STATE OF NEW YORK

8756

IN ASSEMBLY

January 11, 2022

Introduced by M. of A. WOERNER -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, in relation to requiring the public service commission to initiate a proceeding to examine a process for streamlining actions related to utility pole attachments

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 119-a of the public service law, as amended by a chapter of the laws of 2021 amending the public service law relating to requirements for certain contracts for attachments to utility poles and the use of utility ducts, trenches and conduits, as proposed in legislative bills numbers S. 7028 and A. 2396-A, is amended to read as follows:

§ 119-a. Attachments to utility poles; use of utility ducts, trenches and conduits. 1. The commission shall prescribe just and reasonable rates, terms and conditions for attachments to utility poles and the use of utility ducts, trenches and conduits. A just and reasonable rate shall assure the utility of the recovery of not less than the additional cost of providing a pole attachment or of using a trench, duct or conduit nor more than the actual operating expenses and return on capital of the utility attributed to that portion of the pole, duct, trench or conduit used. With respect to cable television and broadband internet attachments and use, such portion shall be the percentage of total usable space on a pole or the total capacity of the duct or conduit that is occupied by the facilities of the user. Usable space shall be the space on a utility pole above the minimum grade level which can be used for the attachment of wires and cables. With respect to cable television and broadband internet attachments and use, a contract for attachments to utility poles and the use of utility ducts, trenches and conduits shall include all such poles, ducts, trenches and conduits located within a given village, town or city, pursuant to a negotiated site license **and any applicable commission requirements, provided that such contract shall not impede the right of a pole owner to issue licenses based on inspections undertaken on a pole-specific basis**.

2. In connection with a new pole attachment, in no instance shall a pole owner avoid responsibility for pole replacement costs by unreasonably postponing replacement until receiving a new attachment request, nor may a pole owner require a requesting attacher to pay the entire

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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cost of such pole replacement or for bringing a pole or third-party equipment into compliance with current safety and construction standards when replacement or compliance upgrades are not necessitated solely by the new attacher.

3. Where a pole owner performs a pole replacement to accommodate an attachment request, the pole owner may not require the attacher, or any existing attacher, to pay any portion of the cost of such replacement, except [~~as provided in subdivision four of this section,~~] where there is [~~not~~] insufficient capacity, clearance or loading to accommodate the request.

[~~If~~] **4. The public service commission, in cooperation with the state broadband program office, shall initiate a proceeding to examine a process for streamlining actions related to utility pole attachments. The matters the commission shall consider in such proceeding shall include: (a) dispute resolution models related to utility pole attachments; (b) cost sharing models related to utility pole attachments; (c) impact on the expansion of broadband into unserved and underserved areas associated with alternative cost allocation scenarios; (d) requiring new, less expensive pole attachment methods; and (e) existing rules regarding the cost obligations associated with new pole attachments and an assessment of the utility ratepayer and broadband subscriber impacts associated with alternative cost allocation scenarios, including but not limited to if** a pole replacement is necessitated because of insufficient vertical space or clearance to accommodate an attachment request, or the attachment will exceed loading, **making** the requesting attacher [~~shall only be~~] liable for the following costs in connection with the replacement: (a) the remaining net book value of the pole being replaced that, but for the new attachment, could have remained in service until such time as it was fully depreciated and/or reached the end of its service life or used and useful life to the pole owner, whichever would come first; and (b) the incremental costs associated with the pole owner installing a pole beyond what said owner would have installed in its normal course of pole replacement, if applicable to the request. **The commission shall invite participation in the proceeding by diverse stakeholders, including electric utilities, municipal utilities, incumbent local exchange carriers, competitive local exchange carriers, telecommunications providers, broadband internet providers, municipalities, economic development corporations, and an association of counties that represents at least ninety percent of the counties in New York. On or before September thirtieth, two thousand twenty-two, the commission shall issue an order adopting the new or revised rules associated with the matters examined in the proceeding provided for in this subdivision.**

[~~5. Where a pole owner performs a pole replacement in response to a pole attachment request, such owner may apply to the commission to recover such reasonably and prudently incurred costs in connection with such pole replacement in a charge separate and apart from its base rates.~~]

§ 2. This act shall take effect on the same date and in the same manner as a chapter of the laws of 2021 amending the public service law relating to requirements for certain contracts for attachments to utility poles and the use of utility ducts, trenches and conduits, as proposed in legislative bills numbers S. 7028 and A. 2396-A, takes effect.