

0504 SEN. FADELEY responded that the RIPPER amendment could include nuclear waste storage but it assumes the new Council will have the expertise to make that kind of a decision and it shifts that decision to the Council, and away from the Legislature. SEN. FADELEY stated that he would like the assurance that no new nuclear plants will be started until all the information is available from the Three Mile Island incident and know what the Federal Government's charges are going to be for long term disposal of nuclear waste.

0517 SEN. DAY asked if SEN. HALLOCK would wait on his motion to move SB 899 out of committee until Tuesday when the two amendments could be integrated into one proposal. SEN. HALLOCK said he would back off on putting a motion with the assurance that the proposal will be taken up on Tuesday.

0535 SEN. FADELEY restated SEN. RIPPER's procedural motion and called for a voice vote. The motion carried 8-1, SEN. POWELL voting no, and the items were set over for the Tuesday, April 10th meeting agenda.

0567 SEN. KULONGOSKI professed that he was not opposed to the attempt to integrate the two proposals but that he does not favor the RIPPER amendments as compared to the CHAIR's amendments. He felt the RIPPER amendments were too limiting and preferred the broader FADELEY amendments. SEN. HALLOCK concurred totally with SEN. KULONGOSKI's comments on the two proposed amendments.

SB 560

0600 SEN. POWELL leaves meeting, 4:00 p.m.

Staff Measure Summary for SB 560 were distributed to the committee (SEE EXHIBIT C).

0640 RAY GRIBLING, representing Pacific Northwest Bell read and submitted prepared testimony (SEE EXHIBIT D). MR. GRIBLING testified that the bill would provide such authorization whenever a public utility and a cable television corporation are unable to agree upon the terms, conditions, or compensation for pole attachments. The bill proposes that the Oregon Public Utility Commission be given jurisdiction to regulate pole attachment rates at the State level and that the FCC's jurisdiction be pre-empted. He offered an amendment to the bill that would assure the utility of recovering not less than all the additional costs of providing and maintaining pole attachments; the amendment is included in the printed testimony.

0712 SEN. GROENER asked SEN. KULONGOSKI, sponsor of the bill, if he favored the proposed amendment. SEN. KULONGOSKI responded that he felt the amendments were good.

0765 DEL CANTRALL, representing Oregon Cable Communication Association testified that SB 560 when introduced appeared to be very similar to the Washington State bill and not quite so similar to the California State bill.

MR. CANTRALL introduced MR. FARROW who helped draft the California legislation and has been dealing in the field of cable television and utility regulations since 1966.

0800 MR. HAROLD FARROW, representing Oregon Cable Communication Association presented and read his prepared testimony (SEE EXHIBITE). MR. FARROW explained that a pre-emption of the federal Act by the State of Oregon was specifically provided for in the second half of a bill that covered only federal fines and forfeitures. Consequently the pole pre-emption only involves pole attachments and is a unique situation where the federal government is indicating that it finally begins to believe that some of the regulation in this world should be more at the local level than at the federal level.

SB 593

0882 ED CAPEN, representing Multnomah County submitted and read prepared testimony (SEE EXHIBIT F). He explained that the basis thrust of the bill is to provide to counties, what cities are already entitled to do under current statute, which is to charge a fee to utilities for right-of-way permits. MR. CAPEN's testimony included amendments to SB 593.

0895 BILL WHITFIELD, representing Multnomah County explained the amendment to SB 593. He said the amendment does not change their argument from the counties point of view. He added that SB 593 has the endorsement of the Board of County Commissioners. MR. WHITFIELD explained that under current statutes, counties are required to issue permits for any construction that takes place within the right-of-way. Last year Multnomah County issued 975 permits and over half of these, 504 were issued without charge. The county spent approximately \$37,000 in tax money for permit administration and inspection. There is also an added cost for patching and re-surfacing caused by utility cuts within the streets.

0912 SEN. JERNSTEDT asked why a fee was received for half of the permits and not the other half. MR. WHITFIELD responded that ORS 758.010 allows utilities to be located within county right-of-ways free of charge. He added that the cities are currently collecting a franchise fee for utility systems within the city limits. MR. WHITFIELD added that the county feels the cost of utility installations should be paid by the utilities and not the taxpayers. MR. WHITFIELD explained amendment A as the cities looking prospectively to franchising of cable television and they were worried about the deletion in the first line of the bill and suggested that the counties help them take care of that by the proposed amendment.

1015 SENS. KULONGOSKI and HALLOCK leaves, 4:27 p.m.

1035 ROBERT HARRINGTON, representing Pacific Power and Light Co. testified in opposition to SB 593. He testified that PP&L supplies electric power to some 500,000 customers in some 240 communities in portions of Oregon, Washington, Wyoming, Montana, California and Idaho. It also provides water service in ten communities. He felt the company and its customers would be

SB 560

RAY GRIBLING representing Pacific Northwest Bell testified and presented amendments. See Exhibits E and F. As he testified on April 5, he said SB 560 proposes that the Oregon Public Utility Commission be given jurisdiction to regulate pole attachment rates at the state level and the FCC's jurisdiction be preempted. The bill would provide such authorization whenever a utility and cable television company are unable to agree on terms, conditions, or compensation for pole attachment. At the first hearing it was apparent that the utilities and cable television companies were not in complete accord ; they have now reached agreement.

In section three of the bill new language has been substituted. Utility has been defined as any entity which owns or controls poles, ducts, or conduits or other right-of way in Oregon. It is not their intention to place the PUD'S , municipalities, or rural coops under the purview of the PUC except when there is disagreement between a cable television company and any of the entities over rates, terms or conditions of attachment. Section 5 language was proposed at the first hearing and minor changes have been made which more clearly describe the formula for establishing forecasting rates. Section 9 has been added to the bill at the request of the Cable T.V. industry to provide an emergency clause.

0528 SENATOR RIPPER asked if this was an agreement between the Cable T.V. people and the telephone companies. MR. GRIBLING responded that it was not just the telephone companies; he represents the privately owned public utilities in this matter, including PGE, PP&L, General Telephone, and the independent telephone companies.

SENATOR FADELEY said this statute would effect Central Lincoln PUD, EWEB and the cooperatives. He asked if MR. GRIBLING knew their view on this. MR. GRIBLING said he had talked to them on occasion, but they were not a party to this agreement.

0530 GLEN STADLER was asked if the association or EWEB had a position by SENATOR FADELEY. He responded that the League of Publicly Owned Electric Utilities are opposed to the provision of putting them under the PUC in any form. (SEE EXHIBIT G).

0540 BOB SPECKMAN was asked how the consumer cooperatives feel by SENATOR FADELEY. He responded that they were opposed to any agreement which put them under any purview of the PUC.

SENATOR FADELEY asked why a governmental agency would have to make the decision on fair rates, terms if there was a disagreement between the parties. MR. GRIBLING said the federal statute required that the Public Utility Commissioners would preempt the FCC. SENATOR RIPPER asked if they would (except the Department of Energy as the preempting agency. MR. GRIBLING said perhaps, but all they were looking for was to have the jurisdiction with the state and not at the federal level.

0580 SENATOR HANLON said another thing to consider was that Cable T.V. according to predictions will become a major industry in communications in the future. If anybody who owns a pole can negotiate any price for use of the pole the t.v. viewers will have to pick up the price which could be substantially higher in the district than outside the district of the PUDs.

0600 MIKE DEWEY and DEL CANTRELL, representing Oregon Cable Association testified. The controversy seems to be in the area of the PUDs. The section 5 formula has been worked on for the last five or six years. It was endorsed by the National Association of Regulatory Utility Commissioners. The formula provides a mechanism for the PUC to allocate a cost to the Cable Company if the PUD cannot agree with the Cable Company on the cost. Discretion is allowed in the formula. For example, Lincoln County PUD, the cable companies are being charged \$4.75 per pole per year. The average across the state is \$2.50. The first figure there was about \$8.00 with a note that if the cable company did not want to pay that rate they would have to get off the pole. After negotiation the rate went to \$4.75. If there cost is actually \$4.75 they would show this to the PUC and that would be the rate the cable company would have to pay. With this formula the cost range would be from \$2.75 up to \$3.50. The formula takes discretion into account and the figures the PUD is dealing with. The cable companies recognize there is not much other alternative than to be under the PUC.

0642 SENATOR FADELEY asked if this was a way a subscriber to a cable company could become an intervenor in a PUC reasonable rate charge claiming that you were paying too high a rate and therefore his monthly rate was too high. MR. DEWEY said he did not know and they have not come across that situation. He said in most situations the rates are set by the City Council.

0662 SENATOR JERNSTEDT asked how many poles are paid for in Medford. MR. CANTRELL thought he had once figured that his company was paying for 30,000 poles. He said that he thought he could put up the poles and amortize them at a rate somewhat less than \$4.00 per year. Present law discourages them from doing this right now.

0670 MR. DEWEY said the power companies and the telephone companies were there prior to the cable situation.

0675 SENATOR FADELEY said this bill says that the cable companies would be like everybody else, requiring all utilities to be on the same pole if they can be, even if it was the same pole. MR CANTRELL said they had gotten to this situation because there was a small cable company who had not been paying their pole rental and power bill for eight years. They were shut down by the utilities and the cable company did not have the resources to go back into business. MR. CANTRELL'S company did not have a contract for their pole rental space. The utility had been charging them about \$2.50, but were going to raise it to about \$4.00 per pole. MR. CANTRELL said they could amortize their own poles for that amount on private property. MR. CANTRELL said that the company was Continental Telephone.

0690 MR. DEWEY said cable deals with both the private and public utilities and would like to deal with both on the same basis if possible.

0700 SENATOR FADELEY asked what MR. CANTRELL thought the federal regulations say about who can be an arbitrator about reasonable charges. MR. DEWEY said the FCC makes that final determination and at this point in time Oregon has not preempted this area. In a case where this is a dispute between a cable company and a cable utility the jurisdiction question goes to the FCC and they have promulgated rules in this regard and they would make the final decision. SENATOR FADELEY asked if the only way to have a non-FCC arbitrator would be to have state preemption. MR. DEWEY replied that the state would have to show they have jurisdiction and presently under Oregon statutes the state does not have jurisdiction. This bill would provide that.

0710 SENATOR FADELEY said one reason people are opposing this bill is because they are offering the PUC; can they offer anyone else and still have it be state jurisdiction. MR. DEWEY responded he thought someone else would be possible. Other states have not chosen to do that. They would have no problem with another agency.

0742 MR. CANTRELL said to note that the federal bill contains a formula also. The federal statute does not say it must be the PUC. It merely says that the state that regulates can do this.

SB 488

SENATOR FADELEY said there were amendments presented which change the bill so it applies to air pollution instead of water pollution, increase the penalty for air pollution. DEQ is concerned about the doubling and redoubling of the fines; Senator Hallock is still interested in this.

0775 JIM SWENSON, representing the Department of Environmental Quality, testified and presented amendments. (SEE EXHIBIT H) DEQ thought the current authority in water quality was sufficient, but in air it was woefully inadequate. The current fine is \$500 per day maximum for air quality violation by statute. \$10,000 per day is the current maximum for water quality violation. The \$500 per day is not a sufficient deterrent for a whole range of air quality violations. For example, demolition clearing, land clearing, it's a lot cheaper to risk the \$500 civil penalty and just burn rather than disposing of it as required by law. They support the \$10,000 portion of the amendments that apply to air. They do not have a position on the doubling penalties that apply after 30 days.

SENATOR DAY asked if the doubling provision has been discussed with the director and the commission. The discussion with the commission has been if they had a \$10,000 maximum in air that that would be sufficient according to SWENSON.

0792 SENATOR HANLON asked how often in the past years has someone paid the \$500 fine. MR. SWENSON said he has a list of civil penalties issued in 1978 and it was about \$85,000 total. That is for air, water, and solid waste totaled issued by the department. SENATOR HANLON asked if they had had higher penalties, how many violations might have been deterred. MR. SWENSON said it was difficult to assess that, but they knew of at least four cases where people burned intentionally after being informed of the \$500 penalty. There were several other air quality violations as well.

0258 VOTE: on a roll call vote the motion failed with SENATORS DAY, HANLON, JERNSTEDT, KULONGOSKI, AND RIPPER voting NO, and SENATORS GROENER AND POWELL absent.

SB 560

0330 SEN. KULONGOSKI moved to add the definition of public utilities to the bill in the same way as they are defined in lines 16-18 in the original bill.

0350 MOTION: amend the hand-engrossed bill to add the definition of public utility to the bill.

0355 VOTE: on a voice vote the motion carried unanimously with SENATOR GROENER AND POWELL absent.

0390 CHAIRMAN FADELEY adjourned the meeting at 3:30 p.m.

Exhibit Summary

A- Amendments to HB 2570

0642 SEN. POWELL questioned if there is any potential conflict of interest for MR. RICHARDS to serve on the Environmental Quality Commission. MR. RICHARDS responded that he knows of no conflict of interest.

0657 VOTE: In a roll call vote the motion carried unanimously, 7-0 with SENS. DAY and JERNSTEDT excused.

0670 SEN. FADELEY relayed to the committee that they should be receiving from the Governor an appointment to replace MR. WANG on the Energy Facility Siting Council as it is the same time frame as MR. RICHARD's appointment and the statute requires it be submitted in advance of the expiration of the terms which would be before July 1, 1980. SEN. POWELL asked if it would be appropriate for the committee to send a letter to the Governor asking where the nominee is. THE CHAIR felt this would be an appropriate action.

0677 MOTION: SEN. POWELL moved the committee send a written request to the Governor for his nominee to replace MR. WANG on the Energy Facility Siting Council.

0678 VOTE: In a voice vote the motion carried unanimously, 7-0 with SENS. DAY and JERNSTEDT excused.

SB 560

0685 THE CHAIR explained that it is his understanding that the three different parties involved with the bill have not entirely agreed upon who the bill actually covers and who should be covered.

0700 MOTION: SEN. KULONGOSKI moved SB 560 as amended by the committee be reported to the floor of the Senate with a Do Pass as Amended Recommendation.

0705 SEN. HALLOCK asked if the bill as covered by the motion covers PUD or not. THE CHAIR responded that the proposal does not cover PUD's.

0708 SEN. POWELL moved to amend SEN. KULONGOSKI's motion to include PUD's.

0710 SEN. HANLON moved to amend SEN. POWELL's motion that PUD's be included under the regulation of the Department of Commerce.

0720 VOTE: In a voice vote on the motion to amend SB 560 to include the PUD's and have them regulated by the Department of Commerce carried 7-0 with SENS. DAY and JERNSTEDT excused.

0730 VOTE: In a voice vote on the motion to amend SB 560 to include PUD's under regulation carried 6-1 with SEN. GROENER voting no, SENS. DAY and JERNSTEDT excused.

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Environment and Energy  
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0735 SEN. KULONGOSKI observed that there is no language as far as the arbitration provision and he asked that staff come up with some draft language before the bill is sent from the committee to the floor of the Senate. THE CHAIR announced that on SEN. KULONGOSKI's request no vote would be taken on the motion to send the bill from committee.

0745 The committee meeting was adjourned at 3:59 p.m.

Respectfully submitted

Pam Delplanche  
Committee Assistant

EXHIBIT SUMMARY

A-HB 2570 as amended and adopted by committee  
B-Sen. Wingard's testimony on SB 567  
C-Tom Fender, testimony  
D-Staff Summary of SB 567



- 0390 MOTION: SEN. HALLOCK moved HB 2846 be passed out of committee with a Do Pass Recommendation and be referred to Ways and Means by prior reference.
- 0410 VOTE: In a roll call vote the motion on HB 2846 carried unanimously, 8-0 with SEN. DAY excused.

SB 560

0422 The CHAIRMAN had distributed proposed amendments to SB 560 (SEE EXHIBIT E). MILT JONES explained that the proposed amendments would provide that the Department of Commerce would arbitrate disputes from the cases which involve public utilities and the PUC will arbitrate the disputes concerning privately owned utilities.

- 0453 MOTION: SEN. KULONGOSKI moved adoption of the proposed amendments to SB 560.

0460 SEN. HANLON leaves meeting, 3:40 p.m.

0460 SEN. KULONGOSKI refreshed the committee members memories by explaining that the PUD's have been unwilling to come under the slightest jurisdiction of the PUC and therefore these proposed amendments are a compromise.

- 0495 VOTE: In a voice vote on the motion to amend SB 560 the motion carried unanimously 7-0 with SEN. DAY excused and SEN. HANLON absent.
- 0497 MOTION: SEN. KULONGOSKI moved SB 560 be reported to the Senate floor with a Do Pass as Amended recommendation.
- 0500 VOTE: In a roll call vote the motion on SB 560 carried 7-0 with SEN. DAY excused and SEN. HANLON absent.

0503 SEN. KULONGOSKI was assigned by the CHAIR to carry the bill on the Senate floor. SEN. KULONGOSKI requested that the bill, when reprinted, carry the requestor as Pacific Northwest Bell.

HB 2661

0515 The CHAIRMAN had distributed amendments to HB 2661 (SEE EXHIBIT F) which would call for a study by the Department of Energy of all energy suppliers, including fuel oil people and including consumer-owned utilities.

- 0532 MOTION: SEN. HALLOCK moved adoption of the proposed amendments to HB 2661 (SEE EXHIBIT F).

0548 SEN. HALLOCK asked why the PUD's have never been placed under the jurisdiction of the Public Utility Commissioner. SEN. FADELEY answered because there never has been a statute that says they will be; the Legislature has not done this.

TO: Committe  
FROM: Marcia Schultz  
Date: April 5, 1979  
RE: SB 560 Measure Summary

SB 560 gives the PUC the authority to regulate rates, terms, and conditions for attachments to public utility poles. The rates must be fair, reasonable, just and sufficient. An "attachment" is defined as a wire or cable for transmission of intelligence by telegraph, telephone and TV (including cable TV) or for transmission of electricity for light, heat or power installed upon any pole or conduit owned or controlled by utility.

If the commissioner finds, upon complaint and hearing, that the rates and terms are unreasonable or rates are insufficient to yield reasonable compensation for attachment and administering it, the commissioner shall fix rates and terms. He must consider interests of both parties' customers.

Agreements between parties regarding these rates and terms are deemed to be fair, just, reasonable, and sufficient, unless after complaint and hearing, the commissioner finds the rates and terms to be adverse to public interest and manifestly unreasonable, unjust or insufficient.

Senate Bill 560 proposes that the Oregon Public Utility Commission be given jurisdiction to regulate pole attachment rates at the State level and that the FCC's jurisdiction be pre-empted.

This bill would provide such authorization whenever a public utility and a cable television corporation are unable to agree upon the terms, conditions, or compensation for pole attachments.

Historically cable systems have rented space on poles belonging to public utility districts, telephone companies, and private power companies. Several years ago as a result of problems throughout the United States, it was necessary to go to the Congress of the United States to obtain legislation regulating the charges which owners of poles could impose on cable television systems using their poles.

The Congress of the United States enacted legislation found in 47 U.S.C., Section 224, which gave the Federal Communications Commission jurisdiction to regulate what owners of poles could charge cable television companies and others when utilizing their poles. This legislation did not include jurisdiction over poles which are owned by PUD's, municipalities and other public agencies. This Federal legislation included a "formula" commonly referred to as a "zone of reasonableness" indicating that the owner of the poles could charge not less than the additional cost to the owner of providing pole attachments nor more than the actual operating expenses and return on capital of the owner attributable to that portion used in the pole attachment. This formula was agreed to by the National Association of Utility Regulation Commissioners.

Pursuant to Section 1.1414 (b) of the Federal Communications Commission's Rules on cable television pole attachments, the following States have certified that they regulate terms, rates, and conditions for pole attachments, and, in so regulating, have the authority to consider and do consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services: Alaska, California, Connecticut, Florida, Illinois, Indiana, Louisiana, Massachusetts, New Jersey, New York, Ohio, Pennsylvania, Puerto Rico, Vermont, and Wisconsin. Most recently Gov. Ray signed similar legislation in the state of Washington.

(Certification by a State pre-empt's the FCC from accepting pole attachment complaints under Subpart J of Part 1 of the Rules.)

Amendments to SB 560 Proposed by Pacific Northwest Bell

In Section 4, page 2, line 9 after the word "owns" insert the words or controls.

Insert after Section 4, page 2, line 10 - New Section 5

SECTION 5. A just and reasonable rate shall assure the utility the recovery of not less than all the additional costs of providing and maintaining pole attachments, nor more than the actual capital and operating expenses, including just compensation, of the utility attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities.

Re-number Section 5 to Section 6

Re-number Section 6 to Section 7

Re-number Section 7 to Section 8

EXHIBIT E  
Senate Committee on  
Environment and Energy  
5 April 1979  
Tape 19 Side 2  
14 Page Exhibit

PREPARED STATEMENT

OF

HAROLD R. FARROW

For Presentation to the Senate Energy  
and Environment Committee

April 5, 1979

RE: Senate Bill 560

My name is Harold R. Farrow. I am an attorney. My offices are located at 35 Embarcadero Cove in Oakland. I am here today at the request of the Oregon State Cable Television Association.

Ordinarily, when I address any group on the subject of cable television, I must first begin with an explanation of what cable television is.

Here that is not necessary. You here in Oregon invented CATV. It began here, it flourished here and it serves the public here from border to border.

So, if I may, I will go directly to the subject at hand -- the proposed legislation to provide, where needed, state regulation of the pricing of pole attachments on utility poles. My approach to that legislation is to try first to identify the relationships to be regulated; then to identify the problems attempted to be solved, or prevented, by the legislation; and then to try to accomplish that purpose as simply and directly as possible. The goal is to try to solve old problems without creating new problems.

First, as to the parties involved, and their relationships.

The first and foremost such party is the public. Almost all of it is a consumer of power and telephone services. But a far smaller portion, perhaps only fifty per cent (50%), or less, of the public uses the entertainment and information services of cable television.

It is this same public which owns the key thing here at issue -- the public rights of way.

Those public rights of way are used by all three of the industries involved in the proposed legislation. The power, the telephone and the cable television industries.

While the legislation speaks to utility poles, those poles have no real value until they are placed in and are occupying the public rights of way.

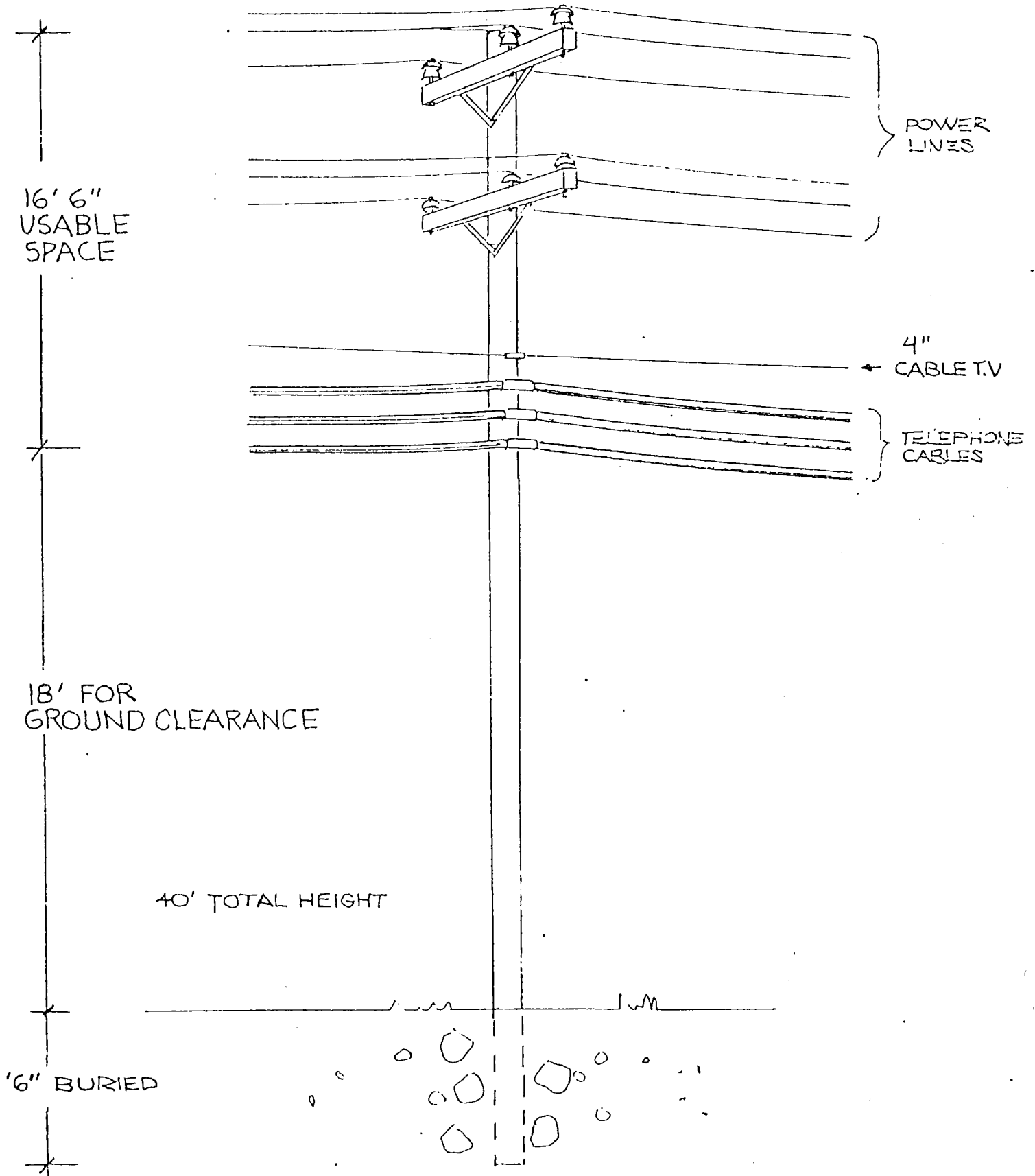
Of the three industries, the power and telephone people came into being and developed their own pole plants long before television or cable television.

As power and telephone developed, they often would build parallel pole plants. But even before the days of public outcry over environmental concerns, it became obvious that the practice of dual poles was wasteful, and so joint use of poles developed.

The result was that by the time cable television was granted the right to use the public rights of way, they were already occupied by a mix of jointly used poles, power only poles, and telephone only poles. From the standpoint of aesthetics and from the standpoint of safety, cable television was thus precluded from building its own poles. The three following pages set forth typical configurations of the mix of the subject pole plant.

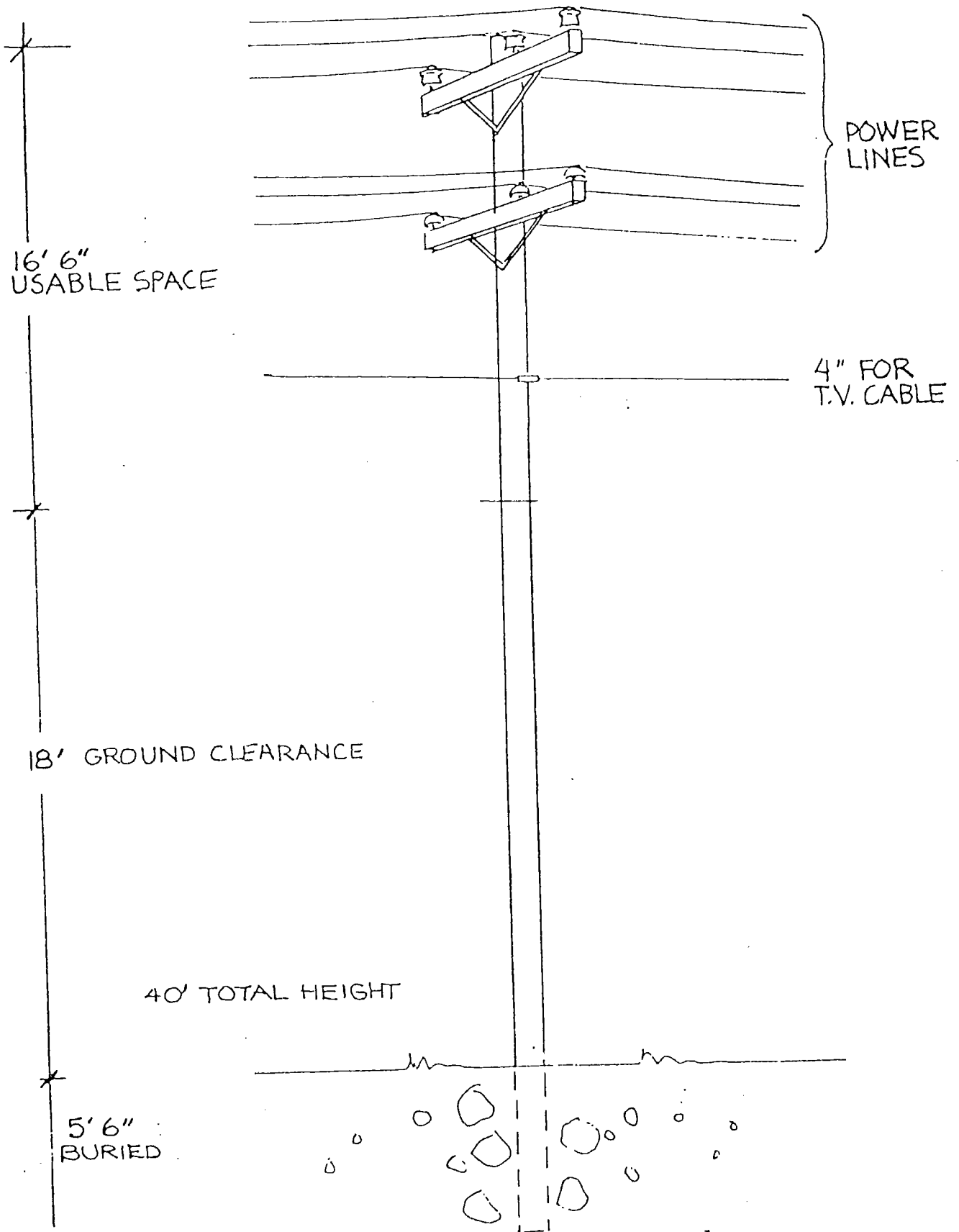


# Joint Pole Configuration



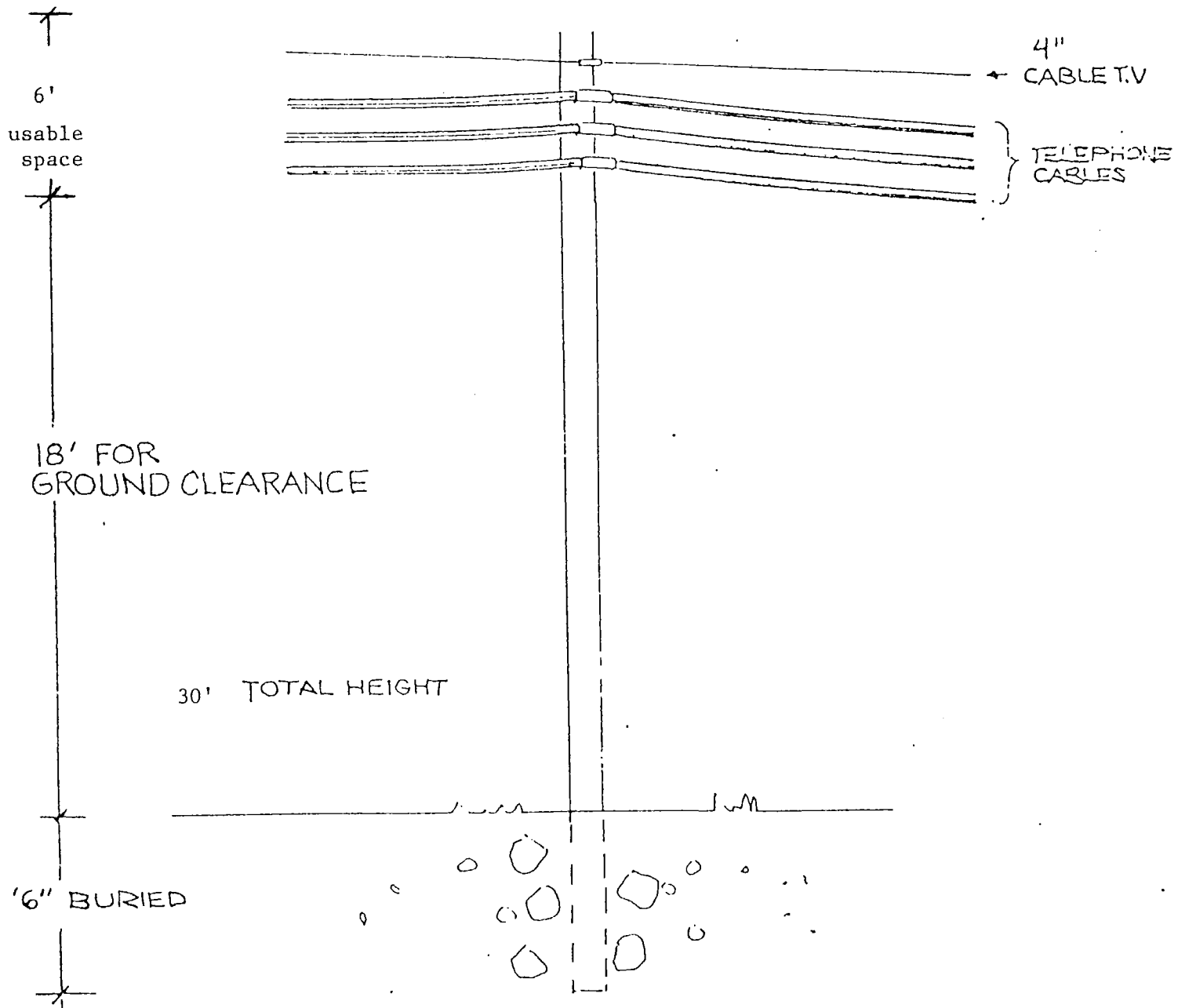
SOLE USE POWER POLE

WITH CABLE TV



SOLE USE TELEPHONE POLE

WITH CABLE TV



Thus, those who had pole plant in place had unintentionally been granted a government monopoly over an indispensable service to a portion of the public.

More than twenty years ago the initial portion of this problem was solved by the developing cable companies by getting the telephone and power companies to agree to allow cable television companies to use the surplus space on both their solely and jointly used poles.

The trade-off was as follows:

1. Cable was required to pay whatever annual rental was demanded, and
2. Cable could only use surplus space, and could use it only so long as it was surplus. If that space was needed at anytime by the owner or another utility user of the pole, cable had to get off the pole or pay the full cost of creating new surplus space, even if that meant cable paying for the installation of a new, taller pole, so that cable could then pay rent on the same pole.

As an example of these conditions, on April 2, 1970, At&T sent a model "License Agreement" for CATV use of poles and conduits to all Bell System Companies.

Without going into great detail that agreement provided that:

( ) CATV systems are to be given non-exclusive, revocable licenses to use space in conduits or space on poles not needed by the telephone company;

) In the event such space were to be needed by the telephone company the CATV system is required to vacate the space or pay the costs of a new pole or conduit;

) In the event space on existing poles would not accommodate the CATV cable, the CATV operator is required to pay all costs of providing a larger pole;

- ) All costs of make-ready are to be borne by CATV systems;
- ) All costs of inspection are to be borne by CATV operator;
- ) The CATV operator is required to maintain insurance to indemnify telephone company against all damages, including damage caused by negligence of telephone company employees;
- ) The CATV operator must furnish a surety bond to guarantee payment of fees due the telephone company;
- ) The term of the agreement is three years;
- ) The CATV operator must pay an annual fee to be set by the telephone company.

In summary, the AT&T recommended Agreement makes it absolutely clear that the telephone company incurs no capital expense whatsoever in providing communications space to CATV and that CATV does not consume any such space to the exclusion of the telephone company. Rather the Bell System Agreement provides for CATV's occupancy of excess communications space and requires CATV to reimburse Bell for any such actual out-of-pocket expenses incurred by the telephone company in making such space available.

I have had occasion to examine pole attachment agreement from utilities located throughout the country. These conditions are typical and the Oregon agreements are at least as restrictive.

Cable was thus accommodated, and to an extent, the public's interest was served.

Those who were power and telephone consumers had the benefit of windfall incremental income from cable to offset their costs.

Of course, those who were consumers of cable television services were subsidizing, to various degrees, those who took power and telephone service only.

Thus, one goal of pole legislation should be to prevent excessive subsidies by one group of consumers in favor of another.

Having framed the issues in terms of the public to begin with, it becomes easy to identify the remaining parties and their interests.

As to both power and telephone, they are the owners of the poles. They provide traditional utility services and those services are considered to be necessities of life. Accordingly, over the past years the degree of dedication by each of those utilities to the other of their respectively owned facilities has necessarily been extensive. Each must have assured occupancy on an exclusive basis of certain portions of the usable attachment space on jointly used poles.

Cable television provides an information and entertainment service in competition with many other sources, including, for example, government-aided translator services. The past twenty or more years of dedication by the utilities to cable television of surplus space only has been adequate and should be recognized and maintained, if we can prevent excessive abuses of the utilities monopoly power to unreasonably extract unreasonable subsidies from the cable television consuming public.

I suggest this can be accomplished by simply recognizing the existing degrees of dedication of utility plant to the specific service, and providing regulatory controls over the two most obvious sources of abuse.

1. The cost of producing needed space when it does not exist; and
2. A pricing formula to cover the annual rental charges.

As to the first of these problems, I understand there is acceptance by some or perhaps all of the utilities of the pricing formula in the federal, the Washington State and the California bill. This is excellent because that formula is flexible enough to allow the Public Utility Commission to adjust its pricing depending upon the degree of dedication required and historically given.

Telephone and power both require the equivalent of fee ownership and control of the space they need on jointly used poles in order to insure

its delivery of their respective services.

Cable television requires and gets less. The formula allows for the recognition of these facts both when pricing the costs of production of space, and when setting annual rental rates.

The pricing provisions for the production of space are simple and easy. It is a simple matter of ascertaining the true cost and adding some reasonable service profit thereto if appropriate.

By merely giving the Public Utility Commission the power to review these changes, you will probably prevent most all disputes, and those that develop will be easy of solution.

The pricing provision for annual rental rates are not much more complicated. Here, let's use as an example the jointly used poles such as the one depicted on page 3 hereof and assume that we are trying to ascertain the rental rate for cable television for use of such poles.

For both the state and the federal regulatory agencies, the utilities are required to keep records of their original pole costs. From these records, the costs of the universe of the poles used or useful to provide the service can be ascertained. This total cost can then be divided by the total actual number of poles involved to obtain a per pole cost to the particular utility.

That cost will, of course, vary from utility to utility. For purpose of illustration, let us assume that the per pole cost is \$100.00.

With this assumption of capital cost of the asset involved, we can then proceed to use the ordinary utility rate making process of:

$$\text{Rate} = \frac{\text{Capital investment in asset times the annual cost of operating such capital assets stated as a percentage.}}{\text{Rate}}$$

by providing for an allocation recognizing the various uses of the space. By reference to page 3, we see that there are 16½ feet of usable attachment space

there indicated and that cable uses one foot of that space. Thus, a maximum rate for cable would be

		Capital investment in asset times
		the annual cost of operating the
Rate	=	capital asset stated as a percentage
		divided by cable's share of that use.

Typical annual costs of operating pole plant contain the following elements:

Maintenance

Taxes, other than income

Administration overhead

Depreciation

and

Cost of capital which includes interest, return on equity and income taxes.

These may vary from one utility to another but, generally, are claimed to total about twenty per cent of original cost when stated as a percentage.

Thus:

Cost per pole	\$100.00
---------------	----------

Annual cost of Ownership

Maintenance

Taxes other than income

Depreciation and

overhead	10%
----------	-----

Cost of capital

Interest

Return on equity

Income taxes	<u>10%</u>
--------------	------------

20%
-----

\$ 20.00
----------



Percentage of use

$1/16.5 = 6.1\%$

6.1%

Annual Rate

\$1.22

Legislative language to describe these concepts can be burdensome.  
But each time you try, you can sometimes improve.

I have had a chance to review the Washington State Act. I understand that it was used as a model by the utilities for Senate Bill 560. I was also advised that the utilities and the cable industry had agreed to an amendment to Section 5 to adopt the concepts of the Washington and California Acts.

On that basis, I prepared a set of amendments last week but did not there cover the regulation of pole attachments for power or telephone when dealing each with the other. I have since been advised that cable and the utilities may be reaching general agreement on the bill on the theory that it will cover those aspects of the relationships.

Accordingly, I have prepared a new draft of proposed amendments which are here today and will try to answer any questions you may have on them.

Please note that the concepts of the pricing formula are exactly the same as the federal, the Washington State and the California Bills. I do believe they are a bit clearer now, and thus easier to work with.

Thank You

20

# Oregon Cable Communications Association

FROM: OREGON CABLE COMMUNICATIONS ASSOC.  
Contact: MIKE DEWEY - 581-2845 or 378-9800

## SECTION-BY-SECTION CHANGES RECOMMENDED FOR SB 560

SECTION 1. Sections 2 to 8 of this Act are added to and made a part of ORS chapter 757.

SECTION 2. As used in this 1979 Act, unless the context requires otherwise:

(1) "Pole Attachment" means the installation of any wire or cable for the transmission of energy, entertainment, information or intelligence by the means of heat, electricity, lightwaves or other phenomenon, and any related device, apparatus or auxiliary equipment upon or in any pole, duct, conduit or other support structure located in any right of way owned, controlled, or used by a utility, or by a cable television company.

(2) "Cable Television Company" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association, other than a utility, which is authorized to construct and operate cable television plant upon, along, under or across the public ways.

(3) "Utility" means any person or entity which owns or controls poles, ducts, conduits or other rights-of-way used or useful, in whole or in part, for wire communications, and, for purpose of this Act only, any cable television company.

SECTION 3. The State of Oregon hereby finds that many utilities, through a course of conduct covering many years have made available surplus space on and in their poles, ducts, conduits, and other support structures for pole attachments, and that the provision of such pole attachment service by such utilities is and has been a dedicated public utility service.

SECTION 4. Whenever a utility and a pole attachment user are unable to agree on the terms, conditions or rates for pole attachments, or the terms, conditions or costs of the production of surplus space needed for pole attachments, then the commissioner shall establish and regulate the terms, conditions and rates for pole attachments and shall establish and regulate the terms, conditions and costs of providing surplus space needed for pole attachments.

SECTION 5. (1) When establishing the terms, conditions and costs of providing surplus space needed for pole attachments the commissioner shall assure the utility the recovery of all its additional costs of providing said surplus space and a reasonable service profit as compensation thereof.

(2) When establishing the terms, conditions and rates for pole attachments on utility poles, the commissioner shall establish rates which shall assure the utility the recovery of not less than all its additional costs of maintaining said pole attachment service; nor more than the actual operating expenses of the utility for the maintaining of the space on the pole used for the pole attachment service plus reasonable compensation for the use of the capital attributable to that portion of the space on the pole, duct or conduit used for the pole attachment, plus a share of the operating expenses including reasonable compensation for the use of the capital attributable to the required support and clearance space of the pole below the minimum attachment grade level. Said share shall be ascertained by establishing the portion of the space above minimum attachment grade level used for the pole attachment as compared to all other space above minimum attachment grade level.

(3) When establishing the terms, conditions and rates for pole attachment service in ducts, conduits or on support structures other than poles, and when establishing terms, conditions and costs of providing needed additional surplus space, the commissioner shall use, so far as is applicable the provisions set forth in Section 5, subsection (1) and (2) hereof.

SECTION 6. Agreements between utilities and cable television companies regarding terms, conditions and rates for attachment service and regarding terms, conditions and costs of providing needed surplus space shall be presumed to be just, fair and reasonable until complaint is made to the commissioner by a utility or by a cable television company party to such agreement. Upon receipt of such a complaint the commissioner shall establish terms, conditions, rates and costs in accordance with the provisions hereof.

SECTION 7. Nothing in this 1979 Act shall be deemed to apply to any attachment by one or more electrical utilities on the facilities of one or more other electrical utilities.

SECTION 8. The procedures of the commissioner for petition, regulation and enforcement relative to pole attachments, including any rights of appeal from any decision thereof, shall be the same as those applicable to the regulation of rates and utilities by the commissioner.

Compromise  
PUB / Cable

SB 560

Hand Engrossed

A BILL FOR AN ACT

Relating to public utilities.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 8 of this Act are added to and made a part of  
ORS chapter 757.

SECTION 2. As used in this 1979 Act, unless the context requires otherwise:

(1) "Attachment" means any wire or cable for the transmission of intelligence  
by telegraph, telephone or television (including cable television), light waves,  
or other phenomena, or for the transmission of electricity for light, heat or  
power, and any related device, apparatus, or auxiliary equipment, installed  
upon any pole or in any telegraph, telephone, electrical, cable television or  
communications right-of-way, duct, conduit, manhole or handhole or other similar  
facility or facilities owned or controlled, in whole or in part, by one or more  
utilities . [ where such installation has been or is proposed to be made with  
the consent of one or more of such utilities.]

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

[(3) "Public utility" means any electrical company, telephone company or telegraph  
company, as defined in ORS 757.005, and does not include any entity cooperatively  
organized or owned by federal, state or local government, or a subdivision of  
state or local government.]

(3) "Utility" means any person or entity which owns or controls poles, ducts,  
conduits or other rights-of-way used or useful, in whole or in part, for  
the transmission of intelligence by telegraph, telephone, television, light

1 waves, or other phenomena, or for the transmission of electricity for light,  
2 heat or power. Where a cable television company owns such poles or other  
3 facilities it shall be considered a utility for purposes of this act only.

4 SECTION 3. The commissioner shall have the authority to regulate  
5 in the public interest the rates, terms and conditions for attachments  
6 by licensees or utilities. All rates, terms and conditions made, demanded  
7 or received by any utility for any attachment by a licensee or by a  
8 utility shall be just, fair [.] and reasonable . [and sufficient.]

9 SECTION 4. Whenever the commissioner finds, after hearing had upon  
10 complaint by a licensee or by a utility, that the rates, terms or conditions  
11 demanded, exacted, charged or collected by any utility in connection  
12 with attachments or the availability of surplus space for such attachments  
13 are unjust or unreasonable, or that such rates or charges are insufficient  
14 to yield to the utility a reasonable compensation for the attachment and  
15 the costs of administering the same, the commissioner shall determine  
16 the just [.] and reasonable [or sufficient] rates, terms and conditions  
17 thereafter to be observed and in force and shall fix the same by order.  
18 In determining and fixing such rates, terms and conditions, the commissioner  
19 shall consider the interest of the customers of the attaching utility or  
20 licensee, as well as the interest of the customers of the utility which  
21 owns or controls the facility upon which the attachment is made.

22 SECTION 5. A just and reasonable rate shall assure the utility the  
23 recovery from the licensee(s) of not less than all the additional costs of  
24 providing and maintaining pole attachment space for the licensee(s) nor  
25 more than the actual capital and operating expenses, including just  
26 compensation, of the utility attributable to that portion of the pole,

1 duct, or conduit used for the pole attachment, including a share of the  
2 required support and clearance space in proportion to the space used for  
3 the pole attachment above minimum attachment grade level, as compared  
4 to all other uses made of the subject facilities, and uses which  
5 remain available to the owner or owners of the subject facilities.

6 SECTION [5] 6 Agreements between utilities or between utilities  
7 and licensees regarding rates, terms and conditions of attachments shall  
8 be deemed to be just, fair and reasonable . [and sufficient,] unless  
9 the commissioner finds upon complaint by a utility or licensee party to  
10 such agreement and after hearing, that such rates, terms and conditions  
11 are adverse to the public interest and [manifestly unreasonable, unjust  
12 or insufficient.] fail to comply with the provisions hereof.

13 SECTION [6] 7 Nothing in this 1979 Act shall be deemed to apply to  
14 any attachment by one or more electrical utilities on the facilities of  
15 one or more other electrical utilities.

16 SECTION [7] 8 The procedures of the commissioner for petition,  
17 regulation and enforcement relative to attachments, including any rights  
18 of appeal from any decision thereof, shall be the same as those applicable  
19 to the regulation of rates of utilities by the commissioner.

20 SECTION 9 This Act being necessary for the immediate preservation  
21 of the public peace, health and safety, an emergency is declared to  
22 exist, and this Act takes effect upon its passage.

23

24

25

26

## Senate Bill 560

Sponsored by Senator KULONGOSKI

MOCK UP WITH HAND ENGROSSED AMENDMENTS

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Prescribes system for authorizing certain attachments to public utility poles and conduits and fixing the fees therefor by Public Utility Commissioner.

## A BILL FOR AN ACT

Relating to public utilities.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to <sup>6</sup>7 of this Act are added to and made a part of ORS chapter 757.

SECTION 2. As used in this 1979 Act, unless the context requires otherwise:

(1) "Attachment" means any wire or cable for the transmission of intelligence by telegraph, telephone or television (including cable television), light waves, or other phenomena, or for the transmission of electricity for light, heat or power, and any related device, apparatus, or auxiliary equipment, installed upon any pole or in any telegraph, telephone, electrical, cable television or communications right-of-way, duct, conduit, manhole or handhole or other similar facility or facilities owned or controlled, in whole or in part, by one or more utilities, <sup>6</sup>where such installation has been or is proposed to be made with the consent of one or more of such utilities.]

(2) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association <sup>6</sup>[other than a utility], which is authorized to construct attachments upon, along, under or across the public ways.

<sup>6</sup>[(3) "Public utility" means any electrical company, telephone company or telegraph company, as defined in ORS 757.005, and does not include any entity cooperatively organized or owned by federal, state or local government, or a subdivision of state or local government.]

(3) "Utility" means any person or entity which owns or controls poles, ducts, conduits or other rights-of-way used or useful, in whole or in part, for the transmission of intelligence by telegraph, telephone, television, light waves, or other phenomena, or for the transmission of electricity for light, heat or power. Where a cable television company owns such poles or other facilities it shall be considered a utility for purposes of this act only.

19 SECTION 3. The commissioner shall have the authority to regulate in the public interest the  
20 rates, terms and conditions for attachments by licensees or utilities. All rates, terms and conditions  
made, demanded or received by any utility for any attachment by a licensee or by a utility shall be  
22 just, fair, <sup>and</sup> reasonable ~~and sufficient.~~

1 SECTION 4. Whenever the commissioner finds, after hearing had upon complaint by a licensee  
2 or by a utility, that the rates, terms or conditions demanded, exacted, charged or collected by any  
3 utility in connection with attachments <sup>or the availability of surplus space for such attachments</sup> are unjust or unreasonable, or that such rates or charges are  
4 insufficient to yield to the utility a reasonable compensation for the attachment and the costs of  
5 administering the same, the commissioner shall determine the just <sup>and</sup> reasonable ~~or sufficient~~ rates,  
6 terms and conditions thereafter to be observed and in force and shall fix the same by order. In  
7 determining and fixing such rates, terms and conditions, the commissioner shall consider the  
8 interest of the customers of the attaching utility or licensee, as well as the interest of the customers  
9 of the utility which owns <sup>or controls</sup> the facility upon which the attachment is made.

SECTION 5. A just and reasonable rate shall assure the utility the  
recovery from the licensee(s) of not less than all the additional costs  
of providing and maintaining pole attachment space for the licensee(s)  
nor more than the actual capital and operating expenses, including  
just compensation, of the utility attributable to that portion of the  
pole, duct, or conduit used for the pole attachment, including a  
share of the required support and clearance space in proportion to the  
space used for the pole attachment above minimum attachment grade  
level, as compared to all other uses made of the subject facilities,  
and uses which remain available to the owner or owners of the subject  
facilities.

10 SECTION ~~6~~ <sup>5</sup> Agreements between utilities or between utilities and licensees regarding rates,  
11 terms and conditions of attachments shall be deemed to be just, fair, <sup>and</sup> reasonable ~~and sufficient.~~  
12 unless the commissioner finds upon complaint by a utility or licensee party to such agreement and  
13 after hearing, that such rates, terms and conditions are adverse to the public interest and ~~manifestly~~  
14 unreasonable, unjust or insufficient. <sup>fail to comply with the provisions hereof.</sup>

15 SECTION ~~6~~ <sup>7</sup> Nothing in this 1979 Act shall be deemed to apply to any attachment by one or  
16 more electrical utilities on the facilities of one or more other electrical utilities.

17 SECTION ~~7~~ <sup>8</sup> The procedures of the commissioner for petition, regulation and enforcement  
18 relative to attachments, including any rights of appeal from any decision thereof, shall be the same  
19 as those applicable to the regulation of rates of utilities by the commissioner.

SECTION 9. This Act being necessary for the immediate preservation  
of the public peace, health, and safety, an emergency is declared to  
exist, and this Act takes effect upon its passage.



On page 1 of this bill, in line 4, delete "7" and insert "8".

In line 11, after "utilities" insert a period and delete the rest of the line.

Delete line 12.

In line 14, delete ", other than a utility,".

Delete line 16 through 18 and insert:

"(3) 'Utility' means any person or entity which owns or controls poles, ducts, conduits or other rights-of-way used or useful, in whole or in part, for the transmission of intelligence by telegraph, telephone, television, light waves, or other phenomena, or for the transmission of electricity for light, heat or power. Where a cable television company owns such poles or other facilities it shall be considered a utility for purposes of this act only.".

In line 22 after "fair" delete the rest of the line and insert "and reasonable.".

On page 2, in line 3, after "attachments" insert "or the availability of surplus space for such attachments".

In line 5 after "just" delete the rest of the line and insert "and reasonable rates,".

In line 9 after "owns" insert "or controls".

After line 9 insert:

"SECTION 5. A just and reasonable rate shall assure the utility the recovery from the licensee(s) of not less than all the additional costs of providing and maintaining pole attachment space for the licensee(s) nor more than the actual capital and operating expenses, including just compensation, of the utility attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space in proportion to the space used for the pole attachment above minimum attachment grade

level, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities."

In line 10 delete "5" and insert "6".

In line 11 after "fair" delete rest of the line and insert "and reasonable".

In line 13 delete "manifestly" and insert "fail to comply with the provisions hereof." and delete line 14.

In line 15 delete "6" and insert "7".

In line 17, delete "7" and insert "8".

After line 19 insert:

"SECTION 9. This Act being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist, and this Act takes effect upon its pasage."

June 1

# Senate Bill 560 w/ hand engrossed

Sponsored by Senator KULONGOSKI amendments

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Prescribes system for authorizing certain attachments to public utility poles and conduits and fixing the fees therefor by Public Utility Commissioner.

## A BILL FOR AN ACT

1  
2 Relating to public utilities *and people's utility districts.*  
3 Be It Enacted by the People of the State of Oregon:

4 SECTION 1. Sections 2 to 7 of this Act are added to and made a part of ORS chapter 757.

5 SECTION 2. As used in this 1979 Act, unless the context requires otherwise:

6 (1) "Attachment" means any wire or cable for the transmission of intelligence by telegraph,  
7 telephone or television (including cable television), light waves, or other phenomena, or for the  
8 transmission of electricity for light, heat or power, and any related device, apparatus, or auxiliary  
9 equipment, installed upon any pole or in any telegraph, telephone, electrical, cable television or  
10 communications right-of-way, duct, conduit, manhole or handhole or other similar facility or  
11 facilities owned or controlled, in whole or in part, by one or more *public utility or people's utility districts.*  
12 has been or is proposed to be made with the consent of one or more of such utilities. ]

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

16 (3) "Public utility" means any electrical company, telephone company or telegraph company, as  
17 defined in ORS 757.005, and does not include any entity cooperatively organized or owned by  
18 federal, state or local government, or a subdivision of state or local government.

(4) "People's Utility District" means any concern providing electricity organized pursuant to ORS 261.010 and includes any entity cooperatively organized or owned by federal, state or local government or a subdivision of state or local government.

19 SECTION 3. The <sup>public utility</sup> commissioner shall have the authority to regulate in the public interest the  
20 rates, terms and conditions for attachments <sup>to poles or other facilities of public</sup> by licensees [of utilities]. All rates, terms and conditions  
21 made, demanded or received by any <sup>public</sup> utility for any attachment by a licensee [or by a utility] shall be  
22 just, fair, <sup>and</sup> reasonable, and sufficient.]

SECTION 4. The director of the department of Commerce shall have the authority to regulate the rates, terms and conditions for attachments by licensees to poles or other facilities of people's utility districts. All rates, terms, and conditions made, demanded or received by any people's utility district for any attachment by a licensee shall be just, fair and reasonable.

SB 560

SECTION 5. <sup>5.</sup> Whenever the <sup>public utility</sup> commissioner <sup>or the director of the department of Commerce</sup> finds, after hearing had upon complaint by a licensee, a public utility or a people's utility district <sup>or by a utility</sup>, that the rates, terms or conditions demanded, exacted, charged or collected <sup>by any</sup> utility <sup>or availability of surplus space for such attachments</sup> in connection with attachments are unjust or unreasonable, or that such rates or charges are insufficient to yield <sup>to the utility</sup> a reasonable compensation for the attachment and the costs of administering the same, the commissioner <sup>or the director</sup> shall determine the just <sup>and</sup> reasonable <sup>or sufficient</sup> rates, terms and conditions thereafter to be observed and in force and shall fix the same by order. In determining and fixing such rates, terms and conditions, the commissioner <sup>or the director</sup> shall consider the interest of the customers of the attaching utility <sup>or licensee</sup>, as well as the interest of the customers of the utility <sup>public or the people's utility district</sup> which owns the facility upon which the attachment is made.

SECTION 6. A just and reasonable rate shall assure the public utility or the people's utility district the recovery from the licensee(s) of not less than all the additional costs of providing and maintaining pole attachment space for the licensee(s) nor more than the actual capital and operating expenses, including just compensation, of the public utility or people's utility district attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space in proportion to the space used for the pole attachment above minimum attachment grade level, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities.

SECTION 7. Agreements <sup>between utilities or between utilities and licensees</sup> regarding rates, terms and conditions of attachments shall be deemed to be just, fair, <sup>and</sup> reasonable <sup>and sufficient</sup>, unless the commissioner <sup>or director</sup> finds upon complaint by a utility <sup>public or people's utility district</sup> or licensee party to such agreement and after hearing, that such rates, terms and conditions are adverse to the public interest and <sup>manifestly</sup> unreasonable, unjust or insufficient. <sup>fail to comply with the provisions hereof.</sup>

SECTION 8. Nothing in this 1979 Act shall be deemed to apply to any attachment by one or more electrical utilities on the facilities of one or more other electrical utilities.

SECTION 9. The procedures of the commissioner <sup>or director</sup> for petition, regulation and enforcement relative to attachments, including any rights of appeal from any decision thereof, shall be the same as those applicable to the regulation of rates of utilities by the commissioner <sup>and director respectively.</sup>

SECTION 10. This Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this Act takes effect upon its passage.

On page 1 of the printed bill, in line 2, after "utilities" insert "an" people's utility district".

In line 11 delete "utilities, where such installation" and insert "public utility or people's utility districts."

Delete line 12.

In line 14, delete ", other than a utility,".

After line 18, insert:

"(4) 'People's Utility District' means any concern providing electricity organized pursuant to ORS 261.010 and includes any entity cooperatively organized or owned by federal, state or local government or a subdivision of state or local government."

In line 19 after "The" insert "public utility".

In line 20 delete "or" and insert "to poles or other facilities of public".

In line 21, after "any" insert "public" and delete "or by a utility".

In line 22 delete the second comma and insert "and" and in the same line delete "and sufficient".

After line 22 insert:

"SECTION 4. The director of the department of Commerce shall have the authority to regulate the rates, terms and conditions for attachments by licensees to poles or other facilities of people's utility districts. All rates, terms and conditions made, demanded or received by any people's utility district for any attachment by a licensee shall be just, fair and reasonable."

On page 2 delete "4" and insert "5" in line 1.

In line 1 delete "commissioner" and insert "public utility commissioner or the director of the department of Commerce".

In line 2 delete "or by a utility," and insert ", a public utility or a people's utility district".

In line 2 delete "by any".

In line 3 delete "utility".

In line 3 before "unjust" insert "or availability of surplus space for such attachments".

In line 4 delete "to the utility".

In line 5, after "commissioner" insert "or director".

In line 5, after "just" delete the rest of the line and insert "and reasonable rates,".

In line 7, after "commissioner" insert "or director".

In line 8 delete "attaching utility or".

In line 9 delete "utility" and insert "public utility or people's utility district".

After line 9 insert :

"SECTION 6. A just and reasonable rate shall assure the public utility or the people's utility district the recovery from the licensee(s) of not less than all the additional costs of providing and maintaining pole attachment space for the licensee(s) nor more than the actual capital and operating expenses, including just compensation, of the public utility or people's utility district attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space in proportion to the space used for pole attachment above minimum attachment grade level, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities.",

In line 10, delete "5" and insert "7" and delete "between utilities or between utilities and licensees".

In line 11, after "fair" delete the rest of the line and insert "and reasonable,".

# EWEB, Kingsford to study potential of waste gases

By DAN WYANT  
Of the Register-Guard

Waste gases burned at the Kingsford Co. charcoal plant in Springfield could be producing as much as 15,000 kilowatts of electrical energy, members of the Eugene Water & Electric Board were told Monday night.

Herb Hunt, EWEB's director of operations and engineering, and representatives of the Kingsford Co. presented an agreement under which the two agencies will conduct a joint study aimed at capturing the energy in the waste gases.

The board approved the agreement

and expressed hope that the project can prove as successful as EWEB's "co-generation" project with the Weyerhaeuser Co. in Springfield, where electricity is generated from waste steam. Board members noted that the Kingsford project could produce electricity for EWEB while reducing air pollution from the charcoal plant.

The new agreement provides that each party will invest up to \$50,000 in the study, which is to be completed no later than next May.

Tom Faber, regional manager for Kingsford, said methane and other gases

are formed when sawdust and hogged fuel is charred to create charcoal for briquettes that are marketed by the company for backyard barbecues. The gas is flared — or burned — in a stack and is often visible from nearby Interstate 105 at night as a bright red flame.

Faber said some of the heat from the combustion process is used to pre-dry the hogged fuel and to dry the finished briquettes, but most of it goes to waste as it simply heats up the atmosphere.

Hunt said the heat represents 100 million to 150 million Btus (British Thermal Units) of wasted energy each hour

and is the equivalent of the heat that would be produced in boilers burning 17 to 25 barrels of fuel oil each hour.

It is enough heat, he said, to operate a generating plant producing as much as 15,000 kilowatts of electricity.

Hunt said the engineering study will explore two possibilities:

- Treating the gas at the Kingsford site to remove residual tar oils so the gas could be piped about five miles through an abandoned 30-inch pipeline to EWEB's steam plant in Eugene. There the gas could be burned in combination with hogged fuel to produce steam for

EWEB's central downtown heating system or for electrical generation.

- Construction of a generation plant on the Kingsford site for direct production of electrical energy that would be marketed by EWEB. Hunt said Springfield Utility Board would be expected to join in the project if it was sharing in the construction costs and the resulting energy.

The agreement signed by the company and by EWEB gives the utility the option to purchase the surplus gases

Please turn to Page 3D

rate of 10 cents per million Btus during the period EWEB is paying off the costs of the plant construction. Once the plant costs are amortized, adjustments would be made to maintain the relationship between the price EWEB pays for the gas and the price Kingsford pays for hog fuel.

Hunt said a second objective of the study will be to aid Kingsford in eliminating or greatly reducing air pollution problems connected with open flaring of the waste gases. If the gases are burned in boilers under controlled conditions fewer emissions will go into the air, he said.

Dick Lingelser, corporate manager for buying for Clorox Corp., the Kingsford plant owners, told the board if the project proves feasible it will amount to recycling waste that has already been recycled once.

The hogged fuel used to make the charcoal briquettes is waste wood from area lumber and plywood mills, he noted, and the gases are waste products from Kingsford's manufacturing process. "We look at it as recycled co-generation," he said.

## Utility to generate electricity from slash

By CLAY EALS  
Correspondent, The Oregonian

1 EUGENE — The Eugene Water and Electric Board has contracted with the Willamette National Forest to burn enough forest slash material in its steam plant to produce electricity to meet the annual needs of about 4,000 homes.

157 May 29

EXHIBIT G  
Senate Committee on  
Environment and Energy  
May 17, 1979 Tape 28  
1 Page Exhibit  
SB 560

Slash is residue left by loggers after clear cutting an area. EWEB has used waste wood such as sawdust and tree bark from lumber mills for nearly 40 years, but an agreement announced Monday between the utility and the Forest Service represents the first time

EWEB will burn slash.

The utility received the first load of chips last Thursday. During the next 12 months, EWEB will receive 160,000 tons of slash from the Willamette forests. The slash will be burned in utility boilers to produce 80 million kilowatt hours of electricity or enough to serve about 4,000 homes in a year.

"By using this previously wasted resource, we will increase our energy supply as well as reduce a major source of pollution," said Herb Hunt, director of EWEB operations and engineering.

"This material is not uniform in any respect and is difficult and expensive to handle in our plant. As a result, the cost to produce this electricity is higher than

our residential retail electric rate, and we therefore market it, whenever possible, to other utilities.

"Remember, this material is pure trash left after the original lumber operators removed everything of value when the land was first clear cut," he said.

Hunt said it is possible EWEB would build plants in nearby communities such as Oakridge and Cottage Grove to burn large amounts of slash, after the one-year pilot project is completed.

He emphasized that the 160,000 tons of slash is "only a drop in the bucket" when compared to the 3.5 million tons of slash burned in the woods by federal forest agencies last year.



GLEN M. STADLER  
Governmental Representative  
EUGENE WATER & ELECTRIC BOARD

HOUSE COMMITTEE ON STATE GOVERNMENT OPERATIONS

June 19, 1979

1:30 P.M.

Hearing Room "D"  
State Capitol Bldg.

Members Present: Representative Bill Markham, Vice-Chairman  
Representative Bud Byers  
Representative Caroline Magruder  
Representative Gary Wilhelms  
Representative Glenn Otto  
Representative Jo Simpson

Members Delayed: Representative Drew Davis, Chairman

Staff: Christy Park, Committee Administrator  
Holly Blanchard, Committee Assistant

Witnesses: Ray Gribbling, representing Pacific Northwest Bell  
George W. Pappani, Continental Telephone of the Northwest  
Glen Stadler, League of Publicly Owned Electric Utilities  
in Oregon  
Mike Dewey, Oregon Cable Communications Association  
Del Cantroll  
Steve Gregory, Western Regional Manager and Liberty T.V.

0009 VICE-CHAIRMAN MARKHAM again resumed the chair position as requested by CHAIRMAN DAVIS. VICE-CHAIRMAN MARKHAM called the House Committee on State Government Operations to order at 1:40 P.M. and indicated that SB 560A would be the first business to come before the Committee.

SB 560A - Prescribes system for authorizing certain attachments to public utility poles and conduits and fixing the fees therefor by Public Utility Commissioner, and in the case of people's utility districts, the Director of the Department of Commerce. Declares emergency, effective on passage.

0015 Christy Park explained the general thrust of the bill. She explained that the bill deals with the regulation of pole attachments relating to utility poles and that it would give the PUC Commissioner jurisdiction over regulation of pole attachments, of public utilities, rates, terms and conditions, etc., and it would give the Director of the Department of Commerce the same authority over regulation of pole attachments by People's Utility District. The bill also gives them authority to deal with complaints pertinent to these things by holding hearings, and if the



Commissioner or Director should find that the complaints are justified, then the Commissioner or Director would be allowed to fix rates or conditions which they would feel just, taking into consideration the customers' needs, etc. The bill also defines what "just and reasonable" means.

0046 Ray Gribling, representing Pacific Northwest Bell, General Telephone, Oregon Independent Telephone Association and Privately Owned Electric Utilities, came before the Committee in support of SB 560A (see EXHIBIT "A").

0105 VICE-CHAIRMAN MARKHAM asked Mr. Gribling what is meant by the term "zone of reasonableness". Mr. Gribling answered that the term refers to the area used for attachments on the poles.

0126 George W. Pappani, Oregon State Manager for Continental Telephone of the Northwest, also spoke in support of the measure (see EXHIBIT "B").

0152 Glen Stadler, representing the League of Publicly Owned Electric Utilities in Oregon, and also the Eugene Water and Electric Board, spoke in opposition to the bill (see EXHIBIT "C"). Mr. Stadler suggested that SB 560A apply only to the investor-owned companies. He then referred the Members to line 18 of the first page of the A-Engrossed bill to the "People's utility district" definition and said that it is an incorrect reference. He said "People's utility districts" only apply to People's Utility Districts and not to municipalities, co-ops, or joint operating agencies. In conclusion, Mr. Stadler said that because there is no federal law and although there might be a prospect of one, his group is not presently included in federal law, and that his group is comprised of public agencies. He felt there is not a need for a Public Utility Commissioner as to the privately-owned utilities because the Public Utility Commissioner represents the public. He requested that his group be excluded from the jurisdiction of SB 560A.

0234 REPRESENTATIVE BYERS asked Mr. Stadler how such things as attachments to poles would be handled if the group Mr. Stadler represents were to be not included under the jurisdiction of the PUC Commissioner. Mr. Stadler said that negotiations are made between the cable companies and the utilities. REPRESENTATIVE BYERS inquired as to how rates are determined for the use of electricity hookups. Mr. Stadler said that rates are based on where the poles are located and how many people are using the poles for electricity. Mr. Stadler said the highest rate that he is aware of is \$4.75 per pole and a low but common rate in Eugene is about \$2.60 per pole.

0324 REPRESENTATIVE OTTO questioned the ability of one of Mr. Stadler's groups to succeed in negotiations with the PUD.

0442 REPRESENTATIVE WILHELMS asked Mr. Stadler who rents pole space from the Eugene Water and Electric Board (EWEB). Mr. Stadler said the telephone company, and Lane Electric which is a co-op, and perhaps some other cable companies.

0469 Steve Gregory, Western Regional Manager for Liberty Communications, came before the Members but suggested that Mr. Mike Dewey, representing the Oregon Cable Communications Association come before the Committee to also answer questions. Mr. Dewey also introduced the President of the Oregon Cable Communications Association, Mr. Del Cantrell. Mr. Dewey said that the Congress of the United States has set up guidelines in relation to controlling rates in issues such as this one.

0494 In cases involving disputes, and only in those cases, normal negotiations occur. However, if a cable company is asked to pay rates which they feel are too high which are determined through the use of an arbiter, then the matter goes to the SCC. Mr. Dewey said that cable companies pay for the use and preparation of poles which they require. He also added that cable companies are usually not allowed to have their own poles and therefore they have no choice but to rent space on the poles. He said that this type of situation has unintentionally resulted in a monopoly with the use of these poles. He said the key to the problem is the "formula". Mr. Dewey said his organization does not have any problem with paying the going rate if it is justified and necessary.

0583 REPRESENTATIVE OTTO asked Mr. Gregory if the rates vary throughout the state. Mr. Gregory said that the rates do vary according to location such as long lines required for rural areas. Mr. Gregory also added that if stronger controls were put on the utilities owning the poles to limit their rates for usage by companies such as cable companies, the cable industry could better plan their budgets and have a better idea of what their profit margins might be for the future.

0615 REPRESENTATIVE WILHELMS asked if the rates discussed were charged per year and that was confirmed to be the case. He then asked if it would cost less if the poles were bought and installed by the cable companies themselves rather than renting the poles through the utility companies. Mr. Cantrell said that based on an estimate he had to prepare recently, it was his conclusion that the cable company involved would just break even in costs, considering the cost of the poles, installation charges, property taxes, etc. REPRESENTATIVE BYERS asked Mr. Cantrell if there might be areas where a right-of-way could not be obtained. Mr. Cantrell said this is a very real situation. The state and city would have a monopoly on the right-of-ways since they have first choice.

0656 Mr. Dewey advised the Members that the cable companies are not excited about coming under the PUC because of additional regulation but they do recognize that it would be to their benefit because of the problems that have occurred. He also added that regulations would be handled under the Department of Commerce and not the PUC.

0668 VICE-CHAIRMAN MARKHAM asked what the average cost per month is to the consumer in the State of Oregon for cable television. Mr. Cantrell said it runs between \$6.50 and \$7.00 per month based on an average.

0675 REPRESENTATIVE MAGRUDER asked what the difference is for those using cable television in public utility districts as compared to those in private districts in relation to the rate costs per month. Mr. Dewey said he did not believe there was any significant difference in rates - they all run in the neighborhood of \$2.50 per month for pole use.

0704 Mr. Stadler again came before the Committee and said it was legally in fault because of line 18 through line 20, inclusive. Mr. Stadler discussed some proposed amendments agreed to between himself and Ray Gribbling but the proposed amendments were never introduced to the Committee Members. After further discussion between REPRESENTATIVE OTTO and Mr. Gribbling it was determined that lines 18 through 20, inclusive, was not technically wrong. He read the ORS statutes pertaining to the language and there is nothing wrong with the definitions.

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HOUSE COMMITTEE ON  
STATE GOVERNMENT OPERATIONS  
June 19, 1979

0810 REPRESENTATIVE OTTO made a motion to move SB 560A to the Floor with a "do pass" recommendation. The motion carried, 6-0 (voting, Aye: Byers, Magruder, Markham, Otto, Simpson, Wilhelms; Excused: Davis). REPRESENTATIVE OTTO to carry the bill.

HJR 4 - Relating to Veterans' Bonuses.

0821 REPRESENTATIVE OTTO asked if there was any new word on HB 3155 which is the enabling legislation for HJR 4 which is in Revenue. Ms. Park said she had contacted Revenue and that HB 3155 was still not ready.

0826 REPRESENTATIVE OTTO made a motion to move HJR 4 to the Floor with a "do pass" recommendation as amended. The motion carried, 7-0 (voting, Aye: Byers, Magruder, Markham, Otto, Simpson, Wilhelms, Davis). REPRESENTATIVE OTTO will carry the bill. He also said he was open to anyone else speaking on the bill on the Floor from the Committee Members.

0855 REPRESENTATIVE OTTO explained to the Members that he felt the bill could stand on its own and that there is no assurance that HB 3155 will come out of Revenue. However, if HB 3155 does come to the Floor, he would like to have HJR 4 on the Floor so that a proper motion can be made to have both bills considered at the same time. He added that if HB 3155 does not come out of Revenue, then the next Legislative Session can worry about the funding and HJR 4 can stand on its own.

0886 Christy Park advised that there is nothing on the Agenda for Thursday, June 21st, and therefore there will be no meeting. However, it was decided that a meeting would be "on call" if anything should be given to the Committee between today's date and Thursday.

0890 VICE-CHAIRMAN MARKHAM advised the Members that Senator Day has been giving him some heat about SB 704 and that he will tell Senator Day that when he can provide four people from this Committee who positively want to call a hearing on the measure, a hearing will be held but otherwise no hearing will be scheduled.

0895 The meeting was adjourned.

Tape 20 - Side 1  
(0001-0895)

Respectfully submitted,

  
Holly Blanchard, Committee Assistant

Summary of Exhibits:

EXHIBIT "A", SB 560A, Testimony of Ray Gribbling, Pacific Northwest Bell  
EXHIBIT "B", SB 560A, George W. Pappani, Continental Telephone of the Northwest  
EXHIBIT "C", SB 560A, Glen Stadler, League of Publicly Owned Electric Utilities  
in Oregon



**Continental Telephone  
of the Northwest**

106 West Main Street/P.O. Box 507  
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House Committee on  
State Government Operations  
June 19, 1979  
EXHIBIT "B" (1 page)  
SB 560A

June 19, 1979

State Government Operations Committee  
Senate Bill 560A

Mr. Chairman, Members of the Committee. For the record, my name is George Pappani. My address is 106 West Main Street, Silverton, Oregon. I represent Continental Telephone of the Northwest and today I am here as a representative for the 35 other independent telephone companies in Oregon.

We are in support of Senate Bill 560A in its present form.

We support the spirit and the concept of having state regulations of pole attachment rates when any cable television company and any utility company cannot come to agreement on equitable rates to charge for attachments to the utility company poles and/or outside plant facilities.

State regulating pole attachments preempt FCC jurisdiction of pole attachment regulation. As of June 11, 1979, 14 states and Puerto Rico have passed legislation regulating terms, rates and conditions of pole attachments.

We urge the committee to pass this bill.

George W. Pappani  
Oregon State Manager

JUNE 19, 1979

RAY GRIBLING - REPRESENTING PACIFIC NORTHWEST BELL, GENERAL TELEPHONE,  
OREGON INDEPENDENT TELEPHONE ASSOCIATION AND  
PRIVATELY OWNED ELECTRIC UTILITIES.

House Committee on  
State Government Operations  
June 19, 1979  
EXHIBIT "A" (2 pages)  
SB 560A

IN 1978 CONGRESS ENACTED LEGISLATION FOUND IN 47 U.S.C., SECTION 224 WHICH GAVE THE FEDERAL COMMUNICATIONS COMMISSION JURISDICTION TO REGULATE WHAT OWNERS OF POLES COULD CHARGE CABLE TELEVISION COMPANIES AND OTHERS WHEN UTILIZING THEIR POLES. THE ACT PROVIDES THAT THE FCC SHALL HAVE NO JURISDICTION WHERE A STATE REGULATES POLE ATTACHMENT RATES, TERMS AND CONDITIONS. STATES WHICH DO REGULATE, ARE TO CERTIFY THAT FACT TO THE FCC, AS WELL AS THE FACT THAT IN REGULATING THEY HAVE AUTHORITY TO, AND DO CONSIDER INTERESTS OF CATV SUBSCRIBERS AS WELL AS INTERESTS OF UTILITY CONSUMERS.

SENATE BILL 560 PROPOSES THAT THE FCC'S JURISDICTION BE PRE-EMPTED AND THAT THE STATE BE GIVEN JURISDICTION TO REGULATE POLE ATTACHMENT RATES WHENEVER A UTILITY AND CABLE TELEVISION COMPANY ARE UNABLE TO AGREE ON TERMS, CONDITIONS, OR COMPENSATION FOR POLE ATTACHMENTS.

THIS PROPOSED LEGISLATION, LIKE THE FEDERAL LAW, INCLUDES A "FORMULA" COMMONLY REFERRED TO AS A "ZONE OF REASONABLENESS" INDICATING THAT THE OWNER OF THE POLES COULD CHARGE NOT LESS THAN THE ADDITIONAL COST TO THE OWNER OF PROVIDING POLE ATTACHMENTS NOR MORE THAN THE ACTUAL OPERATING EXPENSES AND RETURN ON CAPITAL OF THE OWNER ATTRIBUTABLE TO THAT PORTION USED IN THE POLE ATTACHMENT. THIS FORMULA WAS AGREED TO BY THE NATIONAL ASSOCIATION OF UTILITY REGULATION COMMISSIONERS.

AS I TESTIFIED BEFORE THE SENATE ENVIRONMENT AND ENERGY COMMITTEE THE FEDERAL LAW DID NOT INCLUDE JURISDICTION OVER POLES WHICH ARE OWNED BY PUD'S, MUNICIPALITIES OR OTHER PUBLIC AGENCIES, HOWEVER SB 560 PROPOSES THAT IF REGULATION IS REQUIRED TO ASSURE ALL USERS OF A JUST, FAIR AND REASONABLE RATE FOR POLE ATTACHMENTS THEN IT FOLLOWS THAT IT SHOULD NOT ONLY APPLY TO THE PRIVATELY OWNED REGULATED UTILITIES BUT TO THE PUBLICLY OWNED NON-REGULATED UTILITIES AS WELL.

THIS BILL INCLUDES BOTH PRIVATE UTILITIES AND PUBLICLY OWNED UTILITIES BECAUSE BOTH EITHER OWN OR CONTROL THE INTEREST IN POLES UPON WHICH CATV COMPANIES MUST ATTACH IN ORDER TO PROVIDE THEIR SERVICE. BOTH TYPES OF UTILITIES ARE INCLUDED IN ORDER TO FAIRLY REPRESENT ALL SUBSCRIBERS OF UTILITY SERVICE AND THE SUBSCRIBERS TO CATV SERVICE THROUGHOUT THE STATE OF OREGON.

THIS BILL PROVIDES THAT THE PUBLIC UTILITY COMMISSION SHALL ASSUME JURISDICTION IN ALL CASES INVOLVING A REGULATED PRIVATE UTILITY AND A CABLE TELEVISION COMPANY.

AS NON-REGULATED PUBLIC UTILITY DISTRICTS, MUNICIPALLY OWNED ELECTRICS AND COOPERATIVES DO NOT FALL WITHIN THE PURVIEW OF THE PUC, WE HAVE ADDRESSED THEIR CONCERNS BY REQUIRING THAT THE DEPARTMENT OF COMMERCE WILL ASSUME JURISDICTION IN CASES INVOLVING THOSE ENTITIES AND A CABLE TELEVISION COMPANY.

SB 560 PASSED THE SENATE WITHOUT A DISSENTING VOTE. WE RESPECTFULLY REQUEST YOUR FAVORABLE CONSIDERATION.

LEAGUE OF PUBLICLY OWNED  
ELECTRIC UTILITIES IN OREGON

3621 Augusta National Dr., S.  
Salem, Oregon 97302  
(503) 585-8737

15 June, 1979

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The Hon. Drew Davis, Chairman  
State Government Operations  
Salem, OR.

Re: SB 560

Dear Mr. Chairman, and Members:

Senate Bill 560, assigned to your committee today,  
should be amended to exclude any reference to publicly  
owned electric utilities, because:

H. 7442, of January, 1978, which became Public Law 95-234,  
passed by The Congress, specifically excludes them from regu-  
lation.

SECTION 224-A (1), defines the term "utility" as investor or  
privately owned companies, and reads that it does not include:

1. Any railroad,
2. Any person who is cooperatively organized,
3. Or any person owned by the Federal Government, or any State.

SECTION 224-A (3) defines terms, saying:

"State" means any state, territory, or possession of the  
United States, District of Columbia, or any political subdivision,  
agency, or instrumentality thereof.

Therefore, SB 560 should be amended to exclude all references  
to "people's utility districts", cooperatives, municipality or  
any combination thereof, or joint operating agency.

We know that both PNWB and GTE are anxious to avoid  
federal (FCC) regulation, and have the Oregon PUC as arbiter.  
We certainly do not object to their wishes, and recommend that  
you pass out SB 560 applying only to the investor-owned companies.

We were misinformed during the Senate hearings that the publicly  
owned utilities would come under the FCC in this matter, unless  
some state mechanism were established. We agreed to the Department  
of Commerce, but now that we have the specific wording of PL 95-234,  
we are assured that our inclusion in SB 560 is not necessary.

President, 1978: Jack Criswell, Springfield.  
Salem Governmental Representative: Helene N. Stadler.

Thank you.

*Helene N. Stadler*

*Helene N. Stadler*