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Decision No. 90832 SEP 25 1979 ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

CALIFORNIA COMMUNITY TELEVISION ASSOCIATION, INC., Complainant, vs. PACIFIC GAS & ELECTRIC COMPANY, Defendant.	Case No. 10651 (Filed August 21, 1978)

Harold R. Farrow, Thomas S. Dent, and Alan R. Plutzik, Attorneys at Law, for California Community Television Association, Inc., complainant.
Malcolm H. Furbush, Jack F. Fallin, Jr., and S. A. Woo, Attorneys at Law, for Pacific Gas and Electric Company, defendant.
Grant E. Tanner, Attorney at Law, for the Commission staff.

INTERIM OPINION

Background

Complainant is California Community Television Association, Inc. (CCTA), a California nonprofit corporation. CCTA is a trade association comprised of cable television (CATV) system owners and operators in the State of California. CCTA was formed and exists for the sole purpose of representing the interests of its members, who have authorized CCTA to bring this complaint on their behalf. CCTA's membership includes the owners and operators of over 180 CATV systems, serving approximately 99 percent of the 2,000,000 homes served by CATV in the State of California.

Defendant is Pacific Gas and Electric Company (PG&E), a California corporation. PG&E is a public utility subject to the jurisdiction and rules of this Commission and to the provisions of the Public Utilities Code of the State of California.

CCTA, on behalf of its members, as well as individual members of CCTA on their own behalf, has been negotiating with PG&E regarding the rates, charges, terms, and conditions for CATV pole attachments since the fall of 1973, when PG&E first announced a doubling of its then existing pole rental rate. However, no settlement of the issues dividing PG&E and the CATV industry has since been reached.

In 1977, Section 767.5 was added to the Public Utilities Code. It reads as follows:

> "767.5. As used in this section, the term 'public utility' includes any person, firm, or corporation except a publicly owned utility which owns or controls poles, ducts, conduits, or rights-of-way used or useful, in whole or in part, for wire communication.
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> "The term 'pole attachment' means any attachment for wire communication on or in any surplus space on or in any pole, duct, conduit, or other support structure located in any right-of-way owned, controlled, or used by a public utility.
>
> "The Legislature hereby finds that many public utilities have, through a course of conduct covering many years, made available the surplus space on and in their poles, ducts, conduits, and other support structures for use by the cable television industry for pole attachment service, and that the provision of such pole attachment service by such public utilities is and has been a public utility service.

> "Whenever a public utility and a cable television corporation are unable to agree upon the terms, conditions, or compensation for pole attachments or the terms, conditions, or cost of the production of surplus space needed for pole attachments, then the commission shall establish and regulate the rates, terms, and conditions for pole attachments and the terms, conditions, and costs of providing surplus space needed for pole attachments so as to assure a public utility the recovery of not less than all the additional costs of providing and maintaining pole attachments, nor more than the actual capital and operating expenses, including just compensation, of the public utility attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities, and uses which remain available to the owner or owners of the subject facilities."1/

Since January 1, 1978, according to CCTA, its good faith efforts and those of many individual members of CCTA to revive negotiations with PG&E, following the enactment of Public Utilities Code Section 767.5, have failed, and the negotiations are irremediably deadlocked. CCTA believes, and thereon alleges, that no further progress will be made toward a negotiated resolution of those issues. Thus, on that ground, CCTA filed this complaint on August 21, 1978.

CCTA requests the following relief:

1. That this Commission establish and regulate the rates, terms, and conditions for CATV pole attachments to surplus space on support structures owned or controlled solely by PG&E, and that the annual rental rate for said attachments so established by this Commission not exceed $1.00 per pole per year.

1/ Senate Bill 177 introduced by Senators Alquist and Wilson. Effective January 1, 1978.

2. That this Commission issue an order requiring PG&E to provide access to members of CCTA, upon reasonable rates, terms, and conditions, to surplus space owned or controlled by PG&E on joint poles, and declaring the so-called "equity pricing system" to be wrongful and illegal.

3. That this Commission issue an interim order, requiring PG&E to provide immediate access to members of CCTA to surplus space on support structures owned or controlled solely or directly by PG&E; further requiring PG&E to cease and desist from all acts, including but not limited to legal action, having as a purpose or effect the denial of such access or the removal of CATV pole attachments from said surplus space; and setting an interim annual rate for CATV pole attachments equal to the last annual rate established between the parties - $2.50 per pole per year - subject to an accounting order, and subject to retroactive adjustment to reflect the permanent rate ultimately established by this Commission.

4. That this Commission issue an order requiring PG&E to make available as soon as possible to CCTA, to the members of CCTA, and to this Commission, all information necessary or relevant to a determination of fair and reasonable rates, terms, and conditions for CATV pole attachments.

5. For such other and further relief as this Commission may deem appropriate.

On September 8, 1978, PG&E filed a "Motion For Extension Of Time To File Pacific Gas And Electric Company's Response To Complaint".

On September 13, 1978, the Commission having found that public necessity required a hearing on less than ten days' notice set the matter for hearing on September 20, 1978 at San Francisco before Administrative Law Judge Gillanders.

Hearing was held as scheduled. Because more time was used than expected,[2/] the matter was carried over to September 21, 1978. Because of additional witnesses called by complainant, again more time than expected was taken and the matter was adjourned to a date to be set.

By notice mailed September 26, 1978 the Commission set the adjourned hearing for October 3, 1978 having again found that public necessity required a hearing on less than ten days' notice. Hearing was held as scheduled. It was at this hearing that staff counsel made his appearance for the Commission staff. Again, not finished, the matter was put over to a date to be set. On October 3, 1978, complainant filed a "Petition For An Order Directing Issuance Of A Proposed Report In Interim Proceeding".

On October 6, 1978 PG&E filed its answer to the complaint. Among the numerous admissions, denials, and allegations were the following:

PG&E admits and alleges that CCTA and individual cable companies negotiated with PG&E regarding rental rates, charges, terms, and conditions for CATV pole attachments in late 1973, 1974, and early 1975. Since mid-1975, PG&E has discussed the pole rental problem with individual cable companies. None of these negotiations or discussions ever produced a pole rental settlement acceptable to PG&E and the general CATV industry. PG&E denies that since January 1, 1978, CCTA has made good faith efforts to revive pole rental negotiations on any basis other than CCTA's absolute insistence on unreasonably low rates. Since January 1, 1978, PG&E has not succeeded in negotiating pole rental agreements with individual

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2/ The matter was set because complainant's attorney stated that for the purposes of establishing the interim rate he requested he would call only three witnesses and would finish in the one-day set.

cable companies generally acceptable to the CATV industry. PG&E believes and alleges that no further progress can be made toward a negotiated settlement between itself and any CATV company.

PG&E admits and alleges that it has had utility poles supporting its electrical distribution wires and equipment for over thirty years. PG&E also agrees that for over thirty years other public utility companies have been constructing and installing utility poles. In constructing its poles and other support structures, PG&E did not and does not make a practice of providing space not needed to assure the safe and efficient operation of its system under existing and reasonably anticipated future circumstances. These circumstances include existing and reasonably anticipated joint ownership arrangements. On information and belief, PG&E denies that other public utility companies made it customary to provide for space in excess of that reasonably needed for the provision of safe and efficient electric or communication utility service. PG&E denies that some form of new technology has acted to significantly reduce the pole space requirements appropriately made for the provision of electric utility service. PG&E alleges it lacks sufficient information or belief to form an opinion as to the effects of any new technology on the pole requirements for communication utilities. PG&E denies that there exist on PG&E's poles quantities of excess space not reasonably used or useful for the safe and efficient performance of its public utility functions and those of joint owners. On information and belief, PG&E denies that there exists on other utilities' poles excess space not reasonably used or useful for the safe and efficient performance of the public utility functions to which the poles are to be put.

PG&E admits that it allowed certain CATV companies access to its poles under pole contact agreements starting in the mid-1950's. PG&E admits and alleges that over approximately the last twenty years it has allowed CATV systems to contact its solely owned poles under contracts between itself and individual cable companies. PG&E admits and alleges that CATV access to poles jointly owned by itself and a communication utility has been handled by the communication utility co-owner, the owner with primary responsibility for rearrangements in communication space. PG&E has not participated in the establishment of conditions, terms, and rates for CATV contacts on jointly owned poles.

PG&E denies that excess space ("surplus" as used by CCTA) exists on its support structures, and further denies the allegation that pole space generally has been dedicated to the provision of CATV "pole attachments". PG&E denies that members of CCTA occupying poles without PG&E's consent or permission acquired any "right" of access to space on its support structures.

PG&E alleges no knowledge of the so-called "equity pricing system" alleged by complainant. For lack of information or belief as to the alleged "equity pricing system", PG&E denies each and every allegation of paragraph 18.

PG&E alleges and believes that complainant CCTA lacks standing to bring the complaint herein. On information and belief, PG&E alleges that CCTA is a CATV trade association. PG&E is informed and believes that CCTA does not own or operate a cable system, nor does it have any other ownership or operating interest in a cable system. Section 767.5 of the Public Utilities Code provides for Commission regulation of CATV pole rental arrangements "Whenever a public utility and a cable television corporation are unable to agree upon the terms, conditions, or compensation for pole attachments..." (Emphasis added.) PG&E states that the statute looks to the activities and participation of a CATV company, not a CATV trade association.

PG&E argues that CCTA does not satisfy the terms of the statute and its participation herein does not necessarily bind cable companies not appearing in the case to orders which may be issued by the Commission. Therefore, according to PG&E, complainant CCTA does not have standing to bring this suit.

PG&E requested the following:

1. That complainant CCTA take nothing by its complaint herein;
2. That this Commission issue an order establishing a just and reasonable annual rental rate for CATV attachments on PG&E poles of $12;
3. That this Commission issue an order requiring cable companies to report all their contacts on PG&E solely owned poles to PG&E; and
4. That this Commission order such other and further relief as it may find appropriate.

On November 9, 1978 staff counsel filed, in accordance with the request[3/] of the Administrative Law Judge made on October 3, 1978, a "Memorandum Of Points And Authorities Of The Commission Staff".

On December 21, 1978 the Commission mailed a notice setting hearing for January 26, 1979.

On January 11, 1979, complainant filed a "Motion For An Order Defining And Limiting Issues In Interim Proceeding" and a "Motion To Disqualify Administrative Law Judge Gillanders." These motions were denied by ruling of the Administrative Law Judge on January 18, 1979.

3/ All parties were requested to file. Neither complainant nor defendant responded.

Hearing was held on January 26, 1979 as scheduled. At the hearing counsel for complainant stated that he was withdrawing the proposed testimony of his witness Goddard[4/] and wanted to rest his case as far as the interim phase was concerned. PG&E had no further witnesses to present. The staff had no witness to present. However, staff counsel did make a statement on behalf of the Commission staff. Complainant requested that briefs be allowed and it was agreed that any party so desiring could file a brief due in 10 days.[5/]

On February 9, 1979 complainant filed a "Pre-Trial Brief" and defendant filed a "Post Hearing Brief". The staff did not file a brief.

On April 11, 1979, complainant filed a pleading entitled "Withdrawal of Allegations in Complaint", which was opposed by PG&E in a pleading filed May 29, 1979. On April 30, 1979, complainant filed a petition to set aside submission to receive evidence of legislative history.

The petition of complainant for a proposed report was granted by the Commission on May 8, 1979, and the proposed report of Administrative Law Judge Gillanders was issued May 15, 1979. On May 22, 1979, the proceeding was reassigned from Administrative Law Judge Gillanders to Administrative Law Judge Robert T. Baer.

4/ The main purpose of the hearing was to cross-examine complainant's witness. In its Pre-Trial Brief complainant withdrew its request for interim relief.

5/ At the request of complainant, permission was granted to file by February 9, 1979.

Exceptions to the proposed report were filed by both parties on June 18, 1979. On July 2, 1979, a prehearing conference was held at which it was agreed that: (1) submission of the interim evidentiary phase of this proceeding should be set aside, (2) Exhibits 24 through 30, consisting of materials dealing with legislative history, should be received into evidence, (3) replies to exceptions would be due July 20, 1979, (4) the Administrative Law Judge would prepare a recommended interim decision based upon the pleadings and evidentiary record, the proposed report, the exceptions, and the replies to exceptions, and (5) hearings in phase two of the proceeding would commence September 18, 1979. Replies to exceptions have now been filed by both parties and the matter is ready for decision.

Preliminary

At the first day of hearing and in its answer, as noted above, PG&E alleged that complainant CCTA lacks "standing to bring the complaint herein".

Complainant's attorney argued that it did have standing and that the courts have settled the issue. He offered to provide citations if requested. We note that in the two leading cases regarding CATV in California, California Community Television Assn. v General Telephone Co. of California and Southern California Edison Co. (1972) 73 CPUC 507 and International Cable T.V. Corporation v All Metal Fabricators, Inc. (1966) 66 CPUC 366, Harold R. Farrow appeared as counsel for complainants and that the most recent case involved CCTA. For purposes of this interim decision we will assume CATV has standing. A final determination on this issue will be made in the subsequent final decision.

Discussion

For purposes of this interim decision the facts are not in dispute. CCTA has accepted PG&E's description of a typical

pole and cost estimates,[6/] which are as follows:

1. Description of a typical pole: A 40-foot pole of which:
   (a) 5.5 feet are buried;
   (b) 20 feet are required for ground clearance;
   (c) .5 foot is needed for the CATV attachment;
   (d) 6 feet are required for separation clearance, and,
   (e) 8 feet are occupied by PG&E.
2. Cost estimate: The annual cost to PG&E of owning and maintaining such a pole is $30.24.

Given these facts the issue becomes one of correctly applying the language of Section 767.5.

In Section 767.5 the Legislature has vested in the Commission jurisdiction to determine pole attachment rates, terms, and conditions. According to the plain language of the section, the rates set by the Commission must, as a minimum, assure a public utility the recovery of not less than all the additional costs of providing and maintaining pole attachments. The maximum rate that the Commission may fix is a rate not "more than the actual capital and operating expenses, including just compensation, of the public utility attributable to that portion of the pole...used for the pole attachment...". It seems clear that the Legislature intended to give the Commission discretion to fix the pole attachment rate at any level between the minimum and maximum rate, as defined by the statute. However, both of the parties have used ratemaking theories which clearly place them at the maximum end of the spectrum. Although arriving at different results, the parties each attempt to allocate total annual operating and ownership costs. We agree that in this interim order it is appropriate to allocate the total annual ownership and operating costs between the two users,

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6/ CCTA's Pre-Trial Brief, p. 26.

PG&E and the CATV corporation. The crux of the matter is to determine upon what basis these costs should be allocated. According to the statute, the rate may equal the portion of the total costs "attributable to that portion of the pole...used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities, and uses which remain available to the owner...of the subject facilities."

To simplify the analysis, the last dependent clause of the quoted material may be eliminated from consideration, since no additional use could be made of the facilities by PG&E once a CATV corporation had attached its cable to the pole.

CCTA's theory is that it should pay a rate based on the following formula:

$$\frac{\text{Space used by CATV corporation}}{\text{Usable Space}} = \frac{.5 \text{ feet}}{8.5 \text{ feet}} = 5.9\%$$

$$5.9\% \times \$30.24 \text{ per year} = \$1.79 \text{ 7/}$$

7/ Although CCTA's "worst case", under its theory, yields a rate of only $1.79, it is willing to pay $2.50 per pole per year subject to later adjustment depending on the Commission's final rate.

CCTA arrives at its "usable space" figure as follows:

	40.0 feet	Total pole height
less	5.5 "	Buried portion
less	20.0 "	Ground clearance
less	6.0 "	Separation clearance
	8.5 feet	Usable space

Of a total of 8.5 feet of usable space, CCTA argues that only .5 foot is used by a CATV pole attachment while 8 feet is used by PG&E. However, this theory contains a fallacy. CCTA counts only the space it physically occupies and eliminates space which its occupation necessarily renders useless to PG&E, i.e., the 6 feet of separation clearance. At the same time, CCTA allocates to PG&E not merely the one foot of physical space used by two cross-arms[8/] (each slightly less than six inches tall) but all the separation clearance space required by General Order No. 95 as well. We believe that any allocation formula must at least be consistent in order to be fair. Accordingly, two consistent allocation methods do suggest themselves.

The first method is based, in part, upon CCTA's theory of usable space. However, we will define "usable space" as the space physically occupied. Thus, the total usable space is 1.5 feet, of which .5 foot is attributable to the CATV's attachment and 1.0 foot is attributable to PG&E's two cross-arms. Under this theory two-thirds of the total annual cost of owning and maintaining a pole (2/3 x $30.24) or $20.16 is attributable to PG&E's use, while one-third of such cost, or $10.08, is attributable to the CATV attachment. Thus, under this theory, the cost-based rate per pole per year would be $10.08.

8/ We assume that two PG&E cross-arms are mounted on the typical 40-foot pole.

The second allocation method defines usable space as the space preempted by each user. Thus, the CATV's use of six inches of pole space to attach its cable, results in preemption of an additional six feet of space. The moment the CATV cable is attached the six feet of space above the attachment is rendered useless to PG&E because of the clearance requirements of General Order 95. The CATV attachment therefore preempts a total of 6.5 feet, which is 45 percent of the total usable space of 14.5 feet (40'-[20' + 5.5] = 14.5'). Under this theory the rate should be 45 percent of $30.24 or $13.61. 9/

In its Exhibit 3 PG&E advocated a variant of this second allocation system, as follows:

	Total (feet)	Communications Benefit (feet)	Power Benefit (feet)
Pole setting depth	5.5	2.75	2.75
Ground clearance to Communication	20.0	10.0	10.0
Communication Use	.5	.5	-
Free space	6.0	3.0	3.0
Power Company Use	8.0	-	8.0
Total	40.0	16.25	23.75
Percent of 40' Pole	100.0%	40.6%	59.4%

Thus, PG&E's method results in a rate of $12.28 per pole per year ($30.24 X 40.6%), which PG&E rounds to $12.00. This method and rate were adopted by Administrative Law Judge Gillanders in his proposed report dated May 15, 1979.

9/ In the proposed report this method produced a rate of $17.95, due to different assumptions.

The method which produces a rate of $13.61 most closely corresponds to the language of Section 767.5, for it allocates to the CATV corporation "a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities". In contrast, CCTA's theory implicitly ascribes a different meaning to the root word "use" when it appears in the phrase "used for the pole attachment" and when it appears in the phrase "all other uses made of the subject facilities". In the first case, CCTA interprets "use" to mean the portion of the pole "physically occupied". In the second case CCTA interprets "use" to mean the portion of the pole "preempted", i.e., the portion physically occupied plus the necessary clearance space. This inconsistent result was manifestly not intended by the Legislature and is a distortion of the language of the statute.

PG&E, on the other hand, is willing to accept a rate of $12.00 per pole per year. This rate also falls within the range of reasonableness and is calculated on the basis of a reasonable interpretation of Section 767.5. Accordingly, the Commission's interim rate should be $12.00 per pole per year.

Reasonableness of the Adopted Rate

Other evidence in the record suggests that a rate of $12.00 per pole per year is a reasonable rate based upon traditional rate-making criteria. First, we note that the rate of $2.50 per pole per year, the last rate to which CCTA and its members agreed, has been the going rate since 1943, a period of 36 years (CCTA's Exhibit 1, page 8).

Second, there are two million homes served by CATV corporations in California. Approximately one pole per home is required to provide cable television. Thus, two million poles are contacted by CATV corporations. However, only 60,000(or 3 percent) of these poles are solely owned by PG&E. The rate impact per CATV customer resulting from a rate of $12.00 per pole per year (or, $1.00 per month) for PG&E poles is only 3 percent of $1.00 or $.03 per customer per month in PG&E's service area. Even if it were assumed that the rate of $12.00 per pole per year were to become the rate charged by all pole

owners for CATV attachments, the rate impact per customer per month would be no more than $1.00. This is a pittance compared to the cost to CATV customers if the operators were required to place their wires underground or on their own pole lines.

Third, PG&E rents space on its solely owned poles to other communications companies, specifically, independent telephone companies. Since 1970, those companies have paid PG&E three different rental rates: $6.60, $9.90, and $11.60 per pole contact per year. Although PG&E has been unable to negotiate increases in these rates with the telephone companies, it did reach an agreement with them in 1976 that the existing rates would continue as interim rates subject to retroactive adjustment to whatever rate was finally established. (Exhibit 21; Tr. 466.)

Fourth, the General Manager of Cable KOR Communications (a CATV corporation operating three systems in San Luis Obispo County) testified on behalf of CCTA that he recently agreed to an increase in the CATV's share of the cost of joint house drop trenches from 26 to 33 percent. Now, each of the parties using such a joint trench (PG&E, telephone company, and CATV) pay one-third of the cost of such trenches. (Tr. 352, 438.) It seems clear that if the CATV corporation pays trenching costs in proportion to the number of occupants of the trench, it should pay pole costs in roughly the same proportion.

Fifth, CCTA's expert witness, testifying regarding his understanding of PG&E's and PT&T's joint pole agreement, stated that the basic theory of the arrangement is to share the benefits of a joint pole in proportion to the alternative costs of each company building its own poles. (Tr. 60-61.) CCTA's witness agreed that arranging joint use of a pole so that the cost is shared by the parties in a proportion determined by their alternatives, which would be single poles, is a practical and sensible way of dividing the cost of poles between joint users. (Tr. 64.)

Sixth, it is conceded by all parties that cable TV is a luxury and nonessential service (Tr. 102-103) as opposed to electric service. No user of a luxury service, such as cable TV, should expect the users of an indispensable service, such as electric service, to subsidize any portion of the cost of the luxury service. It follows inexorably that the users of cable TV should pay, through their monthly rates, a reasonable proportion of the cost of owning and maintaining the PG&E poles contacted by the cable TV operator in the course of supplying cable TV services to its customers.

Seventh, the rental rates which have been assessed by PG&E to all or to some CATV corporations, namely $2.50, $4.50, $4.75, and $5.04, (Tr. 459) were negotiated figures which bore very little relationship to any actual ownership costs but were, in fact, much lower than such costs. (Tr. 184.) It has been PG&E's opinion that the rate should be in the neighborhood of $12 to $14, but PG&E has been unable to negotiate such a rate (Tr. 463.)

Eighth, one CATV operator testifying on behalf of CCTA, stated that the cost of undergrounding cable TV plant to serve only 26 homes on Burnside Drive in San Jose was $25,000 in 1974 or 1975. (Tr. 222.) Assuming that 26 PG&E solely owned poles were required to serve the same 26 homes and that the rate per pole per year was $12.00, the annual cost to the CATV operator (excluding capital costs) would be only 26 x $12.00, or $312.00. An idea of the relative capital costs of underground versus overhead CATV plant construction can be derived from the same witness' testimony. Assuming 40 poles per mile and 26 poles needed for the facilities on Burnside Drive, the proportion of a mile served on Burnside Drive is 26 divided by 40 or 65 percent of a mile. The cost per mile of overhead plant construction using existing poles owned by a utility company is $10,000 to $12,000 per mile. (Tr. 220.) Therefore, the cost of overhead construction on the same stretch of Burnside Drive would be in the neighborhood of $6,500 to $7,800, roughly one-fourth to one-third of the cost of underground facilities.

It is clear that, if the Commission were to set the rate for pole attachments using the traditional, multifactor approach, it could reasonably find that the rate should be approximately $1.2.00 per contact per year.

Findings

1. PG&E and CCTA are unable to agree upon the terms, conditions, or compensation for pole attachments or upon the terms, conditions, or cost of the production of surplus space needed for pole attachments.

2. A typical PG&E pole is forty feet long of which 5.5 feet are buried, 20 feet are required for ground clearance, 0.5 foot is needed for the CATV attachment, 6 feet are required for separation clearance, and 8 feet are occupied by PG&E.

3. The ownership and maintenance costs of a typical pole total $30.24 per pole per year.

4. The ownership and maintenance costs of a typical pole anchor total $7.31 per anchor per year.

5. The total usable space on a typical pole is 14.5 feet.

6. A CATV attachment uses 0.5 foot of pole space.

7. PG&E uses 8 feet of pole space, including both the space required to attach its equipment and separation clearance.

8. Pole setting depth of 5.5 feet, ground clearance of 20.0 feet, and clearance space above the CATV attachment of 6.0 feet are required for the use of both PG&E and the CATV attachment, and the use of such space should be distributed equally between them.

9. A CATV attachment uses approximately 40 percent of the usable space on a typical pole.

10. The proportion of the annual cost of a typical pole attributable to a CATV attachment is 40 percent of $30.24, or approximately $12.00.

11. The proportion of the annual cost of a typical anchor attributable to a CATV attachment is 40 percent of $7.31, or approximately $3.00.

Conclusions of Law

1. Section 767.5 should be interpreted to give a consistent meaning to the term "use" when it appears in the section.

2. The term "use"[10/] as it appears in Section 767.5 should be defined broadly to mean preempt or occupy so as to render useless to another.

3. Even if CCTA's "equipment inches" theory of allocation were the appropriate method to use under the statute, there is insufficient evidence in the record from which PG&E's equipment inches on a typical pole could be estimated.

4. The Commission has considered the exceptions to the proposed report and the replies to exceptions filed by CCTA and PG&E and, to reflect the content of those pleadings, has amended the proposed report in ways too numerous to be listed.

5. The Commission has considered the legislative history materials submitted as Exhibits 24 through 30 and concludes therefrom that in Section 767.5 the Legislature has given to the Commission broad discretion to balance the interests of the pole-owning public utilities and the CATV owners.

10/The word "use" is defined as: "The act of employing anything, or the state of being employed; employment; conversion to a purpose (to make use of, that is, to use or employ); ...to consume or exhaust by employment; ..." (The New Webster Encyclopedic Dictionary of the English Language, 1971).

6. In Section 767.5 the Legislature has employed general terms, rather than a fixed formula, in establishing the standards by which the Commission should be governed in fixing rates for CATV pole attachments.

7. While the rates adopted herein have been derived solely from the application of the language of Section 767.5 to the facts of this case, it is noteworthy that such rates are otherwise reasonable, based upon traditional ratemaking criteria.

8. Given the latitude set forth in Section 767.5 a rate of $12.00 per year per pole contacted and a rate of $3.00 per year per anchor contacted is fair to all parties and should be adopted.

9. Adoption of the above rates would not be unreasonable to the customers of CATV systems.

10. The $12.00 rate and the $3.00 rate should be ordered subject to refund to or surcharge from the date incurred pending the final determination in this matter.

11. Upon payment of the above rates to PG&E, those CATV companies presently occupying space should be allowed to continue the attachment.

12. New requests for attachments should be allowed upon receipt of payment of the above rates.

13. PG&E should, as soon as possible, ensure the removal from its poles of any equipment for which the authorized rentals are not paid.

14. The issue of the appropriate rate to be assessed and collected for 1977 and for prior years should be considered in and decided by further order of the Commission.

15. PG&E should file tariffs consistent with the following order.

INTERIM ORDER

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) shall, upon payment of ~~$13.00~~ $12.00 per year per pole contacted and $3.00 per year per anchor contacted, allow cable television companies to use space on its poles and anchors.

2. If no usable pole space is available, PG&E shall make space available at the sole cost to the applicant for such space.

3. PG&E shall collect such rentals for all contacts existing on its poles on or after January 1, 1978.

4. If payment for usable pole space and anchors is not made, PG&E shall ensure that cable television equipment is removed from its poles.

5. PG&E shall file tariffs consistent with this interim opinion within ten days of the effective date hereof.

6. The rates established herein shall be subject to refund to or surcharge from the date incurred (with interest at the rate of 7 percent per annum) to reflect rates adopted in a final order in this proceeding.

The effective date of this order shall be thirty days after the date hereof.

Dated SEP 25 1979, at San Francisco, California.