



WC 10-101

FILED/ACCEPTED

APR 26 2010

Federal Communications Commission
Office of the Secretary

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

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DOCKET FILE COPY ORIGINAL

I, ANTHONY MIRAGLIOTTA, Rules Analyst in the Office of Administrative Law of the State of New Jersey, do hereby certify that the foregoing are true and correct copies of the rules of the Office of Cable Television promulgated pursuant to N.J.S.A. 48:5A-1 et seq. The original rules of practice and procedure, N.J.A.C. 14:17-1 et seq., were filed and became effective April 27, 1973. The original rules concerning construction in existing utility right-of-way, N.J.A.C. 14:18-2.3, were filed and became effective April 27, 1973. The original rules concerning identification of property; poles or structures supporting wires or cables, N.J.A.C. 14:18-2.5, were filed and became effective April 27, 1973. The current rules concerning CATV rate regulation under a common tariff, N.J.A.C. 14:17-18, were filed September 27, 1983 to become effective October 3, 1983. A subsequent amendment to the regulations concerning petition to set aside refusal pursuant to N.J.S.A. 48:5A-17(e), N.J.A.C. 14:17-6.21, was filed April 23, 1984 to become effective May 7, 1984. Appendix I to N.J.A.C. 14:17 concerning common tariff maximum rate became effective September 11, 1984. These rules have been compared with the originals filed with the then Division of Administrative Procedure, now the Office of Administrative Law, pursuant to the provisions of N.J.S.A. 52:14B-1 et seq.

IN TESTIMONY WHEREOF, I have
hereunto set my hand at
Trenton, this 15th day of
January, A.D. 1985.

Anthony Miragliotta
Rules Analyst



OK

STATE OF NEW JERSEY
DEPARTMENT OF PUBLIC UTILITIES

GEORGE H. BARBOUR
COMMISSIONER
NEWARK, N. J.

March 15, 1978

RECEIVED

Mr. William J. Tricarico, Secretary
Federal Communications Commission
Washington, D. C. 20554

MAR 23 1978

Re: Regulation by the State of
New Jersey of Rates, Terms
and Conditions for Pole
Attachments

CHIEF, COMMON CARRIER BUREAU

Dear Mr. Tricarico:

Please accept this letter as certification by the State of New Jersey that said State regulates the rates, terms, and conditions for pole attachments as between cable television companies and public utility companies. In so regulating such rates, terms, and conditions, the State of New Jersey has the authority to and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services.

This letter is submitted pursuant to Section 224 of the Communications Act, 17 U.S.C. 224, as amended.

Should you desire further information, please contact me.

Very truly yours,

George H. Barbour
President

cc: Common Carrier Bureau ✓
Attention: James Blaszak, Esq.

Cable Television Bureau

predictability of American Telephone and Telegraph Company's earnings is far superior to the average industrial. The commission concluded that where Standard & Poor's and Moody's indices showed that industrials have earned on the average of 13.5 per cent to 14 per cent, a return on AT&T's equity of 12.13 per cent would be reasonable. The commission's findings were that the company's current cost of capital was 8.62 per cent, and, therefore, established a range of return of 8.56 per cent to 9.02 per cent as being fair and reasonable.

Rate Items

Poles

In fixing the company's particular rates, the commission noted that the use of the relative value-of-service concept in designing telephone rates, including demand and cost considerations, had been approved by the state's supreme court and embodied the needed practical attributes for rate setting.

Using this concept, the commission approved a charge plan for directory assistance of 15 cents per call after an allowance of six calls per month. The charge for coin-box telephone calls was increased from ten cents to 25 cents on those phones providing dial-tone first. The commission stated that the current ten-cent rate was artificially depressed and economically obsolete and that the general body of ratepayers had been subsidizing this service.

Dissenting Opinion

In a dissenting opinion filed by Commissioner Hawkins, the commissioner took issue with the majority's decision in granting a large rate increase to the utility. The commissioner's conclusions were that the equity return should be limited to 11.5 per cent, and that evidence adduced at the hearings did not warrant the majority's grant of an attrition adjustment. The commissioner also stated that the adoption of a year-end rate base was unwarranted with respect to particular rates. He stated that he was in favor of keeping the ten-cent call for pay-station calls.

The commissioner also felt that the majority was in error in authorizing the company to treat as operating expenses its charitable contributions and various civic and social dues. *Re Southern Bell Teleph. & Telog. Co. Docket No. 70-812-TP, Order No. 7926, August 10, 1977.*

Antitrust Action Proceeds

Michigan and Indiana municipalities filed an antitrust action against the Indiana and Michigan Electric Company, a vertically integrated electric company, claiming that it intentionally monopolized and attempted to monopolize the interstate trade and commerce, and distribution and sale of retail electric power by requiring the municipalities to pay a wholesale price for electricity substantially higher than the retail price charged to the company's own industrial customers. The United States district court for the northern district of

Power Commission handed down a final decision on the lawfulness of the company's rates, and the company took an immediate appeal. The court of appeals for the seventh circuit held, among other things, that the Federal Power Commission had neither exclusive nor primary jurisdiction over the subject matter of the action. Therefore the refusal to stay was affirmed.

The court of appeals ruled that the actions of the company in maintaining a dual rate structure under which the rates charged the wholesale customers, including municipal electric utilities, were higher than retail rates charged by the company to its own retail customers were not immunized from attack under the Sherman Act as an attempted monopolization of the interstate trade and commerce, and the distribution and sale of a retail electric power on the grounds that the state utility commission, although approving the rates charged by the company, had in no way placed a seal of approval on the company's dual rate structure. Moreover, the Federal Power Commission did not have exclusive jurisdiction over the company and its rates such as to prevent the municipalities from maintaining an antitrust action against it. Nor did the commission have primary jurisdiction over the price squeeze affected by the dual rate structure such as to require deferral to agency expertise of the matters raised in the municipalities antitrust action.

The court ruled, in conclusion, that the trial court did not abuse its discretion in refusing to stay further prosecution of the antitrust action against the company charging that the company's dual rate structure violated the federal antitrust laws where the stay would allow the price squeeze allegedly imposed by the power company to continue for a substantial period and further where the Federal Trade Commission would be unable to afford complete relief because the Federal Power Act did not provide for damages or for injunctive relief against the utility's alleged violation of antitrust laws. *City of Mishawaka v Indiana & M. Electric Co. No. 70-2220, August 16, 1977.*

Office of Cable Television

The New Jersey board has issued its decision in the matter of the Office of Cable Television's investigation into the practices and operations of CATV companies. The issue to be decided was whether the Office of Cable Television, a subagency of the New Jersey Board of Public Utilities, had jurisdiction to conduct the investigation, in effect compelling participation by public utilities regarding the attachment of cable television plant and equipment to a public utility owned facility. The board found that the Office of Cable Television did have the jurisdiction to conduct the proceeding and that the proceeding was quasi-legislative in nature.

Under New Jersey law, it was clear to the board that the office could not order that joint use of poles be permitted and prescribe reasonable compensation and reasonable terms and conditions therefor, unless the

Those conditions were: public convenience and necessity requiring such use, such use could not result in injury, and that such cable television companies or public utilities had failed to agree. The board was faced with the question of whether it could delegate the function under § 20 of its law to the office. A reading of the applicable law indicated that the director, under the supervision of the board, could institute a proceeding to enforce the provisions of the act. In that context, the director of the office, under board supervision, could institute the proceeding to evaluate the possible presence of the three criteria of § 20. *Re Practices and Operations of CATV Companies, Docket No. 769C-6206, September 8, 1977.*

Natural Gas Price Issue Decided

Due to circumstances in recent commission decisions, a number of issues concerning gas producer sales remaining in a Cities Service Oil Company and Continental Oil Company case had largely been decided. The only remaining question for disposition was the just and reasonable rate applicable to the sales. The proceeding began in 1971, with a contract between Cities Service Oil Company and Continental Oil Company, as sellers, and Tennessee Gas Pipeline Company, as buyer, for the purchase of one-half of the sellers' interest in Block 135 of the West Cameron Block 110 field, offshore federal domain, with the remaining one-half interest retained by the producers for their own use onshore, with the transportation to be supplied by Tennessee Gas Pipeline Company.

Pending resolution of the transportation issue, deliveries commenced in 1972 to Tennessee Gas of the one-half interest it had purchased for resale from Cities Service and Continental. It was estimated that deliveries could continue over six years at the initial rate before any of the reserved gas would be touched, but a subsequent reserve redetermination lowered the estimated total substantially. In 1974, the producers asserted that one-half of the estimated recoverable reserves had been delivered, the contract had been satisfied, and, therefore, the wells were shut in and the applications for abandonment filed. The commission, however, ordered an immediate resumption of the sale. A stay of the commission's order was denied by the District of Columbia circuit court and deliveries were recommenced to the pipeline on February 10, 1975, under temporary authorizations pending resolution of the transportation case.

During the pendency of the abandonment proceedings, the producers filed applications for certificates of public convenience and necessity for an initial sale of their remaining one-half interest in Block 135. The producers sought the then applicable new gas rate of 52 cents per Mcf in contrast to the 26 cents per Mcf authorized for the sale of the first one-half interest. That price differential was the prime concern in this case.

Concerning the just and reasonable rate for the sale to Tennessee Gas and the previously reserved one-half in-

terest, producers asserted that the 1975 executed contracts were replacement contracts since the 1971 agreement had expired of its own terms, thereby entitling them to 52 cents per Mcf. In contrast, the staff contended that the 20-year terms of the 1971 contracts had not expired by their own terms.

A review of the 1971 contracts showed, according to the commission, that the primary term of the agreement was for twenty years from the date of initial delivery which was in 1972. And, while it was clear that only 50 per cent of the producers' reserves were dedicated to the contracts, it was also provided that if the transportation arrangements were terminated prior to the depletion of the Block 135 reserves, then the remaining supplies would be dedicated to Tennessee Gas under the then prevailing terms and conditions of similar contracts. Basically then, the question before the commission was whether the 20-year term or the limited dedication controlled the determination of the just and reasonable rate. The commission affirmed the decision of the law judge that the producers were entitled to the 52 cents per Mcf base rate pursuant to § 256a(a)(5) of the commission's regulations for the sales of the second half of the Block 135 reserves. The commission placed primary reliance on the prior determination of the commission that abandonment of the first one-half sales was in the public interest. Because of that determination, producers would also be entitled to the 52 cents per Mcf base rate under the view that the 1975 sales were the first in interstate commerce after January 1, 1973, for gas not previously dedicated to interstate commerce. *Re Cities Service Oil Co et al. Opinion No. 820, Docket Nos. C175-191 et al. September 20, 1977.*

Oklahoma Electric Rate Hike

Finding that a 9.46 per cent rate of return would be fair and reasonable for the Public Service Company of Oklahoma, the Oklahoma commission granted in part the application of the company to adjust its rates upward.

The biggest issue in the case was the treatment of the company's construction work in progress. That issue had plagued the commission for the last four to five years. The commission noted that the problem arose because of the present economy, inflation, rising costs, lag time in construction of new plant, and, more so, by the increased activity of federal agencies in the area of pollution control and conservation to the burning of fuels, which plants now burn oil or gas. Construction work in progress also involved the treatment to be accorded an allowance for funds used during construction. The main argument presented by the company was the generation of more internal cash flow. The commission noted that currently more than one-half of the state regulatory agencies approve that allowance in whole or in part. It pointed out that last year, after lengthy hearings, the Federal Power Commission adopted a policy of permitting inclusion in utility rate base of construction work in progress associated with facilities to be used for