

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE ON REGULATIONS

February 22, 1999 Hearing Room 350

3:00 p.m. Tapes 7- 9

MEMBERS PRESENT: Rep. Bill Witt, Chair

Rep. Al King

Rep. Anitra Rasmussen

Rep. Mark Simmons

Rep. Jim Hill

MEMBER EXCUSED:

STAFF PRESENT: Jason Cody, Administrator

Samantha Demchak, Administrative Support

MEASURE/ISSUES HEARD: HB 2271- Public Hearing

HB 2582- 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
TAPE 7, A		
007	Chair Witt	Opens hearing on HB 2271 at 3:12 p.m.
<u>HB 2271 PUBLIC HEARING</u>		

022	Mike Dewey	Oregon Cable Telecommunications Association (OTCA). Notes the number of states that use the FCC formula is 32. Adds nine states have certified they will regulate pole attachments. Notes Washington is considering adopting the FCC formula. States concerns about unauthorized pole attachments should go to the Public Utilities Commission (PUC). (EXHIBIT A) .
060	Dewey	States the utilities do recoup their costs. Adds this is the fairest way to calculate fair and reasonable rates. States the cable industry has no other option but to connect to these particular poles. Adds that streetlights are in the 40-inch clearance space.
104	Rep. Simmons	Asks what he is suppose to get out of the pictures provided.
109	Dewey	Answers Mr. Owen will discuss the photographs with the committee.
112	Rep. Simmons	Asks if the object in one of the photos is the base of a streetlight.
115	Mike Owen	North Willamette Telecom (NWT). Answers yes. States that on the back of each photo is a measurement that gives clearances to all the facilities on the pole. (EXHIBIT B) .
120	Rep. Simmons	Asks where streetlights could be hung if they are not on the poles.
127	Chair Witt	Asks if the 41 out of 50 states that are using the formula include the 40 inch safety zone.
132	Dewey	Answers yes. Continues that streetlight may be a revenue producing strength.
141	Chair Witt	Asks if that includes when a utility has charged for a streetlight.
144	Dewey	Answers utilities go through a pricing structure with the PUC.
152	Owen	<p>Cites facilities which are being placed in the "unusable space"</p> <ul style="list-style-type: none"> • Streetlights • Streetlight service cables • Traffic service signal cables • Trolley conductors • Communication cables • Power company transformers • Power company neutral conductors • Power company primary riser cables
170	Owen	States power company streetlight can be attached with an insulated service to NWT facilities.

196	Rep. Rasmussen	Asks for a definition of drip loop.
204	Owens	Answers a drip loop is a loop that is placed at the bottom of a streetlight to keep moisture from going up into the light.
213	Chair Witt	Asks if Mr. Dewey has had a chance to look at amendments proposed by the PUC.
222	Dewey	Answers yes, the OTCA would support amendments that have parties taking care of costs within the framework of the PUC.
228	Diane Cowen	Oregon Peoples Utility District Association (OPUDA). States that OPUDA does charge the cities for streetlights in a bundled rate.
249	Simmons	Asks if streetlights are in the 40 inch area.
259	Cowen	Answers yes, in some instances.
262	Chair Witt	Asks if she had a chance to review the amendments proposed by the PUC.
269	Cowen	Answers OPUDA is not effected by the amendment.
282	Tom O'Conner	Director Oregon Municipal Electric Utilities,(OMEU) represents ten medium-sized municipal utilities in Oregon. States municipal utilities fibers were hung for OMEU use, in communication space. Adds OMEU has no objection to being in the dispute resolution for the PUC. Continues the statute in place now sets out a policy to direct the PUC to "regulate in the public interest the rates terms and conditions of attachments". (EXHIBIT C)
329	O'Conner	Adds the Legislature set the policy and the rates should be just fair and reasonable. Continues the FCC formula is going to change in 2001 as a result of the Federal Telecommunications Act. The PUC has one guide line for cable companies using one way cables and another rate for telecommunications companies using two way cables.
350	Rep. Hill	Asks if running data communications cable in the 40 inch clearance then makes the unusable space, usable.
Tape 8, A		
011	O'Conner	Responds, he is unsure of the answer.
024	Rep. Hill	Asks what the definition of usable space is.

031	O'Conner	States he does not know the definition of the usable space issue.
035	John Sullivan	Portland General Electric, (PGE) answers it has to do with the qualification of the worker doing the instillation not the equipment being installed.
042	Rep. Hill	Asks if the 40 inches is clear space .
050	Sullivan	Answers the pole is designed for hard wire construction. Adds PGE is not talking about pole-to-pole attachments. States with the 40 inches, PGE is protecting workers from voltages.
063	Rep. Hill	Asks if a cable company hires a utility company to install its services and the cables are run in the 40 inch space, is that then an acceptable attachment.
074	Sullivan	Answers yes. Adds PGE is contracted right now to do telecommunication installation.
080	Jerry Murray	Manager, Utilities Safety Section, (USS).States that 40 inches is used in rate regulations as unusable space. Adds if a utilities puts a fiber in that space it then becomes an electric supply conductor and the 40 inches drops. Notes there is equipment that can go in, but it is highly restrictive.
099	Rep. Hill	Clarifies that the ability to use that space as a revenue generating opportunity is limited by who can work within that space.
103	Murray	Notes that 40 inches should be clear when inspections are done. Concedes that there are times when you can drop to 30 inches, but then requirements are very specific
111	Chair Witt	Asks if any member municipal utilities charge for attachments within the 40 inches.
122	O'Conner	Answers he does not have that specific information.
132	Chair Witt	Closes hearing on HB 2271. Opens hearing on HB 2582
<u>HB 2582 PUBLIC HEARING</u>		
143	Sandy Flicker	<p>Oregon Rural Electric Cooperative Association (RECA). RECA does support HB 2582. States RECA does believe there is a bigger issue to pole attachments. Adds there are two consequence to pole bootlegging.</p> <ul style="list-style-type: none"> • unauthorized attachments are theft of pole space, and create an unfair burden to electric utilities customers

		<ul style="list-style-type: none"> • unauthorized attachments create a safety hazard for anyone working on or near poles. <p>Continues some electric cooperative have experienced 28% bootlegging of poles.</p>
183	Flicker	States policies were sent out to everyone in the industry using poles and each company was asked to comply with the policy. States there is a provision in HB 2582 to have a \$500.00 fine for unreported attachments. Stresses this would have a significant financial impact on these companies.
212	Flicker	States a significant fine will help with bootlegging. States pole owners and renters must work together. Adds there are rules in the PUC to be followed. States issues are safety and reliability and equitable cost for customers. Notes RECA came up with some joint use policies that have been overlooked.
262	Rep. King	Asks about a proposed effective date that would allow a grace period .
267	Flicker	Indicates RECA would consider a grace period to diminish the figure of bootlegging.
282	Chair Witt	Asks if RECA is aware of situations where cable companies get requests to provide service, yet it is impossible to provide service because the cable company can not get approval for an attachment.
288	Roger Coleman	Salem Electric, Engineering Operations Manager, (SE). Answers he is not aware of any problems in approval for pole attachments.
298	Rep. Hill	Asks what the penalties are for bootlegging pole space.
303	Flicker	Answers the penalty is 5 times the rental rate, you can go back 5 or 6 years for the attachment rate.
321	Rep. Hill	Asks what is done to make sure the pole is safe for an attachment.
328	Coleman	Answers when SE receives a notice of intent to attach, an engineer goes out and does an inspection of the pole.
342	Rep. Hill	Asks if there is a specific period of time in which inspections are done.
347	Flicker	States this is addressed in the contracts.
355	Chair Witt	Asks what percentage of the time that there is an unauthorized attachment, is the cable company in the process of getting approval for the attachment.

361	Flicker	Answers unauthorized attachments are found by audits of the system.
386	Chair Witt	Asks about how it is determined when the attachment was made.
392	Flicker	Answers it is impossible to get an exact date. Continues that an audit of the system would allow you to figure with some certainty.
Tape 7,B		
009	Chair Witt	Asks if the \$500.00 fine is justifiable.
013	Flicker	Answers it is a fair penalty. States it will make a safer environment for line workers.
020	Rep. Hill	Asks if this is referring to garage sale signs.
025	Flicker	States pole attachments are unsafe in any manner, but this is to address unsafe pole attachments from utility companies.
037	Diane Cowen	Oregon People's Utility District Association(OPUDA), State OPUDA's main concern with pole attachments is safety and reliability. Adds poles can be pulled out of plumb from additional weigh. States OPUDA supports HB 2582. (EXHIBIT D).
066	Chair Witt	Asks if OPUDA supports the \$500.00 fine for unauthorized attachments.
081	Cowen	Answers OPUDA do favor the fine. Adds OPUDA would choose the task force over the fine, if there was a choice.
084	Ann Morrow	Emerald Public Utilities District (EPUD). EPUD supports HB 2582. States personnel are not always trained properly. Adds there are too many people working on the poles. Continues EPUD responds to 23,000 poles in the area. States poles are not always predrilled which causes weakening when attachments are added. (EXHIBIT E).
111	Jerry Murray	Public Utilities Commission (PUC), Manager. States PUC supports HB 2582. Adds more lines are going on poles rather than underground. States PUC needs better standards in the area. Notes the PUC would support the task force. Continues the utilities lose revenue from bootlegging. (EXHIBIT F).
160	Murray	Continues there are maintenance issues and there are abandoned poles in the area that the PUC must deal with.
191	Chair Witt	Asks about the amendments recommended in HB 2271, if they apply to HB

		2582.
201	Murray	Answers yes.
205	Rep. Hill	Asks about utilities locator services for poles to help users.
210	Murray	Answers that a task force was formed and created a system called "NINGINS", a joint utilities notification system, it is now being used in 10 states. Adds communicating over the internet speeds up service.
247	Gary Bauer	Oregon Telecommunication Systems Association (OTSA). OTSA is opposed to HB 2582. Notes two sections in particular, Section 2 because it requires a written contract before someone can connect to a pole. States OTSA feels this conflicts with what companies have to do to comply with PUC rules. Adds Section 4 provides a \$500.00 fine which OTSA feels puts companies in a negative financial situation.
281	Rep. King	Asks if there are companies that refuse to provide a written contract.
286	Bauer	Answers no, under this legislation you would not be allowed to attach to a pole with out written consent first. States companies that did not comply would be subject to the unfair fine of \$500.00.
300	Chair Witt	Asks if the 5 days is a PUC requirement
304	Bauer	Answers yes.
307	Chair Witt	Asks if it a frequent occurrence to not be able to get written approval within 5 days.
314	Bauer	Answers it does happen from time to time.
323	Terry Flores	PacificCorp. States there is a need for better communication between pole owners and pole users. Adds PacificCorp supports HB 2582. (EXHIBIT G) .
360	Corey Cook	<p>PacificCorp. States when PacificCorp standardized all agreements with companies in Oregon that attached to its poles. Explains PacificCorp met with Oregon Telecommunication Corporation and Cable TV Association and came up with a plan that states</p> <ul style="list-style-type: none"> • companies wishing to attach to PacificCorp poles had to make written requests within 24 hours of actually attaching to the pole • PacificCorp would perform an audit of all their poles and would charge \$60.00 per bootleg after the audit was performed

388	Cook	States PacificCorp is in full support of a task force.
400	Chair Witt	Asks if the policy of PacificCorp to allow 24 hours to request an attachment is workable.
423	Cook	Answers the concept is workable.
436	Rep. King	Asks if the payment of the \$500.00 fine constitutes authorization to attach to a pole.
465	Cook	Answers yes.
024	Chair Witt	Asks if policy is consistent with public safety.
Tape 8,B		
058	Cook	Answers yes, but it needs to be strongly enforced.
074	Brian Boe	Portland General Electric, (PGE). States thirty three percent of pole inventory is in noncompliance with the current law. Adds a task force is the appropriate place to address these issues. PGE supports the rise in the fines. Adds PGE would like HB 2582 passed in one form or another.
107	Chair Witt	Asks if PGE would be willing to adopt a standard similar to PacificCorp.
118	John Sullivan	Answers PGE has an expedited process and so far, it has not been utilized.
129	Chair Witt	Asks if there is a charge for the expedited process.
137	John Sullivan	Answers yes , the charge is \$60.00 less than a bootleg attachment fine.
153	Diane Royce	International Brotherhood of Electrical Workers, (IBEW) Presents written testimony in favor of HB 2582. (EXHIBIT H).
194	Mike Dewey	Oregon Cable Telecommunications Association (OTCA). States the association opposes HB 2582 as written. Adds OTCA is not opposed to a task force. Indicates the FCC requires OTCA must serve customers within 7 days. Adds OTCA has been trying to work out a process for service poles. (EXHIBIT I).
236	Dewey	Continues there is a difference between the time one can get service and the time of written authorization. Adds the administrative rule states that the penalty will be 5 times back rent and bootleg fee. Continues OTCA thinks this amount is too high. States OTCA does audits of service poles.

270	Dewey	Expresses OTCA concern with competing utilities. Continues that in Portland "INGINS" the OTCA telecommunication system, is on-line where you can file for pole attachments.
301	Dewey	Indicates \$500.00 is too steep a penalty.
331	Rep. Hill	Asks about the future commitment to inappropriate pole attachments.
343	Dewey	Answers, fines are significant and that should keep unauthorized attachments down.
357	Chair Witt	Asks how the \$135,000 fine TCI paid, was calculated.
372	Dave Mingis	TCI Cable, Technical Manager. Answers TCI received notes from PGE, that \$110,000.00 was due from unauthorized attachments. TCI questioned that amount and did an audit of their own. States TCI found a 20% error rate in PGE's audit. Continues PGE reaudited TCI's system and found more problems. TCI paid the \$135,000.00 and submitted permits on all the problems PGE found.
Tape 9, A		
007	Rep. King	Asks if the fine is per pole.
012	Dewey	Answers the fine is 5 times the rate in effect today. Adds there is also a bootleg charge.
017	Rep. King	Asks if paying penalties would constitute a permit.
021	Mingis	Answers TCI had to get permits after the fees were paid
028	Dewey	Adds there are fewer than 300 telecommunications companies that are making unauthorized attachments.
037	Chair Witt	Closes hearing at 5:05 p.m.

Submitted By, Reviewed By,

Samantha Demchak, Jason Cody,

EXHIBIT SUMMARY

- A - HB 2271, Written testimony, Mike Dewey, 12 pp.**
- B - HB 2271, Written testimony, Mike Owen, 6pp.**
- C - HB 2271, Written testimony, Tom O'Conner, 7 pp.**
- D - HB 2582, Written testimony, Diane Cowen, 5 pp.**
- E - HB 2582, Written testimony, Ann Morrow, 1p.**
- F - HB 2582, Written testimony, Jerry Murray, 1p.**
- G - HB 2582, Written testimony, Terry Flores, 2 pp.**
- H - HB 2582, Written testimony, Diane Royce, 3 pp.**
- I - HB 2582, Written testimony, Mike Dewey, 5pp.**