AMOUNT OF \$1,113,047 AND AUTHORIZE THE DISTRICT'S GENERAL MANAGER TO EXECUTE THE AMENDMENT.

Background:

Work Order No.2 (WO2), which was approved by the Commission on August 24, 2021 covers CONSOR'S Scope of Services related to design, permitting, bidding, and construction services associated with the rebuild of Water Treatment Plant No.1 (WTP1). At the time WO2 was executed, the bidding and construction services portion of the work tasks to be performed by CONSOR only applied to the utilidor portion of the WTP1 rebuild. The utilidor portion included development of the overall facilities campus plan and upgrades to the piping system between the Nooksack River intake facility and the treatment plant on the west side of Ferndale Road. Construction of the utilidor was determined necessary to be completed first and prior to the City of Ferndale's and Corps of Engineers' planned project to improve the levee in the vicinity of the intake. The budget approved for WO2 was \$1,844,773.

After WO2 was executed and CONSOR began implementing its Scope of Services, the District learned that the City of Ferndale was planning to re-route Ferndale Road, as part of the levee project work. This would have future impact on the District's WTP1 rebuild, including the plan to increase capacity of the industrial water supply main leaving the WTP1. The District approached CONSOR about an expansion of the original Scope of Services to be performed under WO2.

This expansion of services included investigating options for re-locating a new supply main so as to avoid the proposed new route of Ferndale Road; preliminary design of the option selected by the District and other associated services. This expansion in scope resulted in Amendment 1 to WO2, which was approved by the Commission on January 10, 2023. The budget addition for Amendment 1 was \$285,000.

Amendment 2 to Work Order No.2

The services to be performed under Amendment 2 to WO2 represent a further expansion of the Scope of Services, which have been prompted by the District and developed in consultation with CONSOR. The services to be performed have been detailed by CONSOR in a Scope of Services document submitted to the

District in final form on June 17, 2024. This document is the basis for Amendment 2, which is included with this memo. The additional services fall within the following categories:

- 1) Preliminary Design
- 2) Final Design
- 3) Bid Services
- 4) Subconsultants
- 5) Unanticipated Services
- 6) Condition Assessments

In general, there is an expansion in design elements of the utilidor portion of the overall project; more value engineering to investigate ways to reduce cost of design elements and construction of the project; expansion of bidding services; inclusion of additional design elements; and modification of existing design elements.

If approved by the Commission, Amendment 2 will increase the overall budget for WO2 by \$1,113,047. The following table summarizes the budget increases for Work Order No.2 and the two Amendments

WO2 TASKS	ORIGINAL BUDGET	AMENDMENT 1	AMENDMENT 2	TOTAL
1.Project Mgt.	213,530	18,777	85,304	317,611
2.Pre-Design	505,171	34,500	331,365	871,036
3.Permitting	36,795	5,053	\$0	41,848
4.Final Design	139,173	113,444	50,524	303,141
5.Bid Services	20,737	7,522	11,556	39,815
6.Subconsultants	840,371	85,254	609,298	1,534,923
7.Unanticipated	89,095	20,450	25,000	134,545
Totals:	\$1,844,873	\$285,000	\$1,113,047	\$3,242,920

Fiscal Impact: Approval of Amendment No.2 to Work Order No.2 with CONSOR will have no fiscal impact on the District’s approved 2024 Annual Budget. The expansion of services and budget was anticipated as a possible outcome going into 2024.

Recommended Action: APPROVE AMENDMENT NO.2 TO WORK ORDER NO.2 WITH CONSOR FOR ADDITIONAL ENGINEERING SERVICES FOR A COST NOT TO EXCEED AMOUNT OF \$1,113,047 AND AUTHORIZE THE DISTRICT’S GENERAL MANAGER TO EXECUTE THE AMENDMENT.

EXHIBIT A

**AMENDMENT NO. 2
(2024)
to
WORK ORDER NO. 2
(2021)**

**Services for:
PUBLIC UTILITY DISTRICT NO. 1 OF WHATCOM COUNTY**

**Performed by:
CONSOR NORTH AMERICA INC.
(Formally Murraysmith Inc.)**

This Amendment No. 2 to Work Order No.2 is issued pursuant to the Standard Agreement for Professional Engineering Services (“Agreement”) dated June 23, 2020, between Public Utility District No.1 of Whatcom County (referred to as “District”, “Whatcom PUD”, or “PUD”) and Murraysmith, Inc., now doing business as Consor North America Inc. (also referred to as “Conсор” or “Engineer”) and which is hereby incorporated into the Agreement by this reference.

BACKGROUND

The District’s Commission approved Work Order No.2 with Murraysmith (now Consor) on August 24, 2021. The bundle of services now being provided by Consor is associated with the design, permitting, and construction of a re-build of Water Treatment Plant No.1 (WTP1). The work order covers design of the entire project and bidding and construction services through Utilidor Access Building (UAB) portion of the project, which originally included construction of a utilidor and new piping under Ferndale Road between the intake and treatment facilities at WTP1.

If approved, Amendment No.2 expands Consor’s services to include identification, permitting, and design of a newly routed supply pipeline, which would avoid the City of Ferndale’s new route for Ferndale Road, which will pass through City property to the north of WTP1’s location and over the existing WTP1 supply pipeline. Amendment No.2 will complete utilidor design through the bid package, including civil, subcontractors, and continued Plant 1 predesign,

SCOPE OF SERVICES

District staff in collaboration with Consor developed the Scope of Services (also known as “Work Scope”) encompassed in this Amendment No.2. In general, Consor as the Engineer will complete the final design of the Utilidor and Utilidor Access Building. Bid period activities and

permitting will also be part of the services provided. There are seven specific major tasks to be performed:

- Task 1: Project Management
- Task 2: Preliminary Design
- Task 3: Permitting
- Task 4: Utilidor Final Design
- Task 5: Bid Period Services
- Task 6: Retain and Manage Sub-Consultants
- Task 7: Unanticipated Services

The services to be performed are detailed in a final Amendment document submitted by Consor to the District on June 17, 2024 and which is available for review. The summary of services described above are to be considered consistent with and the same as Consor's Amendment 2 document.

COST FOR SERVICES

The additional cost not to exceed amount for the Scope of Services described above and to be provided by Consor under this Amendment No.2 to Work Order No.2 is **ONE MILLION ONE HUNDRED THIRTEEN THOUSAND FORTY-SEVEN DOLLARS (\$1,113,047)**. This amount increases the overall budget total for Work Order No.2 to **\$3,242,920** (= \$1,844,873 + \$285,000 + \$1,113,047). The amount listed includes labor, materials, and allowable expenses. Consor shall not exceed the total amount listed above, without prior approval of the District's Project Manager. The District will be invoiced by Consor for actual hours worked and expenses incurred up to the work order budget maximum.

SCHEDULE

The Scope of Services performed under this Amendment No. 2 will be initiated only with approval by the District's Project Manager. Such approval may be in the form of an email, fax, or letter.

AUTHORIZING SIGNATURES

This Amendment No.2 to Work Order No.2 is effective as of the date signed by Whatcom PUD's General Manager.

**PUBLIC UTILITY DISTRICT NO. 1
OF WHATCOM COUNTY**

CONSOR NORTH AMERICA INC.

By: _____

By: _____

Name: Chris Heimgartner

Name: _____

Title: General Manager

Title: _____

Date: _____

Date: _____

Memo

To: Commissioners Arnett, Deshmane, and Lagestee
From: Garrett Love-Smith-Engineering Manager
Date: June 25, 2024
Re: Reject All Bids for the D Station Flow and Control Project

Requested Action: REJECT ALL BIDS FOR THE D STATION FLOW AND CONTROL PROJECT

Background: The District owns and operates the D Station facility, which is located at the west end of Aldergrove Road. D Station controls the flow of industrial water supplied by the District's water transmission system into the BP Refinery's distribution water lines. In 2021, it was determined that D Station was in need of major upgrades from the original 1964 design. The District contracted out the design work to RH2 Engineering. The design covered the installation of a new vault along with redundant lines to assure continuous delivery of water, if one line was taken out of service for repairs to the line or equipment. In November of 2023, the designs were finalized with input provided by both the District and BP Refinery staff. The upgrades designed were then included in the District's Budget as capital improvement project (CIP) RW M-7.

On June 7th, 2024, the District received and publicly read three (3) bids submitted for construction of the D Station project. Upon review of the bids, the District selected the apparent responsive lowest cost Bid. Staff then informed the three companies of the selection.

Summary of Bidders & Bids:

- | | |
|-----------------------------|-----------------------|
| 1. P&P Excavating | \$952,318 (w/o tax) |
| 2. AWARD Construction | \$1,118,500 (w/o tax) |
| 3. Gary Harper Construction | \$1,240,600 (w/o tax) |

Upon further review of the publicly announced bids, one of the three companies submitted a formal protest of the results to the District. The protest was based on the contention that the apparent low bidder did not fully complete the detailing of the subcontractors list by failing to list the company as one of the entities doing the proposed work. By not doing so, the company did not comply fully with the requirements under RCW 39.3.060.

Upon receiving the protest, District staff referred the matter to the District's legal counsel for review. Legal counsel determined that the basis for the protest was valid. The District's bid documents, particularly the subcontractors list sheet did not ask for the name of the primary contractor, in this case the bidding company, doing the work.

Staff Recommendation: Given that the company with the low bid was responsive in completing the bid documents as presented by the District and that the protesting company had a valid complaint, staff believes it to be in all parties' best interests to reject all three current bids and move to re-bid the project. Prior to doing so, staff with legal counsel's assistance, will update all bid documents to assure that they fully reflect all requirements under current RCWs and WACs.

Therefore, staff recommends rejecting the three bids submitted for the D Station Flow and Control Project (CIP RW M-7).

Fiscal Impact: The rejection of the D Station Flow and Control Project Bids has no fiscal impact on the District's 2024 Budget. Staff will proceed with efforts to re-bid the project.

Recommended Action: **REJECT ALL BIDS FOR THE D STATION FLOW AND CONTROL PROJECT.**