

STATE OF NEW YORK

7689

IN SENATE

January 7, 2022

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

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:

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

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

27 2. In connection with a new pole attachment, in no instance shall a
28 pole owner avoid responsibility for pole replacement costs by unreason-
29 ably postponing replacement until receiving a new attachment request,
30 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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1 cost of such pole replacement or for bringing a pole or third-party
2 equipment into compliance with current safety and construction standards
3 when replacement or compliance upgrades are not necessitated solely by
4 the new attacher.

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

11 [~~if~~] 4. The public service commission, in cooperation with the state
12 broadband program office, shall initiate a proceeding to examine a proc-
13 ess for streamlining actions related to utility pole attachments. The
14 matters the commission shall consider in such proceeding shall include:
15 (a) dispute resolution models related to utility pole attachments; (b)
16 cost sharing models related to utility pole attachments; (c) impact on
17 the expansion of broadband into unserved and underserved areas associ-
18 ated with alternative cost allocation scenarios; (d) requiring new,
19 less expensive pole attachment methods; and (e) existing rules regarding
20 the cost obligations associated with new pole attachments and an assess-
21 ment of the utility ratepayer and broadband subscriber impacts associ-
22 ated with alternative cost allocation scenarios, including but not
23 limited to if a pole replacement is necessitated because of insufficient
24 vertical space or clearance to accommodate an attachment request, or the
25 attachment will exceed loading, making the requesting attacher [~~shall~~
26 ~~only be~~] liable for the following costs in connection with the replace-
27 ment: (a) the remaining net book value of the pole being replaced that,
28 but for the new attachment, could have remained in service until such
29 time as it was fully depreciated and/or reached the end of its service
30 life or used and useful life to the pole owner, whichever would come
31 first; and (b) the incremental costs associated with the pole owner
32 installing a pole beyond what said owner would have installed in its
33 normal course of pole replacement, if applicable to the request. The
34 commission shall invite participation in the proceeding by diverse
35 stakeholders, including electric utilities, municipal utilities, incum-
36 bent local exchange carriers, competitive local exchange carriers, tele-
37 communications providers, broadband internet providers, municipalities,
38 economic development corporations, and an association of counties that
39 represents at least ninety percent of the counties in New York. On or
40 before September thirtieth, two thousand twenty-two, the commission
41 shall issue an order adopting the new or revised rules associated with
42 the matters examined in the proceeding provided for in this subdivision.

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

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