

Proposal Concerning Modifications to LIPA's Tariff for Electric Service

Requested Action:

The Long Island Power Authority (the "Authority") staff proposes to modify the Authority's Tariff for Electric Service (the "Tariff") effective January 1, 2020, to set a standard rate for pole attachments of wireless communication equipment in public rights of way in accordance with the New York State Public Service Commission Order Commission (the "Commission")'s *Order Approving Petition in Part and Continuing Proceeding*¹ issued and effective March 14, 2019 (the "March Order").

Background:

Over the last 20 years, the Commission has taken several actions to remove barriers to entry in the telecommunications market, including promoting standard rates and processes for wireline attachments to utility poles. In June 1997, the Commission ordered New York's investor-owned utilities to establish a specific rate methodology for wireline attachments by adopting the Federal Communications Commission (FCC) calculation of rates applicable to "horizontal cable" and wireline attachments. At that time, the Commission determined that the price and terms for wireless attachments should be determined through negotiations.

In April 2004, the Commission adopted an order² that introduced a standard rate methodology for wireless attachments to the Niagara Mohawk Power Corporation d/b/a National Grid's distribution poles. At that time, the Commission did not extend this methodology to other utility pole owners.

In 2011, the FCC opined that "wireless providers are entitled to the same rate [] as other telecommunication carriers."³ In 2015, the FCC further attempted to harmonize regulatory treatment for pole attachments⁴. The FCC construct uses two calculations to determine the rate, one which is based on fully allocated telecommunications formula, and the other which is based on "cost causation".

In 2016, The Wireless Association ("CTIA") filed a petition (the "Petition") with the Commission seeking a proceeding to update and clarify wireless pole attachment policies. The Petition sought an order declaring, *inter alia*, that the Commission's regulation of pole attachments applies, in a non-discriminatory manner, to wireless facilities attached to the utility poles and the Commission's rate principles for wireless attachments should reflect the FCC's telecommunications rate methodology.

After an extended period of deliberation, the Commission issued the March Order. In the March Order, the Commission established an interim rental rate to be charged for new wireless pole attachments in public rights-of-way. The Commission's interim wireless pole attachment rate is a cost-of-service-based rate per foot of space occupied by the pole attachment, using a cost allocation methodology consistent with the FCC's formula. In the March Order, the Commission also announced a new phase of the pole

¹ Case 16-M-0330, *Petition of CTIA The Wireless Association to Initiate a Proceeding to Update and Clarify Wireless Pole Attachment Protections*, Order Approving Petition in Part and Continuing Proceeding (issued and effective March 14, 2019).

² Case 03-E-1578, *Joint Petition of Niagara Mohawk Power Corp. and National Grid Comm. Inc.*, Order Approving Petition with Modifications (issued April 7, 2004).

³ FCC Numbers WC 07-245 and GN 09-51, *In the Matter of Implementation of Section 224 of the Act, A National Broadband Plan for Our Future*, Report and Order and Order on Reconsideration (adopted April 7, 2011) (FCC 2011 Order).

⁴ FCC WC Docket No. 07-245, GN Docket No. 09-51, *Order on Reconsideration* (adopted November 24, 2015) (FCC 2015 Order).

attachment proceeding that include a more comprehensive review of pole attachment policy, including both wireless and wireline, and will explore innovative approaches to the rates, terms and conditions for attachment in the various areas of a pole.

On July 16, 2019, the Commission issued the July Order, suspending implementation of the interim wireless attachment rates set forth in the March Order until November 28, 2019, and ordering the investor-owned utilities to review wireline attachment rates and update them if needed.

Proposal:

The Authority Staff proposes to update the Tariff for Electric Service to set a standard rate for new wireless pole attachments located in public rights-of-way. Previously, the rate was set at a negotiated rate on a case-by-case basis in a written agreement between the customer and the Authority. Pursuant to the March Order, LIPA Staff proposes to establish a standard annual rate per foot of space occupied by the wireless pole attachment, using the methodology adopted in Case 16-M-0330, of \$17.12 per foot.⁵

The Authority will provide rental space to CATV and telecommunications companies for the purpose of installing cables, wires, amplifiers and wireless equipment to specific Company-owned poles within an agreed area. An agreement may be required between the Authority and each CATV or telecommunications company outlined in the “Definitions of Space Allocation on LIPA Distribution Poles” document which describes the requirements for attaching cables, wires, amplifiers and wireless equipment. The “Definitions of Space Allocation on LIPA Distribution Poles” document provides the provisions needed to ensure the safety of our line workers when making electrical repairs.

Pursuant to the July Order, the Authority Staff reviewed the wireline pole attachment rate. Consistent with the other State’s investor-owned utilities, LIPA Staff recommends no modifications to the current wireline rate.

This proposal also requests ministerial tariff language changes to clarify the requirements for other types of pole attachments but does not request a change in the rate of those attachments.

Financial Impacts:

Annual wireless pole attachment revenue for 2019 is \$118,668.29. There are currently 29 wireless pole attachments with rates which were negotiated at a market-based rate. Assuming the wireless pole attachment customers will relocate their wireless pole attachments and terminate their current contract, all current wireless communication attachments will be priced \$17.12 per foot per attachment. Assuming most wireless pole attachments occupy two feet, the proposed annual miscellaneous revenue from the current wireless pole attachments is estimated to be between \$993⁶.

⁵ Because the FCC formula includes inputs that—while commonly reviewed in investor-owned utility rate cases—are not reviewed in a public power or municipal utility rate case, the Department of Public Service accepted PSEG Long Island’s proposal in its 2015 rate case (Matter No. 15- E-00262) that the Authority should adopt the wireline pole attachment fee of the New York investor owned utility with the lowest such fee, which was Rochester Gas and Electric. For consistency, the Authority now proposes to adopt the wireless pole attachment fee of Rochester Gas and Electric and to continue to charge RG&E’s wireline pole attachment fee.

⁶ The estimation of \$993 is based on a \$17.12 per foot pole attachment rate multiplied by 29 attachments multiplied by two feet respectively.

This proposal dramatically changes the cost of wireless attachments, which will likely increase the number of wireless attachments in the service territory to more than 29. This is a new market for wireless carriers and the number of attachments is expected to increase, which will partially offset the loss of miscellaneous revenue. However, no known forecast of new attachments exists for the Long Island's service territory.

Affected Tariff Leaf: 106

Summary of Proposed Change:

The Authority is proposing to update the wireless communication pole attachments fee to a standard annual rate per foot of pole space occupied by the attachment.

IV. Billing Process and Payment of Bills (continued):**C. Charges for Miscellaneous Services:****1. Pole Attachment**

The Authority will provide rental space to CATV and telecommunications companies for the purpose of installing cables, wires, amplifiers and wireless equipment to specific Authority-owned poles, within an agreed area on the pole. A contract may be made between the Authority and each CATV or telecommunications company outlined in the "Definitions of Space Allocation on LIPA Distribution Poles" for attaching cables, wires, amplifiers and wireless equipment.

The annual charge for pole attachments to utility poles by cable television systems and other wire line communications system that occupy the same space on the pole is \$11.98 per pole per year, plus the applicable amounts for payments in lieu of revenue taxes.

The annual charges for attachments of wireless communications facilities to utility poles and towers prior to January 1, 2020 are subject to negotiation on a case-by-case basis of a written agreement between the party seeking the attachment(s) and the Authority. The charge for attachments of wireless communication facilities to utility poles and towers located in public rights-of-way, authorized on or after January 1, 2020, is \$17.12 per foot times the number of feet on the pole occupied by the wireless equipment, per year, plus the applicable amounts for payments in lieu of revenue taxes. For each piece of wireless equipment attached, the occupied space measurement shall reflect the overall length of the equipment and mounting hardware plus six inches, rounded up to the next whole foot. The number of feet occupied for wireless communication facilities shall exclude conduits, risers, and electrical meters.

The annual charge for decorative, festival, or holiday attachments that are seasonal or temporary- attachments ~~other than wire line communications system attachments or wireless communications facilities~~ is \$6.19 per pole per year, plus the applicable amounts for payments in lieu of revenue taxes, which may be prorated on a daily basis for attachments that are seasonal or temporary in place for less than a year. The Authority may require that attachments be made pursuant to the terms of a written agreement with the Authority which permits attachment to utility poles and towers. Consistent with the Authority's written policy, the Authority may waive the pole attachment fee for temporary or seasonal attachments that support a patriotic, civic, or ceremonial purpose, or where the tangible value of the attachment is nominal to both parties.

2. Interest on Customer Deposits

The Authority will pay interest on Customer Deposits at the applicable annual rate specified on a Statement of Interest on Customer Deposits to be prepared and maintained on file by the Authority. The rate will be derived by subtracting a 1.75% administrative cost allowance from the current yield on "A" rated intermediate term municipal debt. The rate will be updated on January 1 of each year to reflect current market conditions.

3. No-Access Charge

The Authority's charge when it cannot gain access to the Customer's meter after attempts to do so will be:

- (a) \$25 per month for Residential accounts
- (b) \$100 per month for Nonresidential accounts

4. Uncollectible Payment Handling Charge

The Authority will charge the Customer a twenty dollar (\$20.00) handling charge plus applicable taxes and assessments. This handling charge includes any amount the Authority

paid to its bank for handling the instrument if it receives a check or other negotiable financial instrument in payment for any bill, charge, or deposit that is not collectible, for any reason.

5. Late Payment Charge

The Authority's charge for late payment of bills for the accounts of all customers as specified in Section IV. D. 4 will be one and one-half percent (1.5%) for each monthly billing period to all amounts billed, but for which the Authority has not received payment by the "Pay by" date on the bill, which will be not less than twenty (20) days after the date payment is due.

Residential customers are not responsible for late payment charges on amounts billed, if the bill is subject to a pending complaint with the Department of Public Service or the Manager pursuant to Section VI. of the Tariff, except that any such late payment charge may be imposed retroactively if the complaint is finally resolved in favor of the Authority.