

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

Comcast of Massachusetts III, Inc.

Complainant,

v.

Peabody Municipal Light Plant and Peabody
Municipal Lighting Commission

Respondents.

D.T.C. 14-2

**COMCAST OF MASSACHUSETTS III, INC.'S RESPONSE TO THE DEPARTMENT
OF PUBLIC UTILITIES' FIRST SET OF INFORMATION REQUESTS**

Pursuant to M.G.L. c. 30A, 220 C.M.R. §§ 1.00 *et seq.* and the September 3, 2014 Phase I Order for the above-referenced matter, Comcast of Massachusetts III, Inc. hereby responds and objects to the Department of Public Utilities' First Set of Information Requests (the "Requests") as follows:

PRELIMINARY STATEMENT

The entity responding to these requests is Comcast of Massachusetts III, Inc. ("Comcast"). Comcast's responses to the Requests are based on information known to it at this time and are set forth without prejudice to its right to supplement these responses or to assert additional objections should it discover additional information or grounds for objection at any time before the above-referenced matter is adjudicated. These responses are made without in any way waiving or intending to waive: (a) any objections as to the competency, relevancy, materiality, privilege or admissibility as evidence, for any purpose, of any answer provided in response to the Requests; (b) the right to object on any ground to the use of the answers provided

in response to the Requests at any hearing or adjudicatory proceeding; or (c) the right to object on any ground at any time to a demand for further responses to the Requests.

Disclosure of any information that is privileged, that was prepared in anticipation of litigation, or that is otherwise legally protected from disclosure, is inadvertent and not intended to and does not constitute a waiver of any privilege or of any other ground for objection to the discovery of such information or of Comcast's right to object to the use of such information.

GENERAL OBJECTIONS

Comcast's responses are made subject to the following General Objections, which apply to each Information Request as if incorporated and set out in full in response to each:

1. Comcast objects to the Requests to the extent that they seek information that is protected from discovery by the attorney-client privilege, the joint defense privilege, the work product doctrine, or any other applicable privilege, rule or duty of confidentiality that precludes or limits production or disclosure of information, including, without limitation, disclosures of documents that contain or reflect information obtained from confidential sources, the disclosure of which would be contrary to public policy.

2. Comcast objects to the Requests to the extent that they are vague, ambiguous, or do not describe the information sought with reasonable particularity.

3. Comcast objects to the Requests to the extent that they seek information in the possession, custody, or control of entities other than Comcast.

4. Comcast objects to the Requests to the extent that they assume disputed facts or legal conclusions in defining the information sought. Comcast hereby denies any such disputed facts or legal conclusions. Any information provided by Comcast with respect to any such

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request is without prejudice to this objection and Comcast does not, by responding to any request, adopt or agree with such disputed facts or legal conclusions.

5. Comcast objects to the Requests to the extent that they seek to require the review of documents and data that are not reasonably accessible and likely are duplicative of data available from other more readily accessible sources.

6. Comcast objects to the Requests to the extent that they exceed the scope of Rules 26, 33 and 34 of the Massachusetts Rules of Civil Procedure or attempt to place greater burdens or obligations on Comcast than those required by Massachusetts Rules of Civil Procedure 26, 33 and 34.

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Information Request DPU-Comcast 1-1

Refer to Comcast's Complaint, Exh. 13, "Calculation of PMLP Maximum Lawful Pole Attachment Rates Using 2012 DPU Annual Report Data." Please calculate a pole attachment rate for Solely Owned and Jointly Owned poles as per the Massachusetts Formula. Clearly show the operation of the formula and cite all inputs used by Comcast in the calculation of these rates.

Response to Information Request DPU-Comcast 1-1

Please see the attached Excel spreadsheet which shows the calculation of a PMLP pole attachment rate for Solely Owned and Jointly Owned poles under the Massachusetts Formula using PMLP's 2012 DPU Annual Report Data and PMLP updated pole count and specific pole height data for its poles provided to Comcast in discovery. See *A-R Services* at 29. The spreadsheet shows each step of the operation of the Massachusetts Formula and cites all inputs and their source.

Person who will support this response: Patricia Kravtin

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Information Request DPU-Comcast 1-2

Refer to Comcast's response to Information Request DPU-Comcast 1-1. Please indicate the source and describe the rationale for the figure that Comcast used for "Normalized Tax Expense."

Response to Information Request DPU-Comcast 1-2

Because municipal light plants ("MLPs") are not subject to taxes, none of the tax accounts included under the Massachusetts Formula in the tax component of the carrying charge factor are directly applicable to PMLP. As a result, there are no actual tax amounts paid by a municipal light plant such that a strict application of the Massachusetts Formula would apply a value of zero for the tax element (as is the case for deferred taxes). However, it is reasonable and generally accepted as being consistent with the Formula's use of a fully allocated cost methodology (which by design produces rates at the upper bound of a just and reasonable rate) to include analogous, albeit voluntary payments by a tax-exempt utility in the derivation of the tax element in Line O "Normalized Tax Expense," as shown in the calculation of PMLP pole attachment rates provided in response to DPU-Comcast 1-1. In the case of PMLP, it makes "payments in lieu of taxes" to both the City of Peabody and the Town of Lynnfield, the sum of which is an appropriate input value to use in the Massachusetts Formula for tax expense for PMLP. The amount in Line O "Normalized Tax Expense" was derived from PMLP's 2012 Annual Report at page 21, cell b24 (payments in lieu of taxes to City of Peabody in the amount of \$480,000) and cell b25 (payments in lieu of taxes to Town of Lynnfield in the amount of \$15,000) by adding those two amounts together in DPU-Comcast 1-1 line O, to reach the figure of \$495,000.

Person who will support this response: Patricia Kravtin

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Information Request DPU-Comcast 1-3

Refer to Comcast's response to Information Request DPU-Comcast 1-1. Please indicate the source and describe the rationale for the figure that Comcast used for "Rate of Return."

Response to Information Request DPU-Comcast 1-3

The source for the "Rate of Return" figure is a proxy benchmark value based on a publicly reported index of municipal revenue bond interest rates called the Bond Buyer 25 Revenue Bond Index . The average value for that index for the year 2012 (to match the other cost data provided in PMLP's most recently available Annual Report) is 4.56% (http://www.bondbuyer.com/apps/custom/msa_search.php?product=bbi_history&col3=1&start_date=01%2F01%2F2012&end_date=12%2F31%2F2012&submit=GO). The rationale for using this figure is that under the Massachusetts Formula, the "Rate of Return" element of the carrying charge factor allows the pole owning utility to recover a normal or fair (economic) return on invested capital from third-party attachers over and above actual cost recovery. For an IOU, the capital cost element of the carrying charge factor component of the Formula is the most current authorized rate of return set by the Department. Because MLPs are not subject to rate of return regulation, have no set predetermined allowed rate of return, and face a different set of capital costs than investor-owned utilities, it is necessary and economically appropriate to substitute an effective "rate of return" in lieu of an allowed rate of return. Indeed, as an MLP, PMLP does not need to access capital equity markets. It would be fully justified from an economic perspective to use an input value of zero for the rate of return element of the Massachusetts Formula. However, as with the tax expense element of the carrying charge factor, it is also reasonable and generally accepted as being consistent with the Formula's use of a fully allocated cost methodology (which by design produces rates at the upper bound of a just and reasonable rate) to include a non-zero rate of return element as a reasonable cost of capital proxy for the rate of return element. Because PMLP faces no actual equity risk, an economically appropriate approach would be to use a number for the "rate of return" that reflects PMLP's cost of debt, as measured by its booked interest expenses. Such debt costs reflect the true "opportunity cost" of money as it would represent the actual financing costs that an MLP such as PMLP incurs in the construction of the fixed assets underlying the net investment carried on its books. For this reason the cost of debt is the most reasonable proxy for the rate of return component of the rate formula. In this instance, however, PMLP has no long-term debt and thus no long term debt expense; in fact, as noted above, it carries a substantial surplus on its books. In the absence of any actual or reported debt cost, the proxy benchmark value described above has been used. Doing so provides an exceedingly generous amount of cost recovery for PMLP, given its status as a debt-free, government-owned entity with a substantial "unappropriated earned surplus" to fund its operations.

Person who will support this response: Patricia Kravtin

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Information Request DPU-Comcast 1-4

Refer to Comcast's response to Information Request DPU-Comcast 1-1. Please indicate the source and the describe rationale for the figure that Comcast used for "Annual Depreciation for Poles." Provide all underlying calculations in support of this figure.

Response to Information Request DPU-Comcast 1-4

The source for the amount listed as "Annual Depreciation for Poles" is page 17 cell d6 of PMLP's 2012 Annual Report. There were no additional calculations made to reach this figure. Because PMLP's annual pole depreciation expense is directly reported to the Department in its Annual Reports, the actual amount reported can be a direct input into the Formula at Line X in the spreadsheet response to DPU-Comcast 1-1 to calculate the depreciation expense Carrying Charge Factor. The application of PMLP's actual, publicly reported annual pole depreciation expense is consistent with the DPU's goal to rely on publicly available data. *See Cablevision of Boston Co. et al. v. Boston Edison Co., D.P.U./D.T.E. 97-82 (Apr. 15, 1998) at 19 and A-R Cable Services, Inc., et al. v. Massachusetts Electric Co., D.T.E. 98-52 (Nov. 6, 1998) at 7* (explaining goal to "simplify the regulation of pole attachment rates as much as possible by adopting standards that rely upon publicly available data.") The carrying charge factor for annual depreciation expense as applied in the Formula to net investment for poles is simply calculated by dividing reported Account 364 depreciation expense by the net investment in Account 364, or equivalently, by dividing the reported Account 364 depreciation expense by gross investment in Account 364 multiplied by the gross to net investment ratio for poles.

Person who will support this response: Patricia Kravtin

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Respectfully submitted,
COMCAST OF
MASSACHUSETTS III, INC.



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September 18, 2014

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CERTIFICATE OF SERVICE

I certify that on September 18, 2014, I served the foregoing document on the Service List in DTC Docket No. 14-2 in accordance with 220 C.M.R. 1.00 *et seq.*



Kevin C. Conroy