

ARKANSAS PUBLIC SERVICE COMMISSION



POLE ATTACHMENT RULES

July 30, 2008

POLE ATTACHMENT RULES

ADMINISTRATIVE HISTORY

<u>Docket</u>	<u>Date</u>	<u>Order No.</u>	<u>Subject Matter of Docket / Order</u>
08-073-R	07-30-08	5	Adopts rules relating to the rates, terms, and conditions upon which a Public Utility pole owner shall provide access for a Pole Attachment to comply with Ark. Code Ann. §23-4-1001 through §23-4-1006 (Act 740 of 2007).

TABLE OF CONTENTS

DEFINITIONS.....	D-1
SECTION 1. GENERAL PROVISIONS.....	1-1
Rule 1.01. Authority	1-1
Rule 1.02. Applicability	1-1
Rule 1.03. Purpose and Scope.....	1-1
Rule 1.04. Negotiated Agreements	1-1
SECTION 2. COMPLAINT PROCEDURES.....	2-1
Rule 2.01. Time for Resolution	2-1
Rule 2.02. Informal Resolution.....	2-1
Rule 2.03. Filing Requirements	2-1
Rule 2.04. Response and Reply	2-3

DEFINITIONS

Attaching Entity

An electric service provider, telecommunications provider, cable television service provider, Internet access service provider, or other information services provider to the extent that its anticipated and actual Pole Attachments are regulated by these Rules. The term "Attaching Entity" does not include a Public Utility pole owner to the extent that it makes Pole Attachments to its own poles, Ducts or Conduits.

Conduit

A structure containing one or more Ducts, usually placed in the ground, in which cables or wires may be installed.

Duct

A single enclosed raceway for conductors, cable and/or wire.

Pole Attachment

As defined in Ark. Code Ann. § 23-4-1001(1).

Public Utility

As defined in Ark. Code Ann. § 23-4-1001(2).

SECTION 1. GENERAL PROVISIONS

Rule 1.01. Authority

These Rules are promulgated pursuant to, and in accordance with, the provisions of Act 740 of 2007 as codified in Ark. Code Ann. §23-4-1001 through §23-4-1006.

Rule 1.02. Applicability

These Rules apply to Public Utilities and Attaching Entities as defined in these Rules.

Rule 1.03. Purpose and Scope

These Rules govern the Commission's regulation of the rates, terms and conditions upon which a Public Utility shall provide nondiscriminatory access for a Pole Attachment in the absence of a voluntarily negotiated agreement. These Rules also govern the procedures necessary and appropriate to hear and resolve complaints arising from the failure or refusal to provide access, the inability of a Public Utility and an entity seeking access for a Pole Attachment to reach a voluntary negotiated written agreement, and disputes over implementation of an existing contract.

Rule 1.04. Negotiated Agreements

Nothing in these Rules prevents or limits the ability of a Public Utility, an electric utility, a telecommunications provider, a cable television service, or an internet access service to enter a voluntarily negotiated written agreement regarding the rates, terms, and conditions upon which access for a Pole Attachment is provided. Voluntary negotiated agreements are preferred and encouraged by the Commission. Nothing in these rules should be interpreted to supersede or modify any rate, term, or condition of a voluntarily negotiated written agreement.

SECTION 2. COMPLAINT PROCEDURES

Rule 2.01. Time for Resolution

The Commission shall resolve any complaint or dispute filed in accordance with these Rules within 180 days after the complaint is filed except that the Commission, for good cause shown, may extend the time for resolution up to 360 days.

Rule 2.02. Informal Resolution

- A. Every complainant shall, before filing a complaint, make a good faith effort to informally resolve with the respondent the situation complained of.
- B. The complainant and respondent shall, within 30 calendar days of a request by the other for data relevant to the situation, provide the data that is publicly available.
- C. An entity shall not be required to submit data that is not publicly available until the other entity agrees in writing that it will use that information only for purposes of resolving the dispute or complaint at issue and will not disclose that information except as may be required by the Commission.

Rule 2.03. Filing Requirements

The complaint shall be filed in compliance with the Commission's Rules of Practice and Procedure.

- A. The complaint shall be accompanied by supporting written testimony and exhibits.
- B. Workpapers and documentation shall be provided to all parties at the time of the filing of the complaint that are sufficient to support all information required by this Section.
- C. The complaint shall be accompanied by a copy of the Pole Attachment agreement, if any, between the Attaching Entity and the Public Utility pole owner.
- D. The Public Utility pole owner or Attaching Entity shall state with specificity in its complaint the section(s) of these Rules or Ark. Code Ann. §23-4-1001 *et seq.* that is claimed to be violated, or, if a written Pole Attachment agreement already exists, the rate, term, or condition of that agreement that is claimed to have been violated, and shall specify all information and argument relied upon to justify said claim.
- E. The complaint shall include the data and information necessary to support the claim, including where applicable, the data and information necessary to calculate the rate.

- F. No complaint filed by an Attaching Entity shall be dismissed for failure to provide the information and data required in Rule 2.03.E., if the Public Utility pole owner has failed to provide such information and data after such reasonable request.
- G. In a case where an Attaching Entity claims that it has been denied access to a pole, Duct, or Conduit despite a written request for such access, the complaint shall include the data and information necessary to support the claim, including:
- (1) The reasons given for the denial of access to the Public Utility pole owner's poles, Ducts or Conduits;
 - (2) The basis for the complainant's claim that the denial of access is improper;
 - (3) The remedy sought by the complainant;
 - (4) A copy of the written request to the Public Utility pole owner for access to its poles, Ducts or Conduits; and
 - (5) A copy of the Public Utility pole owner's response to the written request including all information given by the Public Utility pole owner to support its denial of access. A complaint alleging improper denial of access will not be dismissed if the complainant is unable to obtain a Public Utility pole owner's written response, or if the Public Utility pole owner denies the complainant any other information reasonably needed to establish a prima facie case.
- H. The source of information required under this Section shall be identified. The complainant shall also specify any other information and argument relied upon to attempt to establish that a rate, term, or condition is not just and reasonable.
- I. The complaint shall include a brief summary of all steps taken to resolve the problem prior to filing.
- J. If any of the information required to be filed or provided under this Rule is data from the respondent which was provided under Rule 2.02.C.:
- (1) The complainant shall not file or provide the data with the complaint but the complaint shall generally describe the data.
 - (2) The complainant shall include a notice to the respondent that the complainant intends to use the data in the complaint proceeding.
 - (3) If the respondent desires to protect the data from public disclosure, the respondent shall have twenty (20) days from the date of service of the complaint to file a motion for protective order pursuant to the Commission's Rules of Practice and Procedure.

- (4) If the respondent has not filed a motion for protective order within twenty (20) days from the date of service of the complaint, the complainant shall file the data as a supplement to its complaint.

Rule 2.04. Response and Reply

- A. Respondent shall have 45 days from the date the complaint filed within which to file a response.
- B. The response shall address the complainant's allegations. Factual allegations shall be supported by written testimony of a person or persons with actual knowledge of the facts and exhibits shall be verified by the person who prepares them.
- C. Complainant shall have 20 days from the date the response filed within which to file a reply.
- D. The complainant's reply shall address the respondent's response. Factual allegations shall be supported by written testimony of a person or persons with actual knowledge of the facts and exhibits shall be verified by the person who prepares them.