



THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

DEVAL L. PATRICK
GOVERNOR

ONE SOUTH STATION
BOSTON, MA 02110
(617) 305-3500

ANN G. BERWICK
CHAIR

RICHARD K. SULLIVAN, JR.
SECRETARY OF ENERGY
AND ENVIRONMENTAL AFFAIRS

JOLETTE A. WESTBROOK
COMMISSIONER

KATE McKEEVER
COMMISSIONER

May 27, 2014

Via Electronic and First Class Mail

Lindsay E. DeRoche
Hearing Officer
Department of Telecommunications & Cable
1000 Washington Street, Suite 820
Boston, Massachusetts 02118

RE: Comcast of Massachusetts III, Inc. v. Peabody Municipal Light Plant and Peabody Municipal Lighting Commission, D.T.C. 14-2

Dear Attorney DeRoche:

On March 19, 2014, Comcast of Massachusetts III, Inc. (“Comcast”) filed with the Department of Telecommunications and Cable (“DTC”) a pole attachment rate complaint against the Peabody Municipal Light Plant and the Peabody Municipal Lighting Commission (together, “PMLP”). DTC docketed this matter as D.T.C. 14-2. The Department of Public Utilities (“DPU”) is a full-party intervenor in this matter pursuant to ¶ 9 of the Memorandum of Agreement (“MOA”) executed on March 10, 2014, between DPU and DTC.¹

After an informal procedural conference on May 14, 2014, DTC directed the parties to submit briefs on a proposed procedural schedule. The proposed schedule consists of a two-phase inquiry into the pole attachment rates of PMLP. In the first phase (“Phase I”),

¹ Although DPU is a full-party intervenor in this matter, we note that, pursuant to ¶ 6 of the MOA, to the extent that changes are contemplated to the regulations, policies or procedures applicable to pole attachments, such changes are to be jointly developed and promulgated by DPU and DTC.

DTC would determine whether, as a matter of law, the formula set forth in Cablevision of Boston Co. et al. v. Boston Edison Co., D.P.U./D.T.E. 97-82 (1998), and A-R Cable Servs. Inc., et al. v. Mass. Elec. Co., D.T.E. 98-52 (1998) for establishing the maximum permitted pole attachment rates (“Massachusetts Formula”) applies to municipal light plants and municipal lighting commissions established pursuant to G.L. c. 164. The second phase of the inquiry (“Phase II”) would focus on discovery and an evidentiary hearing, if necessary, into the specific facts of the case. DPU submits this letter in lieu of a brief.

Two-Phase Inquiry Proposal

DPU supports DTC’s proposal for a two-phase inquiry into the pole attachment rates of PMLP. As DTC has acknowledged, the goal in adopting a pole attachment formula was to encourage streamlined proceedings rather than costly, full blown rate cases. A-R Cable Servs. Inc., et al. v. Mass. Elec. Co., D.T.E. 98-52, at 7 (1998). In the interest of streamlining this proceeding, the DPU believes that the issues are most appropriately addressed in separate phases. First, it must be determined whether, as a matter of law, the previously established Massachusetts Formula should be applied to PMLP’s attachment rates. Second, once the legal standard is established, the facts specific to PMLP must be considered in order to determine the maximum pole attachment rates that PMLP may charge.

If adopted, DTC’s proposed two-phase inquiry will not prejudice any party to this case. It is particularly important to conduct this proceeding in an efficient manner given the short deadline for a final Order established in 220 C.M.R. § 45.08. A two-phase inquiry will narrow the issues for discovery and hearing, and avoid a more costly and time-consuming proceeding. Accordingly, DPU encourages DTC to proceed with the proposed two-phase inquiry.

Intervenor Status

On May 8, 2014, Ashburnham Municipal Light Plant (“AMLP”) filed a Petition to Intervene in D.T.C. 14-2, requesting full party intervenor status. According to G.L. c. 30A, §10, an entity requesting intervention must demonstrate that they are substantially and specifically affected by the proceedings. Agencies may allow such entities to intervene in the whole or any portion of the proceeding. G.L. c. 30A, §10.

DPU submits that AMLP, as a municipal light plant with pole attachments, has demonstrated a sufficient interest in this proceeding to be a limited participant. As a limited participant, AMLP will be allowed to receive copies of all documents and, most importantly, will be allowed to submit a legal brief on threshold question of whether the Massachusetts Formula applies to municipal light plants and municipal lighting commissions established pursuant to G.L. c. 164. Accordingly, DPU does not object to AMLP’s participation as a limited participant in this matter.

