Exhibit 7

NYPSC’s Opinion 97-10

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

OPINION NO. 97-10

CASE 95-C-0341 - In the Matter of Certain Pole Attachment Issues Which Arose in Case 94-C-0095.

OPINION AND ORDER SETTING POLE ATTACHMENT RATES

Issued and Effective: June 17, 1997

TABLE OF CONTENTS

TABLE OF CONTENTS

APPEARANCES

FOR NEW YORK TELEPHONE COMPANY:

Gerald M. Oscar, Esq., 110 East 42nd Street, Room 1614, New York, New York 10017.

FOR NEW YORK STATE ELECTRIC & GAS CORPORATION:

Huber, Lawrence & Abell (by Frank J. Miller, Esq.), 605 Third Avenue, New York, New York 10158.

FOR LONG ISLAND LIGHTING COMPANY:

Gerald R. Deaver, Esq., 175 East Old Country Road, Hicksville, New York 11801.

FOR CENTRAL HUDSON GAS & ELECTRIC CORPORATION:

Gould & Wilkie (by Peter V. K. Funk, Jr., Esq.), One Chase Manhattan Plaza, New York, New York 10005-1401.

FOR MCI TELECOMMUNICATIONS CORP. and MCI METRO ACCESS TRANSMISSION SERVICES, INC.:

Whiteman, Osterman & Hanna (by Michael Whiteman, Esq. and Thomas O'Donnell, Esq.), One Commerce Plaza, Albany, New York 12260.

FOR CITIZENS TELECOMMUNICATIONS COMPANY OF NEW YORK, INC.:

Susan M. Redner, Esq. and Joan S. Farrell, Esq., 3 High Ridge Park, Stamford, Connecticut 06905.

FOR NEW YORK STATE TELEPHONE ASSOCIATION:

Robert R. Puckett, Vice President, 100 State Street, Albany, New York 12207.

FOR CABLE TELEVISION & TELECOMMUNICATIONS ASSOCIATION OF NEW YORK, INC.:

Philip S. Shapiro, Esq., 126 State Street, Third Floor, Albany, New York 12207-1637.

FOR CELLULAR TELEPHONE CO. D/B/A AT&T WIRELESS SERVICES, INC.:

Wendy Lee Boudreau, Esq., 15 East Midland Avenue, Third Floor, Paramus, New Jersey 07652-2936.

APPEARANCES

FOR AT&T COMMUNICATIONS OF NEW YORK, INC.:

Frederick C. Pappalardo, Esq., 32 Avenue of the Americas, Room 2700, New York, New York 10013.

FOR OMNIPOINT COMMUNICATIONS, INC.:

Devorsetz, Stinziano, Gilberti, Heintz & Smith, P.C. (by Laurel J. Eveleigh, Esq. and Kimberly Galvin Beach, Esq.), 146 State Street, Albany, New York 12207.

FOR CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.:

Martin F. Heslin, Esq., 4 Irving Place, New York, New York 10003.

FOR NEW YORK STATE DEPARTMENT OF ECONOMIC DEVELOPMENT:

Gloria Kavanah, Esq., One Commerce Plaza, #931, Albany, New York, 12245.

FOR NIAGARA MOHAWK POWER CORPORATION:

Herman B. Noll, Esq. and Mark Langlitz, Esq., 111 Washington Avenue, Albany, New York 12210.

FOR ORANGE AND ROCKLAND UTILITIES, INC.:

Paul F. Mapelli, Esq., One Blue Hill Plaza, Pearl River, New York 10965.

FOR ROCHESTER GAS AND ELECTRIC CORPORATION:

Jeffrey R. Clark, Esq. and Jay D. Coates, 89 East Avenue, Rochester, New York 14604.

FOR ROCHESTER TELEPHONE CORP.:

Gregg C. Sayre, Esq., 180 South Clinton Avenue, Rochester, New York 14646.

FOR TIME WARNER COMMUNICATIONS HOLDINGS, INC.:

Rochelle D. Jones, 300 First Stamford Place, Stamford, Connecticut 06902.

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

COMMISSIONERS:

John F. O'Mara, Chairman
Eugene W. Zeltmann
Thomas J. Dunleavy

CASE 95-C-0341 - In the Matter of Certain Pole Attachment Issues Which Arose in Case 94-C-0095.

OPINION NO. 97-10

OPINION AND ORDER
SETTING POLE ATTACHMENT RATES

(Issued and Effective June 17, 1997)

BY THE COMMISSION:

INTRODUCTION

On April 10, 1995, we initiated this proceeding to address pole attachment matters that arose in Case 94-C-0095.[1] In that case, concerns were expressed about the pole attachment rates cable television companies, and others, would pay when they provide telephone services that compete with those offered by the incumbent local telephone companies. We decided to reexamine our fundamental approach to pole attachment matters here and to address any issues about market entry and fair competition.

Early in this case, we approved interim pole attachment rates for new providers of telecommunication services so there would be no impediment to competition pending this proceeding. The prevailing pole attachment rates for cable television

[1] Case 95-C-0341, Order Establishing Additional Process on Pole Attachment Issues (issued April 10, 1995). Case 94-C-0095 pertains to telecommunications competition in the local exchange market.

companies were extended to the new telecommunications service providers.[1]

Subsequently, the parties collaborated in an attempt to reach a consensus on the issues presented here. Department of Public Service staff were assigned to assist the parties and serve as neutral facilitators. However, the parties were unable to resolve their differences and, in mid-1996, this case was set for litigation.

On October 28, 1996, Administrative Law Judge William Bouteiller convened a legislative-type hearing at which the parties presented their overall positions and addressed public policy matters and legal issues. Briefs on these subjects were filed on November 18, 1996. On December 31, 1996, Judge Bouteiller's recommended decision on public policy matters and issues of law was issued.

Next, the Judge conducted four days of evidentiary hearings on February 10 through 13, 1997. At the hearings, the parties presented facts in support of their respective positions. On February 26, 1997, they filed briefs stating their exceptions to the earlier recommended decision and addressing the factual issues raised at the February hearings. The parties to the proceeding include the electric utility industry,[2] the cable

---

[1] Case 95-C-0341, Order (issued August 28, 1995). On September 18, 1995, Niagara Mohawk Power Corporation filed a petition for rehearing of the interim rates. However, it subsequently dropped its rehearing request and does not except to the Judge's recommendation that its petition be denied.

[2] The electric utility industry parties are Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation. They consolidated their participation for many purposes and are here referred to jointly.

television companies,[1] the incumbent local telephone companies,[2] AT&T,[3] and Omnipoint Communications Inc.[4] These parties also filed reply briefs on March 10, 1997.

Summary of the Recommended Decision

1. Jurisdiction

Judge Bouteiller urged us to continue to exercise full authority over pole attachment rate and operational matters without necessarily adhering to the Federal Communications Commission's (FCC's) approach to such matters. He also recommended that we clarify, for the parties' benefit, our authority to provide third-party access to utility facilities. Finally, with respect to jurisdictional matters, the Judge supported an amendment to Public Service Law (PSL) §119-a that would eliminate its specific provisions for cable television companies.

2. Pole Attachment Rates

The Judge supported a continuation of the "usable space" approach currently in use to set pole attachment rates and recommended that we reject a NYSTA proposal to preclude electric companies from obtaining lease revenues from the telecommunications portion of the pole.

However, the Judge urged us to change the prevailing approach to pole attachment rates to foster local

---

[1] The cable television companies were represented by their trade association, the Cable Television and Telecommunications Association of New York, Inc. (CTTANY).

[2] The local telephone companies were represented by the New York State Telephone Association, Inc. (NYSTA).

[3] AT&T Communications of New York, Inc. and Cellular Telephone Co. (doing business as AT&T Wireless Services) participated jointly in this case.

[4] Omnipoint is a personal communications service provider that uses wireless microwave facilities and has begun to operate in the metropolitan New York City area.

telecommunications competition. He recommended that we reduce the amount of carrying charges that new providers of telecommunication services pay and that we consider using the FCC's method for calculating such charges. But, to avoid any substantial and abrupt changes in the prevailing pole attachment rates, he recommended that the existing rates be frozen and retained until such time as the new approach produced additional revenues for the utility companies.

As to measuring the amount of usable space available on utility poles for third-party attachments, and the amount of common space used by all attachments, the Judge recommended no changes in the way ground clearances are determined or in the assignment of neutral space to the electric companies.

With respect to pole attachments that are co-lashed to another company's facilities, the Judge proposed that we set the rates for such attachments. He also recommended that we not establish or use any presumptions about cable television company operations for purposes of applying pole attachment rates to such firms.

3. Pole Modifications

Judge Bouteiller recommended that we retain the "but for" rule, first adopted in 1978, for the purpose of treating costs incurred to modify poles for third-party attachments.[1] He recommended against switching to the federal approach for assigning pole modification costs.

[1] Case 26494, New York State Cable Television Association - Pole Attachment Agreements, Opinion No. 77-1 (issued February 28, 1977), 17 NYPSC 103, 109-112. The "but for" rule requires new attachers to pay the full costs of making utility poles ready for their facilities. Under this rule, the attachers remain liable for subsequent relocation, modification, and replacement costs that would not be incurred but for their presence on the pole. Only during the two-year period following the initial attachment are they not subject to any such additional charges.

4. Operational and Other Matters

In addition to addressing rate matters, the Judge reported that the parties have begun to address various operational concerns pertaining to utility poles, a process that remains in progress.

Next, the Judge addressed wireless telecommunication attachments to utility facilities. He proposed that we set rates for wireless attachments to utility poles, and that we allow the price for attachments to high-voltage electric transmission towers to be set through private negotiations.

Finally, the Judge recommended that we oversee any access issues concerning any other "pathway" facilities owned and operated by utility companies.

The parties' exceptions to the Judge's recommendations are presented and resolved in the following sections. In general, we have decided to simplify the regulation of pole attachment rates and operations in New York, intending thereby to encourage telecommunications competition and to stimulate economic development. These objectives can be best achieved by our adopting many, if not all, elements of the federal approach to pole attachment rates and operations as detailed below. While we retain full jurisdiction over pole attachment matters, our new approach to pole attachments will adhere to the FCC's methods and practices unless we find a compelling reason to depart from them.

JURISDICTIONAL ISSUES

Pole Attachment Rates

No party has proposed that we renounce our jurisdiction over pole attachment matters; all recognize our responsibilities pursuant to PSL §119-a. However, CTTANY proposes that we exercise our authority by adopting the FCC approach to pole attachment rates and operations. In support of its proposal, CTTANY notes that such states as Ohio and Michigan have largely conformed their requirements to the FCC approach and that the federal approach is being followed by about 31 states in all.

The Judge recommended against the CTTANY proposal because, over the last two decades, the Commission has regulated pole attachment matters without reference to the federal practice. On exceptions CTTANY again urges us to forgo our state-specific approach so as to promote greater certainty for service providers and better conditions for telecommunications competition.

The electric industry opposes CTTANY's proposal. According to it, the current approach does not suffer from any uncertainty, nor does it discourage telecommunication investment in the State. The electric industry sees no good reason for us to conform to the federal approach.

We are granting CTTANY's exception and we will use the federal approach as our model for setting pole attachment rates and for regulating pole attachment operations in New York. Since the enactment of the Telecommunications Act of 1996 there has emerged a clear need for cooperative federalism in this and other areas of telecommunications so as to provide consumers the full benefits available from the development of competitive markets.

By embarking on this course, we hope to make it easier for service providers to do business by eliminating unnecessary variation in regulatory requirements. Also, by exercising our authority in this manner, we make it possible for firms operating nationally to compare favorably New York's practices and those followed elsewhere. Of course, we shall retain our primary jurisdiction over pole attachments and continue to evaluate such matters. If ever there were reason to depart from the federal approach, in order to protect the public interest, we would consider such action.

Access to Utility Poles

In response to AT&T's concerns about obtaining access to utility facilities for its provision of competitive telecommunications services, the Judge concluded that we have ample ability to ensure non-discriminatory access for carriers to

gain entry to poles, ducts, conduits, and rights-of-ways throughout the State.

On exceptions, CTTANY disputes any suggestion by the Judge that we have exclusive jurisdiction over such facilities. It says we are obliged, by the Telecommunications Act of 1996, to apply to utility companies various federal standards that are designed to increase telecommunications competition throughout the nation. In support of its position, CTTANY points to 47 USC §253(a) as precluding any state and local action that prohibits a firm from providing telecommunications services.

As noted above, we have decided, as a matter of our own discretion, to apply the same approach to pole attachment rates and operations in New York as is used in the majority of states. Our action promotes uniform practices and eliminates any differences that could have adverse consequences for competition and economic development. Thus, there is no conflict, nor any tension, between federal requirements and the exercise of our jurisdiction.

PSL §119-a

The Judge supported an amendment to PSL §119-a that would eliminate its specific provisions for cable television companies. If enacted, this change would make the statute's general provisions applicable to all entities that attach facilities to utility poles.

On exceptions, CTTANY urges that no changes be made to PSL §119-a. Contrary to the Judge's view that the cable television industry no longer requires any special treatment, CTTANY claims that such companies continue to require protection from utility companies, which may seek to charge substantial amounts for their facilities. If there were no ceiling on pole attachment rates, CTTANY fears, rate litigation would ensue. CTTANY says cable television companies continue to need the stable and predictable pole attachment rates that the existing statute fosters.

In response, the electric industry denies that there would be any new rate litigation if the statute were amended. According to it, the growth experienced in the cable television industry since 1978 warrants the elimination of the statutory provisions that limit the amount of costs assignable to cable television companies.

Insofar as the rate methods contained herein do not require a statutory amendment, we do not need to make a recommendation on this issue at this time.

POLE ATTACHMENT RATE ISSUES

Usable Space Method

In this case, NYSTA initially proposed that pole attachment rates no longer be set using the usable space approach.[1] Instead, it recommended that all pole costs be allocated between the electric and telephone utilities in proportion to the costs they would incur in building their own poles and the cost savings they achieve from using joint facilities. NYSTA also proposed that telecommunications and cable television companies share equally the costs and savings from their joint use of the telecommunications portion of the pole. As part of its proposal, NYSTA urged that the electric portion of the pole be considered separate from the telecommunications portion, and that electric utilities be precluded from obtaining revenues from telecommunications and cable television providers.

The Judge addressed the substantial problems inherent in NYSTA's initial proposal, which led it to abandon portions of it. However, on exceptions, NYSTA continues to claim that, absent contrary arrangements between electric and telephone utilities, all revenues obtained from cable television and

[1] This approach assigns the costs for the usable portion of the utility pole in proportion to the amount of such space a firm occupies. The remainder of the pole--its common space--also is allocated to pole occupants in proportion to the amount of usable space they occupy.

telecommunications attachments should be kept by the telephone company. According to NYSTA, electric services should be kept distinct from telecommunications and this is best accomplished by not allowing electric companies to share in pole attachment revenues. NYSTA believes the telephone utilities have an equitable ownership interest in the portion of the pole that is being encroached upon and are therefore entitled to the compensation for the space surrendered. NYSTA claims it is unfair to allow the electric utilities to obtain windfall revenues from telecommunications attachments.

The electric industry opposes this portion of NYSTA's proposal. It says such matters as this should be left to the electric and telephone companies to negotiate, as has been the case. The electric industry denies that the telephone utilities lose the use of the portion of the pole they have paid for over the years.

NYSTA's exception is denied. We have allowed the division of pole attachment revenues to be determined by the negotiations that individual electric and telephone companies routinely conduct for this and other matters involving their joint use of utility poles. We see no need nor any compelling reason to interject ourselves into these matters now.

Fully Allocated Costs

Currently, pole attachment rates for cable television companies are set at the high end of the range permitted by law.[1] This is accomplished by allowing the utility companies to include a fully-allocated portion of their administrative, operating and maintenance, and other costs in the rates they charge. At first, the Commission allowed utility companies to

[1] Public Service Law §119-a provides that "[a] just and reasonable [pole attachment] rate shall assure the utility of the recovery of not less than the additional cost of providing a pole attachment . . . nor more than the actual operating expenses and return on capital of the utility attributed to that portion of the pole . . . used."

allocate only 75% of such costs to the cable television companies.[1] However, in the early 1990's, the Commission began to allow them to charge 100%.

The Judge recommended that we move away from the fully allocated cost approach for new pole attachments. Just as the cable television industry was allowed to pay less than fully allocated costs during its infancy, the Judge proposed, the provision of competitive telecommunication services should similarly be encouraged now.

On exceptions, the electric industry urges the use of fully allocated costs for all purposes and says they do not produce excessive rates. Should there ultimately be up to six pole attachments per utility pole, as the electric industry envisions, rates would remain low and affordable without any need for the Judge's recommended departure from fully allocated costs.

Rather than entertain the Judge's recommendation, the electric industry suggests that we examine the total service, long-run incremental costs (TSLRIC) for pole attachments.[2] It maintains that this approach is well suited to establishing a single market-clearing price for an efficient competitive market in equilibrium. It also says a single market-clearing price is desirable to allocate scarce resources among competing uses--in this case utility pole attachments.

If we were to select this approach, the electric industry would propose that the relative demand for electric, telecommunications, and cable television services be used to allocate common costs. The electric industry also proposes that another phase of this proceeding be established to implement the TSLRIC approach. Like the electric industry, NYSTA supports

---

[1] Case 26494, New York State Cable Television Association - Pole Attachment Agreements, Opinion No. 83-4 (issued January 31, 1983), 23 NYPSC 916, 925-931.

[2] The TSLRIC for a service, or a group of services, is equal to the firm's total cost of producing all of its services, minus the firm's costs excluding the service in question.

continuation of the fully allocated cost approach until a change is made to a long-run incremental cost formula.

CTTANY also excepts to the Judge's recommendation to change the prevailing cost formula. While it does not oppose the use of incremental costs, it fears the electric industry will use any change in method to seek higher rates. Rather than allow this, CTTANY urges us to simplify our approach and conform our cost allocation method to the FCC's.

As to the electric industry's TSLRIC proposal, CTTANY sees several flaws in it. First, it objects to the use of industry revenues to measure the relative demand for pole attachments. According to CTTANY, a better approach would be to use the number of subscribers to each industry's service offerings. Also in opposition to the use of industry revenues, CTTANY points out that some revenues are unrelated to utility poles. For example, poles are not used to provide electricity or telephone service in much of Manhattan, and thus the revenues received from this location do not pertain to poles.

Finally, CTTANY objects to reproduction costs being used to calculate long-run incremental costs. Among other things, it says reproduction costs are not conventionally used for ratemaking purposes and they are unnecessary as long as pole attachers continue to pay up front the makeready costs for their attachments.

We see no need to depart from the use of fully allocated costs for setting pole attachment rates. The competition the Judge seeks to encourage is fully contemplated by the Telecommunications Act of 1996, and that statute's approach to such matters is being pursued. Consequently, it is not necessary for us to devise here any new cost allocations or cost assignments. Accordingly, we are granting the electric industry's, NYSTA's, and CTTANY's exceptions, which urge us to retain the fully allocated cost method. However, as explained above, we have decided to follow the federal approach to pole attachment matters. From now on, when these costs are calculated for New York utilities, such calculations should conform to the

FCC's formula. The parties' exceptions on this point are addressed next.

Carrying Charges

In addition to recommending changes to the fully allocated cost approach, the Judge also recommended that we adopt the FCC method for calculating carrying charges. The electric industry, NYSTA, and CTTANY all except to this recommendation.

The electric industry maintains that the FCC approach is no easier to administer, nor any better, than the current method. It says controversy will accompany any move to the FCC approach because that approach does not provide adequately for the costs utility companies incur.

NYSTA agrees with the electric industry, noting that the FCC's carrying charges do not reflect "incremental" costs, as the Judge incorrectly believed they did. NYSTA claims substantial difficulties would accompany the use of the FCC approach as parties attempted to manipulate such items as rate of return, appurtenances, and administrative and maintenance costs.

CTTANY takes limited exception to the Judge's recommendation. While he called for abandoning the prevailing approach, were we to retain it, he would recommend that electric utilities be allowed to include right-of-way, tree trimming, and grounding costs in their cost calculations. On exceptions, CTTANY objects to the inclusion of electric system grounding costs in the carrying charge calculations because cable television companies incur costs for their own grounding systems. In contrast, the electric industry observes that safety standards require cable television facilities to be grounded to the electric and telephone equipment on the poles.

As discussed above, we have decided to switch to the FCC's carrying charge method to simplify the administration of pole attachment matters in New York and thereby enhance the potential for telecommunications competition. While no approach is without some administrative difficulties, it is feasible to use the FCC approach here without substantial detriment to the

utility companies. From our review of the FCC approach, we are satisfied that it provides them reasonable allowances for the costs they incur.

Ground Clearance

Ground clearance requirements determine the amount of usable space available on utility poles. In this case, CTTANY proposed that we switch to the FCC method for setting ground clearances for pole attachment rate purposes. The FCC uses standard values for ground clearances taken from the National Electric Safety Code. The benefit of this approach is that utility companies can avoid the cost and work of conducting outside plant surveys to determine their pole attachment rates. However, if a utility chooses to rebut the standard values, it may submit a study for review.

Believing that the issue here raised matters of public safety, the Judge rejected CTTANY's proposal and recommended that the electric and telephone companies continue to use prevailing ground clearance measurements to set pole attachment rates. On exceptions, however, CTTANY insists that economic choices, as much as safety considerations, influence utility company decisions as to where to install their facilities on the poles. In effect, CTTANY maintains that there are instances where a utility, in an effort to control costs, may install facilities other than at the lowest possible point on a pole. It continues to urge us to ease the administrative burden of calculating and verifying ground clearances by adopting the FCC's approach.

In response, the electric industry insists that ground clearances are set as safety considerations warrant. It also says the industry's practices conform with the applicable standards.

The issue here does not raise safety considerations, for no party is proposing that any changes be made to the utility companies' operating practices. The issue concerns only the preferable means for setting just and reasonable pole attachment rates. On this score, we see substantial benefit in CTTANY's

proposal to follow the FCC approach. By using standard values from the electrical safety code, and by establishing a rebuttal presumption supporting them, the FCC approach offers a simple ratemaking practice that does not preclude the use of plant surveys when good reason supports their use.

Neutral Space

In 1983, the Commission determined that the costs related to the neutral space between electric lines and telecommunication cables are assignable entirely to the electric companies.[1] In this case, the electric industry challenged this ruling and proposed that neutral space be treated the same as the common space, the cost of which is shared by all pole attachers. The Judge found that the electric industry had not addressed adequately the rationale for the Commission's previous decision and he recommended against any change.

On exceptions, the electric industry insists that this matter should be reconsidered. It maintains that neutral space has the same characteristics as common space and both should be treated the same. The electric industry points out that the necessary separation between electric and telecommunications facilities benefits all pole attachers by ensuring safe operations for all involved.

CTTANY opposes the electric industry proposal, noting that a reclassification of the neutral space would shift a sizable portion of pole costs to cable television companies. CTTANY estimates that they would experience a 50% increase in the amount of common costs they pay. CTTANY also observes that the electric industry, even now, has still not addressed the details of the Commission's 1983 decision and says its request should therefore be denied.

CTTANY is correct that the electric industry has not provided any distinguishable or changed circumstances to warrant a change in the 1983 decision concerning neutral space. On these

[1] Case 26494, supra, Opinion No. 83-4, 23 NYPSC 958-964.

grounds alone, the electric industry's exception could be denied. Moreover, the overriding decision we have made in this case is that New York's approach to pole attachment matters should, as much as possible, conform to the federal method. Approached from this perspective, the electric industry's exception should also be denied, for our examination of the FCC method shows that it assigns neutral space to the electric utilities.

Co-Lashed Facilities

The electric industry proposed that new pole attachers that co-lash to existing facilities (thereby otherwise avoiding pole attachment charges) be required to pay pole owners a pro rata portion of the poles' common costs. Such attachers would not have to pay for any usable space since their attachments would require no additional pole space. The other parties did not adequately address this proposal so the Judge directed them to respond to it in their briefs on exceptions.

NYSTA supports the electric industry proposal and says it is consistent with the provisions of the Telecommunications Act of 1996. But it believes the telephone utilities should keep all such revenues.

CTTANY opposes the proposal and disputes NYSTA's claim that it is consistent with the federal approach. CTTANY says the Telecommunications Act of 1996 imposes no additional charges for a cable television attachment that has telecommunications facilities co-lashed to it, other than the gradual ramp-up in telecommunications pole attachment rates scheduled for 2001 through 2006.

AT&T also opposes the electric industry proposal, claiming there is no need for pole owners to attribute any common costs to co-lashed facilities. Other than ensuring that pole owners allow co-lashing, and provide non-discriminatory access to pole attachments, AT&T would have us adopt no other rules for co-lashed facilities. It believes that interested persons should be allowed to negotiate with any pole attachers the fees and terms for co-lashing arrangements.

In this instance, the parties present conflicting views about the federal guidelines for pole attachment rates that apply to co-lashed facilities. We agree with CTTANY that any cable television company that expands its operations to provide telecommunications services should not pay any additional pole attachment fees to provide such services other than those clearly identified by the Telecommunications Act of 1996. However, we disagree with AT&T's claim that pole owners should receive no compensation from a new attacher that obtains access to utility poles by co-lashing to another attacher's facilities. In such instances, we agree with the electric industry that the pole owner should be able to apply charges to the new entity to cover a portion of the poles' common costs.

Cable Television Company Rates

The Judge recommended against an electric industry proposal calling for cable television companies to pay the pole attachment rates for telecommunications providers, unless they certify that they are providing only cable television services. He concluded that there was no reason to believe that cable television companies would pay incorrect pole attachment rates if they received adequate notice of the applicable rates.

On exceptions, the electric industry continues to claim that, in a competitive environment, pole attachers may seek to minimize their costs by incorrectly paying a lower rate. It does not believe that the utility companies should have to monitor the rates pole attachers pay, and it claims this burden could be avoided if we adopt its proposal.

In response, CTTANY denies there is any need for a rate certification process, given the few cable television companies currently offering telecommunications services and the burden such a system would impose on such companies. It says the electric industry proposal is ill-conceived because it exposes cable television companies to incorrect and improper rates if they inadvertently fail to certify their operations.

We agree with the Judge that there is no need to adopt the electric industry proposal. We do not consider it to be an unreasonable burden for the utility company to monitor the application of its rates and charges for the services it provides. On the other hand, the electric industry proposal would expose pole attachers to incorrect charges, and it should therefore be avoided.

Pole Attachment Rate Freeze

To forestall any loss of current revenues for electric and telephone utilities due to changes in pole attachment rates, the Judge recommended that existing pole attachment rates be frozen until such time as the new approach produces rates higher than those now in place, which he expected to be several years hence.

On exceptions, CTTANY says it is willing to go along with a rate freeze so long as we adopt the FCC approach now and the rate freeze does not extend beyond February 2001. At that time, CTTANY recognizes, competitive telecommunications service providers, and the cable television companies that provide such services, should begin to pay higher rates gradually over the five-year transition period provided by the Telecommunications Act of 1996.

NYSTA and AT&T oppose a rate freeze but for different reasons. NYSTA believes that current rate levels should increase as necessary to provide pole owners reasonable compensation. But AT&T considers the existing rates to be too high and urges us to set them at a lower level.

To determine the likely consequences of switching to the federal approach, we have examined the application of the FCC formula to the electric utility companies. If the change were made now, four companies' pole attachment rates would remain about the same or increase slightly, but three companies' pole attachment rates would drop by significant amounts. Given these consequences, we are adopting the Judge's recommendation to freeze the prevailing rate levels until the FCC begins to

implement its new pole attachment rates for competitive telecommunication companies, starting in 2001. This approach benefits not only the electric industry but also telephone companies (other than LECs) considering the provision of competitive services in New York, who are thus assured of the same treatment as they would receive elsewhere under the federal approach. Further, this approach subjects cable television companies only to those pole attachment rate changes mandated by the Telecommunications Act of 1996.

Pole Modification Costs[1]

The Judge recommended that we retain the existing "but for" rule that determines whether a pole owner or a third-party attacher pays the costs for utility pole modifications. As his recommended decision preceded the evidentiary hearings in this case, the Judge noted that there had yet to be any showing that the prevailing approach either discouraged competition or was otherwise unworkable.

On exceptions, CTTANY urges us to adopt the federal approach to pole modification costs. It says the approach prevailing in New York presents efficiency and competitive concerns because it does not require cost causers to bear the economic consequences of their actions and allows costs to be shifted to others.

CTTANY also maintains that pole owners should not be allowed to impose unexpected and large amounts of rearrangement costs on cable television companies and others who do not require such work. It points to recent instances in Massachusetts, New Jersey, and Georgia where telephone companies sought payments from cable television companies for construction work unrelated to their requirements. CTTANY considers the federal approach to be best suited for emerging telecommunications competition.

---

[1] Pole modification costs include the initial "makeready" costs a utility incurs to prepare poles for new attachments and the subsequent costs incurred when facilities are rearranged and poles are replaced to accommodate attachments.

Like CTTANY, AT&T contends the current approach for handling pole modification costs is a barrier to competition. In its view, the existing approach is unjust because it produces different charges for pole owners and attachers.

Responding to the claim that excessive pole modification costs were charged to cable television companies in other states, the electric industry says the facts of these events are not sufficiently well known to have any bearing here. The electric industry sees no competitive disadvantage for telecommunications carriers under the prevailing approach. If CTTANY and AT&T prefer to avoid separate charges for makeready, rearrangement and replacement costs, the electric industry says, they should support the use of the TSLRIC approach, which includes these costs in the annual rate charged for pole attachments.

Here too, substantial benefits can be gained by eliminating unnecessary regulatory differences among the jurisdictions in which competing firms operate. By simplifying our regulation of pole attachment matters, and by conforming our approach to the federal one, we are eliminating any barrier to entry and any disincentive to competition that might result from adhering to a different approach.

OPERATIONAL AND OTHER MATTERS

Operational Matters

Noting the progress made in this proceeding on rate issues, the Judge directed the parties to begin to address pole attachment operational concerns. Since the recommended decision was issued, they have met on at least three occasions, and the electric industry reports that their differences have narrowed. Thus, there are prospects that the ongoing discussions will resolve some, if not all, of their operational concerns. The parties plan to continue to meet regularly and, if their efforts are unsuccessful, CTTANY suggests we step in and decide any contested matters.

Wireless Facilities

Two firms, Omnipoint and AT&T Wireless, presented concerns about wireless telecommunications. In general, the Judge concluded that such firms should have non-discriminatory access to utility facilities, and the rates and rules for wireless attachments to utility poles should be comparable to those for other attachments, absent any significant differences. The Judge also recommended that the electric utilities and wireless carriers be permitted to negotiate the terms for attachments to high-voltage electric transmission towers. Exceptions to these recommendations are discussed next.

1. High-Voltage Electric Transmission Towers

AT&T and Omnipoint except to the Judge's proposal to allow negotiations for attachments to high-voltage electric transmission towers. AT&T says the electric utilities may abuse the process by presenting excessive demands and by purposefully delaying the deployment of wireless facilities. It proposes that tariffed rates and standard contracts be used for all such attachments.

According to Omnipoint, there is no significant difference between high-voltage electric towers and utility distribution poles that warrants private negotiations in one case and regulated rates in the other. It says both may be used by wireless firms as alternatives to constructing their own towers. Like AT&T, it believes that Commission-established rates and rules for wireless attachments to electric towers would provide it quicker access than would private negotiations.

In response, the electric industry says private negotiations are workable and should not hinder the roll-out of wireless services. In support of its position, the electric industry points to the large number of base stations Omnipoint obtained in the New York City area using this process. It also points to the electric utilities' pending negotiations with wireless firms as being fruitful and productive.

Until now, there has been little need for us to address issues concerning wireless firms' access to utility facilities and, thus, the prevailing pole attachment rates do not include or reflect the costs of the tower facilities at issue here. The use of regulated rates and formal regulations for wireless attachments to high-voltage electric towers may prove to be unnecessary if the electric utilities and wireless firms are able to set their own, market-based rates for such attachments. Before we would consider adopting any elaborate regulatory approach to such matters, the parties should attempt to structure their own transactions. Only if an electric utility refuses to negotiate in good faith, or otherwise unreasonably frustrates negotiations, should we become directly involved in such matters. We note that this overall approach is consistent with the processes employed by the Telecommunications Act of 1996.

2. Utility Distribution Poles

The electric industry believes that wireless attachments to utility poles should also be subject to private negotiations. In support of its position, the electric industry claims that a competitive market exists for wireless attachments; wireless firms are capable of negotiating their own agreements; wireless facilities may not conform to the communications space available on utility poles; and there is no urgency that warrants governmental intervention. It further claims that Omnipoint has already met its initial FCC-imposed "build out" requirements.[1]

As to the market for wireless attachments, the electric industry claims as many alternatives exist for these facilities as there are elevated locations. Consequently, the electric industry believes it should be allowed to obtain the same prices that wireless firms would pay to other owners of available locations.

[1] This refers to federal licensing requirements that wireless firms install sufficient facilities to serve increasingly larger percentages of the population in their service areas.

Turning to the differences between wire and wireless pole attachments, the electric industry says it is currently unclear how the wireless firms would seek to use the poles. If they expect to use the tops of the poles, and expect to reach heights of 70 to 90 feet, the electric industry continues, the price for such attachments would necessarily differ from the current tariff prices. If regulated rates for wireless attachments are to be established, the electric industry believes, a proceeding is needed to explore the wireless firms' requirements and to design appropriate rates.

In response, Omnipoint denies that it has completed its build-out requirements in New York. It points out that antenna sites will still be needed in many municipalities and rural areas throughout the upstate region in the next few years. It also notes that it must deploy enough antennas to serve one-third of an area's population within five years, and two-thirds within ten years. Consequently, Omnipoint says, it truly needs non-discriminatory access to utility facilities, and it believes private negotiations may not be sufficiently prompt and may not produce reasonable rates.

The record in this case indicates that wireless attachments to utility distribution poles may or may not resemble or conform to the traditional use of such facilities. This depends on the technology they use and the wireless firms' requirements.[1] To the extent wireless attachments conform to the traditional use of the utility pole structure, wireless firms should be afforded the same rates and terms as are available to any other attacher. But if a wireless firm requires a nonstandard or unique attachment to a utility pole, and if the electric company is willing to make the necessary pole modifications to accommodate such a use, the price and terms for such attachments should be determined through private negotiations. As in the case of wireless attachments to high-voltage electric transmission towers, we would be available to

[1] Tr. 1,320-1,323; 1,342.

the parties to consider their complaints and facilitate resolution of their differences should any unreasonable obstacles to negotiations arise.

3. CTTANY's Exception

CTTANY urges us to maintain the distinction between high-voltage electric transmission towers and utility poles with transmission lines attached to them. If private negotiations are allowed for attachments to electric transmission towers, CTTANY believes, regulated rates should still prevail for standard attachments to electric distribution poles that may also have electric transmission lines on them.

CTTANY is correct and we will continue to distinguish between high-voltage electric transmission towers, for which attachments have not previously been sought, and utility company distribution poles that are subject to tariff rates for standard attachments.

Pathway Facilities

The term "pathway facilities" was coined by AT&T and used by it to refer to all utility facilities to which a telecommunications carrier may require access, including poles, conduits, ducts, manholes, controlled environment vaults, rights-of-way, entrance facilities, building vaults, risers, and telephone closets. AT&T seeks to establish non-discriminatory access rights to all such facilities.

The Judge generally agreed with AT&T that access to such facilities should be available to competitive service providers and that any such troublesome access matters should be addressed when they appear. On exceptions, the electric industry says there is no need to expand this proceeding to consider pathway facilities now. It points out that the record presents no such issues to warrant our attention.

In response, AT&T and CTTANY take odds with the electric industry's characterization of the record, the Judge's

recommended decision, and certain FCC decisions. AT&T continues to urge us to address pathway facilities here.

The Judge has adequately addressed this matter, which does not require any specific action at this time. In the future, should such matters as access to buildings and other facilities controlled by utilities arise, in a context presenting specific facts and policy issues, we will address them accordingly.

The Commission orders:

1. To the extent it is consistent with the foregoing opinion, the recommended decision of Administrative Law Judge William Bouteiller, issued December 31, 1996, is adopted as part of this opinion and order. Except as here granted, all exceptions to that recommended decision are denied.

2. Central Hudson Gas & Electric Corporation, Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., and Rochester Gas and Electric Corporation are directed to cancel effective no later than July 1, 1997 and on not less than one day's notice, the proposed tariff amendments listed in the Appendix.

3. This proceeding is continued.

By the Commission,

(SIGNED) JOHN C. CRARY
Secretary

CASE 95-C-0341 APPENDIX

SUBJECT: Filings by:

CENTRAL HUDSON GAS & ELECTRIC CORPORATION
(Case 97-E-0761)

Amendment to Schedule P.S.C. No. 14 - Electricity
Nineteenth Revised Leaf No. 22M
Issued: April 10, 1997 Effective: August 1, 1997
Received: April 14, 1997

LONG ISLAND LIGHTING COMPANY
(Case 97-E-0713)

Amendment to Schedule P.S.C. No. 7 - Electricity
Twentieth Revised Leaf No. 27C
Issued: March 27, 1997 Effective: July 1, 1997
Received: March 27, 1997

NEW YORK STATE ELECTRIC & GAS CORPORATION
(Case 96-E-0470)

Amendment to Schedule P.S.C. No. 90 - Electricity
Thirteenth Revised Leaf No. 22
Issued: April 23, 1996 Effective: July 1, 1996*
Received: April 29, 1996
*Postponed to July 1, 1997 by S.P.O. 96-E-0470SP2

NIAGARA MOHAWK POWER CORPORATION
(Case 96-E-0533)

Amendment to Schedule P.S.C. No. 207 - Electricity
Twenty-Second Revised Leaf No. 71
Issued: June 10, 1996 Effective: September 16, 1996*
Received: June 12, 1996
*Postponed to July 1, 1997 by S.P.O. 96-E-0533SP2

ORANGE AND ROCKLAND UTILITIES, INC.
(Case 97-E-0805)

Amendment to Schedule P.S.C. No. 2 - Electricity
Seventeenth Revised Leaf No. 21G
Issued: April 18, 1997 Effective: August 1, 1997
Received: April 18, 1997

ROCHESTER GAS AND ELECTRIC CORPORATION
(Case 97-E-0481)

Amendment to Schedule P.S.C. No. 14 - Electricity
Fourth Revised Leaf No. 71B
Issued: March 7, 1997 Effective: July 1, 1997
Received: March 6, 1997