

**HOUSE COMMITTEE ON COMMERCE**

**SUBCOMMITTEE ON REGULATIONS**

**February 17, 1999 Hearing Room 350**

**3:00 p.m. Tapes 5 - 6**

**MEMBERS PRESENT: Rep. Bill Witt, Chair**

**Rep. Jim Hill**

**Rep. Al King**

**Rep. Anita Rasmussen**

**Rep. Mark Simmons**

**STAFF PRESENT: Jason Cody, Administrator**

**Annetta Mullins, Administrative Support**

**MEASURE/ISSUES HEARD:**

**HB 2271ñ Public Hearing**

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
<b>TAPE 5, A</b>		
004	Chair Witt	Calls meeting to order at 3:08 p.m. and opens the public hearing on HB 2271.
<b><u>HB 2271 ñ PUBLIC HEARING</u></b>		
002	Jason Cody	Administrator. Reviews the provisions of the bill.
025	Mike Dewey	Oregon Cable Telecommunications Associations. Introduces Dave Mangis, TCI, and Mike Owen, DirectLink. Reviews history of legislation and agency

		jurisdiction over pole rate matters. Presents a prepared statement in support of HB 2271 ( <b>EXHIBIT A</b> ). Displays deposition in Coos-Curry Co-op.
100	Dewey	Comments the Federal Communication Commission (FCC) and the Oregon Public Utility Commission (OPUC) formula have one difference. The FCC formula produces about 20-percent savings to the cable industry. Explains the "pole formula" using description on page 1 of testimony and the pole diagram on page 4 ( <b>EXHIBIT A</b> ).
126	Dewey	Explains the debate today is how much usable space is on a pole, and how much of the usable space is used by a cable company. The difference between the FCC and OPUC is the 40 inches, the highest point of communication space, and the lowest point of electrical infrastructure. In certain instances the clearance can be 30 inches. OPUC says the 40 inches is not usable space. The FCC said, and most recently Michigan said, this space is usable ( <b>EXHIBIT B</b> ). According to counsel for the cable industry on the Washington Case, the staff recommendation is to incorporate the FCC rule into Washington state's administrative rule.
161	Dewey	Explains that by making the space usable, the space that can be used on a pole is decreased. Making the space usable does not mean that the cable companies can attach any equipment to this space.
178	Dewey	It is presumed under both the FCC and OPUC formulas that cable companies use one foot of the usable space on the pole. . Adds that cable companies are prohibited from putting up poles. Understands phone companies are giving up the rights to the poles. Gives example of taking the minimum clearance going all the way to the top of the pole and assuming there was 10 feet left, they would use 10 percent of the pole. If you subtract the 40 inches, there is a presumption that the cable companies use 17-18 percent of the pole. That creates a higher rate for the cable companies. Cable companies are seeing increases in rates of 38 percent, 53 percent and one increase from \$1.00 to \$12.00.
201	Dewey	Adds that all they are talking about is a formula and are saying they think this body should declare that the electric company could use this space, based upon the evidence. It has a function for the electric company.
206	Dewey	Displays photos showing space that is being used to demonstrate that equipment can be placed in this space. Submits photos of poles with attachments ( <b>EXHIBIT C</b> ). Adds that the National Electric Safety Code (NESC) provides that certain equipment can be placed in the 40 inches; cable companies cannot but electrical companies can.
237	Dewey	The code specifically confirms that the neutral space provides legroom for electrical workers working on electric facilities.
251	Dewey	Comments that according to the California rate docket, one utility acknowledged that the required clearance space is made necessary by the danger posed by electricity.
258	Dewey	Explains that since the FCC rule for the code was adopted in 1984, there have

		<p>been some changes to the code. In certain applications there can be 30 inches. One might argue that 30 is the right number, not 40. And the minimum clearance in some instances has changed from 20 feet to 18 feet. By virtue of that, two additional feet of usable space are created, thereby reducing the percentage for the cable companies.</p>
260	Rep. Hill	Asks who typically owns the poles.
275	Dewey	<p>Responds that in 1979 he was lead to believe that the telephone companies owned about 50 percent of the poles and the electric companies owned about 50 percent. They did not have formulas by which they charged because if there was a 50-50 relationship, there was no reason to charge each other. The cable companies came along later and cannot put up their own poles.</p>
318	Rep. Hill	Asks who else might attach to the poles.
319	Dewey	<p>Responds they had a discussion with John Sullivan with Portland General Electric (PGE) about communications and how they work together. They talked about PGE contracts with GTE. It is a totally different arrangement than with a cable company. Believes in some cases telephone companies come under this rule so they are paying rent based on this rule unless they have another agreement.</p>
335	Rep. Hill	Asks if the telephone company that owns the pole pays just for the space or the unused safety space as well.
342	Dewey	Responds he does not know the answer.
350	Dewey	<p>Comments that conditions have changed with code since 1984 and it is appropriate to have this discussion. The FCC recognized cable companies were in a different position with regard to the relationship with the pole owner. Cable companies are at risk when they attach to a pole. The contracts are fairly onerous. If there isn't enough room, the cable companies have to figure out how to create the room and pay for it. If a new pole is put in, the cable companies pay a higher percentage of the cost for the pole. If the electrical utility needs additional space, the 40 inches is compromised because they are going below the highest level of the clearance. They do not compensate the cable companies when the cable companies have to move their lines. That is, in part, why the FCC said the risks of the cable companies must be recognized.</p>
385	Dewey	<p>Comments that since 1984, there is significant competition in the video business. Explains situation of Falcon Cable in Klamath Falls and the desire of the City of Klamath Falls to provide cable services. It demonstrates when an electric co-op is selling dishes or if the city wants to be in the business and they own the poles, prices go up; that competition concerns the cable companies. The cable companies feel enacting HB 2271 would level the playing field.</p>
<b>TAPE 6, A</b>		

017	Dewey	Adds that the PUC has been concerned whether the electric companies will spend less money on safety if they lose money. According to the PUC, PGE and PP&L would receive about one million dollars per year less in rent. Cable and telephone companies receive benefits. States that when they had a formal discussion at the PUC, PGE and PPL looked at the one million dollars as pocket change. Does not believe the electric companies will go through rate cases because they believe they lose \$500,000 under this legislation. Does not believe the electric companies will spend less money on safety.
030	Rep. Hill.	Asks if Mr. Dewey has an average cost to the cable companies for a pole attachment.
035	Dewey	Responds he believes PGE's rate is \$11.82 either this year or next year per year per pole. Adds that the costs have escalated because PGE has made a concerted effort to take care of safety violations on all sides. PP&L is in the neighborhood of \$8 or \$9. The costs to cable companies are less than for telephone companies.
052	Rep. King	Asks if the cable companies' concern is the regulators want to compete.
056	Dewey	Responds that Ashland owns the poles and regulates the franchise.
063	Dewey	Comments one might ask the question why the cable companies do not go to the PUC. The reason is the cable companies cannot win at the PUC. The reason they are before this committee is to get away from a rule they think is antiquated.
080	Chair Witt	Asks if Mr. Dewey knows the total dollars spent for pole attachments by cable firms in Oregon.
083	Dewey	Responds he can try to get an estimate of the cost.
089	Chair Witt	Ask if Mr. Dewey said the potential cost savings to cable companies would be about one million dollars if this bill passes.
093	Dewey	Responds that according to the PUC the pole rental rate to PGE and PP&L would decrease yearly by about a million dollars. Cable companies, telephone companies and others that attach to the pole would share in the revenues. Adds that Electric Light Wave, a competitive provider in Portland, does not have attachments on a lot of poles, but would benefit.
103	Chair Witt	Asks Mr. Dewey to be more explicit why the cable companies feel they cannot win at the OPUC.
104	Dewey	Explains that cable companies are not regulated by the PUC. Based on the signs and signals he has received, the best place for them is at the legislature. Has a sense that OPUC is very safety conscious and should be, and somehow they believe this impacts or has to do with the integrity of safety.

128	Rep. Simmons	Asks if the cooperatives and public utility districts (PUDs) are regulated by the OPUC.
130	Dewey	Responds that cooperatives and PUDs are not regulated by the OPUC. They believe that by passing SB 560 in 1979 for the purpose of resolving pole attachment disputes, they were included under the Department of Commerce, and later the OPUC, only for the purpose of pole attachment disputes. In 1998, an OPUC hearings officer said they look at the statute as a little convoluted and it was pretty close but the hearings officer did not believe that the OPUC had jurisdiction based on the language in the statute.
155	Sandy Flicker	Oregon Rural Electric Cooperative Association. Introduces Roger Coleman, Salem Electric. Comments there are 17 electric cooperatives that serve about 10 percent of Oregon. The cooperatives are private, not for profit and their rates are not regulated by the OPUC. Cooperatives serve less than six customers per mile of line in Oregon. HB 2271 adds cooperatives to the pole attachment statutes governing rates. Cooperatives are governed by the OPUC for safety.
186	Flicker	Explains that in 1979 Pacific Northwest Bell introduced a bill supported by the cable companies to provide for the OPUC jurisdiction over attachments. Previous to that, they were regulated by the FCC. Consumer utilities were not then and are not now under the regulation of the FCC for pole attachments. It was the clear intention of the legislature that the director of the Department of Commerce was to have been given authority to regulate the rates and terms for poles owned or controlled by PUDs which included cooperatives and municipal electrical utilities. However, the definition was poorly drafted and believes that is what has led to the issue of whether cooperatives are under the OPUC jurisdiction for pole attachment rates.
211	Flicker	Adds that cooperatives have operated their pole attachment programs with the understanding, until very recently, that they were under OPUC jurisdiction. The OPUC mediated a complaint in 1996 between a cooperative and cable company. The issue today is not whether cooperatives should or should not be under the jurisdiction of the OPUC for pole attachment rates. The issue is whether there is a difference of opinion within the OPUC whether cooperatives are or are not under the jurisdiction of the OPUC. The issue is for the OPUC to address because they have a difference of opinion within their own staff. Adds a clarification may be necessary but it is for the OPUC to determine.
224	Rep. Hill	Asks if the cooperatives would have a problem with Section 2 of the bill were deleted.
229	Flicker	Responds she would not have a problem. Adds that it leaves the municipal utilities out.
235	Flicker	Comments the cooperatives do not object to a clarification in statute.
239	Flicker	Comments the cooperatives strongly oppose Section 2 of HB 2271. Explains that in 1979 the cable companies and telephone companies asked for the OPUC to assume the role of dispute resolution for pole attachment rate issues if there was difficulty in coming to contractual agreement. According to OPUC staff, they

		have been asked only two times since 1979 to mediate a dispute.
260	Rep. Hill	Asks whether either party could not go to the OPUC if they cannot come to an agreement on pole attachment rates. Adds that the cable companies are asking for the new language to clarify what "just and reasonable" is.
286	Flicker	Explains they support the process in statute requiring the OPUC to mediate disputes regarding contracts between a pole owner and a pole attacher, but oppose any part of that determination being placed in statutes as HB 2271 does. The cable companies are asking that the determination of what the rate should be through the formula for "usable" and "unusable" space. Oregon Rural Electric Cooperative Association supports the determination on rates being done through the OPUC process as it currently is.
306	Rep. Hill	Asks if all the cooperative members own their poles, or whether the cooperatives are attaching to telephone poles.
311	Flicker	Responds it is her understanding their members own the vast majority of the poles. There are 17 co-ops and most likely some attach to other utility poles.
316	Rep. Hill	Asks whether the cooperatives pay for the 40 inches when they attach to a telephone pole.
320	Flicker	Responds she does not know but will find out.
326	Rep. Hill	Comments he thinks the response will help clarify the issue. Explains that if one party is paying for the 40 inches that is usable because the telephone company could cut the pole off at the top of their line. There is a public interest that we not have multiple poles along the rights of way and would assume there is a requirement the telephone companies provide space for the electrical companies. Adds that if the electrical companies are paying for safety clearance when they do not own the pole, it would make sense to use that in the formula.
347	Flicker	Responds she believes the formulas are determined based on costs. The formulas are allocated to the pole renters based on costs. There may be other considerations and agreements. Does not believe the cooperatives have any kind of exemption from the formula that is in the administrative rule today.
360	Rep. Hill	Asks how it can be that it is not unsafe for the cooperatives to attach in the safety clearance, but it is for others.
367	Flicker	Responds she will let the OPUC address how the PUDs operate. Explains that cooperatives use trained, certified electrical workers for all work on the poles. Cable workers are under a different scenario and the safety clearance is there for the purpose that workers are not injured by being too close to electrical lines.
388		Discussion continues between Rep. Hill and Ms. Flicker on "usable" space.

424	Rep. Hill	Comments the cooperatives are attaching other-than-electrical equipment within that safety space which would lead to the conclusion it is usable space in the context of the value of the pole.
432	Flicker	Responds the cooperatives are not advocating there should not be a safety clearance space. There may be consequences because of revenue issues, but they are not here to say they believe it is a direct safety issue because they are not advocating for anyone who is not trained to work in that space. It is only a revenue issue. It is a determination of pole cost. From the perspective as pole owners, the cooperatives must determine how much it costs to buy the pole. Adds they have to buy taller poles to accommodate attachments. If there were no attachments, they would buy shorter poles. The cooperatives determine their costs based on OPUC guidelines and come up with a contractual proposition for the pole attachers.
<b>TAPE 5, B</b>		
030	Flicker	Comments the issue for the cooperatives is very clear. That is, who is going to pay. Asks if the electric customers are supposed to subsidize cable companies or cable company customers or other pole attachers' customers for the cost of the pole attachment. Finding equity between electric customers and customers of the pole attachers is what this is all about. Costs are rising and therefore the rates are going up.
045	Flicker	Comments the bottom line is that a mediation process has been established and has been used twice in 20 years. Cooperatives are not regulated by the OPUC either so when they bring a complaint before the OPUC it is against people they spend every day with. Adds the cooperatives have competitive issues in terms of keeping their costs down also. The bottom line issue is not about formulas, it is about who pays, and it is about cost shifting. The cooperatives are very concerned about putting in statute a formula that decreases the costs for pole attachers to use the cooperatives' poles without any opportunity to mediate it in another process that is going to adversely impact customers of the cooperatives. Adds that cooperatives are non-profits and do not make a profit by renting space on their poles but have to cover the costs or raise the rates to the customers.
064	Chair Witt	Asks Ms. Flicker to provide a list of purposes that could involve pole attachments, and identify which ones would fit into the 40-inch safety space.
069	Roger Coleman	Salem Electric. Responds that the only attachments are brackets for streetlights are place in the 40 inches and then only if there are certain height requirements.
074	Rep. Simmons	Comments that the 40-inch safety zone is to allow for sagging of the lines; it is not an issue for the streetlights mounted to the pole.
079	Rep. Hill	Asks if Salem Electric receives compensation from the lighting jurisdiction.
079	Coleman	Responds they receive payment for the energy and the cost of the light, not for the use of the pole.

082	Chair Witt	Asks why they do not receive compensation for use of their pools.
085	Flicker	Responds there are different arrangements in every jurisdiction. Some may charge, but believes her members do not charge. Adds that an offset to the cost may be a reduction in the franchise tax the cooperatives pay.
099		Discussion is held on whether transformer shown in photograph being circulated is within the 40 inches.
128	Brian Boe	Portland General Electric (PGE). Introduces John Sullivan, PGE. Comments that PGE concurs with Sandy Flicker's testimony. PGE opposes HB 2271. Charging rent for joint use of utility poles is a common and necessary practice and each utility has a contract with joint pole users and rental amounts vary depending on who owns the poles and the terms of the contract. Pole rents help defray the costs of operation and maintenance. The formula currently used for pole attachments complies with the National Electrical Safety Code and has been adopted by the OPUC.
141	Boe	Ads that the 40-inch safety zone is used for street lighting, and most generally, if not always, is a condition of the use of the right-of-way.
147	Rep. Hill	Asks if PGE allows Enron to run lines within the safety space.
147	Boe	Responds negatively.
151	John Sullivan	Portland General Electric. Introduces himself.
152	Boe	Comments they are concerned the cable companies are trying to make what should be a matter of contract a legislative matter. There is a process in place for cable companies to bring their disputes to the PUC. It is important to note that it is a financial matter. In a recent audit by PGE of its poles in Multnomah County, it found 13,000 illegal attachments.
168	Chair Witt	Asks if it is not true that the cable companies are forced to go to the utility pole owners who have monopolies. Adds in that kind of a case it is really isn't a matter of contract, but also becomes a matter of regulation to make sure there is a fair dealing in how costs are assessed.
183	Rep. Hill	Asks if PGE attaches to U. S. West or GTE poles.
184	Sullivan	Responds that PGE rents from more than a dozen utilities.
187	Rep. Hill	Asks if PGE pays for the 40-inches of safety clearance.
188	Sullivan	Explains that when PGE needs to attach to an U. S. West Pole, typically their



		pole is not tall enough to accommodate PGE's attachments. PGE then installs a new pole and pays for the installation. PGE does not pay, through their rent, for that 40 inches.
192	Rep. Hill	Asks if the pole becomes PGE's pole.
192	Sullivan	Respond negatively. Adds that the original company has the option of selling the pole, but PGE does not take ownership. Adds they calculate the rates the same. The non-usable space includes the 40 inches. It is not calculated in PGE's rates and it is not calculated in any other pool on their rate.
202	Chair Witt	States Mr. Sullivan is saying in every case where PGE is attached onto a pole that is owned by somebody else the 40 inches clearance space is not in the calculation to determine the rate to be paid for attachment to the pole.
205	Sullivan	Responds that is correct.
215	Diane Cowan	Oregon People's Utility District Association, submits and paraphrases a prepared statement ( <b>EXHIBIT C</b> ),
251	Rep. Hill	Asks if PUDs stay within the 40 inches.
255	Cowan	Responds she will find the answer and report back.
256	Chair Witt	Asks if the PUDs have other attachments on their poles within the 40-inch space.
257	Cowan	Responds they have brackets for the street lighting by the cities.
261	Chair Witt	Asks if the PUDs receive compensation from the cities.
261	Cowan	Responds that Clatskanie PUD did not receive compensation until the city decided to charge them a higher franchise fee. The relationship changed and now Clatskanie PUD does charge the city for streetlights.
268	Rep. Hill	Asks if PUDs pay for the 40-inch clearance space when they are not using PUD poles.
271	Cowan	Responds the formula is the same for everyone whether they are a PUD, a telephone, or whatever. This bill would allow the formula to be shifted for the cable companies but not for anyone else.
276	Rep. Hill	Asks who pays for the 40 inches if it is not in the formula.

286	Cowan	Responds that with the 40 inches not being in the formula, it is a shared cost and everyone is paying for it.
293	Chair Witt	Comments that Ms. Cowan testified that some of their customers may not be cable customers and if the cost of the cable connections declines the costs would have to be passed on to the electricity customers. Adds that the question is what is the fair and appropriate charge based upon the appropriate formula to charge a cable company. Asks why Ms. Cowan comments about their customers not being cable customers should be taken into account.
304	Cowan	Responds they feel the PUDs are charging the cable companies what it costs the PUDs. The PUDs believe if the formula is altered, the PUDs will be paying a greater share of the cost of the pole.
311	Rep. King	Asks if the 10 percent of unreported incidences were cable attachments.
314	Cowan	Responds the bulk were cable.
316	Sullivan	Comments that the unauthorized attachments issue is a part of a separate bill. The life of a pole without attachments is 40 years.
322	Rep. King	Asks if the PUDs intend to enter the cable business in the foreseeable future.
324	Cowan	Responds she is not aware they are.
327	Rep. King	Asks if the PUD costs would increase if there were no cable attachment rental income.
332	Cowan	Responds their costs would decrease because the integrity of their poles would not be decreased.
336	Rep. Hill	Asks what the life span is of a utility pole as a result of attachments.
344	Sullivan	Responds the life span of a pole without attachments is approximately 40 years and he does not have numbers on a reduced life span. Adds that communication media have picked up significantly in the last 10 years and does not believe data is available.
363	Rep. Hill	Comments since there are more attachments, he would assume PGE has changed their methodology on pole management and replacement.
369	Sullivan	Explains it is not his area of responsibility but recognizes PGE is changing out an increasingly number of poles. Adds that they are changing out numerous poles that are younger than 10 years. Adds that they used to leave the abandoned poles for the neighbors to use but PGE is currently in negotiation with a lumber

		mill because they are pulling more poles than they can leave laying by the streets.
380	Rep. Simmons	Asks if the poles are pre-drilled for the attachments before they are treated.
382	Sullivan	Explains that the poles are pre-drilled for telecommunications and power attachments before treatment.
388	Rep. Rasmussen	Asks how many wires are attached to a pole.
397	Sullivan	Responds that PGE has 231,000 poles and average in excess of two attachments per pole, predominantly local exchange phone attachments.
404	Rep. Rasmussen	Asks where the phone lines are attached on the pole.
404	Sullivan	Responds that the lowest communication attachment is the typical spot for phone conductors.
408	Chair Witt	Asks if the phone conductors are below the 40-inch safety area.
409	Sullivan	Responds that all communications are required to be below the 40-inch clearance. The local exchange conductor would be the lowest point, typically 18 or 19 feet. Adds that the uppermost point would be 23 feet.
421	Terry Flores	Intergovernmental Affairs, PacifiCorp. Comments a number of people have covered what she had planned to cover. PacifiCorp concurs that the cable industry already has very good deal. They pay about \$6 per pole per year to attach to a PacifiCorp pole. PacifiCorp, as the owner, is liable for the poles and for maintaining them. They also agree with comments about PUC being the proper forum for cable companies to take their complaints, as opposed to the legislature. Suggests the reason the cable companies cannot win at the PUC goes to the merits of the arguments the cable companies would make as opposed to utilities lobbying against pole attachments. Also concurs that HB 2271 is simply a mechanism for the cable companies to reduce their costs for attaching to the PacifiCorp poles and thereby shifting costs to PacifiCorp and its customers. Believes the proposal would reduce the cable company rental rates by about 24 percent. It would translate into a financial impact to PacifiCorp of \$425,000 annually. Adds that the fees from the pole attachments go directly out to the people in their districts who are maintaining the poles.
<b><u>TAPE 6, B</u></b>		
037	Rep. Hill	Asks why the 40 inches is not included in the calculation of what is needed to maintain the pole.
047	Cory Cook	Pacific Power. Responds that the 40-inch clearance space is required, not just for the safety of the electric utility, but for the safety of the cable and

		telecommunication workers. The clearance space is referred to as non-usable because in the reference to pole attachments it cannot be used for electric lines, telecommunications, cable, or fiber optic attachments. Electrically certified workers can place streetlights in the 40-inch clearance space. Streetlights are placed in the 40-inch clearance on approximately 17 percent of PacifiCorp's pole.
057	Rep. Hill	Asks if it would be appropriate if something other than a street light is attached in the 40-inch clearance.
073	Cook	Responds that would be her understanding from their operations personnel.
075	Rep. Hill	Asks that Ms. Cook comment on the pictures taken in Klamath Falls.
080	Cook	Responds she cannot tell whether the attachment is in the 40 inches and whether or not there is a violation. Comments that if it were a data line and were in the 40 inches, it should be addressed at their operations level.
086	Rep. Hill	Asks if Pacific Power is doing static control over fiber optics and using the excess capacity on the fiber lines. Asks if they run those near the top of the pole or down in the data area where PP&L and PacifiCorp have a financial interest in data line.
094	Cory Cook	Explains how rates are calculated and how they use the space. They use 10.7 feet of usable space on the pole. They assume that 7.7 feet of the 10.7 feet is used by an electric utility. The remaining three feet is telecommunication space, one foot being used for cable and two feet for telephone.
105	Cook	Explains it is her understanding that when PacifiCorp uses telecommunications on its own facilities that it is using within the three feet of telecommunication space.
108	Chair Witt	Asks if the 10.7 feet of usable space that PacifiCorp uses in determining the rate excludes the 40 inches.
109	Cook	Responds it does exclude the 40 inches.
111	Rep. Hill	Comments Ms. Cook explained that the 40-inch space was for the safety of their workers and the safety of the telephone or cable workers. Comments he would assume there is a shared interest in the 40 inches. Asks if that would mean that PacifiCorp and PP&L would be willing to split the difference.
118	Flores	Comments she does not think price gouging is going on or anything is amiss and if something is amiss, an avenue is available for it to be addressed fairly. Adds she sees no reason for her company to have to compromise.
136	Chair Witt	Asks if they set the \$6 rate by contract.

137	Flores	Responds that Ms. Cook can respond to the question because she has put contracts together.
139	Cook	Responds it is by contract and they use the OPUC rate calculations. Adds that in 1996 PacifiCorp invited Mike Dewey and all cable companies to attend utility meetings with PacifiCorp to discuss the new contracts being proposed by PacifiCorp. Adds there was no opposition to the rate calculations.
149	Cook	Explains that part of the problem PacifiCorp has with the idea of sharing the 40 inches is that PacifiCorp's rates are already down \$6.02 per year per pole for cable companies. Mr. Dewey was referencing rates back to 1984 of \$3.00 to \$4.00 per pole. If PacifiCorp has to incur the cost of the 40 inches, PacifiCorp's rate goes down to \$4.58 per pole per year, taking them back 15 years in rate calculations. Would imagine that PacifiCorp is not so inclined to further subsidize the cost to the cable industry.
157	Chair Witt	Asks if PacifiCorp believes they are currently subsidizing the cable industry.
159	Cook	Responds they are to a certain exempt.
173	Jerry Murray	Program Manager, Utility Safety and Reliability, OPUC. Submits and reads a prepared statement ( <b>EXHIBIT E</b> ).
216	Rep. Hill	Asks why the OPUC does not use the FTC formula.
220	Murray	Responds the hearings were held in 1983. It was felt the safety clearance space should be shared by all the attachment entities in proportion to the space they used on the pole.
228	Rep. Hill	Asks if the FCC rules were in place in 1983.
230	Murray	Responds the FCC formula was in place. Adds there are several areas where the OPUC did take exception to the FCC calculation.
235	Rep. Hill	Asks if the OPUC can provide a record of the rationale for the OPUC taking an exception to the FCC formula.
240	Murray	Responds he will attempt to provide the information.
241	Rep. King	Asks how many states use the FCC rate.
244	Murray	Responds he is not that familiar with the FCC rules and what other states are doing. Adds there have only been two contested cases and the OPUC has not had an opportunity to review the statute.

267	Chair Witt	Comments it would be helpful for the committee to have information on the FTC rules and information on whether other states have adopted alternative rules and if so, what are the rules.
273	Dewey	Comments he can provide the committee the information on the states that have asserted jurisdiction and the states that have followed the FCC formula. Adds that some states have adopted a totally different formula than has been talked about today.
281	Dewey	Explains that the carrying charge reflects the operational cost of the pole, including a return on their investment in the pole.
295	Dewey	Explains how the cable companies work with the association office when there are changes in the rates. Adds that if the utility has followed the rule, there is no reason for the cable company to go to the OPUC. Adds that if the utilities do not follow the rule, the cable companies would go to the PUC.
305	Rep. King	Asks if Mr. Dewey agrees with the testimony that 10 to 13 percent of the attachments are unauthorized.
326	Dewey	Responds it will vary from place to place. A Salem company paid PGE about \$125,000 in penalties. The cable company found a number of errors in the audit. Adds that it is an issue and that is why they have been meeting with various utilities to try and resolve it.
347	Chair Witt	Announces that the hearing will continue on Monday at 3:00 p.m. and will also have a hearing on HB 2582.
356	Rep. Simmons	Comments he does not know what the original drafter of the statute had in mind. Suggests that the word "data" or "information" may be more appropriate than "intelligence" in line 19 on page 1 of HB 2271.
372	Rep. Hill	Declares a potential conflict of interest. Explains that he works for a wholly owned subsidiary of a telecommunications company.
380	Chair Witt	Closes public hearing on HB 2271 and adjourns meeting at 4:55 p.m.

Submitted By, Reviewed By,

Annetta Mullins, Jason Cody,

Administrative Support Administrator

## **EXHIBIT SUMMARY**

**A ñ HB 2271, prepared statement, Mike Dewey, 5 pp**

**B ñ HB 2271, Michigan case, Mike Dewey, 3 pp**

**C ñ HB 2271, pole attachment photos, Mike Dewey, 16 pp**

**D ñ HB 2271, prepared statement, Diane Cowan, 1 p**

**E ñ HB 2271, prepared statement, Jerry Murray, 2 pp**