

Village of Hyde Park Electric Pole Attachment Tariff

SUBJECT: POLE ATTACHMENT

POLICY: These pole attachment rates shall be applicable to the attachment of lines, wires, cables, or other facilities by an Attaching Entity seeking to attach to a pole owned by the Village of Hyde Park Electric Department (“HPE”).

For the purposes of this tariff, an Attachment is defined as any strand, hardware, cables, wires, and/or apparatus attached to a pole and owned by an Attaching Entity.

RATE 1: \$7.25 per attachment times HPE ownership percentage.

Applicability: This rate shall apply to all Attaching Entities that are not subject to a special contract.

BILLING

PROCEDURE: Attachment shall be billed in advance, on or about January 1 annually, and shall be made payable within thirty (30) days of billing. The attachment charges shall be based on the number of poles for which permits have been issued to the Attaching Entity as of December 31 of the preceding year.

Additionally, HPE will calculate the fee associated with any permits issued during the calendar year beginning with the January 1 billing date, based on the month of issuance of any such permits, and add it to the next annual rental invoice. Permits issued during any month shall be considered issued for that entire month.

A late payment shall accrue and be payable at the rate of 1 1/4% per month commencing thirty (30) days after the billing date.

Other Charges: The Attaching Entity shall be billed in advance for all charges associated with make-ready survey and make-ready work, based on an estimate of costs to be incurred by HPE. The estimated cost of the make-ready survey shall be paid in advance of HPE performing the make-ready survey. After completion of the make-ready survey, if the Attaching Entity authorizes HPE to complete the make-ready work, all additional estimated costs shall be payable in advance. The costs of the make-ready survey shall be payable even if the entity decides not to go

forward with construction of its attachments.

After completion of the make ready work, the Attaching Entity shall pay the cost of all make-ready work actually required for the attachment that has not been pre-paid, or shall be refunded any excess of the prepayment not actually required.

TERMS AND

CONDITIONS:

All pole attachments are subject to the provisions of Vermont Public Utility Commission Rule 3.700, as it may be amended from time to time.

POLE.ATT:02.00 ATTACHMENT LICENSE

01. Subject to the provisions of this Tariff, including payment of the fees and charges, Licensor will issue to Attaching Entity revocable, nonexclusive written license to attach facilities to the space available on Licensor's poles, anchors and rights-of-way. License is required prior to attachment to any pole, anchors and rights-of-way owned in whole or in part by Licensor.
02. No use, however, extended, of Licensor's poles, anchors and rights-of-way or payment of any fees or charges required under this Tariff shall create or vest in Attaching Entity any ownership or property rights in such poles, anchors and rights-of-way. Attaching Entity's rights to use of Licensor's poles, anchors and rights-of-way shall be and remain strictly a license. No license granted under the terms of this tariff shall constitute an assignment of any of Licensor's rights to use the public or private property at the location of Licensor's poles, anchors and rights-of-way.
03. Nothing contained in this Tariff shall be construed to compel Licensor to construct, retain, extend, place or maintain any pole or other facilities not needed for Licensor's own service requirements. Licensor may relocate, remove, operate, modify or reconfigure its poles or other facilities as it deems prudent for its own needs.
04. Nothing contained in this Tariff shall be construed as a limitation, restriction, or prohibition against Licensor with respect to any agreement(s) and arrangement(s) which Licensor has previously made, or may in the future make, with other entities. Nothing in the foregoing provisions of this subsection shall take away rights or impose additional or conflicting obligations upon Attaching Entities under this tariff or the Board's Rules governing pole attachments.
05. Failure of Licensor to enforce any of the terms or conditions of this Tariff, or to give notice of termination of license, shall not constitute a waiver or relinquishment of any term or condition of the Tariff, but the same shall be and remain at all times in full force and effect.
06. By attaching to any of Licensor's poles, anchors and rights-of-way pursuant to this Tariff, Attaching Entity agrees that any and all obligations imposed on Attaching Entity by this Tariff shall extend to each and every sub-contractor hired by Attaching Entity to perform work on Licensor's poles, anchors and rights-of-way, along with any subcontractors hired by subcontractors, no matter how many levels of sub-contracting are involved. Attaching Entity shall be and re

responsible to assure that any such subcontractors and sub-subcontractors shall comply with all terms of this Tariff. Should any subcontractor or

sub-subcontractor of Attaching Entity violates any term of this Tariff, then Attaching Entity itself shall be jointly and severally responsible for and liable to Licensor for such violations by the subcontractor or sub-subcontractor.

- .07 Licensor will provide non-discriminatory access to any pole, anchor, or right-of-way in which it has an ownership interest. Licensor may deny access for reasons of safety, reliability, or applicable and accepted engineering standards. Licensor may deny access on a non-discriminatory basis where there is insufficient capacity. Insufficient capacity shall not be grounds for denial of access where make-ready work can be used to increase or create capacity.

POLE.ATT:03.00 LEGAL REQUIREMENTS

- .01 Attaching Entity shall be responsible for obtaining from the appropriate public and/or private authority any required authorization, including rights-of-way, to construct, operate and maintain its attachments on public and private property at the location of Licensor's poles which Attaching Entity uses. Attaching Entity must submit to Licensor evidence of such authority before making attachments. Licensor shall make available whatever property interests it has obtained with respect to the placement of facilities on its poles and anchors, but shall not be required to request additional property interests solely for the benefit of the Attaching Entity. Licensor will not deny access to its poles based on a questionable use of a right-of-way; however, Attaching Entity will indemnify Licensor against all costs and claims resulting from a legal challenge to Attaching Entity's use of that right-of-way. Licensor shall not seek easements exclusively for the benefit of Licensor.
- .02 Attaching Entity and Licensor shall at all times observe and comply with all laws, ordinances, and regulations which in any manner affect the rights and obligations of the parties.
- .03 No license granted under terms of this Tariff shall extend to any pole where it has been determined by a court of law or the Vermont Public Service Board that the placement of Attaching Entity's attachments would result in forfeiture of the rights of Licensor or any joint owners to occupy the property on which the poles are located. If placement of Attaching Entity's attachments would result in forfeiture of the right to occupy such property, Attaching Entity shall remove its attachments immediately and pay Licensor and any joint owners all losses, damages, and costs incurred as a result.

POLE.ATT:04.00 PUBLIC LIABILITY INSURANCE

- .01 Attaching Entity shall carry public liability insurance issued by a carrier authorized to do business in Vermont to protect both Attaching Entity and Licensor from and against any and all claims, demands, judgments or liabilities of any and every kind or nature which may result, directly or indirectly, from or by reason of any loss, injury or damage caused by Attaching Entity.
- .02 Attaching Entity shall submit to Licensor certificates of public liability insurance from each company insuring Attaching Entity, demonstrating that such insurer or insurers have insured Attaching Entity for all liabilities of Attaching Entity covered by this Tariff and in the amounts required by this Tariff; and such certificates shall name Licensor as an additional insured under the public liability policy and specify that such insurer shall not cancel or change any such policy of public liability insurance issued to Attaching Entity except after the giving of not less than thirty (30) days' written notice to Licensor. Attaching Entity shall also document to Licensor's satisfaction that either: (A) any subcontractors employed by Attaching Entity (and any subcontractors of subcontractors of Attaching Entity) are covered by Attaching Entity's public liability insurance to the same extent required of Attaching Entity under this Tariff; or else (B) that any such subcontractors and subcontractors of subcontractors) have public liability insurance coverage in the same amounts as required of Attaching Entity under this Tariff, and also name Licensor as an additional insured under the public liability policy, and that such public liability insurance of such subcontractors also contains provisions requiring no less than 30 days' written notice to Licensor prior to cancellation.
- .03 The amounts of public liability insurance, without deductible, shall be not less than \$2,000,000.00 as to any one occurrence and \$2,000,000.00 in the aggregate against liability due to property damage; and not less than \$2,000,000 per occurrence and \$2,000,000 in the aggregate against liability due to injury to or death of persons.
- .04 Attaching Entity shall also carry appropriate Workers' Compensation insurance as required by law.
- .05 All public liability insurance must be effective before Attaching Entity attaches to any pole and shall remain in force until such attachments have been removed from all such poles.
- .06 Attaching Entity's property insurance policy shall contain a waiver-of subrogation clause running to Licensor. This must be reflected in the certificate of insurance provided by Attaching Entity. Such policy shall be the primary

remedy for all losses covered by the policy.

POLE.ATT:5.00 LIABILITY AND DAMAGES

- .01 Licensor reserves to itself, its successors and assigns, the right to locate and maintain its poles and to operate its facilities in conjunction therewith in such a manner as will best enable it to fulfill its own service requirements. Licensor shall not be liable to the Attaching Entity for any interruption of the Attaching Entity's service or for interference with the operation of the Attaching Entity's communications services arising in any manner, except from Licensor's gross negligence and willful default, out of the use of Licensor's poles.
- .02 The Attaching Entity shall exercise precaution to avoid damaging the facilities of Licensor and of others attached to Licensor's poles, and the Attaching Entity assumes all responsibility for any and all loss from such damage caused by the Attaching Entity's employees, agents or contractors. The Attaching Entity shall make an immediate report to Licensor and any other user affected by such damage of the occurrence of any such damage and agrees to reimburse the respective parties for all costs incurred in making repairs.
- .03 Licensor shall exercise precaution to avoid damaging the facilities of the Attaching Entity and of others attached to Licensor's poles, and Licensor assumes all responsibility for any and all loss from such damage caused by Licensor's employees, agents or contractors. Licensor shall make an immediate report to the Attaching Entity and any other user affected by such damage of the occurrence of any such damage and agrees to reimburse the respective parties for reasonable, direct costs incurred in making repairs.
- .04 Except to the extent as may be caused by the negligence of the party seeking indemnification, Licensor and Attaching Entity shall each defend, indemnify and save harmless the other against and from any and all liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses arising from or in connection with this tariff (including reasonable attorneys' fees) including, but not limited to, those which may be imposed upon, incurred by or asserted against the party seeking indemnification, by reason of the following:
 - A. Any work or action done upon the poles licensed hereunder or any part thereof performed by the indemnifying party or any of its agents, contractors, servants, or employees;
 - B. Any use, occupation, condition, operation of said poles or any part thereof by the indemnifying party or any of its agents, contractors, servants, or employees;
 - C. Any act or omission on the part of the indemnifying party or any of its

- agents, contractors, servants, or employees, for which the party seeking indemnification may be found liable;
- D. Any accident, injury (including death) or damage to any person or property occurring upon said poles or any part thereof arising out of any use thereof by the indemnifying party or any of its agents, contractors, servants, or employees;
 - E. Any failure on the part of the indemnifying party to perform or comply with any of the covenants, agreements, terms or conditions contained in this tariff;
 - F. Payments made under any workers' compensation law or under any plan for employee's disability and death benefits arising out of any use of the poles by the indemnifying party or any of its agents, contractors, servants, or employees;
 - G. The erection, maintenance, presence, use, occupancy or removal of the indemnifying party's facilities by it or any of its agents, contractors, servants, or employees or by their proximity to the facilities of other parties attached to the poles of the party seeking indemnification; provided that the indemnifying party shall defend, indemnify, and save harmless the party seeking indemnification against and from any and all such liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses brought, made or asserted by any of the indemnifying party's agents, contractors, servants, or employees of any of the indemnifying party's contractors or agents; or by any and all such liabilities, claims, suits, fines, penalties, damages, losses, fees, costs and expenses brought, made or asserted by any of the indemnifying party's agents, contractors, servants, or employees of any of the indemnifying party's contractors or agents.
- .05 The provisions of this Article shall survive the expiration or earlier termination of any license issued hereunder.
- .06 The Attaching Entity shall indemnify, save harmless and defend Licensor from any and all claims and demands of whatever kind which arise directly or indirectly from the operation of the Attaching Entity's attachments, including taxes, special charges by others, claims and demands for damages or loss for infringement of copyright, for libel and slander, for unauthorized use of television broadcast programs, and for unauthorized use of other program material, and from and against all claims and demands for infringement of patents with respect to the manufacture, use and operation of the Attaching Entity's poles, or otherwise.
- .07 If the work on a pole is not completed within the allowed time because of delays

caused by another entity attached to the pole, and Licensor is liable for any penalties or damages because of the delay, the entity causing the delay shall indemnify Licensor for the full amount of the penalty or damages paid.

- .08 In no event shall the Licensor or Attaching Entity be liable to one another for any special, consequential or indirect damages (including, without limitation, lost revenues and lost profits) arising out of this Agreement or any obligation arising hereunder, whether in an action for or arising out of breach of contract, tort or otherwise.

POLE.ATT:6.00 TERMINATION OF LICENSE

- .01 If Attaching Entity fails to comply with any of the terms or conditions of this Tariff, defaults, on any obligation hereunder, or maintains or uses its facilities in violation of any law and Attaching Entity fails to correct such noncompliance or default within sixty days after written notice from Licensor, Licensor may terminate all licenses for use of the specific poles involved in such default or noncompliance.
- .02 If an insurance carrier at any time notifies Licensor that the insurance policies required under this Tariff will be canceled or changed so that tariff requirements will no longer be satisfied, Attaching Entity's license to attach to any of Licensor's poles terminates unless, prior to the effective date of such cancellation or change, Attaching Entity furnishes to Licensor current certificates of insurance for coverage in accordance with the provisions of this tariff.
- .03 Any license or other authorization for Attaching Entity to attach to Licensor's poles issued or arising under this Tariff shall automatically terminate when Attaching Entity ceases to have authority to construct, operate and/or maintain its attachments on the public or private property at the location of the particular pole covered by the license.
- .04 In the event authorization is terminated, Attaching Entity shall remove its attachments from Licensor's poles within 60 days from the date of termination; provided, however, that Attaching Entity shall be liable for and pay to Licensor all fees pursuant to the terms of this Tariff until Attaching Entity's attachments are removed from Licensor's poles. Any license issued under this tariff shall automatically terminate when the Attaching Entity ceases to have authority to construct, operate and/or maintain its attachments on the public or private property at the location of the particular pole covered by the license. Such automatic termination shall be stayed if the Attaching Entity has sought judicial or regulatory review of the

decision that has acted to terminate such authority or, has declared that the Attaching Entity lacks such authority.

- .05 When the Attaching Entity's facilities are removed from a pole or anchor, no attachment to the same pole or anchor shall be made until the Attaching Entity has first complied with all of the provision of this tariff as though no such pole or anchor attachment had been made previously and all outstanding charges due to Licensor for such pole or anchor have been paid in full.