KEEGAN WERLIN LLP

ATTORNEYS AT LAW

ONE CRANBERRY HILL, SUITE 304

LEXINGTON, MASSACHUSETTS 02421

———

(617) 951-1400

August 8, 2025

Mark D. Marini, Secretary
Department of Public Utilities
One South Station,
Boston, MA 02110

Shona D. Green, Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118

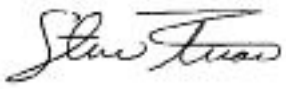
Re: D.P.U. 25-10/D.T.C. 25-1

Dear Mr. Marini and Ms. Green,

On behalf of Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company d/b/a Eversource Energy, and Fitchburg Gas and Electric Light Company d/b/a Unitil (together the "EDCs"), please find the EDCs' Reply Comments in this proceeding.

Please contact me with any questions.

Very truly yours,



Steven Frias

cc: Kerri DeYoung Phillips, Esq., Hearing Officer, Department of Public Utilities
William Bendetson, Esq., Hearing Officer, Department of Telecommunications and Cable
Kevin Roberts, Esq. Hearing Officer, Department of Telecommunications and Cable
Scott Seigal, Esq., Hearing Officer, Department of Public Utilities
Julian Aris, Esq., Assistant Attorney General
Stacey Donnelly, Esq.
Michael B. Hershberg, Esq
Kevin Penders, Esq.
Alice Davey, Esq.

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

Joint Notice of Inquiry by the Department of Public Utilities and the Department of Telecommunications and Cable on their own motion, to explore utility pole attachment, conduit access, double poles, and related considerations applicable to utility work conducted on, public rights-of-way in the Commonwealth	)	D.P.U. 25-10 D.T.C. 25-01

REPLY COMMENTS OF NSTAR ELECTRIC COMPANY D/B/A EVERSOURCE ENERGY MASSCHUSETTS ELECTRIC COMPANY AND NANTUCKET ELECTRIC COMPANY EACH D/B/A NATIONAL GRID FITCHBURG GAS AND ELECTRIC LIGHT COMPANY D/B/A UNITIL

Table of Contents

I. INTRODUCTION

NSTAR Electric Company d/b/a Eversource Energy ("Eversource"), Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid (" National Grid"), and Fitchburg Gas and Electric Light Company d/b/a Unitil ("Unitil") (collectively, "Companies," "Electric Distribution Companies," or "EDCs") hereby submit to the Department of Public Utilities (the "DPU") and the Department of Telecommunications and Cable (the "DTC") (acting jointly as the "Departments") their joint reply comments in the above-captioned proceeding.

In these Reply Comments, the EDCs explain that there is no need for dramatic changes to the current Massachusetts pole attachment process because the current regulatory framework has led to Massachusetts residents enjoying access to one of the country's most ubiquitous, low-priced and fastest broadband networks. The EDCs also explain their opposition to any changes to the current pole attachment regulations, which could negatively impact the safety and reliability of the electric system or increase costs to electric customers. However, the EDCs share an interest in assisting with the deployment of broadband service to underserved communities and stand willing to improve broadband deployment in a targeted fashion. Instead of adopting major changes to Massachusetts pole attachment regulations as set forth in the DTC's draft revisions to 220 CMR 45.00 or as recommended by some pole attachers, the EDCs recommend that a better approach would be to utilize the last mile make-ready working group to help facilitate broadband deployment in order to access funding under the Broadband Equity Access and Deployment ("BEAD") program and to get broadband access to the unserved or underserved.

In addition, the EDCs recommend that mandating National Joint Utilities Notification System ("NJUNS") participation for all pole attachers, including municipalities, and allowing for

single visit transfer for all attachments in the communication space should significantly decrease the number of double poles over time. Also, the EDCs oppose proposed changes to the Massachusetts Formula for calculating pole rental fees because the proposed changes are unnecessary, unjustified, and likely to result in an increase in revenues collected from EDC customers. Furthermore, with respect to the pole attachment complaint process, the EDCs support having the DPU as a co-adjudicator and strongly urge that the DPU be given deference on issues involving the safety, reliability, and costs of the electric system. Lastly, the EDCs explain that, although utility pole-mounted electric vehicle supply equipment ("EVSE") may be viable in certain limited circumstances (if permitted by the EDC in its service territory), ground-mounted EVSE on Right of Ways ("ROWs") are a much better option, and that experience has demonstrated utility-pole mounted EVSE are not an optimal solution for most customers.

II. PROCEDURAL BACKGROUND

On January 17, 2025, the Departments issued an Order Instituting Joint Notice of Inquiry in this proceeding, pursuant to their own motions to explore utility pole attachment, conduit access, double poles, and related considerations applicable to utility work conducted on public rights of way in the Commonwealth. In their order, the Departments indicated that "over the next several years, substantial electric distribution infrastructure investments are planned, in part, to facilitate the clean energy transition in the Commonwealth, including the deployment of ROW and pole-mounted EVSE to contribute to equitable transportation electrification options. Joint Inquiry, D.P.U. 25-10/D.T.C. 25-1 at 1 (2025). Simultaneously, broadband infrastructure expansion and upgrades are also planned throughout the state. Id.

The Departments note that both sets of investments requires the timely access and upgrades to a multitude of utility poles and underground ducts and conduit owned primarily by: (1) the

state's investor-owned electric distribution companies, the statewide traditional telephone providers, and (3) various municipal light plants ("MLPs"). Id. at 2. Utility pole and conduit work conducted on public ROWs in the Commonwealth must comply with various requirements, including the National Electric Safety Code ("NESC"), requirements established by the Massachusetts Department of Transportation ("DOT") and local cities and towns, and those involving collective bargaining agreements applicable to unions for overhead line workers, communications workers, and police officers. Id.

Therefore, the Departments opened this inquiry and sought comment, input and data from a broad range of stakeholders on utility pole and conduit access considerations to inform how the existing utility pole attachment, double pole, and conduit access regulations, practices, and requirements established by the Departments and applicable to utilities should be updated while remaining consistent with various other requirements outside the control of the Departments, by March 18, 2025. Id.

On March 18, 2025, the EDCs, along with 21 other Commenters[1] filed comments on: (1) databases considerations for pole and conduit data; (2) whether any pole attachment requirements adopted by the Federal Communications Commission ("FCC") or other states that regulate pole attachments and/or conduit access should be adopted in the Commonwealth and, generally, on how pole attachment processes may be streamlined in the state; (3) amendments to the current MOA and pole attachment complaint process to facilitate joint adjudication by the agencies and, additionally possible alternative dispute resolution options; (4) double pole considerations; and (5)

[1] In addition, 16 other Commenters filed initial comments before March 18, 2025, and 4 other Commenters filed initial comments just after March 18, 2025, amounting to a total of 41 Commenters participating in the initial comment period.

how to facilitate the deployment of ROW and pole-mounted EVSE in the Commonwealth in accordance with the recent directives in An Act Promoting a Clean Energy Grid, Advancing Equity and Protecting Ratepayers, St. 2024, c. 239.[2] Id. at 3.

On April 10, 2025, the Departments issued a Memorandum to extend the Initial Comment deadline to May 8, 2025 in order to further inform the agencies' future action actions, and because any final rulemaking or action by the agencies may apply to MLPs and will inform utility work to be conducted on public ROWs overseen by municipal officials. Memorandum, D.P.U. 25-10/D.T.C. 25-1, April 10, 2025 at 2-3 ("April 10, 2025 Memorandum"). In addition, the Departments scheduled virtual technical sessions for June 23 through June 27, 2025. Id. at 3. The Departments requested that if any utility pole owners, attachers operating in Massachusetts, or others would like to present during the virtual technical sessions, that they notify the Hearing Officers by April 24, 2025. Finally, the April 10, 2025 Memorandum scheduled reply comments to be due on July 23, 2025.

On April 23, 2025, NECTA on behalf of its members (Breezeline, Charter, Comcast, and Cox Communications), requested to present at the upcoming virtual technical sessions. On April

[2] Those Commenters include Eversource, National Grid, Unitil, Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon"), Crown Castle Fiber LLC ("Crown Castle"), Massachusetts Municipal Association ("MMA"), the Office of the Attorney General ("AGO"), the Cape Light Compact JLP ("Compact"), WiredWest, Cellular Telecommunications and Internet Association ("CTIA"), the New England Connectivity and Telecommunications Association ("NECTA"), Massachusetts Clean Energy Coalition ("Mass Clean Energy"), CRC Communications LLC d/b/a GoNetSpeed ("GNS"), the Executive Office of Economic Development ("EOED"), and the Executive Office of Energy and Environmental Affairs ("EEA"), the Town of Bernardston, Middleton Municipal Electric Light Department, Braintree Electric Light Department, Hingham Municipal Lighting Plant, Holyoke Gas & Electric Department, Middleborough Gas & Electric Department, Town of Falmouth, Georgetown Municipal Light Department, Princeton Municipal Light Department, West Boylston Municipal Lighting Plant, Mansfield Municipal Light Department, Hudson Light and Power Department, Templeton Municipal Light and Water Plant, Town of Billerica, South Hadley Electric Light Department, Littleton Electric Light and Water Departments, City of Medford, Holdon Municipal Light Department, Merrimac Municipal Light Department, Town of Nantucket, AT&T Enterprises, LLC, Town of Charlemont, Paxton Municipal Light Department, Shrewsbury Electric and Cable Operations, Town of Shutesbury, Concord Municipal Light Plant, Reading Municipal Light Department, and Peabody Municipal Light Plant.

24, 2025, Crown Castle, Compact, Verizon, GNS, and the EDCs filed notifications to present at the upcoming virtual technical sessions.

From April 25, 2025 through May 19, 2025,[3] several additional public comments were received by the Departments. Those commenters included: members of the general public; the Massachusetts Bay Transportation Authority ("MBTA"); the City of Cambridge; It's Electric, Inc; Verizon;[4] EVSE, LLC; the Metropolitan Area Planning Council ("MAPC"); and Leverett Municipal Light Plant.

On May 8, 2025, the Departments also issued a Memorandum with the Preliminary Technical Session Agenda and Guidelines for Participation, which requested presentations from the EDCs and Verizon by May 16, 2025 and all other presentations by June 9, 2025. Memorandum, D.P.U. 25-10/D.T.C. 25-1, May 8, 2025, at 3 ("May 8, 2025 Memorandum"). In the Preliminary Agenda, the Departments provided the following eight topics: (1) Topic 1 consisting of Technical, Safety, and Engineering Considerations for Pole Attachments; (2) Topic 2 consisting of ROW Planning and Coordination with Municipalities, MassDOT, and Public Safety; (3) Topic 3 consisting of Attachment Applications, Survey, and Make-Ready Work, and Associated Costs; (4) Topic 4 consisting of the NJUNS; and (5) Topic 5 consisting of Double Poles. Id. at 11-13. On June 25, 2025, the Departments indicated a plan to cover Topic 6 consisting of the Massachusetts Formula and Inputs, Topic 7, consisting of the Memorandum of Agreement ("MOA") and Dispute Resolution, and Topic 8 concerning EVSE.

[3] In the April 10, 2025 Memorandum, the Departments provided a deadline of May 8, 2025, however some commenters filed initial comments as late as May 19, 2025.

[4] Specifically, Verizon provided supplemental comments on May 8, 2025.

On May 19, 2025, following a request by Verizon, the Departments issued a Memorandum allowing for a one-week extension specifically for Verizon and the EDCs, noting that all other presentations were still due on June 9, 2025. See Memorandum D.P.U. 25-10/D.T.C. 25-1 May 19, 2025, at 1-2 ("May 8, 2025 Memorandum"). On June 9, 2025, CTIA, Compact, NECTA, and GNS filed presentations for the upcoming virtual technical sessions. On June 16, 2025, Verizon and the EDCs filed presentations for the upcoming virtual technical sessions.

On June 18, 2025 the Departments issued a Memorandum containing the Final Technical Session Agenda and Participation Details, information regarding reply comments, and draft redlines to 220 CMR 45.00 which were prepared by the DTC to foster additional discussion at the virtual technical sessions. See Memorandum D.P.U. 25-10/D.T.C. 25-1 June 18, 2025, at 1 ("June 8, 2025 Memorandum"). On June 20, 2025, the EDCs submitted a letter requesting an extension to the reply comment deadline from July 23, 2025 to August 8, 2025.

The technical sessions were conducted from June 23, 2025 through June 26, 2025. Following the conclusion of the June 26, 2025 virtual technical session, the Departments issued a Memorandum extending the reply comments deadline to August 8, 2025. See Memorandum D.P.U. 25-10/D.T.C. 25-1 June 26, 2025, at 1-2 ("June 26, 2025 Memorandum"). On July 10, 2025, the Departments issued a Memorandum that extended the MOA between the DPU and DTC through January 30, 2026. See Memorandum D.P.U. 25-10/D.T.C. 25-1 July 10, 2025, at 1 ("July 10, 2025 Memorandum").

The EDCs' joint reply comments are organized into eight sections: (I) Introduction; (II) Procedural Background; (III) Pole Attachment Process; (IV) Double Poles; (V) Pole Attachment Rental Rates; (VI) Pole Disputes; (VII) EVSE; and (VIII) Conclusion. The EDCs are not replying herein to each and every issue or point raised by stakeholders in their comments. The EDCs'

silence on any point made or issue raised should not be construed as support for the perspective of a stakeholder on that issue. Furthermore, in their joint reply comments, the EDCs address aspects of the DTC's proposed revised regulations first submitted on June 18, 2025. The EDCs are not discussing each and every aspect of these proposed regulations. The EDCs' silence on any aspect of the DTC's draft regulations should not be construed as support for that revision to the regulations. The EDCs reserve the right to address any aspect of the DTC's proposed regulations that are later incorporated in some manner the proposed regulations issued by the DPU and DTC in a formal rulemaking.

III. POLE ATTACHMENT PROCESS

A. Summary of Comments

In initial comments, other than the pole owners, seven entities made specific recommendations regarding the Massachusetts pole attachment process: (1) the AGO; (2) Crown Castle; (3) CTIA; (4) EOED/EEA; (5) GNS; and (6) NECTA. In addition, the DTC drafted proposed regulations for consideration as well.

In its initial comments, the AGO requested that the Departments provide a fair and balanced treatment for all stakeholders, including electric ratepayers, who are burdened with the costs of the distribution system, including the poles, conduit, and overheads (AGO In. Comm., at 2). In its initial comments, for the short-term, EOED/EEA recommended that the Departments consider pole attachment process improvements in order to streamline broadband deployments eligible for federal funding that require construction completion by December 31, 2026 (EOED/EEA In. Comm., at 3). The EOED/EEA also encouraged the Departments to explore opportunities to shrink deployment timelines on jointly owned poles by consolidating review processes and approval steps, establishing standard processing timelines, and enabling greater cost

certainty for attachers (id.). In the long-term, EOED/EEA encouraged moving towards a version of One Touch-Make-Ready ("OTMR") for pole attachments, involving a single site visit for all pole related construction work (id.).

In its initial comments, NECTA recommended that the Departments adopt the FCC's pole attachment rules in 47 C.F.R. §§ 1.1411, 1.1412, 1.1415, and 1.1416, which provide for timelines, self-help remedies, qualifications for contractors, dispute resolution, and overlashing (NECTA In. Comm., at 5). In support of its recommendation, NECTA argued that: (1) other nearby states have pole attachment processes that are similar to the FCC; and (2) the FCC's rules will speed broadband deployment (id., at 6-7). Also, NECTA recommended various non-FCC based changes to the Departments' pole attachment regulations such as: (1) mandating a single attachment application, single field survey, and single make-ready estimate for each pole; and (2) the use of temporary attachments in limited situations to ensure a timely attachment process (id., at 10-11). Also, NECTA recommended that the Departments' focus in this proceeding be on access to all utility poles, not just those that are in the public right-of-way (id., at 3-4). In addition, NECTA asserted that there were no state legal impediments to the adoption of FCC requirements in the Departments' pole attachment regulations (id., at 7). In its presentation, NECTA argued that language in G.L. c. 166, §25A which prohibits attachments on poles used principally for the bulk supply of electricity without the consent of the utility involved transmission poles, which was not applicable to this proceeding (NECTA Presentation Topic 3, at 13). Lastly, at the technical session, NECTA suggested that the Departments' pole attachment regulations be applicable to municipal light companies.

In its comments, Crown Castle recommended that the Departments adopt the FCC's pole attachment framework, in particular with timelines and self-help remedies (Crown Castle In.

Comm., at 4-9). In support of its recommendation, Crown Castle argued that: (1) the average time it takes to attach to poles in Massachusetts exceeds what would be permitted under the FCC's rules; (2) other nearby states have pole attachment processes which are similar to the FCC; and (3) the FCC's rules will speed broadband deployment (id., at 5-7, 11). Crown Castle also argued that the FCC rules require joint pole owners to allow a new attacher to submit a single application to attach to the jointly-owned poles, and that a single engineering survey be performed (id., at 6). In addition, Crown Castle supported the adoption of rules that would allow for broader use of contractors for engineering and make-ready for self-help remedies and noted there are often not enough utility-approved contractors available to complete make-ready in a timely manner (id., at 9). Furthermore, Crown Castle recommended that utilities be required to send any final invoice for make-ready work that exceeds the original estimate within 60-days after completion of the work, and that if the final cost exceeds the estimate by more than 10 percent, the utility or existing attacher give advance notice before incurring the cost (id., at 8). Lastly, Crown Castle asserted that a pole owner should not be allowed to charge a new attacher to bring poles, attachments, or third party equipment into compliance with current published safety, reliability, construction standards and guidelines if such noncompliance pre-existed the application and was not caused by the new attacher, and that remedying the pre-existing noncompliance conditions should not delay access by new attachers (id., at 10).

In its comments, GNS recommended that the Departments adopt regulations modeled on the FCC's pole attachment regulations with OTMR, enforceable timelines and self-help remedies involving qualified contractors (GNS In. Comm., at 8-15). In support of its recommendation, GNS argues that: (1) other nearby states have similar pole attachment processes; (2) the pole owners have previously supported OTMR in other states; (3) the current pole attachment process in

Massachusetts takes too much time; and (4) its recommendations will increase broadband competition (id., at 1-2, 5, 9-10, 13). Also, GNS recommended various non-FCC based changes to the pole attachment regulations such as: (1) temporary attachments; and (2) boxing (id., at 16-17). Lastly, GNS made various recommendations to lower the costs attachers are charged by pole owners, such as limiting the amount charged to new attachers for pole replacements, requiring pole owners to provide itemized statements of make-ready charges, and making make-ready estimates binding (id., at 17).

In its comments, CTIA recommended that the Departments adopt regulations modeled on the FCC's pole attachment regulations with OTMR, enforceable timelines and self-help remedies involving qualified contractors (CTIA In. Comm., at 3-4). In support of its recommendation, CTIA argued that: (1) other nearby states have similar pole attachment processes similar to the FCC; and (2) it will increase broadband deployment (id., at 3). CTIA also recommended that wireless attachers should be entitled to pole-top access for deployment (id., at 6).

B. Dramatic Changes to Current Pole Attachment Regulations Are Not Justified

There is no need for dramatic changes to the current Massachusetts pole attachment regulations to promote broadband deployment. The major argument used by pole attachers like NECTA, CTIA, Crown Castle, and GNS to justify dramatic changes in the current pole attachment process is a claimed need to facilitate deployment of broadband. The fact is that that current process has not prevented Massachusetts from having the widespread deployment of broadband. The FCC National Broadband Map demonstrates the ubiquitous and robust deployment of broadband in Massachusetts.[5] In fact, and as shown below, research indicates that Massachusetts

[5] https://broadbandmap.fcc.gov

is among the top states in the nation for the deployment of ubiquitous, low priced and fastest broadband. Broadbandnow, a research firm which conducts independent research into the current state of broadband, ranked Massachusetts as the 4th best state in the nation in regards to broadband.[6] Broadband Search, which provides comprehensive information on broadband, ranked Massachusetts as the third lowest state in the nation when it comes to internet costs.[7] Meanwhile, Broadbandnow has specifically recognized Massachusetts for having high access to low-priced broadband.[8] Uswitch, which is an online comparison and switching service that helps consumers compare prices, ranked Massachusetts as the very best state in the nation for best-value broadband, and the third fastest state in the nation when it comes to broadband speed.[9] Also, as noted in the pole owners' initial comments, under current Massachusetts pole attachment processes, residents in Massachusetts municipalities have access to at least 2 broadband providers, and sometimes up to 7 broadband providers. Furthermore, under the current pole attachment regulations, a last mile make-ready working group facilitated broadband deployment, which lead to the installation of 2,000 miles of fiber-optic cable and access to high-speed broadband to 28,000 household in 53 communities. In no way, has Massachusetts somehow "fallen behind its neighbors" when it comes to access to fast, ubiquitous, low-priced broadband.

In 2018, when the FCC significantly revised its regulations and adopted such policies as self-help in the power space, it did so in the hopes of bridging the large digital divide which existed in many large rural states across America. Today, under the current pole attachment process,

[6] https://broadbandnow.com/research/best-states-with-internet-coverage-and-speed

[7] https://www.broadbandsearch.net/blog/internet-cost-by-state

[8] https://broadbandnow.com/research/best-states-with-internet-coverage-and-speed

[9] https://www.uswitch.com/broadband/studies/the-us-broadband-index/

Massachusetts is without question a leading state in the nation when it comes to broadband. Therefore, a dramatic change in the current Massachusetts pole attachment regulations cannot be justified on the basis of a lack of broadband deployment as some pole attachers have argued.

In its initial comments, EOED/EEA stated there are still approximately 11,000 individuals in unserved or underserved locations for broadband in Massachusetts (EOED/EEA In. Comm., at 2). At the technical session, DTC Commissioner Charles also mentioned the small amount of individuals in unserved or underserved locations. The EDCs recognize the importance of extending broadband access to these individuals. However, dramatic changes in the current Massachusetts pole attachment regulations are not likely to lead to more broadband deployment to these unserved or underserved areas. Many pole attachers are targeting to deploy their networks in areas where broadband is already extensive, and where pole space for new communications attachments is limited. Pole attachers who argue in favor of boxing or other dramatic changes in the pole attachment process do so because they are seeking to deploy their networks in areas where there is already extensive broadband deployment and there is limited space available on poles for their new attachments. Therefore, dramatic changes to the Massachusetts pole attachment regulations are unlikely to lead to an extension of broadband to these approximately 11,000 individuals unserved or underserved locations in Massachusetts Instead, the EDCs would suggest that a better approach than dramatically changing the current pole attachment process would be to utilize the last mile make-ready working group to help facilitate broadband deployment to these last unserved or underserved locations.

In fact, while Massachusetts residents enjoy access to one of the country's most ubiquitous, low-priced and fastest broadband networks, the Massachusetts electric system is facing very significant challenges. These challenges relate to transforming the electric system to help the state

reach its decarbonization goals in order to make it more resilient to deal with the effects of climate change while at the same time trying to keep the cost of electrical service affordable. Furthermore, the AGO specifically singled out the importance of treating fairly the "electric distribution customers, who are burdened with the costs of the distribution system" (AGO In. Comm., at 2). Under these circumstances, dramatic changes to the Massachusetts pole attachment regulations risks making the electric system less reliable and more expensive for electric customers and is unjustified. The current Massachusetts pole attachment process works. It properly balances the need for timely, cost-effective deployment of broadband and the need to ensure the safety and reliability of the electrical system, as well as the need to minimize costs to electric customers. Therefore, the Departments should avoid making dramatic changes to the current Massachusetts pole attachment regulations in the hopes of marginally increasing access to broadband in a state which is already one of the best in the nation when these changes could negatively impact the safety, reliability and cost of an electric system which is already facing unprecedented demands.

C. The Current Length of Time for Pole Attachment Applications is Reasonable

Another major argument used by pole attachers like NECTA, CTIA, Crown Castle, and GNS to justify dramatic changes to the pole attachment process is to suggest that the pole attachment process takes unreasonably longer in Massachusetts than in neighboring states. Specifically, these attachers advocate for imposing deadlines on pole owners to perform surveys and make-ready work with the ability of attachers to engage in self-help remedies if the deadlines are not met. In fact, the current pole attachment application processing time is appropriate given the current circumstances in Massachusetts. The EDCs use the FCC timelines as a guide. However, the timelines for conducting surveys and completing make-ready work can be affected by multiple factors beyond the control of the EDCs such as unusually large applications by

attachers, permitting delays, extreme weather, mutual aid, resource constraints, overlapping work, pole attachers requesting redesign to reduce make ready costs, tree trimming or outages, delayed attacher cooperation, and redesigns due to pole attachers' delays in proceeding with work.

Specifically, there are at least three major reasons why the pole attachment process may take longer in Massachusetts than in other neighboring states. First, Massachusetts DOT permitting process affects about 25 percent of all pole attachment applications and can take on average 272 days. Therefore, DOT permitting can explain a great deal of why the pole attachment process in Massachusetts can take somewhat longer than in neighboring states.

Second, Massachusetts broadband deployment is more ubiquitous than in other states. Space on some poles is becoming more limited. Because these poles already have numerous attachments on them, pole replacements are more likely as is an increase in the length of time involved in the pole attachment process. Therefore, space limitations due to the widespread deployment of broadband in Massachusetts may result in longer pole attachment processing time than in neighboring states.

Third, EDCs in Massachusetts are receiving applications requesting to attach to very large quantities of poles simultaneously, with little or no advance notice. For example, one pole attacher recently filed applications with National Grid seeking to attach to 40,000 poles. However, there are limited number of engineers and contractors who are qualified to perform design work for the power space or perform make-ready work in the power space. Specifically, for an individual to be qualified to work in the power space requires years of extensive training. Because of the importance of ensuring safety and reliability, rigorous minimum qualifications are necessary for contractors to work in the power space. Therefore, EDCs do not have sufficient time to coordinate or acquire the resources, assuming they are available, to process these large applications. The

limited supply of qualified contractors to work in the power space in Massachusetts, coupled with the extremely large quantity of poles to which some attachers are seeking to attach, with little or no advance notice, results in a pole attachment process that may take longer in Massachusetts than in neighboring states.

Because of the factors described above, which are beyond the control of the EDCs, the pole attachment process may take longer in Massachusetts than in other states. Therefore, the imposition of deadlines on EDCs to perform surveys and make-ready work are unlikely to materially shorten the amount of time it takes to complete the pole attachment process in Massachusetts. Imposing deadlines on the EDCs will not make DOT grant a permit faster. Imposing deadlines on the EDCs will not make poles taller with more space for new attachments. Imposing deadlines on the EDCs will not increase the number of individuals who are qualified to work in the space. Therefore, the EDCs oppose the DTC's proposed timeline regulation in Section 45.05, in particular as they pertain to the EDCs.[10]

In particular, the EDCs oppose defining large orders as those equal to 3,000 poles or more. The DTC proposed regulation goes beyond even what is required under the FCC's regulations. Under 47 C.F.R. §1.141(g)(4) the utility is required to "negotiate in good faith the timing of all requests for attachment larger than the lesser of 3000 poles or 5 percent of the utility's poles in a state (emphasis added)." But, under the DTC's proposed regulation Section 45.05(5)(c), a utility can only "add forty-five (45) days to the make-ready periods" for "larger orders," which totals 135

[10] Generally speaking, the existing Massachusetts pole attachment regulations are much less proscriptive than the proposed DTC regulations. Consequently, the terms of pole attachment agreements negotiated at arm's length between sophisticated pole attachers and pole owners control the terms and conditions relative to pole attachments. This approach keeps the terms of pole attachments in the hands of the parties where they belong and gives the parties some flexibility.

days, even when the application seeks to attach to poles that are "equal to or greater than the lesser of three thousand (3000) poles or five (5) percent of the utility's poles physically located" in Massachusetts. Furthermore, it should be noted that the FCC is considering adopting regulations requiring pole attachers to give pole owners advance notice, of at least 60 days, for applications which exceed 3,000 poles. However, the EDCs would note that the FCC's proposed 60 days attacher advance notice requirement is inadequate and should be longer. Advance notice of 180 days for orders of greater than 3,000 is more reasonable. Regardless, the proposed DTC regulations do not require attachers to give *any* advance notice to pole owners for large orders.

Furthermore, in the event, the Departments were to adopt regulations imposing deadlines on the EDCs, notifications or requests to deviate from the timeline by the EDCs should be made to the DPU, not the DTC. Under the DTC proposed regulation Section 45.05(6), any notifications or requests of deviations from any timeline would be made only to the DTC. This is an inappropriate derogation of the DPU's authority to safeguard the electric distribution system. If an EDC needs to deviate from the timeline, the agency that should be made aware of it and should act on any request to deviate, to the extent that it has to potential to impact the power space, is the DPU, the agency with expertise regarding electricity. As already explained by the DPU, the "DTC lacks the requisite subject matter expertise and experience to appropriately analyze the needs of any electric distribution system. Nor does the DTC have jurisdiction over the safety, security, and reliability of the infrastructure or electric service of EDCs … Rather, that expertise, experience, and jurisdiction is vested with the DPU, which retains multiple engineers and attorneys, among other professional and subject matter experts on staff, dedicated to utility system issues." (D.T.C. 22-4, DPU Post Order Brief, at 6 (6/7/2024)). Therefore, EDCs should only be required to notify

and request deviations from any imposed deadline from the DPU which is uniquely able to consider the impact of such notifications or requests to the electric distribution system.

D. Most Neighboring States Do Not Allow Self-Help Remedies in the Power Space

Another major argument used by pole attachers like NECTA, CTIA, Crown Castle, and GNS to justify dramatic changes in the current pole attachment process is that neighboring states have adopted these changes to their pole attachments processes that mirror the FCC. The fact is that most of the states bordering Massachusetts do not allow attachers to engage in self-help remedies in the power space. Other neighboring states like Connecticut and New York rightly recognize that EDCs have an obligation to provide safe, and reliable electric service, and this obligation cannot be delegated to contractors selected by attachers.

At the outset, it should be explained that there are essentially three types of self-help remedies that the attachers are seeking in this proceeding. The first type is OTMR. OTMR is the process where a pole attacher rearranges or shifts communication equipment in communications space. It is only for simple make-ready work in the communications space. It does not involve anything likely to interrupt service or damage existing equipment. It does not involve splicing or cutting existing communication cables. It does not involve pole replacement. It does not involve work in the power space. It is not for complex make-ready work. OTMR does occur in neighboring states, but it is not widely used. For example, in Connecticut, Eversource has not received an OTMR application from any attacher. In New Hampshire, Unitil has not received an OTMR application from any attacher. Therefore, amending the regulations in Massachusetts to permit OTMR is unlikely to materially decrease the amount of time for the average pole attachment application. That said, the EDCs do not object to OTMR for simply make-ready work in communications space as long as the pole owners make the determination as to whether the work

is simple and eligible for OTMR, that the attachers notify pole owners that they are engaging in one-touch make-ready, and a deadline is imposed on pole attachers to ensure that the simple make ready work is performed in a timely manner shortly after the survey is completed so that field conditions do not change. Unfortunately, the DTC's proposed OTMR regulation Section 45.05(8) fail to impose a deadline on the pole attacher to complete the OTMR.

The second type of self-help remedy is self-help for complex make-ready work in the communications space. In the event a survey for the communications space is not completed, or the make-ready work in the communications space is not completed by a deadline set forth in the regulations, an attacher can select a qualified contractor to perform the work. However, self-help in the communications space does not include the replacement of poles. In general, self-help in the communications space can be problematic, and chaotic. In their desire to attach as quickly as possible, pole attachers may place pressure on qualified contractors to engage in activities that are imprudent or to be incompliant with the NESC. These activities could negatively affect the integrity of the pole or other attachments on the pole or compromise other planned work activities on poles. Also, it is unclear why qualified contractors who would perform these make-ready tasks for the attacher would do so quicker or at less cost than if they were directed by a pole owner.

The third type of self-help remedy is self-help in the power space. In the event a survey for the power space is not completed or the make-ready work in the power space is not completed by a deadline set for in the regulations, the proposed regulations would permit an attacher to select a qualified contractor to perform the work. The EDCs strongly oppose self-help remedies in the power space and strongly oppose the DTC's proposed regulation Section 45.05(7) as it pertains to the power space.

Under state law, the EDCs "are responsible for providing … reliable service to customers," and have "public service obligations in terms of providing safe, reliable … service to customers." Massachusetts Electric Company, d/b/a National Grid, D.P.U. 18-150, at 53, 122 (2019). In the past, the DPU has declared it "will not substitute its judgment for that of a utility manager as to how best to fulfill service obligations to operate its system safely and reliably." Boston Gas Company and Colonial Gas Company d/b/a National Grid, D.P.U. 13-78, at 13 (2014). Also, the Massachusetts Supreme Judicial Court has ruled that the DPU engaged in "unreasonable interference" when it substituted its" judgment" for that of a utility's management regarding reliability. New England Tel. &Tel. Co., v. Dep't of Pub. Utils., 262 Mass 137, 148 (1928). In New England Tel. &Tel. Co., the telephone company's general policy was to only provide telephone service to a customer if the wires on the customer's premises had been installed by workers under the telephone company's control. Id., at 143-144. The basis for the telephone company's policy was to avoid "impairing its general service" thereby maintaining the reliability of its network. Id., at 147-148. When the DPU ordered the telephone company to provide service to a hotel even though its telephone wires had not been installed by the telephone company's workers, the court ruled that the "determination" of "whether certain wires are suitable and are properly installed is a detail of management in the administration of the business of the telephone company" and for the DPU "to substitute" its "judgment" for "that of the telephone company … is an interference with the right of management." Id. at 148.

Furthermore, the EDCs cannot delegate to others the ability to make decisions which could impact the safety and reliability of the electric system. A utility company "may not delegate its responsibility" to others. See Commonwealth Electric Company, D.P.U. 92-3C-IA, at 6 (1995). If a pole attacher's self -help efforts result in reliability failures, the actions of the pole attacher could

be imputed to the Company, and the Company could be held ultimately responsible. See Boston Edison Company, D.P.U. 87-1A-A, at 57 (1987). Therefore, if the Departments were to allow pole attachers to hire and direct contractors to work in the power space, the Departments would be acting contrary to the state law because they would be improperly substituting their judgment for that of utility management as to how best operate the electric system safely and reliably.

Massachusetts is not alone in prohibiting self-help remedies in the power space. In fact, most of the states neighboring Massachusetts recognize that self-help in the power space should not be permitted because of the need to maintain the safety and reliability of the electric system. The Connecticut Public Utilities Regulatory Authority ("PURA") determined that self-help "will only be permitted in the communications gain" because of the "extensive safety and operational concerns confronting workers in the electrical gain." PURA Investigation of Third-Party Pole Attachment Process, Docket No. 19-01-52RE01, at 32 (2022). In New York, the New York Public Service Commission ("NYPSC") rejected self-help in general and in particular in the power space because "self-help could potentially undermine system safety and reliability and jeopardize the safety of workers on the utility poles." Proceeding to Review Certain Pole Attachment Rules, Case 22-M-0101, at 35 (2024). New Hampshire also does not allow self-help remedies in the power space. Therefore, if the Departments were to allow self-help in the power space, Massachusetts would be out of step with most of its neighbors and the Departments would be putting at risk utility worker and public safety and the reliability of the electric system.

Also, the EDCs oppose the DTC's proposed contractor regulation Section 45.06(3) and (4) as it pertains to the power space. The minimum qualifications set forth in Section 45.06 to work in the power space are inadequate. The qualifications set forth in this section of the proposed regulations essentially only require the contractor to agree to follow or meet various standards, and

to be insured. The proposed regulations do not require the contractor to actually have years of physical training and experience of working in the power space, as well as strong understanding of the electric power systems. Working in the power space is inherently dangerous, and the EDCs have. established rigorous requirements to protect the workers and the public. The standards for who is qualified to work in the power space should not be lowered. The DTC's proposed regulation would essentially lower that standard and put worker safety at risk. Helping pole attachers deploy their fiber quicker should not come at the expense of the safety of those working on the electric system or the public at large.

In addition, NECTA argues that the language in G.L. c. 166, §25A, which prohibits attachments on poles used principally for the bulk supply of electricity without the consent of the utility, involves only transmission poles. In response, the EDCs would note that the phrase "the supply of electricity in bulk" is not defined in G.L. c. 166, §25A. However, under G.L. c. 164, §1, "supplying electricity in bulk" is defined somewhat broadly as "distributing and selling electricity to electric companies, railroads, street railways or electric railroads, or to municipalities for municipal use or re-sale to their inhabitants, or to persons, associations or corporations under limitations imposed by special law or under section 90 or corresponding provisions of earlier laws." This language is broad enough to be interpreted to apply to more than just transmission poles. More importantly, the prohibition in G.L. c. 166, §25A on attachments being made on poles that supply electricity in bulk without the consent of the utility points to the importance the Massachusetts General Court places on maintaining the reliability of the electric system. This portion of G.L. c. 166, §25A suggests that the Massachusetts General Court does not want pole attachers to put the reliability of the electric system at risk, and gives deference to EDCs to maintain the reliability of the electric system.

It should also be noted that in 1978 Congress enacted the Pole Attachment Act in order promote the deployment of cable television through FCC regulation of pole attachments. However, the Massachusetts General Court promptly opted out of FCC regulation of pole attachments. By taking this step, Massachusetts policymakers implicitly decided that they did not want pole attachment policies in this state to favor the deployment of new communication services at the expense of safety, reliability and expense of electric system. If the Departments were to adopt entire sections of FCC regulations which negatively impact the electric system such as allowing self-help in the power space, they would be essentially reversing the decision made by the Massachusetts General Court, and would be acting in a manner inconsistent with the legislative intent behind G.L. c. 166, § 25A.

E. The EDCs Should Not Be Required to Allow Boxing

In this proceeding, one pole attacher, GNS, has proposed that the Departments adopt regulations to allow boxing of poles. The Departments should reject this proposal. Boxing makes poles unclimbable for utility workers, complicates maintenance, prolongs restoration time for service restoration during outages, and increases costs for electric customers due to the need for additional bucket trucks, specialized equipment and personnel to service boxed poles. In fact, the Departments should reconsider the boxing policy that was established by the DTC, on its own, in D.T.C. 22-4. If the Departments wish to revisit the boxing issue, the EDCs should be allowed to protect the safety and reliability of their distribution systems by having a general policy that prohibits boxing on their poles, and this policy should be expressly allowed in any revisions to the pole attachment regulations.

GNS argues that boxing is commonplace in Massachusetts. In fact, boxing is not prevalent. The EDCs have only allowed boxing in very limited circumstances. And generally do not support

boxing because it creates safety risks and negatively impacts reliability. Boxing makes poles unclimbable for utility workers. Boxing is inconsistent with the standards of the NESC because the underlying assumption of the NESC rules is that climbing is possible on all poles. If a pole is unclimbable, EDCs need additional bucket trucks and personnel to perform maintenance on a pole or restore service after an outage. The additional bucket trucks and personnel increase costs to customers and delay restoration time during outages. The EDCs' policy on boxing promotes safety and electric reliability and reduces costs to customers. Boxing should not be permitted to accommodate pole attachers' financial interests because a pole attacher wants to accelerate its construction schedule or eschew payment for customary make-ready work. The Departments' pole attachment regulations should reflect the EDCs' general policy on boxing.

GNS points to boxing being allowed in a couple of states bordering Massachusetts. In fact, a majority of states bordering Massachusetts do not require EDCs to permit boxing. Also, the FCC does not require EDCs to permit boxing. The FCC has adopted a non-discrimination standard whereby pole owners are only required to allow attachers to box to same extent the pole owner would allow itself to box. In the few states that require pole owners to allow boxing, it has been a problem. The existence of boxing in Connecticut has caused Eversource to incur additional costs to hire more personnel and bucket trucks and has delayed the restoration of service after outages, both of which negatively impact customers. For the EDCs, boxing results directly in increases to storm restoration costs and increases to restoration costs and duration after a power outage. Massachusetts should put electric reliability and lower costs to electric customers ahead of the financial interests of pole attachers like GNS.

F. Temporary Attachments Are Problematic

In this proceeding, NECTA and GNS have proposed that the Departments permit the use of temporary attachments, at least in limited situations. Temporary attachments are problematic for variety of reasons related to safety, the structural integrity of poles, maintenance, visual aesthetics, and long-term planning. If the Departments were to allow temporary attachments, then certain limitations must be established.

The EDCs generally disfavor temporary attachments for a variety of reasons. First, there are safety risks with temporary attachments. These attachments may not adhere to NESC clearance requirements and could therefore result in safety hazards for utility workers and the public. Also, if they are not properly secured, lines may sag or become loose, thereby increasing the risk of contact with other lines. Second, temporary attachments can negatively impact the structural integrity of poles. Over time, these attachments may cause wear or damage to the pole, particularly if bolts are used to secure them. Such wear and damage can lead to pole failures that could cause outages. Furthermore, these attachments add extra weight to poles, and may exceed a pole's designed load capacity, and therefore could lead to bending, cracking, or even failure of a pole. Third, temporary attachments can complicate pole maintenance. For instance, when a pole needs to be replaced or upgraded, the existence of temporary attachments can complicate the attachment transfer process and increase double poles. Fourth, temporary attachments can create visual clutter on utility poles. The appearance of temporary attachments can detract from the overall appearance of an area, particularly residential or scenic areas. Fifth, the existence of temporary attachments on poles complicates long-term planning for poles and the pole attachment process for future attachers. The existence of temporary attachments makes it more difficult for the EDCs to plan for new attachments and any other work that needs to be performed on poles involving system

upgrades. There are sometimes multiple attachers seeking to attach to the same poles. Temporary attachments complicate the design and engineering process for poles where there are requests to attach from multiple new attachers. Long-term planning is also hampered by the fact that these "temporary" attachments can, in effect, become quasi-permanent attachments if the attacher fails to come back to remove or make the necessary design changes to make their attachment permanent.

NECTA and GNS point to temporary attachments being allowed in a couple of states bordering Massachusetts. In fact, a majority of states bordering Massachusetts do not require EDCs to allow temporary attachments. In the few states where the EDCs are required to allow temporary attachments, it has been a problem. In Connecticut, PURA mandates temporary attachments if certain deadlines are not met. However, this requirement does not include any caps on the number of poles to which the attacher could request to attach. PURA also did not require attachers to pay their permanent make-ready costs before installing their temporary attachments. Therefore, the attacher has no incentive to make their temporary attachments permanent. As a result, some attachers installed the temporary attachments using permanent attachment construction methods with thru-bolts when J-hook construction should have been used. This caused extra bolt holes being drilled too close to each other and negatively impacted the structural integrity of poles.

Some EDCs have allowed temporary attachments under limited circumstances. For example, temporary attachments have been utilized when a municipality has a need to temporarily attach or move their wires for construction projects, or other emergency circumstances. Temporary attachments are typically only granted when there is no make ready required, and the temporary attachment is always time limited.

In conclusion, the EDCs recognize the importance of facilitating the deployment of broadband in order to access funding under the BEAD program by December 31, 2026, as mentioned by EOED/EEA in its comments. The EDCs are also aware of the questions asked by DTC Commissioner Charles at the technical session Therefore, the EDCs would suggest that rather than permitting widescale the use of temporary attachments, instead utilize the last mile make-ready working group to help facilitate broadband deployment in order to access funding under the BEAD program. However, if the Departments decide to allow temporary attachments, then certain safeguards must be established. First, pole attachers must pay their estimated make ready costs in full prior to the temporary attachment being installed. Second, temporary attachments must be installed on J-Hooks and not with through bolts, and consistent with the EDCs standards. Third, there must be a time limit for how long a temporary attachment can remain in place. Fourth, the attacher must be responsible for attaching and removing the temporary attachments. Fifth, temporary attachments must comply with the NESC.

G. Costs Should Not Be Shifted to Electric Distribution Customers

Two pole attachers, GNS and Crown Castle, made various proposals designed to shift costs from pole attachers to the pole owners. These proposals were: (1) limiting the amount that can be charged to new pole attachers for pole replacements; (2) prohibiting pole owners from charging for make-ready costs to bring poles, attachments, or third-party equipment into compliance with current safety standards if such was not caused by the new attacher; and (3) making make-ready estimates binding. These proposals are contrary to Massachusetts precedent, contrary to state law, and would shift costs to EDCs and their customers in order to subsidize pole attachers.

Under G.L. c. 166, § 25A, a utility is entitled to "recovery of not less than the additional costs of making provision for attachments" to a pole. Consistent with this language, the D.T.E has

ruled that "the entity seeking to add the new attachment is responsible for the costs associated with the rearrangement or replacement." Complaint and Enforcement Pole Att. Rulemaking, D.T.E. 98-36, at 44 (2000). More recently, in a case involving GNS's predecessor in interest, OTELCO, the D.T.C. declared, if the "work would not occur but for OTELCO's new attachment … OTELCO is responsible for the full cost of the make-ready because OTELCO is the cost-causer, and OTELCO's attachment is the primary reason the work is being completed." D.T.C. 22-4, at 41. In fact, in D.T.C. 22-4, the DTC ruled against GNS when it objected to being charged for cost of a pole replacement, in particular, when it wished to attach to poles, upon which the attachments on the pole were not in compliance with the NESC, but there was not enough space for their new attachment on the pole even after correcting for the NESC violations. It does not matter if the attachments on the pole are currently not in compliance with the NESC; if the new attacher's request for a new attachment necessitates additional space and the need to purchase a new pole, it is the cost causer, and pays the cost of the pole.

Similarly, in neighboring Connecticut, PURA determined that because the costs of bringing a pole into compliance with newer NESC standards were only incurred because of the request of the new attacher, the make-ready-work associated with this request should be charged to the attacher. PURA Investigation of Third-Party Pole Attachment Process, Docket No.19-01-52RE01, at 40-43 (2022). In that case, Eversource argued that when a "pole was compliant with prior NESC rules", it "is allowed to remain in that state until an attachment is requested on the pole." Id, at 40. Therefore, "the costs to bring that pole into compliance with newer NESC standards are only incurred because of the request of the new attacher" and so "the new attacher is the 'cost-causer' under this scenario and thus the new attacher should be responsible." Id. PURA concurred with

Eversource and noted that "non-billable make-ready work unfairly lands on electric distribution and other pole owner customers." Id., at 42.

Because state law, and the precedent of the Departments is clear that the cost causer pays for make-ready work, the DTC's proposed regulation Section 45.05(2)(d) should be rejected. This section may lead to confusion and unnecessary litigation. This section states: "A utility may not charge a new attacher to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards guidelines if such poles, attachments, or third-party equipment were out of compliance because of work performed by a party other than the new attacher." If adopted by the Departments, pole attachers may try to claim that this section should be interpreted to prevent pole owners for charging them for new poles needed to accommodate their new attachments because the existing pole had pre-existing NESC compliance issues. The Departments should not invite litigation on an issue that is settled law. If the Departments wish to provide greater clarity in the pole attachment regulations, they should simply state that the full cost of make-ready will be paid by the cost causer for the work being performed.

As for the proposal that the pole owners provide pole attachers with binding make-ready estimates, and deny them the ability to true up their make-ready costs, it must be rejected as contrary to state law and precedent. As stated earlier, under G.L. c. 166, § 25A, a utility is entitled to "recovery of not less than the additional costs of making provision for attachments" to a pole. It does not say some of its expenses, or only those expenses that are consistent with the estimates it provides the attacher. Furthermore, it is well established principle that a public utility cannot be required to absorb costs of unless it "clearly appears" that it acted in bad faith. See New England Tel. &Tel. Co., v. Dep't of Pub. Utils., 360 Mass 443, 483 23 484 (1971). There is no legal basis

to deny EDCs ability to recover all its make ready costs from pole attachers. Also, recently, the D.T.C. recognized that "an estimate is, by definition, "a rough or approximate calculation that is subject to change." D.T.C. 22-4, at 46. In addition, recently in D.P.U. 23-150, the DPU stated that National Grid "should true-up make-ready payments with final make-ready construction costs." D.P.U. 23-150, at 629. If the Departments require make-ready estimates to be binding, the EDCs and their customers would be forced to absorb make-ready costs. This would be unfair and unlawful.[11]

H. Miscellaneous

A few other proposals made in the initial comments must be addressed. First, some commenters suggested that a single attachment application, single field survey, and single make-ready estimate for each pole be performed. The EDCs are open to considering this approach, but there are challenges. The EDCs and Verizon currently have different application portals, different systems to process applications, and their costs associated with survey, design, and make ready also differ. The expertise and experience of Verizon is in the communication space. The EDCs possess expertise and experience in the power space that Verizon does not. It would be challenging to find one entity with the expertise to properly survey and make-ready estimate for both the power space and the communications space. Furthermore, assuming the EDCs, their designers, and their contractors could assume all the responsibilities and tasks performed now by Verizon for surveying, and make-ready estimates for the communications space, it would increase administrative costs for the EDCs and their customers.

[11] A real problem is that some pole attachers fail to promptly accept the EDCs' make-ready estimate. The delay in their acceptance of estimate is sometimes so lengthy that costs associated with the make-ready work have increased since the estimate was provided.

Second, CTIA's recommendation that wireless attachers should be entitled to pole-top access is unnecessary. The EDCs have different approaches to access to the pole-top, but wireless attachers do have access in some cases. In general, the EDCS allow pole-top access on secondary poles, and this limitation has not negatively affected wireless coverage in Massachusetts.

Third, Crown Castle recommended that pole owners be required to send any final invoice for make-ready work that exceeds the original estimate within 60 days after completion of the work, and that if the final cost exceeds the estimate by more than 10 percent, the utility should give advance notice before incurring the cost. There are practical reasons why this may not be feasible. It may be difficult for a pole owner to predict if or how much the actual costs will exceed an estimate by 10 percent until after the work has been performed. Also, although the EDCs aim to promptly provide final invoices of make-ready work to pole attachers, there may be instances where there may be a delay in processing a final invoice.

Fourth, GNS recommended that pole owners provide itemized statements of make-ready charges. In addition, DTC draft regulation Section 45.05(2) would require pole owners to provide estimates and invoices on a pole-by-pole basis. The EDCs understand the interest in detailed estimates of make-ready costs by pole attachers. However, the level of detail now proposed has not been necessary for pole attachers in the past. In addition, the EDCs do not profit from make-ready work. They are charging pole attachers the costs of labor and materials of contractors incurred on behalf of pole attachers. Also, even if the EDCs were to provide estimates and invoices on a pole-by-pole basis, certain pole attachers would still dispute these estimates and invoices and assert they are inadequately detailed. The Departments should also be mindful that significant changes to these processes would require significant changes to software systems and attendant costs. If the Departments were to impose this requirement, they should give the EDCs sufficient

time to make significant changes to their software systems. They should also guarantee recovery of the costs to make those changes, and they should permit the EDCs sufficient time to develop necessary changes with respect to the operations of their contractors.

Fifth, NECTA's recommendation that the Departments focus in this proceeding on access to all utility poles, not just those that are in the public right-of-way, seems inconsistent with language in G.L. c. 166, § 25A that defines licensee as an entity "authorized to construct lines or cables upon, along, under and across the public ways." Sixth, the DTC draft regulation Section 45.07 regulates the practice of overlashing. Other than suggesting that overlashers be required to label overlashes with identification tags, the EDCs take no position on this issue. Seventh, the EDCs do not agree with the Town of Charlemont that municipalities should be exempted from the requirement of having surety bonds. In D.T.C. 20-4, DTC correctly determined that surety bonds were reasonable. Eighth, NECTA's recommended that the Departments' pole attachment regulations be applicable to municipal light companies. The EDCs do not take a position on this issue. However, if the Departments determine that it will not impose its new pole attachment regulations on municipal light companies because some of its provisions would be too administratively burdensome or costly for municipal light companies and their customers, then likewise, the Departments should not impose those provisions on the EDCs and their customers.[12]

I. Conclusion

There is no need for dramatic changes to the current Massachusetts pole attachment process to promote broadband deployment. Massachusetts residents enjoy access to one of the country's most ubiquitous, low-priced and fastest broadband networks. The Departments should avoid

[12] It should be noted that the Paxton Municipal Light Department asserted in its initial comments that the FCC requirements are not in the best interest of line workers.

making dramatic changes to the current Massachusetts pole attachment regulations in the hopes of marginally increasing access to broadband in a state which is already one of the best in the nation when these changes could negatively impact the safety, reliability and cost of an electric system which is already facing unprecedented challenges.

Furthermore, because there are factors beyond the control of the EDCs that affect the length of time to complete the pole attachment process, the imposition of deadlines on EDCs is unlikely to materially shorten the amount of time it takes to complete the pole attachment process in Massachusetts. More importantly, state law recognizes that EDCs have obligations to provide safe, and reliable service to customers, and that deference must be given to the judgment of the EDCs as to how best operate the electric system safely and reliably. Therefore, if the Departments were to allow pole attachers to hire and direct contractors to work in the power space, the Departments would be acting contrary to state law because they would be improperly substituting their judgment for that of utility management as to how to best operate the electric system safely and reliably. In fact, most neighboring states do not allow self-help in the power space. Helping pole attachers deploy their networks quicker should never come at the expense of the reliability of the electric distribution system or the safety of the public or those working on the electric system.

In addition, in general, boxing should not be allowed on poles, and proposals designed to shift costs from pole attachers to the pole owners should be rejected. Electric reliability and lower costs to electric customers should supersede the financial interests of pole attachers. As for temporary attachments, they are problematic for variety of reasons. If the Departments were to allow temporary attachments, then certain limitations must be established.

Lastly, the EDCs recognize the importance of extending broadband access to the approximately 11,000 individuals in unserved or underserved locations as well as the importance

of accessing funding under the BEAD program by December 31, 2026. However, dramatic changes in the current Massachusetts pole attachment regulations are not likely to lead to more broadband deployment to unserved or underserved areas. Instead, the EDCs would suggest that a better approach would be to utilize the last mile make-ready working group to help facilitate broadband deployment in order to access funding under the BEAD program and to get broadband access to the unserved or underserved.

IV. DOUBLE POLES

In their initial comments, four entities specifically made recommendations regarding double poles: EOED/EEA, MMA, Compact and NECTA.[13] In addition, in its technical session presentation, Verizon also made recommendations.

In its initial Comments, the EOED/EEA recommended that the Departments "address the administrative burden of double poles on municipalities and/or the double poles backlog" and specifically encouraged the Departments to explore a "single visit transfer" program in other states, with a citation to Connecticut (EOED/EEA In. Comm., at 2-3). In addition, EOED/EEA mentioned the possibility of opportunities for the NJUNS to be used by attachers and municipalities as a "potential means to allow greater visibility into the status and timelines associated with double pole projects" (id., at 3).

In its initial comments, the MMA urged that the Departments "draft regulations that allow for municipal enforcement of double pole violations including the ability to remove poles, fine pole owners for non-compliance, and require utility companies to address double pole backlogs before new grants of location can be processed" (MMA In. Comm., at 3). MMA also

[13] The Town of Falmouth, the Town of Shutesbury, and the City of Cambridge also mentioned concerns regarding double poles in their comments.

recommended that the Departments "promote a well-functioning limited-access web-portal or database that would allow approved parties to view ROW and utility pole data" including "next in line for attachment removal" and stated that municipalities "would welcome access to all double pole information in NJUNS, not just poles on which they have attachments" (MMA In. Comm., at 3-4).

In its initial comments and in its technical session presentation, Compact requested that the Departments consider: "(1) more comprehensive reporting on double poles" so as "to understand the issues related to double poles;" (2) "a review of double pole accounting in the NJUNS," which would require "EDCs to conduct an audit;" and (3) "a mechanism to ensure that stakeholders have a mechanism to provide feedback on double poles in the future." (Compact In. Comm., at 11, Compact Presentation Topic 5, at 9). In its initial comments, NECTA recommended that the Departments: (1) designate a single pole administrator for each pole and (2) prohibit the practice of chunking, which occurs in the double pole process when the top and lower portions are removed and the middle section of the old pole remains (NECTA In. Comm., at 25-26, NECTA Presentation Topic 1, at 7-8). In its presentation, Verizon recommended that: (1) the Departments require all attachers to participate in NJUNS, and (2) if the Departments mandate a single visit transfer, certain problems would need to be addressed such as potential Verizon union issues, agreement on contractor pricing by all pole attachers, and contractors would need to be approved by the pole owners (VZ Presentation Topic 4, at 3, 10-12, and Presentation Topic 5, at 2).

At the outset, the EDCs strongly oppose MMA's recommendation that municipalities be allowed to penalize EDC pole owners related to double poles. Except in the case of restoration events when crews are diverted, the EDCs are not the reason that double poles take longer than 90 days to be removed, and therefore, they should not be fined or penalized in any way if a double

pole exists beyond 90 days. Delays in the removal of double poles are generally caused by the length of time pole attachers, other than the EDCs, need to transfer their attachments. Currently, each attacher on a pole is responsible for coordinating the transfer of its own facilities to a new pole. Consequently, the pole being replaced must remain until all attachments are transferred. Some attachers do not transfer their attachments in a timely manner. At times, even municipalities have been unable to transfer attachments, such as fire alarm wires, municipal fiber, streetlights, cameras, and even street signs, in a timely manner. Unfortunately, some municipalities face resource limitations in transferring their attachments, either because they have limited personnel that can transfer the attachments or budgetary constraints impacting the ability to hire contractors for these transfers. When the EDC is the pole custodian and is informed that all the pole attachments have been transferred, the EDC expeditiously removes the old pole.[14] (Of course, there may be certain instances where EDCs cannot quickly remove a double pole due to storm restoration.) Simply put, EDCs cannot control how long it takes other companies to transfer their pole attachment equipment. Therefore, penalizing EDC pole owners for the failure of other attachers to transfer their attachments in a timely manner will not result in a reduction in double poles. In fact, penalizing the EDC, and ultimately its customers, for the conduct of attachers it cannot control is inherently unfair.

Furthermore, the current 90-day timeline in G.L. c. 164, §34B is no longer realistic. In 1997, when the 90-day timeline in G.L. c. 164, §34B was enacted, there were generally a limited number of attachments on poles, primarily electric, telephone, municipal fire wire, and cable attachments. Currently, many poles may have more than double the number of attachments (in

[14] In the National Grid service territory, Verizon removes the old pole.

some instances, eight or more attachments) that were common in 1997. These attachments are owned by many different entities. In addition, there are frequently unauthorized attachments on poles, which slows down the double pole removal process as well. The current 90-day timeline is not realistic because it does not give sufficient time for the high number of attachment transfers and the pole removal. Therefore, EDC pole owners should not be penalized for conditions beyond their control.

Instead, the EDCs agree with Verizon's recommendation that the Departments should mandate NJUNS participation for all pole attachers, including municipalities. Requiring NJUNS participation would help ensure that pole owners know all the parties with attachments on a pole that needs to be replaced or upgraded. It would also ensure that each party would receive timely notifications for any required work on their facilities. Mandating participation in NJUNS for pole work would make attachment transfers faster and more efficient and reduce the number of double poles. In fact, municipal attachments are generally not registered in NJUNS, which slows the double pole removal process. The mandate to participate in NJUNS must be imposed by the Departments, not the EDCs. Although the EDCs have been requiring attachers to participate in NJUNS over the years, in older pole attachment agreements there is no NJUNS requirement. More importantly, EDCs can only encourage municipal participation in NJUNS, but they cannot mandate it because municipalities do not always have agreements for their attachments with the EDC.

Also, the EDCs support the EOED/EEA's recommendation of a "single visit transfer" but only for attachments in the communication space. The single visit transfer program has worked well in Connecticut in reducing the number of double poles. However, the single visit transfer process should not be applicable to attachments in the power space. Equipment in the power space

is more complex than equipment in the communications space. There is a different type of training needed to work in the power space than in the communications space. Also, any errors in the transfer of equipment in the power space may negatively impact reliability and endanger worker and public safety. Therefore, only specifically qualified rated trained personnel working under the supervision and in coordination of the EDCs should be allowed to work in the power space.

Furthermore, the EDCs generally concur with Verizon that there are a number of issues that would need to be resolved prior to the adoption of a single visit transfer process in Massachusetts. For example, attachers in the communication space would need to agree to contractor pricing for the transfer and allocation of these costs, and address issues related to liability. Also, the contractors performing the work in the communications space would need to be qualified and approved by the pole owners. However, EDCs do not support being responsible for transfer of communications equipment. EDCs and their contractors are not trained in the transfer of communications equipment. Also, EDCs and their customers should not be required to incur the cost of transferring communications equipment.

The EDCs oppose NECTA's recommendation that the Department designate a single pole administrator for each pole. In Connecticut, EDCs were designated to be the single pole administrator due to PURA's dissatisfaction with the performance of the incumbent telephone company, Frontier Communications. The EDCs are unaware of Verizon engaging in any behavior in Massachusetts that would justify stripping Verizon of its ability to administer with the EDCs jointly owned poles. Furthermore, as a result, of being designated to be the single pole administrator in Connecticut, Eversource has had to hire more staff, and increase its administrative cost. The higher administrative costs incurred by EDCs in order to act as the single pole administrator will eventually lead to higher electric rates for customers. Also, in general, EDCs

do not have the experience or expertise to perform work or manage the work performed by others in the communications space. The EDCs would likely still need to work with Verizon. A single pole administrator may result in changes to the double pole removal process but it will not make it more efficient or less expensive. Most importantly, a single visit transfer process does not require a single pole administrator. It can be implemented through cooperation and coordination between the joint pole owners.

With respect to NECTA's recommendation to prohibit chunking, the EDCs cannot support a blanket prohibition. There may be instances from an operational perspective where chunking would be necessary. For example, the bottom portion of a pole may be damaged due to a motor vehicle accident, or the top portion of a pole may be damaged due to a storm. In those instances, chunking could be necessary. As noted by NECTA in its presentation, the EDCs and NECTA members have a generally good and collaborative relationship. Therefore, going forward, where feasible, when chunking is done, the EDCs will attempt to have the brackets, which attach the old pole to the new pole, placed below the wires of the attachments that need to be transferred to the new pole. A practical, flexible and cooperative approach rather than promulgating a broad, and rigid regulation is the best way to address concerns regarding chunking.

As to MMA's and EOED/EEA's recommendation to use NJUNS to give municipalities general access to double pole data and utility pole data in general, the EDCs do not support this approach. Municipalities should be required to participate in NJUNS like other attachers. Participation in NJUNS involves notification when they need to transfer the attachments and keeping the NJUNS database up-to-date when they work on poles and attach to poles. However, municipalities should not receive general access to detailed information about poles and the attachments on them. Some of this information is confidential or proprietary. Information as to

the deployment of broadband and telecommunication networks is competitively sensitive. Also, some of this information involves critical infrastructure, and could be used by bad actors. If the Departments decided to move forward with giving municipalities general access to pole data, a number of safeguards and protocols would need to be developed and instituted.

Regarding the Compact's recommendations, they are vague. It is unclear to the EDCs what type of mechanism the Compact is seeking to use to provide feedback on double poles. Currently, the EDCs address double pole problems that are brought to their attention by municipalities. As to more comprehensive reporting, the EDCs are skeptical that more reporting will further illuminate the reasons for double poles. Regarding the request for the EDCs to conduct an audit of double poles in NJUNS, we believe the time and expense associated with such an audit would be better spent in actually removing double poles.

In conclusion, if the Departments adopt the EDCs' recommendations of mandating NJUNS participation for all pole attachers, including municipalities, and single visit transfer for all attachments in the communication space, the number of double poles should significantly decrease over time.

V. POLE ATTACHMENT RENTAL FEES

In its initial comments, one entity specifically made recommendations regarding pole attachment rental fees: NECTA. In those comments, and in its technical session presentation, NETCA recommended that the Departments: (1) alter the current FCC-based Massachusetts Formula by increasing the presumptions from 37.5-foot pole height and a 15-percent appurtenance factor to a presumed average pole height of 40 feet and a presumed average appurtenance factor of at least 22.5 percent; (2) clarify that current FCC-based Massachusetts Formula includes Excess Accumulated Deferred Income Taxes ("EADIT'); (3) alter the current FCC-based Massachusetts

Formula to prorate accumulated depreciation and Accumulated Deferred Income Taxes ("ADIT") in the same manner as the FCC; (4) require the tariffing of pole attachment rates; (5) require pole owners to track all data relevant to the Massachusetts Formula and report such data to the Departments, and (6) amend current regulations so as to require a pole owner to provide the affected attachers detailed data and a calculation supporting the new rate concurrent with the advance notice of the increase (NECTA In. Comm., at 12-24; NECTA Presentation Topic 6, at 17-20). The Departments should reject these recommendations as unnecessary, unjustified, administratively burdensome, and likely to increase costs to electric customers.

At the outset, the EDCs assert that changes to the Massachusetts Formula, and how pole attachment rates are implemented, are unnecessary, and unjustified. First, the current Massachusetts Formula has been followed for over a quarter of century without significant litigation involving the pole owners, attachers, or the Departments. Although there have been disputes, they usually have been resolved short of formal litigation. For instance, the DPU recently recognized that National Grid "routinely collaborates with NECTA and pole attachers on pole-related issues." Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, D.P.U. 23-150, at 623 (2024). Second, there is a lack of evidence that current pole attachment rates are not properly calculated or that costs are not appropriately allocated between attachers and electric customers. In fact, in D.P.U. 23-150, NECTA challenged National Grid's pole-related recordkeeping and Grid's pole attachment rates. Id., at 619-620. The DPU determined that while National Grid's "pole-related tracking processes may not satisfy NECTA's level of granularity … we are not persuaded that the Company's recordkeeping practices are substantially delinquent, nor is there convincing evidence that current pole attachment rates are not just and reasonable." Id. at 625-626. Therefore, it is entirely unclear why significant changes to the

Massachusetts Formula or in the current process of implementing pole attachment fees are needed now. Third, the changes that NECTA is seeking to make to the Massachusetts Formula, such as to pole height, would likely only have a small impact on the amount in pole attachment fees that pole attachers would pay annually. Finally, the proceeds that the EDCs receive from pole attachment billings are used to reduce the amount of revenue that they must recover from their customers to operate their electric system. Any reduction in pole attachment rates would result in a corresponding increase in revenue collected from customers.

The EDCs are opposed to NECTA's recommendation that the Massachusetts Formula be altered by increasing the presumptions from a 37.5-foot pole height to a presumed average pole height of 40 feet. NECTA tries to justify this change by stating that pole heights have increased over the decades and that "40-foot poles are now the standard for placement ins service today" (NECTA In. Comm., at 15-16). NECTA's argument is flawed.

The average pole height for Massachusetts pole owners is not 40 feet. In fact, the pole owners provided information indicating that the average pole height is closer to 37.5 feet than 40 feet (Attachment NG-A-4; Eversource Attachment ES-A-4, and VZ Comments at 3). Furthermore, the FCC still utilizes the 37.5 feet presumption. Therefore, there is no factual basis to increase the pole height presumption to 40 feet.

In the alternative, NECTA suggests that pole owners rely on the actual average pole height in their databases in calculating the pole attachment fee under the Massachusetts Formula (NECTA Presentation Topic 6, at 18). Currently, both National Grid and Verizon use their actual average pole height, while Eversource and Unitil utilize the 37.5-foot presumption.

The use by Eversource and Unitil of a 37.5-foot presumption of pole height is appropriate under the circumstances. Presently, Unitil does not have information on the average height of its

poles. Eversource does have information as to the purchased length of poles, but not the average height of its poles. However, this data reflects the height of its poles when they were purchased. It does not reflect the height of the poles in actual field conditions. The actual ground to top height of the pole will be shorter depending on how much of the pole is mounted into the ground. This is important because the usable space for communications attachments is determined by the height of the pole in actual field conditions. The only way to empirically determine the average pole height is through a field study where actual physical measurements of poles are conducted. According to precedent, the "presumption of 13.5 feet" for the "usable space" can only be rebutted "in the form of a statistical analysis or projections using actual pole surveys" which show the "average usable space is materially different from 13.5 feet." Cablevision of Boston Company, et al. v. Boston Edison Company, D.P.U./D.T.E. 97-82, at 43-44 (1998); A-R Cable Service, et al. v. Massachusetts Electric Company, D.T.E. 98-52, at 27 (1998). NECTA has offered no reason to depart from this well-reasoned precedent. As referenced above, any reduction in pole attachment rates would result in a corresponding increase in revenues collected from EDC customers.

The EDCs are opposed to NECTA's recommendation that the Massachusetts Formula be altered by increasing the presumption from a 15-percent appurtenance factor to a presumed average appurtenance factor of at least 22.5 percent. NECTA tries to justify this change by stating that over time "utilities are continually increasing investment in crossarms and other structures as part of their aggressive electric-network hardening and resiliency programs" (NECTA In. Comm., at 18). This argument is flawed.

Appurtenances can be either pole-related items (e.g., guys, anchors) that all attaching entities benefit from or non-pole related items (e.g., crossarms) which are used to support electrical equipment and only benefit the EDC. The investment in appurtenances, both pole-related and non-

pole related, have grown over the years, not only because of electric resiliency programs, but also because the poles require additional support because the number of pole attachments has increased. Therefore, the increase in appurtenance investments over the years is not driven solely by electric system needs. Furthermore, the FCC still utilizes the 15-percent appurtenance factor. Accordingly, there is no factual basis to increase the appurtenances presumption to 22.5 percent.

In the alternative, NECTA suggests that the pole owners rely on the actual investment data in appurtenances in calculating the pole attachment fee under the Massachusetts Formula (NECTA Presentation Topic 6, at 19). Currently, both National Grid and Unitil use their actual data while Eversource utilizes the 15 percent presumption.

The use of a presumption by Eversource is appropriate under the circumstances. FERC Account 364 includes the cost of appurtenances. However, Eversource does not possess any additional subaccount data, which would allow it to separate non-pole related appurtenances from pole-related appurtenances. Because Eversource does not have the necessary information, it should be allowed to use the presumption. According to precedent, "if a utility does not track Account 364 to the subaccount level, the use of a 15 percent appurtenance presumption is appropriate." D.T.E. 98-52, at 13. NECTA has offered no reason to depart from this well-reasoned precedent. If the Departments were to depart from this precedent, any reduction in pole attachment rates would result in a corresponding increase in revenues recovered from EDC customers.

The EDCs oppose NECTA's recommendations related to EADIT or ADIT. The EDCs in their calculation of the Massachusetts Formula properly take into account EADIT or ADIT. The EDCs have provided and explained in detail at the technical session how they calculate the Massachusetts Formula. NECTA has failed to point out exactly how the EDCs calculation of the

Massachusetts Formula involving either EADIT or ADIT is inconsistent with Massachusetts precedent.

The EDCs do not support the tariffing of pole attachment fees. First, the Departments lack clear statutory authority to require the tariffing of pole attachment fees. G.L. c. 164, §94 only encompasses "all rates, prices and charges to be charged or collected within the commonwealth for the sale and distribution of gas or electricity." It does not cover rental fees on electric poles. Second, tariffing of pole attachment fees would increase the administrative burden on the EDCs, pole owners, and the Department. The intent in establishing the current pole attachment fee process was "to have a simple, predictable, and expeditious procedure that will allow parties to calculate pole attachment rates without the need for Department intervention." D.P.U. 98-52, at 7. The tariffing of pole attachment will invite litigation and increase the Department's involvement. Third, tariffing of pole attachment fees is unnecessary. Although there have been disputes between pole owners and attachers, they usually have been resolved short of formal litigation. Upon request, pole owners will provide attachers with information to justify their pole attachment rates. If a pole attacher wishes to file a formal complaint over a pole attachment fee, current regulations already allow them to do so. Also, pole owners already provide notice to attachers prior to implementing new pole attachment fees. Notice through an official tariff filing is therefore not necessary.

The EDCs oppose NECTA's recommendation to require pole owners to track certain data relevant to the Massachusetts Formula and report such data to the Department. NECTA's request for data tracking is overly broad, and unduly burdensome. NECTA requested: "(1) property records, including records for FERC Account 364, necessary to ascertain the pole owner's actual average pole height and actual investment in appurtenances, (2) amortization schedules related to

the refund of normalized and non-normalized EADIT resulting from the TCJA and reconciling the amounts reported in FERC Form 1, (3) records demonstrating the number of the utility's mixed-use and non-unitized poles with any associated investment booked to FERC Account 364, (4) records tracking the application of make-ready credits and other reimbursements or deferrals of investment or expenses reported in FERC Accounts 364 and 593, and (5) any other records that are not publicly available upon which the utility bases any inputs into the Massachusetts Formula." (NECTA In. Comm, at 23). The pole owners do have much of this information, but there are instances where the pole owners do not have the level of detailed information that NECTA would want.

For instance, in D.P.U. 23-150, NECTA argued that "National's Grid utility pole-related recordkeeping must be improved to fully comply with FERC's and the Department's governing standards" and "that more accurate, precise, and timely recordkeeping is necessary with respect to pole and non-pole items (e.g., anchors and crossarms) booked to Account 364." D.P.U. 23-150, at 619-620. National Grid asserted that "it has provided all data that is relevant to pole attachment rate calculations to NECTA." Id., at 622. In the end, the DPU concluded that "while the Company's pole-related tracking processes may not satisfy NECTA's level of granularity … we are not persuaded that the Company's recordkeeping practices are substantially delinquent." Id., at 625-626. Likewise, the Departments should not adopt NECTA's recommendation in this proceeding. The information the pole owners currently have, track and provide upon request to pole attachers is sufficient. Granting NECTA's request will lead to disputes and potentially litigation over the level of the information pole owners need to have to support their pole attachment rates.

The EDCs do not support NECTA's recommendation to amend current regulations to require a pole owner to provide the attachers detailed data and a calculation supporting the new rate concurrent with the advance notice of the increase. This is not necessary. Most pole attachers do not request detailed data or a calculation supporting a new rate pole attachment from pole owners. When attachers request such information, the pole owners provide it. Therefore, there is no need to adopt regulations to require pole owners to provide this information as part of its standard notice.

In conclusion, the Departments should reject any changes to Massachusetts Formula, and should reject changes to how pole attachment rates are calculated. The adoption of any changes is unnecessary, unjustified. and would result in a corresponding increase in revenues collected from EDC customers.

VI. POLE DISPUTES

In their initial comments, four entities, other than the EDCs, submitted substantive comments regarding the pole attachment complaint process: NECTA, Crown Castle, CTIA and Verizon. In addition, in their technical session presentation, NECTA and Verizon also made recommendations.[15]

In their initial comments, NECTA, CTIA and Crown Castle argued that the Departments should adopt a rapid dispute resolution process like the FCC's Rapid Broadband Assessment Team ("RBAT") or the Departments could adopt an expedited pole attachment complaint process like that of Maine where a final written decision is made within seven business days of the filing of a complaint (NECTA In. Comm., at 8-9; CTIA In. Comm., at 5-6; Crown Castle In. Comm., at 8).

[15] The DTC's proposed revisions as they pertained to the pole attachment complaint process was essentially typographical.

NECTA justified its recommendation by claiming that the current Massachusetts complaint process, which can take up to 180 days, is too long (NECTA In. Comm., at 9). Crown Castle suggested that the Departments adopt a 60-day timeline for resolving pole attachment complaints (Crown Castle In. Comm., at 8). In its technical session presentation, NECTA opposed giving either the DPU or DTC the unilateral authority to dismiss a pole attachment complaint, if either agency believed the relief sought was more appropriate for a rulemaking (NECTA Presentation Topic 7, at 22). In addition, in the event of an impasse between the DPU and DTC on a pole complaint adjudication, NECTA opposed giving the DPU unilateral authority with respect to reliability, safety or cost of the electric distribution system, and instead suggested that the view of the agency with the jurisdiction to decide the complaint under the original Memorandum of Understanding ("MOU") should prevail (id.).

In its initial comments, Verizon recommended that pole owners be allowed to file complaints against attachers, and that prior to the filing of any complaint, executive level resolution would need to be pursued (Verizon In. Comm., at 26). In its technical presentation, Verizon did not object to joint adjudication of formal complaints, and the ability of the Departments to dismiss complaints, and instead open a rulemaking (Verizon Presentation Topic 7, at 2). Also, Verizon reiterated its position that pole owners do not have avenues to seek redress under the Departments' regulations, and suggested that dispute resolution should be included in the regulations (id., at 3).

At the outset, the EDCs reiterate their position that the DPU should be allowed to participate as an adjudicator in any complaint, in particular when an EDC is a party to the complaint. No stakeholders have objected to the DPU being an adjudicator in pole attachment proceedings. Undoubtedly occasions may arise where the DPU and DTC may disagree as to how

to resolve a complaint. In those instances, the logical approach is for the DPU to be granted deference on any issue affecting the reliability, safety or costs of the electric system. As previously explained by the DPU, the "DTC lacks the requisite subject matter expertise and experience to appropriately analyze the needs of any electric distribution system. Nor does the DTC have jurisdiction over the safety, security, and reliability of the infrastructure or electric service of EDCs … Rather, that expertise, experience, and jurisdiction is vested with the DPU, which retains multiple engineers and attorneys, among other professional and subject matter experts on staff, dedicated to utility system issues"(D.T.C. 22-4, DPU Post Order Brief, at 6 (6/7/2024)).[16] NECTA's recommendation that the DTC's view should prevail in case of an impasse simply because it had jurisdiction to adjudicate pole complaints under the original MOU should be rejected. It should not matter if, under the original MOU, the DTC decided pole attachment disputes; what matters is that when it comes to matters affecting the EDCs, the DPU has the jurisdiction to decide issues involving the safety, reliability, and costs of the electric distribution system.

NECTA also disagrees that either agency should have the authority to dismiss a complaint if either agency believes the complaint seeks relief more appropriate for a rulemaking. However, allowing either agency to dismiss a complaint which is more appropriate for a rulemaking is simply more administratively efficient and fairer to the parties. If at the outset the DPU or DTC has determined that a particular complaint is more appropriate for a rulemaking and should be dismissed, it would be an inefficient use of time for all parties and the Departments to go through an adjudication.

[16] At the technical session, Verizon also recognized that the DPU should take the lead on issues affecting electric safety.

In regard to recommendations to shorten the length of time for the current pole attachment complaint process, it should be noted that 180 days is allowed by federal law and that 180 days is needed to have a proper adjudication. 180 days gives the parties sufficient time to answer to the complaint, conduct discovery, present evidence, submit rebuttal evidence, have a hearing and submit briefs, as well as enough time for the regulators to review the record and issue a written decision. Also, it is imperative that the time period for a pole attachment complaint be sufficient for the parties to exercise all their rights under G.L. c. 30A §11, which includes giving parties a "reasonable opportunity to prepare and present evidence and argument", "the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, and to submit rebuttal evidence." Because of the need for due process, the EDCs oppose the adoption of a hyper compressed time frame to resolve pole attachment complaints, such as currently exists in Maine. An alleged need to speed up broadband deployment should leave due process rights behind.

As stated in the initial comments by the EDCs, with the exception of D.T.C. 22-4, the current complaint adjudication process has generally operated well. In fact, in the last ten years, only two formal complaints have been filed against any EDC in this state. This lack of formal complaints is evidence that the EDCs have usually resolved disputes with pole attachers without the need for adjudication. With that said, the EDCs are open to an alternative dispute resolution process, which is non-binding, expedited, and takes place prior to the filing of a formal complaint. This dispute resolution process can provide guidance and advice to the parties on the most effective means of resolving their dispute, which is an aspect of the FCC's RBAT.

Lastly, the EDCs concur with Verizon's recommendation that pole owners should be able to file complaints against attachers or seek dispute resolution with attachers. This option is presently available in New York. Specifically, the EDCs should be able to file complaints against

pole attachers who: (1) refuse to pay make-ready costs provided to them in true-up invoices, (2) after being presented with a make-ready estimate, continuously seek redesigns and changes to their deployment plans, thereby delaying the work to be performed for their competitors, and (3) fail to make timely make-ready payments, which are necessary to ensure resources are secured to perform work in a timely manner.

In summary, the DPU should be a co-adjudicator in pole attachment disputes and the DPU should be given deference by the DTC on issues involving the safety, reliability, and costs of the electric system. The length of time to adjudicate a pole attachment dispute should not be shortened. The parties must have the ability to fully exercise their due process rights under G.L. c. 30A §11. An alternative dispute resolution process, which is non-binding, expedited, takes place prior to the filing of a formal complaint, and provides guidance to the parties that could be helpful and should be considered. Finally, pole owners should be able to file complaints against pole attachers, in particular when the attachers engage in actions which financially harm pole owners, or negatively impact the work performed for other attachers.

VII. Electric Vehicle Supply Equipment ("EVSE")

A. Summary of Comments

In their initial comments, six entities, other than the pole owners, addressed issues related to EVSE: (1) EOED/EEA; (2) MMA; (3) EVSE LLC; (4) Mass Clean Energy Center; (5) MBTA; and (6) the Town of Mansfield. In addition, during the technical session presentation, the DPU made numerous requests for further information related to the EVSE from the EDCs.

In its initial comments, the EOED/EEA expressed a need for clear rules and streamlined processes to deploy EVSE on ROWs and utility poles (EOED/EEA In. Comm., at 2). In its initial comments, the MMA stated it supported municipalities having the option to allow or install pole-

mounted EVSE (MMA In. Comm., at 4). EVSE LLC recommended that utilities be allowed to own EVSE and pole infrastructure (EVSE LLC In. Comm., at 4). The Mass Clean Energy Center expressed support for EVSE but indicated that Eversource and National Grid are unwilling to participate in pole-mounted charging stations projects due to the complexity of ownerships structures, and competition for space, as well as safety and liability concerns (Mass Clean Energy Center In. Comm., at 4-5). This positioning is clarified below. The MBTA expressed serious safety concerns about EVSE on transit routes, and expressed concern that non-transit drivers parking or stopping to use EVSE would hamper the efficiency of bus operations and efficiency (MBTA In. Comm., at 2-3). Mansfield stated that EVSE on utility poles would cause safety issues, extend outage times, and during winter months, street parking next to pole mounted EVSE would cause problems for utilities to access the pole (Mansfield In. Comm., at 1). Mansfield also expressed a preference for ROW EVSE over pole mounted EVSE for both reliability and safety (id., at 2). Lastly, during the technical session, the DPU requested more information from the EDCs as to: (1) the challenges associated with utility pole-mounted EVSE; (2) the costs and resources (both short- and long-term) for utility pole-mounted versus ground-mounted EVSE, informed by the National Grid Melrose utility pole-mounted EVSE project; (3) an estimate of the number of poles statewide that could be used for EVSE; and (4) an explanation as to National Grid's determination not to pursue or support utility ownership of pole-mounted EVSE at this time.

B. Supporting Customer-Led EVSE Deployment

As stated previously and during the technical session in June, the EDCs are committed to supporting our customers in deploying reliable, cost effective, and site-specific EVSE across the Commonwealth. Ubiquitous access to EV chargers is critical for EV drivers (and in accelerating adoption) but needs to be deployed cost effectively and efficiently to be successful and reliable.

Although utility pole-mounted EVSE may be viable in certain limited use cases, there are many unique challenges and costs that accompany this mode of deployment and pursuing utility pole-mounted EVSE is likely not a suitable choice for most locations, given the need for pole suitability and alignment with appropriate parking spaces. Since the first utility pole-mounted chargers were deployed in Melrose, ground mounted EVSE in the state has grown exponentially and there are many types of chargers available in the market to serve customer's unique needs. National Grid allows utility-pole mounted chargers to be installed through its EV Programs, but there has not been interest from any customers in taking that approach of deployment since National Grid worked with Melrose. Similarly, Eversource and Unitil are not aware of any interest from customers in utility pole-mounted EVSE in their service territories. Given that ground-mounted EVSE is far more scalable statewide and comes with far fewer complexities, risks and costs over time, the EDCs do not believe that utility pole-mounted EVSE should be promoted over other options. National Grid and Unitil maintain that utility pole-mounted EVSE should continue to be allowed on a case-by-case basis as pursued by individual customers, while Eversource does not intend to consider that option at this time.

As explained at the technical session and in the initial comments, the EDC's concerns regarding utility pole-mounted EVSE are centered around the challenges faced by customers (such as a municipality or EVSE operator) and the impact pole-mounted EVSE could have on grid operations and service reliability. Customer challenges will likely increase due to their direct connection to the utility's distribution infrastructure. Restoration, maintenance, and operations are more complicated, adding operational complexity and additional potential costs for maintenance due to the technical requirements for anyone doing service on a third-party attachment. With the goal of ensuring a sustainable and reliable network of EVSE across the Commonwealth, it is

important that EVSE owners and operators are aware of all the associated installation and operational costs that will be incurred over time. Additional details regarding utility-pole mounted EVSE costs (both short-term and long-term) will be discussed below.

In addition to the challenges for the EVSE owner and as discussed in the technical session, EVSE on utility poles also adds additional risk for utility operations, service reliability, and the potential for double poles. Due to their size, EVSE can make it more difficult for workers to climb the pole to perform maintenance or repairs. Also, the existence of EVSE on utility poles complicates storm restoration and the potential length of downtime for the EVSE itself. The EDCs are not alone in expressing reliability and safety concerns surrounding utility pole-mounted EVSE. The Mansfield Municipal Light Department also mentioned safety and reliability concerns in their comments.

C. Additional Costs Related to Installing Utility Pole-Mounted EVSE Versus Traditional Ground-Mounted EVSE

Cost conscious deployment of EVSE is also a critical consideration for customers as they venture into owning and operating EV chargers, especially for municipalities whose budgets and resources available to support this type of endeavor are often limited. While the Melrose project is the only example available to the EDCs for comparison of pole-mounted vs. ground-mounted EVSE, the initial and on-going costs discussed below are based on standard attachment processes and fees that would apply to any third-party attachment. The EDCs are also only aware of one model of pole-mounted EVSE that can be sold in Massachusetts, so the lack of customer choice or market competition is a consideration to be aware of as well. While the Melrose pole-mounted EVSE, at the time of deployment, demonstrated the potential for savings on the installation component of the project, the hundreds of staff hours contributed by National Grid employees and

the Melrose Project Manager and other municipal staff to identify sites and poles and conduct engineering assessments likely far exceeded the cost savings for installation. The project teams worked together for more than a year and a half to complete the project, which is more time than a typical Level 2 EVSE project would take to install. While some of this staffing investment was due to the project being first-of-its-kind, it would not be fully eliminated if these projects were more commonplace. Additionally, the project team was extremely selective in identifying potential sites and poles to assess, which likely resulted in a below average cost for staff time and engineering assessments compared to a more expansive deployment where more sites, poles, and engagement with joint pole owners would be required.

The EDCs do not have customer insurance data or other pole owners' fee data to be able to quantify the one-time and annual reoccurring costs for installing and operating EVSE on utility poles. For the installation, additional one-time fees (for EDCs and other pole owners, such as Verizon) include the initial agreement, application, designs, and the pole loading analysis. For the on-going annual costs, these include insurance and surety bond premiums and the device attachment billing fees. Ground-mounted EVSE do not incur these costs associated with third-party utility pole attachment requirements, nor would they require the ongoing higher maintenance costs due to the necessity of specialized technicians who work on utility poles. Given the cost differences, the EDCs believe that, in most cases, the benefits arising from utility pole-mounted EVSE are likely outweighed by the time and costs associated with planning for, installing and maintaining utility pole-mounted EVSE.

D. Estimated Number of Poles Suitable for EVSE

Across Massachusetts, suitable locations for ground-mounted EVSE far outweigh those available for utility pole-mounted EVSE. Designed to provide reliable distribution service across

the state, utility poles can have limited space for EVSE and are not often located where parking and charging for an automobile is feasible. As discussed above, in its Melrose project, National Grid contributed a significant amount of staff time and resources in a city of approximately 3,900 poles to identify 13 poles suitable for EVSE (of which 9 ended up being used for the final EVSE installs). In partnership with municipal staff, National Grid supported the identification of low-risk sites, off major roads, that would be more likely suitable for the project. Expansion of this effort is simply not feasible statewide.[17] While the Melrose project brought EV charging into the community, it also demonstrated that utility pole mounted EVSE often take significantly more time and resources to deploy than ground-mounted chargers. Therefore, like the Mansfield Municipal Light Department, the EDCs would encourage that the EVSE deployment be focused on ground-mounted EVSE in ROWs rather than utility pole-mounted EVSE. Focusing limited time and resources on ground-mounted EVSE in ROWs is a more cost-effective way to achieve the goals of the EOED/EEA, the DPU, and the Mass Clean Energy Center in increasing access to electric vehicle charging infrastructure in this state.

Although in most cases, ground-mounted EVSE in ROWs may be an easier and a better option to deploy than utility pole-mounted EVSE, National Grid and Unitil concur with MMA that municipalities should have the option to install pole-mounted EVSE. National Grid and Unitil will work with municipalities if they wish to own and operate utility-pole mounted EVSE. At this time, Eversource is not considering this option for municipalities. However, municipalities need

[17] The EDCs lack sufficient information to determine how many of its poles are suitable for EVSE statewide. As shown in the Melrose pilot, a significant amount of resources were utilized by National Grid and the City of Melrose to identity 13 poles out of a city with 3,911 poles, which is equal to 0.0028 percent of National Grid's Melrose poles. In Massachusetts, the EDCs own solely or jointly 1,250,592 poles. 0.0028 percent of 1,250,592 poles would be equal to about 3,501 poles statewide.

to be aware of the challenges associated with owning and operating utility-pole mounted EVSE. As shown in the Melrose project, the project required a significant amount of staff time and resources to complete, not only for National Grid, but also for the City of Melrose. As indicated earlier, it required a significant amount of time to determine appropriate poles that would meet all the requirements for EVSE mounting, aligned with parking spaces, and meet the approval of abutters through the traffic commission. In addition, Melrose incurred costs associated with obtaining insurance for its utility pole-mounted EVSE. As of now, the EDCs have not received any additional requests from municipalities to own and operate EVSE on utility poles. Therefore, the Mass Clean Energy Center's perception that National Grid is unwilling to participate in pole-mounted charging stations projects is not entirely accurate. National Grid will work with municipalities, but after the Melrose project, the EDCs are aware of the challenges of utility pole-mounted EVSE and will fully inform municipalities about the challenges associated with deploying, owning and operating utility pole-mounted EVSE.

E. Utility Ownership of Pole-Mounted EVSE

In 2022, the DPU and other stakeholders recognized that "utility owned EVSE" could "hinder the development of the competitive market" and the lack of evidence that the competitive EV charging market could not meet the need for more EVSE. Electric Vehicles, D.P.U. 21-90/D.P.U. 21-91/D.P.U. 21-92, at 153 (2022). The EDCs agree with this determination. Operating EV chargers is outside of the EDCs core businesses and would require significant financial and staffing resources to do well. If the EDCs had to pursue this approach (such as owning a network of utility pole-mounted chargers), the EDCs would need to stand up new and separate operating models to own and operate the chargers. The cost to ratepayers for the EDCs to deploy a small utility pole-mounted network would be fairly expensive per charger (especially given that they

would be thinly spread across the state and would require localized maintenance staff or contractors). Most importantly, some of the challenges associated with utility pole-mounted EVSE do not go away simply because the EVSE is owned by the utility. Whether the EVSE is owned by the utility or another entity, in most cases, pole-mounted EVSE can make it more difficult for workers to climb the pole to perform maintenance or repairs, complicate storm restoration, and increase the likelihood of double poles. Utility ownership, currently, is not a priority for the EDCs and the preference is to focus on supporting customers through our existing and future EV Programs. EVSE LLC's recommendation that utilities own EVSE should not be adopted.

In conclusion, although utility pole-mounted EVSE may be viable in certain limited circumstances if permitted by the EDC, ground-mounted EVSE on ROWs are a much better option because they have lower long-term costs than utility-pole mounted EVSE, and the Melrose project demonstrated that because of resources needed for deploying utility pole-mounted EVSE, they are not the optimal solution for most customers. With that stated, National Grid and Unitil will work with municipalities if they wish to own and operate utility-pole mounted EVSE, but municipalities need to understand the challenges associated with installing, owning, and operating utility-pole mounted EVSE. While the challenges discussed here serve as barriers to pole-mounted EVSE deployment, they do not prevent deployment, if the use case and value is enough to warrant the effort and cost for the customer or community installing the EVSE. At this time, Eversource is not considering utility-pole mounted EVSE as an option for municipalities. Furthermore, the problems associated with utility pole-mounted EVSE are not overcome if the EVSE is owned by a utility. The EDCs encourage all customers to assess their EVSE options when designing charging projects. To ensure customers have options, including utility pole-mounted EVSE, the EDCs

recommend that any required plans for pole-mounted EVSE be integrated into their future EV Program filings as eligible chargers (if the utility permits them) under future approved programs.

VIII. CONCLUSION

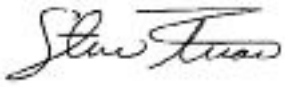
The EDCs appreciate the opportunity to provide the DPU and DTC with these Reply Comments and look forward to further engagement on these various topics.

Respectfully submitted by:

MASSACHUSETTS ELECTRIC COMPANY AND NANTUCKET ELECTRIC COMPANY d/b/a NATIONAL GRID

By its attorneys,

Stacey Donnelly, Esq.
National Grid
170 Data Drive
Waltham, MA 02451
(781) 663-3131



Steven Frias, Esq.
Keegan Werlin LLP
One Cranberry Hill, Suite 304
Lexington, MA 02421
617-951-1400

NSTAR ELECTRIC COMPANY
d/b/a EVERSOURCE ENERGY

By its attorneys

_____

Kevin F. Penders, Esq.
Michael B. Hershberg, Esq.
Keegan Werlin LLP
One Cranberry Hill, Suite 304
Lexington, MA 02421
617-951-1400

FITCHBURG GAS AND ELECTRIC
LIGHT COMPANY d/b/a UNITIL

By its attorney,

_____

Alice Davey
Senior Counsel
Unitil Service Corp
6 Liberty Lane West
Hampton, NH 03842
daveya@unitil.com

Dated: August 8, 2025