BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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California Cable & Telecommunications Association, Complainant, v. San Diego Gas & Electric Company (U902E), Defendant.	Case No. C.17-11-002 (Filed November 6, 2017)

CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION APPEAL OF PRESIDING OFFICER'S DECISION DETERMINING POLE ATTACHMENT FEE

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Pursuant to Rule 14.4 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure ("Rules"), the California Cable & Telecommunications Association ("CCTA") timely appeals the Presiding Officer's Decision ("POD") of Administrative Law Judge Yacknin ("ALJ") in this proceeding.

The Commission should revise the POD to eliminate the legal errors and erroneous factual assertions discussed below. By doing so, the Commission should find San Diego Gas & Electric Company ("SDG&E") failed to produce material information in discovery. Rather that vacating the POD, the Commission should accept CCTA's robust record evidence to adopt SDG&E annual pole attachment rates for 2017 of $19.32 for wood poles and $117.23 for steel poles and for 2018 of $18.53 for wood poles and $105.76 for steel poles as shown in Appendix A.

The Commission should also require, going-forward, that all pole owners produce records of their actual costs, including cost of "appurtenances" – property unnecessary for a pole attachment – when CCTA or any other party requests it. The underlying data related to

appurtenances, which is not publicly available, is necessary to rebut the rebuttable 15 percent appurtenance presumption reduction ("Appurtenance Adjustment Presumption") used to calculate pole attachment rates. Fundamentally, actual cost data is necessary to determine that pole attachment rates are just and reasonable, as required by law. Even the Assigned Commissioner has requested review of the POD for the Commission to "consider allowing CCTA to conduct discovery into the documentation underlying accounting of the cost of ownership of its utility poles, and then allowing CCTA to present any evidence it obtained in discovery to support its claims regarding the appropriate pole attachment rates for SDG&E's utility poles."[1]

I. INTRODUCTION

The Commission must ensure that the process for how pole owners set rates is transparent and that there is accountability for how pole owners recover their costs. In this case, SDG&E attributes its over 87% increase from its previous rate to costs of "fire hardening." Investor-owned utilities ("IOUs"), like SDG&E, will also seek to recover fire hardening costs from ratepayers through General Rate Cases and Commission approval of fire mitigation plans required by SB 901. Nevertheless, the POD does not require SDG&E to disclose its actual cost data that it claims justify its pole attachment rates. Revealing that data is the only way attachers and the Commission can ensure there is no double-recovery and that SDG&E is charging legal rates. Moreover, even though, as discussed below, SDG&E consistently denied it had this cost data, it conceded otherwise during cross-examination.[2]

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[1] Request for Review by Commissioner Rechtschaffen at 1 (May 10, 2019).

[2] Witness Gentes admitted SDG&E maintains records of pole and appurtenance material costs. *See* Transcript at 283 (lines 21-28), 284 (lines 1-20), 296 (lines 9-22), 298 (lines 15-25), 299 (lines 3-9) SDG&E (Gentes). Witness Thomas admitted SDG&E tracks costs for materials, labor, and equipment of poles and appurtenances in its SAP [Systems, Applications, and Products] electronic database. *See* Transcript at 308 (lines 24-28), 309 (lines 1-6), and 311 (lines 1-15) SDG&E (Thomas).

Without a requirement to produce this non-public data, the POD essentially opens the door for all IOUs to increase dramatically pole attachment rates in the name of "fire hardening" with no accountability. While legal error in any proceeding is problematic, the reduced transparency of IOU costs that this POD authorizes is an especially harmful precedent at a time when the IOUs propose multi-billion dollar fire mitigation plans. Pole attachment rates recover certain legitimate costs, but the Commission cannot permit IOUs to recover whichever costs the IOUs themselves claim as legitimate without substantiation especially when disputed. Attachers and the Commission must be allowed to keep the IOUs accountable to ensure rates are just and reasonable as required by law.

Unreasonable pole attachment rates make the cost of building communications infrastructure much more costly for no legitimate reason. The Commission has specifically sought "to protect against anticompetitive pricing by utilities."[3] Indeed, the Commission has specifically found access to poles necessary to promote broadband deployment and further the State's goals to close the digital divide.[4] The Commission recognizes that the cost of access to poles "is a key driver in the economic feasibility" of broadband deployment.[5] Lack of access to infrastructure "limits competition in the communications market, in turn causing higher prices for consumers and diminished economic vitality for California."[6] In these ways, the POD undermine the Commission's policy goals to promote access to facilities to enable robust

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3 *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service, D.98-10-058,* ("*ROW Order*") at 50, 56.

4 OII 17-06-027; OIR 17-06-028, at 5 (issued July 10, 2017).

5 *Id*. at 35.

6 *Id*. at 4.

competition in the communications marketplace and to expand broadband deployment to close the digital divide.[7]

Lack of reasonably-priced access to infrastructure also harms public safety. Parts of California still lack broadband and those areas overlap significantly with the areas the Commission and CalFire have identified as having the highest fire danger.[8] Broadband access enables residents to receive emergency alerts and access critical information such as escape routes and evacuation centers as well as greatly enhances first responder and emergency services when fires erupt.

To ensure that pole attachment rates in California continue to be just and reasonable, the Commission should correct the factual and legal errors in the POD, and find:

1. The ALJ abused her discretion with respect to the Commission's discovery rules;
2. SDG&E failed to provide actual cost data in its possession related to appurtenances and, absent that data, CCTA's robust record evidence warrants adoption of CCTA's proposed attachment rates in Appendix A;
3. The ALJ violated CCTA's due process rights by establishing a new discovery standard at the Evidentiary Hearing after the discovery period had closed;
4. The POD erroneously finds there is no Commission precedent to support the principle of separate rates for wood and steel poles; and
5. The POD erroneously fails to recognize wood and steel poles are not "similar support structures."

[7] Pub. Util. Code § 767.5. All subsequent references to statute are to the California Public Utilities Code.

[8] *Compare* https://ia.cpuc.ca.gov/firemap/ to http://www.broadbandmap.ca.gov/.

II. THE ALJ ABUSED DISCRETION WITH RESPECT TO THE COMMISSION'S DISCOVERY RULES

The POD affirms all of the ALJ's discovery-related determinations throughout the proceeding. Instead, as will be described, the Commission should determine that the ALJ abused her discretion by allowing SDG&E to refuse to produce records of its actual appurtenance costs in response to CCTA discovery requests. Further, given SDG&E's failure to provide data to enable CCTA to determine the exact appurtenance adjustment factor to be used in the attachment rate formula, the Commission should instead find CCTA's robust record evidence warrants adoption of its proposed 30% appurtenance adjustment factor and CCTA's proposed attachment rates as described in Appendix A.

The Commission must avoid actions that either constitute an "abuse of discretion"[9] or "violate[] any right of the [party] under the Constitution of the United States or the California Constitution."[10] "To exercise judicial discretion, a trial court must know and consider all material facts… essential to an informed, intelligent, and just decision."[11] Furthermore:

> trial courts issuing discovery orders and appellate courts reviewing those orders should do so with the prodiscovery policies … firmly in mind…. A reviewing court may not use the abuse of discretion standard to shield discovery orders that fall short: "Any record which indicates a failure to give adequate consideration to these concepts is subject to the attack of abuse of discretion…." [12]

Rule 10.1 establishes a broad standard for discovery in complaint proceedings at the Commission:

> [A]ny party may obtain discovery from any other party regarding any matter, not privileged, that is relevant to the subject matter involved in the pending proceeding, if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence, unless the

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9 Pub. Util. Code § 1757.1(a)(1),

10 Pub. Util. Code § 1757.1(a)(6).

11 *People v. Moya*, 184 Cal. App. 3d 1307, 13121 (citing *In re Cortez* (1971) 6 Cal.3d 78, 85-86).

12 *Williams*, 3 Cal. 5th 531, 540 (2017).

burden, expense, or intrusiveness of that discovery clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence.

As discussed below, the POD errs where it confirms the ALJ's discovery-related determinations that:

1. CCTA's inquiry into SDG&E's actual costs are outside the scope of the proceeding and would not serve to rebut the Appurtenance Adjustment presumption;

2. An erroneous discovery standard could be used to deny CCTA's discovery;

3. Providing CCTA the discovery it requested regarding appurtenance costs would be burdensome; and,

4. No action was appropriate when SDG&E admitted its failure to provide information that it had in its possession.

Instead, the Commission should find SDG&E failed to provide actual cost data in its possession related to appurtenances and that absent that data, CCTA's robust record evidence warrants adoption of CCTA's proposed attachment rates in Appendix A.

A. Discovery Background

A recitation of the discovery process in this proceeding is necessary to provide context for the POD's errors with respect to discovery-related determinations.

Date	Discovery-Related Action
January 2, 2018	CCTA submits Data Request No. 1 to SDG&E
February 2, 2018	SDG&E essentially declines to provide the information CCTA requested
February 28, 2018	Telephonic "meet and confer" and SDG&E further declines to provide any supplement to its February 2 response
March 5, 2018	CCTA submits Motion to Compel ("First Motion to Compel")
March 15, 2018	SDG&E submits Response to First Motion to Compel ("Response")

In SDG&E's Response, SDG&E agreed "to supplement its prior data responses with respect to [19 of CCTA's Data Requests]."[13] However, SDG&E failed to provide such additional information.

Date	Discovery-Related Action
September 24, 2018	Assigned Commission issues Scoping Memo
October 2, 2018	ALJ issues Ruling on Motion to Compel ("First Discovery Ruling")

The First Discovery Ruling observed that SDG&E had "agreed to provide responses to all of the data requests in dispute except for nos. 8, 9, 13, 18, 27, and 37"[14] but erroneously assumed SDG&E had already provided the supplemental responses to which it had agreed. The First Discovery Ruling therefore addressed only those six of CCTA's data requests.[15]

Since the First Discovery Ruling failed to address the relationship between the discovery process and the Scoping Memo's schedule and given the ALJ's erroneous assumption that SDG&E already had supplemented its responses to several CCTA data requests, CCTA submitted a Motion to Modify Proceeding Schedule ("Motion to Modify"). CCTA's Motion to Modify explained that the ALJ's First Discovery Ruling made completion of the discovery process impossible before the November 7, 2018 date on which the parties then had to submit their direct testimony pursuant to the Scoping Memo schedule.

Date	Discovery-Related Action
October 8, 2018	Motion to Modify

[13] Response of SDG&E in Opposition to the CCTA's "Motion to Compel" Further Discovery at 6 (March 15, 2018).

[14] ALJ's Ruling on Motion to Compel ("First Discovery Ruling") at 1 (Oct. 2, 2018).

[15] *Id.* at 2 -4.

October 31, 2018	ALJ issues Ruling on Motion to Modify Proceeding Schedule ("First Modification Ruling")

In the First Modification Ruling, the ALJ extended the due date for direct testimony and rebuttal testimony, but ignored SDG&E's misrepresentations regarding the discovery it provided and otherwise denied the Motion to Modify. The First Modification Ruling asserted that:

> it does not appear to me that the likelihood that underlying pole cost and inventory data is admissible or will lead to the discovery of admissible evidence outweighs the burden of producing the data.[16]

Following the First Modification Ruling, CCTA and SDG&E met and conferred four times,,[17] and SDG&E submitted three Supplemental and Revised Supplemental Responses to CCTA's discovery requests.[18] Despite these efforts, SDG&E continued to provide ambiguous and incomplete information, or refused to provide any information at all. Moreover, the limited information SDG&E did provide contradicted its previous responses in many cases.

Date	Discovery-Related Action
November 14, 2018	CCTA submits Further Motion to Modify Proceeding Schedule ("Further Motion to Modify")
November 19, 2018	ALJ denies Further Motion to Modify Proceeding Schedule ("Second Modification Ruling")

The Further Motion to Modify requested that the ALJ allow reasonable time for CCTA to complete discovery before being required to submit its direct testimony. The ALJ denied the

[16] First Modification Ruling at 4.

[17] CCTA and SDG&E met and conferred on October 15, October 30, November 7, and November 14, 2018.

[18] SDG&E ultimately submitted a Fourth Supplemental Response on November 19, 2018 (two days before direct testimony was filed).

Further Motion to Modify and ruled "[i]f I grant CCTA's yet-to-be-filed motion to compel, I will consider schedule modifications that are narrowly tailored to accommodate that grant."[19]

Date	Discovery-Related Action
November 21, 2018	CCTA submits Second Motion to Compel and Direct Testimony ("Second Motion to Compel")
November 28, 2018	ALJ files Notice of Law and Motions Hearing
December 12, 2018	Law and Motions Hearing
December 19, 2018	ALJ issues Ruling Denying Second Motion to Compel Responses to Items A.21, A.22 and A.23 ("Second Discovery Ruling")

During the Law and Motions hearing, the ALJ denied most of CCTA's outstanding discovery requests because "the burden outweighs the likelihood that it will lead to the discovery of admissible evidence."[20] Additionally, the Second Discovery Ruling held that the costs of appurtenances used in the Commission's pole attachment fee formula are "beyond the scope of issues identified in the assigned Commissioner's scoping memo."[21]

As a result of these adverse rulings, CCTA submitted a Motion to Reconsider Discovery Rulings on January 3, 2019, which the ALJ denied at the beginning of Evidentiary Hearings that began on January 8.[22] The ALJ did rule that testimony seeking to rebut the appurtenance presumption in the Commission's pole attachment fee formula was within the scope of the proceeding and noted with respect to her ruling that "maybe in this sense it's also a minor reconsideration of my … earlier ruling on the motion for discovery."[23] Nevertheless, she failed to grant additional discovery.

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19 Second Modification Ruling at 2.

20 Transcript at 18, lines 24-26.

21 Second Discovery Ruling at 2.

22 Transcript at 105 (lines 1-4) (ruling on CCTA's Motion to Reconsider filed Jan. 3, 2019).

23 Transcript at 114 (lines 1-3).

B. The POD Commits Legal Error By Determining CCTA's Inquiry Into SDG&E's Actual Costs Are Outside the Scope of the Proceeding and Otherwise Irrelevant

The ALJ initially denied any discovery regarding SDG&E's appurtenance costs because "the scoping memo does not identify the appurtenance adjustment factor as an issue in the proceeding."[24] Although the ALJ belatedly acknowledged at the Evidentiary Hearing that testimony regarding SDG&E's actual costs is within the scope of this proceeding,[25] the POD nevertheless reiterates that "CCTA's inquiry into the documentation underlying SDG&E's FERC Account 364 is beyond the scope of this proceeding."[26] The POD also asserts that the Appurtenance Adjustment presumption "is not rebuttable by recourse to a calculation of the utility's ownership costs based on documentation of its costs reported in FERC Account 364."[27] Both of these assertions in the POD aim to buttress the ALJ's denials of CCTA discovery that CCTA's discovery inquiries were irrelevant. The Commission should find these assertions to be legal error and that the ALJ abused her discretion in denying CCTA discovery into SDG&E actual costs.

The Scoping Memo identifies "SDG&E's annual cost of ownership under Section 767.5(a)(9)" as an issue to be determined in this case.[28] Section 767.5(a)(9) requires the removal of appurtenance costs (*i.e.*, "costs for any property not necessary for a pole attachment") to determine the annual cost of ownership. However, the primary Federal Energy Regulatory Commission ("FERC") account used in the calculation of pole attachment rates under Section

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[24] Second Discovery Ruling at 2.

[25] *See* Transcript at 116 (lines 13-25) (ruling on SDG&E's Motion to Strike filed Jan. 2, 2019).

[26] POD at 17.

[27] *Id.* at 18.

[28] Scoping Memo at 2.

767.5 (*i.e.*, FERC Account 364 Poles, towers and fixtures), includes the capital cost for a wide variety of property unnecessary for pole attachments and instead used solely for the utility's core electric service (*e.g.*, brackets, crossarms, braces, transformer racks, insulators, *etc.*).[29] Where such costs are undisputed, the Appurtenance Adjustment presumption of 15 percent is used; however, the Appurtenance Adjustment presumption is rebuttable.[30] Discovery is appropriate to rebut a presumption where data and information regarding a rebuttable presumption are in the exclusive possession and control of a party.[31]

Here, no other method exists to rebut the use of Appurtenance Adjustment presumption given that all SDG&E's appurtenance costs for distribution poles are recorded in its FERC Account 364 and not publicly available. Therefore, evidence regarding costs that must be removed from SDG&E's FERC Account 364 is relevant, discoverable, and admissible for purposes of determining SDG&E's annual cost of ownership under Section 767.5(a)(9). Given these circumstances, the Commission should revise the legal error in the POD finding CCTA's

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[29] *See* 18 C.F.R. Part 101 § 364.

[30] *See*, *e.g.*, *CCTA v. Southern California Edison Co.,* D.98-04-062 ; *ROW Order*, at 56-57; *Amendment of Rules and Policies Governing Pole Attachments*, Consolidated Partial Order on Reconsideration, 16 FCC Rcd 12103, 12123 at n.138 (2001); Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, *Report and Order*, 2 FCC Rcd 4387, 4390, para. 19 (1987).

[31] *United Prepaid Network v. U.S.,* 112 Fed.Cl. 59, 66 (2013) (finding a party was "entitled to pursue appropriate discovery to determine whether it can offer any rebuttal to the presumption" that taxes were paid); *Cooper v. Henderson*, 174 F.Supp.3d 193, 205 (D.D.C. 2016) (plaintiff "must be afforded an opportunity to rebut . . . presumption, and she will be permitted to conduct discovery for that purpose"); *Polis v. American Liberty Financial*, 237 F.Supp.2d 681, 685 (S.D. W.Va. 2002) (plaintiffs given the "opportunity to conduct discovery" to rebut a presumption established in a consumer protection statute); *Shaw Group v. Zurich American Insurance Co*., Ruling and Order, 2014 WL 1816494, at *7 (M.D. La. May 7, 2014) (defendant insurance company was "entitled to seek discovery" to rebut a presumption relied upon by plaintiffs); *In re Allergan, Inc. Securities Litigation*, No. 14-CV-02004, 2016 WL 5929250, at *4-5 (C.D. Cal. Oct. 5, 2016) (defendants "entitled to discovery" of plaintiff's stock trading history to rebut presumption of reliance on efficient market).

discovery inquiry irrelevant and determine that the ALJ abused her discretion in denying CCTA discovery into SDG&E actual costs.

C. The POD Errs By Approving an Erroneous Discovery Standard

In denying CCTA discovery of SDG&E's actual appurtenance costs, the ALJ announced at the Evidentiary Hearing a "good faith" discovery standard finding CCTA must:

> provide a good-faith basis to rebut the 15 percent appurtenance presumption and the presumption of the reported FERC Account 364 numbers. . . . [Y]ou cannot use discovery as a fishing expedition to try to find out if there is a good faith basis to be found.[32]

Thus, the POD commits legal error by confirming the ALJ's retroactive application of this erroneous discovery standard that denied CCTA its ability to conduct the discovery it required to determine if the 15 percent Appurtenance Adjustment presumption was incorrect.

Discovery rules and procedures "must be construed liberally in favor of disclosure unless the request is clearly improper by virtue of well-established causes for denial,"[33] and discovery "is a matter of right unless statutory or public policy considerations clearly prohibit it."[34] Rule 10.1 establishes that one factor in determining whether to allow discovery is "the likelihood that the information sought will lead to the discovery of admissible evidence."

Here, the ALJ's discovery standard effectively required CCTA to demonstrate in advance of receiving responses from SDG&E that the information it sought in discovery would ultimately rebut the rebuttable 15 percent Appurtenance Adjustment. Instead, the ALJ should have required CCTA demonstrate the likelihood that the information sought would lead to the discovery of admissible evidence.

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[32] Transcript at 100 (lines 15-20) - 101 (lines 19-21).

[33] *Williams*, 3 Cal. 5th at 541 (quoting *Greyhound Corp v. Superior Court*, 56 Cal. 2d 355, 377).

[34] *Id.* (quoting *Greyhound Corp. v. Superior Court*, 56 Cal. 2d at 378).

Furthermore, the record includes numerous good-faith reasons the ALJ should have permitted CCTA to seek discovery from SDG&E to show the likelihood that the information sought would lead to the discovery of admissible evidence:

- SDG&E's practice of including the appurtenance costs for third-party and mixed-use poles in its rate calculations deviates materially from the assumptions underlying the FCC's adoption of the rebuttable presumption.[35]

- SDG&E's discredited claim that it maintains no accounting of its appurtenance costs deviates from the accounting practices of other utilities and the requirements of other states in which SDG&E's parent company operates.[36]

- The actual percentage of appurtenance investment has increased significantly over time particularly "for utilities, like SDG&E, that have undertaken wide-scale pole replacement and reinforcement programs,"[37] which has been confirmed by other state proceedings.[38]

- SDG&E's testimony in its GRCs confirms that its "fire hardening" efforts have entailed, among other things, substantial additional costs associated with replacing existing wooden cross arms, racks, *etc.* with significantly more expensive fire resistant metal appurtenances.[39]

- SDG&E's testimony in its GRCs suggests that it keeps detailed records of its appurtenance costs.[40]

- SDG&E reported a 93% increase in capital costs recorded in its FERC Account 364 (pole and appurtenance costs) over an 11-year period while its claimed pole count *decreased* by 1,277 poles.[41]

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[35] *See Teleprompter v. C&P Telephone Co.,* 85 FCC 2d 243, at para. 8. *See also* Transcript at 106.

[36] *See* Revised Direct Testimony of Patricia D. Kravtin ("Exhibit CCTA-01 (Kravtin)") at 30 (lines 4-6 and n.36) and at 31 (lines 12-14).

[37] Exhibit CCTA-01 at 14 (lines 12-14).

[38] *See, e.g., id.* at 28-33.

[39] *See. e.g.*, *Application of San Diego Gas & Electric Co*. (A.17-10-007), Revised Capital Workpapers to Prepared Direct Testimony of Alan F. Colton, Electric Distribution Capital, Ex. SDG&E-14-CWP-R, at 701-705 (Dec. 2017); *Application of San Diego Gas & Electric Co.* (A.14-11-003), Rebuttal Testimony of Jonathan T. Woldemariam, Electric Distribution O&M, Ex. SDG&E-210, at JW-8-9 (June 2015); *Application of San Diego Gas & Electric Co.* (A.14-11-003), Revised Capital Workpapers to Prepared Direct Testimony of John D. Jenkins, Ex. SDG&E-09-CWP-R, at 790 (Mar. 2015).

[40] *See* Rebuttal Testimony of Patricia D. Kravtin ("Exhibit CCTA-03 (Kravtin)"), at 24, n.25.

[41] Complaint at 7, para. 15.

- SDG&E admitted that it included the costs of appurtenances installed on third-party owned poles and mixed-use poles in its own FERC Accounts used to calculate pole attachment rates while excluding those poles from the pole count used to determine pole attachment rates.[42]

CCTA provided these good-faith reasons throughout the proceeding as to why the ALJ should permit CCTA to seek discovery to rebut SDG&E's reliance on the rebuttable presumption. The POD mischaracterizes CCTA's argument in its Brief as providing these reasons to rebut the presumption itself and disputes that any of them "raise the inference that the ratio of SDG&E's average appurtenance costs to the average cost of its bare poles has changed."[43] CCTA's Brief, however, focused on explaining that a good-faith basis existed for requiring SDG&E to produce material information within its exclusive custody and control.[44] Furthermore, these same reasons show the high likelihood that the information sought would lead to the discovery of admissible evidence – namely the actual appurtenance costs that, as discussed above, are the primary manner that the Appurtenance Adjustment presumption can be rebutted. Accordingly, the POD errs by confirming the ALJ's retroactive application of her erroneous discovery standard that denied CCTA the ability to conduct its requested discovery.

D. The POD Errs By Determining that Providing CCTA the Discovery It Requested Regarding Appurtenance Costs Would Be Burdensome

The POD asserts without analysis or support that "[t]he ALJ properly denied CCTA's discovery requests seeking documentation of SDG&E's reported FERC account costs … as overbroad and unduly burdensome, and we agree."[45] The Commission should find this assertion in the POD to be legal error because the ALJ's determinations that providing CCTA with its

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42 Transcript at 235 (line 6) – 236 (line 4), 236 (lines 15-24) SDG&E (Gentes).

43 POD at 10.

44 *See* CCTA Brief at 16-18.

45 POD at 18.

actual appurtenance costs in FERC account 364 would be burdensome were an abuse of her discretion.

Objections to discovery requests based on burden, expense, or intrusiveness to the responding party therefore must contain more than mere assertions. Such claims must include evidence demonstrating, among other things, the manpower, time, and cost to respond to each discovery request.[46] The burden of justifying objections to discovery "remains at all times with the party resisting . . . [discovery]."[47] Although "some burden is inherent in all demands for discovery[,]" an "objection of burden is valid only when that burden is demonstrated to result in injustice."[48]

SDG&E persistently refused to respond to CCTA's discovery requests regarding its actual appurtenance costs and made no showing justifying that refusal. Moreover, under cross-examination during the Evidentiary Hearing, SDG&E witnesses admitted that SDG&E maintained documents and electronic records of all its property related to pole installations, including, among other things, appurtenance costs and costs associated with third-party owned custodial poles and SDG&E mixed-use poles, in an SAP database.[49] SDG&E claims that it cannot "run a report out of its SAP (or other) system that would delineate the specific costs associated with appurtenances."[50] However, SDG&E did not even provide its SAP records to CCTA that do include the non-specified, actual costs associated with appurtenances. Furthermore, SDG&E's repeated claims that it cannot break down the actual costs to specific

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46 *Williams*, 3 Cal. 5th at 549; *West Pico Furniture Co. v. Superior Court*, 56 Cal. 2d, 407, 418.

47 *Id.* at 541; *Coy v. Superior Court*, 58 Cal. 2d 210, 220-21 (1962).

48 *West Pico Furniture Co. v. Superior Court*, 56 Cal. 2d 407, 418 (1961).

49 Transcript at 283 (lines 21-28) - 284 (line 20), 296 (lines 9-22), 298 (lines 15-25), 299 (lines 3-9) SDG&E (Gentes), Transcript at 308 (lines 24-28) - 309 (lines 1-6), 311 (lines 1-15) SDG&E (Thomas).

50 SDG&E Reply Brief, at 6.

appurtenance costs is contrary to FERC accounting rules requiring SDG&E to maintain detailed information of appurtenance data within FERC Account 364.[51] Therefore, no significant burden would have been imposed on SDG&E to produce records associated with its actual appurtenance costs or to produce the SAP records that it admits it has.

Given SDG&E's ultimate admission during cross examination that it maintains records of such costs, the ALJ's refusal to require disclosure was an abuse of her discretion. Accordingly, the Commission should find the POD errs in confirming the ALJ's discovery rulings regarding the actual appurtenance data.

E. The POD Errs By Failing to Take Any Action When SDG&E Has Admitted Its Failure to Provide Information That It Had in Its Possession

The POD takes no action against SDG&E despite SDG&E admission that it failed to provide information that it had in its possession with respect to its actual appurtenance cost data. The Commission should correct this error and instead conclude that because of SDG&E's refusal to provide evidence of SDG&E's actual "appurtenance" costs, which it admitted to maintaining, the Commission should instead rely on CCTA's estimate provided in the record.

The Commission "has the power to impose discovery sanctions where litigants violate discovery procedures."[52] In particular, in situations in which a party fails to provide material information in discovery, the Commission has held that an inference should be drawn that such

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[51] FERC rules required SDG&E to "keep its books of account, and all other books, records, and memoranda which support the entries in such books and records so as to be able to furnish readily full information as to any item included in any account. Each entry shall be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto." 18 C.F.R. Part 101, General Instruction No. 2(A); *see also* 18 C.F.R. Part 101, General Instruction Nos. 2(B)-2(E). *See, e.g.,* CCTA Opening Brief at 20-21.

[52] D.02-05-042, mimeo at 21.

evidence is unfavorable to the refusing party.[53] For example, the Commission ruled in one proceeding that "cost information that [a telephone company] refused to produce would be deemed to support the adoption of interim rates for unbundled loops and unbundled switching that are lower than current rates."[54] The FCC has issued similar rulings in the context of appurtenance coasts, holding that "where one party has not provided a satisfactory comprehensive figure," it is "reasonable and proper" to use estimates proposed by the other party.[55]

Despite initial claims that a "massive" study and "very lengthy manual effort" would be required to determine its actual appurtenance costs,[56] SDG&E later admitted that it maintains records of its actual appurtenance costs in an electronic SAP database. CCTA was foreclosed from the opportunity to analyze this data by SDG&E's refusal to provide the critical data and the ALJ's refusal to order its production.

However, as demonstrated by robust record evidence, CCTA's expert witness estimated SDG&E's actual appurtenance factor (30%) to compute SDG&E's annual attachment fee.[57] Since SDG&E failed to provide the actual appurtenance data it had in its possession, the

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[53] *See, e.g.*, D.15-04-021, mimeo at 41 (the Commission drew adverse inferences against a utility for "failure to fully produce records" that would demonstrate compliance with "industry-accepted standards and statutory requirements") and 45 ("[the utility]effectively situated itself into a position in which its failure to produce the … documents denie[d] … the evidence necessary to prove facts at issue").

[54] D.02-05-042, mimeo at 21.

[55] *Capital Cities Cable*, 56 Rad. Reg.2d (P&F) 393 at para. 16 (1984). *See also Teleprompter v. C&P Telephone Co.,* 85 FCC 2d 243, paras. 9-10 (1981) (where the pole owner "had the opportunity to develop an alternate [appurtenance cost] figure but did not … [it] cannot now allege unfairness" for using an appurtenance estimate proposed by the other party); *Teleprompter v. Northwestern Bell Telephone Co.,* File No. PA-79-0043, 49 Rad. Reg.2d (P&F) 557 at para. 4 (Com. Car. Bur. 1981) ("when no figure [for appurtenances] was supplied by the utility," the FCC declined to "criticize [an attacher's] use of an estimate").

[56] *See* Response of SDG&E to CCTA Second Motion to Compel at 11.

[57] *See*, *e.g.,* Exhibit CCTA-01 (Kravtin) at 14 (line 1) –15 (line 2), 64 (line 19) – 65 (line 11), 79 (line 8) – 83 (line 5).

Commission should modify the POD to use a 30% appurtenance factor for the computation of SDG&E's annual attachment fee.

III. THE ALJ VIOLATED CCTA'S DUE PROCESS RIGHTS BY ESTABLISHING A NEW DISCOVERY STANDARD AT THE EVIDENTIARY HEARING AFTER THE DISCOVERY PERIOD HAD CLOSED

The ALJ's announcement of her new discovery standard at the Evidentiary Hearing after discovery had closed denied CCTA the opportunity to include argument in its motions to satisfy the standard. Thus the Commission should find that the ALJ denied CCTA's due process because CCTA had no prior notice of her new discovery standard established at the evidentiary hearing and therefore could not have complied with the standard when discovery was on-going.

Due process stands for the "fundamental principle in our legal system … that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required."[58] The Commission has found that "[d]ue process is the federal and California constitutional guarantee that a person will have notice and an opportunity to be heard before being deprived of certain protected interests by the government."[59] Furthermore:

> because the due process clause ensures that an administrative proceeding will be conducted fairly, "discovery must be granted if in the particular situation a refusal to do so would so prejudice a party as to deny him due process."[60]

However, in denying CCTA discovery of SDG&E's actual appurtenance costs, the ALJ announced at the Evidentiary Hearing a "good faith" discovery standard, which it retroactively

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[58] *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). *See also Fuentes v. Shevin*, 407 U.S. 67, 80-82 (1972)

[59] *Re Competition for Local Exchange Service*, Order Denying Rehearing, D.95-09-121, 1995 Cal. PUC LEXIS 788, at *13 (1995).

[60] *See, e.g.*, *Mohilef v. Janovici*, 51 Cal.App.4th 267, 302 (Cal. App. 2 Dist. 1996).

applied to CCTA's pending motions.[61] The ALJ's standard adopted a new prerequisite to discovery demanding that CCTA must provide in advance:

> a good-faith basis to rebut the 15 percent appurtenance presumption and the presumption of the reported FERC Account 364 numbers. . . . [Y]ou cannot use discovery as a fishing expedition to try to find out if there is a good faith basis to be found.[62]

Due process fundamentally requires meaningful advance notice that a different discovery standard would be applied. The Commission must recognize the ALJ's failure to provide due process by adopting a new discovery standard at the beginning of evidentiary hearings.

IV. THE POD ERRONEOUSLY FINDS NO COMMISSION PRECEDENT IN SUPPORT OF THE PRINCIPLE OF SEPARATE RATES FOR WOOD AND STEEL POLES

In Decision 03-05-055, the Commission established separate rates for wood and steel transmission poles. The POD dismisses this Commission precedent stating: "D.03-05-055 did not decide the issue as the issue was not in dispute. Rather, SDG&E stipulated to separate fees."[63] The POD thus concludes that the Commission's "adoption of the stipulated matter does not constitute approval of or any precedent regarding the principle."[64] Further, the POD cites Rule 12.5 for the proposition that the Commission's "adoption of the stipulated matter does not constitute approval of or any precedent regarding the principle."[65] This is legal error. Commission precedent in D.03-05-055 supports the establishment of separate rates for wood and steel poles.

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61 Transcript at 100 (lines 15-19).

62 *Id.* at 100 (lines 15-20) -- 101 (lines 19-21).

63 POD at 8.

64 *Id.* at 8.

65 *Id.*

Rule 12.5 applies only to the Commission's "adoption of a settlement." There was no settlement among the parties to Case 00-09-025 and no settlement was approved in D.03-05-055; rather, the Commission decided based on a fully-litigated record. The words "settle" and "settlement" do not even appear in D.03-05-055.

As D.03-05-055 describes, SDG&E initially attempted to impose an annual attachment charge of $69.36 on both wood and steel transmission poles.[66] But, as the decision explains later in the proceeding:

> SDG&E acknowledged the concept of separate rates for wood and steel poles, recognizing that equity demands that the pole attachment rate should reflect the actual type of attachment.[67]

SDG&E did not "stipulate" to separate fees through a Rule 12 settlement process that explicitly determined that such a stipulation would not be precedential. Instead, as the decision explains, SDG&E recognized and acknowledged, and the Commission ultimately adopted as precedent, complainant's position with respect to the creation of separate rates for wood and steel poles. Accordingly, the Commission must revise the POD's legal error in failing to recognize the precedent for establishment of separate rates for wood and steel poles in D. 03-05-055 and establish separate rates in this proceeding for wood and steel poles.

V. THE POD ERRONEOUSLY FAILS TO RECOGNIZE WOOD AND STEEL POLES ARE NOT "SIMILAR SUPPORT STRUCTURES"

The POD erroneously finds that "[t]here is no material difference between wood and steel distribution poles for purposes of determining attachment fees."[68] However, the Commission

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66 D.03-05-055, mimeo at 4.

67 *Id.*, mimeo at 5.

68 POD at 6.

should correct this error in the POD based on the robust record evidence demonstrating that wood and steel poles are not "similar support structures."

Section 767.5(a)(9) defines "annual cost of ownership" as:

> the sum of the annual capital costs and annual operation costs of the support structure which shall be the average costs of all similar support structures owned by the public utility.[69]

Thus, this plain language, as well as the evidence in this case, dictates that where there are dissimilar support structures, the Commission must establish separate attachment rates. SDG&E itself admits that "Section 767.5 requires disparate rates for dissimilar support structures."[70]

The record is replete with evidence that wood and steel poles are not "similar support structures" due to substantial differences in service life, strength, heights, spans, and costs. For example, the evidence demonstrates that:

(i) the average service life of steel poles is at least twice that of wood poles;[71]
(ii) steel poles can be manufactured with far greater strength than wood poles;[72]
(iii) steel poles have lower maintenance costs than wood poles;[73]
(iv) steel poles generally are taller than wood poles;[74] and,
(v) steel poles are significantly more costly than wood poles.[75]

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[69] Pub. Util. Code § 767.5(a)(9).

[70] SDG&E Opening Brief at iv.

[71] *See* Exhibit CCTA-01 (Kravtin) at 66 (lines 11-12), 69 (lines 4-7), n.82; CCTA Reply Brief at 5, n.11.

[72] *See* Exhibit CCTA-01 (Kravtin) at 66 (lines 12-13); CCTA Reply Brief at 6.

[73] *See* CCTA Reply Brief at 5, n.11.

[74] *See* Exhibit CCTA-01 (Kravtin), at 66 (lines 12-13); Exhibits CCTA-04 and CCTA-05 also demonstrate that as of December 2017, the average height of SDG&E's steel pole inventory was 49.174 feet compared to 43.496 feet for wood poles. *See also* CCTA Reply Brief at 7 and nn.18-19.

[75] *See* Exhibit CCTA-01 (Kravtin) at 67 (line 15) – 68 (line 17); SDG&E Fourth Supplemental Data Response, Item 4, attached to Second Motion to Compel as Exhibit 4; CCTA Reply Brief at 7-8, nn.19-22.

Indeed, the POD does not dispute CCTA's demonstration that wood and steel poles are dissimilar in terms of longevity, strength, height, spans, and per-unit cost.[76] Nevertheless, the POD erroneously finds that because wood and steel poles serve a similar function, the same rate should apply, despite the statutory mandate and existing precedent. The Commission must reverse this error.

A. The POD Commits Legal Error By Determining that All Support Structures Are Similar Because They Serve the Same Function

The POD argues CCTA's demonstrations that wood and steel poles are dissimilar "are not a material basis upon which to deem them dissimilar support structures for purposes of Section 767.5(a)(9)."[77] The POD then concludes that wood and steel poles are "similar" because they "serve the same function of supporting the utility's distribution lines."[78] As discussed above, this conclusion is contrary to existing precedent and would render superfluous the explicit statutory distinction that only the average cost of "similar support structures" be included in the "annual cost of ownership"[79] to calculate attachment rates.

A court must "give effect, if possible, to every clause and word of a statute."[80] "[O]ne of the most basic interpretive canons, [is] that '[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous.'"[81] The POD's analysis of

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76 *See* CCTA Opening Brief at 29-34; CCTA Reply Brief at 3-14.

77 POD at 7.

78 *Id*. at 6.

79 Pub. Util. Code § 767.5(a)(9).

80 *Montclair v. Ramsdell*, 107 U.S. 147, 152 (1883).

81 *Corley v. U.S*., 556 U.S. 303, 314 (2009), citing *Hibbs v. Winn*, 542 U.S. 88, 101 (2004) (quoting 2A N. Singer, Statutes and Statutory Construction § 46.06, pp.181–186 (rev. 6th ed.2000)). *See also Stevens v. Corelogic Inc.*, 899 F.3d 666, 673-74 (9th Cir. 2018); *Imperial Merchant Services, Inc. v. Hunt*, 47 Cal.4th 381, 390 (2009) ("Statutes must be interpreted, if possible, to give each word some operative effect," quoting *Walters v. Metropolitan Educational Enterprises, Inc*. 519 U.S. 202, 209 (1997); *id.*

Section 767.5(a)(9) treats all support structures as "similar" because of their function regardless of their dissimilar characteristics and thus renders superfluous the explicit statutory mandate that the average cost of "similar support structures" be included in the "annual cost of ownership"[82] to calculate attachment rates. In other words, the average cost of ownership of dissimilar support structures should be calculated separately.

All support structures serve the same function, *i.e.,* supporting electric and/or communications infrastructure, regardless of whether they are "similar" or "dissimilar" within the meaning of Section 767.5(a)(9). Since all support structures share an identical underlying functionality, the POD's conclusion would make it impossible to distinguish between and among any support structures with respect to the statute. Indeed, the POD fails to identify any factors that would distinguish dissimilar support structures under the statute. The Commission should correct this legal error and conclude that wood and steel structures are dissimilar within the meaning of Section 767.5(a)(9).

B. The POD Commits Legal Error By Dismissing the Established Dissimilarities of Wood and Steel Poles Because of "Averaging"

The POD concludes that:

> the cost of ownership differential between SDG&E's [wood and steel] distribution poles is not a material basis upon which to deem them dissimilar support structures . . . [because] the statutory formula accounts for cost differentials across pole types by basing the annual cost of ownership on average costs.[83]

The POD ignores the plain language requiring the averaging of costs only for "all similar support structures owned by the public utility."[84] The statute requires that "average costs" must

("We do not presume that the Legislature performs idle acts, nor do we construe statutory provisions so as to render them superfluous," quoting *Shoemaker v. Myers*, 52 Cal.3d 1, 22 (1990)).

82 Pub. Util. Code § 767.5(a)(9).

83 POD at 6.

84 Pub. Util. Code § 767.5(a)(9).

be separately determined for dissimilar structures – i.e., the Commission must determine separate average costs for wood poles and steel poles because wood poles are dissimilar from steel poles.

Thus, the POD cannot use "averaging" as a basis to justify a determination that wood and steel poles be treated as similar structures under the statute. The Commission should correct the POD to determine separately that (i) the average costs for wood poles be used to determine the rate for wood poles, and (ii) the average costs for steel poles be used to determine the rate for steel poles.

C. The POD Commits Factual and Legal Error In Determining That Installation Costs Are Relevant to a Determination of Whether Wood and Steel Poles Are Dissimilar

The POD accepts that "SDGE's average cost of steel poles is higher than that of its wood poles," but then argues "the driving cost factor is not the composition of the pole" and instead is related to "the engineering, design, permitting and construction costs that can be higher in SDG&E's 'backcountry' areas."[85] This is incorrect. The Commission should determine that POD's asserted distinctions are both erroneous and irrelevant to determining whether wood and steel poles are "similar support structures" under Code Section 767.5(a)(9).

First, while SDG&E claimed and the ALJ accepts that "the vast differences [in cost] reflect new construction and location"[86] in its backcountry areas, where "in some cases the costs . . . can be higher,"[87] SDG&E provided no evidence to support this assertion. Nothing in the record demonstrates that SDG&E's costs for installation of wood poles in the backcountry areas are any different than its costs for installation of steel poles in the backcountry (other than

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85 POD at 6-7.

86 SDG&E Opening Brief at 8.

87 Exhibit SDG&E-07 (Thomas) at 1 (line 18) – 2 (line 7).

the cost of the poles themselves). Nor does any record evidence demonstrate that SDG&E's costs of installing steel poles is greater in the backcountry compared to other parts of its service areas. To the contrary, SDG&E's testimony confirms that "[t]he engineering and design, construction labor, tools, and equipment used to install a pole are the same for wood and steel."[88] Given these identical installation costs, the POD's unsupported assumption that the vast differences in the cost of wood and steel poles are due to location cannot be correct. Rather, the primary difference is in the cost of the materials, which CCTA witness Ms. Kravtin's testimony and SDG&E's own records confirm.[89]

Second, similarities or dissimilarities in installation costs based on differences in terrain is inapposite to a statutory inquiry of whether the poles being installed are "similar support structures" where cost differences between classes of dissimilar support structures are a relevant factor. Furthermore, neither the POD nor SDG&E provide any Commission precedent to support the use of installation costs in a statutory inquiry of whether the poles being installed are "similar support structures" nor does any such precedent exist.

Yet, the POD would reach beyond the plain language of the statute in favor of looking at irrelevant and unsupported claims of installation costs as opposed to relying on the material and accepted differences in the cost of wood and steel poles readily available in the record of this proceeding. Thus, the Commission should correct the POD's factual and legal errors in determining that installation costs are relevant to the Commission's determination as to whether wood and steel poles are similar support structures.

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88 *Id*.

89 *See supra* n.75; Exhibit CCTA-01 at 67-68 (Kravtin); CCTA-03 (Kravtin) at 12-21; CCTA Opening Brief at 31; CCTA Reply Brief at 7-8, nn.19-22 (citing *inter alia* SDG&E Fourth Supplemental Data Response, Item 4, attached to Second Motion to Compel as Exhibit 4.

VI. CONCLUSION

Rather than vacate the POD, the Commission should revise the POD to eliminate the legal errors and erroneous factual assertions discussed above and adopt CCTA's calculations of SDG&E pole attachment rates for 2017 and 2018, as described in Appendix A, based on the robust record evidence that CCTA has provided. The Commission should also ensure, going-forward and when CCTA or another party requests, that pole owners provide their actual, non-public cost data, including appurtenance cost data, so that attachers and the Commission can ensure that pole attachment rates are set in compliance with the law.

Respectfully submitted,

_____/s/_____

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APPENDIX A

CCTA Proposed Calculation of SDG&E Company Pole Attachment Rental Rate

(Year-End 2015 Data, Billing Year 2017)

	Blended Total	Steel	Wood	
Net Cost of a Bare Pole Calculation				**Source (FERC Form 1 Except as Indicated)**
Gross Distribution Plant	5,688,816,119			207, line 75(g)
Gross Pole Investment (Acct. 364)	638,732,141	129,928,079	508,804,062	207, line 64(g), SDG&E 11/19/18 Supp.Response
Distribution Plant Accumulated Depreciation	2,478,295,295			219, line 26(b)
Depreciation Reserve (Poles)	278,259,453	56,602,312	221,657,140	F14/F13*F15, G14/F13*F15,H14/F13*F15
Gross Plant Investment (Electric)	12,865,760,488			200, line 8(c)
Accumulated Deferred Taxes (Electric)(190, 281-3)	2,276,207,950			273(8k)+275(2k)+277(9k)-234(8c)
Accumulated Deferred Taxes(Accts. 190, 281-3)(Poles)	113,004,371	22,986,852	90,017,520	F14/F17*F18, G14/F17*F18, H14/F17*F18
Net Pole Investment	247,468,317	50,338,915	197,129,402	F14-F16-F19
Appurtenances Factor (1-Appurtenance Ratio)	70%	0.70	0.70	Exhibit CCTA-01 at 14-15, 64-65; Exhibit CCTA-03 at 21-25
Net Pole Investment Allocable to Attachments	172,853,343	35,161,066	137,990,581	F20*F21
Total Number of Poles	206,436	7,420	199,016	POD at 15, SDG&E Response to CCTA Request 12, 35
Net Cost of a Bare Pole	**837.32**	**4,738.69**	**693.37**	F22/F23
Carrying Charge Calculation				
Total General and Administrative	455,442,963			323, line 197(b)
Gross Plant Investment (Electric)	12,865,760,488			200, line 8(c)
Depreciation Reserve (Electric)	4,148,867,962			200, line 22(c)
Accumulated Deferred Taxes (Electric)(190, 281-3)	2,276,207,950			273(8k)+275(2k)+277(9k)-234(8c)
Administrative Carrying Charge	**0.07071344**	**0.07071344**	**0.07071344**	F27/(F28-F29-F30)
Account 593 (Maintenance of Overhead Lines)	41,183,868			322, line 149(b)
Investment in Accts. 364,365 & 369	1,660,156,810			207, lines 64(g)+65(g)+69(g)
Depreciation (Poles) related to Accts. 364, 365 & 369	723,236,386			F34/F13*F15
Accumulated Deferred Income Taxes for 364, 365 & 369	293,714,634			F34/F17*F18
Maintenance Carrying Charge	**0.064029**	**0.021790**	**0.064029**	F33/(F34-F35-F36); *see also* Exhibit CCTA-01 at 76-77 & n.86; Exhibit CCCTA-03 at 32-34
Gross Pole Investment (Acct. 364)	638,732,141	129,928,079	508,804,062	207, line 64(g)
Net Pole Investment	247,468,317	50,338,915	197,129,402	F14-F16-F19
Depreciation Rate for Gross Pole Investment	0.0421	0.0421	0.0421	2016 Form 1, 337.2, line 14(e)
Depreciation Carrying Charge	**0.108663**	**0.108663**	**0.108663**	F39/F40*F41
Taxes (Accts. 408.1 + 409.1 + 410.1 + 411.4 - 411.1)	424,879,169			114, line 14(c)+15(c)+16(c)+17(c)+19(c)-18(c)
Gross Plant Investment (Total Plant)	15,483,670,138			200, line 8(b)
Depreciation Reserve (Total Plant)	5,348,749,257			200, line 22(b)
Accumulated Deferred Taxes (Total Plant)(190, 281-3)	2,444,971,001			273(8k)+275(2k)+277(9k)-234(8c)
Taxes Carrying Charge	**0.055251**	**0.055251**	**0.055251**	F44/(F45-F46-F47)
Rate of Return	0.0779			Latest CPUC Rate Case
Return Carrying Charge	**0.0779**	**0.0779**	**0.0779**	
Total Carrying Charges	**0.376557**	**0.334317**	**0.376557**	F31+F37+F42+F48+F51
ANNUAL POLE ATTACHMENT RENTAL RATE CALCULATION				
Net Cost of a Bare Pole	837.32	4,738.69	693.37	F24
Total Carrying Charges	0.376557	0.334317	0.376557	F53
Annual Cost of Ownership Per Pole	315.30	1584.22	261.09	F59*F60
Space Use Factor	0.074	0.074	0.074	CPUC Rules
POLE ATTACHMENT RENTAL RATE	**23.33**	**117.23**	**19.32**	F61*F62

All highlighted cells show differences in inputs between CCTA's proposed calculation and the POD's calculation.

CCTA Proposed Calculation of SDG&E Company Pole Attachment Rental Rate
(Year-End 2016 Data, Billing Year 2018)

	Blended Total	Steel	Wood	
Net Cost of a Bare Pole Calculation				**Source (FERC Form 1 Except as Indicated)**
Gross Distribution Plant	5,998,338,965			207, line 75(g)
Gross Pole Investment (Acct. 364)	671,234,956	161,608,973	509,625,983	207, line 64(g), SDG&E 11/19/18 Supp.Response
Distribution Plant Accumulated Depreciation	2,615,090,125			219, line 26(b)
Depreciation Reserve (Poles)	292,637,664	70,456,510	222,181,154	F14/F13*F15, G14/F13*F15,H14/F13*F15
Gross Plant Investment (Electric)	13,509,709,576			200, line 8(c)
Accumulated Deferred Taxes (Electric)(190, 281-3)	2,569,705,865			273(8k)+275(2k)+277(9k)-234(8c)
Accumulated Deferred Taxes(Accts. 190, 281-3)(Poles)	127,676,794	30,739,930	96,936,864	F14/F17*F18, G14/F17*F18, H14/F17*F18
Net Pole Investment	250,920,498	60,412,533	190,507,965	F14-F16-F19
Appurtenances Factor (1-Appurtenance Ratio)	0.70	0.70	0.70	Exhibit CCTA-01 at 14-15, 64-65; Exhibit CCTA-03 at 21-25
Net Pole Investment Allocable to Attachments	175,264,646	42,197,355	133,355,575	F20*F21
Total Number of Poles	206,479	9,537	196,942	POD at 15, SDG&E Response to CCTA Request 12, 35
Net Cost of a Bare Pole	**848.83**	**4,424.59**	**677.13**	F22/F23
Carrying Charge Calculation				
Total General and Administrative	400,171,572			323, line 197(b)
Gross Plant Investment (Electric)	13,509,709,576			200, line 8(c)
Depreciation Reserve (Electric)	4,498,674,541			200, line 22(c)
Accumulated Deferred Taxes (Electric)(190, 281-3)	2,569,705,865			273(8k)+275(2k)+277(9k)-234(8c)
Administrative Carrying Charge	**0.062125621**	**0.062125621**	**0.062125621**	F27/(F28-F29-F30)
Account 593 (Maintenance of Overhead Lines)	45,182,924			322, line 149(b)
Investment in Accts. 364,365 & 369	1,771,989,742			207, lines 64(g)+65(g)+69(g)
Depreciation (Poles) related to Accts. 364, 365 & 369	772,532,680			F34/F13*F15
Accumulated Deferred Income Taxes for 364, 365 & 369	337,053,318			F34/F17*F18
Maintenance Carrying Charge	**0.068211**	**0.021337**	**0.068211**	F33/(F34-F35-F36); *see also* Exhibit CCTA-01 at 76-77 & n.86; Exhibit CCCTA-03 at 32-34
Gross Pole Investment (Acct. 364)	671,234,956	161,608,973	509,625,983	207, line 64(g)
Net Pole Investment	250,920,498	60,412,533	190,507,965	F14-F16-F19
Depreciation Rate for Gross Pole Investment	0.0409	0.0409	0.0409	2016 Form 1, 337.2, line 14(e)
Depreciation Carrying Charge	**0.109411**	**0.109411**	**0.109411**	F39/F40*F41
Taxes (Accts. 408.1 + 409.1 + 410.1 + 411.4 - 411.1)	411,180,623			114, line 14(c)+15(c)+16(c)+17(c)+19(c)-18(c)
Gross Plant Investment (Total Plant)	16,460,669,128			200, line 8(b)
Depreciation Reserve (Total Plant)	5,795,395,900			200, line 22(b)
Accumulated Deferred Taxes (Total Plant)(190, 281-3)	2,792,045,147			273(8k)+275(2k)+277(9k)-234(8c)
Taxes Carrying Charge	**0.052225**	**0.052225**	**0.052225**	F44/(F45-F46-F47)
Rate of Return	0.0779			Latest CPUC Rate Case
Return Carrying Charge	0.0779	**0.0779**	**0.0779**	
Total Carrying Charges	**0.369873**	**0.322999**	**0.369873**	F31+F37+F42+F48+F51
ANNUAL POLE ATTACHMENT RENTAL RATE CALCULATION				
Net Cost of a Bare Pole	848.83	4,424.59	677.13	F24
Total Carrying Charges	0.369873	0.322999	0.369873	F53
Annual Cost of Ownership Per Pole	313.96	1429.14	250.45	F59*F60
Space Use Factor	0.074	0.074	0.074	CPUC Rules
POLE ATTACHMENT RENTAL RATE	**23.23**	**105.76**	**18.53**	F61*F62

All highlighted cells show differences in inputs between CCTA's proposed calculation and the POD's calculation.