

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

**IN THE MATTER OF AN
INVESTIGATION INTO POLE
ATTACHMENTS**

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**DOCKET NO. 04-999-03
ELECTRIC LIGHTWAVE'S
COMMENTS**

INTRODUCTION

Electric Lightwave, LLC, welcomes this opportunity to submit comments to the Utah Public Service Commission ("Commission") in response to the Commission's *Notice of Further Agency Action and Scheduling* in Docket. No. 04-999-03, issued March 19, 2004. Electric Lightwave has attached its facilities to many poles belonging to Utah Power along the Wasatch Front, and Electric Lightwave has received notice that the rates Utah Power intends to charge for Electric Lightwave's joint use attachments have more than doubled, from \$7.28 per pole annually to \$18.20. Moreover, Utah Power has retroactively billed Electric Lightwave at the higher pole attachment rate, resulting in an estimated \$52,426.92 in increased charges, and Utah Power has assessed Electric Lightwave \$556,020.00 in penalties for alleged unauthorized attachments. Electric Lightwave has provided Utah Power with evidence that its attachments were authorized but has so far been unable to resolve these issues through negotiations with Utah Power. Consequently, Electric Lightwave urges the Commission to take immediate action to address its concerns.

POLE ATTACHMENT RATES

Speedy Action Required

First and foremost, the Commission must set a schedule in this proceeding that will allow the Commission to establish just and reasonable pole attachment rates before Utah Power's new, higher rates take effect on July 1, 2004. Unless the Commission stays or overturns Utah Power's unilateral rate increase, Electric Lightwave will suffer an estimated unanticipated increase in joint use pole costs of \$52,426.92 annually. Such a large increase will discourage joint pole use by Electric Lightwave and others and thereby prevent attaining the greater efficiencies available from sharing indivisible network facilities. This increase in cost will also inhibit the development of competition in Utah by adding significantly increased expense to telecommunications products with already thin margins.

Statewide Uniform Rates

Electric Lightwave believes that the preferred course of action is to establish a uniform statewide ratemaking methodology for all types of attachers. Particular types of attachers should not be asked to bear a larger share of joint pole costs than others, provided the physical characteristics of their attachments are reasonably comparable. Similarly, wide geographic variations in pole attachment rates should not be permitted unless it can be shown that the costs of installing and maintaining poles varies widely across different geographic areas.

ADDITIONAL SIGNIFICANT TERMS AND CONDITIONS

Application and Approval Procedures, Retroactive Billing and Penalties for Unauthorized Attachments, Inspection Fees, Audits and Inventories

Once the Commission resolves the issues surrounding reasonable compensation for pole attachments, it should turn its attention to closely related issues, including application and approval procedures, retroactive billing and penalties for unauthorized attachments, inspection fees, audits and inventories. Electric Lightwave's recent experience with Utah Power in regard to these matters has been troubling.

As noted above, Electric Lightwave has received hundreds of thousands of dollars in retroactive billing and penalties for unauthorized pole attachments going back five years. On some invoices, Utah Power assessed the \$18.20 pole attachment rate that does not go into effect until July 1, 2004. Moreover, Utah Power has levied penalties of \$60.00 per year per pole for unauthorized attachments. Electric Lightwave has disputed Utah Power's contention that it is wrongfully attached to Utah Power poles and has provided evidence to the contrary. The disputes have been going on for months in many instances but Electric Lightwave has yet to receive a reply.

An example of Utah Power's billing practices illustrates Electric Lightwave's frustration. Last September, Utah Power sent Electric Lightwave back bills and penalties for an inventory inspection that Utah Power performed in Layton and Ogden. Electric Lightwave has received very little information regarding the expenses incurred during Utah Power's field inspection work and no information regarding the number of hours field inspectors worked or how inspection costs were allocated among various attachers. Nor has Utah Power provided Electric Lightwave with **the location of all the poles inspected**, both those to which it alleges Electric Lightwave has unauthorized attachments and those to which it agrees Electric Lightwave has duly authorized attachments. Because the object of the survey was ostensibly to create an inventory, it is inexplicable why Utah Power will not divulge the location of all the poles to which it has found Electric Lightwave is attached. Electric Lightwave has waited since October, 2003, for a reply from Utah Power.

In any event, five-years' worth of retroactive billing is excessive. Consider the Commission's existing rule governing back billing of electricity service, R746-310-8(D):

A utility shall not bill a customer for service rendered more than 24 months before the utility actually became aware of the circumstance, error, or condition that caused the underbilling or that the original billing was incorrect.

Other Terms and Conditions

The foregoing issues do not exhaust Electric Lightwave's concerns about Utah Power's pole attachment policies and procedures. Electric Lightwave recommends that the Commission consider at least the following matters for rulemaking:

1. Whether pole owners must respond to requests for attachments within a specific period of time, or the request is deemed granted.
2. Whether pole owners should be able to impose the entire cost of pole surveys, inventories and audits on attachers or share in such costs.
3. Whether rules for grounding should be prescribed for situations in which attachers do not use the pole owner's neutral.
4. How long after receiving permission attachers may take to complete their attachments.
5. How much an attacher should compensate the owner when a pole is replaced for the benefit of the attacher.
6. Whether it is necessary or preferable to specify the height of a standard pole.
7. Whether the needs of attachers should be reflected in pole line design, e.g., placement of mid-span poles.
8. Whether pole owners should be permitted to charge a fee for removal of an attachment.

CONCLUSION

Electric Lightwave respectfully requests that the Commission make the foregoing issues the subject of a rulemaking covering pole attachments, keeping in mind that much higher pole attachment rates may take effect July 1, 2004, unless the Commission acts sooner.

Respectfully submitted this 1st day of April, 2004.

ELECTRIC LIGHTWAVE, LLC.

Charles Best
Associate General Counsel

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of **Electric Lightwave's Comments** regarding Docket No.04-999-03, to be mailed by first class mail, postage prepaid, this 1st day of April, 2004 to the following:

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