

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE CATV POLE ATTACHMENT)	ADMINISTRATIVE
TARIFF OF THE UNION LIGHT)	CASE NO. 251-27
HEAT AND POWER COMPANY)	

O R D E R

Procedural Background

On September 17, 1982, the Commission issued an Amended Order in Administrative Case No. 251, "The Adoption of a Standard Methodology for Establishing Rates for CATV Pole Attachments," in which it ordered electric and telephone utilities providing or proposing to provide CATV pole attachments to file tariffs conforming to the principles and findings of the Order on or before November 1, 1982.

On October 28, 1982, The Union Light Heat and Power Company ("ULH&P") filed rates, rules, and regulations for CATV pole attachments. On November 15, 1982, the Commission suspended ULH&P's CATV pole attachment tariff to allow the maximum statutory time for investigation and comment from interested persons.

On November 19, 1982, the Kentucky Cable Television Association, Inc., ("KCTA") requested and was granted leave to intervene and comment on ULH&P's CATV pole attachment tariff. On January 17, 1983, KCTA filed a statement of objections to various CATV pole attachment tariffs, including those of ULH&P.

On April 11, 1983, the Commission received an extension of time in which to consider ULH&P's CATV pole attachment tariff.

FINDINGS

The Commission, having considered the evidence of record and being advised, is of the opinion and finds that:

1. ULH&P's rules and regulations governing CATV pole attachments conform to the principles and findings of the Commission's Amended Order in Administrative Case No. 251, and would be approved, except for the following objections:

(a) Applicability: ULH&P refers to the CATV operator as a Licensee. The CATV operator is a customer, not a licensee, and should not be referred to as a licensee in the tariff. The term attachee or customer would be more appropriate. Additionally, ULH&P may not require a contract or agreement other than that required of other classes of customers. ULH&P's tariff must contain all terms and provisions of service to CATV operators.

(b) Payment: ULH&P's tariff provision requiring the CATV operator to pay rental for the then current year or one-half year is unreasonable. Just as with any other customer, the CATV operator can only be held responsible for rental for the then current month when the CATV operator abandons the pole.

- (c) Terms and conditions: ULH&P may not deny CATV attachments to existing poles when space is or can be made available. The conditions under which attachments are made are subject solely to the CATV pole attachment tariff.
- (d) KCTA objects to indemnification and hold harmless provisions which require indemnity from the CATV operator. ULH&P may require indemnification and hold harmless provisions in cases of alleged sole or joint negligence by the CATV operator, but cannot require same merely because of the existence of CATV attachments and equipment on ULH&P's poles.
- (e) Terms and conditions: ULH&P proposes to disclaim liability if the CATV operator is ever required to remove attachments from a ULH&P pole.
- 1) ULH&P may not require that the CATV operator remove attachments for the sole reason to make room for ULH&P on an existing pole.
 - 2) Ten days is sufficient notice for CATV movement of its facilities to another ULH&P pole.
 - 3) Thirty days' notice shall be given if ULH&P plans to abandon a pole and no other pole is available or planned to be installed by ULH&P. ULH&P may not disclaim liability for loss or damage resulting from its transfer

of CATV facilities when the CATV operator has not made the transfers according to the specified timetable. ULH&P may only disclaim liability in such instances for any consequential damages such as loss of service to CATV customers.

(f) KCTA objects to ULH&P's tariff provision which makes all the rights to which the CATV operators are entitled subject to rights granted subsequently to any other party. This is a reasonable objection, and the CATV operator's attachment privileges should not be subject to any subsequent agreement.

(g) KCTA objects to lack of tariff provisions which would provide for the reduction or lifting of bonding requirements after the CATV operator has proven to be a reliable customer. This is a reasonable objection. If a bond is furnished by the CATV operator to assure performance of required indemnity and hold harmless provisions, such bond should be in a form and amount reasonably calculated to cover the undertakings specified during the "make-ready" and construction phases of the CATV system's operations.

The amount of the bond may be reduced after the construction phase has been completed, and after

the CATV operator has proven to be a reliable utility customer. Allowance of such reduction should not be unreasonably denied.

(h) Terms and conditions: ULH&P proposes to disclaim liability for loss or damage resulting from its removal of CATV equipment from ULH&P's poles when the CATV operator has not met the tariff provisions. ULH&P may not disclaim liability for any negligent destruction of CATV equipment in the removal process.

2. ULH&P should be allowed to substitute 1982 Annual Report information to adjust its annual carrying charge, provided the information is filed with the Commission.

3. ULH&P's calculation of its annual carrying charge includes an 11.34 percent cost of money component. The calculation should be modified to include a cost of money component equal to the return on investment allowed in its last rate case, Case No. 8509, of 11.29 percent.

4. KCTA objects that ULH&P included the cost of all appurtenances attached to its distribution poles in calculating its bare pole cost. KCTA proposes that as ULH&P does not maintain specific records of major appurtenances in its pole accounts, 35 percent of the total pole account should be deducted for non-CATV-related appurtenances. ULH&P responds that the Commission's Order of September 17, 1982, only required electric utilities to deduct 15 percent as the value of appurtenances. The Commission's Order of September 17, 1982, clearly states on

pages 9 and 10 that 22 percent should be excluded for appurtenances for telephone utilities and that for electric utilities when the cost of major appurtenances is segregated only 15 percent need be subtracted. Therefore, as ULH&P does not segregate the cost of major appurtenances, 22 percent should be deducted from its pole account in calculating its bare pole cost.

5. KCTA objects to ULH&P's adding \$12.50 for ground to the cost for each pole. ULH&P responds that 90 percent of its poles have ground wires and CATV grounding instructions require the first, last and every tenth intermediate pole of a line extension to be grounded. ULH&P argued that as CATV operators have the opportunity to use ground wires on nearly every pole, the ground wire charge should be added to every pole. The Commission's Order of September 17, 1982, states that \$12.50 should be added to the bare pole cost when CATV has used the ground wire. As ULH&P does not know how many of its ground wires are attached to by CATV operators and as more than 10 percent of the pole attachments must be grounded but no more than 90 percent may be, it is reasonable that 50 percent of the \$12.50 ground wire cost be added to the bare pole cost.

6. KCTA objects to ULH&P's tariff provision concerning the cost of pole replacements necessary to accommodate CATV pole attachments. The Commission advises ULH&P that it may charge a CATV operator the total cost of pole replacements necessary to accommodate CATV pole attachments, less the salvage value of any pole that is removed.

7. KCTA objects to ULH&P's imposing a pole attachment fee up to 6 months prior to actual attachment. ULH&P opposes prorating billings for attachments during a contract year or billing a CATV operator more than once a year on the basis that either alternative would cause substantial administrative costs. ULH&P bills CATV operators at the end of the contract year, charging the full amount for attachments during the first half of the contract year and one-half for attachments during the second half of the year. ULH&P's payment provision is reasonable.

8. KCTA objects to ULH&P's initial contract fee of \$1. KCTA's objection is reasonable. The carrying charge already reflects CATV's contribution to general expenses including costs of processing applications. Therefore, this tariff provision should be deleted.

9. KCTA objects that ULH&P charges interest for late payment of bills but inconsistently does not accrue interest on advance payments. This objection is unreasonable. ULH&P bills CATV operators at the end of the contract year. Therefore, there are no advance payments.

ORDERS

IT IS THEREFORE ORDERED that ULH&P's CATV pole attachment tariff filed with the Commission on October 29, 1982, be and it hereby is rejected.

IT IS FURTHER ORDERED that ULH&P shall file revised rates, rules, and regulations for CATV pole attachments with the Commission within 30 days from the date of this Order, and that the revised rates, rules and regulations shall conform to the

findings of this Order and the Commission's Order of September 17, 1982.

IT IS FURTHER ORDERED that ULH&P shall file detailed workpapers supporting its revised rates at the same time it files its revised rates, rules and regulations.

Done at Frankfort, Kentucky, this 1st day of June, 1983.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary