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Decision 98-04-062 April 23, 1998

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ORIGINAL

California Cable Television Association, Complainant, vs. Southern California Edison Company, (U 338-E) Defendant.	Case 97-03-019 (Filed March 13, 1997)

Lesla Lehtonen, Attorney at Law, for complainant.
John Stuart Tinker, John W. Evans, Thomas K. Braun Steptoe & Johnson, LLP, Attorneys at Law, for defendant.

OPINION

Summary

This decision establishes an annual fee of $2.73 plus an appropriate pole inspection fees to be charged by Southern California Edison Company (Edison) for pole attachments covered under Edison's standard pole attachment agreement. The rate is effective on the date of this decision.

The annual fee of $4.31proposed by Edison is not approved.

We find that the pole attachment service provided by Edison is a public utility service requiring no added facility.

Procedure

The California Cable Television Association (CCTA) and Edison, by this complaint and answer, request that the Commission establish an annual rate to be charged for pole attachments covered under Edison's standard pole attachment agreement and provide an effective date for the established rate.

An evidentiary hearing was held in San Francisco on October 14, 1997. Opening and Closing Briefs were filed by the parties, and the matter was submitted for decision on November 26, 1997.

Background

Authority to Regulate Public Utility Pole Attachments for Cable Television

The provision by public utilities of surplus space and excess capacity for pole attachments by cable television corporations is a public utility service. Whenever a public utility and an association of cable television corporations are unable to agree upon the annual compensation for pole attachments, the Commission shall establish and enforce the rate for pole attachments so as to assure that the public utility recovers reimbursement for actual costs incurred by the public utility for rearrangements performed at the request of the cable television corporation and an annual recurring fee of $2.50 or 7.4% of the public utility's annual cost of ownership for the pole and supporting anchor, whichever is greater. "Annual cost of ownership" means the sum of the annual capital costs and annual operation costs of the support structure which shall be the average costs of all similar support structures owned by the public utility. The basis for computation of annual capital costs shall be historical costs less depreciation. Depreciation shall be based upon the average service life of the support structure. (Public Utilities (PU) Code § 767.5.)

CCTA's Position

CCTA asserts that the Commission's ratemaking methodology provides a common sense method for determining pole attachment rates. It points out the primary difference between CCTA's and Edison's rates is attributable to the method each of them used to determine the "annual cost of ownership" which is defined as follows:

> "Annual cost of ownership means the sum of the annual capital costs and annual operation costs of the support structure which shall be the average costs of all similar support structures owned by the public utility. The basis for computation of annual capital costs shall be historical capital costs less depreciation. The accounts upon which the historical capital costs are determined shall include a credit for all reimbursed capital costs of the public utility. Depreciation shall be based upon the average service life of the support structure. As used in this paragraph, "annual cost of ownership" shall not include costs for any property not necessary for pole attachment."(P.U. Code § 767.5 (a)(9))

CCTA believes that the pole attachments are placed on excess space of utility support structures, or pole plants. It asserts that this available space or "excess capacity" on the poles is a part of the pole plant of Edison which the company uses to provide a "public utility service" which includes, according to CCTA, pole attachment services. Therefore, CCTA believes that the depreciation method applied to determine pole attachment fees, i.e., for a portion of their plant, should not be any different than the method applied to the entire pole plant for to set Edison's rates for retail electric service. Accordingly, CCTA asserts that the average net cost of a bare pole, using Edison's book figures, as follows:

Poles, Towers and Fixtures	$ 546,069,707
Depreciation Reserve	<356,721,688>
Deferred Income Tax	< 34,386,215>
Net Balance	$154,961.804
Number of Poles	1,490,563
Average Net Cost	$ 103.96

Next an established 15% deduction for non-pole items from the average net cost is taken, producing an adjusted average net cost of $88.37.

Cost factors for depreciation expense on the straight-line basis, administrative expense, maintenance expense, normalized taxes, and rate of return totaling 40.90% are calculated.

Total cost factors of 40.90% are applied against the adjusted average net cost of $88.37, and application of the statutory space use factor of 7.40% results in CCTA's recommended rate of $2.67.

CCTA submits that its ratemaking methodology: (1) is the only pricing method meeting the requirements of PU Code § 767.5; (2) is supported by Commission precedent in Resolution T-15603, September 1, 1994; and (3) is consistent with methodology used by the Federal Communications Commission (FCC).

Edison's Position

Edison believes that the appropriate rate for cable television company attachments is $4.31.

Edison contends that pole attachments for television are non-standard services or added facilities, quoting its Added Facilities Tariff (Tariff Rule No. 2-H-1-b(PUC Sheet No. 19901-E), effective January 20, 1996) defining added facilities as:

> "A pro rata portion of the facilities requested by an applicant, allocated for the sole use of such applicant, which would not normally be allocated for such sole use."

Edison states that Rule 2H provides this illustration of Added Facilities:

> "Added Facilities may include, but are not limited to, all types of equipment normally installed by the Company in the development of its electrical transmission and distribution systems and facilities or equipment related to the Company's provision of service to a customer or a customer's receipt or utilization of Company's electrical energy. Added Facilities also include the differential costs for equipment for electrical transmission and distribution systems designed by the Company which, in the Company's sole opinion, is in excess of equipment required for Edison's standard servicing system. Added Facilities may include poles, lines, structures, fixtures, transformers, service connections, meters, and load control devices." (Emphasis added by Edison.)

As requested by Edison, the Commission takes official notice of Rule 2H.

Edison offers the following explanation for classifying pole attachments as a non-standard or special service and using "levelized" or "sinking fund" depreciation:

> "Pole attachments represent a situation nearly identical to customers who seek special line connections or voltage regulation. When such special or non-standard service is provided for electric service, both Edison and the Commission recognize that these costs should not be collected into the total costs of providing electric service. CCTA members' pole attachments are just such a non-standard service because these attachments have nothing to do with any CCTA member's electric use or with the overall revenue requirements allocated to retail electric service."

> "[T]his Commission and other Commissions around the country have identified certain types of services which are either non-standard in the sense that not every customer seeks them, but perhaps a number of customers might seek them, for which identifiable investments are made, and from a business standpoint and from a regulatory standpoint there's a preference to use the sinking fund depreciation."

> "Now, for nonstandard service Edison keeps a separate accounting of the costs that are involved in the provision of that nonstandard service and uses a levelized approach or a sinking fund depreciation approach to collect those dollars, and in terms of sorting this out, Edison keeps track of the costs that are assigned to fully bundled retail service and those investment costs that are assigned to nonstandard customers."

Edison argues that, because the Commission has authorized it to use what it describes as the "levelized" or "sinking fund" depreciation method for non-standard services and added facilities, it is appropriate to use that methodology for establishing pole attachment rates.

Accordingly, Edison finds the weighted average cost of a pole, using Edison's book figures, by adding direct costs to overhead costs and subtracting contributions in aid of construction (CIAC), as follows:

Direct costs	\$488,785,507
Overhead	78,998,120
CIAC	< 26,963,333>
Net Balance	\$540,820,294
Number of Poles	1,490,563
Average Net Cost	\$ 362.83

Next an established 15% deduction for non-pole items is taken from the average net cost, producing an adjusted average net cost of \$308.41 per pole.

Cost factors for depreciation expense on the sinking fund basis, negative salvage, pole-related expenses, and other expense items not in dispute produce an annual carrying charge of 18.90%.

A total cost factor of 18.90% is applied against the adjusted average net cost of \$308.41, and application of the statutory space use factor of 7.4% results in Edison's recommended rate of \$4.31.

Edison submits that: (1) both the straight-line and sinking fund methods of depreciation satisfy the requirements of PU Code § 767.5; (2) the sinking fund method is the better and most commonly used method to use in pricing non-standard or special services; (3) Resolution T-15603, September 1, 1994, neither approves nor disapproves any particular depreciation method for pole attachment fees; and (4) the sinking fund method offered by Edison is consistent with methodology used by the FCC.

Finally, Edison provides comparable pole attachment fees charged to cable television companies by other utilities pursuant to negotiated arrangements, as follows:

	Current Attachment Rate	Rate Implemented
PG&E	$7.39	1/1/96
Pacific Bell	6.35	1/1/97
SDG&E	5.86	1976

Discussion

In this proceeding CCTA and Edison request that the Commission establish an annual rate that cable television providers will pay to attach their facilities to Edison's electric transmission line support poles, as the parties have not been able to reach agreement between themselves as to an acceptable rate.

PU Code § 767.5 is the controlling statute authorizing the Commission to regulate public utility pole attachments for cable television. If a public utility and a cable television corporation are unable to agree upon annual compensation for pole attachments, the statue directs the Commission to determine the pole attachment fee to assure the public utility the recovery of a one-time reimbursement for actual costs of rearrangements and an annual recurring fee of two dollars and fifty cents ($2.50) or 7.4% of the public utility's annual cost of ownership for the pole and supporting structures, whichever is greater. The statute ensures that cable television corporations can utilize any surplus and excess capacity of utility poles for television transmissions by declaring such surplus capacity a public utility service. The statute also ensures the entitlement of utility ratepayers to full proportionate reimbursement of capital costs and operation costs, including depreciation, properly assignable to pole capacity devoted to cable television purposes.

The parties in this proceeding have a fundamental disagreement on the depreciation methodology that should be applied to determine pole attachment fees. The straight line depreciation method supported by CCTA produces a fee of $2.67 whereas the so-called "sinking-fund" or "levelized" depreciation method advocated by Edison would produce $4.31. Edison's methodology relies on a determination that pole attachment service is an added-facilities and non-standard service. We disagree with Edison.

Edison's computation considers the excess capacity a non-standard service; and on this basis it finds the average cost on a per pole basis by adding direct costs of the poles to overhead costs and subtracting contributions-in-aid-of-construction. This results in an average pole cost of $362.83.

The paramount difference between CCTA and Edison in their pricing approaches is the starting point. The statute directs the determination of the average cost of all similar support structures owned by Edison. CCTA's computation, as described above, finds the average cost by calculating the book value of the plant, less depreciation, subtracts deferred income tax and divides the result by the number of poles. This yields an average cost per pole of $103.96.

The service provided to cable companies in this case is a surplus space which is excess capacity available on Edison's poles and can be used for the purpose of cable attachments. The provision of this surplus service by Edison does not require it to install any additional facilities such as poles, lines, structures, fixtures and other devices in order to permit cable companies to use its poles for attachments. Cable television corporations seek only to use the available excess space on the poles for attachments in order to serve Edison's customers. If a cable television corporation sought to have Edison install an additional pole, a pole not otherwise required for Edison to serve its other customers, it would be appropriate for the cable television corporation to receive service under the added facilities tariff. However, that is clearly not the case here. Here the cable company is seeking to attach to poles already in service and utilized by Edison to serve its electric service customers prior to the attachment of plant owned by the cable television corporation. In this sense, it is inappropriate and illogical to consider the attachment by cable television to existing utility plant as added facilities. This excess capacity is neither added nor non-standard. It is, however, a public utility service pursuant to § 767.5 (a) (9) (b).

Therefore, because the service the cable television companies seek for attachment are neither added facilities nor are non-standard facilities for which the utility incurs an additional cost, it is clear that the Commission here is establishing a fee for a utility service and thus the computation of the pole attachment fee should be consistent with the methodology utilized in determining the cost of these facilities for other ratemaking purposes. We shall adopt the straight -line depreciation accounting methodology as proposed by CCTA.

Contrary to Edison's claims we do not believe that the use of straight-line depreciation is unfair to Edison's electric ratepayers. Rather, we find that the use of Edison's sinking fund method is unfair to cable television companies because it shifts unjustifiable costs to cable service providers. Edison argues that:

> "CCTA is proposing to have its members pay an attachment fee ($2.73) for Edison's pole attachments which is calculated after Edison's ratepayers have already paid for a majority of the overall costs of ownership of the poles. Put another way, for the purposes of its calculation, CCTA has ignored all pole depreciation and other similar costs prior to the time of calculation leaving those costs to be borne solely by Edison's ratepayers."

Edison's logic here is flawed. Like Edison's ratepayers, CCTA has also been paying for the costs of the ownership of these poles. CCTA's members have been attached to these poles in the past, prior to 1994, and have paid the appropriate depreciation costs in those rates. Edison's, proposal would subject cable television corporations to a different depreciation than that used to calculate the cost of poles for which Edison's electric customers pay for these same facilities. Cable television is not a new customer. They have been paying for these poles for several years and like Edison's electric ratepayers will pay the costs of the poles they use. To utilize a sinking-fund approach would deprive cable television corporations of the benefits of the level of accumulated depreciation of Edison's poles.

P.U. Code Section 767.5 calls for cable television corporations to pay 7.4% of the public utility's annual cost of ownership for the pole and surrounding anchor. We believe that the straight line depreciation method better tracks the utilities own cost of the facilities in question. This commission traditionally utilizes straight-line depreciation in calculating utility costs. It is this method that we utilize in calculating the revnue requirement for these facilities. Edison's proposal would have CCTA pay singificantly more for the pole usage than Edison's costs are for the same facilities.

There are two other items under dispute. The first is whether CCTA's method of calculating annual pole costs adequately reflects the negative salvage value of the poles and the second is the treatment of pole inspection costs.

We agree with CCTA that their calculation adequately reflects the negative salvage value of the poles and is consistent with the straight-line remaining life methodology for calculating the depreciation rate. This is, in fact, confirmed by the testimony of Edison's witness who described that the method used by CCTA allows for negative salvage expense to be added to depreciation expense on an annual basis. Thus sufficiently permitting recovery of negative salvage value.[1]

Second, we find it reasonable to include the costs of safety inspections in the annual pole costs that form the basis of this fee. We note that CCTA's methodology includes total cost factors of 40.9% which includes a factor of maintenance expenses. These maintenance expenses should include the appropriate regular safety inspection costs. Maintaining safe poles is a cost of using such poles and it is incumbent upon cable televisions corporations to pay their fair share of these costs. Accordingly, we will add 6 cents to the pole attachment rate as determined by CCTA's witness[2] to reflect pole inspection charges and arrive at a total pole attachment rate of $2.73.

Alternate Order

This decision was issued for comment as an Alternate Order of Commissioners Jessie J. Knight and Josiah L. Neeper to which the parties filed timely comments. The

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[1] Dr. Ceccehetti's Testimony, page 19, Exhibit 4.

[2] Mr. Bolte's (CCTA's witness) testimony. Transcript, Vol. 1, page 53.

comments of Edison merely reiterated positions taken during hearing and in briefs submitted and already considered. We need not consider these comments further. Some comments, however, pointed out details overlooked. We have modified this decision accordingly.

Effective Date

PU Code § 767.5 provides that whenever a utility and a cable television corporation are unable to agree upon the annual compensation for pole attachments, the Commission shall establish the rate.

The existing rate applies until a new rate is established. The new rate is established upon the effective date of the Commission decision establishing the new rate.

The new rate of $2.73 for pole inspection costs will be immediately effective.

An application for rehearing of the decision that follows may be made pursuant Division 1, Part 1, Chapter 9, Article 2 of the P.U. Code. Judicial review of Commission decisions is governed by Division 1, Part 1, Chapter 9, Article 3 of the PU Code. The appropriate court for judicial review is dependent on the nature of the proceeding. This is a complaint case which challenges "the reasonableness of rate [or] charges as specified in Section 1702." Therefore, this is <u>not</u> an adjudicatory proceeding as defined in § 1757.1, and thus, pursuant to § 1756(b), the proper court for filing any petition for writ of review is the California Supreme Court.

Findings of Fact

1. CCTA and Edison request that the Commission establish an annual rate to be charged for pole attachments covered under Edison's standard pole attachment agreement and provide an effective date for the established rate.

2. CCTA's straight line depreciation methodology is reasonable to determine standard pole attachment agreement fees.

3. It is reasonable to include pole safety inspection costs in the annual pole cost calculations.

4. CCTA's straight line depreciation method produces a reasonable fee of $2.73 which should be adopted.

5. CCTA's straight line method for calculating pole attachment fees should be adjusted to reflect any pole inspections costs not already included in its calculation of a $2.67 fee.

6. The annual fee of $2.73 which includes a pole inspection charge of 6 cents should be effective upon the effective date of this decision.

7. As this matter has been pending since March 1997, this decision should be effective immediately.

Conclusions of Law

1. Edison's annual fee for pole attachments covered under Edison's standard pole attachment agreement should be $2.73 as of the effective date of this decision.

2. This is a complaint case challenging the reasonableness of rates or charges, and so this decision is not issued in an "adjudicatory proceeding" as defined in PU Code § 1757.1. Therefore, the proper court for filing any petition for writ of review will be the California Supreme Court.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company may charge an annual fee of $2.73 for pole attachments covered under its standard pole attachment agreement as of the effective date of this decision.

2. Case 97-03-019 is closed.

This order is effective today.

Dated April 23, 1998, at Sacramento, California.

RICHARD A. BILAS
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners