



Amy G. Rabinowitz
Counsel

October 9, 2002

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station
Boston, MA 02110

Re: D.T.E. 02-47

Dear Secretary Cottrell:

I am enclosing the Response of Massachusetts Electric Company to Fibertech's Motion for Leave to Amend its Petition for Interim Relief and Complaint.

Very truly yours,

Amy G. Rabinowitz

cc: Jesse Reyes, Hearing Officer
Robert T. Wittauer, Fibertech
Charles B. Stockdale, Fibertech
Bruce P. Beausejour, Verizon
Keefe B. Clemons, Verizon
Alexander W. Moore, Verizon
Stephen Gibelli, WMEC
Stephen Klionsky, WMEC
Joseph Rogers, Office of the Attorney General

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**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

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FIBER TECHNOLOGIES NETWORKS, L.L.C.,)	
)	
Complainant,)	
)	
v.)	D.T.E. 02-47
)	
VERIZON NEW ENGLAND and)	
NORTHEAST UTILITIES SERVICE COMPANY,)	
)	
Respondents.)	
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**RESPONSE OF MASSACHUSETTS ELECTRIC COMPANY TO
MOTION FOR LEAVE TO AMEND
PETITION FOR INTERIM RELIEF AND COMPLAINT**

Massachusetts Electric Company (“Mass. Electric”) files this response to the Motion for Leave to Amend Petition for Interim Relief and Complaint filed by Fiber Technologies Networks, L.L.C. (“Fibertech”) on September 23, 2002. In its motion, Fibertech seeks to add Mass. Electric as an additional respondent in the above-captioned action. For the reasons set forth below, Mass. Electric respectfully requests that the Department deny Fibertech’s motion.

I. INTRODUCTION AND SUMMARY

On August 13, 2002, Fibertech filed a Petition for Interim Relief and Complaint (“Petition”) against Verizon New England, f/k/a New England Telephone and Telegraph Company (“Verizon MA”) and Northeast Utilities Service Company d/b/a Western Massachusetts Electric Co. (“WMECO”). Fibertech’s Petition came following August

lawsuits initiated by Verizon MA and WMECO in Superior Court of Hampden County against Fibertech for failing to obtain required licenses prior to installing attachments on their poles, and making the attachments in an unsafe manner that jeopardized the safety of their employees, employees of other companies who attach to the poles, and the general public. Following a hearing on August 14th, the Superior Court justice entered an order granting Verizon MA and WMECO a preliminary injunction that prohibits Fibertech from making any further attachments without express written authorization and requires Fibertech to remove within 45 days all attachments on Verizon MA and WMECO poles for which it does not have a license or pay \$400,000 to be used by Verizon MA and WMECO to correct unsafe conditions on poles.

Fibertech acted similarly in Mass. Electric's Northampton service territory, disregarding the terms of its Aerial License Agreement with Mass. Electric and placing over 200 unauthorized attachments on poles owned by Mass. Electric solely or in conjunction with Verizon MA. A great majority of these attachments occurred on poles owned jointly by Mass. Electric and Verizon MA. In many instances, Fibertech installed these facilities in a manner that threatens public safety and poses a hazard not only to Mass Electric personnel and facilities, but those of other pole users, such as telephone and telecommunications carriers, and cable television providers. Mass. Electric also filed suit against Fibertech in Superior Court of Hampden County on September 18th, requesting injunctive relief and damages for breach of the Aerial License Agreement. Copies of documents filed in that proceeding are attached hereto: Attachment A, Complaint; Attachment B, Application for Preliminary Injunction; Attachment C, Memorandum of Law in Support of Application for Preliminary Injunction; Attachment D, Affidavit of Pamela Jo Fournier; Attachment E,

Affidavit of G. Paul Anundson; and Attachment F; Emergency Motion to Consolidate with the Verizon MA and WMECO proceeding. On September 23rd, Fibertech filed its motion at the Department to add Mass. Electric to the Petition. Fibertech's answer to Mass. Electric's complaint in the Superior Court is due October 9, 2002.

Fibertech agreed to enter into a consent order with Mass. Electric that closely mirrors the terms of the Superior Court justice's order granting the preliminary injunction in favor of Verizon MA and WMECO. In the consent order, dated September 30, 2002, Fibertech agreed not to make any further attachments to Mass. Electric's poles without express written authorization, pay Mass. Electric \$59,000 for corrections of all unsafe conditions on its solely owned poles (most were jointly owned and covered under Fibertech's payment to Verizon MA in the order granting the preliminary injunction), and transfer other attachments as required by Mass. Electric. A copy of the consent order is attached as Attachment G.

II. ARGUMENT

Mass. Electric agrees with Fibertech that the underlying installation of Fibertech's facilities on utility poles at issue in this Department proceeding is the same as in the Mass. Electric/Fibertech Superior Court dispute. Mass. Electric itself requested that the Superior Court of Hampden County consolidate its case with the Verizon MA and WMECO ones. See Attachment F. As noted above, many of Fibertech's attachments occurred on poles jointly owned by Mass. Electric and Verizon MA. Based on Mass. Electric's review of the Petition, however, Mass. Electric does not believe that Fibertech

has alleged any facts to support a complaint against Mass. Electric. Thus, Fibertech's motion should be denied.

Fibertech has not alleged any specific facts to support its allegations against Mass. Electric. Mass. Electric has not yet seen what Fibertech's proposed amended petition would look like, and does not know what, if anything, Fibertech would allege against it. Therefore Mass. Electric is not in a position to respond to specific allegations. Mass. Electric makes the following general observations, however.

Mass. Electric has sought to enforce its Aerial License Agreement against Fibertech by bringing a court action, and the Department should not take any steps that would limit Mass. Electric from pursuing its rights in state court. The Superior Court judge ruled firmly against Fibertech in the Verizon MA and WMECO cases, based on the same set of facts (*See* Attachment C for a copy of the Superior Court ruling; Answer of Verizon MA in this proceeding), and Fibertech then entered into the consent order with substantially the same terms with Mass. Electric. Mass. Electric notes that just as Fibertech commenced this proceeding at the Department after Verizon MA and WMECO sued Fibertech in state court, Fibertech quickly filed its motion to add Mass. Electric as a respondent in this proceeding after Mass. Electric sued Fibertech in state court. Mass. Electric advised Fibertech that it had unauthorized attachments on Mass. Electric's poles in Northampton prior to Mass. Electric's commencement of proceedings in the Superior Court. Mass. Electric is unaware of any allegations or complaints by Fibertech to the Department regarding Mass. Electric's pole attachment process, however, despite the execution of the Aerial License Agreement by the parties in March of 2000 (*See* Attachment E), prior to the filing of Mass. Electric's complaint in the state court. As a

consequence, and given the timing of Fibertech's motion to amend the Petition to add Mass. Electric, Mass. Electric believes that the motion to amend is retaliatory in nature. This retaliatory action by Fibertech will not further a just or timely resolution of the issues between the parties. On the contrary, Fibertech's Petition to the Department merely protracts and muddies them.

III. CONCLUSION

For the reasons set forth above, Mass. Electric respectfully requests that the Department deny Fibertech's motion to add Mass. Electric to this proceeding.

Respectfully submitted,

MASSACHUSETTS ELECTRIC
COMPANY

By its attorney,

Amy G. Rabinowitz
25 Research Drive
Westboro, MA 01582

Dated: October 9, 2002

Attachments

The electronic version of this filing does not contain the attachments.