

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on April 18, 2007

COMMISSIONERS PRESENT:

Patricia L. Acampora, Chairwoman
Maureen F. Harris
Robert E. Curry, Jr.
Cheryl A. Buley

CASE 06-E-1427 - Proceeding on Motion of the Commission to Determine Pole
Attachment Rates for Municipal-Owned Poles.

ORDER ON MUNICIPAL POLE ATTACHMENT RATES

(Issued and Effective May 9, 2007)

BY THE COMMISSION:

BACKGROUND

On November 17, 2006, we issued an Order¹ setting a pole attachment rate for the Village of Bath. In the Order, we proposed that instead of using the FCC cable television formula for municipal pole attachment rates, it would be more reasonable to use a rate proxy: allowing the municipals to charge a rate at the lower end of the range currently in effect for investor-owned electric utilities.

On November 21, 2006, the Secretary issued a Notice in this case on whether municipal electric companies should be allowed to charge pole attachment rates at a proxy rate of approximately \$10.98.² A Notice under the State Administrative Procedures Act (SAPA) was published on January 24, 2007.

¹ Case 04-E-1471, Ordinary Tariff Filing of Bath Electric, Gas & Water Systems to Establish Pole Attachment Rates, Order Granting, In Part, Petition for Rehearing (issued November 17, 2006).

² Central Hudson Gas & Electric's rate.

COMMENTS

Comments in response to the Notice were filed by the: New York Municipal Power Agency (NYMPA), Green Island Power Authority (Green Island), New York Association of Public Power (NYAPP), and the Cable Telecommunications Association of New York Inc. (CTANY). NYMPA and CTANY also filed reply comments. No comments were received on the SAPA Notice.

Green Island supports a proxy rate at the low end of the investor-owned utility rates. It points out that it derives extremely small revenues from pole attachments and that use of the FCC cable television pole attachment formula for a small municipal electric company would not be cost effective or reasonable.

NYAPP, an unincorporated association of nine municipal electric utilities and rural electric cooperatives in New York State, agrees that: "...the lowest pole attachment rate charged by investor-owned utilities in the state logically represents the minimum just and reasonable rate that municipal electric companies should charge, to ensure fair competition from attachers for the benefit of ratepayers."³ However, it points out that special circumstances may warrant a higher rate. NYAPP suggests that the FCC's telephone rate may be more appropriate to use for municipal pole attachments than the lower cable television rate, currently in effect in New York. It notes that severe weather in some parts of the State may result in relatively higher maintenance costs for municipalities than for the large utilities. NYAPP requests that procedures be provided for rate adjustments over time for inflation, other factors, or to allow a municipality to show that its actual costs justify a rate higher than the presumptive rate. Finally, NYAPP reserves its right to challenge our jurisdiction over municipal pole attachments.

NYMPA, an association of 34 municipalities, argues that the FCC approach to setting pole attachment rates is not cost effective for municipalities. It asserts that in setting the Bath pole attachment rate, we incorrectly assumed that accounts used by Bath included expenses unrelated to poles. According to NYMPA, municipal electric utility accounts reflect only costs related to utility electric work. NYMPA agrees that a proxy

³ Comment of NYAPP at 2.

rate is appropriate and that the cost of developing a rate under the FCC formula exceeds the resulting revenue.

NYMPA points out that the cable formula can yield a wide range of results. It gives the example of Massachusetts Electric Company, which figured its rate under the formula as \$15.93, while the cable interests, using the same formula, calculated the rate as \$9.00.⁴ In addition to the proxy method, NYMPA argues that a municipality should be entitled to a higher rate if it can demonstrate that its actual pole attachment expenses justify it. NYMPA also favors a negotiated rate, if parties wish to use one. Finally, NYMPA asserts that municipalities should be allowed to keep their current pole attachment rates, provided there is no objection from attachers.

CTANY requests a collaborative proceeding to determine how to apply the FCC formula to establish municipal pole attachment rates. It opposes the proxy rate and favors use of the FCC formula, arguing there is nothing unique about municipal electric utilities that would require special treatment. CTANY argues that the FCC formula allows simplicity of administration. CTANY did not address NYMPA's point about the wide disparity of results in applying the FCC formula.

NYMPA replies that the Uniform System of Accounts for municipal electric companies does not contain nearly as many primary accounts and none of the sub-accounts required for large investor-owned utilities. It continues that municipals do not record labor costs in accounts used in the FCC formula. Therefore, it concludes, the FCC formula is not easy to apply to municipals. In its Reply, CTANY continues to favor a collaborative proceeding to design an appropriate rate for municipal pole attachments.

DISCUSSION

The purpose of this proceeding is to find a cost-effective way of establishing just and reasonable pole attachment rates for municipal electric companies in

⁴ Comments of NYMPA at 7.

view of the small revenues they derive from pole attachments.⁵ The collaborative proceeding, proposed by CTANY, and opposed by the municipalities seems unlikely to succeed and will impose additional costs on municipalities, the other parties, and staff, given the difficulties of applying the FCC formula to municipalities. Such an approach will not provide the needed standard method for setting municipal pole attachment rates that can be easily applied by the municipalities and staff, without unnecessary controversies and expenditures of more money in filing and administration costs by all parties.

The proxy rate approach is the simplest and most cost effective method for a municipality to establish a pole attachment rate, without detailed analysis and accounting. We do not agree with CTANY's position that municipal electric companies are indistinguishable from large utilities for purposes of using the FCC formula. The municipal electric utilities do not use the detailed accounting necessary for direct application of the FCC formula. Municipal electric utilities in our informal survey charged pole attachment rates between \$2.50 and \$12.70, with an average of \$7.32. This average may understate the municipalities' costs somewhat in view of the fact that the lowest rate charged by an investor-owned utility in New York is \$8.51⁶ under the FCC cable television formula, which reflects the cost of only the usable portion of the space on the pole, not the entire pole. Although our original proposed proxy rate was \$10.98, the second lowest investor-owned utility rate in the State, our intent was to use the low end of the range of investor-owned utility attachment rates. We find use of \$8.51 as a rebuttable proxy rate best balances the attacher's interest in not being overcharged against the municipal interest in establishing an administratively efficient rate that recovers reasonable costs.

⁵ An informal staff survey of some municipal pole attachment rates and revenues in 2005 indicates that total annual revenues from pole attachments for municipalities ranged from \$40 to \$15,280. Six of the municipalities collected less than \$1,000 in total annual revenue.

⁶ New York State Electric & Gas Corporation's rate.

Additionally, we note that requiring a filing in support of individual cost-based calculations for a rate that generates, on average, less than \$5,000 of revenue per year, is not cost effective. The primary purpose of a pole attachment tariff rate is to provide an appropriate level of revenue contribution towards the total electric revenue requirement, for which the municipality's electric ratepayers would otherwise be completely responsible. To obtain a fair and equitable result, one could argue that individual calculations of pole attachment rates for municipalities should include the administrative costs of the filing and appeal process. Including these costs would add significantly to costs underlying the rate, even if we narrowed the dispute to strict application of the FCC formula. For example, the cost of preparing the study and filing the rates for a municipality could be from \$5,000 to \$15,000, depending on whether the rate is contested or accepted. For the average municipality, with gross revenues from pole attachment rates of less than \$5,000 per year, including 100% of the preparation and filing costs could increase the rate substantially.

In the Bath case, the Village filed a \$12.18 rate, which was not opposed by any attacher to its poles. Although we attempted to apply the FCC formula, we note a continuing dispute as to whether the \$5.03 rate we ultimately approved for Bath reflects all expenses reasonably attributable to Bath's provision of poles. Of perhaps greater significance, the rate does not reflect costs incurred by the Village with regard to its establishment, since it did not include the costs of processing and litigating the rate, which Bath's counsel estimated to be in excess of \$15,000.⁷ Recovering those costs exclusively from the select group of attachers, would be appropriate because an attachment rate would not be necessary, but for their use of the poles. Such recovery would certainly produce a higher attachment rate. The \$8.51 proxy rate is, therefore, an appropriate default rate for a municipality that does not want to incur the expenses of a cost study.

We do not oppose a negotiated rate or use of existing rates, if there is no objection from attachers. Furthermore, if a municipality wants to go to the expense of filing a cost analysis in support of a higher rate, it may do so. For municipalities that

⁷ Comments of NYMPA at 8.

prefer to adopt the proxy rate as described herein, they must file a tariff with the proxy rate and it will be presumed just and reasonable. An attacher may challenge the proxy rate by rebutting the presumption.

The proxy rate will not be changed every time the lowest investor-owned utility rate changes. Rather, we will entertain a request to revisit the proxy rate no earlier than one year from the date of this Order.

CONCLUSION

The \$8.51 proxy pole attachment rate for municipal electric companies is just and reasonable and will be allowed for those municipalities that file tariffs with such proxy rate subject to rebuttal. If a municipality wishes to file a rate higher than the proxy rate, it is required to prove the cost basis of its position. In the alternative, all municipalities may continue to use their current rate, without making a tariff filing, if there are no objections from attachers. If attachers and municipalities agree on a negotiated rate, that rate can be presumed to be just and reasonable and no tariff filing is required.

The Commission orders:

1. All municipal electric companies, including Bath Electric, Gas & Water Systems, are authorized to file tariff amendments, to become effective on not less than 30 days notice, containing pole attachment rates at the proxy rate of \$8.51 and such rate will be presumed to be just and reasonable, subject to rebuttal.
2. The requirement of Section 66(12)(b) of the Public Service Law as to newspaper publication of the amendments authorized in clause 1 above shall be waived provided the company notifies the attachers.
3. This proceeding is closed.

By the Commission

(SIGNED)

JACLYN A. BRILLING
Secretary