

WC 1074

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

FILED/ACCEPTED

APR 26 2010

DOCKET FILE COPY ORIGINAL
Federal Communications Commission
Office of the Secretary

Illinois Commerce Commission :
On Its Own Motion :
Investigation of rates, terms : 80-0249
and conditions for pole attach- :
ments by cable television :
systems. :

ADOPTING ORDER

By the Commission:

On January 25, 1984, the Illinois Commerce Commission ("Commission") entered an Order in this docket which authorized for publication in the Illinois Register proposed Rules on Pole Attachment Rates, Terms and Conditions Applicable to Cable Television Companies and Public Utilities in the State of Illinois. On February 24, 1984, the proposed Rules appeared in the Illinois Register commencing the "first notice period" required by Section 5.01(a) of the Illinois Administrative Procedure Act.

On September 26, 1984, the Commission entered an Interim Order in this docket authorizing notice of the proposed rule-making to the Joint Committee on Administrative Rules and initiating the "second notice period" required by Section 5.01(b) of the Illinois Administrative Procedure Act. Pursuant to discussions, the Commission and the Joint Committee on Administrative Rules have agreed to make the following modifications in the proposed rulemaking:

1. To change the word "associated" to "other" in the third line of Section 315.20(d)(1).
2. To insert in Section 315.20(d)(4) after the words "calendar year," "for which figures are available."
3. To add Section 315.20(f) which will state:

The electric accounts mentioned in this Section are those required to be maintained by 83 Ill. Adm. Code 415. The telephone accounts mentioned in this Section are those required to be maintained by 83 Ill. Adm. Code 710.

4. To delete from the beginning of Section 315.30(a) and (b):

Where consent and approval of the Commission to a pole attachment agreement is required by Section 27 of the Illinois Public Utilities Act and 83 Ill. Adm. Code 105 and 710 (the Commission's General Orders 175 and 199, respectively), and

and insert in its place:

Where a pole attachment agreement is not exempt pursuant to 83 Ill. Adm. Code 105 and 710 (formerly the Commission's General Orders 175 and 199), so that consent and approval of the Commission is required by Section 27 of "An Act concerning public utilities" (Ill. Rev. Stat. 1983, ch. 111-2/3, par. 27) and where

5. To change the word "record" to "recorded" in Section 315.20(d)(4).

In addition, the Joint Committee on Administrative Rules has objected to (1) Section 315.20(d)(4) for not providing the standards which the Commission will use to allocate taxes, a cost of the utility, between utilities and cable television operators, (2) Section 315.30(b) for not providing the standards which the Commission will use to allocate costs between utilities and cable television operators to determine whether to approve deviations from the formula in Section 315.20, and (3) the use of the E factor in the formula unless and until a unique cost to a particular utility would justify the use of the E factor. Members of the Joint Committee on Administrative Rules also stated that the pole rental rate developed by the formula contained in the proposed rulemaking should be reduced to more closely accord with pole rental rates being charged in neighboring states.

In response to the objections and suggestions of the Joint Committee on Administrative Rules, the Commission has revised its proposed rulemaking as follows:

1. To insert in Section 315.20(d) (4) after the words "reasonably develops the expense," "of invested capital tax and real estate tax," and delete the next three words "for such taxes."
2. To add to Section 315.30(b):

Commission decisions under this part shall be governed by the following standard: Costs will be assessed on a fully allocated basis so that neither the CATV company nor the public utility subsidizes the operations of the other. In determining whether to approve deviations from the formula set forth in Section 315.20, the Commission shall first consider the benefits to be derived from each party to the agreement, and then determine whether charges have been apportioned in accordance with those benefits.

3. To delete the E factor from the rental rate formula contained in Section 315.20, and to delete the definition of "E" which formerly constituted Section 315.20(e). With this deletion Section 315.20(f) is redesignated as Section 315.20(e).
4. To delete .75 from the beginning of the rental rate formula contained in Section 315.20 and insert in its place .333.

The Commission has considered alternatives to the proposed rulemaking and no feasible alternatives exist which will minimize the economic impact on small businesses. Based on the revisions to the proposed rulemaking it is now timely and appropriate to adopt proposed 83 Ill. Adm. Code 315.

IT IS THEREFORF ORDERED by the Illinois Commerce Commission that proposed 83 Ill. Adm. Code 315, Pole Attachment Rates, Terms and Conditions Applicable to Cable Television Companies and Electric and Telephone Public Utilities, attached hereto as an Appendix, be, and the same is hereby, adopted.

80-0249

IT IS FURTHER ORDERED that said rulemaking be filed with the Secretary of State for publication in the Illinois Register as an adopted rule in accordance with the Illinois Administrative Procedure Act and that all submissions incident thereto and in satisfaction of the requirements of the Illinois Administrative Procedure Act be made.

IT IS FURTHER ORDERED that the Commission's Chief Clerk be, and is hereby, directed to serve a copy of this Adopting Order on all parties of record in this docket.

By order of the Commission this 6th day of February, 1985.

(SIGNED) PHILIP R. O'CONNOR

Chairman

(S E A L)

TITLE 83: PUBLIC UTILITIES
CHAPTER I: ILLINOIS COMMERCE COMMISSION
SUBCHAPTER b: PROVISIONS APPLICABLE TO MORE THAN
ONE KIND OF UTILITY
PART 315
POLE ATTACHMENT RATES, TERMS
AND CONDITIONS APPLICABLE TO CABLE TELEVISION COMPANIES
AND ELECTRIC AND TELEPHONE PUBLIC UTILITIES

Section

- 315.10 Statement of Purpose and Commission Policy
315.20 Preferred Pole Attachment Rental Rate Formula
315.30 Procedure

AUTHORITY: Implementing Section 27 and authorized by Section 8 of "An Act concerning public utilities" (Ill. Rev. Stat. 1983, ch. 111-2/3, pars. 27 and 8).

SOURCE: Adopted and codified at 9 Ill. Reg. _____, effective
_____.

Section 315.10 Statement of Purpose and Commission Policy

- a) The purpose of this rule is to designate a preferred methodology for computation of annual rental rates to be paid by cable television ("CATV") companies to electric and telephone public utilities under the jurisdiction of the Illinois Commerce Commission for the use of space on such utilities' distribution poles for attachment of CATV cables and associated facilities.
- b) It is the policy of the Illinois Commerce Commission that CATV companies and public utilities should, to the maximum extent possible, endeavor to establish pole attachment rental rates through negotiation and without resort to the processes of the Commission. The preferred pole attachment rental rate formula is designated herein in order to provide guidance to all parties in such negotiations and to set forth the methodology the Commission intends to follow in exercising its authority under Section 27 of "An Act concerning public utilities"

(Ill. Rev. Stat. 1983, ch. 111-2/3, par. 27) the Illinois Public Utilities Act with respect to such controverted cases as are brought before it.

Section 315.20 Preferred Pole Attachment Rental Rate Formula

Subject to the provisions of Section 315.30 below, an annual pole attachment rental rate included in a pole attachment agreement between a CATV company and a public utility which is presented to the Commission for consent and approval under Section 27 of "An Act concerning public utilities" (Ill. Rev. Stat. 1983, ch. 111-2/3, par. 27) the Illinois Public Utilities Act shall be presumed to be just and reasonable if shown to be equal to the rate resulting from the following formula:

$$\text{Rental Rate} = \frac{.75}{.333} \left[\frac{(\text{Cost per pole}) \times (\text{CATV Space})}{(\text{Total Usable Space})} \times (\text{Carrying Charge}) \right] + E$$

Where:

- a) "Cost per Pole" shall be the utility's book investment in 35 feet wooden distribution poles included in the electric utility Account 364 or telephone utility Account 241 at the most recent December 31, divided by the number of 35 feet wooden poles included in the account at such date.
- b) "CATV Space" shall be 1.5 feet, representing an allocation to the CATV company of 1 foot of the useful space for the CATV attachments and 6 inches of the neutral space on a joint use pole used by electric and communication utilities.
- c) "Total Usable Space" shall be 10 feet of a standard 35 feet distribution pole.
- d) "Carrying Charge" shall include the sum of the following components determined in the following manner:
 - 1) "Maintenance costs carrying charge" shall be the maintenance expense attributed to the maintenance of the poles and associated other equipment set forth in the respective electric utility Account 364 or telephone utility Account 241 as recorded in the

books of accounts for the most recently completed calendar year divided by the respective cost of plant recorded in such plant account for the most recently completed calendar year.

- 2) "Administrative and general costs carrying charge" shall be calculated as the sum of the expenses recorded in the electric utility Accounts 920 through 932 or telephone utility Accounts 661 through 677 for the most recent completed calendar year, divided by the investment in electric or telephone utility plant in-service (including amounts unclassified and allocated common plant, if any) at the most recently completed calendar year.
- 3) "Depreciation expense carrying charge" shall be the annual depreciation rate applied to electric utility Account 364 or telephone utility Account 241, expressed as a decimal, for the most recently completed calendar year.
- 4) "Taxes other than income taxes carrying charge" shall be calculated using a methodology which reasonably develops the expense of invested capital tax and real estate tax for such taxes for the most recently completed calendar year for which figures are available attributable to the ownership of the facilities recorded in Account 364 or 241, divided by the book cost of such plant.
- 5) "Return and income taxes carrying charge" shall be determined by the utility by considering the rates of return currently being permitted on depreciated original cost rate bases by the Commission. With said rate of return so determined, the return and income tax carrying charge shall be computed as follows:

$$RIT = \frac{r}{1.0 - f - s + fs} \times \frac{DOC}{OC}$$

Where:

- A) "RIT" is the return and income tax carrying charge;

- B) "r" is the rate of return expressed as a decimal;
 - C) "f" is the effective federal income tax rate as charged by the utility in the most recently completed calendar year expressed as a decimal;
 - D) "s" is the effective state income tax rate as charged by the utility in the most recently completed calendar year, expressed as a decimal;
 - E) "DOC" is the depreciated original cost of the pole account as of the end of the most recent calendar year; and
 - F) "OC" is the original cost of the pole account, as of the end of the most recent calendar year.
- e) "E" shall include any other identifiable, annual recurring expenses of the utility, other than expenses which are separately reimbursable under the pole attachment agreement, resulting from the presence of a CAFV attachment, on a per-pole basis.

ef) The electric accounts mentioned in this Section are those required to be maintained by 83 Ill. Adm. Code 415. The telephone accounts mentioned in this Section are those required to be maintained by 83 Ill. Adm. Code 710.

Section 315.30 Procedure

- a) Where a pole attachment agreement is not exempt pursuant to 83 Ill. Adm. Code 105 and 710 (formerly the Commission's General Orders 175 and 199), so that consent and approval of the Commission is required by Section 27 of "An Act concerning public utilities" (Ill. Rev. Stat. 1983, ch. 111-2/3, par. 27) Where consent and approval of the Commission to a pole attachment agreement is required by Section 27 of the Illinois Public Utilities Act and 83 Ill. Adm. Code 105 and 710 (the Commission's

~~General Orders 175 and 199, respectively~~, and where the parties thereto have agreed to the annual rental rate specified in such agreement, the utility's petition for consent to and approval of the agreement shall be accompanied by verified statements of concurrence as to the rate, signed by a representative of each party. In such cases, no showing shall be required that the rental rate is equal to the rate resulting from the formula set forth in Section 315.20 hereof.

- b) Where a pole attachment agreement is not exempt pursuant to 83 Ill. Adm. Code 105 and 710 (formerly the Commission's General Orders 175 and 199), so that consent and approval of the Commission is required by Section 27 of "An Act concerning public utilities" (Ill. Rev. Stat. 1983, ch. 111-2/3, par. 27) Where consent and approval of the Commission to a pole attachment agreement is required by Section 27 of the Illinois Public Utilities Act and 83 Ill. Adm. Code 105 and 710 (the Commission's General Orders 175 and 199, respectively), and where the parties thereto have not agreed to an annual rental rate, the utility's petition for consent to and approval of the agreement shall be accompanied by an exhibit or exhibits showing that the rental rate proposed by the utility is equal to the rate resulting from the formula set forth in Section 315.20 hereof, or if there is a deviation from the formula, a statement explaining any deviations therefrom. Commission decisions under this Part shall be governed by the following standard: Costs will be assessed on a fully allocated basis so that neither the CATV company nor the public utility subsidizes the operations of the other. In determining whether to approve deviations from the formula set forth in Section 315.20, the Commission shall first consider the benefits to be derived by each party to the agreement, and then determine whether charges have been apportioned in accordance with those benefits.
- c) Where a pole attachment agreement provides that the annual rental rate shall be adjusted each year based on the most recent data applied in accordance with the formula set forth in Section 315.20 hereof, the consent and approval of the Commission to the rental rate resulting from such annual adjustment shall be required.

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

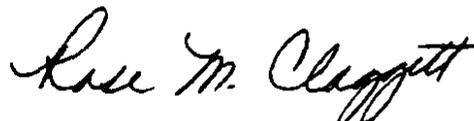
CERTIFICATE

Re: Docket No. 80-0249

I, ROSE M. CLAGGETT, do hereby certify that I am Chief Clerk of the Illinois Commerce Commission of the State of Illinois and keeper of the records and seal of said Commission.

I further certify that the above and foregoing is a true, correct and complete copy of order made and entered of record by said Commission on February 6, 1985.

Given under my hand and seal of said Illinois Commerce Commission at Springfield, Illinois, on February 19, 1985.


Chief Clerk