

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2018-00202

January 19, 2019

MAINE PUBLIC UTILITIES COMMISSION
Amendments to Chapter 395

ORDER AMENDING RULE
AND STATEMENT OF FACTUAL
AND POLICY BASIS

VANNOY, Chairman; WILLIAMSON and DAVIS, Commissioners

I. SUMMARY

Through this Order, the Commission adopts amendments to the Commission's Construction Standards, Ownership, Cost Allocation, and Customer Charges for Electric Distribution Line Extensions Rule (Chapter 395).

II. BACKGROUND

A. Chapter 395

Chapter 395 of the Commission's Rules governs construction standards, ownership, cost allocation, and customer charges for electric distribution line extensions. The Chapter establishes the requirements for persons who construct electric distribution line extensions, including the development and approval of construction standards, qualifications to perform tasks associated with building line extensions, and dispute resolution procedures. Additionally, the rule governs the ownership of electric distribution line extensions and the method for reapportioning construction costs among customers who receive service from them. Finally, Chapter 395 excludes service drops from the definition of a line extension, and specifies that a customer will not be charged for a service drop that is provided by a transmission and distribution (T&D) utility.

Chapter 395 was last amended on February 27, 2013, when the Commission removed reference to "secondary voltage line extensions" and added a provision that provided that "large" T&D utilities may not charge a customer for a service drop of up to 150 feet if located on the same side of the street as the distribution facilities and 200 feet if located on the opposite side of the street from the distribution facilities. *Maine Public Utilities Commission, Amendments to Construction Standards, Ownership and Cost Allocation, and Customer Charges Rules for Electric Distribution Line Extensions (Chapter 395)*, Docket No. 2012-00583, Order Adopting Amended Rule and Statement of Factual and Policy Basis (Feb. 27, 2013).

B. Notice of Rulemaking

On August 24, 2018, the Commission issued a Notice of Rulemaking (NOR) and proposed rule. The purpose of this rulemaking was to consider more specific requirements regarding cost responsibility for service drops. Consistent with rulemaking procedures, the Commission held a public hearing on October 2, 2018, and received written comments on the proposed amendments. Written comments were provided by Emera Maine, Central Maine Power Company (CMP), Eastern Maine Electric Cooperative, Inc., and David McElvain. The Commission addresses these comments below.

III. **ADOPTED PROVISIONS AND AMENDMENTS**

A. Section 1 (Definitions)

1. Service Drops

In the NOR, the Commission proposed amending the definition of service drop to specifically include “associated equipment, including anchors, push braces and transformers,” along with the “service cable or other conductor” already included in the definition of the rule. However, CMP noted in its comments that the inclusion of “transformers” in the definition could incorrectly imply that a customer with an underground service drop would be required to provide the transformer. Therefore, the adopted rule differs from the proposed rule in that it removes reference to transformers. Additionally, as discussed further below, because the adopted rule now requires that customers provide poles and any equipment associated with the poles, reference to “anchors” and “push braces” has also been removed from the definition, so as not to imply that such equipment will be provided for free by the T&D utility as part of an above-ground service drop. The adopted rule now defines a “service drop” as the “cable or other conductor and *associated equipment* that provides secondary voltage to the customer’s service entrance equipment from a transformer or from a secondary conductor located on the utility’s distribution system or on a privately-owned line extension” [emphasis added]. The adopted definition specifies that a service drop does not include a transformer or poles.

2. Applicability of Line Extension Charges

The adopted rule applies the line extension charges provisions (Section 10) and the service drop provisions (Section 11) to both CMP and Emera Maine. Accordingly, the rule removes the definition of “Large transmission and distribution utility,” as well as all references to “large” T&D utilities throughout the rule. Under the prior rule, provisions related to “large” T&D utilities applied only to CMP. The language in the adopted rule is unchanged from the proposed rule.

3. Consumer-Owned T&D Utilities

The rule now defines “Consumer-owned transmission and distribution utility” (COU). This definition is unchanged from the proposed rule.

4. Electric Distribution Line Extensions

In the NOR, the Commission did not propose any amendments to the definition of “electric distribution line extension,” which is was defined as “any new single-phase or polyphase distribution facility that will be connected to a T&D utility’s distribution system after the new facility’s completion.” The prior definition went on to state that an “electric distribution line extension does not include a ‘service drop’ that is provided by a T&D utility without charge to the customer.” The adopted rule modifies the prior definition of “electric distribution line extension” to remove the language referring to a service drop “that is provided by a T&D utility without charge to the customer.” This language is removed because, under the adopted rule, customers are responsible for the costs of underground service drops.

In its comments, Emera Maine requested that the definition of a “line extension” be clarified so that it is expressly clear whether a line extension includes “secondary voltage lines.” Emera Maine states that where the rule is not clear, it has interpreted a line extension to mean any line where a new pole is involved, whether the line is secondary or primary voltage.

The prior rule, the proposed rule and the adopted rule do not include any reference to “secondary voltage lines” or “secondary line extensions.” The issue of “secondary line extensions” was addressed and resolved in the last two Chapter 395 rulemakings, during which time the concept of “secondary line extensions” was removed from the rule.

In 2012 the Commission issued an NOR, noting that above-ground service drops, which were provided free of charge, were sometimes treated as “secondary line extensions” when a pole was necessary to reach the customer. Therefore, a customer located on the same side of the distribution system without the need for a pole would be provided the above-ground service drop at no charge, while a customer that required a pole because they were on the opposite side of the street or on terrain that necessitated a pole to reach the residence, would be charged line extension charges. This raises fairness issues because the need for a pole is often a function of which side of the street the distribution system happens to be located or the height of the poles a utility chose for a particular area. Therefore, the Commission amended Chapter 395 to provide that a utility could not charge for “secondary line extensions.” *Order Adopting Rule and Statement of Factual and Policy Basis*, Docket No. 2012-00313 (Oct. 22, 2012) (2012 Order Adopting Rule).

Following the issuance of the 2012 Order Adopting rule, the Commission received several petitions for reconsideration requesting that the rule contain provisions

for the establishment of secondary line extension charges. The requests for reconsideration generally acknowledged the fairness concern with regard to charging customers for “secondary line extensions,” but suggested that an approach used by Bangor Hydro Electric Company (now Emera Maine) be implemented. Under this general approach, service drop cable, for which customers are not charged, would be provided up to 150 feet if customers are located on the same side of the street as the distribution facilities and up to 200 if located on the opposite side of the street from the distribution facilities. Bangor Hydro Electric Company did not have a category of work referred to as secondary line extensions.

On December 13, 2012, the Commission issued an NOR and proposed rule that contained changes to the secondary line extension provisions. *Notice of Rulemaking*, Docket No. 2012-00583 (Dec. 13, 2012). The proposed rule contained the 150/200 foot limit approach, and as a result, noted that there would be no need for a specific definition or provisions regarding secondary voltage line extensions.

The Office of the Public Advocate and several private contractors commented in favor of the approach in the proposed rule of not charging for service drop cables up to up to the respective 150/200 feet limit, but disagreed that there should be no charge for related items such as poles and anchors. The contractors believed that charging for the setting of poles and anchors would promote competition and place costs on the cost causer.

The final adopted rule removed all reference to “secondary line extensions,” implemented the 150/200 feet limit for service drops, but was silent with regard to the contractors’ request that poles and anchors be paid for by the customer. This led to some T&D utilities adopting terms and conditions that require customers to pay for poles and associated equipment that are necessary for drop lines.

Based on this history, the Commission finds that the concept of “secondary line extensions” was removed in the prior rulemaking. Therefore, if an above-ground cable or conductor is secondary voltage, regardless of whether it requires a pole, it is a service drop.

B. Section 2 (Purpose and Applicability)

This section of the adopted rule includes service drops in addition to line extensions, when describing the scope of the rule. It remains unchanged from the proposed rule.

C. Section 10 (Line Extension Charges for T&D Utilities)

As noted above, the Commission has eliminated references to “large” T&D utilities in the adopted rule. In the NOR, the Commission proposed removing this distinction because there is no apparent reason to treat Maine’s investor-owned utilities (CMP and Emera Maine) differently in this regard. Comments received in response to

the NOR supported this proposal, and thus, the reference has been removed in the final rule. EMEC stated in its comments that the provisions and requirements contained in Section 10 would require substantial effort for COUs to implement. The Commission notes that the adopted rule explicitly exempts COUs from the provision of this section.

Additionally, in his comments and at the public hearing, Mr. McElvain noted that Emera Maine had not updated its line extension pricing since 2007. Tr. 6 (Oct. 2, 2018). Mr. McElvain stated that Emera's outdated costs hurt competition with private contractors. In its comments, Emera Maine stated that it plans on updating its line extension pricing. The removal of the term "large" T&D utility from the rule will require that Emera Maine annually update its pricing to comply with the rule.

Section 10(D) of the prior rule contained a provision regarding the cost responsibility for service drops. In the adopted rule, this provision has been removed. Provisions governing service drop installations and cost recovery are contained in a newly-added Section 11 of the proposed rule.

D. Section 11 (Service Drop Cost Responsibility, Ownership and Maintenance)

This new section applies to investor-owned utilities and addresses both above-ground and underground service drop cost responsibility, installation, ownership and maintenance.

1. Above-Ground Service Drops (Section 11(A))

Section 11(A)(1) of the proposed rule provided that only the T&D utility shall install an above-ground service drop. As noted above, the adopted definition of a service drop is that it is the cable or conductor and associated equipment that provides secondary voltage to the customer's service entrance. Commenters requested clarification on whether the definition of service drops includes poles. Based on these comments, this section clarifies that poles and the equipment associated with poles are not part of the service drop. Therefore, Section 11(A)(1) has been amended from the proposed rule to make clear that while only the T&D utility may install an above-ground service drop, poles and equipment associated with poles may be installed by a contractor or by the utility because they are not part of the service drop.

Section 11(A)(2) of the adopted rule addresses cost responsibility. Unlike the prior rule and the proposed rule, the amended rule states that the T&D utility shall not charge for an above ground service drop, regardless of length. As noted previously, the 150/200 feet distinction was developed to ensure that customers were not penalized if their service drops required poles. The removal of this distinction and the inclusion of language that makes it clear that the customer is responsible for the cost of installing any necessary poles will continue to ensure that all customers are treated equitably. This means that the installation of the conductor or cable will now be provided free of charge, regardless of the distance from the distribution system, and all customers will

be required to pay for poles and the equipment associated with poles. This provision gives customers the choice of having any poles associated with a service drop provided and installed by contractors or by the T&D utility.

Section 11(A)(3) of the adopted rule states that, for above-ground service drops, the T&D shall own and maintain the service drop and shall not charge a customer for the cost of maintaining an above-ground service drop. This section also specifies that the customer shall own any poles associated with the service drop and that it is the customer's responsibility to pay for any replacement poles and associated equipment. The customer may choose to have the utility or a contractor install a replacement pole.

2. Underground Service Drops (Section 11(B))

Section 11(B)(1) of the adopted rule provides that a customer may elect to have service provided through an underground service drop. This section remains unchanged from the proposed rule.

Section 11(B)(2) of the adopted rule states that a T&D utility shall not own an underground service drop. This section remains unchanged from the proposed rule.

Section 11(B)(3) of the adopted rule provides that if a customer elects to have an underground service drop, the customer shall provide, install and maintain all equipment related to the underground service drop.

Section 11(B)(4) of the adopted rule states that a customer that elects to have an underground service drop shall be responsible for "all costs associated with the installation, maintenance and repair of the underground service drop." In its comments, Emera sought clarification whether these costs include the cost for Emera Maine to connect the underground service drop to its system. The rule now includes language clarifying that the T&D utility shall not charge a customer for connecting the underground service drop to its system. The Commission notes that the T&D utility does not charge when connecting an above-ground service drop and this modification ensures that underground service drops are treated the same way.

3. Applicability (Section 11(C))

This section of the adopted rule states that the provisions in Section 11 do not apply to COUs. This remains unchanged from the proposed rule.

4. Prior Ownership Arrangements (Section 11(D))

In comments to the NOR, the T&D utilities requested further clarity on how to address prior ownership arrangements, such as underground service drops that have previously been transferred to the T&D utility for ownership and maintenance. This section clarifies that prior arrangements will not be affected by the new rule.

IV. ORDERING PARAGRAPHS

In light of the foregoing, the Commission

ORDERS

1. That the amendments to Chapter 395, are hereby adopted;
2. That the Administrative Director shall notify the following of the final adoption of the attached rule:
 - a. All electric transmission and distribution utilities in the state;
 - b. All persons who have filed with the Commission within the past year a written request for notice of rulemakings; and
 - c. All persons who commented in this rulemaking, Docket 2018-00202.
3. That the Administrative Director shall provide copies of the Order Adopting Rule and attached adopted rule to:
 - a. The Secretary of State for publication in accordance with 5 M.R.S. § 8053(5); and
 - b. Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine 04333-0115.

Dated at Hallowell, Maine, this 19th day of January, 2019.

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear

Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Williamson
Davis

COMMISSION ABSENT: Vannoy

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.