

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6609

Investigation into tariff filings of Green )  
Mountain Power Corporation re: proposed )  
Pole Attachment Tariffs )

Order entered: 10/29/2003

**I. INTRODUCTION**

The Public Service Board ("Board") opened this docket on December 31, 2001, to investigate the proposed pole attachment tariff of Green Mountain Power Corporation ("GMP") under the Board's revised Rule 3.700, *et seq.*, which became effective on September 1, 2001. Under Rule 3.711, new pole rental rates were to become effective as of January 1, 2002. Based on the evidence presented in this docket and on the stipulation of the parties, I conclude that the annual pole rental rates to which the parties have stipulated are just and reasonable. In support of that conclusion, I adopt the terms and conditions and the substance of the findings contained in a Stipulation dated August 8, 2003, between GMP, the New England Cable and Telecommunications Association, Inc. ("NECTA") and the Vermont Department of Public Service ("Department") and recommend that the Board approve the Stipulation.

**II. PROCEDURAL HISTORY**

On December 31, 2001, pursuant to 30 V.S.A. §§ 225 and 227, the Board opened an investigation into GMP's pole attachment tariffs<sup>1</sup> and appointed me as Hearing Officer.<sup>2</sup> I convened a prehearing conference in this matter on January 22, 2002. GMP was represented by Harriet Ann King, Esq., and John J. Cotter, Esq., appeared on behalf of the Department. NECTA

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1. GMP filed two separate tariffs, one intended to apply to cable television operators not also providing local exchange service and one to apply to all other attaching entities except incumbent local exchange carriers.

2. Docket 6609, Order of 12/31/01.

was represented by Alan D. Mandl and William Durand. On March 1, 2002, GMP submitted prefiled direct testimony in support of its proposed pole attachment tariffs. Following the submission of GMP's prefiled testimony, both the Department and NECTA issued discovery requests to GMP, and GMP responded to those requests. No further proceedings were scheduled or filings made in the Docket until receipt of the Stipulation between the Department, NECTA, and GMP.

On August 8, 2003, GMP, NECTA, and the Department filed a Stipulation that, if approved, would resolve the issue of the annual pole attachment rates that GMP is entitled to assess; the parties asked the Board to adopt the Stipulation in its entirety. In the Stipulation, GMP, NECTA, and the Department agree to specific annual pole attachment rates applicable to attachments for cable-only Attaching Entities, and attachments for other Attaching Entities as specified in Rule 3.700, for poles solely-owned or jointly-owned by GMP; the parties agree that these rates are just and reasonable, and consistent with Rule 3.700. A proposed Board Order was attached to the Stipulation. The Parties also agree that GMP will implement the stipulated annual pole attachment rates for its next bills after entry of a final Board order adopting the Stipulation, and that all charges for attachment from January 1, 2002, forward would be based on the agreed-upon rates with credits provided as necessary. In the Stipulation the parties further agree that GMP will not seek an increase in the agreed-upon annual pole attachment rates with an effective date prior to January 1, 2005. By the Stipulation, the Parties have waived their rights under 3 V.S.A. § 811 to file exceptions, present briefs, and make oral argument, if the Hearing Officer issues a Proposal for Decision substantially in the form attached to the Stipulation.

### **III. FINDINGS**

Based upon the record, I submit the following findings to the Board in accordance with 30 V.S.A. § 8.

1. The annual rate proposed in GMP's tariff filing for cable-only attachments by a cable television operator that does not provide local exchange telephone service ("Cable Attachments") to a pole solely-owned by GMP was \$9.88. This rate was based on information contained in GMP's annual report filed with the Department for the year ending December 31, 2000, with

additional pro forma adjustments to year-end accounting data. In GMP's tariff filing, the proposed annual attachment rate for all other attachments ("Other Attachments") of Attaching Entities except for those of Incumbent Local Exchange Carriers ("ILECs") and electric utilities was \$19.76 for an attachment to a pole solely owned by GMP. Griffin pf. at 2–3 and 9; Stipulation at fn. 1.

2. In the Stipulation, the Parties jointly recommend that the Board approve the agreed-upon annual pole attachment rates for attachment to GMP poles. The Stipulation proposes the Board approve an annual per-pole attachment rate of \$8.00 for Cable Attachments to a solely-owned pole of GMP, and an annual per-pole attachment rate of \$16.00 for Other Attachments to a solely-owned pole of GMP. In the case of poles owned jointly by GMP, the annual rate for a Cable Attachment would be \$4.00 in the case of a pole in which GMP has a fifty percent (50%) ownership interest. Where GMP owns more or less than fifty percent (50%), the rate would be \$8.00 times GMP's ownership percentage. The rates for Other Attachments to poles owned jointly by GMP would similarly be computed by multiplying the rate of \$16.00 times GMP's percentage ownership. Stipulation, ¶¶ 1–2; Griffin pf. at 2–3.

3. The Stipulation provides that an attachment shall be deemed a Cable Attachment or Other Attachment as follows:

- A. Cable Attachment: An attachment by a cable television operator, defined as an entity authorized to offer cable television service, where the attachment is not used to provide local exchange telecommunications services. An attachment by a cable television operator will be deemed to be used to provide local exchange telecommunications services, and be considered an Other Attachment in any town where
- (i) the cable television operator uses any of its attachments to provide local exchange telecommunications services within the town served by the attachment; or
  - (ii) if located in a town where the cable television operator offers or advertises the availability of local exchange telecommunication services within the town. Where the cable television operator leases attachments to another entity for use in providing local exchange telecommunications services, each such attachment shall be considered an Other Attachment. Certification of a cable television operator to provide local exchange telecommunications services shall be evidence of, but shall not be, in and of itself, sufficient for an attachment to be classified as an Other Attachment.

B. Other Attachments: All other attachments which are not Cable Attachments. The Stipulation further provides that the above provisions, and the provisions of the tariffs filed by GMP pursuant to the Stipulation, shall not apply to incumbent local exchange carriers ("ILECs") or electric utilities. The Stipulation also provides that where facilities are overlashed and owned by different entities, each entity shall pay for its attachments at the applicable rate. Stipulation at ¶ 2.

4. The stipulated annual pole attachment rates are just and reasonable and represent a compromise among the rate levels that were proposed by GMP and those that would have been proposed by the Department and NECTA had this matter proceeded to litigation. By settling this matter, the Parties have avoided the uncertainty, delay, and significant costs of further litigation. Stipulation at ¶ 3.

5. The Stipulation provides that, within 30 days after entry of a final Board order approving the Stipulation, GMP shall file with the Board replacement tariff pages consistent with the Stipulation. Stipulation at ¶ 6.

6. The Stipulation provides that GMP shall implement the agreed-upon rates in its next bills following the Board's final order approving the Stipulation, and that all charges for attachments beginning January 1, 2002, are to be calculated based on the annual pole attachment rates agreed to in the Stipulation with credits provided as necessary. Stipulation at ¶ 7.

7. GMP has agreed that it will not seek approval from the Board for an increase, effective date prior to January 1, 2005, in the agreed-upon pole attachment rates. Stipulation at ¶ 8.

8. The Parties have represented that the agreed-upon rates were arrived at through negotiations taking into account the Company's annual reports filed with the Department for the years ending December 31, 2000, and December 31, 2001, the pro-forma adjustments proposed by GMP, and the different positions of the parties. Stipulation at ¶¶ 4 and 5.

9. The Stipulation provides that its approval will resolve only the issue of the rates GMP is entitled to charge for attachment to its poles, and that all other terms and conditions of the tariffs that remain in dispute will be subject to further proceedings in this Docket pursuant to a schedule to be set by the Hearing Officer. Stipulation at ¶ 9.

10. The Stipulation provides that if it is not adopted by the Board in its entirety, then the agreements therein will terminate and the parties will have the right to advance positions going forward different from those reflected in the agreements set forth in the Stipulation. Stipulation at ¶ 10.

11. GMP, NECTA, and the Department agree that the Board should approve the Stipulation and proposed rates for attachment to GMP's poles as reflected in the Stipulation and that upon such approval, the Hearing Officer should determine a schedule for proceeding with the resolution of any remaining disputed issues in the Docket. Stipulation at ¶ 12.

#### **IV. DISCUSSION AND CONCLUSION**

The Board opened this investigation into GMP's proposed pole attachment tariffs pursuant to 30 V.S.A. Sections 225 and 227. The standard for review of rates under these sections is whether the rates are just and reasonable. GMP's pole rental rates must also be consistent with the Board's Pole Attachment Rule, including Rule 3.706. GMP, NECTA, and the Department agree that the annual pole attachment rates embodied in the Stipulation result in a reasonable determination of GMP's annual pole attachment rates and annual rental rates that are just and reasonable.

I have reviewed the Stipulation and the testimony and exhibits provided in support of it. Based on my review of the filings, I concur with the parties that the annual pole attachment rates presented in the Stipulation are just and reasonable, and in accordance with Rule 3.706. There is no disagreement among the parties concerning issues of space occupied by attachments, as GMP adopted the presumptions contained in Rule 3.706(D), and the parties have agreed to rates following the filing of testimony, the exchange of information in discovery, and negotiation. Additionally, no other party or interested person has objected to the Stipulation.

In concluding that the rates are just and reasonable, and therefore consistent with Rule 3.706, I rely in part upon the expertise and judgment of the Department's staff, and their depth of knowledge about GMP's accounting data and pole rental rate justifications. The Department reviewed GMP's accounts applicable to the pole rental rate calculation. Department staff has been closely involved in the development of the recently amended Rule 3.700, and is familiar

with the underlying policy considerations that resulted in the new Rule. I have also relied upon the prefiled testimony and accompanying support and the discovery responses of all parties. Based upon the foregoing, I recommend that the Board adopt the substance of the parties' agreement as embodied in the Stipulation.

All parties to this proceeding have waived the opportunity to file exceptions, present briefs, and make oral argument on this Proposal for Decision in accordance with the provisions of 3 V.S.A. § 811, in the event that this Proposal is substantially in the form proposed by the parties. This proposal is consistent with, and adopts the substance of, the parties' proposal.

Dated at Montpelier, Vermont, this 27<sup>th</sup> day of October, 2003.

s/John P. Bentley  
John P. Bentley, Esq.  
Hearing Officer

**V. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings, conclusions, and recommendations of the Hearing Officer are adopted.
2. The Stipulation between GMP, NECTA, and the Department dated August 8, 2003, is approved.
3. GMP shall file revised tariffs incorporating the rates, terms, and conditions contained in the Stipulation within 30 days from the date of this Order.
4. GMP shall implement the new rates and credits as prescribed in the Stipulation. In all other respects, the parties shall comply with the terms and conditions of the Stipulation.
5. This matter is remanded to the Hearing Officer for consideration of any remaining disputed issues.

Dated at Montpelier, Vermont, this 29<sup>th</sup> day of October, 2003.

<u>s/Michael H. Dworkin</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: October 29, 2003

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*