

Public Service Commission Staff Report

Improving the Equipment Transfer Process for Utility Poles in New York State

*NYPSC Case 08-M-0593 – Proceeding on Motion of the Commission to Evaluate a
Standardized Facility and Equipment Transfer Program*

Executive Summary

On June 5, 2008 the New York State Public Service Commission (Commission) initiated a proceeding, Case 08-M-0593, to evaluate the need for a program to improve the efficiency and communication involved in the transfer of overhead utility and communication facilities. The Commission intended to implement a Standardized Facility and Equipment Transfer Program (SAFET Program or Program) to establish better coordination between utilities transferring facilities and equipment to new poles and to speed the removal of old poles.

Commission Staff (Staff) utilized a collaborative approach involving all interested parties to develop a state wide program that would most effectively achieve the Commission's goals to enhance the coordination, communication, monitoring, and notification relating to facility transfers by utility pole owners, attaching entities, and the public. The collaborative included representatives of New York State's major utility pole owners, third party attachers, Staff, and other interested parties. The collaborative resulted in substantial agreement among the parties with respect to a program that is expected to achieve the interests of the Commission and meet the needs of the participants.

Electric and telecommunications companies generally attach their facilities to poles. Utilities' facilities in New York State are routinely transferred daily between utility poles for many reasons, including road construction, capital improvements, damage, and decay. Staff conducted a review of New York State's double pole status and found a significant number of double pole conditions. In addition to its own observations, Staff took into account complaints that were received over the last several years from state agencies, municipalities, and the public regarding incomplete facility transfers. Staff recommended that the interests of public safety and reduced utility and attacher costs, required development of a process to better coordinate and facilitate the transfer of facilities to new poles and to speed the removal of old facilities. Pursuant to Staff's recommendation, the Commission initiated the subject proceeding.

New York State is one of a number of states that have recognized an increase in double pole conditions in instances where either only part of the overhead facilities is transferred or where all of the overhead facilities are removed and the unused pole is abandoned rather than being removed. Other state utility regulators, legislatures, and municipalities have taken action on this issue. Among these states are Maine, Massachusetts, New Hampshire, New Jersey, and Vermont. All have taken various approaches to mitigate issues that are associated with facility transfers and double pole removal.

Through the proceeding's working groups, the collaborative effectively identified important issues for consideration in the formulation of a SAFET Program and developed a program with which most participants are in substantial agreement. A concerted effort was made to consider the input of all interested parties and develop a SAFET Program representing a consensus of most or all of the participants. In instances where agreement was not reached, Staff has recommended provisions for a complete and effective SAFET Program.

First and foremost, there was consensus among the parties that there were potential benefits of a state wide pole transfer program. The pole owners and Staff evaluated and chose a commercial software product in accordance with the Commission Order requiring a standardized facility and equipment transfer program for record-keeping, communication, coordination, monitoring and notification related to facility transfers between poles. A majority of the pole owners favor participating in a six year "no cost" software program that is among those presented by software vendors for the collaborative's consideration. There was consensus that Staff and the pole owners would conduct a review of the SAFET Program two years after the program's implementation. Some pole owners expressed the concern that after six years the software vendor will charge an undetermined amount for the previous "no cost" software service. Staff recommends that if the "no cost" option software program is not extended beyond six years Staff will revisit the cost allocation issue. In addition, Staff will monitor the program on an ongoing basis. Staff has proposed pole transfer and removal time criteria to enable the program to be monitored and evaluated. Penalties were not developed for non-compliance with the program, however, based upon results of the two year evaluation, penalties could be considered if needed. The consensus is that resolution of disputes will initially be undertaken between the pole owner and the other party to the dispute. Unresolved disputes can be presented to Staff or the Commission's Alternative Dispute Resolution (ADR) process can be utilized.

The Staff team believes that the proposed SAFET Program will provide parties participating in the Program with efficiencies in managing pole facilities and cost less than the methods currently utilized.

Introduction

The installation of new utility poles is essential to maintenance of safe, adequate, and reliable electric and communication services. However, removal of older often structurally unsound poles has not kept pace with new pole installations. In many instances, this results in a partial transfer of facilities where one utility transfers all or part of its equipment to the new pole, while the facilities of other utilities or attachers are left on the old pole. Until the transfer of all facilities is complete and the older pole is removed, two poles remain in close proximity to each other. This is an acceptable practice if the transfers are completed within a reasonable period of time. However, when such transfers are delayed or never completed, a double-pole condition is created which results in unnecessary costs, inefficiencies, and potential public safety impacts.

Over the last decade Electric and Telecommunication Staff observed increasing numbers of double pole conditions and identified this as a potential area of concern. In addition to the increasing numbers of double poles that were observed, numerous complaints were received, prompting Staff to investigate the proliferation of double poles. In 2007 Staff reviewed its telecommunication outside plant inspection data with respect to the double pole issue. While the data collected is small as compared with the overall outside plant in New York State, the results revealed 1,134 non-standard conditions¹ among 2,023 inspections. Of the 1,134 non-standard conditions, 5% of the poles were in an uncompleted transfer condition, or the pole itself was abandoned. An extrapolation of Staff's findings, in addition to the complaints and inquiries that were received, suggested that double poles were becoming an issue of concern.

To determine whether other states were experiencing the same situation, Staff reviewed the actions taken by neighboring states with regard to double pole conditions. Outside New York, twenty states have addressed the growing concern over delayed facility transfers and double pole removal. Vermont and New Hampshire Public Utility Commissions mandate the remediation of double poles as part of their approval of the sale of telecommunication infrastructure. Maine uses its Department of Transportation regulations to require wire transfer and pole replacement completion within one year of a new pole's installation. At the request of Massachusetts legislators the State's Department of Telecommunications and Energy requires the removal of double poles within 90 days of a new pole's installation. The New Jersey legislature amended an existing law to require that all poles and debris be removed within 90 days of completion of facilities transfer. Municipalities in New Jersey are authorized to

¹ Non-standard conditions are present when overhead facility transfer is not complete or when the transfer of overhead facilities is complete but the vacated pole has not been removed.

impose a fine of up to \$100 each per day, after 90 days, until the condition is corrected.

In 2006, the New York State Assembly addressed the removal of abandoned utility poles with the introduction of Bill No. 10978 to amend the Public Service Law (PSL). Legislation was also introduced in 2010, Bill No. 10577, which would require large telecommunications companies to complete pole inspections, conduct a pole study, and submit the companies' remediation plans for removal of unsafe or unacceptable poles, with removal to take place within 120 days of the pole study submission. These proposals did not include electric or small telecommunication facility operators.

In 2008, the Commission in Case 08-M-0593, initiated this proceeding to evaluate a SAFET Program. Staff considered a collaborative approach to be the best method of developing an inclusive and functional state wide program. All New York State parties that own or jointly own poles, parties that attach to poles, and parties that are affected by pole transfers or abandoned poles were invited to participate in the collaborative process.

Discussion

The Commission Order initiated this proceeding to evaluate the potential benefits of a SAFET Program for record-keeping, communication, coordination, monitoring and notification related to facility transfers on utility poles owned by electric and telephone corporations. The Order directed that the proceeding should inquire as to the feasibility of a SAFET Program's use by utility pole owners, attachers, public and other parties to provide a more comprehensive facility management program, lower maintenance and capital costs and improve public safety. The SAFET Program is expected to automatically inform entities of the need for facility removal, the availability of poles for telecommunications and cable facility transfers, the identity of the entity responsible for removing the old poles, and provide notification that the old poles are ready for removal. A state wide facilities transfer program involves the complex interface of diverse corporate structures and government authorities. Considerations include the needs of both large and small utility pole owners and attachers, as well as the interests of State government entities such as the Department of Transportation (DOT) and local city, town, and village governments. The SAFET Program must meet the diverse interests, different project and deadline needs, and unique agendas of each of these entities. The collaborative approach identified the issues of importance to the participating parties and facilitated the development of a SAFET Program that reflected the input of the participants and achieved the goals identified by the Commission.

The following issues were raised:

SAFET Program Development

- Clear definition of what the system must accomplish
- Ability of system requirements to integrate with existing systems in NY
- Adaptability of software to NY pole owners and attachers
- Content of notices and method of dissemination
- Timeliness of work flow

- Method of compiling and inputting pole information
 - Extent and type of action required with respect to double pole conditions
 - Pre-existing double pole conditions
- Dispute Resolution and Penalty Action
- Involvement of local permitting authority – DOT, municipal, pole owners
- Legal requirements/obligations of pole owners

Legislation

- Overlap of rules and regulations

Cost Allocation

- Cost of program and/or software
- Division of cost among pole owners and attachers
- Recovery or mitigation of cost

Participation

- Requiring all parties to participate
- Method of system utilization and by whom

SAFET Program Development

Program development encompassed all the issues identified above. Three choices in program methodology were considered: either use a system from a commercial software vendor, employ a system to be developed by the pole owners, or ask the NYS call before you dig One-Call Center organizations to develop a system.

The resources and experience of commercial software vendors were key factors in choosing a commercially developed system. The development of a program by pole owners was not deemed realistic due to the extensive time and resources needed for pole owners to do this type of development. This would be particularly inefficient because networking

programs already exist through software vendors. Development of a program by State One-Call Centers through their existing state wide communications and databases would have been more practical, however, both Call Centers declined to take on this type of work at this time.

To address the program development issues, four software vendors undertook the unique challenge of working in a collaborative with a working group comprised of potential customers. The vendors described their services to the working group. They explained how they would address the goals of the Commission, the pole owner's requirements and Staff monitoring requirements. They described how their programs would meet the goal of providing a system for record-keeping, communications, coordination, monitoring and notifications related to pole facility transfers. The pole owners and the Staff team evaluated the vendor proposals and determined that each of the proposed systems provided the IT, notification, and reporting services required for the SAFET Program. The vendors, however, addressed the program requirements differently and at significantly different costs.

A majority of the pole owners agreed, with Staff's concurrence, on a vendor whose program meets the Commission's requirements for a facilities transfer program and the requirements of the users.

Some of the pole owners suggested that to ensure that the vendor can fully deliver the program it proposes, the program's operation should be evaluated. To accomplish this, the pole owners and Staff will review the SAFET Program's functionality two years after it is implemented, or sooner if necessary, and make any necessary changes.

In addition to the two year review of the SAFET Program, on an ongoing basis, Staff will monitor the implementation of the Program and its success in achieving the intended goal of improving the pole transfer process.

SAFET Program timeframes were developed to enable the function of the Program to be assessed. The establishment of measurable and enforceable timeframes for the SAFET Program's operation was discussed, but consensus was not reached. Without established timeframes for the participants' implementation of the various components of the Program, it would be difficult to evaluate the Program during the initial two year trial period. Although not recommended by Staff for inclusion at this time, Staff proposes timeframes with which to guide the evaluation of the Program and gauge its success.

Staff proposes the following pole transfer and removal guidelines:

- From the time a pole owner is first informed that a pole must be removed, or if of its own volition, from the time it first informs an attacher that its equipment must be removed, the original pole should be removed within 60 days. This can be evaluated further as experience increases. Pole owners have the flexibility to establish timeframes for attachers to transfer faculties in order to achieve a workable schedule with all the attaching entities.
- Within 24 hours or the next business day after a company's facility transfer is completed the SAFET Program's notification system should be updated to document the completion.
- Poles (including poles that pre-exist the SAFET Program) with partial transfers or no attachments, that pose an immediate or potential safety hazard should be resolved immediately upon recognition of the situation or within 24 hours respectively.

The parties represented in the working group agreed that any double pole identified as hazardous or unsafe should be addressed promptly.

Pre-existing Double Pole Conditions

The SAFET Program is intended to apply to facility transfers, double pole conditions and pole transfers beginning with the effective date of the SAFETY Program, as determined by the Commission. Therefore, any such activities that occur between that date and the implementation of the Program should comply with the SAFET Program requirements.

After the Program is fully implemented, poles comprising pre-existing conditions, meaning those that exist prior to the effective date of the SAFET Program, should be entered into the SAFET system. This will enable pre-existing conditions including partial facility transfers and poles awaiting removal, to be entered into the SAFET Program software and addressed utilizing the Program's notification. Remediation of existing double wood situations was not explicitly addressed by the collaborative other than to note the importance of ensuring that the selected program could facilitate such remediation. Certain pole owners believed that this issue should not be addressed further in this proceeding. Staff will not recommend that remediation of pre-existing double pole conditions be required at this time in instances other than those constituting a hazardous condition. Staff proposes that the pole owners develop a plan describing efforts that they will undertake to reduce the number of double poles currently in existence, so that safety and financial concerns will diminish. It is recommended by Staff that the pole owners should provide Staff with a report within 180 days of the effective date of the Commission

Order. Staff will continue to monitor the number and management of pre-existing poles.

Dispute Resolution and Penalty Action

It is not expected that all pole transfers and removals will be without dispute. Resolving disputes must be accomplished as efficiently as possible.

It was agreed by the working group and Staff that the first level of dispute resolution should take place between the disputing parties. If the dispute is irresolvable by the parties, it can be referred to Staff or the ADR process can be utilized. While the ADR process would formally resolve the dispute, the process may not resolve the dispute quickly enough to satisfy the efficiency sought in the SAFET Program.

In the case of contract disputes between pole owners and attaches, assistance may be required to resolve disputes where all parties may not fall within PSC jurisdiction. Contractual disputes are best settled between pole owners and attaches in accord with pole attachment agreements. Resorting to judicial dispute resolution may be too time consuming to support SAFET Program goals. As such, the best efforts of the parties to resolve disputes rapidly and fairly, is necessary for the success of the Program.

The possibility of penalty actions for non-compliance with the Commission's Order, as set forth in the PSL, may deter delays and disputes in the facility transfer or pole removal process. State and local government parties generally were of the view that necessary enforcement could be accomplished through that means. The parties generally agreed that a specific penalty structure is not workable, nor is it necessary, because the Program is beneficial to the pole owners, attachers, and other affected parties and voluntarily compliance is expected. The need for penalties can be evaluated further during the initial two year review period.

The State DOT and municipalities have engaged the pole owners and attachers in local enforcement actions. Local municipalities may also have the ability to levy fines for non-compliance by pole owners. In addition, if a road project is delayed due to delay in a pole owner facility transfer, pole owners are concerned that DOT or a municipality may take this into account in the issuance of construction permits to the pole owners on subsequent utility projects.

The pole owners expressed the concern that no matter which entity causes a delay, it is usually the pole owner that is penalized due to its accessibility and because responsibility for management of utility poles lies primarily with the pole owners. The SAFET Program will provide

improved communication and notification between pole owners and attachers, thereby improving this situation.

Cost Allocation

A majority of the pole owners favored the “no cost” software option offered by one of the commercial vendors. The vendor offers a software service that meets the minimum requirements of the SAFET Program at no cost for six years and the ability to opt out of the Program after two years. The vendor offers other services that some pole owners have shown interest in, such as, software that enhances the pole owner’s work management systems. The software costs beyond the required “no cost” service will be the responsibility of each company that requests the service. Some of the pole owners were concerned that after the “no cost” six years the vendor could charge an undetermined amount for the service. Staff proposes to revisit the cost allocation issue if the “no cost” option is not extended beyond six years.

The pole owners are also concerned about recovering costs other than the vendor costs, such as additional IT hardware, labor, and litigation associated with operating the Program. These costs are unknown and pole owning utilities would not have these costs included in their rates until the next time rates are reviewed and approved by the Commission. Increased utility costs can be addressed through existing means. Pole owners could request that Program costs be deferred for consideration in an upcoming rate order. If the costs become impediments to critical expenditures the pole owners have the option to petition the Commission for recovery. The opportunity to request recovery in rates and the possibility of incorporating increased costs in attachment fees continues to be available.

Program efficiencies may reduce costs. Among the cost reducing efficiencies this could include are more effective communication and coordination of workforces and the need for less administrative time to communicate and coordinate transfer needs. Entities will know precisely when they are required to perform their activity in the transfer process and when their work can be conducted. Work crews will be less likely to travel to a location and find that the steps that are required to be taken before they can perform their work have not been taken. The wasted time and necessity of having to return to the location at another time will be avoided.

Participation in the SAFET Program

The pole owners have management responsibility of the poles and throughout the proceeding they embraced the development of a facilities transfer program, as did major attachers. Some of the third party attachers see little benefit for themselves to be gained from the Program,

however, were they not to participate, delayed transfers caused by disengaged attachers could impact the effectiveness of the SAFET Program and result in increased costs for all and potentially impact safety. In addition to participation by pole owners and attachers within the Commission's jurisdiction, we urge the Commission to strongly encourage participation by other attachers and governmental entities. We include the Long Island Power Authority in this category.

Implementation of the SAFET Program will change very little in an attacher's facility operations and therefore should not be a deterrent to that parties' participation. Attachers will benefit because by using a consistent state wide web based notifications system they will be alerted more efficiently when their facilities must be transferred and they will be able to more effectively relate their completion of work to the pole owners. To assist in management of their facilities, pole owners often stipulate in their pole attachment agreements, that if attachers do not modify facilities as required within a specified period of time, the pole owner may make the modification and charge the attacher. Staff urges the Commission to encourage pole owners to enforce their contractual agreements in order to advance facility transfers in a timely manner. To maintain timely transfers, Staff recommends that the Commission endorse the inclusion of enforceable provisions, in any renegotiated and future agreements between pole owners and attachers.

State DOT and municipal participation is also important to the SAFET Program's success. As non-attaching parties these entities engage in road construction activities that are affected by utility poles that must be removed. Delays in those transfers can negatively affect the projects and increase their cost. The benefits of participation in the SAFET Program should therefore be recognized by these government entities and they are urged to participate fully.

These municipal parties can also constitute third party attaches by virtue of their mounting street lights, fire/police alarm, or local communications networks on utility poles. It is important for the Commission to require all pole owners and attaching entities over which it has jurisdiction, to participate in the SAFET Program. State DOT and municipalities should be strongly encouraged to participate in the SAFET Program as significant parties in pole attachments.

Legislative Action

Legislative proposals that duplicate or overlap the intent of the SAFET Program were not discussed by the collaborative, but Staff recognizes that proposed Legislative Bill 10577, if it became law, would be redundant in some aspects and may cause undue confusion among the participants. Legislative Bill 10577 was introduced on April 8, 2010 to amend the PSL as it relates to telecommunication poles. Staff did not evaluate the bill's

merits with regard to telecommunications safety and reliability, but did review its proposed mandates and evaluate the extent to which the bill impacts the scope of the SAFET Program.

The bill would apply only to telephone companies with more than one million subscribers, which singles out Verizon, and leaves out the major electric utilities and small telecommunication pole owners in the state. The inspection mandate would identify abandoned unused poles, but would not address the generation of those poles, partial transfer, or double poles as systematically as the SAFET Program. The bill provides deadlines for pole removals and also implements penalties.

The SAFET Program and the proposed legislation have common issues that overlap, for example, requirements relating to removal of hazardous poles with no facilities attached. If the bill were passed as proposed, any conflicts that may develop between its provisions and the terms of the SAFET Program would be reviewed by Staff and any necessary modification to the SAFET Program would be recommended. Staff, however, believes the proposed SAFET Program provides a more comprehensive method of addressing the systemic problems of double pole conditions going forward than does the proposed legislation.

Proposed Resolution

The proposed “no cost” software program will fulfill the minimum SAFET Program requirements as established by the Commission and meet the needs of the participants. The Program provides the minimum SAFET Program requirements, however, if a utility company so requests, the Program can be modified to provide greater efficiencies to the company, at its own cost. If the “no cost” software service is not extended after six years Staff will revisit the cost allocation issue.

Recovery of the cost of the SAFET Program by utility companies is not addressed in this proceeding. Existing methods of seeking recovery are not affected and Staff would support requests for deferral of the SAFET Program costs for consideration of recovery until a company’s next rate case. If the costs of the Program become an impediment to critical budget items, the pole owners can petition the Commission for recovery. Commission approval of pole owners’ inclusion of SAFET Program costs in pole attachment fees as appropriate is recommended.

Dispute resolution will begin between the pole owner and the other party to the dispute. The software vendor can provide information to assist in the resolution of a dispute. If a dispute is irresolvable by the pole owner and the attaching party the dispute can be presented to either Staff or submitted to the ADR process. Contractual agreement disputes are the initial responsibility of parties in dispute. Regardless of the time required for resolution, the flow of facility transfers including pole removal should

not be delayed by disputes. Pole owners should take whatever measures available to maintain the timeliness of facility transfers and pole removals. To assist pole owners in managing the flow of transfers, they should be encouraged to include enforcement language in any renegotiated and new pole attachment agreements, as consistent with the SAFET Program's objectives.

Penalties were not specifically identified or developed for the SAFET Program. The Commission, pursuant to the PSL, presently has authority to proceed against regulated companies with penalty actions if justified. The need for additional penalties and or enforcement tools will be evaluated after the Program is operational and has been evaluated. The working group agreed that the Program should be evaluated two years after the SAFET Program is initiated. Staff will monitor the effectiveness of the Program through its own observations as well as feedback from the participating parties and public input to evaluate whether the Program is meeting the Commission's goal to improve the efficiency of facility transfers and pole removal and will recommend any modifications that it deems necessary.

Staff recommends the pole transfer and removal timeframes specified above to instill effective practices and enable the Program to be effectively evaluated. Double pole conditions and incomplete facilities transfers that exist after the effective date of the SAFET Program should comply with the proposed timeframes. All double pole conditions that pre-exists the SAFET Program effective date will be entered into the SAFET system as pre-existing and not as a backlog. Backlog will be recognized to apply to non-compliant transfers and pole removals that are guided by the SAFET Program timeframes.

No timeframe for actual work on pre-existing conditions is suggested, but Staff urges that the companies expeditiously address those issues in due course. The pole owners are expected to utilize the Program's notification system to manage the pre-existing facilities as well as current conditions. The pole owners should submit to Staff, within 180 days of the SAFET Program's effective date, a plan that addresses their pre-existing double pole conditions, with the goal of eliminating pre-existing conditions. Staff will continue to monitor pre-existing conditions.

All pole owners and attaches within the jurisdiction of the Commission should be required to participate in the SAFET Program. Those parties over which the Commission does not have jurisdiction should be strongly urged to participate. Participation by others may be achieved through pole attachment agreements. NYS DOT and municipalities are strongly encouraged to participate. To the extent that all involved and affected parties participate, the benefits of the SAFET Program will be shared by all.