



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

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Order Instituting Rulemaking to Revise and Clarify Commission Regulations Relating to the Safety of Electric Utility and Communications Infrastructure Provider Facilities.

Rulemaking 08-11-005
(Filed November 6, 2008)

**OPENING COMMENTS
OF THE DIVISION OF RATEPAYER ADVOCATES
ON TELEPHONE COMPANY COST RECOVERY
FOR OVERHEAD LINE INSPECTIONS**

SARAH THOMAS

Staff Counsel for:
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue,
San Francisco, CA 94102
Telephone: (415) 703-2310
Facsimile: (415) 703-2262
E-mail: srt@cpuc.ca.gov

BREWSTER FONG

Staff Analyst for:
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-2187
E-mail: bfs@cpuc.ca.gov

CHRISTOPHER MYERS

Staff Analyst for:
Division of Ratepayer Advocates
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102
Telephone: (415) 703-2908
E-mail: cg2@cpuc.ca.gov

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I. SUMMARY

The Division of Ratepayer Advocates (DRA) hereby comments on one key issue raised in this case: whether and how Incumbent Local Exchange Carriers (ILECs) whose rates have been deregulated may cover their costs of inspecting and maintaining their overhead lines and appurtenances. It is DRA's position that ILECs must bear their own costs if their rates are not regulated, in whole or part, pursuant to this Commission's Uniform Regulatory Framework (URF) decision or other federal, state or local law.

DRA makes the following recommendations in these comments:

- ILECs should bear the cost of inspection and maintenance, without ratepayer funding. Because their rates are deregulated, they may not seek to add surcharges to customer bills to recover costs that this rulemaking may impose. Rather, they must fund inspection and maintenance from their market-based rates.
- ILECs regulated by this Commission have always been required to inspect and maintain their overhead facilities. To the extent they have failed to do so, ratepayers should not subsidize carriers in remedying this failure.

- ILECs' estimates of the cost of inspection and maintenance are overstated.
- ILECs' records regarding the cost of inspection and maintenance should not be afforded confidential treatment.

II. BACKGROUND

This rulemaking came about as a result of devastating fires in several California locations in 2007, triggered in many cases by the overhead wiring and appurtenances of Commission-regulated telecommunications and cable providers. In this rulemaking, the Commission refers to these providers collectively as Communication Infrastructure Providers (CIPs). DRA's comments are limited to ILECs whose rates were deregulated as part of the Commission's URF proceeding – AT&T Communications of California, Inc. (AT&T), Verizon California Inc. (Verizon), SureWest Telephone (SureWest) and Frontier Communications (Frontier),¹ the four largest ILECs.

In its comments on the Consumer Protection and Safety Division's (CPSD's) proposed safety rules, AT&T asked the Commission for leave to recover the costs of complying by a line item surcharge on customers' bills:

if such rules are mandated for CIPs, the Commission should consider as part of this proceeding the means by which such costs can be recovered by CIPs so that their services will continue to be competitively priced, with regulatory costs separately identified and made explicit to consumers. One such approach is through a line-item surcharge on customers' bills. (AT&T Reply Comments, 12/17/08, p. 3).

CPSD is spearheading the safety aspects of this proceeding, and DRA defers to CPSD's expertise on safety matters. However, DRA has several recommendations on ILEC cost issues.

¹ The four largest ILECs operate under various "doing business as" (dba) monikers. DRA intends to incorporate ILECs AT&T/Pacific Bell, Verizon, SureWest and Frontier, and each of their dbas, in these comments.

III. CIPS MUST BEAR THE COSTS OF INSPECTION AND MAINTENANCE IN RATES, AND MAY NOT RECOVER SUCH COSTS BY SURCHARGE

A. There is No Basis To Impose A Surcharge in a Deregulated Environment

In its URF decision, the Commission permitted market based ratemaking for ILECs. D.06-08-030, ordering paragraph 3; D.08-09-042, ordering paragraph 1. Market-based rates are designed to put the ILECs on equal footing with their competitors by allowing these companies to set their prices without regard to cost for most products and services, with full pricing freedom to commence on January 1, 2011. D.08-09-042, ordering paragraph 4.

Thus, these CIPs have been given the freedom to set their own rates. With this freedom comes the responsibility on the part of the ILECs to manage their own costs. These ILECs have the flexibility to establish their basic rates at a level that will cover their administrative costs, just as they do for any other costs. Safety-related expenses, including compliance with the requirements of General Order 95,² are normal costs of operation, and are not appropriate for a surcharge.

Nonetheless, some ILECs propose that the Commission grant them a line-item surcharge on customers' bills to cover the cost of any inspections and maintenance the Commission orders here. This "heads I win, tails you lose" approach has no place in a deregulated environment. If the ILECs wish to compete on a level playing field in the market, their rates must suffice to cover their costs. Old regulatory decisions allowing the carriers to impose customer surcharges no longer apply.

In granting ILECs price deregulation, the Commission reasoned that rate deregulation would require the ILECs to bear the burdens – and not just reap the benefits – of competition. As the Commission noted in its URF decision, D.06-08-030, “If

² CPSD's recommendations would modify the inspection and maintenance requirements of Commission General Order 95.

[AT&T] prices its services too high or if its service quality deteriorates, customers will have the incentive to switch to a lower-priced or better-quality carrier." D.08-06-030, mimeo. p. 33 (citations omitted). Allowing ILECs a surcharge to cover the costs of maintaining their networks would run directly counter to this Commission's desire for ILECs to compete in the free market.

Those carriers supporting a line item surcharge actually seek to interfere with market forces. If they are allowed to impose surcharges, while other competitors do not, they will distort price signals sent to consumers and deny consumers the full right to select the industry's most competitive provider. Instead, under AT&T's proposal, the consumer will be subject to both an industry-wide surcharge and any rate the carrier sets based on market forces.

B. Safety Obligations Are Never Appropriate for Surcharge Under Any Regulatory Regime

Carriers' safety obligations are fundamental to their obligation to serve. Pub. Util. Code § 451 ("Every public utility shall furnish and maintain such adequate, efficient, just and reasonable service, instrumentalities, equipment and facilities, including telephone facilities ... as are necessary to promote the safety [and] health ... of its patrons, employees and the public."). Thus, simple outside plant maintenance expenses are not extraordinary expenses eligible for surcharge treatment, as ILECs have always been required to inspect and maintain their facilities. The Order Instituting Rulemaking (OIR) in this proceeding as well as Commission General Order 95 recognize this basic safety obligation. *See, e.g.*, OIR, mimeo, p. 2.

We have learned in this proceeding that the ILECs have not always carried out their obligations.³ It appears, for example, that AT&T and Verizon have a policy that simply requires service personnel who are at a site for a different purpose – say, a service

³ Indeed, during the February 18th workshop, CPSD counsel asked AT&T's representative if "communication providers are allowed to never inspect parts of their plant." AT&T responded "well, we inspected it when we built it Maybe that's enough." The workshop was webcast, but not transcribed. The webcast appears on the Commission's website.

call – to inspect the overhead facilities in the vicinity. This approach is obviously flawed, as it does not ensure inspection of all facilities, including those for which there are no service calls.

We agree with CPSD that

if CIPs are not complying with existing safety requirements, as required by GO 95, . . . any additional cost would be due to their own non-compliance, which jeopardizes the safety of California citizens by not ensuring that their facilities are maintained in good condition to comply with the clearance requirements or other safety features of GO 95. (CPSD's Proposed Rules, 3/6/09, p. 32.)⁴

Thus, the fact of ILECs' noncompliance with existing GO 95 obligations actually weakens their case for a surcharge.

The fact that certain ILECs carriers have failed to meet their inspection and maintenance obligations does not permit a surcharge now. Responsibility for the safety of communication facilities rests solely with the carrier, and ratepayers should not be compelled to pay for protection against industry related hazards.

IV. EVEN ASSUMING, *ARGUENDO*, THAT ILECS ARE ELIGIBLE FOR A SURCHARGE, THEY FAIL TO JUSTIFY THEIR COSTS OR ESTABLISH THAT RATEPAYERS SHOULD BEAR THEM

The ILECs claiming entitlement to a surcharge have failed to provide any evidence of their costs. When asked for their costs at the workshop, many CIPs present, including AT&T, Verizon, Cox Communications and Comcast Cable, responded that such data was confidential, proprietary and would not be produced in a public forum. (Feb. 18, 2009 workshop (part 1).) At the same time, AT&T claimed, without providing supporting data, that it would cost the company \$35 million annually to implement the inspection rules CPSD now proposes. *Id.*

⁴ CPSD re-served the Proposed Rules on March 9, 2009.

There is no basis to hold simple cost data in confidence. While DRA opposes any inspection cost recovery, if the Commission were to permit a surcharge, the ILECs would be required to document all costs. When a party claims it is entitled to confidential treatment as part of the Commission's open rulemaking process, the burden falls on that party to justify its claim. *See, e.g.*, D.06-06-066, ordering paragraph 10.⁵ No ILEC has satisfied or can satisfy this burden, especially given the Commission's obligation to act in public on this important issue of public safety.

Moreover, the evidence in the record submitted by the electric utilities indicates that the CIPs claiming the right to a surcharge are vastly overstating the likely cost of inspections. CPSD points out that

in response to certain CIPs' claims that minimum inspection cycles would result in astronomical costs, a [Southern California Edison (SCE)] representative at the [February 17, 2009] workshop pointed out that SCE's inspection costs were only about \$1 million per year, which covered not only patrol inspections, but detailed inspections as well for approximately 1.5 million poles. [San Diego Gas and Electric Company (SDG&E)] also responded to a CPSD data request, which revealed that for SDG&E's service territory, which is smaller than SCE's, SDG&E's actual patrol inspection for 2009 were approximately \$194,000. (See Attachment C, SDG&E's March 9, 2009 data response to CPSD). [Pacific Gas and Electric Company (PG&E)], which has the largest service territory of the electric IOUs, also provided CPSD with cost data showing that it spends approximately \$5 million per year for patrol inspections for their overhead distribution facilities on approximately 1.3 million poles. (See Attachment D, PG&E 2008 GO 165 Costs and Units.) (CPSD Proposed Rules, 3/6/09 p. 32.)

Thus, the evidence in the record demonstrates that annual inspection costs are not significant. The ILECs fail to justify their assertion that inspection rules will impose a significant new cost burden that they must recover by way of surcharge.

⁵ Order on rehearing on other grounds, D.07-05-032.

Indeed, CPSD is only proposing minimum inspection cycles for CIPs in extreme and very high fire threat zones, and for facilities with electric facilities on the same pole or one pole away. Furthermore, the annual inspection requirement applies only to zones in Southern California. (CPSD Proposed Rules, p. 33.) Given the above minimum requirements, DRA concurs with CPSD that the new inspection requirements should not be too costly, especially in view of the electric utilities' data.

VI. CONCLUSION

It is not reasonable for ILECs to benefit from price deregulation, yet seek Commission and ratepayer assistance whenever they claim costs will burden them. Consumers should not be subject to line item surcharges or any other form of cost compensation, other than a market based recovery. It would be especially inappropriate to require ratepayers to subsidize inspections and maintenance by ILECs that have failed to comply with existing safety requirements. Finally, the ILECs overstate the costs that would result from compliance with inspection requirements, and should be required to submit all cost information as part of the public record.

Respectfully submitted,

/s/ SARAH R. THOMAS

Sarah R. Thomas

Attorney for the Division of Ratepayer
Advocates

California Public Utilities Commission
505 Van Ness Ave.
San Francisco, CA 94102
Phone: (415) 703-2310
Fax: (415) 703-2262

March 27, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of “**OPENING COMMENTS OF THE DIVISION OF RATEPAYER ADVOCATES ON TELEPHONE COMPANY COST RECOVERY FOR OVERHEAD LINE INSPECTIONS**” in **R.08-11-005** by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

U.S. Mail Service: mailing by first-class mail with postage prepaid to all known parties of record who did not provide electronic mail addresses.

Executed on March 27, 2009 at San Francisco, California.

/s/ HALINA MARCINKOWSKI

Halina Marcinkowski

N O T I C E

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chilen@nvenergy.com
skuhn@counsel.lacounty.gov
lionmeyer@gmail.com
jesus.g.roman@verizon.com
robert.f.lemoine@sce.com
dj0conklin@earthlink.net
KMelville@sempra.com
michael.bagley1@verizonwireless.com
jon.dohm@crowncastle.com
facilitiesmanagement@cox.net
bfinkelstein@turn.org
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cjhashimoto@tid.org
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ernylee.chamlee@fire.ca.gov
mclaughlin@braunlegal.com
wynne@braunlegal.com
schohn@smud.org
bob.ritter@crowncastle.com
mike.roden@att.com
kevin.saville@frontiercorp.com
Marjorie.Herlth@Qwest.com
lsheehan@ceo.lacounty.gov
Shanise.Black@ladwp.com
daryl.buckley@ladwp.com
ssnyder@legal.ladwp.com
jtodd@fire.lacounty.gov
craig.hunter@wilsonelser.com
jacque.lopez@verizon.com
lorraine.kocen@verizon.com
steve.ford@sce.com
case.admin@sce.com
james.lehrer@sce.com
sdunn@dpw.lacounty.gov
scaine@cainelaw.com
jwmitchell@mbartek.com

atrial@sempra.com
esther.northrup@cox.com
jpacheco@sempra.com
liddell@energyattorney.com
Blain@tbmlawyers.com
lurick@sempra.com
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peter.hayes@att.com
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Grant.Kolling@cityofpaloalto.org
lex@consumercal.org
larry.abernathy@davey.com
douglas.garrett@cox.com
ll@calcable.org
mrw@mrwassoc.com

ferpello@newton.berkeley.edu
robert@novembriconsulting.com
rw8914@att.com
bmcc@mccarthy.com
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