

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on August 2, 2017

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Gregg C. Sayre
Diane X. Burman
James S. Alesi

CASE 17-E-0243 - Petition of the New York Municipal Power Agency
to Determine Pole Attachment Rates for
Municipal-Owned Poles.

ORDER APPROVING MUNICIPAL POLE ATTACHMENT RATE INCREASE
WITH MODIFICATION

(Issued and Effective August 4, 2017)

BY THE COMMISSION:

INTRODUCTION

On April 24, 2017, the New York Municipal Power Agency (NYMPA), which represents 36 municipal utilities, filed a petition requesting an increase to its pole attachment rate used by its members. NYMPA proposes to increase its pole attachment rate¹ from \$8.51 to \$14.04, per equivalent pole,² based on the

¹ The Commission authorized municipal utilities, which generally derive relatively little income from pole attachments to use an investor owned utility's pole attachment rate instead of filing individual rate cases. See Case 06-E-01427, Municipal Pole Attachments, Order on Municipal Pole Attachment Rates (issued May 9, 2007) (2007 Order).

² An equivalent pole is the calculated number of poles owned by the utility, considering joint pole ownership. For example, if the utility owns fifty percent of twenty poles, the calculated number of equivalent poles would be ten.

currently effective pole attachment rate of New York State Electric & Gas Corporation (NYSEG).

Under Public Service Law (PSL) §119-a, the Commission has the authority to set just and reasonable rates for utility poles, ducts, trenches, and conduits.

By this Order, the Commission denies NYMPA's request to increase the attachment rate to \$14.04, however, grants an increase to \$11.98, which is the rate currently charged by Rochester Gas & Electric Corporation (RG&E) and is the lowest investor owned utility attachment rate.

BACKGROUND

In the 2007 Order the Commission determined that a proxy rate approach was the simplest and most cost effective method for a municipality to establish a pole attachment rate.³ The Commission found the Federal Communications Commission's (FCC) cable pole attachment formula used to establish pole attachment rates for investor-owned utilities, would not be appropriate for municipal electric companies.⁴ Under this proxy rate approach, municipal companies would use an attachment rate based on the lower end of the range of attachment rates currently in effect for investor-owned electric utilities.⁵ Per the 2007 Order, all municipal electric companies were authorized to file tariff amendments containing pole attachment rates at the proxy rate of \$8.51, which was the lowest rate charged by an investor-owned utility at the time.⁶

³ Ibid., p. 4.

⁴ Id.

⁵ Ibid., p. 1.

⁶ Ibid., p. 6.

PETITION

NYMPA requests that the Commission approve a proxy attachment rate increase from \$8.51 to \$14.04 because their proxy attachment rate has not been updated since the 2007 Order. NYMPA considered the \$14.04 to be on the "low end" of currently-effective investor-owned pole attachment rates.⁷ Specifically, the \$14.04 rate was chosen because it is NYSEG's currently-effective pole attachment rate. NYMPA states that since the original proxy attachment rate of \$8.51 was a rate in effect for NYSEG at that time, using NYSEG's rate again would maintain consistency.⁸ Despite RG&E's lower pole attachment rate, currently \$11.98, NYMPA states that using the higher attachment rate of \$14.04 would allow its members to avoid the administrative burden of requesting proxy rate increases more frequently.⁹

Alternatively, NYMPA suggests that the Commission use the average of all investor-owned utility pole attachment rates, which results in a proxy rate of \$15.01.¹⁰

Additionally, NYMPA requests that its members continue to have the ability to maintain their current negotiated pole attachment rates and to negotiate new attachment rates that

⁷ Case 17-E-0243, Petition for Order Approving Increase to Proxy Pole Attachment Rate (Petition), p. 4.

⁸ Petition, p. 5. On May 26, 2017 NYMPA filed a Clarifying Memorandum to note an error in the petition. The proposed \$14.04 rate was not NYSEG's current rate as stated in the petition but is the rate of Niagara Mohawk Power Corporation d/b/a National Grid (National Grid). Maintaining consistency by using NYSEG's current rate would mean using the rate of \$12.14, their current rate, however the letter stated that \$14.04 was still the requested rate.

⁹ Petition, p. 5.

¹⁰ Id.

differ from their tariffed rate, provided the negotiated rate is just and reasonable.¹¹

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking was published in the State Register on May 24, 2017 [SAPA No. 17-E-0243SP1]. The time for submission of comments pursuant to the Notice expired on July 10, 2017. No comments were received.

LEGAL AUTHORITY

Under PSL §119-a, the Commission has the authority to establish rates for the attachment to a regulated utility's poles or other distribution infrastructure.

DISCUSSION AND CONCLUSION

The 2007 Order established \$8.51 as the proxy rate, the lowest investor-owned utility rate in effect at the time.¹² The Commission indicated in the 2007 Order, "our intent was to use the low end of the range of investor-owned utility rates" and determined that the "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."¹³

The Commission agrees, as claimed by NYMPA in its Petition, that the FCC formula continues to be inappropriate for

¹¹ Ibid., p. 1.

¹² 2007 Order, p. 4. The rate of \$10.98 was originally proposed in Case 06-E-1427, supra, Notice Requesting Comments (issued November 21, 2006).

¹³ Id.

municipal utilities, and that the proxy rate method remains the simplest and most cost-effective way to establish municipal utility pole attachment rates. However, the proposed \$14.04 rate, the current rate charged by National Grid, is nearly a 40% increase from the current rate charged by NYPMA members.

The 2007 Order established the Commission's intent to use the low end of the range of investor-owned utility attachment rates for municipal proxy pole attachment rates. In the 2007 Order the lowest rate charge by an electric investor-owned utility, or \$8.51, was determined to be appropriate. Currently RG&E has the lowest tariffed pole attachment rate of \$11.98 and using this rate as a proxy rate reflects the intent of the 2007 Order.

As in the 2007 Order, the Commission does not oppose a negotiated rate or maintaining the use of the current NYPMA rate, if there are no objections from attachers. The Commission finds that the increase from \$8.51 to \$11.98 for municipal electric companies is just and reasonable, and should municipalities want to adopt this proxy rate they must file a tariff with the new proxy rate. The tariff filing, limited to such a modification, will be presumed just and reasonable.

Additionally, should a municipality file for a rate higher than \$11.98, it will be required to prove the cost basis of its position. Alternatively, all municipalities may continue to use their current rate, without making a tariff filing.

The Commission orders:

1. All municipal electric companies are authorized to file tariff amendments, on not less than one day's, notice containing an annual pole attachment rate of \$11.98.

2. The requirements of Public Service Law §66(12)(b) and 16 NYCRR §720-8.1 as to newspaper publication of the proposed change are waived.

3. This proceeding is closed.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary