

In the matter of the complaint of the MICHIGAN CABLE TELECOMMUNICATIONS ASSOCIATION and HARRON CABLEVISION OF MICHIGAN, INC., against THE DETROIT EDISON COMPANY regarding the terms and conditions of pole attachments

Case No. U-11964

MICHIGAN PUBLIC SERVICE COMMISSION

1999 Mich. PSC LEXIS 261

September 28, 1999

PANEL: [*1] PRESENT: Hon. John G. Strand, Chairman; Hon. David A. Svanda, Commissioner; Hon. Robert B. Nelson, Commissioner

OPINION: At the September 28, 1999 meeting of the Michigan Public Service Commission in Lansing, Michigan.

ORDER APPROVING SETTLEMENT AGREEMENT

On April 19, 1999, the Michigan Cable Telecommunications Association and Harron Cablevision of Michigan, Inc., (the complainants) filed a complaint against The Detroit Edison Company (Detroit Edison) regarding the terms and conditions of pole attachments. On June 2, 1999, Detroit Edison filed its answer and affirmative defense.

On June 30, 1999, Administrative Law Judge George Schankler conducted a prehearing conference, which was attended by the complainants, Detroit Edison, and the Commission Staff (Staff). Subsequently, the complainants and Detroit Edison submitted a settlement agreement and the Staff submitted a statement of non-objection.

The settlement agreement, attached as Exhibit A, clarifies the procedures to be followed by the complainants and Detroit Edison with regard to pole attachments.

The Commission FINDS that:

a. Jurisdiction is pursuant to *1909 PA 106*, as amended, MCL 460.551 et seq.; MSA 22.151 et seq.; *1919 PA [*2] 419*, as amended, MCL 460.51 et seq.; MSA 22.1 et seq.; *1939 PA 3*, as amended, MCL 460.1 et seq.; MSA 22.13(1) et seq.; *1969 PA 306*, as amended, MCL 24.201 et seq.; MSA 3.560(101) et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1992 AACCS, R 460.17101 et seq.

b. The settlement agreement is reasonable and in the public interest, and should be approved.

c. The complaint should be dismissed with prejudice.

THEREFORE, IT IS ORDERED that:

A. The settlement agreement, attached as Exhibit A, is approved.

B. The complaint filed by the Michigan Cable Telecommunications Association and Harron Cablevision of Michigan, Inc., against The Detroit Edison Company is dismissed with prejudice.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26; MSA 22.45.

MICHIGAN PUBLIC SERVICE COMMISSION

By its action of September 28, 1999.

EXHIBIT A

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SETTLEMENT AGREEMENT AND STATEMENT OF UNDERSTANDING

This is a Settlement Agreement and Statement of Understanding between Harron Cablevision of Michigan, Inc. (Harron), Michigan Cable Telecommunications Association (MCTA), and Detroit Edison (Edison). Trust is an essential part of this Settlement Agreement and Statement of Understanding. Frequent and open communication is critical for its success. The parties completely agree that the safety of our employees and customers is of paramount importance and unsafe practices will not be permitted. In addition, this Settlement Agreement and Statement of Understanding complies with the applicable Terms and Conditions for the Attachment to Poles, Ducts, Conduits and [*4] Rights-of-Way approved by the Michigan Public Service Commission (MPSC No. 1).

First Time Attachments

. An attaching party will follow the attachment permit process prior to making a first time attachment to an Edison pole. This requires providing an Attachment Permit and an Outside Sales Product map to the appropriate Edison Service Center. An Application Fee may be charged if Edison prepares the make-ready survey, or will be waived if the Edison Service Center authorizes an attaching party to prepare the make-ready survey and the attaching party completes the survey, as provided in Section A-2.3, Application Fees, in MPSC No. 1.

. An attaching party will make a first time attachment after all make-ready work is completed and Edison returns an approved Attachment Permit to the attaching party. An attaching party making a first time attachment will have the approved Attachment Permit available for review at the job site within a reasonable time, upon request of Edison. Edison will process all Attachment Permit applications as promptly as reasonably possible, with a target median average response time of ten (10) working days. Responsibility for the make-ready work required to accommodate [*5] the facilities of an attaching party will be performed and paid for as provided in Section A-5.2, Work to Accommodate Attachments to Poles, Duct, or Conduit, in MPSC No. 1.

Existing Attachments

. An attaching party is permitted to replace, maintain, or repair an existing attachment on an Edison pole without obtaining a new Attachment Permit or providing notification.

. Except in emergencies, an attaching party will provide notification to the appropriate Edison Service Center no less than one-week prior to the start of a rebuild or overlashing project. The notification will include the location of the project, start date, estimated completion date and other information the Edison Service Center may reasonably request. Edison will not require payment of an application fee for a rebuild or overlashing project if the attaching party completes a survey and notifies the appropriate Edison Service Center of all needed make-ready work. An attaching party will correct all violations for which it is responsible within 30 days after discovery, if the violations do not require make-ready work. Responsibility for the make-ready work and related costs will be as provided in Section A-5.2, Work [*6] to Accommodate Attachments to Poles, Duct, or Conduit, in MPSC No. 1.

Other

. Edison will be performing an audit of various pole attachments. The auditors will verify the number of attachments and will inspect each attachment for violations of Edison's construction standards, as provided in the applicable pole attachment agreement. The parties will cooperate with each other during the audit and Edison will allow representatives from attaching parties to accompany Edison's auditors during all or part of the audit, at the discretion of each attaching party. The attaching parties will correct all violations for which they are responsible within a mutually agreeable time after receiving notice from Edison. Edison's audit charges will be reasonable and cost-based as provided in Section A-8.1, Inspection, in MPSC No. 1. When applicable, audit costs shall be allocated fairly among all responsible attaching parties. Pursuant to tariff, Edison may bill retroactively only where an attaching party has made an attachment without permission. It is the intent of the parties that the preceding sentence not be interpreted to modify the terms of the tariff. . Harron and MCTA agree that, if this Settlement [*7] Agreement and Statement of Understanding is approved by the MPSC, it will resolve their Formal Complaint and Petition for Hearing in MPSC Case No. U-11964. The parties agree to cooperate with the communication and implementation of this Settlement Agreement and Statement of Understanding.

. Edison will cooperate with requests by attaching parties to energize power supplies, approve Attachment Permits and perform make-ready work.

. The parties will work together to create new uniform working procedures and administrative practices, subject to the understanding that the MPSC has the jurisdiction to regulate the rates, terms and conditions of attachments by attaching parties.

. If a party fails to live up to this Settlement Agreement and Statement of Understanding, the other parties reserve the right to take any legal or equitable actions they deem prudent.

This Settlement Agreement and Statement of Understanding takes immediate effect with the following signatures.

By:

David E.S. Marvin
Fraser Trebilcock Davis & Foster, P.C.
Attorneys for MCTA and Harron Cablevision

By:

Richard J. Aaron
Honigman Miller Schwartz & Cohn
Attorneys for Detroit Edison

Dated: September 16, 1999