

READ AND LANIADO, LLP

ATTORNEYS AT LAW
25 EAGLE STREET
ALBANY, NEW YORK 12207-1901

(518) 465-9313 MAIN
(518) 465-9315 FAX
www.readlaniado.com

KEVIN R. BROCKS
DAVID B. JOHNSON
SAM M. LANIADO
KONSTANTIN PODOLNY

TYLER W. WOLCOTT

HOWARD J. READ
PATRICK A. SILER
Of Counsel

Via Electronic Filing

July 29, 2019

Hon. Kathleen H. Burgess
Secretary
State of New York Department
of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

RE: Case 16-M-0330 – Petition of CTIA – The Wireless Association to Initiate a Proceeding to Update and Clarify Wireless Pole Attachment Protections

Dear Secretary Burgess:

Pursuant to the *Order Approving Petition In Part and Continuing Proceeding* and the *Order Suspending Wireless Pole Attachment Rate Tariff Filings and Granting a Filing Extension to the New York Municipal Power Agency* (“NYMPA”) issued in this proceeding on March 14, 2019 (“March Order”) and July 16, 2019 (“July Order”), respectively, NYMPA hereby submits tariff amendments to establish an annual wireless pole attachment rate. The tariff amendments have a proposed effective date of November 29, 2019. Ordering Clause 5 of the Order waived the requirements of Public Service Law § 66(12)(b) and 16 NYCRR § 720-8.1 as to newspaper publication of the proposed change.

NYMPA is a joint action agency of thirty-five New York State municipal electric utilities with each member operating pursuant to the NYMPA generic tariff and its own concurrence tariff. NYMPA hereby submits the following:

- A new original Section XXIV to PSC NO: 1 ELECTRICITY, comprising Leaf No. 98, governing pole attachment rates for its members;
- A third revised Leaf 8, updating the Table of Contents to include Leaf 98;

- Short Form Environmental Assessment Form.

Background

The March Order required the filing of a per-foot attachment rental rate using a calculation methodology based on the wireline attachments in New York. However, the Commission previously determined that a proxy rate approach was the simplest and most cost effective method for a municipality to establish a pole attachment rate.¹ 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.² 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.³ In 2017, the Commission reaffirmed that "the FCC formula continues to be inappropriate for municipal utilities, and that the proxy rate method remains the simplest and most cost-effective way to establish municipal utility pole attachment rates."⁴ In the 2017 Order, the Commission approved a proxy rate for municipal utilities based on Rochester Gas and Electric Company's ("RG&E) tariffed rate.⁵ In addition, the Commission confirmed the municipal utilities' ability to continue charging negotiated rates.⁶

Current Filing

By this filing, NYMPA submits an updated wireline attachment rate, and a new wireless rate based on the RG&E submission in response to the March and July Orders. Once the new rate is approved by the Commission, NYMPA will cancel its members' concurrence tariff leafs containing the previously approved NYMPA generic rate. Thereafter all NYMPA members' pole attachments will be governed by the NYMPA Generic Tariff, unless and until an individual member files for a different rate and that rate is approved by the Commission.

Please contact the undersigned should you have any questions.

Respectfully submitted,
READ AND LANIADO, LLP
Attorneys for the New York Municipal
Power Agency

By: /s/ Konstantin Podolny
Konstantin Podolny

Attachments

¹ See 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 May 9, 2007) at 4 ("2007 Order").

² *Id.*

³ *Id.* at 1.

⁴ 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 (August 4, 2017) at 4-5 ("2017 Order").

⁵ *Id.* at 5.

⁶ *Id.*