

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4685

BY DELEGATES COWLES, PETHTEL, SKAFF, STORCH,

AND SUMMERS

[Introduced February 04, 2020; Referred to the
Committee on Technology and Infrastructure then the
Judiciary]

1 A BILL to amend and reenact §31G-4-4 of the Code of West Virginia, 1931, as amended, relating
 2 to the regulatory authority of the Public Service Commission over make-ready pole access
 3 and use; authorizing the commission to promulgate its own rules; and matters to be
 4 considered in the promulgation of the rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-4. Public Service Commission jurisdiction; rulemaking; enforcement.

1 (a) The Public Service Commission shall possess and exercise regulatory jurisdiction over
 2 the provisions of this article. The commission shall administer and adjudicate disputes relating to
 3 the issues and procedures provided for under this article.

4 (b) The commission shall ~~adopt the~~ promulgate its own rules with respect to the rates,
 5 terms and conditions of access to and use of poles, ducts, conduits and rights-of-way in the State
 6 of West Virginia. Such rules shall reasonably balance the interests of the subscribers of services
 7 offered through such access to and use of such poles, ducts, conduits, and rights of way with the
 8 interests of the customers of the utility providing such access:

9 (1) The commission shall consider matters of safety, reliability, prudent engineering, and
 10 fair allocation of all costs in promulgating such rules.

11 (2) The rules promulgated by the commission shall ensure: (i) That the owner of any pole,
 12 duct, conduit or right of way recovers all incremental costs associated with such access, and (ii)
 13 that any recurring rate allows the owner of a pole, duct, conduit or right of way to recover a pro
 14 rata share of the fully allocated costs associated with such pole, duct, conduit, or right of way.

15 (3) The rules promulgated by the commission shall include provisions to incorporate the
 16 commission’s Rules of Practice and Procedure to handle complaints, discovery, hearings,
 17 briefings and other procedural matters that are of part of the dispute resolution process that is
 18 currently in place at the commission for resolving disputes for other matters involving regulated
 19 utilitites, as provided in 47 U.S.C. § 224 and 47 C.F.R. § 1.1401—1.1415, inclusive, of the dispute

20 ~~resolution process incorporated by reference in those regulations and any subsequent~~
21 ~~modifications or additions to the provisions of the United States Code or Code of Federal~~
22 ~~Regulations provisions referenced herein~~

23 (4) No rule promulgated by the commission may restrict the right of a utility providing
24 electric service to deny access to a pole, duct, conduit or right of way on a non-discriminatory
25 basis where there is insufficient capacity and for reasons of safety, reliability, and generally
26 applicable engineering concerns.

27 (c) The commission shall certify to the Federal Communications Commission that this
28 state, as evidenced by the enactment of this article, hereby exercises jurisdiction over the
29 regulation of pole attachments. The certification shall include notice that the State of West Virginia
30 hereby:

31 (1) Regulates the rates, terms and conditions related to pole attachments; and

32 (2) In so regulating such these rates, terms and conditions, the state ~~has the authority to~~
33 ~~shall consider and does~~ consider the interests of the subscribers of the services offered via such
34 attachments, as well as the interests of the consumers of the services.

NOTE: The purpose of this bill is to authorize the Public Service Commission to promulgate its own rules relating to make-ready pole access and use.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.