Fact Sheet

September 2020

NRECA
America's Electric Cooperatives

Pole Attachment Rate Formulas: An Electric Co-op Perspective

Key Findings

- FCC pole attachment rate formulas are unfair to the electric cooperative pole owner, fail to reflect the attacher's actual use of the pole, and generate rates far below the value of the attachments. They allocate only 7.4% of a utility's total annual pole costs to the attaching entity. In recognition that electric cooperatives were best positioned to determine the best needs for their members, Congress exempted electric cooperatives from the FCC's pole attachment regulation.

- Formulas produced by the Tennessee Valley Authority (TVA) and Arkansas PSC take a more appropriate approach with the TVA being the most equitable.

  - The TVA pole attachment formula is a common-sense, cost-based formula that is fair to all pole attachers. The TVA formula allocates approximately 28% of annual pole costs to communications attachers.

  - The Arkansas PSC formula serves as a middle ground between unfairly low FCC rates and the TVA rate, allocating approximately 19% of annual pole costs to the communications attacher.

Background on Pole Attachment Rate Regulation

Electric cooperatives are not subject to pole attachment regulation by the Federal Communications Commission (FCC).

When Congress enacted the original Pole Attachment Act in 1978, it exempted cooperatives from FCC regulation in recognition that co-ops were best positioned to act in the best interest of their members. This exemption was maintained in the Telecommunications Act of 1996 and has remained despite efforts to remove it. Congress recognized that many cooperative consumer-members were cable subscribers themselves and stated that co-ops could be relied on to determine an equitable distribution of pole costs between themselves and the cable companies. (S. Rep. No. 95-580, at 18 (1977).) For these reasons the establishment of appropriate pole attachment rates has been left largely to negotiation between co-ops and communications attachers.

An unregulated electric cooperative may consider setting pole attachment rates using any cost-based, legally defensible methodology that fits its circumstances. There are several cost-based formulas for calculating pole attachment rates.

FCC Formulas

The FCC applies three cost-based rate formulas to poles owned by the investor-owned utilities it regulates — one applicable to cable-only attachments ("cable-only rate") and two others to telecommunications attachments ("telecom rate"). None of these FCC formulas allocate an appropriate amount of pole costs to attaching entities.

The FCC cable rate, for example, allocates only 7.4% of a utility's total annual pole costs to the attaching entity. This rate fails to reflect the attacher's full use of the pole, or the value of pole access to the attacher.

The FCC formula is grossly unfair to the cooperative pole owner, fails to reflect the attacher's actual use of the pole, and generates rates far below the value of the attachments. This is due to the FCC's lack of understanding of electric utility grid resilience and reliability obligations and sole focus on supporting communications companies subject to its jurisdiction. Attaching enties consider it beyond reproach, but only because it unfairly favors them.

Tennessee Valley Authority Formula

Fortunately, other cost-based rate formulas allocate a more reasonable percentage of pole costs to attaching entities, including the formula approved in 2016 by the Tennessee Valley Authority (TVA) and others.

TVA is a corporate entity owned by the federal government, operating in seven southeastern states and regulating approximately 165 electric cooperatives and municipally-owned utilities. TVA operates with a full appreciation of the financial needs and grid reliability obligations of electric utilities. Because of that,TVA's pole attachment formula allocates approximately 28% of annual pole costs to communications attachers (assuming 2 communications attachers and the pole owner attacher), primarily based on the understanding that all attachers make equal use of the common space on the pole (*i.e.*, six feet underground and 18 feet above-ground clearance), and so should pay an equal share of common space costs. According to TVA, their cost-based allocation appropriately compensates utility pole owners so that they "are not forced to subsidize the business activities of those entities that are utilizing electric system assets."

TVA's formula makes common sense, and is similar to rental rate formulas established in other jurisdictions like Delaware and Indiana. It is cost-based, is fair to all attachers and the pole owner, and was developed by a federal entity which, unlike the FCC, actually has jurisdiction over attachments to electric cooperative poles.

Arkansas PSC Formula

In 2016, the Arkansas Public Service Commission (Arkansas PSC) adopted pole attachment regulations that include a formula generating rates approximately midway between the low FCC rates and the TVA rate. Like FCC formulas and the TVA formula, Arkansas calculates pole attachment rates using nearly identical annual costs of owning and maintaining distribution pole infrastructure, but the differences between the formulas lies in how those costs are allocated to the communications attachers. Following its presumptions, the Arkansas PSC formula allocates approximately 19% of annual pole costs to the communications attacher.

By generating rates roughly half-way between the FCC and TVA rates, the Arkansas PSC formula serves as a middle ground between the unfairly low FCC rates favored by communications attachers and the TVA rate favored by utility pole owners. As with the TVA formula, it is arguably more legitimate than any FCC formula because the Arkansas PSC, unlike the FCC, has jurisdiction to regulate attachments to poles owned by electric cooperatives and has better appreciation for the financial needs and grid reliability obligations of electric utilities.