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May 27, 2014

By E-Mail and Hand Delivery

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

Dear Ms. Williams and Mr. DeRoche:

Enclosed for filing in the above-referenced docket on behalf of the Ashburnham Municipal Light Plant and the Peabody Municipal Light Plant and the Peabody Municipal Lighting Commission is the Joint Brief of Ashburnham Municipal Light Plant, Peabody Municipal Light Plant, and Peabody Municipal Lighting Commission Addressing Procedural Issues Set Out By the Hearing Officer.

Sincerely,

Nicholas J. Scobbo, Jr.

Enclosure

cc: Service List for D.T.C. 14-2

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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Comcast of Massachusetts III, Inc. *Complainant,* v. Peabody Municipal Light Plant and Peabody Municipal Lighting Commission *Respondents.*	)	D.T.C 14-2

JOINT BRIEF OF ASHBURNHAM MUNICIPAL LIGHT PLANT, PEABODY MUNICIPAL LIGHT PLANT AND THE PEABODY MUNICIPAL LIGHTING COMMISSION ADDRESSING PROCEDURAL ISSUES SET OUT BY THE HEARING OFFICER

I. INTRODUCTION

On May 14, 2014, the Department of Telecommunications and Cable ("Department") held a procedural conference to address: the Petition to Intervene filed by the Ashburnham Municipal Light Plant ("AMLP"), the procedural schedule, format of the proceeding, discovery, evidentiary hearing, issues to be addressed, and the deadline for the final order in this proceeding. Comcast of Massachusetts III, Inc. ("Comcast"), AMLP, the Department of Public Utilities ("DPU") and the Peabody Municipal Light Plant and the Peabody Municipal Light Plant Commission (together "PMLP") participated in the procedural conference.

On May 13, 2014, the Department issued a proposed schedule.

Also on May 13, 2014, Comcast filed an Answer to AMLP's Petition to Intervene ("Answer") and a Response to the Department's proposed schedule ("Response").

In its Answer, Comcast argued that the Department should deny AMLP's Petition to Intervene as it relates to full-party intervenor status. *Comcast of Massachusetts III, Inc. v. Peabody Mun. Light Plant and Peabody Mun. Lighting Comm'n*, D.T.C. 14-2, Comcast's Answer to Petition to Intervene of the Ashburnham Municipal Light Plant, at 3-4 (May 13, 2014).

According to Comcast, AMLP has failed to assert "individual facts that establish any substantial and specific affect that this proceeding will have on it other than resolution of the Legal Issue." *Id.* at 3. Comcast did not object to AMLP participating in this proceeding for the limited purpose of expressing its position on the threshold legal issue. *Id.* at 4. As asserted by Comcast, the threshold legal issue is: whether the formula set forth in *Cablevision of Boston Co. et al. v. Boston Edison Co.*, D.P.U./D.T.E. 97-82 (Apr. 15, 1998) ("*Cablevision*"), and *A-R Cable Servs. Inc., et al. v. Mass. Elec. Co.*, D.T.E. 98-52 (Nov. 6, 1998) ("*A-R Cable Servs*") for establishing the maximum permitted pole attachment rates of utility companies, applies to municipal light plants and municipal lighting commissions established pursuant to G. L. c. 164.

In its Answer and at the procedural conference, Comcast proposed a schedule that would divide the proceeding into two (2) phases. The first phase of the case would address what Comcast calls the so-called "legal threshold" ("Phase 1"). The second phase would focus on discovery and an evidentiary hearing into only the PMLP facts. ("Phase 2").

On May 15, 2014, the Hearing Officer issued an order directing the parties to produce procedural briefs addressing the following three (3) issues:

(1) Explain in detail whether the proposed two-phase format would unduly prejudice any party to this case or otherwise produce an inefficient or inequitable result.

(2) Explain in detail whether the legal threshold articulated above is accurate, and could it be addressed separately from the specifics of the PLMP/PLMC rate studies.

(3) Address the Town of Ashburnham's Petition to Intervene as it would relate to participation in each phase of this investigation.

AMLP and PMLP jointly submit this brief addressing these issues.

II. RESPONSE TO BRIEFING ISSUES

A. Issue 1: The proposed two-phase format would unduly prejudice AMLP and PMLP and produce an inefficient, inequitable, unjust, unreasonable, and unlawful result.

The proposed two-phase format would address first whether the pole attachment rate formula set forth in *Cablevision* and *A-R Cable Servs* ("Cablevision Formula") applies to

municipal light plants and municipal lighting commissions. If the Cablevision Formula applies, then the second phase would address discovery and evidentiary hearings.

This bifurcation would focus the proceeding on an incorrect inquiry.

As noted in AMLP's Petition to Intervene, Comcast has asserted that AMLP's rates are not just and reasonable and that Comcast intends to use the outcome in this proceeding to address AMLP's rates. Thus, the legal issue in this proceeding is whether AMLP's and PMLP's pole attachment rates are *just and reasonable* and as a consequence whether Comcast has *nondiscriminatory access* to the AMLP and PMLP poles. This is the inquiry required by Department regulations (220 C.M.R. § 45.00) and by statute (G.L. c. 166, § 25A). In making the inquiry as to whether the rates are just and reasonable, the Department must "consider the interest of subscribers of cable television services and wireless telecommunications services as well as the interest of consumers of utility services." G.L. c. 166, § 25A.

In order to address whether the Cablevision Formula previously enunciated by the Department applies to AMLP and PMLP, the Department must simultaneously consider factual evidence showing cost causation and cost allocation in the context of AMLP's and PMLP's legal structures and purposes. General Laws c. 166, § 25A clearly requires consideration by the Department of cost causation and cost allocation. The Department is obligated to determine just and reasonable rates "...by assuring...recovery of not less than the additional costs of...attachments nor more than the proportional capital and operating expenses...attributable to that portion the pole..." G.L. c. 166, § 25A. If the Department does not address this, then it cannot balance the "interest of subscribers of cable television" with the "interest of consumers of utility services" and its resulting order in this case would not be supported, yielding an unlawful result.

The inquiry required by G.L. c. 166, § 25A necessarily mandates the evaluation of factual issues in order to support the Department's legal conclusion with the required reasoning, context, and sustainability. To do otherwise would be anathema to long standing Massachusetts

law. *Massachusetts Inst. of Tech. v. Dep't of Pub. Utils.*, 425 Mass. 856, 868, 870-871 (1997); *Stowe Mun. Elec. Dep't v. Dep't of Pub. Utils.*, 426 Mass. 341, 344 (1997); *Costello v. Dep't of Pub. Utils.*, 391 Mass. 527, 533, 536 (1984); *Sch. Comm. of Chicopee* v. *Massachusetts Comm. Against Discrimination*, 361 Mass. 352, 354-355 (1972); *New York Central R.R. Co. v. Dep't of Pub. Utils.*, 347 Mass. 586, 593 (1964); *Hamilton v. Dep't of Pub. Utils.*, 346 Mass. 130, 137 (1963); *Leen v. Bd. of Assessors of Boston*, 345 Mass. 494, 502 (1963).

The Cablevision Formula plays a part in the Department's inquiry, but it is not the primary or threshold legal question. In *Cablevision*, the Department stated that it could "depart from the FCC method when additional costs or adjustments to the federal method are justified on state policy grounds [and] . . . the Department . . . is free to depart from the federal approach in the future should circumstances warrant to protect the public interest." *Cablevision of Boston Co., et al v. Boston Edison Co.*, D.P.U./D.T.E. 97-82, at 19 (April 15, 1998).

Circumstances present in this matter before the Department warrant protection of the public interest and an adjudication of just and reasonable rates. As a matter of legal structure and operation, AMLP and PMLP embody the "public interest".

AMLP is owned and operated by the Town of Ashburnham. G.L. c. 164, §§ 34-69A. PMLP is owned and operated by the City of Peabody. *Id.* Both AMLP's and PMLP's operations are overseen by a publicly elected board of light commissioners. G.L. c. 164, §§ 55-56A. In fact, Comcast has named the PMLP Board of Lighting Commissioners as a defendant in its Complaint, thereby acknowledging its role. Neither AMLP nor PMLP have stockholders. The electricity sold by both AMLP and PMLP is sold to the citizens of and the businesses in the town and city respectively. By law, the pricing of the electricity sold by AMLP and PMLP is at cost. G.L. c. 164, § 58.

The Supreme Judicial Court has found that Massachusetts municipal light departments, like AMLP and PMLP, are imbued with the public interest. *See Bd. of Gas & Elec. Comm'rs of Middleborough v. Dep't of Pub. Utils.*, 363 Mass. 433, 438 (1973) ("The special provisions

applicable to municipal light boards (see G. L. c. 164, Sections 55-56A) indicate a legislative deference to the fact that their rate schedules are fixed by 'public officers acting under legislative mandate' (*Adie v. Mayor of Holyoke*, 303 Mass. 295, 300), and that therefore they do not require the close scrutiny and measure of supervision by the Department which is authorized or required as to nonmunicipal electric companies under Section 94.").

This proceeding involves parties that are fundamentally different than the investor owned utilities in *Cablevision* (Boston Edison) and *A-R Cable Servs* (Massachusetts Electric). Nearly sixteen (16) years have passed since those decisions were rendered. Moreover, cable television ("CATV") providers have changed considerably over the intervening 16 years. During the last 16 years, Comcast has changed through consolidation, technological improvements, and the expansion of service offerings. Comcast is no longer just a CATV provider. Today, Comcast is a global Fortune 50 company and has expanded into the areas of business and home high-speed internet service, digital phone service, and home security. None of these services were as prevalent—if even in existence—16 years ago.

If the Department simply addresses the Phase 1 inquiry as posed by Comcast, then the conclusion reached by the Department would not contain any of the facts and circumstances briefly set out above. Consequently, this proceeding would yield an order devoid of the evidence that is necessary to adjudicate the reasonableness of AMLP and/or PMLP's rates and charges. The Supreme Judicial Court would likely overturn such an order. These facts and circumstances justify departure from the blind application of the Cablevision Formula. The Department must examine the costs underlying PMLP and AMLP's pole attachment rates. How else could the Department determine whether the AMLP and PMLP rates are just and reasonable?

In *Cablevision*, "the Department established **a** method to estimate the fully-allocated costs of pole attachments." *A-R Cable Servs Inc., et al. v. Mass. Elec. Co.*, D.T.E. 98-52, at 7 (Nov. 6, 1998) (emphasis added). The Department did not find that the method employed in *Cablevision* is the exclusive method to use in the calculation of pole attachment rates as

Comcast suggests. *Comcast of Massachusetts III, Inc. v. Peabody Mun. Light Plant and Peabody Mun. Lighting Comm'n*, D.T.C. 14-2, Comcast's Answer to Petition to Intervene of the Ashburnham Municipal Light Plant, at 2 (May 13, 2014) ("Application of the Massachusetts Formula to Peabody Municipal Light Plant (PMLP) would fulfill the requirements of the Pole Attachment Statute.").

Pursuant to G.L. c. 30A, § 11(8), "the decision of the department [must] 'be accompanied by a statement of reasons . . . including determination of each issue of fact or law necessary to that decision." *Massachusetts Inst. of Tech. v. Dep't of Pub. Utils.*, 425 Mass. 856, 868 (1997) (quoting *Costello v. Dep't of Pub. Utils.*, 391 Mass. 527, 533 (1984)); *see City of Newton v. Dep't of Pub. Utils.*, 339 Mass. 535, 542 ("Procedure before the department is now governed by the State administrative procedure act found in G.L. c. 30A."). The Department has a "duty to make adequate subsidiary findings." *Hamilton v. Dep't of Pub. Utils.*, 346 Mass. 130, 137 (1963), (quoting *Leen v. Assessors of Boston*, 345 Mass. 494, 502 (1963)).

The "legal threshold" articulated in the Hearing Officer's May 15, 2014 Order and the proposed two-phase format would preclude the Department from "mak[ing] adequate subsidiary findings to support its determination of each issue of fact or law." *Stowe Mun. Elec. Dep't v. Dep't of Pub. Utils.*, 426 Mass. 341, 344 (1997). In order to make adequate subsidiary findings, the Department must consider facts that are relevant to the legal inquiry required by the Department's regulations and G.L. c. 166, § 25A.

1. The factual evidence that PMLP and AMLP must be permitted to offer in this proceeding is inextricably intertwined with the relevant legal inquiry and therefore must be evaluated by the Department to adjudicate the complaint fairly.

G.L. c. 166, § 25A directs the Department to "consider the interest of subscribers of cable television and wireless communications services as well as the interest of consumers of utility services." *See also* 47 U.S.C. § 224(c)(2)(B) (providing that states preempting federal regulation must certify to the FCC that "the State . . . *does consider* the interests of the

subscribers of the services offered via such attachments as well as the interests of the consumers of utility services.")(emphasis added); *Louisiana Cablevision v. Louisiana Pub. Serv. Comm.*, 493 So.2d 555, 559 (1986) ("Fulfilling [the] mandate [to assure that the charges for pole attachments are just and reasonable] necessarily entails balancing the interests of cable television subscribers with the other interests at stake."). AMLP and PMLP acknowledge that the Department is required to weigh the interests of Comcast's subscribers in the balancing test required by G.L. c. 166, § 25A. It is Comcast that is not ready to acknowledge that the interests of AMLP and PMLP ratepayers should be weighed by the Department in its required balancing.

This balancing test must be guided by the principles used in ratemaking. *Attorney Gen. v. Dep't of Telecomm. & Energy*, 438 Mass. 256, 262, 268, 273 (2002) ("The "public interest" standard constitutes an overriding consideration in the department's regulatory and ratemaking scheme."); *Massachusetts Inst. of Tech. v. Dep't of Pub. Utils.*, 425 Mass. 856, 868 (1997); *see Wolf v. Dep't of Pub. Utils.*, 407 Mass. 363, 369 (1990); *Boston Real Estate Bd. v. Dep't of Pub. Utils.*, 334 Mass. 477, 495 (1956) ("The controlling consideration of the public interest in the exercise of the department's statutory regulating power is implicit throughout the statute. It is the standard which supports the grant of power over rates and regulations in general, and it is not necessary to specify further").

Both PMLP and AMLP should be permitted to present cost-of-service studies and testimony that address—from their perspectives—how and why their pole attachment rates are just and reasonable and fairly balance the interests of their ratepayers (who own and pay for the poles) with the interests of Comcast and its ratepayers (who desire to use the poles owned by the ratepayers of AMLP and PMLP). The Department is required to determine whether the pole attachments rates are "not less than the additional costs of … attachment nor more than the proportional capital and operating expenses…attributable to that portion of the pole…". G.L. c. 166, § 25A. Stated differently, since AMLP and PMLP are public entities imbued with the public

interest who are required to charge rates based on cost, what is the legally appropriate allocation of that cost between different ratepayers and CATV subscribers?

PMLP and AMLP employ a fully allocated cost-of-service methodology taking into account cost causation and allocate costs to the customers or customer classes responsible for those costs. This approach is consistent with well-established ratemaking principles. *Boston Edison Co., Cambridge Elec. Light Co., Commonwealth Elec. Co.*, D.T.E. 03-121, at 46-47 (July 23, 2004)); *see Boston Gas Co.*, D.P.U. 96-50 (Phase I) at 133-134 (Nov. 29, 1996); *Boston Gas Co.*, D.P.U. 93-60, at 331-337, 410, 423 (Oct. 29,1993); *Bay State Gas Co.*, D.P.U. 92-111, at 54, 283-284, 311-312 (Oct. 30, 1992). Municipal light plants, like PMLP and AMLP, must recover all of their costs-to-serve each year since they are not-for-profit entities without shareholders. G.L. c. 164, §§ 57, 58.

A fundamental principle underlying the cost-of-service approach is the avoidance cross-subsidies. *Stowe Mun. Elec. Dep't v. Dep't of Pub. Utils.*, 426 Mass. 341, 349 (1997) ("To the extent that, one way or another, utilities pass their fixed costs on to ratepayers, the public interest requires that no group of customers bear an unfair share of these costs."). "[C]ross-subsidization is of critical concern in the ratemaking process." *Investigation by the Department of Telecomm. and Energy upon its own motion commencing a rulemaking pursuant to 220 C.M.R. §§ 2.00 et seq., establishing standards of conduct governing the relationship between electric distribution companies and their affiliates and between natural gas local distribution companies and their affiliates*, D.P.U. 97-96, at 4 (May 29, 1998). A fully allocated cost-of-service approach ensures that costs incurred by one group of customers are not subsidized by another group of customers. The cost of providing "usable space" for pole attachments necessarily includes the cost of the underlying support space. Without the underlying support space, there would be no usable space at all, i.e., one cannot have a top without a bottom. The pole attachment formula advocated by Comcast does not include support space and is therefore not based on fully-allocated costs. The Comcast approach would require the electric consumers

of not-for-profit citizen-owned municipal light plants to subsidize the pole attachments of a global for-profit media and communications corporation. *Contra Lowell Gas Light Co. v. Dep't of Pub. Utils.*, 319 Mass. 46, 52 (1946) ("[T]he function of the department is the protection of public interests and not the promotion of private interests.").

2. The Phase I Application of the Cablevision Formula to municipal light plants without factual evidence violates municipal light plants' exclusivity to set their own rates.

G. L. c. 164, §§ 56 and 58 provide municipal light plants exclusivity in setting their rates for gas and electricity. *See Shea v. Boston Edison Co.,* 431 Mass. 251, 254 (2000); *Bd. of Gas & Elec. Comm'rs of Middleborough v. Dep't of Pub. Utils.*, 363 Mass. 433, 438 (1973). The rates of municipal light plants are only subject to revision by the Department if they are found to be discriminatory. *See Holyoke Water Power Co. v. City of Holyoke*, 349 Mass. 442, 446-447 (1965).

The AMLP and PMLP publicly elected commissions have determined the allocation between the electric ratepayers and the cable ratepayers based on fully allocated cost-of-service studies. If the application of the Cablevision Formula by the Department in this case—without cost allocation evidence—results in shifting costs to electric ratepayers, then the Department would have substituted its judgment for the judgment of the publicly elected light commissioners of AMLP and PMLP who have exclusive legal jurisdiction to set rates in their communities. This results in the Department setting rates for the electric ratepayers of AMLP and PMLP in violation of G.L. c. 164, §§ 56 and 58.

3. The proposed two-phase format would create an appealable legal issue.

If the Department determines that the Cablevision Formula applies, without evaluation or application of the necessary supporting evidence, a 'final determination' within the meaning G.L. c. 25, § 5 would result and give rise to an immediate right of appeal. *See Providence and Worcester R.R. Co. v. Energy Facilities Siting Bd.*, 453 Mass. 135, 140 (2009); *Fitchburg Gas & Elec. v. Dep't of Pub. Utils.*, 394 Mass. 671, 677 (1985) (quoting *Check v. Kaplan*, 280 Mass.

170, 176 (1932)); *Pollack v. Kelly*, 372 Mass. 469, 475-476 (1977). This scenario is plainly inefficient as it would entail an appeal on the legal issue by PMLP and AMLP before the Department's proceeding is concluded.

Conversely, if the Department's determination of Phase 1 is not considered a 'final determination', then AMLP and PMLP would be unable to pursue their appeal until after the proceeding concludes with only PMLP litigating the case. *See Western Massachusetts Elec. v. Dep't of Pub. Utils.*, 373 Mass. 227, 237 (1977). This result would be inequitable and inefficient.

B. Issue 2: The threshold legal issue articulated by the May 15, 2014 Order is not accurate.

As explained above, the threshold legal issue articulated by the May 15, 2014 Order is misplaced and not the proper inquiry for this proceeding. The relevant legal inquiry required by Department regulations and G.L. c. 166, § 25A is: whether the AMLP's and PMLP's pole attachment rates are *just and reasonable* and whether Comcast has *nondiscriminatory access* to AMLP and PMLP poles.

As required by G.L. c. 166, § 25A and the Department's regulations (220 C.M.R. § 45.00), PMLP presented evidence that its pole attachment rates are just and reasonable in the Affidavit of Richard La Capra. *See generally Comcast of Massachusetts III, Inc. v. Peabody Mun. Light Plant and Peabody Mun. Lighting Comm'n*, D.T.C. 14-2, Affidavit of Richard La Capra (May 2, 2014). Comcast submitted evidence in its Complaint asserting that PMLP's pole attachment rates are not just and reasonable. Plainly there is already conflicting evidence in this proceeding. "[I]n cases such as this, where the evidence is conflicting, the administrative agency is 'charged with the responsibility of making findings of fact . . . .'" *Massachusetts Inst. of Tech. v. Dep't of Pub. Utils.*, 425 Mass. 856, 870 (1997) (quoting *Costello v. Department of Pub. Utils.*, 391 Mass. 527, 536 (1984)). Therefore, only by hearing a full presentation of the legal and factual issues together can the Department make the necessary subsidiary findings to adjudicate this Complaint properly. *See Massachusetts Inst. of Tech. v. Dep't of Pub. Utils.*, 425

Mass. 856, 868 (1997) (explaining that review of a department's decision is impossible unless it is "accompanied by a statement of reasons . . . including determination of each issue of fact or law necessary to the decision.").

C. Issue 3: AMLP's Motion to Intervene with full-intervenor status should be granted regardless of whether the Department proceeds in two phases or in a single proceeding.

1. Standard of Review

The Department has discretion to determine whether to permit intervention in Department proceedings. *Att'y Gen. v. Dep't of Pub. Utils.*, 390 Mass. 208, 216-217 (1983); *Boston Edison Co. v. Dep't of Pub. Utils.*, 375 Mass. 1, 45 (1978), cert. denied, 439 U.S. 921 (1978); *see also Robinson v. Dep't of Pub. Utils.*, 835 F. 2d 19 (1st Cir. 1987); *Newton v. Dep't of Pub. Utils.*, 339 Mass. 535, 543, n.1 (1959).

"[A] determination of intervening party status is based on *individual facts* establishing the 'substantial and specific' effect that the proceeding may have on the individual or entity seeking to intervene." *Bd. of Health of Sturbridge v. Bd. of Health of Southbridge*, 461 Mass. 548, 558 (2012) (emphasis added).

When ruling on a petition to intervene, a Hearing Officer may consider, among other factors:

> The interests of the petitioner, whether the petitioner's interests are unique and cannot be raised by any other petitioner, the scope of the proceeding, the potential effect of the petitioner's intervention on the proceeding, and the nature of the petitioner's evidence, including whether such evidence will help to elucidate the issues of the proceeding, and may limit intervention and participation accordingly.

Boston Edison Company, D.P.U. 96-23, at 10 (Sept. 8, 1997) (citations omitted).

2. Basis for Full-Party Intervenor Status

As noted in AMLP's Petition to Intervene, Comcast has unambiguously asserted that it intends to use the outcome of this proceeding as the basis for resolving its pole attachment billing dispute with AMLP. *Pole Attachment Rate Complaint of Comcast of Massachusetts III,*

Inc. v. Peabody Mun. Light Plant and Peabody Mun. Lighting Comm'n, D.T.C. 14-2, Petition to Intervene of the Ashburnham Municipal Light Plant, at 2 (May 8, 2014). This individual fact alone demonstrates that AMLP has a significant interest in this proceeding because it directly affects its pole attachment rates and the interests of electric consumers in Ashburnham.

AMLP's situation is unique in that Comcast plainly intends to use this proceeding with respect to AMLP's pole attachment rates. Thus, AMLP has a substantial interest in ensuring that the record is fully developed and the Department's deliberations will be well served by the evidence to be submitted by AMLP.

AMLP will bring evidence to this proceeding that will assist the Department in assessing the unique facts and circumstances that municipal light plants present. This evidence will elucidate the broader public interest at stake as well as the specific interests of electric customers in a municipality (i.e., the Town of Ashburnham and the City of Peabody). *See RicMer Properties, Inc. v. Bd. of Health of Revere*, 59 Mass. App. Ct. 173, 179 (2003) (holding that: "[t]he city's intervention, rather than advancing a political agenda, benefitted the proceedings by expanding the evidentiary record on which the board could base its decision."); *Boston Edison Co.*, D.P.U. 96-23, at 10 (Sept. 8, 1997) ("[A] Hearing Officer may consider, among other factors . . . the nature of the petitioner's evidence, including whether such evidence will help to elucidate the issues of the proceeding . . ."). AMLP intends to provide evidence, including but not limited to affidavits, expert testimony, briefs, and cross-examination. This evidence will provide the Department with both the facts and legal arguments necessary to make adequate subsidiary findings, support a reasoned determination of each issue of fact or law, and facilitate a just resolution of this proceeding.

The conduct of the proceeding will not be adversely affected by AMLP's intervention as a full party. As shown by the filing of this Joint Brief, AMLP and PMLP will work together to assist the Department's inquiry in this proceeding.

AMLP meets the requirements for intervention set forth in 220 C.M.R. § 1.03. Therefore, AMLP respectfully reiterates its request that the Department grant AMLP's Petition to Intervene with full-party intervenor status.

III. CONCLUSION

The Department should not bifurcate this proceeding as proposed by Comcast because it would unduly prejudice AMLP and PMLP and produce an inefficient, inequitable, unjust, unreasonable, and unlawful result. Moreover, the proposed bifurcation would focus the proceeding on an incorrect inquiry. The legal inquiry in this proceeding is whether AMLP's and PMLP's pole attachment rates are just and reasonable and as a consequence whether Comcast has nondiscriminatory access to the AMLP and PMLP poles. This is the inquiry required by Department regulations (220 C.M.R. § 45.00) and by statute (G.L. c. 166, § 25A).

The legal inquiry also requires the Department to balance the interest of electric consumers with the interest of cable television subscribers. A blind application of the Cablevision formula to AMLP and PMLP, without examining the costs underlying AMLP's and PMLP's pole attachment rates, would not comply with the requirements of the statute. This approach would also usurp the ratemaking prerogative that has been granted to municipal light plants by statue. G. L. c. 164, §§ 56, 58.

For all these reasons, in addition to those set forth in this brief, the Department should not bifurcate the proceeding or proceed based on the "legal threshold" articulated in the May 15, 2014 Order.

AMLP has presented individual facts demonstrating that it will be substantially and specifically affected by this proceeding. In addition, AMLP will provide evidence that will augment the evidentiary record, elucidate the issues in the case, and facilitate a just resolution. For all these reasons, the Department should grant AMLP's Petition to Intervene with full-party intervenor status.

Respectfully submitted,

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On behalf of the Ashburnham Municipal Lighting Plant

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2014, I served the foregoing Joint Procedural Brief by electronic delivery, hand-delivery and first-class mail to the attached Service List in accordance with the requirements of 220 CMR § 1.05.

Nicholas J. Scobbo, Jr.

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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

Pole Attachment Rate complaint of Comcast Massachusetts III, Inc. v. Peabody Municipal Light Plant and Peabody Municipal Lighting Commission.

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