

**Title 23. Public Utilities and Regulated Industries**  
**Chapter XVI. Arkansas Public Service Commission**  
**Subchapter A. Generally**  
**Part 458. Pole Attachment Rules**

**Codification Notes.** This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"POLE ATTACHMENT RULES ADMINISTRATIVE HISTORY

Effective	Order		
Docket	Date	No.	Subject Matter of Docket / Order
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).
15-019-R	05-19-17	5&7	Amends Definitions and moves to Section 1; amends Section 1; adopts new Sections 2, 3, & 4; renumbers Section 2 to Section 5 and amends."

"Last Revised: June 24, 2016

Order Nos. 5 & 7

Docket No. 15-019-R

Effective: 5-19-2017"

**Subpart 1. Purpose, Applicability, and General Matters**

**23 CAR § 458-101. Authority.**

This part is promulgated pursuant to, and in accordance with, the provisions of Acts 2007, No. 740, as codified in Arkansas Code §§ 23-4-1001 – 23-4-1006.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 1.02 prior to codification in the Code of Arkansas Rules.

**23 CAR § 458-102. Applicability.**

This part applies to pole owners and attaching entities as defined in this part.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 1.03 prior to codification in the Code of Arkansas Rules.

**23 CAR § 458-103. Purpose and scope.**

(a) This part governs the Arkansas Public Service Commission’s regulation of the rates, terms, and conditions upon which a pole owner shall provide nondiscriminatory access for a pole attachment in the absence of a voluntarily negotiated agreement.

(b) This part also governs the procedures necessary and appropriate to hear and resolve complaints arising from:

- (1) The failure or refusal to provide access;
- (2) The inability of a pole owner and an entity seeking access for a pole attachment to reach a voluntary negotiated written agreement; and
- (3) Disputes over implementation of an existing contract.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 1.04 prior to codification in the Code of Arkansas Rules.

**23 CAR § 458-104. Definitions.**

The following definitions shall apply throughout this part except as otherwise required by the context and any references to this part shall include these definitions:

(1)(A) "Attaching entity" means a provider of:

- (i) Electric service;
- (ii) Telecommunication service;
- (iii) Cable television service;
- (iv) Internet access service; or
- (v) Other related information services.

(B) The term "attaching entity" does not include a pole owner to the extent that it makes pole attachments to its own:

- (i) Poles;
- (ii) Ducts; or
- (iii) Conduits;

(2) "Conduit" means a structure containing one (1) or more ducts, usually placed in the ground, in which cables or wires may be installed;

(3) "Duct" means a single enclosed raceway for:

- (A) Conductors;
- (B) Cable; or
- (C) Wire;

(4) "Inner-duct" means a ductlike raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables;

(5) "Insufficient capacity" means the inability of a pole owner to accommodate a new pole attachment or overlashing through the performance of make-ready work;

(6) "Make-ready work" means engineering or construction activities necessary to make a pole, duct, conduit, or other support equipment available for:

- (A) A new pole attachment;

(B) Pole attachment modifications; or

(C) Additional facilities;

(7) "NEC" means the NFPA 70: National Electrical Code published by the National Fire Protection Association;

(8) "NESC" means the American National Standards Institute's ANSI C2 National Electrical Safety Code published by the Institute of Electrical and Electronics Engineers;

(9)(A) "Overlashing" means the placement of telecommunications provider, cable television service, or internet access service facilities on existing facilities that already are attached within the usable space allocated to an existing attaching entity.

(B) Overlashing is not considered a separate pole attachment;

(10) "Pole attachment" means as defined in Arkansas Code § 23-4-1001(1);

(11) "Pole attachment audit" means any audit done at the option of the pole owner to count the number of pole attachments by one (1) or more attaching entities;

(12) "Pole owner" means a public utility as defined in Arkansas Code § 23-4-1001(2), having ownership or control of a:

(A) Pole;

(B) Duct; or

(C) Conduit;

(13) "Safety inspection" means any inspection done at the option of the pole owner to ensure pole attachments comply with applicable safety standards;

(14) "Safety space" means, as defined in the current issue of the NESC, the space located between the areas to which electric conductors and communication circuitry may be attached;

(15) "Service drop" means a connection from distribution facilities to the building or structure being served that does not require guys under standard industry design practice;

(16)(A) "Unusable space" is equal to the length of the pole minus the usable space.

(B) Safety space is included in "unusable space"; and

(17) "Usable space" means the space above minimum-grade level available for circuit, communications, coaxial cable, fiber optic, or electrical conductor pole attachments by public utilities and attaching entities.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 1.01 prior to codification in the Code of Arkansas Rules.

**23 CAR § 458-105. Negotiated agreements.**

(a) Nothing in this part prevents or limits the ability of a pole owner and an attaching entity to enter into a voluntarily negotiated written agreement regarding the rates, terms, and conditions for pole attachment access.

(b) Voluntarily negotiated agreements are preferred and encouraged by the Arkansas Public Service Commission.

(c) Nothing in this part shall be interpreted to supersede or modify any lawful rate, term, or condition of a voluntarily negotiated written agreement.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 1.05 prior to codification in the Code of Arkansas Rules.

**23 CAR § 458-106. Communications.**

Pole owners and attaching entities are encouraged to employ consistent and compatible communications systems for the purpose of notification and coordination associated with the pole attachments addressed in this part.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 1.06 prior to codification in the Code of Arkansas Rules.

## **Subpart 2. Access and Notification**

### **23 CAR § 458-201. Contracts and permits.**

(a) Prior to installing a pole attachment, the pole owner and the attaching entity shall have a written contract that specifies the rates, terms, and conditions for the pole attachments.

(b) An attaching entity shall have a permit from the pole owner, except as provided in subsection (c) of this section, for each pole attachment, including a permit covering any overlash, subject to the provisions of 23 CAR §§ 458-203 and 458-204.

(c)(1) An attaching entity may install a service drop without first obtaining a separate permit for that service drop if the service drop can be installed by the attaching entity in compliance with 23 CAR § 458-301(1).

(2) The attaching entity shall account for and report the installation of service drops in compliance with the written contract for service as required by subsection (a) of this section.

(d) Prior to the assignment, in whole or in part, of an existing pole attachment agreement, an attaching entity shall notify the pole owner of the assignment.

(e) The pole owner shall notify all affected attaching entities of the sale or transfer of ownership of any pole.

(f)(1) The pole owner and the attaching entity shall exchange and maintain current contact information for both routine business and emergency notification, including but not limited to:

- (A) Name;
- (B) Telephone number;
- (C) Email address; and
- (D) Street address.

(2) Participation in a communication system consistent with 23 CAR § 458-106 is encouraged to facilitate this information exchange.

(g) Pole owners and attaching entities shall make a good faith effort to begin negotiations of the terms and conditions of a new agreement no less than ninety (90) days prior to the expiration of the current contract.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 2.01 prior to codification in the Code of Arkansas Rules.

**23 CAR § 458-202. Request for access.**

(a)(1) Requests to a pole owner for a pole attachment or overlashing permit shall be in writing.

(2) The pole owner may require the applicant to provide the following technical information:

(A) The location of the pole, duct, or conduit for which the attachment or occupancy is requested;

(B) The amount of space requested;

(C) The number and type of attachment for each pole, duct, or conduit addition;

(D) The physical characteristics of the attachment or addition;

(E) The attachment location on the pole or in the duct or conduit;

(F) The proposed route;

(G) The proposed schedule for construction; and

(H) Any other information:

(i) Reasonably required by the pole owner; and

(ii) That is necessary to process the request.

(3) A request containing the information set forth in subdivisions (a)(2)(A) – (H) of this section shall be considered to be a complete request for purposes of subsection (f) of this section.

(b)(1) An attaching entity wishing to overlash facilities shall submit a written request to the pole owner identifying:

- (A) The size and type of facilities to be overlashed;
- (B) The size and type of facilities to be added;
- (C) The poles over which such facilities will be overlashed; and
- (D) When such facilities will be overlashed.

(2) In cases where a party is seeking to overlash facilities to another attaching entity, the party seeking to overlash shall also provide the pole owner evidence of the written consent of such host party.

(c)(1) The pole owner shall identify and account for the:

- (A) Incremental engineering costs associated with a request for a pole attachment or overlashing permit; and
- (B) Cost of estimating make-ready work.

(2) A pole owner may charge an attaching entity incremental administrative costs associated with a request for a pole attachment or overlashing permit and the cost of estimating make-ready work, provided that the pole owner identifies and accounts for such incremental administrative costs.

(3) The attaching entity shall pay to the pole owner any incremental engineering costs or incremental administrative costs incurred and charged by the pole owner in connection with a request for a pole attachment or overlashing permit, regardless of whether the attaching entity's request is rejected or withdrawn by the attaching entity.

(d)(1) A pole owner may reserve available space on its facilities for future provision of its core utility service, but must permit the use of such reserved space by attaching entities on an interim basis until the pole owner has an actual need for the space.

(2) The pole owner shall provide written notification to the attaching entity when a permit is being issued for the use of reserved space.

(e) Within sixty (60) days of written notification that the space is needed by the pole owner, the interim attaching entity must vacate the occupied space at its own expense and pay for any modifications needed to maintain the attachment or pay for the expansion of capacity.

(f)(1) The pole owner shall approve, deny, or conditionally approve with make-ready work provisions the request for a pole attachment or overlashing in writing as soon as practicable, but in no event later than:

(A) Forty-five (45) days after receipt of a complete permit request for requests including no more than three hundred (300) poles or twenty (20) manholes; or

(B) Sixty (60) days after receipt of a complete permit request for requests greater than the preceding limits but less than three thousand (3,000) poles and one hundred (100) manholes.

(2) If the permit request exceeds the preceding limits, the parties shall work in good faith to negotiate a mutually agreeable timeframe.

(3) For purposes of this timeframe, multiple permit requests from a single attaching entity within a rolling thirty-day period shall be treated as a single request.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 2.02 prior to codification in the Code of Arkansas Rules.

**23 CAR § 458-203. Make-ready work estimate.**

(a) If the pole owner grants an application for a pole attachment or overlashing that requires make-ready work, the pole owner shall provide a detailed list of make-ready work to include a description of the work, the estimated number of days to complete, and a detailed list of the activities and materials to be used in the make-ready work, along with a cost estimate, within fourteen (14) days from the date of approval, as provided for in 23 CAR § 458-202(f).

(b)(1) Within fifteen (15) days of the receipt of the make-ready work estimate, the attaching entity shall provide a written response either accepting the estimate and making payment arrangements as provided in its contract with the pole owner, or, if the attaching entity has any disagreement with the make-ready work estimate or the estimated number of days to complete the work, it shall provide in writing a list of any areas of disagreement to the pole owner.

(2) The pole owner will have fifteen (15) days from the receipt of the list to provide a response to the attaching entity.

(3) If the attaching entity and the pole owner cannot reach a resolution within fifteen (15) days from the date the owner's response is provided to the attaching entity, either party may file a complaint with the Arkansas Public Service Commission pursuant to the terms of this section.

(c) If the pole owner approves an application that requires make-ready work, the pole owner shall perform the make-ready work at the attaching entity's expense.

(d)(1) Make-ready work shall be completed:

(A) In a timely manner;

(B) At a reasonable cost; and

(C) As soon as practicable after the date payment is received, but not

later than:

(i) Sixty (60) days (ninety (90) days for attachments above the safety space) after the date payment is received for permit requests including no more than three hundred (300) poles or twenty (20) manholes; or

(ii) Seventy-five (75) days (one hundred five (105) days for attachments above the safety space) after the date payment is received for permit requests greater than the preceding limits but less than three thousand (3,000) poles and one hundred (100) manholes.

(2)(A) If the permit requests exceed the preceding limits or where make-ready work will require more than the above-referenced limit of days from the date payment is received to complete, the parties shall work in good faith to negotiate a mutually agreeable timeframe.

(B) For purposes of this timeframe, multiple permit requests from a single attaching entity within a rolling thirty-day period shall be treated as a single request.

(e)(1) If make-ready work is not completed by the pole owner in a timely manner, the attaching entity may complete the applicable work that is within the communications space using a contractor approved by the pole owner.

(2) This section does not apply to any work that is within the electric space.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 2.03 prior to codification in the Code of Arkansas Rules.

**23 CAR § 458-204. Denial of access.**

(a) A pole owner may deny access for a pole attachment on a nondiscriminatory basis:

(1) Where there is insufficient capacity; or

(2) For reasons of safety, reliability, or generally applicable engineering standards as referenced in 23 CAR § 458-301(1).

(b) A pole owner may deny access for a pole attachment to all facilities used exclusively for transmission on a nondiscriminatory basis.

(c) The pole owner shall confirm in writing the denial of access for pole attachment or overlashing as soon as practicable, but in no event later than the applicable timeframe prescribed in 23 CAR § 458-202(f).

(d) The pole owner's denial of access shall be specific, shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to denial of access consistent with the provisions of subsections (a) and (b) of this section.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 2.04 prior to codification in the Code of Arkansas Rules.

**23 CAR § 458-205. Notification.**

(a) Except as provided for in subsection (b) of this section or when a regulation, statute, ordinance, or other similar legal requirement otherwise provides, a pole owner shall provide an attaching entity no less than sixty (60) days' written notice prior to:

(1) Removal or abandonment of the pole owner's facilities, except in situations outside the pole owner's control, in which case it shall do so as soon as reasonably possible; or

(2) Any modification of the pole owner's facilities other than:

(A) Routine maintenance; or

(B) Modification in response to emergencies or in situations outside the pole owner's control.

(b) If removal or modification of facilities is required because of imminent danger to life or property, a pole owner shall:

(1) Have discretion to make that removal or modification without advance notice; and

(2) Provide verbal notice and subsequently confirm in writing whatever action was taken as soon as practicable but in no event later than ten (10) days thereafter, except in extraordinary circumstances.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 2.05 prior to codification in the Code of Arkansas Rules.

**Subpart 3. Safety**

**23 CAR § 458-301. Safety responsibilities.**

An attaching entity shall:

(1) Install and maintain its pole attachments and any overtopping in compliance with:

(A) The current edition of the NESC and NEC in effect at the time of construction and the pole owner's applicable engineering standards related to safety and reliability in effect at the time of construction; and

(B) The codes, rules, or regulations of any federal, state, or local governing body having jurisdiction;

(2)(A) Remove idle facilities as soon as is reasonably practicable, but in no event more than forty-five (45) days after their replacement.

(B) This requirement does not apply when fiber optic cable is authorized to be overtopped to existing copper cable that becomes dormant as a result;

(3) Repair, disconnect, isolate, or otherwise correct any violation that poses an imminent danger to life or property immediately after discovery;

(4)(A) Upon receipt of a pole owner's notification of any safety violation:

(i) Immediately correct a violation that poses imminent danger to life or property; and

(ii) Correct other safety violations within thirty (30) days except in extraordinary circumstances or as mutually agreed.

(B) All reasonable costs associated with correcting undisputed safety violations shall be incurred by the party responsible for the violation; and

(5)(A) Transfer or remove its pole attachments from utility poles that have been abandoned by the pole owner within sixty (60) days of being notified of such abandonment.

(B) If pole attachments have not been removed after sixty (60) days' notice, the pole owner may remove attaching entity pole attachments at the attaching entity's expense.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 3.01 prior to codification in the Code of Arkansas Rules.

**23 CAR § 458-302. Safety inspections.**

(a) All attaching entities shall participate in a joint safety inspection with the pole owner, with each attaching entity bearing its own expense.

(b) Pole owners shall establish safety inspection schedules so that an inspection of all of the pole owner's Arkansas facilities will be completed at least every five (5) years, but not more frequently than every three (3) years.

(c) Prior to engaging in a safety inspection, the pole owner shall provide one hundred eighty (180) days' advance written notice to the attaching entities.

(d)(1) All of the pole owner's inspection costs associated with a safety inspection shall be paid by the attaching entities and the pole owner.

(2) The pole owner shall be responsible for twenty-five percent (25%) of its inspection costs and the remaining seventy-five percent (75%) of the pole owner's inspection costs shall be paid by the attaching entities on a pro rata basis, based on the number of poles each attaching entity occupies.

(e) Prior to conducting a safety inspection, the pole owner and the attaching entities shall work in good faith to negotiate mutually agreeable terms of the safety inspection.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 3.02 prior to codification in the Code of Arkansas Rules.

**23 CAR § 458-303. Pole attachment audits.**

(a) All attaching entities shall participate in a joint pole attachment audit with the pole owner, with each attaching entity bearing its own expense.

(b) Pole owners shall establish pole attachment audit schedules so that an audit of all of the pole owner's Arkansas facilities will be completed at least every five (5) years, but not more frequently than every three (3) years.

(c) Prior to engaging in a pole attachment audit, the pole owner shall provide one hundred eighty (180) days' advance written notice to the attaching entities.

(d)(1) All of the pole owner's audit costs associated with a pole attachment audit shall be paid by the attaching entities and the pole owner.

(2) The pole owner shall be responsible for twenty-five percent (25%) of its attachment audit costs and the remaining seventy-five percent (75%) of the pole owner's attachment audit costs shall be paid by the attaching entities on a pro rata basis, based on the number of poles each attaching entity occupies.

(e) Prior to conducting a pole attachment audit, the pole owner and the attaching entities shall work in good faith to negotiate mutually agreeable terms of the pole attachment audit.

(f) Additional equipment that is normally required by the presence of a pole attachment in the attaching entity's usable space and equipment placed in the unusable space, which is used in conjunction with the pole attachment and to the extent allowed by the pole owner, is not an additional pole attachment for rental rate purposes.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 3.03 prior to codification in the Code of Arkansas Rules.

#### **Subpart 4. Rate Formulas and Modification Costs**

##### **23 CAR § 458-401. Pole attachment rate formula.**

(a) When the parties fail to reach a voluntarily negotiated written agreement regarding the pole attachment rate and the complaint procedures under Subpart 5 of

this part are invoked, the Arkansas Public Service Commission will apply the formula in Appendix A of this part for determining the maximum just and reasonable rate.

(b) The investments and expenses used in the pole attachment rate formula shall be based on historical or original cost.

(c)(1) The pole owner's net pole investment shall be adjusted to eliminate the investment in crossarms and other costs not associated with owning a pole.

(2) There is a rebuttable presumption that these costs are equal to fifteen percent (15%) of net investment for electric utilities and five percent (5%) for telephone companies.

(d)(1) When the net pole investment is zero (0) or negative, the gross investment may be substituted for the net investment in Appendix A, except for the return element of the carrying charges, which is always a net calculation.

(2) The return element shall be calculated as follows:

$$\text{Return Element} = 8.00\% \times \text{Net Pole Investment} \div \text{Gross Pole Investment}$$

(e) The following rebuttable presumptions are used in the calculation of the space factor:

- (1) The height of a pole is equal to 37.5 feet;
- (2) Usable space on the pole is equal to 10.17 feet;
- (3) Unusable space on the pole is equal to 27.33 feet, which includes the safety space;
- (4) Occupied usable space is:
  - (A) Cable television service is equal to one foot (1'); and
  - (B) Telecommunications service is equal to one foot (1');
- (5) The presumptive average number of attachers on a pole is equal to three (3), which includes the pole owner;
- (6) A pole owner may only challenge the presumptive average number of attachers in subdivision (e)(5) of this section upon a showing that:

(A) The pole owner, upon request, provided all attaching entities and all entities seeking access the methodology and information upon which the pole owner's average number of attachers is based;

(B) The pole owner exercised good faith in establishing and updating its average number of attachers; and

(C) The methodology used to demonstrate why the presumptive number is incorrect;

(7) An attaching entity may only challenge the presumptive average number of attachers in subdivision (e)(5) of this section or the average number of attachers propounded by the pole owner pursuant to subdivision (e)(6) of this section upon a showing of:

(A) Information demonstrating why the pole owner's average is incorrect; and

(B)(i) What the attaching entity believes should be the average and the methodology used to obtain that average.

(ii) Where a complete inspection is impractical, a statistically sound survey may be submitted; and

(8) Upon successful challenge of the existing average number of attachers pursuant to subdivisions (e)(6) or (7) of this section, the resulting data determined shall be used by the utility as the number of attachers within the rate formula.

(f) The presumptions in subdivisions (e)(1) – (4) of this section may be rebutted by either the pole owner or the attaching entity.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 4.01 prior to codification in the Code of Arkansas Rules.

**23 CAR § 458-402. Duct/conduit rate formula.**

(a) When the parties fail to reach a voluntarily negotiated written agreement regarding the duct/conduit rate and the Arkansas Public Service Commission's complaint procedures under Subpart 5 of this part are invoked, the Arkansas Public Service Commission will apply the formula in Appendix A of this part for determining the maximum just and reasonable rate.

(b) The investments and expenses used in the duct/conduit rate formula shall be based on historical or original cost.

(c) In the calculation of the percentage of conduit capacity occupied, if no inner-duct is installed in the conduit, the number of inner-ducts is presumed to be two (2).

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 4.02 prior to codification in the Code of Arkansas Rules.

**23 CAR § 458-403. Modification costs.**

Pole owners shall charge attaching entities separately for the following:

(1) Make-ready work pursuant to 23 CAR § 458-203;

(2)(A) **Solely assigned — Excess height.** When an attaching entity, including the pole owner, except as provided for under 23 CAR § 458-202(d), requires additional space that is not available on that pole and the pole must be replaced by a taller pole, the entity causing the need for replacement shall pay for the replacement cost of such pole, including:

(i) The cost of removing the old pole; less

(ii) Any salvage value; plus

(iii) The costs of transferring the facilities of all other attachers.

(B) **Mutual assignment.** When a taller pole is required by two (2) or more attaching entities, including the pole owner, except as provided under 23 CAR § 458-202(d), the costs identified in this subdivision (2) shall be shared equally among the entities requiring the replacement; and

(3) **Rearrangements.** Except as provided for under 23 CAR § 458-202(e), an entity that obtains a pole attachment shall not be required to bear any of the costs of rearranging or replacing its attachment if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 4.03 prior to codification in the Code of Arkansas Rules.

## **Subpart 5. Complaint Procedures**

### **23 CAR § 458-501. Time for resolution.**

The Arkansas Public Service Commission shall resolve any formal complaint filed in accordance with this part and the Arkansas Public Service Commission's Rules of Practice and Procedure, 23 CAR pt. 462, within one hundred eighty (180) days after the complaint is filed, except that the Arkansas Public Service Commission, for good cause shown, may extend the time for resolution up to three hundred sixty (360) days after the complaint is filed.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 5.01 prior to codification in the Code of Arkansas Rules.

### **23 CAR § 458-502. Informal resolution.**

(a) Before filing a formal complaint, every complainant shall make a good faith effort to informally resolve the dispute with the respondent.

(b) The complainant and respondent shall, within thirty (30) 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:

(1) Will use that information only for purposes of resolving the dispute; and

(2) Will not disclose that information except as may be required by the Arkansas Public Service Commission.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 5.02 prior to codification in the Code of Arkansas Rules.

### **23 CAR § 458-503. Filing requirements.**

The formal complaint shall be filed in compliance with the Arkansas Public Service Commission's Rules of Practice and Procedure, 23 CAR pt. 462, and meet the following requirements:

(1) The complaint shall be accompanied by a copy of the pole attachment agreement, if any, between the attaching entity and the pole owner;

(2) The complaint shall state with specificity the section(s) of this part, Arkansas Code § 23-4-1001 et seq., or the agreement that is (are) claimed to have been violated;

(3) 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 pursuant to Appendix A;

(4) No complaint filed by an attaching entity shall be dismissed for failure to provide the information and data required in subdivision (5) of this section if the pole owner has failed to provide such information and data after a reasonable request;

(5) In a case where a claimant alleges 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 allegations, including:

(A) The reasons given for the denial of access to the pole owner's poles, ducts, or conduits;

(B) The basis for the complainant's allegation that the denial of access is improper;

(C) The remedy sought by the complainant;

(D) A copy of the written request to the pole owner for access to its poles, ducts, or conduits; and

(E)(i) A copy of the pole owner's response to the written request, including all information given by the pole owner to support its denial of access.

(ii) A complaint alleging improper denial of access will not be dismissed if the:

(a) Complainant is unable to obtain a pole owner's written response; or

(b) Pole owner denies the complainant any other information reasonably needed to establish its prima facie case;

(6)(A) The source of data and information required under this section shall be identified.

(B) 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;

(7) The complaint shall include a brief summary of all steps taken to informally resolve the problem prior to filing; and

(8) If any of the information filed or provided under this section is data that is publicly unavailable and that was provided pursuant to 23 CAR § 458-502(c):

(A) The complainant shall not file or otherwise include such data with the complaint, but the complaint shall generically describe the data;

(B) The complainant shall include a notice to the respondent that the complainant intends to use the data in the complaint proceeding;

(C) 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 Arkansas Public Service Commission's Rules of Practice and Procedure, 23 CAR pt. 462; and

(D) 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.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 5.03 prior to codification in the Code of Arkansas Rules.

### **23 CAR § 458-504. Response and reply.**

(a) The complaint shall be served on respondent pursuant to 23 CAR § 462-902 of the Arkansas Public Service Commission's Rules of Practice and Procedure, 23 CAR pt. 462.

(b) Respondent may file a response pursuant to 23 CAR § 462-902 of the Arkansas Public Service Commission's Rules of Practice and Procedure, 23 CAR pt. 462.

(c) Thereafter, the Arkansas Public Service Commission may adopt a procedural schedule for the filing of written testimony with or without a hearing, as appropriate.

**Authority.** Arkansas Code § 23-4-1003.

**Codification Notes.** This section was promulgated as Rule 5.04 prior to codification in the Code of Arkansas Rules.

## **Appendix A. Pole Attachment Rate Formula and Conduit Rate Formula**

**Link:**

<https://CodeOfARRules.arkansas.gov/docs/CARCodeAppendices/Appendices/159/23CARpt.458Appendix.pdf>