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§ 22A. Replacing Poles and Overhead Wires — Definitions and Construction of Terms.

As used in this section and in sections 22B to 22M, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:—

- (a) “Municipality”, any city or town.
- (b) “Department”, the department of telecommunications and energy.
- (c) “Planning board”, the planning board of a city or town.
- (d) “Person” shall include individuals, firms, corporations, partnerships, and their agents and employees.
- (e) “Poles and overhead wires and associated overhead structures” shall mean poles, towers, supports, wires, conductors, guys, stubs, platforms, crossarms, braces, transformers, insulators, cut-outs, switches, communication circuits, appliances, attachments, and appurtenances located above ground, upon, along or across any public way or ways of a municipality and used or useful in the transmission of intelligence by electricity or otherwise, or for the transmission of television signals, whether by electricity or otherwise, or for the transmission of electricity for lighting, heating or power, or for the construction or operation of a street railway or an electric railroad; provided, however, that said phrase shall not mean or include any of the following: poles, towers, overhead wires and associated overhead structures used exclusively in the transmission but not the distribution of electricity; poles used exclusively for police and fire alarm boxes or any similar municipal equipment installed under the supervision and to the satisfaction of the engineer of any municipality; wires (exclusive of supporting structures) crossing any portion of any underground utility district from which overhead wires have been prohibited, or connecting to buildings on the perimeter of such portion, when such wires originate in an area from which poles and overhead wires and associated overhead structures are not prohibited; overhead wires attached to the exterior surface of a building by means of a bracket or other fixture and extending from one location on the same building or to an adjacent building without crossing any public street; radio antennae, their associated equipment and supporting structures, used by a utility for furnishing communication services; and service terminals including transformers in pedestals above ground, used to distribute electric or communication service in underground systems.
- (f) “Utility”, any person who has been or may be granted any license, permission or other authority to construct or maintain poles and overhead wires and associated overhead structures upon, along, under or across any public way or ways.
- (g) “Engineer of the municipality”, the town engineer or commissioner of public works, or other officer or employee having corresponding duties.
- (h) “Transmission”, the carrying of electric power in excess of twenty thousand volts, phase-to-phase.
- (i) “Retail delivery revenues”, the revenues that a distribution company, as defined in [section 1 of chapter 164](#), receives for transmission and distribution service excluding revenues from power supply, transition charges, renewable charges and demand side management charges.

History

1969, 884, § 1; [1997, 164, § 263](#); [1998, 463, § 141](#); [2004, 480, § 1](#).

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§ 22B. Replacing Poles and Overhead Wires — Determination to Prohibit New Construction or Require Progressive Removal.

The planning board of any town, if any, or in a town having no such board, the board of selectmen and the city council of any city or a committee designated and appointed for the purpose by it, may (after completing such preliminary consideration and study, including consultation with any utility as it may deem appropriate) at any time by resolution designating the time and place therefor call a public hearing to ascertain whether the public safety, health, convenience or welfare would be advanced by a program (a) prohibiting new installation or construction of or (b) requiring progressive removal of poles and overhead wires and associated overhead structures within all or any part or parts of the municipality. After such hearing the planning board, board of selectmen, city council or committee, as the case may be, shall make a report of its findings, conclusions, and recommendations which shall be filed with the records of the city council or the town meeting of the municipality.

History

1969, 884, § 1.

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§ 22C. Replacing Poles and Overhead Wires — Ordinance or Bylaw Forbidding New Construction.

After such report has been filed, the municipality may adopt an ordinance or by-law which shall forbid a utility to install or construct except by way of replacement or upgrading of existing facilities any poles and overhead wires and associated overhead structures upon, along or across any public way within all or any part or parts of the municipality and shall require a utility to remove immediately any poles and overhead wires and associated overhead structures installed or constructed by it in violation of such ordinance or by-law. Any such ordinance or by-law shall specify whether it applies to all of the municipality or only to a part or parts thereof and, if only to a part or parts, shall describe such part or parts with reasonable certainty by reference to the names of any way or ways to all or any designated portions thereof to which it applies, by reference to a map, or by other suitable means. Any person who installs or constructs any poles and overhead wires and associated overhead structures in violation of any such ordinance or by-law shall be punished by a fine of not less than one thousand dollars and not more than five thousand dollars. Any person who fails to remove immediately any poles and overhead wires and associated overhead structures in violation of any such ordinance or by-law shall be punished by a fine of not less than one thousand dollars and not more than five thousand dollars for each consecutive fifteen day period during which his failure continues.

History

1969, 884, § 1 ; 1984, 189, § 121.

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§ 22D. Replacing Poles and Overhead Wires — Ordinance or Bylaw Requiring Removal; Removal and Replacement with Underground Facilities.

After a report has been filed under section twenty-two B, the municipality may adopt an ordinance or by-law which shall require a utility to remove its poles and overhead wires and associated overhead structures which are located upon, along or across any public way or ways within all or any part or parts of the municipality. Any such ordinance or by-law shall specify whether it applies to all of the municipality or only to a part or parts thereof and, if only to a part or parts, shall describe such part or parts with reasonable certainty by reference to the names of any way or ways to all or any designated portions thereof to which it applies, by reference to a map, or by other suitable means.

Such ordinance or by-law may specify in whole or in part the sequence which any utility shall follow in removing its poles and overhead wires and associated overhead structures by specifying the part or parts of the municipality in which removal shall first be effected, then the part or parts in which removal shall next be effected.

Any utility which fails to remove any poles and overhead wires and associated overhead structures as required by such ordinance or by-law shall be punished by a fine of not less than one thousand dollars and not more than five thousand dollars for each consecutive fifteen day period during which such failure continues; provided, however, that no utility shall be deemed to have violated any such ordinance or by-law, provided that (a) if replacement facilities for poles and overhead wires and associated overhead structures required to be removed will be needed in order for it to continue its service, it shall within sixty days after the effective date of such ordinance or by-law petition pursuant to section twenty-two for permission to erect or construct under the public ways of said municipality replacement facilities for said poles and overhead wires and associated overhead structures, and (b) it shall prepare and file with the board of selectmen or city council of the municipality a plan (which shall be consistent with any removal sequence specified in such ordinance or by-law) for the removal of such poles and overhead wires and associated overhead structures and, if needed for the continuation of its service, for their replacement with underground facilities, and (c) in each calendar year beginning with the calendar year next following the effective date of such ordinance or by-law and until all such overhead wires and associated overhead structures shall have been removed, it shall, in carrying out such plan, allocate and expend for the direct cost of demolition and construction (over and above the reasonable value of any salvage) an amount which shall be not less than two per cent of its gross revenue or in the case of a distribution company as defined in *section 1 of chapter 164*, 7 per cent of retail delivery revenues derived during the next preceding calendar year from its customers in said municipality; provided, however, it may carry over as a credit allocable to any one or more subsequent years any amount expended in any year exceeding said two per cent of its gross revenue or in the case of a distribution company as defined in *section 1 of chapter 164*, 7 per cent of retail delivery revenues, but any utility may receive interest at the rate set by the department for customer security deposits; and (d) it shall, on or before the last day of March in each year, file with the board of selectmen or city council of such municipality a statement signed, under the penalties of perjury, by its treasurer setting forth in detail: the amounts spent by it during the immediately preceding calendar year in carrying out said plan, the purposes for which such expenditures were made; and the gross revenue or in the case of a distribution company as defined in *section 1 of chapter 164*, the retail delivery revenues derived from its customers in said municipality during the immediately preceding calendar year; and provided, however, that no utility which enters into a cooperation agreement under section twenty-two E shall be deemed to have violated said ordinance or by-law during the term such payments are to be made, so long as said utility shall not be in default of said cooperation agreement.

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If any such ordinance or by-law, provides, any utility in providing replacement facilities for any poles and overhead wires and associated overhead structures required to be removed shall install customer's service facilities. Any sums expended by any utility in installing such customer's service facilities in compliance with such ordinance or by-law shall be deemed to have been expended in carrying out the plan of such utility, referred to in this section, for the removal of such poles and overhead wires and associated overhead structures, and for their replacement by underground facilities.

History

1969, 884, § 1 ; [2004, 480, §§ 2-5](#).

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§ 22E. Replacing Poles and Overhead Wires — Removal and Replacement by Municipality under Cooperation Agreement with Utility.

Any utility organized and existing under the laws of or doing business in this commonwealth and any municipality may enter into, and from time to time amend, and perform a cooperation agreement pursuant to which (a) the utility shall pay to the municipality in each calendar year for a period of years specified in such agreement an amount which shall be not less than two per cent of such utility's gross revenue or in the case of a distribution company as defined in [section 1 of chapter 164](#), [7](#) per cent of retail delivery revenues derived during the next preceding calendar year from its customers in said municipality and (b) the municipality shall expend during such term as such agreement may specify an amount not exceeding the sums paid to it by the utility pursuant to such agreement to remove (or cause to be removed) any poles and overhead wires and associated overhead structures of such utility and, if needed for the continuation of such utility's service, to replace the same (or cause them to be replaced) with underground facilities. In carrying out its obligations under any such cooperation agreement, a municipality may exercise all of its powers appurtenant to the performance of any public work and may award contracts in the same manner and subject to the same limitations and restrictions as would apply to like contracts in reference to the planning or performance of any public work. Such cooperation agreement may contain any and all such provisions as shall be consistent with the purposes of this section, including a provision that the municipality shall expend a portion of the sums paid to it by the utility for the provision of customer's service facilities.

History

1969, 884, § 1 ; [2004, 480, § 6](#).

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§ 22F. Replacing Poles and Overhead Wires — Notices Required of Municipality.

The municipality shall comply with the following provisions with reference to notice:

- (a) When the planning board, board of selectmen, city council or committee of any municipality calls a public hearing pursuant to section twenty-two B, the clerk of the municipality shall publish a copy of said resolution in a newspaper of general circulation in the municipality at least once not more than fifteen nor less than five days prior to said hearing.
- (b) When a municipality adopts an ordinance or by-law pursuant to section twenty-two C or section twenty-two D the clerk of the municipality shall, in addition to any other notice required by law, notify all utilities known to have poles and overhead wires and associated overhead structures affected by said ordinance or by-law and all persons known to own real property served by said poles and overhead wires and associated overhead structures, by mailing a copy thereof to said persons and utilities within thirty days after the date it was adopted.

History

1969, 884, § 1.

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§ 22G. Replacing Poles and Overhead Wires — Special Permission to Construct and Operate, Notwithstanding Provisions of Ordinance or Bylaw.

The board of selectmen or city council of any municipality may grant special permission, for such period and on such terms as it may deem appropriate, in cases of emergency or unusual circumstances, without discrimination as to any person or utility, to erect, construct, install, maintain, use or operate, poles and overhead wires and associated overhead structures, notwithstanding the provisions of any ordinance or by-law adopted pursuant to section twenty-two C or twenty-two D. No person shall be deemed to have violated any ordinance or by-law adopted pursuant to section twenty-two C or section twenty-two D for doing any act authorized by any such special permission.

History

1969, 884, § 1.

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§ 22H. Replacing Poles and Overhead Wires — Requirements as to Underground Construction.

If underground construction is necessary to provide replacement facilities for any poles and overhead wires and associated overhead structures removed pursuant to any ordinance or by-law enacted pursuant to section twenty-two D the utility shall be responsible to furnish in connection with such replacement facilities only that portion of the conduits, conductors and associated equipment required to be furnished by it under its applicable rules, regulations and tariffs on file with the department (hereinafter called the “utility’s service facilities”); provided, however, that the utility shall by its tariff offer to carry its lines up to any structure which is to receive service or a distance of fifty feet from the street, whichever is the lesser; and provided, further, that if any ordinance or by-law adopted pursuant to section twenty-two D so provides, any utility in providing underground replacement facilities for any poles and overhead wires and associated overhead structures shall install customer’s service facilities. Underground construction by the utility, or by or on behalf of any municipality, pursuant to any cooperation agreement entered into pursuant to section twenty-two E shall be accomplished in accordance with the rules and regulations authorized by the department, and shall be scheduled so as to be completed at or prior to removal of such poles and overhead wires and associated overhead structures as are being removed.

History

1969, 884, § 1.

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§ 22I. Replacing Poles and Overhead Wires — Customer's Service Facilities Defined.

All underground construction and conduits, conductors and associated equipment necessary to receive utility service between the utility's service facilities referred to in section twenty-two H and the service facilities in the building or structure being served shall be deemed "customer's service facilities".

To the extent required by any ordinance or by-law adopted pursuant to section twenty-two D may provide, any utility in providing underground replacement facilities for any poles and overhead wires and associated overhead structures shall install customer's service facilities. In all other respects the provision of customer's service facilities shall be the responsibility of the person owning, operating, leasing or renting said property, subject to applicable rules, regulations and tariffs of the utility on file with the department and to the requirements of applicable laws, ordinances and by-laws. If the person owning, operating, leasing or renting said property fails to provide such customer's service facilities which are his responsibility prior to the time for removal of the poles and overhead wires and associated overhead structures of the utility, the engineer of the municipality shall have the authority to order the disconnection and removal of any and all overhead service wires and associated facilities supplying utility service to said property at the expense of the person owning, operating, leasing or renting said property, and the municipality shall have a claim against said person for the cost thereof and a lien against said property to secure said claim. No utility shall be in violation of any such ordinance or by-law in continuing to maintain overhead facilities necessary to serve such person during the period of such person's failure to provide customer's service facilities for which he is responsible and such reasonable time thereafter as may be necessary to remove such overhead facilities. No utility shall be deemed to be in violation of any law, by-law or ordinance or any obligation to the public or to any person by reason of such utility's discontinuing service to any property in the event of failure of the person owning, operating, leasing or renting said property to provide customer's service facilities for which he is responsible prior to the removal by any utility of its poles and overhead wires and associated overhead structures as required by any ordinance or by-law adopted pursuant to section twenty-two D of this chapter.

History

1969, 884, § 1.

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§ 22J. Replacing Poles and Overhead Wires — Removal by Municipality of Police and Fire Alarm Circuits from Poles.

When a municipality adopts an ordinance or by-law pursuant to section twenty-two D, it shall remove its police and fire alarm circuits or any similar municipal equipment at its own expense from all poles required to be removed, and the removal of such circuits shall be completed in such manner and in such time as not to hinder or interfere with action taken by the utility to comply with said ordinance or by-law.

History

1969, 884, § 1.

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§ 22K. Replacing Poles and Overhead Wires — Effect of Impossibility of Performance of Acts Required by Ordinance or Bylaw.

If any act required by an ordinance or by-law adopted pursuant to section twenty-two D cannot be performed within the time provided on account of shortage of materials, war, restraint by public authorities, strikes, labor disturbances, or any other circumstances beyond the control of the person obligated to perform such act, then the time within which such act will be accomplished shall be extended for a period equivalent to the time of such limitations.

History

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§ 22L. Replacing Poles and Overhead Wires — Differential in Customers' Rates in Municipalities Prohibiting New Overhead Construction.

If at any time one or more but less than all of the municipalities in which the customers of any one utility are located adopt an ordinance or by-law forbidding new installation of overhead facilities under section twenty-two C, the department of telecommunications and energy shall, in accordance with the provisions of section fourteen of chapter one hundred and fifty-nine and section ninety-four of chapter one hundred and sixty-four, after notice to all the municipalities in which such customers are located, and a hearing, establish a differential between the rates charged customers located in municipalities which have adopted such ordinance and those located in municipalities which have not adopted such ordinance, provided that no such differential, however introduced or effected, shall at any time result in revenues materially exceeding any increased cost of providing service caused solely by adoption of such ordinance by such municipality. The foregoing procedure for establishing such differential shall be exclusive.

History

1969, 884, § 1; [1997, 164, § 264](#).

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§ 22M. Replacing Poles and Overhead Wires — Collection by Utility of Surcharge on Customer Billings.

In addition to all other rates, charges and fees it may otherwise be authorized to impose and collect any utility shall impose and collect as a capital contribution towards the cost of construction a surcharge of two per cent on its total billing to each customer located in a city or town which has in force and effect an ordinance or by-law adopted in accordance with section 22D. However, a distribution company, as defined in *section 1 of chapter 164*, shall impose and collect a surcharge of 7 per cent of retail delivery revenues, plus interest at the rate set by the department, for customer security deposits except in a city or town that before the effective date of this section has enacted an ordinance or by-law under section 22D establishing a 2 per cent surcharge or where construction is in progress or already completed, unless the city or town otherwise agrees to the 7 per cent surcharge by adopting an ordinance or by-law under said section 22D. A surcharge under this section shall apply only if the distribution company is not in violation of the ordinance or by-law and if the ordinance or by-law has been in effect for a period of at least 1 year.

History

1969, 884, § 1 ; [2004, 480, § 7](#).

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§ 22N. Replacing Poles and Overhead Wires — Effective Date of any Ordinance or Bylaw Adopted.

Any ordinance or by-law adopted under the provisions of section twenty-two C or section twenty-two D shall become effective on the first day of January next following a date nine months subsequent to the date of its enactment.

History

1969, 884, § 1.

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