

STATE OF NEW YORK  
PUBLIC SERVICE COMMISSION

At a session of the Public Service  
Commission held in the City of  
New York on November 17, 2022

COMMISSIONERS PRESENT:

Rory M. Christian, Chair  
Diane X. Burman  
James S. Alesi  
Tracey A. Edwards  
John B. Howard  
David J. Valesky  
John B. Maggiore

CASE 22-E-0435 - Tariff Filing by the New York Municipal Power Agency to Modify Its Electric Tariff Schedule P.S.C. No. 1 - Electricity, to Update the Pole Attachment Proxy Rates Used by Its Municipal Utility Members.

ORDER ESTABLISHING UPDATED POLE ATTACHMENT RATES

(Issued and Effective November 18, 2022)

BY THE COMMISSION:

INTRODUCTION

On July 27, 2022, the New York Municipal Power Agency (NYMPA), which represents 35 municipal utilities, filed a proposed tariff amendment to its electric tariff schedule, P.S.C. No. 1 - Electricity, to increase its pole attachment proxy rate used by its municipal utility members. NYMPA proposes to increase its pole attachment rate from \$13.62 per foot of space required by the attacher per year to \$16.75, based on the currently effective pole attachment rate of Niagara

Mohawk Power Corporation d/b/a National Grid (National Grid), which has the lowest investor-owned utility attachment rate.<sup>1</sup>

By this Order, the Commission authorizes the tariff amendment listed in the Appendix to become effective on December 28, 2022. Additionally, we authorize those NYMPA members that have pole attachment rates included in their specific tariffs, as well as those municipal electric utilities that are not NYMPA members, to file tariff amendments containing the pole attachment proxy rate of \$16.75 per foot of space required by the attacher per year. Further, we waive the newspaper publication requirements, subject to NYMPA members and other municipal electric utilities providing direct notification to impacted attachers.

#### BACKGROUND

In its 2007 Order, 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 work well for some municipal electric companies.<sup>2</sup> The Commission found 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."<sup>3</sup> The Commission authorized municipalities, which generally derive relatively little income from pole attachments, to use an investor-owned utility's pole attachment rate as a proxy instead of using the FCC cable television formula to

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<sup>1</sup> Case 22-E-0125, Niagara Mohawk Power Corporation d/b/a National Grid - Pole Attachment Rates, Order Approving Tariff Amendments (issued July 15, 2022) (2022 Order).

<sup>2</sup> Case 06-E-1427, Municipal Pole Attachments, Order on Municipal Pole Attachment Rates (issued May 9, 2007) (2007 Order).

<sup>3</sup> Id. at p. 4.

develop municipality specific pole attachment rates. Under the proxy rate approach, municipalities establish a pole attachment rate equal to the lowest attachment rate currently in effect among investor-owned electric utilities.<sup>4</sup>

NYMPA was most recently directed to update its proxy pole attachment rate in November 2019.<sup>5</sup> The updated pole attachment rate went into effect on November 29, 2019. The rate was at parity with that of National Grid, which had the lowest pole attachment rate of the investor-owned utilities at that time.

On July 15, 2022, in the 2022 Order, the Commission approved National Grid's proposed pole attachment rate increase from \$13.62 to \$16.75 per foot of space required by the attacher per year. Presently, National Grid has the lowest attachment rate among investor-owned electric utilities.

#### TARIFF FILING

On July 27, 2022, NYMPA filed a tariff amendment to its tariff schedule, P.S.C. No. 1 - Electricity, updating its pole attachment proxy rate from \$13.62 to \$16.75 per foot of space required by the attacher per year. The tariff amendment has an effective date of December 28, 2022, and is listed in the Appendix to this Order.

NYMPA requests waiver of newspaper publication requirements pursuant to Public Service Law (PSL) §66(12)(b) and Title 16 of the New York Codes, Rules and Regulations (16 NYCRR) §720-8.1 because publication would not be practicable. Instead,

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<sup>4</sup> Case 06-E-1427, Municipal Pole Attachments, Order Denying Petition for Rehearing (issued May 28, 2008) (2008 Order).

<sup>5</sup> Case 16-M-0330, CTIA - The Wireless Association - Protections for Pole Attachments, Order Establishing Updated Pole Attachment Rates with Modifications (issued November 18, 2019) (2019 Order).

NYMPA states that its member utilities will notify the attachers on their respective systems of the rate change individually by mail.

NOTICE OF PROPOSED RULE MAKING

Pursuant to the State Administrative Procedure Act (SAPA) §202(1), a Notice of Proposed Rulemaking (Notice) was published in the State Register on August 24, 2022 [SAPA No. 22-E-0435SP1]. The time for submission of comments pursuant to the Notice expired on October 24, 2022. No comments were received.

LEGAL AUTHORITY

Pursuant to PSL §§5, 65(1), and 66 (1) and (12), the Commission has the legal authority to review proposed tariff leaves, as well as modify, reject, or approve such filed tariff amendments. As such, the Commission has the legal authority to review NYMPA's filing and approve the tariff amendment, as prescribed in this Order.

DISCUSSION AND CONCLUSION

The 2007 Order authorized municipal utilities to use a proxy pole attachment rate as a cost-effective method to establish such rates. The 2008 Order specified that use of the lowest utility pole attachment rate as the proxy rate allows the Commission to determine that the proxy rate is just and reasonable; and, that a municipality seeking that rate is deemed to have met any statutory burden by proposing such a rate.<sup>6</sup> Presently, National Grid has the lowest pole attachment rate charged by an investor-owned electric utility. NYMPA's requested pole attachment rate is equal to the lowest pole

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<sup>6</sup> 2008 Order, p. 11.

attachment rate of the investor-owned electric utilities in the state and it has been more than one year since NYMPA's pole attachment rate has changed. Consistent with the 2008 Order, the proxy rate is presumed reasonable. Accordingly, the Commission authorizes the tariff amendment listed in the Appendix to become effective on December 28, 2022.

As explained above, the 2007 Order and 2008 Order apply to all municipal electric utilities, not just NYMPA members. Additionally, some NYMPA members may have pole attachment rates specified in their individual tariffs. To enable efficient revisions to references to the pole attachment rates in such tariffs, we authorize those NYMPA members that have pole attachment rates included in their specific tariffs, as well as those municipal electric utilities that are not NYMPA members, to file tariff amendments containing the pole attachment proxy rate of \$16.75 per foot of space required by the attacher per year.

The requested waivers of the newspaper publication requirements in PSL §66(12)(b) and 16 NYCRR §720-8.1 are granted due to the widespread geographic nature of NYMPA members' service territories. NYMPA's member utilities are to individually notify attachers subject to the tariffed pole attachment rate of the rate change in writing at least ten days prior to the effective date of the rate change.

The Commission orders:

1. The tariff amendment filed by the New York Municipal Power Agency and listed in the Appendix shall become effective on December 28, 2022.
2. All municipal electric utilities are authorized to file tariff amendments, to become effective on a permanent basis on or after December 28, 2022, on not less than five days'

notice, containing the pole attachment proxy rate of \$16.75 per foot of space required by the attacher per year.

3. The requirements of Section 66(12)(b) of the Public Service Law and 16 NYCRR Section 720-8.1 as to newspaper publication requirements for the tariff amendment listed in the Appendix and for the amendments authorized in Clause 2 above is waived provided the municipal electric utilities notify impacted attachers, at least ten days prior to the effective date of the rate change, in writing.

4. The New York Municipal Power Agency member utilities are to file, with the Secretary to the Commission, a copy of the notice sent to attaches impacted by the rate change in Ordering Clauses 1 and 2 not more than 15 days after the effective date of the change.

5. In the Secretary's sole discretion, the deadlines set forth in this Order may be extended. Any request for an extension must be in writing, must include a justification for the extension, and must be filed at least three days prior to the affected deadline.

6. This proceeding is closed.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS  
Secretary

CASE 22-E-0435

APPENDIX

Subject: Filing by NEW YORK MUNICIPAL POWER AGENCY

Amendment to Schedule P.S.C. No. 1 - Electricity

Second Revised Leaf No. 98

Issued: July 27, 2022      Effective: December 28, 2022

SAPA: 22-E-0435SP1 - State Register - August 24, 2022

NEWSPAPER PUBLICATION: Waived