Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
CoxCom, LLC,	)	Proceeding No. 25-347
	)	Bureau ID No. EB-25-MD-003
Complainant,	)	
	)	
v.	)	
	)	
Oklahoma Gas & Electric Company,	)	
	)	
Defendant.	)	

ORDER

Adopted: April 28, 2026 **Released: April 28, 2026**

By the Chief, Market Disputes Resolution Division:

I. INTRODUCTION

1. Complainant CoxCom, LLC (Cox) filed a formal complaint pursuant to section 224 of the Communications Act (Act) against Defendant Oklahoma Gas & Electric (OG&E), alleging that OG&E's rates for pole attachments are unreasonable, and that OG&E failed to provide Cox with data relevant to calculating aspects of OG&E's annual rental rates for pole attachments.[1] OG&E served an answer to the complaint,[2] and also filed a motion to dismiss, arguing, among other things, that Cox failed to allege a *prima facie* case for relief.[3]

2. We deny OG&E's motion to dismiss. Although the Commission uses fact pleading standards that require complainants to supply all evidence when filing a complaint, Cox's complaint contains plausible facts that, if ultimately found to be true after discovery and further briefing, are sufficient to establish that OG&E's rates are unreasonable under the Act. Since section 224 was enacted in 1978, the Commission has held that pole attachment complaints will not be dismissed for lack of supporting information when the complainant makes reasonable efforts to obtain relevant information from the utility and adequately explains in good faith why it lacks access to all relevant information. We find Cox's explanations in this case to be plausible. Dismissal at this preliminary stage is thus not appropriate.[4]

[1] CoxCom, LLC, Pole Attachment Complaint – Unlawful Rates and Failure to Provide Data, Proceeding No. 25-347, Bureau ID No. EB-25-MD-003 (Dec. 16, 2025) (Complaint).

[2] Answer and Affirmative Defenses of Oklahoma Gas & Electric Company, Proceeding No. 25-347, Bureau ID No. EB-25-MD-003 (Feb. 20, 2026) (Answer).

[3] Motion to Dismiss of Oklahoma Gas & Electric Company, Proceeding No. 25-347, Bureau ID No. EB-25-MD-003, at iii (Feb. 6, 2026) (Motion to Dismiss).

[4] *See* 47 CFR § 1.721(c); *id.* §§ 1.1404(e)-(g), 1.1406(a). The denial of the motion to dismiss the complaint does not reflect any determination as to the discovery Cox seeks or the ultimate merits of its complaint.

II. BACKGROUND

A. Regulatory Framework

3. Under section 224(b) of the Act, the Commission has broad authority to "hear and resolve complaints" regarding the rates, terms, and conditions for pole attachments.[5] The Commission has two sets of relevant regulations for pole attachment complaints. First, the Commission has adopted rules that pertain to the rates, terms, and conditions for pole attachments, including complaints regarding pole attachments.[6] Second, the Commission also applies its procedural rules for formal complaints.[7]

4. The Commission's procedural rules for formal complaints require that a complaint must "contain facts which, if true, are sufficient to constitute a violation of the Act or a Commission regulation or order."[8] In formal complaint cases, the Commission uses fact pleading standards, and thus "[a]verred facts, claims, or defenses . . . must be supported by relevant evidence," such as documents or sworn affidavits.[9] Assertions "based on information and belief" are generally "prohibited."[10] However, the Commission has recognized that "complainants may not always have in their possession the information that would substantiate their claims and that such information may be in the sole possession or control of the defendant carrier or of uncooperative third parties."[11] Consequently, complainants should not be "penalized or prevented from filing a formal complaint in those situations in which the necessary information could not have been reasonably obtained prior to the filing of the complaint."[12] In such circumstances, allegations on information and belief are permitted if made "in good faith" and "if accompanied by a declaration or affidavit explaining the basis for the party's belief and why the party could not reasonably ascertain the facts from any other source."[13]

1. Pre-Complaint Disclosure Requirements

5. The Commission's pole attachment rules also have pleading requirements that complement the general formal complaint rules.[14] The pole attachment pleading rule provides that a pole attachment complaint "shall state with specificity the pole attachment rate, term or condition which is

[5] 47 U.S.C. § 224(b). The Commission has authority unless pole attachments "are regulated by a State." *Id.* § 224(c)(1). Cox's complaint concerns pole attachments in Oklahoma, and Oklahoma does not regulate the rates, terms, and conditions for pole attachments in the state.

[6] *See* 47 CFR §§ 1.1401-1.1416; *id.* § 1.1404 (rules for pole attachment complaint proceedings).

[7] *Id.* § 1.1404(a) (providing that pole attachment formal complaint proceedings shall be governed by the formal complaint rules found in 47 CFR §§ 1.720-1.740); *see also id.* § 1.720 (procedural rules apply to formal complaints under section 208 of the Act, pole attachment complaints under section 224, and advanced communications services and equipment complaints under sections 255, 617, and 619).

[8] 47 CFR § 1.721(c); *see also id.* § 1.721(b) ("All matters concerning a claim . . . should be pleaded fully and with specificity."); *id.* § 1.721(r) ("Any document purporting to be a formal complaint which does not state a cause of action under the Communications Act, or a Commission regulation or order, will be dismissed.").

[9] *Id.* § 1.721(d); *see Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, 33 FCC Rcd 7178, 7179, para. 3 (2018) (*2018 Formal Complaint Rules Order*) (the "complaint procedural rules provide for," *inter alia*, "fact-based pleading").

[10] 47 CFR § 1.721(d).

[11] *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497, 22534, para. 82 (1997).

[12] *Id.*

[13] 47 CFR § 1.721(d).

[14] 47 CFR § 1.1404.

claimed to be unjust or unreasonable and provide *all data and information* supporting such claim."[15] However, since as early as 1978, just after the enactment of the pole attachment provisions of the Act, the Commission recognized that attachers will not always have access to all relevant data.[16] Thus the Commission's rules also place duties on utilities to provide attachers with certain data and information before a complaint is filed, so that attachers can "obtain the necessary data from a utility upon request."[17]

6. Given that attachers may need to obtain relevant information from the defendant utility, the Commission has long expected that "parties will make reasonable efforts to resolve potential disputes" regarding the scope of pre-complaint disclosures "before filing complaints."[18] However, when such disputes cannot be resolved, the Commission's rules have provided since 1978 that "[i]f any of the information and data" required to be included in a pole attachment complaint "is not provided to the [attacher] by the utility on reasonable request, the [attacher] shall include a statement indicating the steps taken to obtain the information from the utility, including the dates of all requests."[19] When such steps are documented and set forth in a complaint, the Commission has stated that it "would not dismiss a complaint for lack of adequate supporting data where the utility has failed to provide the necessary information after reasonable request."[20] Where a complainant "has made reasonable efforts to obtain the information from the utility we would consider that the complainant has made out his *prima facie* case."[21]

7. For many years, the Commission's pole attachment pleading rule contained lengthy lists of the types of information and data that could be relevant to a pole attachment complaint, and the rules

[15] 47 CFR § 1.1404(e) (emphasis added). The rule further provides that "[d]ata and information supporting the complaint (including all information necessary for the Commission to apply the rate formulas in § 1.1406[)] should be based upon historical or original cost methodology, insofar as possible. Data should be derived from ARMIS, FERC 1, or other reports filed with state or federal regulatory agencies (identify source). 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." *Id.* The Commission's rules also provide that the "complainant shall have the burden of establishing a *prima facie* case that the rate, term, or condition is not just and reasonable or that the denial of access violates 47 U.S.C. § 224(f)." *Id.* § 1.1406(a).

[16] *Adoption of Rules for the Regulation of Cable Television Pole Attachments*, Notice of Proposed Rulemaking, 68 F.C.C.2d 3, 5, para. 5 (1978) (*1978 Pole Attachment NPRM*) (attachers will likely find it "difficult to obtain" all of the "necessary cost data"); *see also Adoption of Rules for the Regulation of Cable Television Pole Attachments*, First Report and Order, 68 F.C.C.2d 1585 (1978) (*1978 Pole Attachment Rules Order*). When adopting its rules, the Commission re-affirmed that, as to the information to be provided with complaints, "the utility would be in the best position to supply the information required." *Id.* at 1593, para. 22; *see id.* at 1594-95, paras. 28-31. The Commission also rejected a request that the utility be reimbursed for the costs of providing data and information. *Id.* at 1594-95, para. 28.

[17] *See 1978 Pole Attachment NPRM*, 68 F.C.C.2d at 5, para. 5; 47 CFR § 1.1404(f) ("A utility must supply a cable television system operator or telecommunications carrier the information required in paragraph (e) of this section, . . . within 30 days of the request by the cable television system operator or telecommunications carrier.").

[18] *1978 Pole Attachment NPRM*, 68 F.C.C.2d at 5, para. 5. In adopting the rules, the Commission explained that some commenters opposed allowing "requests for documents in advance of filing the complaint for fear of potential abuse." *1978 Pole Attachment Rules Order*, 68 F.C.C.2d at 1595, para. 29. However, the Commission discounted those comments, concluding that such pre-complaint requests and disclosures would shorten the time needed to decide a complaint, and also could reduce the number of complaints, because an attacher may decide, after review of the additional data and information supplied by a utility, that the information supports the utility's rates and that it would be futile to bring a rate complaint. *Id.*

[19] *Id.* at 1604, Appendix (rule 1.1404(h)). The rule in substantially the same form is currently codified at 47 CFR § 1.1404(g).

[20] *1978 Pole Attachment NPRM*, 68 F.C.C.2d at 5, para. 5.

[21] *Id.*

required complainants to provide this data in a complaint "where applicable."[22] The rules also imposed a corresponding duty on utilities, upon request before a complaint is filed, to supply an attacher with "applicable" data and information contained in these long lists.[23]

8. In 2017, the Commission proposed to consolidate and streamline the procedural rules regarding formal complaints, including those filed against common carriers and complaints regarding pole attachments.[24] In doing so, the Commission proposed to create a uniform set of procedural rules for formal complaint proceedings delegated to the Enforcement Bureau.[25] The Commission later adopted these proposals.[26] The Commission also proposed in 2017 "to simplify" the pole attachment complaint pleading rule by "eliminating [the] provisions that specify in detail the factual support that must be included with a pole attachment complaint," including the long lists of data and information.[27] Parties objected to the proposal in part, reporting to the Commission that the pre-complaint disclosures are "integral to the resolution of pole attachments complaints and promot[e] settlement," and the information requested "is largely within the knowledge and control of the utility pole owner."[28] Citing this record evidence, the Commission put in a place a compromise by streamlining the rules to eliminate the long lists of data and information, but retaining the duties explicitly placed on utilities to provide information before complaints are filed in response to requests by attachers.[29]

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[22] *See, e.g.*, *1978 Pole Attachment Rules Order*, 68 F.C.C.2d at 1593, para. 22 (the rule "contains a list of data that we believe will be useful in determining costs incurred by a utility to install pole plant"); 47 CFR § 1.1404(g)(1)(i)-(xiii) (2017) (listing 13 categories of data and information for poles that could be applicable and that could be required to be included in a pole attachment complaint). The Commission also added a separate and lengthy list of data and information that could be applicable to complaints regarding attachments in ducts, conduit or rights-of-way systems. *Id.* § 1.1404(h)(1)(i)-(ix) (nine categories); *see also id*. § 1.1404(i) (similar rules for complaints concerning rights-of-way).

[23] *See, e.g.*, 47 CFR § 1.1404(j) (2017) ("A utility must supply" an attacher "the information required in paragraph (g), (h) or (i) of this section, as applicable, along with the supporting pages from its ARMIS, FERC Form 1, or other report to a regulatory body, within 30 days" of an attacher's request; the attacher "in turn, shall submit these pages with its complaint."). In 1987, the Commission added the language in the regulation that expressly imposes a duty of disclosure on the utility. *See Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, Report and Order, 2 FCC Rcd 4387, 4398-99, para. 85 (1987) (*1987 Pole Attachment Order*). In adding this explicit duty, the Commission stated that it expected "utilities to provide documents even though a complaint has not yet been filed in order to promote prompt resolution of matters in controversy." *Id.* Although the Commission noted that in most cases, the utility "more often than not, cooperates by providing the information," an express duty of disclosure was appropriate "to address those few instances of untimely cooperation or unresponsiveness by a utility." *Id.*

[24] *Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Notice of Proposed Rulemaking, 32 FCC Rcd 7155, 7155, paras. 1-2, 7157, para. 7 (2017) (*2017 Formal Complaint Rules NPRM*).

[25] *Id*. at 7175, para. 1.

[26] *2018 Formal Complaint Rules Order*, 33 FCC Rcd at 7179, para. 3; 7181, para. 9.

[27] *2017 Formal Complaint Rules NPRM*, 32 FCC Rcd at 7157, para. 7, n.19 (explaining that the "proposed simplification recognizes that a complainant may not need to adduce all the evidence required by the current rule to prove their case. The proposed revisions would not alter a complainant's obligation to provide adequate evidentiary support for a pole attachment complaint.").

[28] *2018 Formal Complaint Rules Order*, 33 FCC Rcd at 7186-87, para. 24 (quoting and citing Letter from Steve Morris, Vice President and Associate General Counsel, NCTA, to Marlene H. Dortch, Secretary, FCC (dated July 5, 2018) and Letter from Curtis Groves, Associate General Counsel – Federal Regulatory and Legal Affairs, Verizon, to Marlene H. Dortch, Secretary, FCC (dated July 5, 2018)).

[29] 47 CFR §§ 1.1404(e), (f); *see 2018 Formal Complaint Rules Order*, 33 FCC Rcd at 7186-87, para. 24 ("Upon re-examination of the issue, we now find that we should retain the requirement that pole owners, upon request of a

(continued….)

9. The Commission's rules thus place burdens on both parties in formal complaint pole attachment proceedings. Complainants are required to "provide all data and information supporting" an unreasonable rate claim and to "specify any other information and argument relied upon to attempt to establish" an unreasonable rate claim,[30] whereas utilities "must supply [an attacher] the information required in [section 1.1404(e)], as applicable."[31]

2. Motions to Dismiss

10. The Commission's formal complaint rules provide that "[m]otions to dismiss all or part of a complaint are permitted."[32] However, "motions to dismiss are rarely warranted," because the Commission requires defendants to file answers that set forth "fully and completely . . . the nature of any defense, and [that] . . . respond specifically to all material allegations of the complaint."[33] Accordingly, the Commission "will address, based on the evidence and arguments in the defendant's answer, a well-substantiated contention that a complaint fails to state a claim."[34]

11. Where a motion to dismiss is filed, it is handled in a matter "similar to [motions] that would be filed in federal court under Rule 12(b)(6)" of the Federal Rules of Civil Procedure.[35] Thus, as under the federal rules, when the Commission considers a motion to dismiss, it determines whether the complaint contains "sufficient factual material, accepted as true, to state a claim to relief that is plausible on its face."[36] It is not sufficient to offer only "labels and conclusions" in a complaint, or "a formulaic recitation of the elements of a cause of action."[37]

B. The Parties' Dispute

12. Cox provides cable service, broadband internet access service, and other services via cable systems in the State of Oklahoma.[38] OG&E is an investor-owned utility in the business of providing

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cable operator or telecommunications carrier, provide the information they have relied on in calculating rates. Having access to this essential information will facilitate the resolution of disputes without Commission involvement. Indeed, it is critical that attaching entities have this information well in advance of executive-level discussions to ensure that those pre-complaint negotiations have a chance of success.").

[30] 47 CFR § 1.1404(e).

[31] 47 CFR § 1.1404(f). Further, as noted above, the current rule provides (as it did in 1978, in primarily the same form) that "[i]f any of the information and data required in paragraphs (e) and (f) of this section is not provided to the [attacher] by the utility upon reasonable request, the [attacher] shall include a statement indicating the steps taken to obtain the information from the utility, including the dates of all requests. No complaint filed by [an attacher] shall be dismissed where the utility has failed to provide the information required under paragraphs (e) and (f) after such reasonable request." *Id.* § 1.1404(g).

[32] 47 CFR § 1.729(d).

[33] *Id.* § 1.726(b); *see 2018 Formal Complaints Rules Order*, 33 FCC Rcd at 7182-83, para. 13 (a "defendant's answer is a comprehensive pleading" that should include "a thorough explanation of every ground for dismissing or denying the complaint").

[34] *Id.* ("if a defendant believes that there is a basis for dismissal on some other threshold ground, the Commission will consider it without the filing of a motion").

[35] *Id.*, 33 FCC Rcd at 7219 (Statement of Commissioner Brendan Carr).

[36] *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. . . . Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense.").

[37] *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007)).

[38] Complaint at 7, para. 11.

electric transmission and distribution services.[39] In 2017, Cox and OG&E entered into a pole attachment agreement that permits Cox to attach its cable system facilities to OG&E's poles in the State of Oklahoma.[40]

13. On November 1, 2024, OG&E notified Cox of an increase in its pole attachment rate.[41] On April 17, 2025, Cox notified OG&E that it disputed OG&E's rate increase and requested information and data from OG&E to analyze OG&E's rate calculation.[42]

14. On May 14, 2025, OG&E responded to Cox's request for information.[43] OG&E provided: (1) a copy of a report of OG&E's confidential pole attachment rate calculation, which includes its pole count; (2) a Google Chrome link to the Federal Energy Regulatory Commission (FERC) Form 1 that OG&E filed for the year ending December 31, 2023; and (3) the Order of the Corporation Commission of the State of Oklahoma that establishes a rate of return for OG&E of 9.5 percent.[44] OG&E asserted that this information fulfilled its obligation to disclose information to attachers under the Commission's pole attachment complaint rules.[45] OG&E declined to provide any of the additional information that Cox requested, and notified Cox that OG&E underbilled Cox for 2025.[46] Cox and OG&E exchanged letters until October 6, 2025, but were unable to resolve their disagreement about the information that OG&E was required to share with Cox.[47] On October 30, 2025, Cox and OG&E had an executive-level meeting, but still were unable to resolve their dispute.[48] OG&E sent Cox another letter on November 5, 2025, reiterating that it would not disclose the information requested by Cox.[49]

15. Cox filed a formal complaint against OG&E on December 16, 2025. Cox's Complaint includes two counts: (1) OG&E's pole attachment rate is unjust and unreasonable in violation of section 224 of the Act and (2) OG&E has refused to provide, in violation of sections 1.1404(e)-(f) of the Commission's rules, information necessary for Cox to establish that its pole attachment rates for 2025 and 2026 are unjust and unreasonable.[50]

16. On February 6, 2026, OG&E filed a Motion to Dismiss Cox's Complaint with prejudice. OG&E's motion asserts that dismissal is warranted because: (1) Cox has failed to make a *prima facie* case that OG&E's pole attachment rates are unjust and unreasonable;[51] (2) the Commission lacks jurisdiction to determine whether OG&E has complied with FERC filing requirements;[52] (3) Cox failed to comply with the pre-complaint notice and disclosure requirements in the Commission's formal complaint rules;[53]

[39] *Id*. at 8, para. 13; Answer at 16, para. 27.

[40] Complaint at 9, para. 19; Answer at 17, para. 33.

[41] Complaint at 9, para. 21; Answer at 17, para. 36.

[42] Complaint at 9, para. 23; Answer at 17, para. 37.

[43] Complaint at 15, para. 28; *see* Answer at 19, para. 42.

[44] Complaint at 15, para. 28; Answer at 19, para. 42.

[45] Complaint at 15, para. 28; *see* Answer at 19, para. 42.

[46] Complaint at 15, paras. 28-29; Answer at 19, paras. 42-43.

[47] Complaint at 17-19, paras. 33-37; Answer at 21-22, paras. 48-52.

[48] Complaint at 19, para. 38; Answer at 23, para. 53.

[49] Complaint at 19-20, para. 38; Answer at 23, para. 53.

[50] Complaint at 38-40, paras. 87-100.

[51] Motion to Dismiss at 19-25, paras. 43-54.

[52] *Id.* at 25-27, paras. 55-59.

[53] *Id*. at 27-29, paras. 60-63.

and (4) Cox has abused the Commission's complaint and discovery processes.[54] OG&E incorporated the arguments in its Motion to Dismiss into its Answer to Cox's Complaint, which OG&E filed on February 20, 2026.[55] Cox filed a combined Joint Reply and Opposition to OG&E's Answer and Motion to Dismiss on March 9, 2026.[56]

III. DISCUSSION

A. Cox's Complaint Contains Sufficient Factual Material to State Plausible Claims That OG&E's Rates Are Unreasonable.

17. OG&E's primary argument is that Cox fails to establish a *prima facie* case of unreasonableness, contending that the complaint "identifies only 'possible conditions' that 'could' be confirmed by additional data, which 'could' demonstrate that the annual pole attachment rental rates invoiced by OG&E are not just and reasonable."[57] Underlying this argument is OG&E's contention that it is not required to provide the additional data that Cox seeks; rather, under the current Commission rules, OG&E is only required to provide the data on which it relied to calculate its pole attachment rates.[58]

1. The *Prima Facie* Complaint Standard

18. Under the standards applicable to a motion to dismiss in pole attachment cases, the issue is whether Cox's Complaint, accepting all the factual material as true and making all reasonable inferences in Cox's favor, states a plausible claim for relief that OG&E's rates are unreasonable.[59] We hold that it does.

19. The Complaint begins by alleging that OG&E's rates have increased by a substantial amount—about 36%—over a two-year period, and further alleges those increases exceed the 8.5% increase found in a publicly available index of utility construction costs.[60] After explaining the components in the Commission's rate formula for cable attachments, the Complaint, supported by an expert declaration, then alleges that, although many of the inputs to the formula are based on publicly available data, other "data points . . . must necessarily come from the utility's internal records."[61] In particular, Cox challenges some of the rebuttable presumptions that are used in the rate formula, and the Complaint and Cox's expert allege that Cox is "only able to validate a utility's rate calculation or rebut these presumptions" by obtaining certain information that is "within the sole control of the utility."[62] The Complaint alleges that Cox requested various types of data and information from OG&E that Cox could

[54] *Id.* at 29-32, paras. 64-67.

[55] Answer at 1-2.

[56] Reply to Oklahoma Gas & Electric Company's Answer to Affirmative Defense to Complaint of CoxCom, LLC and Opposition to Oklahoma Gas & Electric Company's Motion to Dismiss, Proceeding No. 25-347, Bureau ID No. EB-25-MD-003 (Mar. 9, 2026) (Cox Reply and Opposition).

[57] Motion to Dismiss at 19, para. 43, 22, para. 50 (citing Complaint at 3, para. 5).

[58] Motion to Dismiss at 6-7, para. 10, 8, para. 13, 19, para. 42, 23-25, paras. 52-54.

[59] *See supra* para. 11; *see also* 47 CFR §§ 1.721(c), (r); 1.1404(e)-(g); 1.1406(a).

[60] Complaint at 1-2, para. 2, 20-21, paras. 41-43 (OG&E's rate increases were larger than increases in the "the Handy Whitman Index for the South Central region for the 2022 to 2024 period," which was "only 8.49%."). The Handy-Whitman Index is a "utility cost index published since 1924 that tracks costs" based on accounts filed with the FERC. *See PJM Interconnection, L.L.C*, 129 FERC ¶ 61,090, paras. 13, 38 (2009) (the data in the Index "is collected and verified by an independent group of consultants, whose reports have been used in the marketplace by both buyers and sellers of electric power for a period of several decades").

[61] Complaint at 22, para. 46; Complaint, Exhibit A, Declaration of Patricia D. Kravtin, at 4-6, paras. 13-19 (Kravtin Decl.).

[62] Kravtin Decl. at 6-7, paras. 20-21.

use to attempt to rebut the presumptions, but that OGE declined to provide a large portion of the data Cox requested.[63]

20. In contending that OG&E's rates are unjust and unreasonable, Cox identifies five conditions—which Cox pleads on information and belief, supported by expert declaration—that it alleges could be causing unreasonable rates.[64] For example, by comparing publicly available data on OG&E's large increases in pole plant investment with a more modest increase in OG&E's pole count, Cox alleges that OG&E is now likely using poles that are taller than the presumed height of 37.5 feet, a condition that would result in excessive rates.[65] Another condition that Cox alleges relates to the costs of appurtenances, which are pieces of equipment used only for electric power distribution; Cox and its expert allege that OG&E's rates are unreasonably high because OG&E's actual investments in appurtenances (based on what data is publicly available) appear to be greater than the rebuttable presumption used in the rate formula for investment in appurtenances.[66]

21. Accepting these factual assertions as true, we find that Cox has offered plausible explanations to support its claim for relief that OG&E's rates are unreasonably high.[67] In short, Cox supports its unreasonable rate allegations with factual statements, and a sworn expert declaration, with a level of detail that permits reasonable inferences that OG&E's rates are improperly high.[68]

22. We disagree with OG&E's argument that the Complaint is based purely on "speculative statements."[69] The Complaint does not merely offer a "formulaic recitation" that OG&E's rates are unreasonable, nor do Cox and its expert simply point to the rate increases and engage in rank speculation that the increased rates necessarily must be unreasonable.[70] Rather, Cox and its expert offer several plausible allegations, using the public data available to them, as to why OG&E's rates have not increased

[63] Complaint at 9-16, paras. 23-30.

[64] Complaint at 3-5, para. 5, 26-36, paras. 54-80, 38-39, paras. 88-95; Kravtin Decl. at 10-22, paras. 30-63. Cox's pleading of these aspects of its Complaint on information and belief is generally consistent with the requirements of section 1.721(d), because Cox's assertions are made in good faith, accompanied by sworn declarations explaining the basis of Cox's beliefs and the reasons why Cox could not ascertain the facts pleaded on information and belief. 47 CFR § 1.721(d); *see* Complaint at 3-5, para. 5, 26-36, paras. 54-80, 38-39, paras. 88-95; Kravtin Decl. at 10-30, paras. 30-63.

[65] *E.g.*, Complaint at 2, para. 3, 3-5, para. 5, 26, para. 54; Kravtin Decl., at 13-14, paras. 32-35, 17, para. 45. Cox's Complaint uses this data to calculate an average cost per installed pole for OG&E, and alleges that this average cost is higher than certain publicly available average make-ready pole costs for a peer utility. Complaint at 26, para. 54; Kravtin Decl., at 9, para. 27.

[66] *E.g.*, Complaint at 26-32, paras. 53-69; Kravtin Decl. at 13-18, paras. 32-48. The other three conditions alleged by Cox concern (1) make-ready credits and other reimbursements, which, if not properly accounted for, could cause double recovery (Complaint at 4, para. 5c; Cox Reply and Opposition at 57-58; Kravtin Decl. at 24-26, paras. 49-54); (2) a lag between the booked increase in pole investment versus the corresponding increase in actual pole count, which could lead to overstated per-pole costs and thus higher rates (Complaint at 4-5, para. 5, 34-35, paras. 74-76; Cox Reply and Opposition at 56-57; Kravtin Decl. at 11-12, paras. 30.d, 19-20, paras. 55-58); and (3) OG&E's treatment of a special category of accumulated deferred income taxes, which should be included as an offset to its gross pole investment (Complaint at 5, para. 5, 35-36, paras. 77-80; Cox Reply and Opposition at 58; Kravtin Decl. at 12, para. 30.e, 20-22, paras. 59-63).

[67] 47 CFR § 1.721(c), (d); *id.* §§ 1.1404(e), (g), 1.1406(a); *cf. Twombly*, 550 U.S. at 570 (a complaint must have "enough facts to state a claim for relief that is plausible on its face").

[68] Cox Reply and Opposition at 54-56; Complaint at 3-5, para. 5, 28, paras. 58-59; *cf. Iqbal*, 556 U.S. at 678 ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.").

[69] Motion to Dismiss at 23-25, paras. 52-54.

[70] *Twombly*, 550 U.S. at 555 ("Factual allegations must be enough to raise a right to relief above the speculative level.").

solely because of actual changes to the inputs to the rate formula (as OG&E contends), but have increased based on an improper application of the rebuttable presumptions in the cable rate formula, which would (if true) make the rates unreasonable.[71] Because Cox lacks access to certain data that it alleges is in the possession of OG&E, it cannot now offer definitive evidence that the presumptions are in fact wrong or that the rates are actually unreasonable, but there is no "probability requirement at the pleading stage."[72] Instead, what is required is "enough fact to raise a reasonable expectation that discovery will reveal evidence" of illegality,[73] and we find that Cox's Complaint contains reasonable and plausible grounds that further discovery could provide evidence that the presumptions used in the rate formula should be rebutted and that OG&E's rates are unreasonable.[74]

23. Our holding here is also fully consistent with the Commission's past precedents regarding the pleading requirements to establish a *prima facie* case in pole attachment complaint cases.[75] One notable and recent case is *BellSouth v. Duke Energy*, in which the Commission, in denying a petition for review, rejected a utility's claim that the attacher failed to establish a *prima facie* case that the rates in the parties' joint use agreement (JUA) were unreasonable.[76] The Commission found that the attacher "established a *prima facie* case that the JUA rates are unreasonable," and the Commission pointed to evidence that the JUA rates were higher than both the Old and New Telecom Rates; higher than the rates that the complainant (which was also a pole owner) charged other attachers for access to its poles; and disproportionate to the amount of space that the attacher and the utility each use on the poles.[77] Our finding that Cox's Complaint states a *prima facie* case of rate unreasonableness is consistent with these precedents, because Cox alleges a substantial rate increase, compares the rate and rate increase to benchmarks, and includes factual material that provides a plausible basis to believe the rate increase is due to improper calculations or flawed data.[78]

[71] Complaint at 3-5, para. 5, 26-36, paras. 54-80, 38-39, paras. 88-95; Kravtin Decl. at 10-22, paras. 30-63.

[72] *Twombly*, 550 U.S. at 556.

[73] *Id.*

[74] At this stage, Cox's factual allegations and its reasonable inferences must be accepted as true, even if they might be deemed "doubtful in fact." *Twombly*, 550 U.S. at 555; *id.* at 556 (if well-pleaded, a complaint may proceed even if "recovery is very remote and unlikely" and even if "it strikes a savvy judge that actual proof of those facts is improbable").

[75] 47 CFR § 1.1406(a) (the complainant has the burden to establish a *prima facie* case).

[76] *BellSouth Telecommunications v. Duke Energy Progress*, Order on Reconsideration and Review, 37 FCC Rcd 13905, 13916, para. 24 (2022).

[77] *Id. See also Selkirk Communications v. Florida Power*, Order, 8 FCC Rcd 387, 389, para. 17 (1993) (finding that the attacher established its *prime facie* case by showing that the challenged rate (for attachments used to provide non-video services) was higher than pole attachment rate for video services); *Florida Cable Telecomm. Ass'n v. Gulf Power Co*., Memorandum Opinion and Order, 18 FCC Rcd 9599, 9505-06, para. 13 (E.B. 2003), *on recon. referred to ALJ for further consideration*, 19 FCC Rcd 18718 (2004) (finding that the complainants have "met their burden of establishing a *prima facie* case," because the complaint, supported by numerous exhibits, showed that the utility sought to impose a new rate that is "significantly higher" than prior rates, and that a rate study indicated that the rates could be far less).

[78] 47 CFR § 1.1406(a). In other contexts, the Commission has also relied in part on benchmarks to ascertain whether common carrier rates are just and reasonable. *See, e.g., Business Telecom v. AT&T*, Memorandum Opinion and Order, 16 FCC Rcd 12312, 12324, para. 23 & n.73 (2001) ("the Commission has frequently used rate comparisons, benchmarks, and non-cost factors to evaluate the justness and reasonableness of rates and to prescribe just and reasonable rates for regulated entities") (citing numerous cases including *In the Matter of Beehive Telephone Company, Inc., et al.*, Memorandum Opinion and Order, 13 FCC Rcd 12275 (1998) (rejecting rate above "industry averages" for comparable companies)).

2. The Pre-Complaint Disclosures Required by Rule 1.1404

24. In its Motion to Dismiss and its Answer, OG&E asserts that the Commission's rules require utilities to share only the information that a utility has "relied on" in calculating a pole attachment rate.[79] OG&E maintains that the Commission's *2018 Formal Complaint Rules Order* repealed and eliminated any obligation to provide information beyond such information.[80] OG&E contends that it "relied on" the inputs in the Commission's formula for calculating the pole attachment rate for cable providers and that it provided such information to Cox.[81] According to OG&E, that encompasses data from its FERC Form 1, its pole count, and the rebuttable presumptions for pole space and appurtenance investment in the Commission's rules.[82] OG&E admits that it has refused to provide data requested by Cox—which includes information about OG&E's pole heights, investment in appurtenances, and reimbursements and offsets[83]—based on its view that "[t]he Commission's rules . . . do not entitle attachers to 'evaluate' the validity of a utility's rates based on unbounded disclosures of non-public information."[84]

25. OG&E's conception of its disclosure requirement is contradicted by the plain text of section 1.1404 of the Commission's pole attachment rules, the long history of the Commission's pleading rules in pole attachments cases, and the policies animating the rules.[85] We start first with the text. Subsection (e) of the rule states that a pole attachment complaint must include two categories of information: (1) "all data and information" supporting a claim of unreasonableness, which "should be derived from" various regulatory reports, and (2) "any other information relied upon" by the complainant to support its claim.[86] In turn, subsection (f) then specifies a utility's corresponding obligation to "supply [an attacher with] the information required in paragraph (e) of this section, as applicable."[87] The second category in subsection (e) thus necessarily includes more than a utility's FERC Form 1 data (or the other regulatory reports); it also includes "any other information relied upon" *by the attacher* in its complaint.

26. OG&E improperly reads section 1.1404 to limit a utility's duty of disclosure to information upon which *the utility* relied in calculating its rates, but the actual text of the rule contains no such limitation. Rather, the only reference in the text of the rule regarding a party's reliance on information refers to the duty of *the complainant* to specify any other information or argument that it "relied upon" to attempt to establish that a rate, term, or condition is not just and reasonable.[88] The

[79] Motion to Dismiss at 6-7, para. 10, 8, para. 13, 18-19, para. 41, 23-25, paras. 52-54, *id.* at 6-8, paras. 9-13; Answer at 2, para. 1, 20, para. 45, 26, para. 62, 39, para. 85.

[80] Motion to Dismiss at 6-7, para. 10, 8, para. 13,10, para. 17, 18-19, para. 41; Answer at 2, para. 1, 20, para. 45, 26, para. 62, 39, para. 85.

[81] Motion to Dismiss at 3-5, paras. 4-7.

[82] *Id.* The Commission's pole attachment rules include a formula that a utility uses to calculate the maximum just and reasonable rate that the utility can charge cable providers to attach facilities to the utility's poles. *See* 47 CFR § 1.1406(d). That formula—known as the Cable Rate Formula—relies on data from specified accounts in FERC Form 1, which is a financial report that utilities file with the Federal Energy Regulatory Commission (FERC). *Id.*

[83] Complaint at 15, para. 28; Answer at 19, para. 42. *See* Complaint, Exh. E, Letter dated May 14, 2025, from Brett Heather Freedson, Counsel to OG&E to Scott Thompson, Counsel to Cox ("OG&E is not required under any rule or order of the FCC to respond to the extensive discovery-type inquiries included in your [April 17, 2025] letter."); *see also* Complaint, Exh. H., Letter dated August 15, 2025, from Brett Heather Freedson, Counsel to OG&E to Scott Thompson, Counsel to Cox ("no further disclosures by OG&E are required").

[84] Motion to Dismiss at 23, para. 52; Answer at 20, para. 45.

[85] 47 CFR § 1.1404(e)-(g).

[86] *Id.* § 1.1404(e).

[87] *Id.* § 1.1404(f).

[88] *Id.* § 1.1404(e).

utility's duty to supply information to attachers encompasses any of "the information required in paragraph (e) of this section, as applicable."[89] That duty thus necessarily requires a utility to supply, upon request, "any other information . . . relied upon" by the complainant "to attempt to establish that a rate, term, or condition is not just and reasonable."[90]

27. In support of its argument, OG&E points to language in the *2018 Formal Complaint Rules Order*, where the Commission, in describing the changes it was making to streamline section 1.1404, stated that it "should retain the requirement that pole owners, upon request of [an attacher], provide the information *they have relied on* in calculating rates."[91] OG&E places more weight on this statement than it can bear.

28. To begin, OG&E ignores earlier language in the same paragraph of the *2018 Formal Complaint Rules Order*, where the Commission described a utility's duty to disclose information in response to requests by attachers in broader terms, without limiting it to materials relied on by the utility: "[c]urrent pole attachment rules require complainants to include *critical information regarding pole costs* in a complaint and require utility pole owners to provide *such information* upon request by [an attacher] before a complaint is filed."[92]

29. Beyond this, the Commission has never explained that a utility's duty to supply information to an attacher can be limited solely to materials on which the utility relies. As described above, when these duties were first established in 1978 (and then made express in the regulations in 1987), the Commission used broad language, stating that, because it is "more difficult" for a complainant to obtain "the *necessary cost* data" used in complaint proceedings, the attacher should thus "be able to obtain *the necessary data* from a utility upon request."[93] Further, and most important, the text of the regulation refers to the utility's duty to supply "applicable" information, i.e., the complainant is obligated to include with its complaint "all data and information" supporting its claims, and, to the extent the complainant lacks access to all such information and data, the complainant should request it from the utility, which "must supply" all of the "applicable" information, not merely the data on which the utility relied.[94] The terms that the Commission has previously used in describing a utility's duty of disclosure—

[89] *Id.* § 1.1404(f).

[90] *Id.* § 1.1404(e). The utility generally does not need to create information that does not exist in its records. *See 1978 Pole Attachment Rules Order*, 68 F.C.C.2d at 1593, para. 23, 1595-96, para. 30 (the information requested will "generally be available from existing records," but the utility may need "to collate information").

[91] Motion to Dismiss at 6, para. 10, 23-24, para. 53; *2018 Formal Complaint Rules Order*, 33 FCC Rcd at 7186-87, para. 24 (emphasis added).

[92] *Id.* (emphases added).

[93] *1978 Pole Attachment NPRM*, 68 F.C.C.2d at 5, para. 5 (emphases added); *see also 1978 Pole Attachment Rules Order*, 68 F.C.C.2d at 1593-96, paras. 27-31. The Commission further recognized that "[a]n unavoidable consequence of regulation in this area is that utilities must be expected to supply *required information*." *Id.*, 68 F.C.C.2d at 1595, para. 28 (emphasis added).

[94] 47 CFR § 1.1404(e)-(f) (paragraph (e) provides that the complaint shall include "all data and information supporting" its claims (and shall "specify any other information and argument relied upon to attempt to establish such claim"); paragraph (f) provides that, before such a complaint is filed and upon request by an attacher, a "utility must supply [an attacher] the information required in paragraph(e) of this section, as applicable . . ."). When there is a conflict between the language in a Commission order and a codified regulation, the language of the regulation controls. *See, e.g.*, *AT&T Corp. v. FCC*, 967 F.3d 840, 847 (D.C. Cir. 2020). Because the text of the regulation is not limited to requiring disclosure of only materials upon which a utility has relied, the statement in the *2018 Formal Complaint Rules Order* (as OG&E interprets it) could not be authoritative because the statement would conflict with the regulation's text.

including "necessary," "critical," or "applicable" cost data or information—are more broad than a disclosure requirement that is limited only to data or information on which the utilities have relied.[95]

30. Since 2018, moreover, the Commission has not limited a utility's pre-complaint disclosure duty solely to materials on which the utility has relied in calculating its rates. Most notably, in 2023, the Commission rejected a proposal to create new general rules that would have required all utilities to make disclosures of additional financial data regarding rates.[96] The Commission concluded that new rules were not necessary because its current rules "already require" disclosures of such information, *both* "the information [pole owners] have relied on in calculating rates" *and* "information *an attacher seeks to rely on* in establishing that a rate, term, or condition is not just and reasonable."[97] Further, the Commission in 2023 clarified that, in the *2018 Formal Complaint Rules Order*, "[t]he Commission sought to 'streamline the rules in section 1.1404' by removing the long list of information specified in that section *but did not narrow the scope of information utilities must provide attachers*."[98] These Commission statements in 2023 regarding the text of its rules on utilities' duty to make pre-complaint disclosures further erode any reasonable reliance that OG&E places on the single and isolated statement in the *2018 Formal Complaint Rules Order*.

31. OG&E's unduly narrow reading of a utility's pre-complaint disclosure requirements is also inconsistent with the Commission's policies. As the Commission has stated, requiring a utility to disclose to an attacher, prior to the filing of a complaint, information and data that is "applicable" and relevant to the claims that an attacher wishes to allege in a pole attachment complaint is efficient and

[95] Although "necessary" or "applicable" data can include a spectrum of information that goes beyond the regulatory reports identified in the rules, we do not agree that a utility's duty to respond to pre-complaint data requests is "unbounded." *See* Motion to Dismiss at 23, paras. 52. Parties should work cooperatively on such pre-complaint requests, but if there is an impasse about what must be provided, the utility can seek informal guidance from the Commission staff (including the Rapid Broadband Assessment Team). Further, a utility can, as OG&E did here, decline to provide the information, and allow the complainant to proceed to specify the steps that it made to obtain data from the utility. *See* 47 CFR § 1.1404(g). But the disclosure duties in the rules are intended to prevent a utility from withholding information that could be "applicable" or necessary to a complaint, and then arguing that a complaint should be dismissed as a matter of law, without any discovery or investigation, on the grounds that an attacher lacks data or information that the utility's rate, term, or condition is unjust and unreasonable, even when some relevant data is in the sole possession of the utility—precisely what OG&E appears to be doing here. 47 CFR § 1.1404(g) ("No complaint . . . shall be dismissed where the utility has failed to provide the information required under paragraphs (d) and (f) after such reasonable request."); *1978 Pole Attachment NPRM*, 68 F.C.C.2d at 5, para. 5 (where a complainant "has made reasonable efforts to obtain the information from the utility we would consider that the complainant has made out his *prima facie* case").

[96] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Deployment*, Fourth Report and Order, Declaratory Ruling, and Third Further Notice of Proposed Rulemaking, 38 FCC Rcd 12379 (2023) (*2023 Fourth Wireline Infrastructure Order*).

[97] *Id.* at 12404, para. 38 (emphases added) (quoting *2018 Formal Complaint Rules Order*, 33 FCC Rcd at 7187, para. 24). *See* 47 CFR §§ 1.1404(e)-(f).

[98] *2023 Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12404**,** para. 38, n.137 (emphasis added). OG&E asserts that its position is correct because the Commission "disagreed" with a commenter that "the former language" in section 1.1404 "was inadvertently removed" because the Commission had already decided that utilities do not have to disclose that information in 2018. Motion to Dismiss at 7-8, paras. 11-13 & n.36; *id.* at 23-25, paras. 53-54; *see 2023 Fourth Wireline Infrastructure Order*, 38 FCC Rcd at 12404**,** para. 38, n.137. But the argument ignores the next sentence, which confirms that the changes in 2018 did not narrow the scope of a utility's duty to disclose data and information. Thus, contrary to OG&E's assertion, the Commission has not repealed, rescinded, or eliminated the disclosure requirements. *See* Motion to Dismiss at 6-7, para. 10, 8, para. 13, 10, para. 17, 18-19, para. 41, 23-24, para. 53.

promotes settlement.[99] These policy concerns are even more important because the Commission's regulations now provide timing rules for action on pole attachment complaints.[100] To reduce the burdens on the parties, the Commission, and its staff, the Commission has repeatedly and consistently stressed the importance of an attacher and a utility working cooperatively, before a complaint is filed, to ensure that the pleadings of the parties are based on a common set of data. Indeed, given the deadlines, a utility that refuses to provide relevant and applicable data before the filing of a complaint may find itself in the position, once a complaint is filed, of having to respond to an attacher's discovery requests in a very compressed time frame, creating burdens and additional costs on the utility. Although responding to an attacher's pre-complaint requests for data and information can impose costs on a utility, providing the requested information up front could allow the parties to avoid the more significant costs of a complaint proceeding.[101]

32. Where, as here, the utility declined to provide the data that an attacher has requested pursuant to rule 1.1404 and the complainant properly documents the steps taken to obtain any missing or incomplete data, the Commission will, in the course of the complaint proceeding, rule on the appropriateness of the requests for disclosure and then allow the parties to file briefs on the merits based on a complete record.[102]

B. OG&E's Additional Grounds Seeking Dismissal of the Complaint Lack Merit

33. OG&E also advances four other arguments for dismissing the Complaint, each of which we reject in turn. First, OG&E argues that the Complaint requires the Commission to decide that OG&E's reports to the FERC do not comply with FERC rules and requirements.[103] Upon review of the portions of the Complaint cited by OG&E, we fail to see how the Complaint requires the Commission to determine OG&E's compliance with any FERC rule or requirement.[104] Rather, the Complaint requests that the Commission order OG&E to provide additional data and, using that data, determine that OG&E's rates are unjust and unreasonable under section 224(b) of the Act. The Commission is plainly authorized to adjudicate such complaints and can do so without interfering with the authority of the FERC or making rulings on how utilities must comply with FERC regulations.[105]

34. Second, OG&E contends that Cox failed to comply with the requirements of section 1.722(g) of the Commission's rules, which require a complainant (i) to discuss or attempt to discuss the possibility of settlement, including executive-level discussions for businesses, and (ii) to notify the

[99] *1978 Pole Attachment Rules Order*, 68 F.C.C.2d at 1595, para. 29. In addition, in enacting the pre-complaint disclosure rules, the Commission emphasized that it expected the parties to "make reasonable efforts to resolve potential disputes" regarding pre-complaint disclosures "before filing complaints." *1978 Pole Attachment NPRM*, 68 F.C.C.2d at 5, para. 5; *see 1987 Pole Attachment Order*, 2 FCC Rcd at 4398-99, para. 85 (the Commission expected "utilities to provide documents even though a complaint has not yet been filed in order to promote prompt resolution of matters in controversy").

[100] 47 CFR § 1.1414.

[101] Exchanging this data prior to the filing of a complaint can also lead to a negotiated settlement of a dispute over rates and terms for pole attachments. *See 2018 Formal Complaint Rules Order*, 33 FCC Rcd at 7186-87, para. 24.

[102] *See 1978 Pole Attachment NPRM*, 68 F.C.C.2d at 5, para. 5; *see also 1987 Pole Attachment Order*, 2 FCC Rcd at 4398-99, para. 85.

[103] Motion to Dismiss at 25-27, para. 55-59.

[104] *See id.* (citing Complaint, at 3-5, para. 5, 34-36, paras. 74-80); *see also* Cox Reply and Opposition at 63-64.

[105] 47 U.S.C. § 224(b). The Commission is authorized to adopt any "procedures necessary and appropriate" to resolve these complaints, *id.*, which includes its regulations requiring utilities to disclose certain information and data to attachers before the filing of complaints. 47 CFR §§ 1.1404(e)-(g). In those disclosure obligations, the Commission allows use of certain FERC reports in an effort to streamline pole attachment complaints, not to direct utilities how to comply with FERC rules or requirements.

defendant in writing of the allegations that form the basis of the complaint and invite a response.[106] Cox's Complaint describes and attaches correspondence between the parties that provided notice of the primary claims in the Complaint.[107] The Complaint also includes a sworn declaration regarding executive level settlement discussions.[108] The materials provided by Cox are sufficient to show that it complied with section 1.722(g) of the rules.

35. Third, OG&E argues that the Complaint should be dismissed because Cox has engaged in "harassment" and "abuse" of the Commission's complaint and discovery processes.[109] These claims are meritless. In light of the finding that the Complaint states a plausible claim for relief, we reject OG&E's claim that the Complaint was filed in bad faith or in violation of section 1.721(m) of the rules.[110] As to OG&E's claim that Cox's interrogatories exceed the limits in the Commission's rules, Cox appears to have reiterated its pre-complaint disclosure requests in interrogatories submitted with its complaint. Section 1.730 of the formal complaint procedural rules do not apply to the pre-complaint disclosure requirements in section 1.1404 of the Commission's rules. Nor, in any event, does Cox cite any authority holding that the appropriate remedy for any violation of the rule is the dismissal of a complaint with prejudice.[111] As noted, the Commission staff have not yet made any discovery rulings, but the forthcoming rulings will eliminate any abusive or excessive discovery, and thus dismissal of the Complaint on these grounds is unwarranted.[112]

36. Fourth, and finally, Count Two of the Complaint alleges that, contrary to section 1.1404 of the Commission's rules, "OG&E has refused to provide information necessary" for Cox to "establish

[106] Motion to Dismiss at 27-29, paras. 60-63; 47 CFR § 1.722(g).

[107] Complaint at 9-20, paras. 23-29; Complaint, Exhs. D to L. *Compare, e.g.*, Complaint, Exh. F (a letter from Cox's counsel dated July 7, 2025, which stated that Cox (i) disagreed that OG&E had provided all data required by section 1.1404(f) of the Commission's rules and (ii) contended that OG&E's proposed rate increase "is not just and reasonable") *with* Complaint at 38-40, paras. 87-100 (raising two counts, a claim that rates are unreasonable and that OG&E did not provide all data required by the Commission's rules).

[108] Complaint at 19-20, para. 38; Complaint, Exh. B, Declaration of Christopher Breeding, at 3, para. 11. Cox also provided a letter from OG&E's counsel that both acknowledged the executive level discussions and rejected the two Cox positions that would ultimately form the basis of Cox's complaint. *See* Complaint, Exh. L; *see also Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles*, Notice of Proposed Rulemaking, 104 F.C.C.2d 412, 428, para. 30 (1986) (*1986 Pole Attachment NPRM*) ("The utility is on notice that a cable company may be contemplating filing a rate complaint when the utility receives an information request. If the utility wants to negotiate, it simply has to offer to do so"). OG&E argues that Cox never raised in pre-complaint discussions its claims regarding 2026 rates. Motion to Dismiss at 28-29, para. 62. However, in light of the detailed correspondence between the parties and the impasse over what information must be provided in pre-complaint discussions, *see* Complaint, Exhs. D to L, Cox has established in this case that further discussions to address the 2026 rates would have been futile. *See 1986 Pole Attachment NPRM*, 104 F.C.C.2d at 428, para. 30 ("the Commission's Rules do not require useless negotiations when substantial differences separate the parties").

[109] Motion to Dismiss at 29-32, paras. 64-67. In this section of its motion, OG&E repeats its position that Cox violated the rules in section 1.722(g) as to notification of the claims in a forthcoming complaint. *Id.* at 31, para. 66. As discussed in the preceding paragraph, there has been no prejudicial violation of that section of the rules.

[110] *See id.* at 29-31, paras. 64-66; *see* 47 CFR § 1.721(m).

[111] *Id.*

[112] The Commission's discovery procedures reduce the risks of abuse or harassment in discovery because Commission staff have "substantial discretion in ordering discovery." *2018 Formal Complaints Rules Order*, 33 FCC Rcd at 7183, para. 14; *see also* 47 CFR § 1.730(f) ("additional discovery" is permitted in the discretion of the Commission).

that [OG&E's] pole attachment rates for 2025 and 2026 are not reasonable."[113] OG&E has also moved to dismiss this count.[114] Having found that OG&E's interpretation of the requirements of section 1.1404 is incorrect, there is no basis to dismiss this claim, although we reiterate that this ruling on the Motion to Dismiss is not a final determination on the claims in the Complaint.

IV. ORDERING CLAUSES

37. Accordingly, IT IS HEREBY ORDERED, pursuant to sections 1, 4(i), 4(j), 208, 224 of the Communications Act, 47 U.S.C. §§ 151, 154(i), 154(j), 208, 224, and sections 1.720-1.740, 1401-1.1416, of the Commission's rules, 47 CFR §§ 1.720-1.740, 1401-1.1416, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 CFR §§ 0.111, 0.311, and for the reasons explained above, Oklahoma Gas & Electric Company's Motion to Dismiss is DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Rosemary McEnery
Chief, Market Disputes Resolution Division
Enforcement Bureau

[113] Complaint at 39-40, paras. 98-100; *see id.* at 10-19, paras. 25-35; 47 CFR § 1.1404(f) ("A utility must supply a cable television system operator or telecommunications carrier the information required in paragraph (e) of this section, as applicable . . . ").

[114] Motion to Dismiss at 32, para. 69.