



**BEFORE THE
PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

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**California Cable and
Telecommunications Association,
Complainant**)
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)
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v.)
)
**San Diego Gas & Electric
Company (U902E), Defendant**)

Case No. _____ C1003005

**VERIFIED COMPLAINT OF CALIFORNIA CABLE AND
TELECOMMUNICATIONS ASSOCIATION**

Pursuant to Section 767.5(c) of the California Public Utilities Code, the California Cable and Telecommunications Association (“CCTA”) hereby requests that the Commission prohibit San Diego Gas and Electric (“SDG&E”) from imposing unreasonable charges for use of its rights-of-way. SDG&E has significantly increased the rate that it charges cable companies for pole attachments, but it has been unable to sufficiently justify its increase. As such, the Commission should rule that SDG&E’s proposed pole-attachment rate is unjust and unreasonable, and is inconsistent with the mandates of the California Public Utilities Code. The Commission should also set a just and reasonable rate for SDG&E’s pole attachments pursuant to Section 767.5(c) of the California Public Utilities Code. CCTA reserves the right to amend this Complaint to address other right-of-way issues, as necessary.

I. Scoping Information

1. The proposed category for the proceeding is “adjudicatory.” An opportunity for a hearing is necessary.

2. The issues to be considered are:
 - (1) Whether SDG&E's proposed pole attachment rate is just and reasonable, and is consistent with the mandates of the California Public Utilities Code.
 - (2) What rate would be just and reasonable for SDG&E to charge cable companies for attaching to its utility poles.

3. CCTA proposes the following schedule for resolving this proceeding within one year:

Service of Complaint	Day 1
Answer	Day 31
Prehearing Conference	Day 50
Hearing	Day 180

4. CCTA proposes to alter the schedule from the Commission's suggested guidelines as it anticipates the need for a lengthened discovery period.

II. Parties

5. CCTA is a trade association representing cable companies and program content providers in California. It is the industry's largest state cable and telecommunications association. By authority of Section 767.5 of the Public Utilities Code, CCTA negotiates on behalf of cable television companies regarding pole-attachment rates, terms and conditions for all investor-owned utility poles in California. CCTA's members include Cox Communications, Inc., Time Warner Cable, and other cable operators that attach their facilities to SDG&E's poles, and CCTA has been

engaged on their behalf in negotiations with SDG&E regarding the pole attachment rates. As a result, CCTA has a direct interest in this proceeding. CCTA's address is 1001 "K" Street, 2nd Floor, Sacramento, CA 95814. The telephone number is (916) 446-7732.

6. SDG&E is an investor-owned utility providing electric and gas service in the San Diego area. SDG&E is a subsidiary of Sempra Energy. SDG&E's address is 8326 Century Park Court, San Diego, CA 92123. The telephone number is (619) 696-2000.

III. Jurisdiction

7. Section 767.5 of the California Public Utilities Code establishes the Commission's authority to determine and enforce pole-attachment rates, terms, and conditions whenever the cable operator, or association of the operators, and public utility companies are unable to reach agreement.

IV. Facts

8. In order to provide cable services to their subscribers, CCTA members attach coaxial cable and fiber optic cable facilities to poles owned by SDG&E.

9. Section 767.7 of the California Public Utilities Code states that public utilities shall be "fairly and adequately compensated for the use of their rights-of-way and easements for the installation of fiber optic cable."¹ In addition, the Commission has determined that a public utility receives "reasonable compensation" when the

¹ CAL. PUB. UTIL. CODE § 767.7(b).

attaching cable company pays an attachment rate based on the formula outlined in Section 767.5 of the Public Utilities Code.²

10. Section 767.5 provides that attaching cable companies pay a one-time reimbursement for actual costs incurred by the utility for rearrangements performed at the cable companies' request, as well as a per-pole annual rate equal to 7.4% of its annual cost of ownership. The annual cost of ownership is the sum of annual capital costs (historical capital costs less depreciation) and annual operation costs.³

11. In June 2008, SDG&E elected to increase its pole attachment rate for 2009 to \$20.13. The new rate nearly doubles SDG&E's 2007 rate of \$11.24. It is nearly four times the \$5.44 rate charged by AT&T for use of its poles in SDG&E's service territory. And it is considerably higher than typical regulated pole attachment rates charged by electric utilities nationally, which generally range between a quarter to a third of the rate that SDG&E now seeks.

12. Over the past 17 months, CCTA and SDG&E have engaged in negotiations regarding the proposed rate. Throughout this time, CCTA has repeatedly requested that SDG&E explain the rate's basis. SDG&E, however, has continuously provided incomplete and inconsistent backup data to substantiate the new rate. SDG&E has never justified the extraordinarily high pole costs that it uses in its calculations; nor has it provided sufficient backup to explain its asserted number of distribution poles. In fact, the data SDG&E has provided contain internal inconsistencies that suggest questionable and improper accounting practices. As examples: SDG&E imbeds costs associated with 2007 and 2003 fires even though it

² *Order Instituting Rulemaking on the Commission's Own Motion Into Competition for Local Exchange Service*, R.95-04-043/I.95-04-044, D.98-10-058, at 55 (rel. Oct. 22, 1998) ("*Right-of-Way Order*").

³ See CAL. PUB. UTIL. CODE §§ 767.5(a)(9), (c)(2)(A).

recovers those costs through CEMA filings; it uses retirement accounting practices that artificially inflate pole investment; and it has made inconsistent statements regarding the number of poles it claims to own. Most important, however, SDG&E has provided incomplete yet significantly inconsistent information about the costs of its poles as entered into FERC Account 364 (Poles, Towers and Fixtures), and it has never provided an explanation of the process by which the Company determines the embedded costs of poles in the first place. Because SDG&E cannot justify its formula inputs, the parties have reached an impasse in their negotiations.

V. Argument

A. SDG&E's Proposed Pole Attachment Rate Is Unjust and Unreasonable.

13. Section 767.7 of the California Public Utilities Code states that public utilities shall be “fairly and adequately compensated for the use of their rights-of-way and easements for the installation of fiber optic cable.”⁴ The Commission has ruled that a public utility receives “reasonable compensation” when it calculates its pole attachment rate based on the formula in Section 767.5.⁵

14. The foundation for the 767.5 formula is that “reasonable compensation” is based on actual costs. As the Commission explained in its *Right-of-Way Order*, “Section 767.5 provides that the pole attachment rate will be based on the utilities’ annual cost of ownership, including historic depreciated capital costs and annual operating expenses.”⁶ Otherwise put, the rate is reasonable because it “corresponds to

⁴ CAL. PUB. UTIL. CODE § 767.7(b).

⁵ *Right-of-Way Order* at 55.

⁶ *Id.*

the costs incurred by the utility to provide the attachment.”⁷ Anchoring pole attachment rates to actual costs is particularly important because it “guards against an unbalanced bargaining position between incumbent utilities and telecommunications [and cable] providers.”⁸

15. The linchpin of the *Right-of-Way Order*, therefore, is that if one inputs accurate and reliable costs into the 767.5 formula, the resulting rate will be “reasonable” because it will reflect actual costs incurred by the utility. And the opposite is true as well: if the inputs are inaccurate or unreliable, and the resulting rate does not reflect actual costs, then it is not “reasonable.” This is the heart of the dispute between CCTA and SDG&E.

16. In June 2008, SDG&E increased its pole attachment rate for 2009 to \$20.13. The increase nearly doubles the rate SDG&E charged in 2007, and it is considerably higher than rates charge by AT&T in SDG&E’s service territory (\$5.44) and than rates generally charged by other investor-owned utilities nationwide (between \$5.50 and \$9.00). There is no reasonable explanation why SDG&E’s pole costs should be three or four times the costs of other utility pole owners in California and nation-wide, or why the rate should almost double in a single year. It is for this reason that CCTA has pressed SDG&E to provide data to explain and support its purported cost increases.

17. More than a year and a half later, SDG&E has yet to sufficiently justify its proposed pole attachment rates. Indeed, the data that SDG&E has provided is rife with inconsistencies and questionable accounting. For example, SDG&E has still not fully explained how it determines what costs to book to FERC Account 364 during

⁷ *Id.*

⁸ *Id.* at 124 (Conclusion of Law 29); see also *id.* (Conclusions of Law 30-31).

construction. It has not adequately explained its allocation of costs to different asset accounts in connection with the with the 2007 and 2003 fires, and it has not justified its embedding those costs in its pole attachment rates despite that fact that SDG&E recovers those costs through CEMA filings. Nor has it justified retirement accounting practices that significantly inflate purported pole investment. As another example, SDG&E has not justified its count of the number of distribution poles in its system, a number that forms the denominator of the fraction that determines the average cost per pole.

18. SDG&E's inconsistent and incomplete explanations and questionable accounting practices have real consequences: if inflated pole investment or a deflated pole count are input into the 767.5 formula, they will result in a significantly higher pole attachment rate than is justifiable. And if the inputs to the formula are inaccurate, then the resulting pole attachment rate will be based on those inaccurate inputs – not on the actual costs the *Right-of-Way Order* envisioned.

19. In light of SDG&E's extraordinary and anomalous average pole costs and its failure to provide complete and consistent data to CCTA, the Commission should rule that SDG&E's proposed rate is unjust and unreasonable. It is evident that SDG&E's extraordinarily high rate is not based on actual costs incurred, and must be found to be unjust and unreasonable in violation of Section 767.7 of the Public Utilities Code.

B. The Commission Should Determine a Just and Reasonable Pole Attachment Rates for SDG&E.

20. Section 767.5 of the California Public Utilities Code provides that the Commission shall set the pole attachment rate when a public utility and a cable

company or association are unable to reach agreement on them.⁹ CCTA and SDG&E have attempted good faith negotiation, but have reached a standstill.

21. When the Commission calculates the rate in this case, it should follow the standards it prescribed in the *Right-of-Way Order* to ensure that the new rate is just and reasonable, and based on actual costs. It is thus imperative that the Commission assess the accuracy and reliability of the data points used to calculate the rates.

VI. Request for Relief

22. CCTA requests that the Commission take the following actions:

- (1) Set this Complaint for hearing to determine SDG&E's just and reasonable pole attachment rate.
- (2) Rule that SDG&E's proposed pole attachment rate is not just and reasonable, and is inconsistent with the mandates of the California Public Utilities Code.
- (3) Determine a just and reasonable rate for SDG&E to charge cable companies for attaching to its utility poles.

Respectfully submitted,

/s/ GARDNER F. GILLESPIE

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⁹ CAL. PUB. UTIL. CODE § 767.5(c).

/s/ LESLA LEHTONEN

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Dated: March 5, 2010

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VERIFICATION

I am an officer of the California Cable and Telecommunications Association, and I am authorized to make this verification on its behalf. The statements in the foregoing Complaint are true of my own knowledge or, based upon my information and belief, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 5, 2010, at Oakland, California.

/s/ LESLA LEHTONEN

Lesla Lehtonen
Vice President
Legal and Regulatory Affairs
California Cable and
Telecommunications Association

CERTIFICATE OF SERVICE

I hereby certify that on this day, I served a copy of VERIFIED COMPLAINT OF CALIFORNIA CABLE & TELECOMMUNICATIONS ASSOCIATION together with this Certificate of Service, upon the following parties by causing a copy thereof to be delivered electronically mailed and properly addressed on each such party.

Executed on March 5, 2010, at Sacramento, CA

/s/ RICHELLE ORLANDO

Richelle Orlando