

JASON M. STANEK
CHAIRMAN

MICHAEL T. RICHARD
ANTHONY J. O'DONNELL
ODOGWU OBI LINTON
MINDY L. HERMAN



PUBLIC SERVICE COMMISSION

February 25, 2021

Chairperson Delores G. Kelley
Senate Finance Committee
Miller Senate Office Building, Room 3 East
Annapolis, MD 21401

RE: SB 754 – UNFAVORABLE – Public Service Commission – Damaged, Obsolete, or Excessive Lines - Fines

Dear Chair Kelley, Vice Chair Feldman, and Committee Members:

The Maryland Public Service Commission opposes Senate Bill 754, which would require the Commission to promptly notify the owner of a utility pole if and when the Commission receives notice related to: 1) a damaged or dangling line; 2) an obsolete or redundant line; or 3) a blight or public nuisance caused by an excessive number of lines on a utility (hereinafter referred collectively as “Offending Lines”). The legislation provides that within 30 days after receiving notice from the Commission, the owner of the utility pole shall require the entity that controls the lines to investigate and, where appropriate, remove the Offending Lines. If the Offending Lines are not repaired or removed within 90 days after the Commission notifies the owner of the utility pole, SB 754 directs the Commission to impose a \$250 fine on the owner of the utility pole for each day of non-compliance.

Regulation of Pole Attachments

As a threshold matter, SB 754 seeks to regulate wires attached to utility-owned poles, which in many cases presents a jurisdictional issue when the lines are for telecommunication services. The Commission only regulates electric utility infrastructure, and, with the exception of local voice telephone service, the Commission does not regulate most of the operations of telecommunication common carriers that attach their wires to utility poles, such as Comcast, AT&T and Verizon. While the Commission has jurisdiction over matters involving electric utility wires and electric utility-owned poles, the Commission does not have jurisdiction over non-utility wire attachments, even if they are attached to electric utility poles. Instead, the Federal Communications Commission (“FCC”) regulates the market for such pole attachments, and there are clear (federal) regulations and rules for attaching wires to poles.¹ Once the wires are attached, however, there are no regulations and rules regarding their removal. In most cases, the Offending Lines may not fall within existing Commission jurisdiction but within FCC jurisdiction.

¹ These rules include mandatory pole access and joint use.

Pole attachments are also governed through negotiated agreements between pole owners and pole attachers. In some cases, where the electric utility has joint ownership of a pole with a telecommunications carrier through a contract, the Commission has jurisdiction over the jointly owned pole. However, the utility's negotiated contracts for wire attachments with various telecommunications common carriers do not fall under Commission jurisdiction; they are also subject to federal law. *See* 47 U.S.C. § 224. Under federal law, there are specific conditions that must be satisfied before a State can certify to the FCC that it can regulate terms and conditions involving pole attachments.

Investigation, Repair and Removal Requirements

SB 754 requires pole owners to be responsible for investigating and, where appropriate, removing the Offending Lines. If the Offending Lines are not timely repaired or removed, the pole owner would be subject to a civil penalty for noncompliance. This provision of the bill is problematic for two reasons. First, pole owners cannot remove lines they do not own, except as provided under any terms and conditions of a controlling pole attachment agreement. Second, as a matter of fairness and due process, before the Commission can impose a civil fine, the pole owner should have an opportunity to respond to the complaint—via Commission-led investigation by the Consumer Affairs Division or evidentiary-type proceeding.

Commission Notification Requirement

SB 754 provides that upon receiving notice of an Offending Line, the Commission shall promptly notify the utility company in whose distribution service territory the pole is located. However, a complaint about an Offending Line could involve a utility pole, a telecommunications common carrier pole, or a jointly owned pole. While a pole number could, in theory, help identify the pole owner, individuals reporting Offending Lines might not provide a pole number when calling in problems at pole locations.

Offending Line Conditions

SB 754 specifies three line conditions that trigger the Commission's notification obligation. The first condition pertains to damaged or dangling lines. As a matter of safety and reliability, all lines that are damaged or dangling down need to be reported immediately by the person observing the wire condition to the electric company, even if the observer is uncertain about the type of wire or who owns it. The utility will respond immediately to ensure the area is made safe. SB 754 could have the unintended consequence of confusing customers who have been educated to call the electric utility first to report a damaged, dangling, or downed wire.

The second line condition concerns an obsolete or redundant line. SB 754 does not, however, define the terms "obsolete" or "redundant". Without an objective standard, these terms

are ambiguous. The Commission would be required to act based solely on the reporting individual's subjective judgment.

Similarly, the third line condition covers blight or public nuisance caused by an excessive number of lines on a utility pole. Similar to the "obsolete" and "redundant" condition, this third category relies on the judgment of the individual reporting the line condition to the Commission. Furthermore, placing the maximum number of lines on a pole serves to minimize the number of poles.

For the above reasons, I respectfully request an unfavorable report on SB 754. However, if the Committee is inclined to proceed with SB 754, I recommend that the legislation be amended as follows:

5-107

(A) ~~THE COMMISSION SHALL PROMPTLY NOTIFY THE OWNER OF A UTILITY POLE IF THE COMMISSION RECEIVES NOTICE A COMPLAINT TO ITS CONSUMER AFFAIRS DIVISION RELATED TO A UTILITY POLE AND THE COMPLAINT INCLUDES THE POLE NUMBER. OF:~~
THE COMMISSION SHALL PROMPTLY NOTIFY THE UTILITY COMPANY OR COMPANIES IN WHOSE DISTRIBUTION SERVICE TERRITORY THE POLE IS LOCATED

~~(1) — A DAMAGED OR DANGLING LINE;~~

~~(2) — AN OBSOLETE OR REDUNDANT LINE; OR~~

~~(3) — BLIGHT OR PUBLIC NUISANCE CAUSED BY AN EXCESSIVE NUMBER OF LINES ON A UTILITY POLE.~~

(B) ~~WITHIN 30 DAYS AFTER RECEIVING NOTICE FROM THE COMMISSION, THE OWNER OF THE UTILITY POLE~~ UTILITY COMPANY OR COMPANIES IN WHOSE DISTRIBUTION SERVICE TERRITORY THE POLE IS LOCATED SHALL REQUIRE FORWARD THE COMPLAINT TO ALL THE PERSONS THAT CONTROLS THE ANY LINE OR LINES ATTACHED TO THE IDENTIFIED POLE. TO INVESTIGATE AND, WHERE APPROPRIATE, REPAIR OR REMOVE THE OFFENDING LINE OR LINES.

(C) ~~IF THE OFFENDING LINE OR LINES ARE NOT REPAIRED OR REMOVED WITHIN 90~~ 45 ~~DAYS AFTER THE COMMISSION NOTIFIES THE OWNER OF THE UTILITY POLE~~ UTILITY COMPANY OR COMPANIES IN WHOSE DISTRIBUTION SERVICE TERRITORY THE POLE IS LOCATED, THE UTILITY COMPANY OR COMPANIES WILL PROVIDE A RESPONSE TO THE COMPLAINT IDENTIFYING ALL PERSONS THAT CONTROL ANY LINE OR LINES ATTACHED TO THE POLE INCLUDING THE TERMS OF THE LINE ATTACHMENT AGREEMENT AND DESCRIBING ABOUT THE CONDITION OF THE LINES. ~~THE COMMISSION SHALL IMPOSE A FINE ON THE OWNER OF THE UTILITY POLE OF \$250 FOR EACH DAY OF NONCOMPLIANCE.~~

WILLIAM DONALD SCHAEFER TOWER • 6 ST. PAUL STREET • BALTIMORE, MARYLAND 21202-6806

410-767-8000 • Toll Free: 1-800-492-0474 • FAX: 410-333-6495
MDRS: 1-800-735-2258 (TTY/Voice) • Website: www.psc.state.md.us/psc/

(D) IF NECESSARY, IN ITS DISCRETION, THE COMMISSION MAY SHALL ADOPT REGULATIONS TO CARRY OUT THE REQUIREMENTS OF THIS SECTION.

Thank you for the opportunity to provide testimony regarding Senate Bill 754. Please contact Lisa Smith, Director of Legislative Affairs, at 410-336-6288, if you have any questions.

Sincerely,



Jason M. Stanek
Chairman