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STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
OFFICE OF CABLE TELEVISION

BERNARD R. MORRIS
DIRECTOR
RINALDO M. D'ARGENIO
DEPUTY DIRECTOR

1100 RAYMOND BLVD.
NEWARK, NEW JERSEY 07102
201-648-2670

FILED/ACCEPTED

APR 26 2010

May 30, 1985

Federal Communications Commission
Office of the Secretary

RECEIVED

MAY 31 1985

ENFORCEMENT DIVISION

Margaret Wood, Esq.
Federal Communications Commission
Room 6206
1919 M. Street, N.W.
Washington, D.C. 20554

Re: Certificate of Pole
Attachment Methodology
47 C.F.R. § 1.1414

Dear Ms. Wood:

I hereby certify pursuant to 47 U.S.C. § 224 (c), as amended, and 47 C.F.R. § 1.1414(a)(3) that the State of New Jersey, Board of Public Utilities, Office of Cable Television has issued and made effective rules and regulation governing pole attachments which include a specific methodology.

Said rules are annexed hereto and submitted in response to your agency's request of May 3, 1985, for a supplemental certification.

Very truly yours,

Bernard Morris
Director

Enclosure



STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
OFFICE OF CABLE TELEVISION

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May 23, 1985

Anthony Miragliotta, Esq.
Administrative Filings
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
CN-301
Trenton, NJ 08625

RECEIVED

MAY 31 1985

ENFORCEMENT DIVISION

Re: Emergency Pole
Attachment Rule
BPU Docket No. CX8505533

Dear Mr. Miragliotti:

Enclosed, for filing in this matter, are copies of the Board of Public Utilities Order Adopting Emergency Rule, Emergency Rule and Concurrent Proposal, certification statements by Board President Barbara A. Curran, and by the Governor, and the Certificate of Adoption signed by OCTV Director Morris for completion by your office.

Thank you for your assistance in this matter.

Very truly yours,

Bernard R. Morris
Bernard R. Morris
Director

CAR/pvf

Enclosures

cc: President Barbara A. Curran
Board of Public Utilities
1100 Raymond Boulevard
Newark, NJ 07102



STATE OF NEW JERSEY
OFFICE OF THE GOVERNOR
CN-001
TRENTON
08625

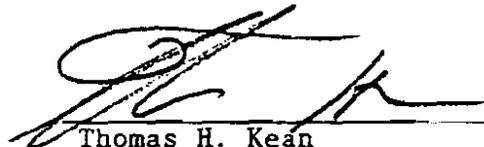
THOMAS H. KEAN
GOVERNOR

CERTIFICATION OF IMMINENT PERIL

Barbara A. Curran, President of the Board of Public Utilities, has proposed pursuant to N.J.A.C. 1:30-4.4 (a) an Emergency New Rule with a Concurrent Proposal at N.J.S.A. 14:18-2.9. The text of this Emergency Rule and Concurrent Proposal and the attached Statement of Imminent Peril, which includes a statement of reasons describing the Imminent Peril to the public, have been submitted for review and concurrence.

I hereby concur with the findings of the President of the Board of Public Utilities that an emergency exists warranting the above-described Emergency New Rule Adoption at N.J.S.A. 14:18-2.9.

Date: May 28, 1985



Thomas H. Kean
Governor

STATEMENT OF IMMINENT PERIL

1. On May 9, 1985, the Board of Public Utilities, Office of Cable Television was advised by the Federal Communications Commission that a recent amendment to its rules, 47 C.F.R. §1.1414(a)(3), effective date, April 28, 1985, requires that a state's rules and regulations include a specific methodology for cable television pole attachment regulation. States which fail to certify such rules to the FCC by May 30, 1985 will lose their jurisdiction over cable television pole attachment matters.

Therefore, the FCC has requested that the Board of Public Utilities, Office of Cable Television supplement its January 21, 1985, certification with a statement that there are effective rules and regulations containing a specific methodology governing pole attachments. Compliance through normal rulemaking procedures cannot be attained in only 21 days.

On May 17, 1985, the Board found that the immediate need to conform the rules to the requirements of Federal regulation presented an imminent peril necessitating an emergency rulemaking. The text of the Adopted Emergency New Rule and Concurrent Proposal is annexed hereto.

2. The emergency rule, N.J.A.C. 14:18-2.9, provides such a methodology by setting forth the various elements which are to be used to calculate the appropriate rental cable television companies shall pay for attaching their plant to utility poles.

This methodology has been in effect since August 20, 1984, but not in the form of a rule or regulation. By adopting the Board's 1984 order in Docket No. 769C-6206 as a rule, the Board will be in technical compliance with the new FCC rule. Such compliance can then be certified to the FCC.

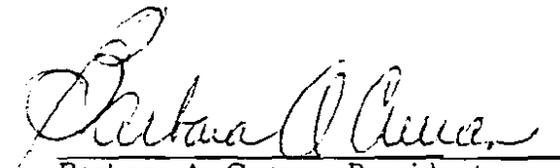
3. Emergency rule N.J.A.C. 14:18-2.9 shall expire 60 days from the date it is accepted for filing by the Office of Administration Law.

4. Affected parties have been mailed a certified copy of the Board's Order Adopting Emergency Rule, Docket No. CX8505533, dated May 17, 1985. Such parties include all parties to the Board's generic pole attachment proceeding, Docket No. 769C-6206, and all those who have requested advance notice of Office of Cable Television rulemakings pursuant to N.J.A.C. 1:30-3.1(a)(3).

All parties are already aware of the substance of the emergency rule through the Board's 1984 pole attachment Decision and Order in Docket No. 769C-6206.

5. I, Barbara A. Curran, President, Board of Public Utilities, State of New Jersey, hereby certify that the facts set forth herein are true and accurate to the best of my knowledge.

DATED: 5/23/85


Barbara A. Curran, President
Board of Public Utilities

BOARD OF PUBLIC UTILITIES
OFFICE OF CABLE TELEVISION

POLE ATTACHMENT RATE METHODOLOGY

ADOPTED EMERGENCY NEW RULE AND
CONCURRENT PROPOSAL: N.J.A.C. 14:18-2.9

EMERGENCY NEW RULE ADOPTED: May / 7 , 1985 by the Board of Public Utilities
Governatorial Approval (See N.J.S.A. 52:14B-4(c):
1985.

EMERGENCY NEW RULE FILED: 1985, as

R. d.

Authority: N.J.S.A. 48:5A-10, 20(b), 21.

EMERGENCY NEW RULE EFFECTIVE DATE:

EMERGENCY NEW RULE EXPIRATION DATE:

The Concurrent Proposal is Known as
PRN 1985 -

Submit comments by , 1985 to:

Bernard R. Morris, Director
Office of Cable Television
Board of Public Utilities
1100 Raymond Boulevard
Newark, New Jersey 07102
Telephone: (201) 648-2670

This new rule was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 54:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of the emergency new rule are being proposed for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et. seq. The re-adopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follows:

SUMMARY

The Board of Public Utilities, Office of Cable Television is mandated by Federal regulation to certify to the Federal Communications Commission that its rules and regulations include a specific methodology for regulation of cable television attachments to utility poles which has been made publicly available in the state. 47 C.F.R. 1.1414(a)(3). (Effective date, April 28, 1985)

On May 9, 1985, the FCC informed the Office of Cable Television that such certification must be made by May 30, 1985. Although the Board established a publicly available methodology in its generic Decision and Order, dated August 20, 1984, In the Matter of the Office of Cable Television's Investigation into the Practices and Operations of CATV Companies and Certain Utilities Under the Provisions of Sections 20 and 21 of the Cable Television Act, Docket No. 769C-6206, it has not been promulgated as a "rule or regulation." Said order was adopted after lengthy hearings in a proceeding which extended over nearly eight years. To ensure that the state is in compliance with federal law, the method of calculating pole rental rates for cable television attachments has been formulated as a rule without any substantive change to the original order.

Social Impact

By adopting the Board's existing cable television pole attachment rate methodology, this rule assures that the Board's rules are in conformity with FCC requirements and will enable the Board to exercise its pole attachment jurisdiction without challenges to its certification to the FCC that there are "effective rules and regulations" governing pole attachment methodology.

Decertification would place all questions of pole rental rates in the hands of the FCC rather than state regulators familiar with local pole plant and sensitive to the impact on cable and utility rate payers.

Economic Impact

Because this rule corresponds to the Board's existing generic Decision and Order, it will have no additional economic impact upon adoption.

Full text of the emergency adoption and concurrent proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]).

14:18-2.9. Calculation of Pole Attachment Rent.

(a) In cases where the Board must determine the appropriate rental rate for cable television attachments on utility poles, it shall be calculated in the following manner:

(1) Total Percentage of Gross Plant as Annual Cost shall be the sum of the following percentages:

- (i) Rate of Return
- (ii) Depreciation Expense
- (iii) Miscellaneous Taxes
- (iv) Maintenance Expenses
- (v) Administrative Expenses
- (vi) Federal Income Tax

(2) Total Yearly Ownership Expense = Unweighted Average Original Installed per Pole Cost Multiplied by Total Percentage Gross Pole Plant as Annual Cost

(3) Common Space = Setting Depth plus Ground Clearance

(4) Usable Space = Total Pole Length minus Common Space

(5) Footage of Usable Space Allocated to CATV = 1.0 Feet

(6) Footage of Common Space Allocated to CATV = $\frac{1.0 \text{ Feet}}{\text{Total Usable Space on Pole}}$ Multiplied by Total Common on Pole

(7) Percentage of Total Space Allocated to CATV = $\frac{\text{Footage of CATV Common Space} + \text{Footage of CATV Usable Space}}{\text{Total Pole Length}}$

(8) Annual Rental Charge Per Pole = Percentage Space Allocated to CATV Multiplied by Total Yearly Ownership Expense

(b) Weighted average original installed per pole cost may be used in Subsection (a) (2) above, upon mutual agreement of the cable company and the utility; however, should the parties be unable to agree on weighted or unweighted costs, the Board shall employ the unweighted average original installed per pole cost.

(c) The ratio of total common space on the pole to the number of parties on the pole may be used to set the footage of common space allocated to cable television upon mutual agreement of the cable company and the utility; however, should the parties be unable to agree to allocate common space equally, the Board shall employ the formula set forth in subsection (a) (6).

(d) Any terms not defined by subsection (a) shall be interpreted in a manner consistent with established Board policies and orders.

(e) The Office of Cable Television shall designate those uniform utility account numbers which are the appropriate sources of data.