



FEB 2 1996

Decision 95-08-075 February 23, 1996

referred to herein as petitioner). We extend the surcharge from 12 to 24 months, and clarify that no further adjustments of the surcharge are authorized. To speed implementation, we shorten the time before the advice letter and surcharge become effective from 40 to 25 days. Finally, we clarify how the surcharge is to be calculated.

2. Background

Pursuant to Rule 47 of Commission's Rules of Practice and Procedure, on December 19, 1995 CUCC petitioned for modification and/or clarification of D.94-11-074. Petitioner asks that (1) the surcharge authorized by D.94-11-074, to align interim with final revenues, be implemented as closely as possible with the estimated January 1, 1996 implementation of final rates; (2) that the surcharge be collected over 24 rather than 12 months; (3) that the surcharge be implemented now using 10 months of actual data and 20 months of estimated data (with a true-up made in January 1996) rather than waiting for 12 months of actual data; and (4) that the time for responding to the petition be shortened. By ruling dated

H O I I I O

1 Citizens Utilities Company of California filed Application? (A.) 93-07-039 and A.93-12-005 in these consolidated proceedings. When the applications were filed, CUCC provided both telephone and water service. By D.95-03-017 (as modified by D.95-04-034 and D.95-08-001), CUCC was granted authority to separate its telephone and water operations. Water operations continue under the name CUCC. A new certificate of public convenience and necessity was granted for telephone operations to Citizens Telecommunications Company of California Inc. (CTC-California). CTC-California was also assigned a new corporate identification number, different than the one used in the captions for these proceedings. CUCC's telephone service began to be performed under the CTC-California name on August 16, 1995, when CTC-California's tariffs became effective. We will continue to use the CUCC name in this decision for the telephone matter before us here for consistency with the prior decisions and the name and corporate identification number in the captions.

December 29, 1995, the time for filing responses was shortened to January 9, 1996.

On January 4, 1996, the Division of Ratepayer Advocates (DRA) filed its response, recommending that the petition be denied. Among other things, DRA contends that the petition is untimely, and petitioner did not adequately explain why the petition is late. Further, DRA believes the surcharge should be amortized over whatever months remain in 1996, rather than over 24 months.

Pursuant to Rule 47(g) on January 8, 1996 CUCO sought and was granted permission to reply to DRA's response. CUCO filed its reply on January 16, 1996, opposing DRA's response. On January 18, 1996, CUCO filed a supplement to its petition proposing the specific words it recommends to carry out all requested modifications to the decision (as required by Rule 47(b)). In its supplement, CUCO states that it no longer seeks authorization for the surcharge to be calculated using 10 months of actual data and 2 months of forecast data, with a subsequent true up.

3. **Late Filing**

Rule 47(d) requires that a petition for modification be filed and served within one year of the effective date of the decision proposed to be modified. If more than one year has elapsed, petitioner must explain why the petition could not have been presented within one year of the effective date. If the late submission is not justified, the petition may be summarily denied on that ground.

D.94-11-074 was effective on November 23, 1994, the day the decision was mailed. CUCO's petition was filed on December 19, 1995 and is, therefore, untimely, having been filed more than one year after the effective date of the decision proposed to be modified. Petitioner contends it was impossible to have sufficiently anticipated the issues so as to have filed the petition within one year.

To the contrary, CUCC was monitoring revenues under interim rates pursuant to Ordering Paragraph 3 of D.94-11-074. The monitoring reports revealed interim rate revenues substantially less than the final revenue requirement in the proposed decision filed and served August 17, 1995. CUCC's comments on the proposed decision argued for increasing, not decreasing, the revenue requirement. Consistent with its comments, CUCC could have reasonably foreseen the need for a substantial surcharge and begun preparation of, if not filed, its petition for modification.

Moreover, the issue of implementing the surcharge coincident with final rates was raised by the parties in their comments on the interim rate proposed decision. From the perspective of its customers, CUCC preferred implementation on the same date as the final rates, but recommended later determination of the date in recognition of the fact that sometime would be needed to calculate the surcharge. The Commission agreed with CUCC. (D.94-11-074, mimeo, p. 82) The issue already having been raised and deferred until later, CUCC's monitoring of revenues should have prepared it to quickly file a petition for modification after the August 17, 1995 final rate proposed decision. Final rates could have been implemented as soon as 30 days after the mailing of the proposed decision. Since the petition seeks implementation of the surcharge coincident with or close to the date of first implementation of final rates, CUCC would have needed to file its petition with sufficient time for Commission action before the effective date of the final rates.

Even if, it elected to wait until issuance of the final decision, CUCC had seven Commission business days between the effective date of the final decision and one year after the effective date of the interim decision. Assuming CUCC was monitoring this issue, it could have filed its petition within those seven days.

Nonetheless, we decline to issue a summary denial of the petition. The petition was filed only slightly more than one year after the effective date of D.94-11-074. CUCO's delay in filing the petition prevents us from considering its request for a delay in implementation of the surcharge coincident with or close to the January 1, 1996 implementation of final rates. Nevertheless, this petition still provides an opportunity to address important issues which directly affect ratepayers and the company.

4. Surcharge Collection Over 24 Rather Than 12 Months

CUCO estimates the necessary surcharge, pursuant to D.94-11-074 and collected over 12 months, to be 19.77%. According to CUCO, this results in a surcharge of \$5.93 per month on a flat rate residential customer's average monthly bill of \$35.10 for intraLATA services, and \$11.96 per month on a flat rate business customer's average monthly bill of \$69.02 for intraLATA services. CUCO believes this would be unduly burdensome and proposes collecting the surcharge over 24 months, without any further interest for the additional 12 months. We adopt CUCO's proposal. We see no reason to unduly burden petitioner's customers. Petitioner is willing to defer collection of the surcharge revenues, and not seek additional interest. This is in its customers' best interest.

In contrast, DRA recommends collecting the surcharge over the remaining months in 1996. This would require a surcharge of 26.36%, if collected over 9 months. DRA argues this surcharge is not unreasonably high compared to prior surcharges. According to DRA, the Commission authorized a 25% surcharge in 1983 which lasted several years, and recent surcharges of 16.54% were removed on January 1, 1995, with the implementation of D.94-09-065 (the 1995 Implementation Rate Design decision). We decline to shorten

To the contrary, prior surcharges of 25% and 16.54%, whether high or not, do not themselves justify such a high surcharge at this time. The circumstances justifying prior

surcharges do not themselves support a high surcharge here, where circumstances are different. DRG asserts that implementation of decisions in other major proceedings (e.g., local exchange competition, universal service) will inevitably affect the level of CUCC's rates, bills, and revenues in 1997 and beyond. These fluctuations will affect CUCC's surcharge if collected beyond January 1, 1997, and could require further adjustment to normalize petitioner's surcharge revenues, according to DRG. DRG believes any surcharge adjustments would be difficult to quantify, given all the uncertainties surrounding the effects of implementing local competition and universal service. Therefore, to avoid customer confusion regarding surcharges, DRG recommends termination of all surcharges resulting from CUCC's general rate case (D:95-11-024) by December 31, 1996.

We agree with DRG that regulatory changes are likely by January 1, 1997. We do not know, and cannot now quantify, however, the effects on CUCC, nor do we know how soon after January 1, 1997, if at all, the effects will occur. Therefore, we are not persuaded by DRG.

Moreover, DRG recommends termination of all surcharges by December 31, 1996. The Fountain Fire surcharge is scheduled to last 24 months. We decline to modify the Fountain Fire surcharge. No authorization is provided in the final decision (D:95-11-024) for any adjustment of the Fountain Fire surcharge if the billing base varies in 1996 and/or 1997 from that used to calculate the surcharge, or if revenues vary from those expected by DRG concerning necessary recalculations and customer confusions, therefore,

We decline to shorten the period of recovery of the surcharge to align interim with final rates for the same reason. Actual experience can be expected to reasonably vary from the assumptions used to calculate a surcharge. While the purpose of a



formal proceeding and the matter referred to the Administrative Law Judge Division.

6. Actual 1995 Sales  
CUCG states that:

"The surcharge or surcredit is to be calculated based on any difference between the revenues collected under the interim rates and the adopted revenue requirement. (Petition dated December 19, 1995, page 3.)

We take this opportunity to clarify the calculation of the surcharge.

The interim rate decision states that:  
"The revenues collected under the tariffs as set forth and described in Appendices A and B (interim rate tariffs) shall be subject to adjustment, with interest, based upon the final 1995 test year revenue requirement adopted in these consolidated proceedings. (Ordering Paragraph 2, D. 94-11-074, mimeo, p. 14.)

The adjustment of revenues collected under interim rate tariffs is to be based on the final 1995 test year revenue requirement, but is not necessarily equivalent recovery. It is not intended, for example, to be a windfall to CUCG by guaranteeing recovery of the adopted test year revenue requirement if actual sales are below adopted test year sales. Nor is it intended to be a penalty to CUCG if actual sales are above adopted test year sales, with CUCG concurrently incurring greater expenses. That is, if actual 1995 revenues under interim rates are \$59 million, and adopted test year 1995 revenues are \$66 million, the surcharge is not automatically \$7 million (\$66 minus \$59). Rather, the surcharge must also take sales into account, by adjusting test year sales for actual sales. This follows from the general premise of our regulation:

Adoption of a test year revenue requirement requires adoption of sales forecast. While the goal is for adopted sales to match actual sales, it is unlikely they will be exactly equal.

Rather, some reasonable difference may occur. If final rates had been adopted effective January 1, 1995 (without the need for interim rates, actual revenues would not necessarily have exactly equaled those adopted for test year 1995.

Similarly, the adjustment between revenues from final and interim rates must reflect this actual sales experience. Without this adjustment, the surcharge would effectively be a guarantee that CUCC collect, or a limitation that CUCC only collect, the final test year revenue requirement. Thus, the authorization to adjust interim revenues is to base the adjustment on the final 1995 test year revenue requirement, not guarantee or limit recovery without reflection of the actual sales experience and our regulatory principles.

For example, assume actual sales under interim rates generated revenues of \$59 million, but those sales are only 98% of the sales adopted for the test year. The final rate decision (D.95-11-024) adopted a test year revenue requirement of \$66 million based on 100% of adopted sales. Adopted final rates applied to actual sales (98% of adopted sales) would generate revenues of \$64.7 million ( $\$66 \times 0.98$ ). The shortage to be collected by the surcharge would therefore not be \$7 million ( $\$66$  minus  $\$59$ ), but would be \$5.7 million ( $\$64.7$  minus  $\$59$ ).

The opposite is true if actual sales exceed adopted test year sales. Assume actual sales under interim rates generated revenues of \$59 million, and those sales are 102% of the sales adopted for the test year. Adopted final rates applied to actual sales (102% of adopted sales) would generate revenue of \$67.3 million ( $\$66 \times 1.02$ ). The shortage would not be \$7 million ( $\$66$  minus  $\$59$ ), but would be \$8.3 million ( $\$67.3$  minus  $\$59$ ).

An accurate calculation of the revenues from adopted final rates applies the adopted final rates to actual 1995 sales by sales component. From this is subtracted actual revenue from interim rates to calculate the difference to be collected by the

surcharge. This is consistent with our statements in the text of the interim rate decision and the ordering paragraph adopted.

"We understand this term to mean that the overcollection... will be calculated by comparing the interim revenues actually collected against the revenues that would have been collected under final rates." (D.94-11-074, mimeo., pp. 10-11.)

"The advice letter shall report actual interim revenues, revenues that would have been received under the final adopted rates." (Ordering Paragraph 2, D.94-11-074, mimeo., p. 14.)

**Findings of Fact**

1. While the petition for modification could have been filed within one year, CUCC's late filing is not entirely unreasonable with the petition filed only slightly more than one year after the effective date of the decision proposed to be modified. (SSO-11-20.0)

2. Collection of the estimated surcharge over 12 months or less would be unduly burdensome on petitioner's ratepayers.

3. Petitioner proposes collecting the surcharge over 24 months without any further interest accrual for the additional 12 months.

4. Shortening the effective date from 40 to 25 days will accelerate implementation of the surcharge consistent with GO 96-1A procedures.

5. The adjustment of revenues collected under interim rates based on the final 1995 test year revenue requirement is not intended to be a windfall or penalty to CUCC by guaranteeing or limiting recovery to the adopted test year revenue requirement.

6. A reasonable difference may occur between adopted final test year revenues based on adopted sales and revenues generated from actual sales in the test year. From this sales component, interim rates to calculate the difference to be collected by the

7. Revenue from final rates, to which revenue from interim rates will be adjusted, must reflect actual sales experience, just as would revenue at final rates if there was no adjustment.

8. Without adjusting the interim-to-final rate surcharge for sales, an unreasonable and unauthorized windfall or penalty will not occur which is inconsistent with our regulation. Conclusions of Law

1. The petition for modification should not be summarily denied, even though it was filed more than one year after the effective date of the decision proposed to be modified.

2. The adjustment of revenues collected under interim rates based upon the final 1995 test year revenue requirement should be collected by a surcharge over 24 rather than 12 months without additional interest for the extended collection period.

3. Neither the interim nor final rate decisions provide authorization for further adjustments to the Fountain Fire or interim to final rate surcharges if the billing base, rates, or revenues from the surcharges in 1996 and 1997 and beyond differ from the assumptions used to calculate the surcharges.

4. The surcharge should become effective on the 25th day after the advice letter is filed, unless the advice letter is suspended as a result of a protest or on the Commission's own motion.

5. Authorization to adjust interim revenues based upon the final 1995 test year revenue requirement is not a guarantee or limitation of recovery to the adopted revenue requirement without reflection of actual sales.

6. This decision should be effective today to allow filing of the advice letter and implementation of the surcharge without further delay.

Revenue from final rates which would be adjusted to reflect actual rates experienced. Just

**IT IS ORDERED** that: If there is revenue as would be adjusted to reflect actual rates experienced. Just  
1. The petition for modification filed by Citizens Telecommunications Company of California Inc. (formerly known as Citizens Utilities Company of California (CUC)) is granted as provided herein and denied in all other respects.

2. The last two sentences of the first full paragraph on page 9 in Decision (D.) 94-11-074 (mimeo.) beginning with "If hearings are necessary." and ending with "for our consideration" are deleted and replaced with:

"If protested, the advice letter will be automatically suspended. If suspended (by protest or on the Commission's own motion), unless hearings are necessary, the Commission's Advisory and Compliance Division will review the matter and prepare a resolution for our consideration. If hearings are necessary, the advice letter will be docketed as a formal proceeding and the matter referred to the Administrative Law Judge Division."

3. The paragraph in D.94-11-074 (mimeo.) beginning on the bottom of page 10 starting with "Fourth, the agreement provides..." and ending on page 11 with "...without adjustments for seasonal or other factors)" is deleted and replaced with the following paragraph:

"Fourth, the agreement provides that the adopted revenue requirements will be adjusted to reflect the same fraction of the year for which the interim rates are in place. We understand this term to mean that the overcollection or undercollection will be calculated by comparing the interim revenues actually collected against the revenues that would have been collected under final rates over the same fraction of the year (e.g., the same number of days). The total amount of a surcredit or surcharge must be calculated using the same fraction or proportion of time (e.g., the same number of days) from the date the interim rates became effective to the effective date of the final

rates. A surcredit will be distributed over the same fraction of time from the date the interim rates become effective to the effective date of the final rates. However, collection of a total surcharge may be spread over a longer period of time if requested by CUCO and it appears to provide a benefit to the customer to do so. Although the time to collect a surcharge may be extended, interest will be calculated only for the period between the date the interim rates became effective and the effective date of the surcharge and no additional interest will be added for the time extended.

4. Finding of Fact 11 in D.94-11-074 is renumbered 11(a).

Finding of Fact 11(b) is added as follows:

11(b). Calculations of the total amount of a surcharge for surcredit must be made using the same fraction or proportion of time between the date the interim rates became effective and the date the final rates become effective. Distribution of a surcredit must be made over the same fraction or proportion of time between the date the interim rates became effective and the date the final rates become effective. Collection of a surcharge may be extended over a longer period of time if requested by CUCO and it appears to provide a benefit to the customer although no additional interest may be added for the time extended.

5. Ordering Paragraph 2 of D.94-11-074 is deleted and replaced with:

"2. The revenues collected under the tariffs as set forth and described in Appendices A and B shall be subject to adjustment, with interest, based upon the final 1995 test year revenue requirement adopted in these consolidated proceedings. An adjustment, if made, shall be accomplished by the application of either a surcredit or surcharge to final rates. The surcredit or surcharge adjustment shall be calculated using the same fraction or proportion of

time between the date the interim rates became effective and the effective date of the final rates. A surcredit will be distributed over the same fraction of a period of time between the date the interim rates became effective and the effective date of the final rates. Collection of a surcharge may be extended over a longer period of time if requested by CUCC and if it appears to provide a benefit to the customer. However no additional interest shall be added to the total amount of the surcharge if collection of a surcharge is extended over a longer period of time. The interest rate used shall be the three-month commercial paper rate. CUCC shall file and serve an advice letter as soon as possible after the final rates are established in these proceedings and the final interim revenues are collected and tabulated. The advice letter shall be filed consistent with and under the terms of GO 96-A, and shall report actual interim revenues, revenues that would have been received under the final adopted rates, accumulated and forecasted interest through the proposed initial effective date of the surcharge or surcredit, CUCC's proposed surcharge or surcredit, and any other necessary and relevant information to assess, authorize and implement the surcharge or surcredit. Consistent with GO 96-A, parties shall have 20 days to file and serve protests, and CUCC shall have 5 business days after receipt of the protest to file and serve a response. If protested, the advice letter shall be automatically suspended.

6. Unless suspended (by protest or on the Commission's own motion), the advice letter authorized in D. 94-11-074 shall become effective on the 25th day after it is filed.

7. The surcharge authorized in D. 94-11-074 shall be collected over 24 months.

8. This proceeding is closed.

This order is effective today.

Dated February 23, 1996, at San Francisco, California.

DANIEL Wm. FESSLER  
President  
P. GREGORY CONLON  
JESSIE J. KNIGHT, JR.  
HENRY M. DUQUE  
JOSIAH L. NEEPER  
Commissioners