

STATE OF NEW YORK

7028

2021-2022 Regular Sessions

IN SENATE

May 25, 2021

Introduced by Sen. HINCHEY -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to requirements for certain contracts for attachments to utility poles and the use of utility ducts, trenches and conduits

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

1 Section 1. Section 119-a of the public service law, as added by chapter 703 of the laws of 1978, is amended to read as follows:

2 § 119-a. Attachments to utility poles; use of utility ducts, trenches
3 and conduits. 1. The commission shall prescribe just and reasonable
4 rates, terms and conditions for attachments to utility poles and the use
5 of utility ducts, trenches and conduits. A just and reasonable rate
6 shall assure the utility of the recovery of not less than the additional
7 cost of providing a pole attachment or of using a trench, duct or
8 conduit nor more than the actual operating expenses and return on capital
9 of the utility attributed to that portion of the pole, duct, trench
10 or conduit used. With respect to cable television and broadband inter-
11 net attachments and use, such portion shall be the percentage of total
12 usable space on a pole or the total capacity of the duct or conduit that
13 is occupied by the facilities of the user. Usable space shall be the
14 space on a utility pole above the minimum grade level which can be used
15 for the attachment of wires and cables. With respect to cable television
16 and broadband internet attachments and use, a contract for attachments
17 to utility poles and the use of utility ducts, trenches and conduits
18 shall include all such poles, ducts, trenches and conduits located with-
19 in a given village, town or city, pursuant to a negotiated site license.

20 2. In connection with a new pole attachment, in no instance shall a
21 pole owner avoid responsibility for pole replacement costs by unreason-
22 ably postponing replacement until receiving a new attachment request,
23

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

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1 nor may a pole owner require a requesting attacher to pay the entire
2 cost of such pole replacement or for bringing a pole or third-party
3 equipment into compliance with current safety and construction standards
4 when replacement or compliance upgrades are not necessitated solely by
5 the new attacher.

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

12 4. If a pole replacement is necessitated because of insufficient
13 vertical space or clearance to accommodate an attachment request, or the
14 attachment will exceed loading, the requesting attacher shall only be
15 liable for the following costs in connection with the replacement: (a)
16 the remaining net book value of the pole being replaced that, but for
17 the new attachment, could have remained in service until such time as it
18 was fully depreciated and/or reached the end of its service life or used
19 and useful life to the pole owner, whichever would come first; and (b)
20 the incremental costs associated with the pole owner installing a pole
21 beyond what said owner would have installed in its normal course of pole
22 replacement, if applicable to the request.

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

28 § 2. This act shall take effect on the ninetieth day after it shall
29 have become a law.