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:

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:

§ 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.**

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,

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

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nor may a pole owner require a requesting attacher to pay the entire 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.

4. If a pole replacement is necessitated because of insufficient vertical space or clearance to accommodate an attachment request, or the attachment will exceed loading, 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.

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 ninetieth day after it shall have become a law.