

DPU-DTC Joint Proposed Amendments to Regulations

220 CMR 45.00

Attachment B – Clean Regulations (Proposed)

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220 CMR: DEPARTMENT OF PUBLIC UTILITIES

220 CMR 45.00: POLE ATTACHMENT, DUCT, CONDUIT AND RIGHT-OF-WAY
ACCESS, REMOVAL, COMPLAINT AND ENFORCEMENT
PROCEDURES

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45.01: Purpose and Applicability

220 CMR 45.00 effects legislative policy in favor of competition and consumer choice in telecommunications, while also preserving consumer protections to ensure utility services are safe, secure, reliable, and affordable, by providing access, removal, complaint, and enforcement procedures that: (1) ensure that telecommunications carriers and cable system operators have nondiscriminatory access to poles, ducts, conduits, and rights-of-ways owned or controlled, in whole or in part, by one or more utilities with rates, terms and conditions that are just and reasonable; and (2) consider the interests of both consumers of utility services and subscribers of telecommunications and cable television services. The general procedural rules set forth at 207 CMR 1.00: Procedural Rules and 220 CMR 1.00: Procedural Rules are also applicable except to the extent that they are inconsistent with 220 CMR 45.00.

For purposes of enforcement and dispute resolution, the following regulations will take effect 90 days after final publication in the Massachusetts Register: 220 CMR 45.06: Utility Poles – Attachment Application Size through 220 CMR 45.12: Utility Poles – Overlapping Wires in the Communications Space, and 220 CMR 45.17: Annual Informational Filings and Website Postings.

45.02: Definitions

For the purposes of 220 CMR 45.00, the following terms are defined as follows, unless the context otherwise requires:

Appropriate Government Authority. A government entity with jurisdiction over the public rights-of-way affected by a new licensee's proposed project, that may be involved in approving permits or other requests necessary to complete a new licensee's project, or that may be asked to provide resources to facilitate completion of a new licensee's project.

Attachment. Any wire or cable for transmission of intelligence by telegraph, wireless communication, telephone, television, including cable television, or other means of telecommunication, or for the transmission of electricity for light, heat, or power and any related device, apparatus, appliance, or equipment installed upon any pole or in any telegraph or telephone duct or conduit owned or controlled, in whole or in part, by one or more utilities.

Communications Space. The lower usable space on a pole, which typically is reserved for low-voltage communications equipment and facilities and is separated from the electric supply space by a communication worker safety zone.

Complainant. A licensee or a utility that files a complaint pursuant to 220 CMR 45.15: Formal Complaint Procedure.

Complaint. A petition with supporting documentation filed by either a licensee or a utility concurrently to the Department of Public Utilities and the Department of Telecommunications and Cable pursuant to 220 CMR 45.15: Formal Complaint Procedure. A complaint shall constitute an initial pleading within the meaning of 207 CMR 1.04(1) and 220 CMR 1.04(1).

Cyclical Pole Inspection Report. Any report that a utility creates in the normal course of its business that sets forth the results of a routine inspection of its poles during the utility's normal pole inspection cycle.

Department. The Department of Public Utilities and the Department of Telecommunications and Cable.

EVSE. Electric vehicle supply equipment.

Licensee. Any person, firm, or corporation, inclusive of wireless providers, other than a utility, that is authorized to construct lines or cables, including EVSE attachments, upon, along, under, and across the public rights-of-way. For the purposes of 220 CMR 45.02: Licensee, the term shall also include a municipal lighting plant or cooperative that operates a telecommunications system outside the limits of its service territory pursuant to M.G.L. c. 164, § 47E, but only with respect to attachments located outside its service territory. A licensee shall be classified as either an “existing licensee,” or a “new licensee,” depending on the circumstances surrounding a particular attachment or attachment application.

Existing Licensee. Any person, firm, or corporation, including a municipality and municipal lighting plant, other than a utility, with an authorized attachment installed upon any pole or in any duct or conduit owned or controlled, in whole or in part, by one or more utilities.

New Licensee. Any person, firm, or corporation, including a municipality and municipal lighting plant, other than a utility, requesting to install a new or upgraded attachments upon any pole or in any duct or conduit owned or controlled, in whole or in part, by one or more utilities. A new licensee includes any existing licensee that submits an application to one or more utilities to install a new attachment upon a pole or in any duct or conduit owned or controlled, in whole or in part, by the utilities.

Make-Ready. The modification or replacement of a pole, or of the lines or equipment on a pole, to accommodate new or upgraded telecommunications, including those of advanced telecommunications capability, and cable television attachments.

Complex Make-Ready. Transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or damage to any attachment or pole, including, but not limited to, the splicing of an existing attachment, the relocation of an existing wireless attachment, or the relocation of an EVSE attachment. An attachment application shall be considered to require complex make-ready if it necessitates work above the communications space, necessitates a pole replacement, or involves wireless telecommunications attachments generally.

Simple Make-Ready. Make-ready where attachments in the communications space could be transferred without any reasonable expectation of a service outage or damage to any attachment or utility pole, and does not require the splicing of an existing attachment, the relocation of an existing wireless attachment, the relocation of an EVSE attachment, the replacement of a pole, or the involvement of any other wireless activities.

NESC. The National Electrical Safety Code.

NJUNS. The National Joint Use Notification System.

OSHA. Occupational Safety and Health Administration.

OTMR. One-Touch Make-Ready. The process by which a new licensee opts to perform all simple make-ready required to accommodate a new attachment in the communications space on a pole, as authorized by 220 CMR 45.09.

Respondent. A licensee or a utility against which a petition for interim relief or formal complaint has been filed pursuant to 220 CMR 45.14: Petitions for Interim Relief and Alternative Dispute Resolution Procedure or 220 CMR 45.15: Formal Complaint Procedure.

Usable Space. The total space which would be available for attachments, without regard to attachments previously made:

(a) upon a pole above the lowest permissible point of attachment of a wire or cable upon such pole which will result in compliance with any applicable law, regulation, or electrical safety code; or

(b) within any telegraph or telephone duct or conduit.

Utility. Any person, firm, corporation, or municipal lighting plant that owns or controls, or shares ownership or control of, poles, ducts, conduits, or rights-of-way used or useful, in whole or in part, for supporting or enclosing wires or cables for the transmission of intelligence by telegraph, telephone, or television, or for the transmission of electricity for light, heat, or power.

Wireless Attachment. An attachment responsible for wireless activities, including, but not limited to, those involving mobile, fixed, and point-to-point wireless communications or the provision of wireless internet service.

45.03: Computation of Time

Computation of any period of time referred to in 220 CMR 45.00 shall begin with the first day following the day on which the act that initiates such period of time occurs. The last day of the period so computed shall be included unless it is a day that the Department is closed, in which event the period shall run until the end of the next following business day. When such period of time, with intervening Saturdays, Sundays, and legal holidays counted, is five calendar days or less, the said Saturdays, Sundays, and legal holidays shall be excluded from the computation; otherwise, such days shall be included in the computation.

45.04: Duties of Licensees and Attachment Owners

- (1) No person, firm, or corporation shall install an attachment upon any pole, duct, conduit, or right-of-way owned or controlled, in whole or in part, by one or more utilities without the consent of the utility and any appropriate government authority. Unauthorized attachments may be subject to removal by a utility.
- (2) Joint Utility Electronic Notification Databases. All licensees on poles located on public rights-of-way shall:
 - (a) register and participate in any joint utility electronic notification database such as NJUNS utilized by the utilities that are subject to M.G.L. c. 164, § 34B;
 - (b) maintain a current contact, including the individual's name, telephone number, and e-mail address, within NJUNS and any successor database to receive next-to-go notifications relating to the licensee's attachments, and to facilitate make-ready or other work identified by a next-to-go notification; and
 - (c) update NJUNS and any successor database with all relevant information relating to any work performed by the licensee on its attachments, including self-help and OTMR work, or affecting a pole, duct, conduit, or right-of-way no later than five business days after said work is completed.
- (3) When an existing licensee receives a next-to-go or other notification from a utility, a new licensee, NJUNS, or any successor database to NJUNS, informing the existing licensee of its duty to modify one or more of its attachments as part of the make-ready process, the existing licensee shall complete such work within a reasonable time in coordination with the utility and other licensees to the pole. For make-ready in the communications space, failure to complete such work within a reasonable time may result in modification of the existing licensee's attachment by a new licensee pursuant to the self-help provisions identified in 220 CMR 45.08(6).
- (4) Consistent with M.G.L. c. 166, § 31, the owner of an attachment located on a pole shall affix to such an attachment an identification tag listing, at a minimum, the name or initials of the owner. The identification tag shall be affixed on or near each pole where the attachment is installed and must be maintained in legible condition.

45.05: Duties of Utilities

- (1) In accordance with M.G.L. c. 166, § 25A, a utility shall provide a licensee with nondiscriminatory access to any pole, duct, conduit, or right-of-way used or useful, in whole or in part, owned or controlled by it. Notwithstanding this obligation, a utility may deny a new licensee access to its poles, ducts, conduits, or rights-of-way on a nondiscriminatory basis for valid reasons of insufficient capacity, reasons of safety, reliability, or generally applicable engineering standards. Any exclusive contract between a utility and an existing licensee entered into or extended after August 18, 2000, concerning access to any pole, duct, conduit, or right-of-way owned or controlled, in whole or in part, by such utility shall be presumptively invalid insofar as its exclusivity provisions are concerned, unless shown to be in the public interest.
- (2) Requests for access to a utility's poles, ducts, conduits, or rights-of-way owned or controlled, in whole or in part, by one or more utilities must be in an adequately descriptive writing directed to the appropriate named recipient identified by the utility on its website in accordance with 220 CMR 45.17(2)(e). A utility shall confirm in writing the approval or denial of a new licensee's request for access no later than the date established by 220 CMR 45.08(2)(f) for non-OTMR applications and by 220 CMR 45.09(2)(g) for OTMR applications. For all other requests for access, the utility shall confirm in writing the approval or denial of the request no later than 45 days after submission of the request. In all instances, a utility's denial of access shall be specific, shall include all relevant information supporting its denial, and shall explain how such information relates to a denial of access, as applicable, for reasons of lack of capacity, safety, reliability, or generally applicable engineering standards.
- (3) A utility shall make electronic payment methods available to licensees whenever a payment is required by 220 CMR 45.00 and may assess a reasonable charge to licensees for electronic payments.
- (4) (a) A utility shall provide an existing licensee no less than 60 days' written notice prior to:
 1. removal of that licensee's existing attachment or termination of any service to that attachment, with such removal or termination arising out of

- a rate, term, or condition of the attachment agreement between the licensee and the utility;
2. any change in attachment rates, terms, or conditions; or
 3. any modification of facilities other than the exceptions enumerated under 220 CMR 45.05(4)(d).
- (b) Any existing licensee that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or rights-of-way accessible.
- (c) Any licensee that obtains an attachment to a pole, duct, conduit, or right-of-way shall not be responsible for the costs of rearranging or replacing its attachment if such changes are required due to a new attachment or the modification of an existing attachment requested by another entity, including the owner of such pole, duct, conduit, or right-of-way.
- (d) Exceptions: A utility may provide to an existing licensee or an entity with an unauthorized attachment less than 60 days' written notice of removal, change, or modification if such removal, change, or modification of the attachment is due to routine maintenance, an emergency, the need to accommodate a small or large clean energy infrastructure project, or the need to accommodate make-ready for an application submitted pursuant to 220 CMR 45.08: Utility Poles – Non-OTMR Option or 220 CMR 45.09: Utility Poles – OTMR Option. A utility shall make a good faith effort to identify the owner of an unauthorized attachment. If, after such effort, the owner cannot be identified, the utility may remove the attachment without providing 60 days' prior notice.
- (e) When a utility provides an existing licensee with less than 60 days' written notice, the utility shall make reasonable efforts to provide the licensee with as much notice as practicable under the circumstances.

45.06: Utility Poles – Attachment Application Size

- (1) For the purposes of 220 CMR 45.00, an application to attach to a utility's poles by a licensee for the provision of a telecommunications service, including one of advanced telecommunications capability, or cable television shall be categorized by the number of poles identified in the attachment application, as detailed below. The utility may treat multiple applications from a single licensee within a 60-day period as a single request. In such cases, the applicable timelines identified in 220 CMR 45.07 through 220 CMR 45.09 will restart based on the filing date of the most recent application, and the total number of poles across all applications will determine the category of the combined request.
 - (a) Small Orders. Attachment requests up to the lesser of 50 poles or 0.1 percent of the utility's poles in Massachusetts.
 - (b) Regular Orders. Attachment requests exceeding small orders up to the lesser of 300 poles or 0.5 percent of the utility's poles in Massachusetts.
 - (c) Mid-Sized Orders. Attachment requests exceeding regular orders up to the lesser of 3,000 poles or 5.0 percent of the utility's poles in Massachusetts.
 - (d) Large Orders. Attachment requests exceeding mid-sized orders up to the lesser of 5,000 poles or 10.0 percent of the utility's poles in Massachusetts.
 - (e) Very Large Orders. Attachment requests greater than the lesser of 5,000 poles or 10.0 percent of the utility's poles in Massachusetts.
- (2) For applications involving poles jointly owned by an electric municipal lighting plant utility and a telephone utility, for both utilities, the applicable order application size, timelines, and related requirements identified in 220 CMR 45.07 through 220 CMR 45.12, shall be based on the size of the application to the municipal lighting plant.

45.07: Utility Poles – Advance Notice and Meet-and-Confer Requirements

(1) Advance Notice.

(a) For anticipated applications involving mid-sized, large, and very large orders to be submitted pursuant to 220 CMR 45.08: Utility Poles – Non-OTMR Option or 220 CMR 45.09: Utility Poles – OTMR Option, a new licensee for telecommunications, including those of advanced telecommunications capabilities, or cable television attachments shall provide advance written notice concurrently to each utility, existing licensee in the communications space, and appropriate government authority which would be affected by or require action relating to the anticipated work. Such notice shall be provided at least 45 days in advance for mid-sized orders and at least 90 days in advance for large and very large orders.

(b) At a minimum, such advance notice shall contain:

1. the name, telephone number, and e-mail address of the applicant;
2. a description of the proposed deployment area(s) by municipality and route(s), in order of priority;
3. a target build-out schedule for each of the proposed deployment area(s) and route(s);
4. an indication of whether the project is being funded by a government source that requires build-out by a date certain or the new licensee risks losing said funding and, if so, identify the funding source and the end date by which the project may be jeopardized;
5. a request to meet-and-confer within 30 days of the notice date for mid-sized orders and within 60 days of the notice date for large and very large orders; and
6. the name, telephone number, e-mail address, job title, and business affiliation of each individual who received a copy of the advance written notice.

(c) Failure to Provide Advance Notice.

1. If a new licensee files an attachment application without the required advance written notice, including the required minimum information, then the utility may notify the new licensee and any jointly-owning utility within ten business days that the notifying utility is treating the date of filing of such application as the beginning of the 45-day advance notice for mid-sized orders or the 90-day advance notice for large orders.
2. Such notice from the utility to the licensee shall indicate that the application initiates the advance notice period and that the applicable timelines identified in 220 CMR 45.07 will not begin to toll until after the relevant advance notice period has ended. The notice shall also state that the licensee must request the meet-and-confer required by 220 CMR 45.07(2) within five business days. At the end of the advance notice period, the new licensee must submit either a new application or notify the utility and any jointly-owning utilities that the new licensee intends to proceed with its original submission as its application.
3. If the new licensee does not request the meet-and-confer described in 220 CMR 45.07(2) within five business days after the utility notifies the new licensee of their failure to provide the required advance written notice, the new licensee's application will be considered void. In such a circumstance, the utility shall notify the new licensee and any jointly-owning utility in writing within three business days that the application is voided.

(2) Meet-and-Confer Requirements.

- (a) No later than 30 days after the date of the notice for mid-sized orders and no later than 60 days after the date of the notice for large and very large orders, the new licensee, utilities, and existing licensees in the communications space shall meet-and-confer to engage in good faith discussions regarding the mechanics and timing of the application and implementation schedule. Invitations to attend and participate in this meet-and-confer shall be sent as soon as practicable by the new licensee to each appropriate government authority that received notice.

- (b) The entities subject to this meet-and-confer requirement shall find a mutually agreeable date and time for the meeting (which can take place in-person, virtually, or by phone) within the requisite timeframe after the advance notice is provided.

45.08: Utility Poles – Non-OTMR Option – Timelines, Application, Survey, Make-Ready, and Related Requirements for Access

(1) Applicability. The non-OTMR process identified in 220 CMR 45.08 shall be limited to new licensees seeking to attach telecommunications, including those of advanced telecommunications capabilities, and cable television provider facilities to the communications space of a pole. The non-OTMR process identified in 220 CMR 45.08 shall apply if one of the following conditions are met:

- (a) the application is categorized as a small, regular, or mid-sized order but includes attachments that require complex make-ready;
- (b) the application is characterized as large or very large order; or
- (c) if a new licensee does not elect to proceed with the OTMR option identified in 220 CMR 45.09 in its initial application to the utility for the project.

(2) Application and Survey Process.

- (a) If no single application process exists between utilities that jointly own poles, then a new licensee shall concurrently submit pole attachment applications to each utility that shares ownership of the poles identified in the application. The licensee shall also include in a cover letter the contact information for the individual(s) at each utility to whom the respective application(s) were submitted.
- (b) If a new licensee anticipates utilizing overlashing in connection with the work described in its pole attachment application, then it shall provide documentation of any overlashing approvals it has received from existing licensees and comply with the requirements identified in 220 CMR 45.12(3)(a).
- (c) A utility shall confirm receipt of an attachment application through a written notice provided to the applicant and any utility that jointly owns any poles identified in the application within one business day of receiving the application.
- (d) Application Completeness.

- 1. A utility shall review a new licensee's attachment application for completeness before reviewing the application on its merits. A new licensee's attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master pole attachment agreement or in requirements that are available

in writing publicly at the time of application's submission, to begin to survey the affected poles.

2. Within ten business days for small and regular orders, 15 business days for mid-sized orders, and 30 days for large and very-large orders following the receipt of an attachment application from a new licensee, the utility shall assess the application for completeness and notify both the licensee and any utilities that jointly own the poles identified in the application of its determination. As part of its notification, If a utility determines that the application is incomplete, it must specify the reasoning for its determination in the notification.
3. Resubmission Process.
 - (1) A new licensee may resubmit an application within ten business days after receiving notice that the original submission was incomplete. If the resubmission is not made within ten business days, the utility may treat the resubmission as a new application and notify the new licensee and jointly-owning utilities accordingly. A timely resubmission need only address the deficiencies identified in the utility's notice.
 - (2) A utility shall determine within 15 business days whether the resubmitted application is complete and notify the licensee and jointly-owning utilities of that decision. If the utility determines that the resubmitted application is still incomplete, it must specify the deficiencies that were not addressed and why the resubmission failed to resolve them.
 - (3) The new licensee may resubmit its application as many times as it chooses within 60 days of the initial application if in each case the licensee makes a good faith effort to address the deficiencies identified by the utility. For each resubmission, the utility shall have 15 business days to review and respond, as specified above.

(4) A utility may not charge a separate application fee for any resubmissions made in accordance with this process within 60 days of the new licensee's initial application.

(e) Survey Estimate and Payment.

1. When a utility provides notice to a new licensee that an application is complete, it shall also present to the new licensee a detailed, itemized estimate of charges to perform all necessary survey work. The utility shall provide documentation that is sufficient to determine the basis of all estimated charges, including any projected material, internal and external labor hours and costs, gas mileage, and other related costs that form the basis of the estimate.
2. A new licensee may accept an estimate and make payment within 30 days after receipt of an estimate, otherwise the contract is voided. A utility shall not be required to conduct survey work until it receives payment from the new licensee in the full amount of the estimate.
3. Final Invoice. After the utility completes all survey work, it shall provide the new licensee with a detailed, itemized final invoice for the actual survey charges incurred. The utility shall provide documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage, and other related costs that form the basis of its invoice, and explain with documentary support any substantial overages from the initial estimates.

(f) Survey and Application Review on the Merits.

1. A utility shall coordinate and confer with any jointly-owning utilities to complete a survey of poles for which access has been requested and shall, in coordination with any jointly-owning utilities, conduct the survey, review the application on its merits, and provide a written response to the new licensee either granting or denying access within the following timeframes from the receipt of a complete application: 45 days for small and regular orders, 60 days for mid-sized orders, or 90 days for large orders. For very large orders, the utility, any jointly-owning utilities, and

new licensee shall negotiate in good faith to establish the timeline for completing survey work and issuing a written decision either granting or denying access.

2. A utility shall permit the new licensee, any existing licensees on the affected poles, and any jointly-owning utilities, to be present for any field inspection conducted as part of the utility's survey. A utility shall use commercially reasonable efforts to provide the affected licensees and jointly-owning utilities with at least three business days' advance notice of any field inspection as part of the survey and shall provide the date, time, and location of the survey, as well as the name, telephone number, and e-mail address of the contractor or employee performing the survey.

- (1) A utility may not deny the new licensee pole access based on a preexisting violation not caused by any prior attachments of the new licensee, unless the violation involves a safety issue or impacts the structural integrity of the pole. In any instance where a preexisting violation is identified by the utility, it shall update NJUNS or any successor database on the details of the violation and notify the jointly-owning utility of the violation. The utility shall also notify any existing licensee responsible for the violation, identifying the location of the pole, describing the violation, and requesting details from the existing licensee on how and when the violation will be resolved.

- (2) The utility shall permit the new licensee an opportunity to modify and resubmit its application within ten business days based on the utility's denial of access.

(3) Make-Ready Cost Estimate and Payment.

- (a) Cost Estimate. For all applications other than very large orders, where a new licensee's request for access is not denied, a utility shall present to the new licensee a detailed, itemized estimate, on a pole-by-pole basis where requested, of costs to perform all necessary make-ready within ten business days of notifying a licensee that their attachment application has been approved on the merits, or in

the case where a new licensee has performed a self-help survey pursuant to 220 CMR 45.08(6)(a), within ten business days of receipt by the utility of such survey. If the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may present costs on a per-job basis rather than present a pole-by-pole estimate for those fixed costs. The utility shall provide documentation and calculations that are sufficient to determine the basis of all estimated charges, including any projected material, labor, and other related costs that form the basis of the estimate. A utility, any jointly-owning utilities, and the new licensee shall negotiate in good faith the timeline for completing make-ready cost estimates for very large orders.

(b) Information from Cyclical Pole Inspection Reports.

1. Within five business days of receiving a make-ready cost estimate, a new licensee may request in writing that the utility provide, as to the poles requiring replacement as a result of the application, a copy of the utility's most recent cyclical pole inspection report for each pole that would require replacement, or, if available, any more recent pole inspection report. The utility shall provide the new licensee with this information within five business days of the new licensee's written request.
2. After requesting and receiving copies of the requested pole inspection reports, a new licensee may amend an attachment application within five business days.
 - (1) A utility that receives such an amended attachment application may, at its option, restart the period for responding to the application and conducting the survey as if the application were newly filed.
 - (2) A utility electing to restart the period shall notify the licensee of its intent to do so within five business days of receipt of the amended application.

(c) Withdrawn Estimate.

1. If the new licensee fails to submit payment to the utility for the make-ready within ten business days of receiving the cost estimate from

the utility, or within ten business days of receiving cyclical pole report data from the utility if requested by the new licensee in accordance with 220 CMR 45.08(3)(b), the utility may withdraw the cost estimate to perform make-ready. If the utility withdraws the cost estimate, the utility shall notify the new licensee and any jointly-owning utilities of the withdrawal.

2. If the estimate is withdrawn, the new licensee may submit a single request for updated cost estimates from a utility and any jointly-owning utility no later than 45 days after the original withdrawing utility provided the original estimate. The utilities shall provide the updated estimates within ten business days. If payment is not received from the new licensee within ten business days of receipt of an updated estimate, a utility may withdraw the updated cost estimate and shall notify the new licensee and any jointly-owning utilities of the withdrawal.
3. If the new licensee has not paid in full a make-ready cost estimate within 60 days of receiving the estimate, then the new licensee's application and any corresponding survey work conducted in response to the application may be voided by the utilities. If a utility seeks to void a new licensee's application or any corresponding survey work conducted in response to the application, it shall notify the new licensee and any jointly-owning utility by written notice that clearly identifies the date on which the application or survey work is void.
4. Municipal New Licensee. Pursuant to M.G.L. c. 41, § 56, written notice of acceptance of a make-ready cost estimate shall satisfy the requirements of 220 CMR 45.08(c) in lieu of payment when the new licensee is a municipality, or any political subdivision thereof. Payment in full shall be provided by such a new licensee within 30 days of receipt of a final invoice provided pursuant to 220 CMR 45.08(3)(d).

(d) Final Invoice. After the utility completes make-ready to accommodate the new licensee's attachment, the utility shall provide the new licensee with a detailed, itemized final invoice of the actual make-ready charges incurred, on a pole-by-

pole basis where requested, to accommodate the new licensee's attachment. If the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may instead present those costs on a per-job basis for those fixed costs. The utility shall provide documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage, and other related costs that form the basis of its invoice, and explain with documentary support and corresponding calculations any substantial overages from the initial estimates.

- (e) A utility may not charge a new licensee to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards or guidelines if the non-compliance is due to work performed by an entity other than the new licensee prior to the new attachment.

(4) Permitting and Governmental Approvals.

(a) Required.

1. In coordination with any jointly-owning utilities and after the utilities have received full payment for their make-ready estimates, within 15 business days for small and regular orders, 30 days for mid-sized orders, and 60 days for large orders, a utility shall submit to the appropriate government authorities any necessary permitting or approval applications required to complete its make-ready. A utility, any jointly-owning utilities, and the new licensee shall negotiate in good faith and coordinate the timeline for submitting to the appropriate government authorities all permitting and approval applications for very large orders.
2. Upon request, a utility shall provide a copy to the new licensee of each permitting and approval application submitted to the appropriate government authorities.
3. A utility shall provide on at least a monthly basis regular, written updates to new licensees and jointly-owning utilities on to the status of any pending permitting and approval application requests submitted to all government authorities whose approvals are necessary to commence any make-ready identified for the new licensee's request.

4. A new licensee shall respond within five business days to any requests for information from a utility to respond to government authority inquiries relating to the permitting and approval applications. If a government authority rejects or requests modification to any make-ready identified in a permitting or approval application, then the new licensee, utility, and any jointly-owning utility shall confer and coordinate on amending the underlying pole attachment application to the utility and the corresponding permitting and approval applications to the applicable government authority.

(b) Not Required. If no permitting or approval applications are required to be submitted by the utility, then the utility must notify the licensee within ten business days of the make-ready payment. The make-ready timelines identified in 220 CMR 45.08(5) will begin to toll at the end of that ten-day period.

(5) Make-Ready Notifications and Timelines.

(a) After receipt of payment in full for make-ready cost estimates, entry into a new or amended pole attachment agreement with the new licensee for the attachments identified in its application, and within a commercially reasonable time after the utility receives the necessary permitting and approvals from government authorities in order to commence make-ready, a utility shall issue notifications in writing to the new licensee, all known entities and existing licensees with existing attachments, and appropriate government authorities that may be affected by the make-ready in the locations where government authority approvals were obtained. The notices may be staggered based on when the utility receives any necessary government authority approvals in order to commence work on portions of the new licensee's planned deployment project.

(b) The make-ready notices provided by the utility shall:

1. identify with specificity the deployment area(s), route(s) and street names, and pole numbers with existing licensees where make-ready needs to be performed;
2. if a meet-and-confer was conducted prior to the new licensee's application to the utility, identify the date of the prior meet-and-confer and all individuals and their associated entities that attended the meeting;
3. include a request to meet-and-confer at least once within 30 days of the date of the make-ready notice for mid-sized orders and within 60 days of the date of the make-ready notice for large and very large orders;
4. if an existing licensee must modify or shift its attachments to accommodate the new licensee, explain that the new licensee is responsible for the cost of that make-ready for the existing licensee;
5. if an existing licensee must modify or shift its attachments to accommodate the new license in the communications space, explain that the existing licensee may allow the new licensee to perform necessary make-ready to the existing licensee's facilities by submitting written approval to the new licensee and any utilities that own the affected poles within ten business days of the make-ready notice;
6. remind existing licensees that they must update NJUNS (or any successor database) within five business days of completing any make-ready on the poles identified for make-ready;
7. for areas requiring only simple make-ready:
 - (1) set a date for sequential completion of make-ready for all existing licensees in the communications space from the top down that is no later than 30 days after receipt of government authority approvals for poles identified in small and regular orders originally submitted by the new licensee, 75 days after receipt of government authority approvals for poles identified in mid-sized orders originally submitted by the new licensee, or 120 days after receipt

- of government authority approvals for poles identified in large orders originally submitted by the new licensee; and
- (2) explain that if make-ready is not completed by the completion date set by the utility and the existing licensee has not provided prior approval, the new licensee may automatically hire a contractor from the appropriate utility's authorized contractor list to complete the make-ready specified in the communications space and consistent with the self-help requirements identified in 220 CMR 45.08(6);
8. for areas requiring complex make-ready:
- (1) identify with specificity the utility's planned make-ready schedule, including the planned sequence and anticipated work dates for the deployment area(s), route(s) and street names, and pole numbers (with associated existing licensees) where make-ready will be performed;
- (2) set a date for sequential completion of make-ready from the top down for all existing licensees that is no later than 90 days after receipt of government authority approvals for poles identified in small and regular orders originally submitted by the new licensee, 135 days after receipt of government authority approvals for poles identified in mid-sized orders originally submitted by the new licensee, or 180 days after receipt of government authority approvals for poles identified in large orders originally submitted by the new licensee; and
- (3) explain that the utilities and existing licensees may deviate from the timelines consistent with 220 CMR 45.10: Deviation from Timelines.
9. for poles originally identified in very large orders submitted by the new licensee, explain that make-ready by all existing licensees, the utility and jointly-owning utility, and the new licensee must be negotiated,

coordinated, and performed in good faith and in consultation with the appropriate government authorities;

10. explain that the existing licensee may modify its attachment consistent with the specified make-ready at any time after all licensees higher on the pole have shifted their attachments but no later than date set for completion; and
11. provide contact information for the utility, jointly-owning utility, and new licensee, including the name, telephone number, and e-mail address of each relevant contact to coordinate the make-ready that needs to be performed and share other, relevant information.

(c) Meet-and-Confer Requirement.

1. No later than 30 days after the date of the make-ready notice for mid-sized orders and no later than 60 days after the date of the make-ready notice for large and very large orders, the new licensee, utilities, and existing licensees in the communications space shall meet-and-confer to engage in good faith discussions regarding the mechanics and timing of the implementation schedule. Invitations to attend and participate in this meet-and-confer shall be sent as soon as practicable by the utility to each appropriate government authority that received the make-ready notice.
2. The entities subject to this meet-and-confer requirement shall find a mutually agreeable date and time for the meeting (which can take place in-person, virtually, or by phone) within the timeframe specified in the prior paragraph.

(6) Self-Help Remedies.

- (a) Surveys. If a utility fails to complete a survey within the timeline specified in 220 CMR 45.08(2)(f), then a new licensee may conduct the survey in place of the utility by hiring a contractor from the utility's pre-approved contractor list to complete the survey.
 1. If the new licensee elects to conduct self-help, it shall notify the utility and any jointly-owning utility in writing within five business days of its decision to pursue self-help.

2. A new licensee shall permit the affected utility and existing licensees to be present for any field inspection conducted as part of the new licensee's survey.
3. A new licensee shall use commercially reasonable efforts to provide the affected utility and existing licensees with at least three business days' advance notice before conducting any field inspection as part of a survey. The notice shall include the date and time of the survey, a description of the work involved, and the name, telephone number, and e-mail address of the contractor selected by the new licensee.

(b) Make-Ready. If simple or complex make-ready in the communications space is not complete within the timelines specified pursuant to 220 CMR 45.08(5), the utilities and existing licensees have not provided any notice of deviations from the timelines in accordance with 220 CMR 45.10: Utility Poles – Deviation from Timelines, the electric utility has completed any necessary make-ready on the pole, and the new licensee has received the requisite authorization(s) to install its attachments along public rights-of-way by the appropriate government authorities, then a new licensee may conduct the make-ready in the communications space in place of the telephone utility and existing telecommunications, cable television, and municipal licensees, as applicable, by hiring a contractor from the telephone utility's pre-approved contractor list to complete the make-ready.

1. If the new licensee elects to conduct the make-ready, it shall notify the telephone utility, any jointly-owning electric utility, and the applicable existing licensees in writing within five business days of its decision to pursue self-help.
2. A new licensee shall permit the telephone utility, any jointly--owning electric utility, and existing licensees to be present for any make-ready.
3. A new licensee shall use commercially reasonable efforts to provide the telephone utility, any jointly-owning electric utility, and existing licensees with at least five days' advance notice of the impending make-ready. The notice shall include the date and time of the make-ready, a description of

the work involved, and the name, telephone number, and e-mail address of the contractor selected by the new licensee.

4. During the course of performing self-help, in the event that the contractor selected by the new licensee identifies the need for adjustments to make-ready identified in the survey(s) or unexpected safety violations on particular poles, the new licensee's contractor shall cease make-ready on the affected pole(s) and the new licensee shall immediately notify the utilities of the changed circumstances from the make-ready plan and utilities' surveys. The new licensee and utilities shall confer and coordinate on resolving the make-ready on the affected pole(s) within a commercially reasonable timeframe.
5. The new licensee shall notify an affected utility or existing licensee immediately if make-ready damages the equipment of a utility or an existing licensee or causes an outage that is reasonably likely to interrupt the service of a utility or existing licensee. Upon receiving notice from the new licensee, the utility or existing licensee may either:
 - (1) complete any necessary remedial work and bill the new licensee with an itemized invoice of costs related to fixing the damage and with documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage, costs related to loss of service to customers, and other related costs that form the basis of the invoice; or
 - (2) require the new licensee to fix the damage at its expense immediately following notice from the utility or existing licensee.
6. After completion of make-ready on a particular pole or set of poles on a particular day, a new licensee shall update NJUNS (or any successor database) within five business days and notify the affected utility and existing licensees within ten business days. Upon receipt of the notice, a utility and existing licensees may notify the new licensee of any damage or code violations caused on their equipment by the make-ready conducted by the new licensee. If the utility or an existing licensee notifies the new

licensee of such damage or code violations, then the utility or existing licensee shall provide adequate documentation of the damage or the code violations. The utility or existing licensee may either:

- (1) complete any necessary remedial work and bill the new licensee with an itemized invoice of costs related to fixing the damage or code violations and with documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage, and other related costs that form the basis of the invoice; or
- (2) require the new licensee to fix the damage or code violations at its expense within ten business days following notice from the utility or existing licensee.

(c) Self-Help Make-Ready Limitations. A licensee conducting make-ready pursuant to 220 CMR 45.08(6)(b) shall be limited to make-ready in the communications space involving municipal, cable television, and telecommunications provider attachments and shall not include work to replace a pole.

(7) New Licensee Obligations.

- (a) A new licensee shall install its new and upgraded attachments identified in its application only after it has received authorization from the applicable authorized government authorities.
- (b) A new licensee shall install its new and upgraded attachments within 30 days of notice of completed make-ready for poles originally identified in its applications for small and regular orders, within 45 days of notice of completed make-ready for poles originally identified in its applications for mid-sized orders, and within 60 days of notice of completed make-ready for poles originally identified in its applications for large and very large orders. The new licensee may forfeit its designated space on the utilities' poles to other licensees in the utilities' queue for failure to meet these timelines.
- (c) A new licensee shall be responsible for the cost of removing an existing pole only when the existing pole is replaced with a new pole as part of make-ready necessitated solely by the new licensee's application. For the purposes of

220 CMR 45.00, a pole replacement is not necessitated solely by a new licensee's application when:

1. A pole replacement is otherwise required by law;
2. The existing pole fails applicable engineering standards, such as those contained in the NESC;
3. A previous or contemporaneous change to a utility's internal construction standards necessitates replacement of an existing pole;
4. The pole is required to be replaced due to road expansion or alternation, property development, in connection with storm hardening, as the result of grid modernization efforts, or similar government-imposed requirements;
or
5. The current pole already is on the utility's internal replacement schedule, regardless of when the replacement is scheduled to take place.

In accordance with 220 CMR 45.08(7)(c)(1) – (5), costs may be assigned and recovered from a pole owner, an existing licensee, or an entity other than the new licensee whose application necessitated the replacement of an existing pole.

45.09: Utility Poles – OTMR Option – Timelines, Application, Survey, Make-Ready, and Related Requirements for Access

- (1) Applicability. The OTMR process identified in 220 CMR 45.09 may only apply if the following conditions are met:
 - (a) the new licensee seeks to attach telecommunications, including those of advanced telecommunications capabilities, or cable television provider facilities to the communications space of a pole;
 - (b) the application size is categorized as a small, regular, or mid-size order;
 - (c) the poles identified in the application require only simple make-ready;
 - (d) the need for complex make-ready is not identified during the survey process; and
 - (e) the new licensee expressly elects to proceed with the OTMR process identified in 220 CMR 45.09 in its initial application to the utility.
- (2) Application Process.
 - (a) If no single application process exists between utilities that jointly own poles, then a new licensee shall concurrently submit pole attachment applications to each utility that shares ownership of the poles identified in the application the contact information of each individual from each utility to whom an application(s) to attach to jointly-owned poles was also submitted.
 - (b) If a new licensee anticipates utilizing overlashing in connection with the work described in a pole attachment application, then it shall provide documentation of any overlashing approvals it has received from existing licensees and comply with the requirements identified in 220 CMR 45.12(3)(a).
 - (c) A new licensee that elects to proceed under the OTMR process must make this election in writing in its initial attachment application and must identify the simple make-ready on a pole-by-pole basis that it proposes to perform.
 - (d) A utility shall confirm receipt of an attachment application through a written notice provided to the applicant and any utility that jointly owns any poles identified in the application within one business day of receiving the application.

(e) Application Completeness.

1. The utility shall review the new licensee's attachment application for completeness before reviewing the application on its merits. A new licensee's attachment application is considered complete if it provides the utility with the information necessary under its procedures, as specified in a master pole attachment agreement or in publicly available written requirements in effect at the time of submission of the application, to make an informed decision on the application.
2. After receipt of a new licensee's application, a utility shall determine within ten business days whether the application is complete and notify the licensee and any utilities that jointly own the poles identified in the application of that decision. As part of its notification, if the utility notifies the new licensee and jointly-owning utilities that the new licensee's attachment application is not complete, then the notifying utility must specify all reasons for finding the application incomplete.
3. Resubmission Process.
 - (1) A new licensee may resubmit an application within ten business days after receiving notice that the original submission was incomplete. If the resubmission is not made within ten business days, the utility may treat the resubmission as a new application and notify the new licensee and jointly-owning utilities accordingly. A timely resubmission need only address the deficiencies identified in the utility's notice.
 - (2) A utility shall determine within 15 business days whether the resubmitted application is complete and notify the licensee and jointly-owning utilities of that decision, unless the notifying utility specifies to the new licensee and jointly-owning utilities which deficiencies were not addressed and how the resubmission failed to resolve them.
 - (3) The new licensee may resubmit its application as many times as it chooses within 60 days of the initial application if in each case the

licensee makes a good faith effort to address the deficiencies identified by the utility. For each resubmission, the utility shall have 15 business days to review and respond, as specified above.

- (4) A utility may not charge a separate application fee for any resubmissions made in accordance with this process within 60 days of the new licensee's initial application.

(f) Survey Process.

1. If the utility deems the OTMR application complete, then within 30 days after this determination, the new licensee shall conduct and submit copies to the utilities of the survey(s) conducted to facilitate review of the application's merits.

(1) To perform the OTMR survey(s), the new licensee shall use a contractor included on the authorized contractor lists maintained by each utility with ownership of the poles. If the telephone and electric utility do not include the same contractors on their authorized lists, then the new licensee shall utilize at least one contractor included on the electric utility list and one contractor included on the telephone utility list or added to the utility list in accordance with 220 CMR 45.11: Utility Poles – Contractors for Surveys and Make-Ready.

(2) If the new licensee fails to conduct and submit to the utilities copies of the requisite surveys within 30 business days of its notification of application completeness, then the non-OTMR survey and make-ready requirements outlined in 220 CMR 45.08: Utility Poles – Non-OTMR Option, commencing with the survey estimate requirements identified in 220 CMR 45.08(2)(e), shall apply to the application.

2. The new licensee shall permit the utility and any existing licensees on the affected poles to be present for any field inspection conducted as part of the new licensee's surveys. The new licensee shall use commercially reasonable efforts to provide the utility and affected existing licensees

within at least three business days' advance notice of any field inspection conducted as part of a survey and shall provide the date, time, and location of the surveys, and name, telephone number, and e-mail address of the contractor performing the surveys.

(g) Application Review on the Merits. The utility shall coordinate and confer with any jointly-owning utilities to each complete a review on the merits of an application requesting OTMR and respond to the new licensee by either granting or denying an application within 15 business days of receipt of copies of the survey(s) conducted by the new licensee.

1. Denial of access.

(1) Any denial of access shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how such evidence and information relate to a denial of access, if applicable, for reasons of lack of capacity, safety, reliability, or generally applicable engineering standards.

(2) A utility may not deny the new licensee pole access based on a preexisting violation not caused by any prior attachments of the new licensee unless the violation involves a safety issue or impacts the structural integrity of the pole. In any instance where a preexisting violation is identified by the utility, it shall update NJUNS or any successor database on the details of the violation and notify the jointly-owning utility of the violation. The utility shall also notify the existing licensee(s) responsible for the violation by identifying the location of the pole, describing the violation, and request details from the existing licensee on how and when the violation will be resolved. In such an instance, the period of time for a new licensee to resubmit its application shall not begin until the preexisting violation has been resolved. A utility, any jointly-owning utilities, and the new licensee shall negotiate in good faith the timeline for when the violation will be resolved, so that the new licensee may submit a new application.

2. Denial of OTMR.

(1) Within the 15 business day review period of an OTMR survey and application on its merits, a utility may object in writing to the new licensee and any jointly-owning utilities to the designation by the new licensee or its contractor that the required make-ready is simple. If the utility objects to the contractor's determination that the required make-ready is simple, then it is deemed complex. The utility's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, is made in good faith, and explains how such evidence and information relate to a determination that the required make-ready is not simple.

(2) In the event of a utility denial of an OTMR request, the utility, any jointly-owning utility, and the new licensee shall immediately proceed with the survey, make-ready, and associated timelines identified in 220 CMR 45.08: Utility Poles – Non-OTMR Option to process the application.

(3) Make-Ready.

(a) If the new licensee's attachment application is approved on the merits, has entered into final or amended pole attachment agreements with the utilities for the attachments identified in its application, has received the necessary permitting and approvals from government authorities, has provided at least 15 business days' prior written notice of the OTMR to the affected utility and existing licensees, and the utility has not denied the application or objected to the OTMR request, the new licensee may proceed with make-ready within 30 days of the necessary authorizations using a contractor included on the simple make-ready authorized contractor list of the telephone utility and required pursuant to 220 CMR 45.11: Utility Poles - Contractors for Surveys and Make-Ready.

(b) The prior written notice of OTMR provided pursuant to 45.09(3)(a) shall include the date and time of the OTMR, a description of the work involved, the name,

telephone number, and e-mail address of the contractor or employee being used by the new licensee and provide the affected utility and existing licensees with a reasonable opportunity to be present for any make-ready.

(c) The new licensee shall notify an affected utility or existing licensee immediately if the make-ready damages the equipment of a utility or an existing licensee or causes an outage that is reasonably likely to interrupt the service of a utility or existing licensee. Upon receiving notice from the new licensee, the utility or existing licensee may either:

1. complete any necessary remedial work and bill the new licensee with an itemized invoice of costs related to fixing the damage and with documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage, costs related to loss of service to customers, and other related costs that form the basis of the invoice; or
2. require the new licensee to fix the damage at its expense immediately following notice from the utility or existing licensee.

(d) In performing the OTMR work, if the new licensee or the utility determines that make-ready classified as simple is complex, then that specific make-ready must be halted, and the determining entity must provide notice within ten business days to the other entity or entities of its determination and the impacted poles. The affected make-ready shall then be governed by 220 CMR 45.08(3)-(5) and the utility shall provide the notice required by 220 CMR 45.08(5) as soon as reasonably practicable.

(e) A new licensee shall conduct its approved OTMR within 30 days of the utilities' approvals of the licensee's application(s) on the merits. The new licensee may forfeit its designated space on the utilities' poles to other licensees in the utilities' queue for failure to meet this timeline.

(4) Post-Make-Ready Timelines.

- (a) A new licensee shall notify the affected utility and existing licensees within ten business days after completion of the make-ready on a particular pole or group of poles conducted on the same day. The affected utility and existing licensees shall have at least 90 days from receipt in which to inspect the make-ready.
- (b) The affected utility and existing licensees have 15 business days after completion of their inspection to notify the new licensee of any damage or code violations caused by make-ready conducted by the new licensee on their equipment. If the utility or an existing licensee notifies the new licensee of such damage or code violations, then the utility or existing licensee shall provide adequate documentation of the damage or the code violations. The utility or existing licensee may either:
 - 1. complete any necessary remedial work and bill the new licensee with an itemized invoice of costs related to fixing the damage or code violations and with documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage, costs related to any loss of service to customers, and other related costs that form the basis of the invoice; or
 - 2. require the new licensee to fix the damage or code violations at its expense within 15 business days following notice from the utility or existing licensee.

45.10: Utility Poles – Deviation from Timelines

(1) Utility Make-Ready.

- (a) A utility may deviate from the time limits specified in 220 CMR 45.08: Utility Poles – Non-OTMR Option during performance of make-ready for good cause that renders it infeasible for the utility to complete the make-ready within the specified time limits. Good cause shall include, but is not limited to: (1) repair work required to restore service following a widespread service outage; (2) major weather or emergency events that trigger the utility's emergency response plan; (3) roadway or traffic moratoriums implemented by a government authority; (4) availability of police details or flaggers as required by a government authority; and (5) pending issuance of permits or approvals by a government authority.
- (b) A utility that deviates from the time limits specified in 220 CMR 45.08: Utility Poles – Non-OTMR Option shall notify as soon as practicable, in writing, the new licensee, all affected existing licensees, and, if applicable, appropriate government authorities of the deviation. This notification shall identify the affected poles, include a detailed explanation of the reason for the deviation, and provide a new completion date. A utility shall provide updated notifications to new licensees, all affected existing licensees, and, if applicable, appropriate government authorities at least every 30 days for as long as the deviation persists. In addition to the information included in the initial notification, each updated notification shall include a detailed description of any efforts taken to ameliorate the cause of the deviation and any make-ready that was completed in the preceding 30 days.
- (c) The utility shall deviate from the make-ready time limits specified in 220 CMR 45.08: Utility Poles – Non-OTMR Option for a period no longer than necessary to complete make-ready on the affected poles and shall resume make-ready without discrimination when it returns to routine operations and is able to proceed with the work.

(2) Existing Licensee Complex Make-Ready.

- (a) An existing licensee may deviate from the time limits specified in 220 CMR 45.08(5)(b)(8)(2) during performance of complex make-ready for reasons of utility delays, delays caused by other licensees required to move their attachments before the existing licensee, or safety or service interruptions that render it infeasible for the existing licensee to complete the complex make-ready within the specified time limits. An existing licensee that deviates for safety or service interruptions shall as soon as practicable notify, in writing, the utilities, new licensee, other affected existing licensees, and, if applicable, appropriate government authorities, and shall identify the affected poles and include a detailed explanation of the basis for the deviation and a new completion date, which in no event shall extend beyond 60 days from the date the notice described in 220 CMR 45.08(5)(b)(8)(2) is provided by the utility for small and regular orders, up to 105 days in the case of mid-sized orders, up to 150 days for large orders, or up to a certain number of days agreed to in coordination with the utilities and new licensee for very large orders.
- (b) The existing licensee shall deviate from the time limits specified in 220 CMR 45.08(5)(b)(8)(2) for a period no longer than necessary to complete make-ready on the affected poles.

45.11: Utility Poles – Contractors for Surveys and Make-Ready

- (1) Authorized Contractor Lists Maintained by Utilities. Each utility shall maintain a reasonably sufficient list of contractors it authorizes to conduct surveys related to the poles it solely or jointly owns, and each telephone utility shall also maintain a reasonably sufficient list of contractors it authorizes to conduct simple make-ready and complex make-ready in the communications space related to the poles it solely or jointly owns.
- (2) Licensee Selection of Authorized Contractors. When selecting a contractor for a self-help survey or make-ready in accordance with 220 CMR 45.08(6) or OTMR in accordance with 220 CMR 45.09: Utility Poles – OTMR Option, a licensee shall choose a contractor on the relevant list, as applicable, of each utility with ownership of the affected pole(s) as of the date the licensee sends notice of its intent to use the contractor.
- (3) Licensee Requests to Add Contractors to the Telephone Utility Authorized Contractor Lists. New and existing licensees may request the addition to the telephone utility survey and make-ready lists of any contractor that meets the minimum qualifications identified in 220 CMR 45.11(4). Such a request shall be made in writing to the telephone utility and include a certification that the contractor meets the minimum qualifications, as well as the name, telephone number, and e-mail address of the contractor. When such requests are made related to anticipated work on poles that are jointly-owned, the licensee shall submit notification of the request concurrently to the jointly-owning electric utility.
 - (a) The telephone utility shall provide notice to the licensee of its acceptance or rejection of the licensee's request within ten business days of the utility's receipt of the request.
 - (b) The telephone utility may reject a request made by a licensee to add a contractor to any of the utility's preauthorized contractor lists, provided, however, that the grounds for such a rejection shall be limited to reasonable safety or reliability concerns related to the contractor's ability to meet the minimum qualifications or the utility's publicly available and commercially reasonable safety or reliability standards. Notice of a contractor rejection shall be specific, include all relevant information supporting its rejection, and explain how such information relates to the contractor's failure to meet the minimum qualifications or to meet the utility's

publicly available and commercially reasonable safety or reliability standards. A notice of contractor rejection shall also identify at least one available, qualified contractor.

- (4) Contractor Minimum Qualification Requirements. For purposes of 220 CMR 45.00, telephone utilities, new licensee applicants, and existing licensees shall ensure that the contractors they select to perform surveys or to perform make-ready in the communications space provide written confirmation that the contractors meet the following minimum requirements prior to conducting any work:
- (a) the contractor has agreed to follow and is experienced with the published safety and operational guidelines of the telephone utility, the jointly-owning electric utility, and the NESC;
 - (b) the contractor has acknowledged that it knows how to read and follow, and is experienced with reading and following the licensed-engineered pole designs for make-ready, if required by the utility;
 - (c) the contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under OSHA requirements;
 - (d) the contractor meets or exceeds any uniformly applied and reasonable safety and reliability thresholds set by the utility, if made available;
 - (e) the contractor is adequately insured or will establish an adequate performance bond for the make-ready it will perform, including work it will perform on poles, facilities, and attachments owned by the utilities and existing licensees, and for potential damages caused by the contractor to the poles, facilities, and attachments; and
 - (f) the contractor is licensed and authorized to work in Massachusetts.

45.12: Utility Poles – Overlapping Wires in the Communications Space

- (1) Applicability. The overlapping requirements and limitations identified in 220 CMR 45.12 shall only apply to the overlapping of wires or cables in the communications space by licensees for the transmission of intelligence by telegraph, wireless communication, telephone, television, including cable television, and other means of telecommunications, including those of advanced telecommunications capabilities.
- (2) Prior Approval for Overlapping.
 - (a) A utility shall not require prior approval by the utility for an existing licensee to overlap to the existing licensee's own existing wires on a pole.
 - (b) A new licensee shall obtain, on a pole-by-pole basis, the specific, written permission of an existing licensee to overlap to the existing licensee's wires.
- (3) Licensee Duties.
 - (a) In its initial pole attachment application to a utility submitted pursuant to 220 CMR 45.08: Utility Poles – Non-OTMR Option or 220 CMR 45.09: Utility Poles – OTMR Option, a new licensee shall provide documentation of any approvals obtained from existing licensees.
 1. The overlapping approvals provided in the application shall be provided on the existing attacher's letterhead, identify with specificity the wires and poles on which overlapping is allowed, and identify a contact name, telephone number, and e-mail address of the individual or team responsible for the approval.
 2. For purposes of inputs into NJUNS and any successor databases, as well as future work to be performed on the poles and associated attachments proposed to be overlapped by the new licensee, the overlapping approvals from the existing licensees shall identify whether the new or existing licensee will be responsible for shifting the overlapped wires upon any future request by the utility or other licensees.
 - (b) A licensee that engages in overlapping is responsible for its own equipment and shall ensure that it complies with reasonable safety, reliability, and engineering practices.

- (c) A licensee may not overlash to the lowest telephone utility lines on a pole.
 - (d) If damage to a pole or other existing attachment results from the licensee's overlashing, or overlashing work causes safety or engineering standard violations, then the overlashing licensee shall be responsible at its expense for any necessary repairs.
 - (e) A licensee that engages in overlashing shall not obscure identification tags on existing attachments. If an overlashing licensee obscures the identification tags of another licensee, the overlashing licensee shall be responsible at its expense for new identification tags to be affixed to the wires where the other licensee's tags were obscured.
- (4) Preexisting Violations.
- (a) A utility may not require an existing licensee that overlashes its existing wires on a pole to fix preexisting violations caused by another existing licensee.
 - (b) A utility may prohibit overlashing to an existing licensee's wires by a new licensee on a pole-by-pole basis if the existing wires have preexisting violations that cannot be resolved during the make-ready process.
- (5) Opportunity to Modify Proposal. Consistent with the requirements of 220 CMR 45.08(2)(b) and 220 CMR 45.09(2)(b), if after receiving copies of overlashing approvals in the new licensee's initial application, and after any surveys have been conducted pursuant to 220 CMR 45.08(2)(f), 220 CMR 45.08(6)(a), or 220 CMR 45.09(2)(f), the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, the utility must provide specific documentation of the issue to the new licensee in order to provide the new licensee with an opportunity to modify the scope of work proposed in its application. A new licensee shall submit within 15 business days to the utility and any jointly-owning utility a revised application that modifies the proposed scope of work. The utility shall review and respond to the revised application in accordance with the timelines identified in 220 CMR 45.08: Utility Poles – Non-OTMR Option or 220 CMR 45.09: Utility Poles – OTMR Option, as applicable, for review of an application on its merits.
- (6) Post-Overlashing Review. An overlashing licensee shall notify the affected utility and existing licensee(s) within 15 business days of completion of the overlash on a particular

pole or group of poles conducted on the same day. The notice shall provide the affected utility and existing licensee(s) at least 90 days from receipt in which to inspect the overlash. The utility and existing licensees(s) each have 15 business days after completion of its inspection to notify the overlashing party of any damage or code violations to its equipment caused by the overlash. If the utility or any existing licensee(s) discovers damage or code violations caused by the overlash on equipment belonging to the utility or the existing license the utility or existing licensee shall inform the overlashing party and provide adequate documentation of the damage or code violations. Depending on the owner of the facility damaged, the utility or existing licensee may either:

- (a) complete any necessary remedial work and bill the overlashing licensee with an itemized invoice of costs related to fixing the damage and with documentation that is sufficient to determine the specific code violation and basis of all charges, including any material, internal and external labor costs, gas mileage, costs related to loss of service to customers, and other related costs that form the basis of the invoice; or
- (b) notify the overlashing licensee of the specific code violations and require the overlashing licensee to fix the damage or code violations at its expense within 15 business days following notice from the utility.

45.13: Utility Poles – Terms and Conditions Presumed Reasonable

The provisions established in 220 CMR 45.04: Duties of Licensees and Attachment Owners through 220 CMR 45.12: Overlapping Wires in the Communications Space are presumed to be reasonable terms and conditions for non-discriminatory pole access on public rights-of-way in Massachusetts. A utility shall not establish rates, terms or conditions related to attachment applications or attachment agreements which conflict with applicable state laws or these regulations.

45.14: Petitions for Interim Relief and Alternative Dispute Resolution Procedure

- (1) Petition for Interim Relief. In conjunction with the formal complaint procedure outlined in 220 CMR 45.15: Formal Complaint Procedure, a licensee may file with the Department a Petition for Interim Relief of the action proposed in a notice received pursuant to 220 CMR 45.05(4)(a) within 15 business days of receipt of such notice. Such a filing will not be considered unless it includes, in concise terms, the relief sought, the reasons for such relief, including a showing of irreparable harm and likely cessation of the licensee's service to its customers, a copy of the notice, and certification of service as required by 207 CMR 1.00: Procedural Rules and 220 CMR 1.00: Procedural Rules. The named respondent may file an answer within seven days of the date on which the Petition for Interim Relief was filed. No further filings with respect to this petition will be considered unless requested or authorized by the Department and no extensions of time will be granted with respect to this petition unless allowed pursuant to 207 CMR 1.02(5) and 220 CMR 1.02(5).
- (2) Alternative Dispute Resolution. Prior to the filing of a formal complaint pursuant to 220 CMR 45.15: Formal Complaint Procedure, a utility or a licensee may first pursue an informal, alternative dispute resolution consistent with: (1) any contractual terms entered into by the involved parties; or (2) any informal process established by the Department of Public Utilities and the Department of Telecommunications and Cable and outlined in any Memorandum of Agreement between the two agencies.

45.15: Formal Complaint Procedure

(1) The Department of Public Utilities and the Department of Telecommunications and Cable will jointly adjudicate any formal complaint filed in accordance with 220 CMR 45.15: Formal Complaint Procedure. Each agency will assign a separate docket number to the filing, and any procedural requirements, rulings, and orders will be jointly issued by both agencies.

(2) Complaint.

(a) A petition with supporting documentation submitted concurrently to the Department of Public Utilities and Department of Telecommunications and Cable by either a utility or licensee alleging a dispute under M.G.L. c. 166, § 25A, 220 CMR 45.00, or otherwise involving allegations of discriminatory access or an unjust or unreasonable rate, term, or condition will commence a formal complaint proceeding under 220 CMR 45.15: Formal Complaint Procedure. Complainants may join together to file a joint complaint.

(b) Each complaint shall conform to the requirements specified in 207 CMR 1.04(1)(b) and 220 CMR 1.04(1)(b) and shall be accompanied by: (1) a cover letter describing the filing and noting the distribution of copies, and (2) a certification of service on any utility, licensee, or party named as complainant or respondent. The complaint shall also contain supporting information and documentation, with each document individually pre-marked for identification in the upper right-hand corner with the docket number(s), exhibit name limited to 20 characters, date of filing with the Department, page number, and total number of pages in the document. The supporting documentation shall include the following, as applicable:

1. a copy of the attachment agreement, if any, between the licensee and the utility, and if no attachment agreement exists, the complaint shall contain:
 - (1) a statement that the utility uses or controls, in whole or in part, those poles, ducts, conduits, or rights-of-way at issue which are used or designated for attachments; and

- (2) a statement that the licensee currently has attachments on the utility's poles, ducts, conduits, or rights-of-way or has requested that attachments be placed on the utility's poles, ducts, conduits, or rights-of-way;
2. in any complaint where it is claimed that a term or condition is unjust or unreasonable, the complaint shall identify the specific term or condition that is claimed to be unjust or unreasonable, and provide all information and arguments relied upon to justify said claim;
3. in any complaint where it is claimed that a rate is unjust or unreasonable, or that a term or condition requires review of the associated rate, the data, information, and arguments in support of said claim shall include, but not be limited to, the following, where applicable and available to the complainant:
 - (1) analysis and discussion addressing why the specific rate is claimed to be unjust or unreasonable;
 - (2) the gross investment by the utility for the pole lines;
 - (3) the investment by the utility in appurtenances not used by or useful to the licensee. This may be expressed as a percentage of the gross pole investment, and shall include a list of specific appurtenances considered not used or useful;
 - (4) the depreciation reserve for the gross pole line investment;
 - (5) the total number of poles (A) owned; and (B) controlled or used by the utility;
 - (6) the total number of poles which are the subject of the complaint;
 - (7) the annual carrying charges attributable to the cost of owning a pole, and the specific factors used in the determination of these charges. Annual carrying charges may be expressed as a percentage of net pole investment;
 - (8) the average amount of useable space per pole for those poles used for pole attachments; and

- (9) the reimbursements received from the licensee for non-recurring costs;

Data and information should be based on historical or original cost methodology, to the extent possible. Data should be derived from publicly available reports filed with the Department of Telecommunications and Cable, the Department of Public Utilities, the Federal Communications Commission, the Federal Energy Regulatory Commission, such as the Federal Energy Regulatory Commission's Form No. 1, or other reports filed with state or regulatory agencies. The source of any data shall be identified. Calculations made in connection with these figures should be provided to the complainant upon request, as should the computation of any rate determined by using the formula adopted for calculating reasonable attachments rates in Massachusetts;

4. in any complaint where it is claimed that a complainant has been improperly denied access to a pole, duct, conduit, or right-of-way, owned or controlled, in whole or in part, by one or more utilities, the complaint shall include the data and information necessary to support the claim, including:
 - (1) the reasons given for the denial of access to the poles, ducts, conduits, or rights-of-way, owned or controlled, in whole or in part, by one or more utilities;
 - (2) the basis for the complainant's claim that the denial of access is improper;
 - (3) the remedy sought by the complainant;
 - (4) a copy of the written request to the utility for access to its poles, ducts, conduits, or rights-of-way; and
 - (5) a copy of the utility's response to the complainant's written request, including all information given by the utility to support its denial of access. A complaint alleging improper denial of

- access will not be dismissed if the complainant is unable to obtain a utility's written response;
- (6) a statement that the utility and licensee have been unable to agree and a brief summary, including dates, of all steps taken to resolve the problem prior to filing, and if no such steps were taken, the complainant shall state the reason(s) why;
 - (7) if applicable, any other information and arguments relied upon to argue that a rate, term, or condition is not reasonable; and
 - (8) a statement that the complainant requests that a hearing be convened pursuant to 207 CMR 1.06: Hearings and 220 CMR 1.06: Hearings or that it waives its right to a formal hearing; and
5. in any complaint brought by a utility against a licensee alleging a dispute under M.G.L. c. 166, § 25A or 220 CMR 45.00, the complaint shall include the data and information necessary to support the claim, including:
- (1) analysis and discussion involving the basis for the complainant's claim;
 - (2) the remedy sought by the complainant;
 - (3) a statement that the utility and licensee have been unable to agree and a brief summary, including dates, of all steps taken to resolve the problem prior to filing, and if no such steps were taken, the complainant shall state the reason(s) why; and
 - (4) if applicable, any other information, arguments, and supporting documentation relied upon to support the complaint.
- (c) Where the attachments involve ducts, conduits, or rights-of-ways, appropriate data and information, equivalent to that required by 220 CMR 45.15(2)(b), shall be filed.
- (d) All factual allegations set forth in the complaint or supporting documentation shall be authenticated by affidavit(s) at the time of filing. Any complaint shall also include any relevant witness testimony in support of the complaint and a summary list of each document, including the associated pre-marked exhibit identifier, submitted with the complaint.

- (e) The complainant shall include a statement either that the complainant requests the opportunity for a hearing to be conducted pursuant to M.G.L. c. 30A, § 10, 207 CMR 1.06(6)-(7), and 220 CMR 1.06(5)-(6), or that it waives its right to a formal hearing.
- (3) Response.
- (a) The response to a formal complaint under 220 CMR 45.15: Formal Complaint Procedure shall be filed with both the Department of Public Utilities and the Department of Telecommunications and Cable, as well as served on the complainant, within ten business days after service of the document to which the response is directed.
- (b) The response shall specifically address all contentions made by the complainant. All factual statements shall be supported by affidavit(s).
- (c) The response shall include a statement either that the respondent requests the opportunity for a hearing pursuant to M.G.L. c. 30A, § 10, 207 CMR 1.06(6)-(7), and 220 CMR 1.06(5)-(6), or that it waives its right to a formal hearing.
- (4) Policy Considerations. Within 15 business days of receipt of a response to a complaint, the presiding officers assigned to the complaint by the Department of Public Utilities and the Department of Telecommunications and Cable may make a determination that the allegations raise policy considerations of general applicability which are not presently addressed by these regulations. If such a determination is made, the presiding officers may jointly issue a written recommendation that some, or all, of the complaint be converted into a petition for joint rulemaking pursuant to the Memorandum of Agreement between the Department of Telecommunications and Cable and the Department of Public Utilities. Such a recommendation shall be granted only by a joint order signed by the Commissioner of the Department of Telecommunications and Cable and the Commission of the Department of Public Utilities. During the pendency of any such presiding officer determination or joint agency order on converting a petition into a joint rulemaking, the presiding officers may jointly establish a procedural schedule to commence the adjudication of the underlying complaint.
- (5) Notice of Complaint, Intervention, and Comments. The Department shall give public notice by such means as it deems appropriate, consistent with due process, that a formal

complaint has been filed and docketed. Such notice shall include a brief description of the complaint and shall set a deadline for the filing of petitions to intervene and for the opportunity for comments to be filed by any person permitted to intervene as a party.

That time limit for intervention requests shall be no shorter than 14 days after such public notice, and the time limit for comments submitted by intervenors shall be no later than 20 days after issuance of any decision by the Department permitting intervention.

- (6) Intervention. The procedures outlined in 207 CMR 1.03: Appearances; Intervention and Participation: Parties and 220 CMR 1.03: Appearances; Intervention and Participation: Parties shall generally apply to petitions to intervene under 220 CMR 45.15: Formal Complaint Procedure.
- (7) Presiding Officers and Procedural Schedule. After the receipt of a complaint, to the extent that it is deemed necessary and practicable, the presiding officers shall jointly establish a detailed schedule for the proceeding, including, but not limited to, dates reserved for potential evidentiary hearings or dates for the parties to file information requests and responses, objections to discovery questions and responses to those objections, requests for an evidentiary hearing, testimony, stipulations, settlement proposals, and briefs. The presiding officers shall also jointly address any other procedural matters that will aid in the orderly disposition of the case. The presiding officers may direct the parties to attend a procedural call or procedural conference to discuss procedural matters relating to the proceeding at any time before the commencement of an evidentiary hearing.
- (8) Meetings and Evidentiary Hearings. The Department may decide each complaint upon the filings and information before it, may require one or more informal meetings with the parties to clarify the issues or to consider settlement of the dispute, or may, in its discretion, require a hearing upon any issues.
- (9) Department Consideration of Formal Complaint. Where one of the parties has failed to provide information required to be provided by 220 CMR 45.00 or requested by the Department, or where costs, values or amounts are disputed, the Department may estimate such costs, values or amounts it considers reasonable on the basis of available evidence of record, or may decide adversely to a party who has failed to supply requested information which is readily available to it, or both.

- (10) Remedies. If the Department finds a violation of M.G.L. c. 166 § 25A or 220 CMR 45.00, it may prescribe a just and reasonable rate, term or condition and may:
- (a) terminate the unjust or unreasonable rate, term, or condition;
 - (b) substitute in the attachment agreement the reasonable rate, term or condition established by the Department; or
 - (c) order relief the Department finds appropriate under the circumstances.
- (11) Time Limit. The Department shall issue a final Order on any formal complaint filed by a new licensee in accordance with 220 CMR 45.00 within 180 days after the complaint is filed, although the deadline may be extended up to 360 days after the complaint is filed by a joint order signed by a designated Commissioner from each Department issued within the initial 180 days. Formal complaints filed by any party other than a new licensee shall not be subject to these time limits.
- (12) Appeal from Department Decisions. The Department shall notify all parties of their rights to appeal a final decision of the Department pursuant to M.G.L. c. 25, § 5, and of the time limits on their rights to appeal.

45.16: Rates Charged Any Affiliate, Subsidiary, or Associate Company

A utility that engages in the provision of telecommunications services or cable television services shall impute to its costs of providing such services (and charge any affiliate, subsidiary, or associate company engaged in the provision of such services) an equal amount to the pole attachment rate for which the utility would be liable under 220 CMR 45.16.

45.17: Annual Informational Filings and Website Postings

(1) Utilities shall annually submit an informational filing with both the Department of Public Utilities and the Department of Telecommunications and Cable on or before July 1 in a docket designated by each agency.

(a) Content. The informational filing shall, at a minimum, include the following:

1. a cover letter that:

- (1) states the purpose of the filing;
- (2) identifies the designated docket numbers; and
- (3) identifies the name, address, telephone number, and e-mail address of the individual submitting the filing, as well as the name of the entity on behalf of which the filing is being submitted;

2. as of December 31 of the preceding calendar year:

- (1) a list of approved survey and, as applicable, make-ready contractors identified in accordance with 220 CMR 45.11: Utility Poles – Contractors for Surveys and Make-Ready; and
- (2) a list of the annual sole- and jointly-owned pole, duct, and conduit attachment rates charged by the utility for telecommunications, wireless, cable television, and, if applicable, EVSE attachments;

3. for the preceding calendar year through December 31, a spreadsheet that identifies:

- (1) the total number of pole attachment applications received, categorized by application size and the total number of poles included in those applications;
- (2) a summary breakdown of each application received, categorized by application size, that identifies:
 - (a) the date the application was received by the utility;
 - (b) the date on which all work included in the application was completed or is expected to be completed;

- (c) the amount of time that elapsed between receipt of the application by the utility and the date on which all work included in the application was completed, if applicable;
- (d) the total number of poles included in the application;
- (e) the number of poles surveyed by the utility;
- (f) whether the licensee elected OTMR and whether the utility approved the OTMR;
- (g) the number of poles with completed simple versus complex make-ready;
- (h) the number of poles requiring replacement and replaced as a result of the request, and the number of double poles remaining; and
- (i) the number and type of attachments (i.e., wireline telecommunications, wireless telecommunications, cable television, and municipal) associated with the request; and

4. identification of the web address(es) with access to the information required pursuant to 220 CMR 45.17(2).

- (b) The information submitted in filings pursuant to 220 CMR 45.17(1) will not be considered or treated as confidential or proprietary by the Department.
- (2) Website Postings. Each utility shall implement and maintain on its website a dedicated, publicly-accessible page that provides, at a minimum:
- (a) a current list of approved contractors identified in accordance with 220 CMR 45.11: Utility Poles – Contractors for Surveys and Make-Ready;
 - (b) a current list of the annual sole- and jointly-owned pole attachment and conduit rates charged by the utility for wireline telecommunications, wireless telecommunications, cable television, and, if applicable, EVSE attachments;
 - (c) a current list of, and links to pole, duct, and conduit attachment agreement templates utilized by the utility, as well as associated instructional and informational guides, if available;
 - (d) links or details on relevant safety and operational guidelines of the utility applicable to pole attachment and conduit access applications; and

- (e) appropriate recipient and contact information at the utility for pole attachment and conduit access application submittals and questions.

45.18: Severability

The provisions of 220 CMR 45.00 shall be deemed severable if any particular provision is rendered invalid by judicial determination or by statutory amendment.

REGULATORY AUTHORITY

220 CMR 45.00; 47 U.S.C. § 224; 47 C.F.R. § 1.1405; M.G.L. c. 25; M.G.L. c. 25C;
M.G.L. c. 159; M.G.L. c. 164; and M.G.L. c. 166.