RS 48:19-17

June 14, 1971

LEGISLATIVE HISTORY OF R.S. 48:19-17
(Pipelines in streets authorized; municipal consent)

(Source) Rev. 1877, p. 1367, § 49

Amended by:

L. 1962, Chapter 198 - § 193 (A486)
See Legislative History of R.S. 48:19-20.

L. 1966, Chapter 233, § 1 (A496).
March 7 - Introduced by Hyland (and 3 others).
May 9 - Passed in Assembly.
June 6 - Passed in Senate.
August 10 - Approved, Chapter 233.
Statement on the bill (copy enclosed).

Similar bills (1965-1971) - None located.

Searched Report of the Dept. of Public Utilities (1966) without success.

Searched Report of Board of Utility Commissioners (1965-) without success.

Searched New Jersey Municipalities (1966)
"Underground Utilities", Nov. 10, 1966 (copy enclosed).

TD/PC
GC-Yes

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ASSEMBLY, No. 496

STATE OF NEW JERSEY

INTRODUCED MARCH 7, 1966

By Assemblymen HYLAND, HORN, DICKEY and MILLER

Referred to Committee on Highways, Transportation and Public Utilities

AN ACT concerning the installation of pipes beneath public roads, streets and places by water companies and amending section 48:19–17 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. Section 48:19–17 of the Revised Statutes is amended to read as follows:

48:19–17. Each water company may lay its pipes beneath such public roads, streets **[**,**]** and **[**alleys**]** *places* as it may deem necessary for its corporate purposes, free from all charge to be made by any person or body politic whatsoever for such privilege, and may also construct and maintain hydrants on and along such *roads,* streets and **[**alleys**]** *places, provided* that the **[**consent shall be obtained of the corporate authorities of the municipality through which the pipes may be laid. The**]** pipes shall be laid at least 3 feet below the surface and shall not in anywise unnecessarily obstruct or interfere with the public travel or damage public or private property.

The consent of the public body charged with the repair and maintenance of such public roads, streets and places shall first be obtained.

If such public body shall refuse or fail to give its consent, the water company may appeal to the Board of Public Utility Commissioners of the State of New Jersey. A hearing thereon shall be had on notice to all parties in interest, who shall be afforded an opportunity to be heard. If, after such

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

hearing the Board of Public Utility Commissioners shall determine that the installation of such pipes or hydrants is reasonably necessary for the service, convenience or welfare of the public, the water company shall be authorized to proceed in accordance with such determination.

2. This act shall take effect immediately.

STATEMENT

The purpose of the provisions of this section requiring municipal consent is to protect the public against unnecessary obstruction of roads or damage to property.

In many cases, such roads are under the jurisdiction of the county or other public agencies. It is unnecessary duplication to require municipal consent as well as the consent of other public bodies.

Notwithstanding the decision of the Supreme Court in Hackensack Water Company v. Ruta, 3 N. J. 139 (1949) which states that a municipality may not arbitrarily or capriciously refuse its consent, public bodies might delay service to the public by refusing their consent and thus forcing the water company to resort to court action.

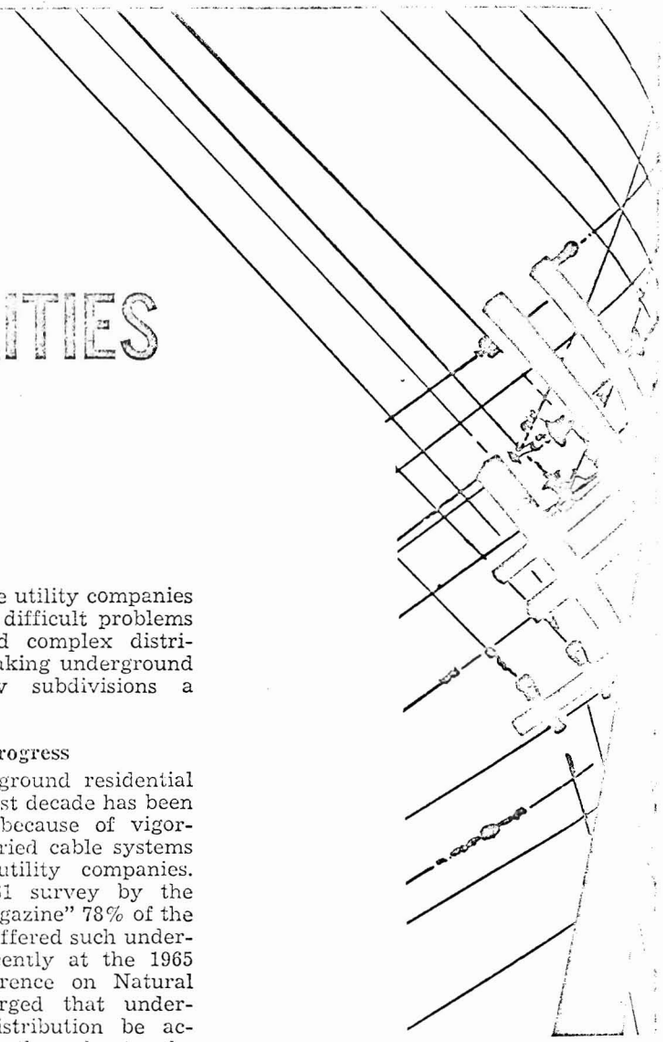
The proposed amendment permitting the water company to present its appeal to the Board of Public Utility Commissioners upon refusal or failure of the public body to give its consent, would provide a speedy determination of the controversy.

The public is protected since the board is required to make a finding that the installation is reasonably necessary for the service, convenience and welfare of the public.

In any event, the water company is required to proceed before the Board of Public Utility Commissioners since the board has construed such consent to be a privilege requiring its approval under Revised Statutes 48:2–14.

UNDERGROUND UTILITIES

By DAVID PARSONS, Supervising Planner,
N. J. Division of State and
Regional Planning



Photos courtesy *Massachusetts Municipal Voice*

Electrical power and telephone distribution in the United States has been developed primarily with overhead construction. Underground installation has been voluntarily used in the past only where the load density has made it impossible to use overhead distribution. For example, many central business districts of larger urban areas and some long-distance telephone trunk lines are serviced by underground systems. In a few cities, underground systems are found in high-priced residential areas where the higher installation costs are paid by the developer and, of course, ultimately passed on to the home buyer.

The adoption of the overhead distribution system was based primarily on its advantages of minimum initial investment and less complicated construction. The system was flexible and additional capacity could be obtained by adding a few new wires. Overhead distribution was easily suited to meet any expansion of residential, business and industrial loads.

The original design of our national power systems was strongly influenced by service load requirements that were quite small in comparison with today's demands. Residential electrical usage only a short while ago consisted principally of several illuminating fixtures scattered through a home. Only recently has there been a marked increase in the number and type of household appliances and even electrical heat which has brought about an unprecedented demand for power.

Telephone and power companies started more than 50 years ago to replace overhead distribution systems with underground service installations in congested areas of our cities. Conversion was made solely to insure better service in high load areas where utility companies faced extensive and costly service failures when pole service was interrupted. In these locations underground facilities could be economically justified. However, in low density areas, the utility companies are confronted with difficult problems involving costly and complex distribution equipment making underground installation in new subdivisions a difficult matter.

Recent Progress

Progress in underground residential distribution in the past decade has been substantial, largely because of vigorous promotion of buried cable systems by a few major utility companies. According to a 1961 survey by the "Electrical World Magazine" 78% of the utilities in 42 states offered such underground service. Recently at the 1965 White House Conference on Natural Beauty, a panel urged that underground electrical distribution be actively encouraged throughout the country and that the public be better informed of its potentialities.

Also in July 1965, the Federal Housing Administration issued a directive requiring underground residential distribution in all future FHA insured sub-divisions. Exceptions would be permitted in subdivisions with unique and difficult terrain problems, if the developer could prove to FHA's satisfaction that underground utilities would not be economically feasible for the particular project.

This move has begun to accelerate the growth of underground distribution. In addition, municipal authorities in at least several dozen cities have adopted laws requiring underground facilities in certain new subdivisions. Furthermore, underground utilities have been employed in such new towns as Foster City, California and Reston, Virginia.

Costs

Although the popularity of underground utilities has been increasing at a rapid pace in recent years, the reason for the limited use, at least in New Jersey, has been the cost of installation. Only ten years ago the cost differential between the installation of underground and overground facilities was 10:1 (ten times as expensive for underground lines). However, with the use of more efficient equipment for trenching and backfilling and less restrictive depth requirements for the cable, the trenching cost for most places has been reduced by as much as 30%. In addition, technical innovations have assisted in cost reduction including new types of cable, the use of preassembled ducts, and new termination procedures. Today the cost differential has been reduced to roughly 1.5:1 in many areas. According to N. J. Public Service Electric and Gas Company, the cost differential under ideal conditions (a subdivision of over 50 homes on lots no wider than 85 feet) varies from $100 to $130 per unit. Underground facilities will be installed at the request of the developer, if he pays the cost difference

and undertakes all trenching and backfilling operations.

The Atlantic City Electric Company will install underground service at no cost to the developer, if it is guaranteed that certain percentage of the structures in the subdivision will have electric heat or major electrical appliances to assure a high demand for electricity.

In respect to high tension transmission lines the cost differential between underground and overground services is still unreasonable. Generally the cost ratio runs from 10:1 to 30:1. As an example, the 500,000 volt, 90 mile Keystone Project of the New Jersey Public Service Electric and Gas Company is estimated to cost $15,000,000 with the use of overground high tension lines. The estimate for underground cables runs above $400,000,000. This vast difference did not include the fact that underground cable capable of carrying the proposed load has yet to be developed.

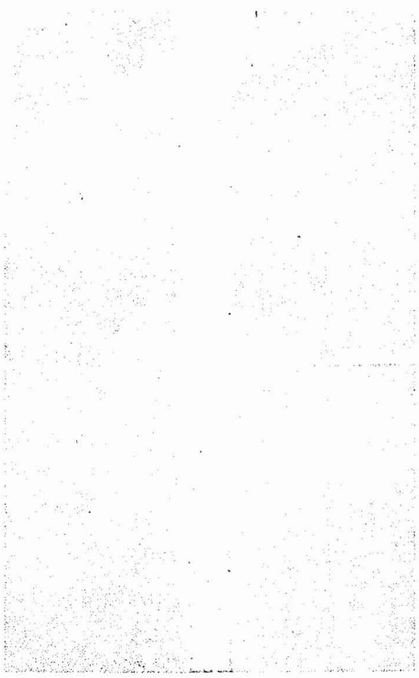
Construction Methods

The methods used for the construction of underground distribution systems vary considerably. Small systems involving a few homes may require a single underground tap or lateral from an overhead line leading into the subdivision. Large subdivisions may require main trunk feeders with alternate overhead supply points, or the main supply itself might be taken from underground feeder lines directly connected to the central station. Telephone and power lines in some areas may be buried in separate trenches; however, it is usually preferable to place the lines in a common trench.

There are two methods of installing underground distribution systems, duct or direct burial. In a duct system the cables are pulled through tubes which may be encased in concrete. In the burial system, cables are buried directly in the earth. While direct burial is increasing in use, even with the introduction of new types of power and telephone cables, ducts must still be used to prevent cable damage in rocky soils and filled land under roadways.

The type of subdivision design, topography and other physical features along with rights-of-way for water, sewer and other utilities directly influence the location of underground electrical facilities. Most utility companies prefer to locate the easements, in which the cable and transformers are placed, along the rear and side property lines. Although this procedure is preferred from a planning and aesthetic standpoint, problems arise in serving street lights from the easements that must be left open for repair equipment. This feature limits the construction of fences and the planting of trees. Also there is always the potential of the service man trampling the "rose garden" in order to make a repair in the line.

To counteract these problems, front yard easements have lately become popular. However, until recently, utility companies were reluctant to place the transformers underground because adequate pre-cast water proof vaults had not been developed. Aesthetic problems were quite apparent and the utilities tried several innovations including a disguise of the transformer through landscaping and shrubbery, newer design and the use of attractive colors, but all attempts were unsuccessful. Finally, with the development of the above mentioned water proof vault, this problem was solved. Today the utility companies can locate both cables and transformers almost any place on the property without causing unsightly problems except perhaps for a painted metal container rising several inches above the ground surface.



Municipal Control

Power and utility companies are subject to complex public controls. Rates are established by state and federal governments, equipment must meet minimum standards set up by the state, and local regulations may to some extent influence the location of the distribution system and plant.

Local governments throughout the country have made beginning efforts to require the developer to install underground electrical and telephone service through the subdivision regulations as part of the municipal police power. It is debatable whether or not such regulations are reasonable in cases where the cost differential between overground and underground installation is relatively high. However it is an accepted element of the police power to require the subdivider to install or provide other costly improvements including roads, sewers, curbs and even open space. In New Jersey, Ocean Township (Ocean County) has recently amended its subdivision regulations to require the developer to install underground electrical service. Presumably the additional cost of installation will be passed on to the developer. However this regulation is subject to possible exemption by the State Board of Public Utility Commission. According to a recent telephone interview, the Public Utility Commission reviews each request for an exemption from municipal regulations on its own merits. The prime question is usually the economics of the particular situation. If it is found that underground service can be provided economically and technically in a particular area, the Board will be reluctant to grant an exception.

In regard to transmission lines which carry high and extra-high voltage, the Board feels that any underground requirement at this time would not be reasonable because of excessive high costs of installation. In addition, the New Jersey Supreme Court in 1961, in re: *Public Service Electric and Gas Company*—173A, 2d 233 held that a municipality had no power to require that power lines be placed underground.

This case primarily concerned the problem of high voltage transmission where the public interest extended beyond the municipal boundaries.

The Future of Underground Distribution

Notwithstanding the doubtful status of local underground distribution ordinances, the future outlook for the acceleration of installation of underground utilities is very bright. With the reduction of the cost differential through improved equipment and installation techniques, with continued pressure brought forth through consumer demands, and with the encouragement of the Federal Housing Administration, it can be estimated that within at least a decade a vast majority of new subdivisions will have underground service. Some estimates run as high as 75% to 80%.

Conversely the potential for underground high voltage transmission lines is at this time not great. However, with the development of new equipment and other technological advances, the time may come in the forseeable future when the many high tension lines now traversing our State will be placed below ground. ○