COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF JACKSON PURCHASE ENERGY CORPORATION FOR ADJUSTMENTS IN EXISTING CABLE TELEVISION ATTACHMENT TARIFF	))))	CASE NO. 2004-00319

O R D E R

On September 14, 2004, Jackson Purchase Energy Corporation ("JPEC") applied for authority to adjust its charges for cable television ("CATV") pole and anchor attachments effective January 1, 2005. The Commission, however, did not accept this application for filing until November 15, 2004 when JPEC cured deficiencies in the application. By Order dated December 16, 2004, the Commission suspended the proposed rates for 5 months, up to and including May 31, 2005. JPEC amended its application on August 3, 2005 to reflect new proposed rates and a new effective date of October 1, 2005.

Ballard Rural Telephone Cooperative Corporation ("Ballard RTCC") and the Kentucky Cable Telecommunications Association ("KCTA") were granted full intervention in this proceeding. A limited procedural schedule was established which provided for two rounds of discovery. On January 26, 2005, JPEC, KCTA, Ballard RTCC, and Commission Staff participated in a telephonic informal conference at which the parties agreed that the procedural schedule should be suspended to permit the parties the opportunity to conduct settlement discussions. On February 17, 2005, the Commission entered an Order suspending the procedural schedule. On February 10, 2005, JPEC filed new calculations supporting the revised rates it stated it would propose if the settlement discussions failed. These rates were not the rates it proposed in its amended application of August 3, 2005.

Pursuant to Staff's request, KCTA and Ballard RTCC submitted, on February 25, 2005, calculations which supported their proposals for JPEC's CATV rates. Each contended that its proposal was based on the methodology that the Commission established for calculating pole attachment rates in Administrative Case No. 251 ("Admin. 251").[1]

On April 13, 2005, Ballard RTCC moved for immediate application of JPEC's CATV rates to its attachments on JPEC's utility poles. JPEC subsequently moved for dismissal of Ballard RTCC as an intervenor and approval of a settlement agreement that it had entered with KCTA. We denied these motions and established a revised procedural schedule. A hearing was held on August 11, 2005 at which all parties participated. All parties have filed post-hearing briefs. The case stands submitted for decision.

HISTORY

The Commission asserted jurisdiction over CATV pole attachment charges in Admin. 251 and established a uniform methodology for calculating CATV attachment charges. The basic formula for pole attachments charges set forth in Admin. 251 is as follows:

$$\text{Average Pole Cost} \times \text{Investment Percentage} \times \text{Carrying Charge} \times \text{Useable Space} = \text{Pole Charge}$$

[1] Administrative Case No. 251, The Adoption of a Standard Methodology for Establishing Rates for CATV Pole Attachments (Ky. PSC Sept. 17, 1982).

The Investment Percentage was set at 85 percent for electric utilities and the Useable Space factors were set at 12.24 percent for two-party poles and 7.59 percent for three-party poles. None of the parties contest these two components of the formula. The contested components of the formula are: (1) the appropriate grounds charge; (2) the appropriate rate of return to include in the carrying charge; and (3) the appropriate plant account level which should be used to establish the net-to-gross ratio that should be used to adjust gross pole costs to net pole costs to determine the annual pole cost.

DISCUSSION OF ISSUES

Ground Attachments

While JPEC asserts that cable operators attach to roughly 50 percent of the grounds of poles on which cable attachments are made, it acknowledges that its assertion is based on approximations.[2] In its amended application, JPEC proposes to separate the cost of grounds from its pole costs and impose separate charges for ground attachments. It plans to conduct a field count in 2006 to determine the actual number of ground attachments and proposes to start charging for grounds in 2007.[3] While both KCTA and Ballard RTCC disagreed with JPEC's original proposal of 50 percent grounds, neither contested JPEC's amended grounds proposal. In Admin. 251, the Commission established $12.50 per ground as the amount to be added to the cost of a bare pole when a cable operator attaches to a ground. However, since the record does not contain sufficient evidence to support the number of ground attachments we will, consistent with our previous decisions

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[2] Hearing Video Transcript, August 11, 2005, 10:05:24.

[3] Hearing Video Transcript, August 11, 2005, 10:16:28-30.

in similar cases[4] and as requested by JPEC in its amended application, treat grounds separately from the pole attachments. Separate ground attachment rates will be applied on a per attachment basis, allowing JPEC and the cable operator to more accurately determine the number of existing ground attachments and calculate a separate total charge for grounds accordingly.

Rate of Return

Pursuant to the methodology established in Admin. 251, the carrying charge includes a return component and an operating expense component. The return component is based on the rate of return, or margin, that the Commission allowed in the utility's most recent rate case. In its original application, JPEC proposed a return component based upon an adjusted return of 5.81 percent, which it calculated by using the cumulative results from three previous Commission decisions, Case Nos. 1997-00224, 2000-00527 and 2002-00485.[5] In its amended application, JPEC proposed a rate of return of 8.88 percent, which was the stated rate of return in its 1984 rate case, Case No. 8863.[6]

KCTA argues that JPEC's originally proposed rate of return of 5.81 percent, which it states is the rate of return in JPEC's last general rate case, Case No. 1997-00224,

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[4] Case No. 2000-00359, Application of Cumberland Valley Electric, Inc. to Adjust Its Rates; Case No. 2000-00414, Application of Blue Grass Energy Cooperative Corporation to Adjust Its Rates.

[5] Case No. 1997-00224, The Application of Jackson Purchase Electric Cooperative Corporation for Permission to Flow Through a Portion of the General Rate Decrease Filed Before the Kentucky Public Service Commission By Big Rivers Electric Corporation; Case No. 2000-00527, Application of Jackson Purchase Energy for an Adjustment in Depreciation Rates (Ky. PSC May 30, 2001); and Case No. 2002-00485, Application of Jackson Purchase Energy Corporation for an Order Approving Revised Depreciation Rates (Ky. PSC Dec. 30, 2003).

[6] Case No. 8863, Notice and Application for Adjustment of Rates for Jackson Purchase Energy Corporation (Ky. PSC Dec. 29, 1983).

adjusted to reflect changes to depreciation rates made in Case Nos. 2000-00527 and 2001-00485, is the appropriate rate of return to use. Noting that the Commission stated in Admin. 251 that the "cost of money" factor should be "equal to the return on investment (or margin) allowed in the utility's last rate case," KCTA argues that ignoring JPEC's most recent rate case simply because it resulted in settlement and no rate of return was expressly stated is inappropriate. It further contends that use of the rate of return expressed in Case No. 8863 is also inappropriate because pole attachment rates would then be based on a different rate of return than other utility services.

Ballard RTCC argues that 4.61 percent, the rate of return from JPEC's last general rate case, Case No. 1997-00224, without any adjustments for the subsequent depreciation cases, is the appropriate rate of return

In Admin. 251, the Commission found that the factor representing the return on a utility's investment in poles should be equal to the return on investment, or margin, allowed in the utility's last rate case. In subsequent pole attachment rate cases, the Commission has adhered to that finding and has used the rate of return from the utility's last general rate case. The last JPEC rate case in which a rate of return was granted was Case No. 8863. In Case No. 1997-00224, which was filed by JPEC to address a general rate decrease filed by Big Rivers Electric Corporation, a return was not stated in the unanimous settlement agreement approved by the Commission; however, a margin of $1,004,836 was stated.

Acceptance of a settlement agreement in a prior proceeding does not require the Commission to incorporate the results of the settlement in subsequent proceedings. In fact, the Settlement Agreement entered into in Case No. 1997-00224 expressly states "[t]his Settlement Agreement is not to be construed as precedent in future rate proceedings."[7] Nevertheless, consistent with the standard applied in reviewing any rate proposal, we must consider whether the CATV rates proposed are fair, just and reasonable. In this instance, we must consider whether the margin that resulted from the settlement in Case No. 1997-00224 is an appropriate margin to use in JPEC's CATV calculation.

For electric distribution cooperatives, we generally establish revenue requirements using a Times Interest Earned Ratio ("TIER") of 2.0X. The TIER produced from the 1997-00224 settlement was 1.58X, which is clearly below a 2.0X TIER.[8] While we found the TIER and settlement reasonable at that time and in the context of that case, we find that the settlement margin resulting from that case should not be used to establish the return component of JPEC's carrying charge herein. Furthermore, we find that after-the-fact adjustments of the kind initially proposed by JPEC based on the outcomes of Case Nos. 2000-00527 and 2002-00485, and endorsed by KCTA, clearly fall outside the scope of the methodology established in Admin. 251. Accordingly, those adjustments are rejected.

Having considered and rejected the rate of return that resulted from the settlement in Case No. 1997-00224, we find that the use of the 8.88 percent rate of return approved in Case No. 8863 is most appropriate. While this rate of return was based on a TIER of 2.25X awarded in 1984, as noted by KCTA, which is slightly higher than that generally

[7] Case No. 1997-00204, Settlement Agreement dated January 21, 1998, p. 2.

[8] This TIER level is only slightly greater than the minimum level established by the Rural Utilities Service in electric distribution cooperatives' mortgage agreements.

awarded today, it is a reasonable rate of return. We find that use of this rate of return conforms to the intent of our decision in Admin. 251. Having considered the matter fully, we find that 8.88 percent is the appropriate return component to be included in JPEC's carrying charge.

This case has raised an issue not contemplated when we established the CATV methodology. Utility companies, especially the rural electric cooperatives, are no longer filing general rate adjustment cases as frequently as before. As a result, the rates of return the Commission determined in the utility's most recent rate case may no longer accurately reflect current conditions. Therefore, the Commission finds that in all future CATV rate adjustment cases, the utility shall bear the burden of demonstrating the reasonableness of its proposed rate of return to be included in the carrying charge component of the CATV methodology.

Net To Gross Ratio

In our Order in Admin. 251, we included no specific discussion of whether gross pole costs or net pole costs should be used in the calculation of CATV charges. Resolving this issue in Case No. 2000-00359,[9] we held that net plant, i.e., plant investment net of accumulated depreciation, should be used to calculate CATV charges. At issue in this case is the appropriate level of accounting detail to use in computing a "net-to-gross" ratio to adjust the gross average pole costs to net average pole costs. JPEC supports a net-to-gross ratio based on total accumulated depreciation and total plant investment, which produces a ratio of 71.2 percent. KCTA and Ballard RTCC support a 66.5 percent net-to-

[9] Case No. 2000-00359, Application of Cumberland Valley Electric, Inc. to Adjust Its Rates (Ky. PSC Feb. 26, 2001).

gross ratio using the accumulated depreciation and investment in poles based on JPEC's account level records for Account 364, Poles, Towers, and Fixtures. In its testimony, Ballard RTCC's witness states that "[i]t is much more consistent with the principle of cost causation to use total pole investment and total pole depreciation in calculating net pole values, than it is to use total plant investment and total plant depreciation in calculating net pole values."[10]

In Case No. 2000-00359, the Commission determined that specific pole account records are to be used to establish the net-to-gross ratio unless there are concerns about the accuracy of the account level property records. JPEC's witness testified at hearing that JPEC's Account 364 records are accurate and that there is no reason that the account records could not be relied upon by the Commission.[11] We find, therefore, that the net-to-gross ratio used to calculate JPEC's pole attachment rates should be based on JPEC's total investment in poles and the accumulated depreciation for its poles account, which results in a net-to-gross ratio of 66.5 percent.

Single-Issue Rate-making

Prior to the hearing, Ballard RTCC moved to dismiss JPEC's application on the grounds that it violated the general rule against single-issue rate-making. It argued that the Commission could not determine whether the proposed CATV rates were just and reasonable "in isolation." It stated that since JPEC did not apply for a general rate case, the Commission should dismiss the case. JPEC responded by arguing that it did not seek

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[10] Verified Prefiled Direct Testimony of Randy C. Grogan on Behalf of Ballard Rural Telephone Cooperative Corporation, Inc. filed August 9, 2005, page 4.

[11] Hearing Video Transcript, August 11, 2005, 10:03:23-30.

to increase revenues "in isolation" and that its application included an Adjusted Income Statement which provided the Commission with JPEC's total financial picture.

Having considered the motion, we find that JPEC filed its application pursuant to the filing requirements of a general rate case as set forth in 807 KAR 5:001, Section 10. As permitted in that regulation, we granted JPEC permission to deviate from certain filing requirements, but required the filing of an Income Statement and Balance Sheet to permit review of the utility's financial condition. We have not, in establishing JPEC's CATV rates, reviewed the proposed adjustment "in isolation," but have fully considered JPEC's present financial condition. We have not engaged in single-issue rate-making. Therefore, we find that Ballard RTCC's motion should be denied.

SUMMARY

In conclusion, our determination follows the methodology established in Admin. 251 and produces the following results: (1) grounds will be set apart and will be charged separately from pole attachments; (2) the rate of return component included in the carrying charge will be 8.88 percent, based on the decision in Case No. 8863; and (3) JPEC's account-specific pole investment and accumulated depreciation, Account 364, will be used which results in a net-to-gross ratio of 66.5 percent. We find that the rates set forth in Appendix A to this Order are fair, just, and reasonable and should be approved for service rendered by JPEC for CATV attachments on and after the date of this Order.

IT IS THEREFORE ORDERED that:

1. JPEC's proposed CATV charges are denied.

2. The CATV charges set forth in Appendix A to this Order are approved for service rendered by JPEC on and after the date of this Order.

3. JPEC shall file with the Commission within 20 days from the date of this Order revised tariff sheets setting out the rates and charges approved herein.

4. Ballard RTCC's motion to dismiss is denied.

Done at Frankfort, Kentucky, this 14th day of September, 2005.

By the Commission

ATTEST:

Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2004-00319 DATED September 14, 2005

The following rates and charges are prescribed for the customers in the area served by Jackson Purchase Energy Corporation. All other rates and charges not specifically mentioned herein shall remain the same as those in effect under authority of the Commission prior to the effective date of the Order.

CATV ATTACHMENTS:

2-Party Pole	$4.84
3-Party Pole	$4.09
Anchors	$5.88
2-Party Pole Grounds	$0.24
3-Party Pole Grounds	$0.16