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N.Y. Public Service Commission Approves Pole Attachment Rental Rate Increase for Municipally Owned Utilities: Davis Wright Tremaine

The New York Public Service Commission ("Commission") entered an Order this month authorizing municipally owned electric utilities to significantly increase the annual rental rates charged to cable system operators and telecommunication carriers for the attachment of communications infrastructure to their utility poles. Specifically, the Order allows municipally owned electric utilities to increase annual pole attachment rental rates by 23 percent, from $13.62 to $16.75,[1] which will increase pole attachment expense for communications service attachers by a like amount.

The Commission approved such an increase based upon its "proxy rate approach," which it adopted in 2007 for municipal electric companies in lieu of the Federal Communications Commission's (FCC) cable pole attachment formula to establish pole attachment rates.[2] The Commission explained that its "proxy rate approach" works better for municipal electric companies because it is the "simplest and most cost-effective method for a municipality to establish a pole attachment rate, without detailed analysis and accounting."[3] In practice, under the Commission's "proxy rate approach," municipalities establish pole attachment rates equal to the lowest attachment rate currently in effect among investor-owned electric utilities.[4] Through the Commission's Order, it has aligned municipal electric companies' pole attachment rates with the lowest currently in effect among investor-owned electric utilities in New York. In doing so, the Commission has allowed municipal electric companies to nearly double their rental rates since 2017, when they were $8.51.[5]

This new Order comes at a time when cable system operators and telecommunication carriers across the country are making considerable investments to expand broadband access, both in New York State and nationwide, to underserved and unserved areas where utility poles are often owned by municipalities. Cable system operators and telecommunication carriers have consistently invested in expansive broadband deployment, both through private investment and in connection with various government grant initiatives; however, pole attachment rate increases like that approved here could dampen or impede operators' and carriers' expansion plans and lessen their investment in providing video, voice, and broadband services to underserved or unserved communities.

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[1] 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 November 18, 2022) (Order).

[2] Case 06-E-1427, Municipal Pole Attachments, Order on Municipal Pole Attachment Rates (issued May 9, 2007) at p. 4.

[3] Id.

[4] Case 06-E-1427, Municipal Pole Attachments, Order Denying Petition for Rehearing (issued May 28, 2008).

[5] 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 (issued August 4, 2017).

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November 29 2022

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