

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 26th day of August 2025.

CASE NO. 24-0703-T-E-CTV-GI

A proceeding on the Commission's own motion to initiate a general investigation for the purpose of establishing a task force to make recommendations by General Order and/or modification of the Commission's Rules for the Government of Pole Attachments, 150 C.S.R. 38.

**COMMISSION ORDER**

The Commission clarifies its Rules for the Government of Pole Attachments 150 C.S.R. 38, (Pole Attachment Rules), regarding cost-sharing for pole replacements, and further clarifies its interpretation of "necessitated solely" for purposes of cost allocation for pole replacements under the Pole Attachment Rules.

**BACKGROUND**

On August 23, 2024, the Commission opened a proceeding on its own motion to initiate a general investigation to establish the Pole Attachment Rules Task Force (Task Force) to consider and recommend: (1) incorporating, by General Order and/or rule, modification to the Commission's Pole Attachment Rules, new processes for the resolution of pole attachment disputes that delay deployment of broadband projects by implementing a pre-complaint dispute resolution mechanism similar to the newly adopted Federal Communication Commission (FCC) Rapid Broadband Assessment Team (RBAT) and how such a process may be implemented by the Commission; (2) requiring utilities and pole owners to share pole inspection information with potential attachers; and (3) requiring utilities and pole owners to provide periodic reporting to the Commission on compliance with the Pole Attachment Rules and processing applications by potential attachers.<sup>1</sup>

On January 31, 2025, the Task Force filed its Final Report. In the Final Report, the Task Force made four recommendations: (1) the adoption of an accelerated informal dispute resolution process referred to as the "Rapid

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<sup>1</sup> A more complete procedural history of this matter can be found on the Commission's web docket.

Response Team (RRT)” process; (2) the adoption of the FCC regulation regarding the sharing of pole inspection reports set forth in 47 C.F.R. § 1.1411(c)(4); (3) the adoption of an annual reporting requirement for pole owners to demonstrate compliance with the Commission’s Pole Attachment Rules; and, (4) the adoption of a joint list of approved third-party contractors and engineers provided by pole owners.<sup>2</sup>

On February 25, 2025, the Commission entered General Order No. 261.2 (GO 261.2) that adopted and implemented certain recommendations of the Task Force. Specifically, the Commission adopted and implemented the recommendation that the Commission create the accelerated informal dispute resolution process referred to as the Rapid Response Team (RRT); implemented the current FCC regulations regarding the sharing of pole inspection reports; and adopted the joint list of approved contractors provided by the primary pole owners, and required the pole owners to update the list quarterly.

In addition to the above, the Commission required further proceedings in this case on the issues of:

- (1) Collection of Uniform Pole Inspection Data;
- (2) Creation of a pole information database, including logistics of collecting the data, privacy concerns, any funding that may be available to facilitate the collection of data, creation of the database, access to the database, and maintenance of the database;
- (3) The annual report requirement for pole owners including what data is included, collection of the data, and any cost/cost recovery proposals’; and,
- (4) The Pole Attachment Working Group, as referenced in the Task Force Final Report.

With respect to the continued proceedings, the Commission requested additional comments regarding the proposed Pole Attachment Working Group.<sup>3</sup>

On June 27, 2025, the Commission entered an order that, *inter alia*, created the Pole Attachment Working Group (Working Group); established an annual reporting requirement for pole owners; established requirements for the creation and management of a pole inspection database; and authorized the use of dielectric cable for the deployment of broadband consistent with the most recent NESC requirements.

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<sup>2</sup> See *generally*, Task Force Final Report.

<sup>3</sup> GO 261.2 at 16-17.

That Order also required the Working Group to meet and provide a draft(s) amendment to Pole Attachment Rule 10.9.3 to allow for temporary attachments that comply with the NESC when an attacher has agreed to and paid for a pole replacement as part of an attachment application pending the pole replacement; and, replacement of a pole when necessary with pole owner-approved contractors and materials by the third-party attacher. The Commission required the Working Group to file a set of proposed rules within sixty (60) days of the date of that Order.<sup>4</sup>

On July 14, 2025, Staff filed a Petition for Reopening (Petition) the above-referenced consolidated cases (referred to as the Consolidated Pole Attachment Proceedings in the Petition) for purposes of examining the issue of pre-existing violations, and specifically, how the primary pole owners address the existence of pre-existing conditions in the context of processing new pole attachment license applications.

The Petition raises issues presented in a Formal Pole Attachment Complaint filed by Comcast Cable Communications, LLC (Comcast) against Appalachian Power Company (APCo)<sup>5</sup> (Comcast complaint case). In the Comcast Complaint Case, Comcast asserted that APCo imposed unlawful and unreasonable terms and conditions for the processing of pole attachments in West Virginia. The Petition asserted that, among other claims, Comcast alleged that APCo imposed a policy that unlawfully required it to pay for the remediation of third-party pre-existing violations on poles to which Comcast sought to attach.<sup>6</sup> The Petition requested “that the Commission reopen the Consolidated Pole Attachment Proceedings for purposes of further examining the issue of pre-existing conditions and how such are handled by the primary pole owners in West Virginia.”<sup>7</sup>

On July 17, 2025, APCo and Wheeling Power Company (WPCo) (collectively the Companies), filed a Response in Support of Staff Petition for Reopening (Company Response). The Companies supported the reopening of the this proceeding “for the purposes of the Commission examining, through a rulemaking, the impact of preexisting violations on the pole attachment process.”<sup>8</sup> The Companies agreed “that these issues have global implications and are best resolved in a rulemaking proceeding educated by witness testimony, data, and briefing.”<sup>9</sup> In addition, the Companies stated that the Petition specifically

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<sup>4</sup> Per General Order 261.3, entered concurrently with this Order, the Working Group will no longer consider the proposed rule presented by DQE Communications, LLC, in Case No. 25-0305-T-P in its post-hearing brief.

<sup>5</sup> See Comcast v. APCo, Case No. 25-0463-CTV-E-POLE (Comcast Complaint Case).

<sup>6</sup> See, e.g., Petition at ¶ 2.

<sup>7</sup> Petition at Bates 9, Wherefore Clause.

<sup>8</sup> Company Response at ¶ 2.

<sup>9</sup> Id.

referenced the policy at issue in the Comcast Complaint Case, and that reopening this proceeding would both “clarify the legality of this Policy and address issues that are far broader than the dispute between APCo and Comcast.”<sup>10</sup>

## DISCUSSION

The Commission has reviewed the Petition and the Companies’ Response. Based upon the fact that there is confusion regarding which parties must pay for pole replacement costs in the context of a pole attachment application, we clarify our Pole Attachment Rules related to the same.

The Commission is charged with regulatory jurisdiction over pole attachments in W.Va. Code § 31G-4-1, et seq.<sup>11</sup> Further, the Commission “shall administer and adjudicate disputes relating to the issues and procedures provided for under [W.Va. Code § 31G-4-1, et seq.],” titled “Make-Ready Pole Access.”<sup>12</sup> The Commission is responsible for setting rates and charges that are just, reasonable and not unduly discriminatory.<sup>13</sup> That responsibility includes rates and charges for pole attachments.<sup>14</sup>

Pursuant to the Code, “In so regulating such rates, terms, and conditions, the state has the authority to consider and does consider the interests of the subscribers of the services offered via such attachments, as well as the interests of the consumers of the services.”<sup>15</sup>

The Commission must be cognizant of changing circumstances, including reasons for pole replacements that are different and growing over the years. A factor recognized by the FCC and one that we must also consider in a rapidly evolving pole attachment universe. For example, in the 2021 Pole Replacement Declaratory Ruling, the FCC noted that utilities throughout the country have disparate and inconsistent practices with regard to cost responsibility for pole replacements.<sup>16</sup> Specifically, it appeared to the FCC that that some utilities may delay needed pole replacements until they receive a request for a new attachment, at which point they allocate the entire cost of the replacement to the new attacher.<sup>17</sup> To that end, the FCC issued its Declaratory Ruling “to clarify that it is unreasonable and inconsistent with section 224 of the Communications Act, the Commission's

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<sup>10</sup> Id. at ¶ 4.

<sup>11</sup> W. Va. Code § 31G-4-4(a).

<sup>12</sup> Id.

<sup>13</sup> W. Va. Code § 24-2-7(a). See also Pole Attachment Rule 5.2 (“The Commission shall determine whether the rate, term or condition complained of is just and reasonable”).

<sup>14</sup> See footnote 13.

<sup>15</sup> W. Va. Code § 31G-4-4(c)(2).

<sup>16</sup> In re Declaratory Ruling on Certain Section 224 Cost Allocations, 36 FCC Rcd 776, ¶ 3 at 777 (January 29, 2021) (hereinafter the 2021 Pole Replacement Declaratory Ruling.)

<sup>17</sup> 2021 Pole Replacement Declaratory Ruling, 36 FCC Rcd 776, ¶ 3 at 777.



rules, and past precedent, for utilities to impose the entire cost of a pole replacement on a requesting attacher when the attacher is not the sole cause of the pole replacement.”<sup>18</sup>

The basis for the aforementioned clarification by the FCC is the cost causation and cost sharing principles codified in 47 C.F.R. § 1.1408(b) of the FCC’s regulations.<sup>19</sup> The first two sentences of that section set out the “cost sharing” principle: “[t]he costs of modifying a facility shall be borne by all parties that obtain access to the facility as a result of the modification and by all parties that directly benefit from the modification ... [e]ach party described in the preceding sentence shall share proportionately in the cost of the modification.”<sup>20</sup> According to the FCC, the cost sharing language must be read together with the cost causation language: “[n]otwithstanding the foregoing, a party with a preexisting attachment to a pole, conduit, duct or right-of-way shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is necessitated solely as a result of an additional attachment or the modification of an existing attachment sought by another party.”<sup>21</sup> Read together, the FCC clarified “that parties benefitting from a modification share proportionately in the costs of that modification, unless such a modification is *necessitated solely* as a result of an additional or modified attachment of another party, in which case that party bears the costs of the modification.”<sup>22</sup>

The “necessitated solely” language and its interpretation have been the source of confusion and application that is, we believe, contrary to our rules. Historically, the FCC has drawn a distinction between “necessitated solely” pole replacements (e.g., a new attacher requests access and the pole must be replaced because the old one cannot safely accommodate that new attacher) versus “routine” or “unrelated” replacements (e.g., a pole that must be swapped due to age, storm damage, or the utility’s own upgrade program). Under the *old approach*, the requesting attacher paid for the incremental costs only when the pole replacement was “necessitated solely” by its request, but not for replacements that would have happened anyway.

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<sup>18</sup> Id. The Commission made a comparable ruling in Comcast Cable Communications Corporation, LLC. v. Appalachian Power Company, Case No. 25-0463-CTVE-E-POLE (Commission Order, July 28, 2025).

<sup>19</sup> 2021 Pole Replacement Declaratory Ruling, 36 FCC Rcd 776, ¶ 7 at 779.

<sup>20</sup> See 2021 Pole Replacement Declaratory Ruling, 36 FCC Rcd 776, ¶ 7 at 779; see also Pole Attachment Rule 7.2 (the Commission’s rule and the FCC rule are identical here).

<sup>21</sup> See 2021 Pole Replacement Declaratory Ruling, 36 FCC Rcd 776, ¶ 7 at 779; see also Pole Attachment Rule 7.2.

<sup>22</sup> 2021 Pole Replacement Declaratory Ruling, 36 FCC Rcd 776, ¶ 7 at 780 (emphasis added).

In the 2011 Pole Attachment Order<sup>23</sup> and especially in the 2018 Wireline Infrastructure Order,<sup>24</sup> the FCC acknowledged that pole replacements are becoming more common due to network modernization, safety standards, and broadband deployment. The FCC started to shift toward treating all parties benefiting from the new pole—including existing attachers and the pole owner and not just the new entrant—as beneficiaries. In the 2018 Wireline Infrastructure Order, the FCC said that costs of pole replacements should be allocated among beneficiaries, not imposed entirely on the new attacher.<sup>25</sup> We agree and we find it necessary to clarify that sharing in the cost of a new pole by all beneficiaries, including the utility and all attachers, is a necessary feature of establishing rates and charges that are just, reasonable and not unduly discriminatory.

The FCC's more recent reasoning which is in line with ours is that a new pole is a shared asset, and all parties (owner, existing attachers, and new attachers) enjoy the benefits which include:

- Improved safety and reliability,
- Longer useful life,
- More space for future attachments,
- Compliance with modern construction standards.

In its December 15, 2023 *Fourth Report and Order and Declaratory Ruling*,<sup>26</sup> the FCC broadened the concept of “red-tagged” poles. Originally, that term referred only to poles identified for replacement due to safety issues. The new definition includes poles scheduled for replacement “for any reason other than the pole’s lack of capacity to accommodate a new attachment.”<sup>27</sup> The FCC explicitly clarified that:

A utility may not evade application of our cost causation and cost replacement policies ... simply by failing to ‘red tag’ a pole that has safety violations or is otherwise out of compliance.<sup>28</sup>

This means that companies with poles already slated for replacement—regardless of why—should not automatically saddle new attachers with the entire cost. We agree and believe that the FCC view reinforces our intention to require that not

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<sup>23</sup> In re Implementation of Section 224 of the Act, 26 FCC Rcd 5240 (April 7, 2011) (2011 Pole Attachment Order).

<sup>24</sup> In re Accelerating Wireline Broadband Deployment by Removing Barriers, 33 FCC Rcd 7705 (August 3, 2018) (2018 Pole Attachment Order).

<sup>25</sup> 2018 Pole Attachment Order, 33 FCC Rcd 7705.

<sup>26</sup> In re FCC Seeks to Make Pole Attachment Process Faster, More Transparent, and More Cost-Effective, 38 FCC Rcd 12379 (December 15, 2023) (*Fourth Report and Order and Declaratory Ruling*).

<sup>27</sup> Fourth Report and Order and Declaratory Ruling, 38 FCC Rcd 12379, 12380.

<sup>28</sup> Id., 38 FCC Rcd at 12405.

only new entrants, but all who benefit by using the new pole, should bear appropriate cost responsibility.

The FCC also addressed ambiguity around the phrase “necessitated solely” from 47 C.F.R. § 1.1408(b). The updated ruling clarifies situations where a pole replacement is not deemed “necessitated solely” by a new attachment. These include:

- Replacements required by law;
- Poles failing engineering standards, like the National Electrical Safety Code (NESC);
- Changes in a utility’s internal construction standards;
- Replacements due to road expansion, storm-hardening, real estate development, or if the pole was already on a pre-scheduled replacement, and;
- The current pole is already on the utility’s internal replacement schedule, regardless of when the replacement is scheduled to take place.<sup>29</sup>

In these scenarios, the replacement is not solely triggered by a new attacher—and therefore, the cost should not fall entirely on that attacher.<sup>30</sup> Just as the FCC has recognized the chilling effects of saddling new attachers with pole replacement costs we too find that chilling effect and find it necessary to issue this order to establish our requirements for cost allocation for pole replacements.

We recognize that our rate setting requirements for pole attachments and specifically pole replacements, are guided by the FCC rules. However, we are also guided by the changing FCC interpretations of its rules considering its required just and reasonable standard, which is the same as ours. While in earlier years when this Commission was structuring rules based on the FCC rules, we acknowledged that the FCC felt that a new attacher generally bore the full cost of pole replacements that the new attacher triggered. The Commission, in establishing earlier rules, did not clarify that the utilities must consider changing circumstances and hardships, including a chilling effect on broadband expansion when developing just and reasonable rates and charges.

We believe that the FCC has evolved to understand that if a pole is due for replacement for any reason it is not “necessitated solely” by the new request. Thus, the attacher should only pay an appropriate portion of the cost of the replacement pole as should all other attachers, including the utility.

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<sup>29</sup> *Id.*, 38 FCC Rcd at 12406, ¶ 46. See also Pole Attachment Rule 7.2 (as stated previously, the Commission’s rule and the FCC rule are identical here).

<sup>30</sup> The FCC also noted that the above examples are not exhaustive. *Id.*, at 38 FCC Rcd at 12406-12407, ¶ 46. The Commission would note the same, and that the examples are provided as a means to assist pole owners and attachers apply the “necessitated solely” language in our Pole Attachment Rules.

Simply put, the Commission concludes that utility actions related to pole replacements must be just, reasonable and not unduly discriminatory. Considering the arguments we have heard it appears that utilities are not considering the justness and reasonableness of their failure to allocate costs for pole replacements among all beneficiaries of the replacements. Just as the FCC has moved from a position that often forced a single new attacher to pay entire pole-replacement costs to a clarified, beneficiary-based approach that considers all attachers and the owner as beneficiaries we clarify that pole owners should institute procedures to fairly share the cost of new poles among all attachers. We leave it to the utility whether that involves a direct allocation of a one-time charge for a fairly allocated share among all users of the pole replacement cost or a modification in the pole attachment rental rates or some alternative or combination thereof.

### **FINDINGS OF FACT**

1. On August 23, 2024, the Commission opened a proceeding on its own motion to initiate this general investigation
2. On January 31, 2025, the Task Force filed its Final Report.
3. In the Task Force Final Report, the Task Force made four key substantive recommendations.
4. On February 25, 2025, the Commission entered G.O. 261.2 that adopted and implemented certain recommendations of the Task Force.
5. In addition to the above, the Commission required further proceedings be held in this case on the issues of:
  - (1) Collection of Uniform Pole Inspection Data;
  - (2) The creation of a pole information database, including logistics of collecting the data, privacy concerns, any funding that may be available to facilitate the collection of data, creation of the database, access to the database, and maintenance of the database;
  - (3) The annual report requirement for pole owners including what data is included, collection of the data, and any cost/cost recovery proposals'; and,
  - (4) The Pole Attachment Working Group, as referenced in the Task Force Final Report.
6. The evidentiary hearing was held on June 3, 2025.

7. On June 27, 2025, the Commission entered an Order in these proceedings.

8. On July 14, 2025, Staff filed the Petition.

9. On July 17, 2025, APCo and Wheeling Power Company (WPCo) (collectively the Companies), file a Response.

10. The Commission recognizes the importance of broadband access for communities across West Virginia. Moreover, “the landscape associated with broadband deployment today in West Virginia is vastly different than perhaps at any previous point due to the unprecedented funding levels presently available through the Broadband Equity, Access and Deployment (BEAD) Program, which follows on existing programs through the Rural Digital Opportunity Fund (RDOF), American Rescue Plan Act (ARPA), and West Virginia’s own Line Extension Advancement and Development (LEAD) program, Major Broadband Strategies Program (MBPS), and the Gig Ready program.”<sup>31</sup>

### **CONCLUSIONS OF LAW**

1. The Commission is charged with regulatory jurisdiction over pole attachments in W.Va. Code § 31G-4-1, *et seq.*<sup>32</sup> Further, the Commission “shall administer and adjudicate disputes relating to the issues and procedures provided for under [W.Va. Code § 31G-4-1, *et seq.*],” titled “Make-Ready Pole Access.”<sup>33</sup>

2. The Commission is responsible for setting rates and charges that are just, reasonable and not unduly discriminatory.<sup>34</sup> That responsibility includes rates and charges for pole attachments.<sup>35</sup>

3. The Commission provides a regulatory framework to facilitate the efficient and timely deployment of broadband throughout the State of West Virginia. Furthermore, pole owners have a duty within the regulatory to allow for non-discriminatory access to poles by third-party attachers.

4. Due to inconsistencies in interpretation and implementation of the cost sharing principle in FCC pole attachment regulations, the FCC recently clarified its regulations regarding the allocation of costs for pole replacements and the

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<sup>31</sup> Final Report at Bates 7, p. 4.

<sup>32</sup> W. Va. Code § 31G-4-4(a).

<sup>33</sup> Id.

<sup>34</sup> W. Va. Code § 24-2-7(a). See also Pole Attachment Rule 5.2 (“The Commission shall determine whether the rate, term or condition complained of is just and reasonable”).

<sup>35</sup> See footnote 13.

Commission should likewise clarify just and reasonable allocation of pole replacement costs.

5. The Commission's rate setting requirements for pole attachments and pole replacements are guided by the FCC rules and the FCC's interpretation of those rules.

6. In light of the above and the Commission's desire to facilitate the rapid deployment of broadband in West Virginia, it is reasonable for the Commission to clarify the Pole Attachment Rules regarding cost sharing and cost allocation for pole replacements and the "necessitated solely" language as used in Rule 7.2 of the Pole Attachment Rules.

### **ORDER**

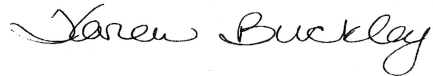
IT IS THEREFORE ORDERED that pursuant to W. Va. Code § 31G-4-4(a), W. Va. Code § 24-2-7(a), and Rule 5.2 of the Commission's Rules for the Government of Pole Attachments, (Pole Attachment Rules), the Pole Attachment Rules require cost sharing among all attachers and the owner of the pole when a pole is replaced as identified and described herein.

IT IS FURTHER ORDERED that the clarification and interpretations of the Pole Attachment Rules explained herein are effective upon entry of this Order.



IT IS FURTHER ORDERED that the Executive Secretary of the Commission shall serve a copy of this Order by electronic service on incumbent local exchange telecommunications companies, electric utilities, competitive local exchange carriers and cable television providers. In addition, the Executive Secretary shall serve a copy of this Order electronically and by United States Mail on the West Virginia Broadband Council and the West Virginia Department of Economic Development Office of Broadband, and on Commission Staff by hand delivery.

A True Copy, Teste,

A handwritten signature in cursive script that reads "Karen Buckley".

Karen Buckley, Executive Secretary

JAF/lcw  
240703ch

# Public Service Commission of West Virginia

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August 26, 2025

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RE: Case No. 24-0703-T-E-CTV-GI

A proceeding on the Commission's own motion to initiate a general investigation for the purpose of establishing a task force to make recommendations by General Order and/or modification of the Commission's Rules for the Government of Pole Attachments, 150 C.S.R. 38.

Ladies/Gentlemen:

Enclosed is a copy of a Commission Order issued today in the above-styled proceeding. **Please note all other parties have agreed to receive this order via electronic notification.**

Documents submitted to the Public Service Commission of West Virginia may be 1) uploaded to its public website, 2) subject to public disclosure under the West Virginia Freedom of Information Act, and/or 3) subject to disclosure under the West Virginia Open Governmental Proceedings Act. Do not submit personal information with your filings. The Commission is not responsible for confidential or personal information included with your submission. A list of personal information is available here: [http://www.psc.state.wv.us/Privacy\\_Policy/WhatisPII.htm](http://www.psc.state.wv.us/Privacy_Policy/WhatisPII.htm)

If you have provided an email address you will automatically receive notifications as documents are filed in this proceeding. The email notifications allow recipients to view a document within an hour from the time the filing is processed. If you have not provided your email address, please send an email to [caseinfo@psc.state.wv.us](mailto:caseinfo@psc.state.wv.us) and state the case number in the email subject field. **You are encouraged to file an Electronic Mail Agreement which allows the commission to serve all orders issued in this matter via electronic notification.**

Sincerely,

  
Karen Buckley  
Executive Secretary

KB/al  
Enc.