

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

Comcast of Massachusetts III, Inc.

Complainant,

v.

D.T.C. 14-2

Peabody Municipal Light Plant and Peabody
Municipal Lighting Commission

Respondents.

**COMCAST'S ANSWER TO PETITION TO INTERVENE
OF THE ASHBURNHAM MUNICIPAL LIGHT PLANT**

In accordance with 220 C.M.R. 1.03, Comcast of Massachusetts III, Inc. ("Comcast") hereby responds to the Petition to Intervene of the Ashburnham Municipal Light Plant ("Petition") filed on May 8, 2014 in the captioned proceeding. For the reasons set forth below, Comcast respectfully requests that the Department deny the request of Ashburnham Municipal Light Plant ("AMLP") for "full party intervenor status."¹ However, Comcast does not object to AMLP's participation limited solely to AMLP providing its position regarding the threshold legal issue in this proceeding - namely whether utilities in Massachusetts are bound by the Massachusetts Formula, as set forth in D.P.U./D.T.E. 97-82, Cablevision of Boston Company, et al. v. Boston Edison Company, 1998 WL 35235111 (April 15, 1998) and D.T.E. 98-52, A-R Cable Services, Inc., et al. v. Massachusetts Electric Company (Nov. 6, 1998), in establishing their maximum permitted pole attachment rates (the "Legal Issue").²

¹ Petition at page 1 and ¶18.

² The Massachusetts Formula was developed in 1998 by the Department of Telecommunications and Energy ("DTE") – the predecessor agency of the Department of Telecommunications and Cable ("the Department") and the Department of Public Utilities ("DPU") – in D.P.U./D.T.E. 97-82, Cablevision of Boston Company, et al. v. Boston Edison Company, 1998 WL 35235111 (April 15, 1998) ("Cablevision

As explained in Comcast's Complaint, the Massachusetts Formula was explicitly developed by the DTE to implement the requirements of M.G.L. c. 166, § 25A (the "Pole Attachment Statute"). A principal objective for establishing the formula was "to have a simple, predictable and expeditious procedure that will allow parties to calculate pole attachment rates without the need for Department intervention."³ Application of the Massachusetts Formula to Peabody Municipal Light Plant (PMLP) would fulfill the requirements of the Pole Attachment Statute and the objectives of the Department's precedent by establishing the maximum lawful rate chargeable by PMLP without the necessity of a "costly, full-blown rate case" but instead through "streamlined proceedings based on publicly available data."⁴ However, in its Answer, PMLP denies, without explanation, that the Department's precedent is binding upon it – "PMLP further denies any allegations that the so-called Massachusetts Formula applies to the PMLP."⁵

As AMLP acknowledges in its Petition, "the relevant *legal issues* underlying Comcast's assertions are the same as those in [the PMLP proceeding]...."⁶ In this regard, AMLP also disputes the applicability of the Massachusetts Formula to its pole rates, albeit relying on an entirely different pole attachment rate formula than PMLP. To the extent that the Legal Issue is resolved by reaffirming the applicability of the Department's Massachusetts Formula precedent to PMLP, it would likewise bind AMLP and substantially resolve the rate issue in both disputes. Accordingly at the May 14, 2014 procedural conference, Comcast will propose that the Legal Issue be resolved before the remainder of D.T.C. 14-2 moves forward.

of Boston"). The Massachusetts Formula was reaffirmed and clarified by the DTE in another 1998 decision, D.T.E. 98-52, *A-R Cable Services, Inc., et al. v. Massachusetts Electric Company* (Nov. 6, 1998) ("*A-R Cable Services*").

³ *A-R Cable Services* at 7; see also *Cablevision of Boston* at 19.

⁴ *A-R Cable Services* at 7; see also *Cablevision of Boston* at 19.

⁵ PMLP Answer at ¶ 28.

⁶ Petition at 8 (emphasis added).

However, Comcast opposes the intervention of AMLP as full party because if the Massachusetts Formula is not found to bind PMLP, then the issues regarding the validity of the differing PMLP and AMLP formulas and any other factual questions that might arise in the context of each matter would have no connection to one another. Under such circumstances the combination of such matters would offer no economies or efficiencies to the Department or the parties – the opposite would be true.⁷

The Department has “broad discretion to determine whether to permit participation in Department proceedings, and the extent of such participation,”⁸ and such a determination is “based on individual facts establishing the ‘substantial and specific’ affect that the proceeding may have on the individual or entity seeking to intervene.”⁹ AMLP has failed to meet this burden as it has not asserted individual facts that establish any substantial and specific affect that this proceeding will have on it other than resolution of the Legal Issue. Aside from the common Legal Issue, the AMLP matter involves a different town, rate, pole attachment rate formula, pole attachment agreement and other factors that will not be affected by resolution of the specifics of the PMLP case. AMLP’s proposed “full party” involvement in the instant case will unnecessarily complicate its resolution, a substantial concern in light of the expedited procedural schedule.

⁷ As explained in the Petition, AMLP envisions its “full party” participation to include providing “evidence, including but not limited to affidavits, expert testimony, briefs and cross-examination” (Petition at ¶ 16) to demonstrate that its pole attachment rates meet the requirements of the Pole Attachment Statute. As explained herein, the issues relating to AMLP are entirely irrelevant to whether PMLP’s rates are lawful to the extent that the Massachusetts Formula does not bind both utilities.

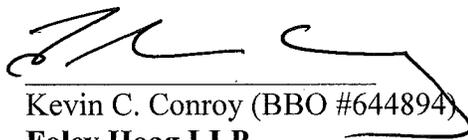
⁸ *Petition of Comcast Cable Communications, LLC to establish and adjust the basic service tier programming, equipment, and installation rates for the communities in Massachusetts served by Comcast Cable Communications, LLC that are currently subject to rate regulation*, D.T.C. 13-5, Hearing Officer Ruling on the Town of Weymouth’s Petition to Intervene at 2 (June 24, 2013) (citing *Att’y Gen. v. Dep’t of Pub. Utils.*, 390 Mass. 208, 216 (1983); *Boston Edison Co. v. Dep’t of Pub. Utils.*, 375 Mass. 1, 45 (1978), *cert. denied*, 439 U.S. 921 (1978); see also *Robinson v. Dep’t of Pub. Utils.*, 835 F.2d 19 (1st Cir. 1987); *Newton v. Dep’t of Pub. Utils.*, 399 Mass. 535, 543, n.1 (1959)).

⁹ *Id.* (citing *Bd. of Health of Sturbridge v. Bd. of Health of Southbridge*, 461 Mass. 548, 558 (2012)).

Accordingly, Comcast does not object to intervention by AMLP for the limited purpose of expressing its position on the Legal Issue. *See* 220 CMR 1.03(1)(e) (“The Commission ... may grant a person leave to intervene as a party in the whole *or any portion of a proceeding...*”) (emphasis supplied). Clearly, allowing AMLP intervention status in the PMLP proceeding on any basis other than to address the Legal Issue would prejudice Comcast, notwithstanding AMLP’s contention to the contrary.

Based on the foregoing, Comcast respectfully requests that the Department deny the request of AMLP for full-party intervenor status and instead limit AMLP’s participation solely to addressing the Legal Issue.

Respectfully submitted,



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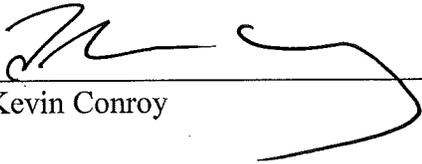
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Attorneys for Comcast of Massachusetts III, Inc.

Dated: May 13, 2014

CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2014, I served the foregoing Answer to Petition to Intervene of the Ashburnham Municipal Light Plant by personal delivery and first-class U.S. Mail to the attached Service List in accordance with the requirements of 220 CMR 1.05.



Kevin Conroy