

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

CRC COMMUNICATIONS LLC, D/B/A OTELCO,

Complainant,

v.

MASSACHUSETTS ELECTRIC COMPANY
D/B/A NATIONAL GRID, AND VERIZON NEW
ENGLAND INC.

Respondents.

D.T.C. 22-4

INITIAL BRIEF OF
CRC COMMUNICATIONS LLC, D/B/A OTELCO

June 7, 2024

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OTELCO’S INITIAL BRIEF

The Department should find that the refusal of Verizon New England Inc. (“Verizon”) and Massachusetts Electric Company d/b/a National Grid (“National Grid”) (collectively, the “Pole Owners”) to process OTELCO’s requests pertaining to opposite side construction (also called “boxing”), unless and until each pole owner conducts resurveys and redesigns of all the poles on OTELCO’s applications, is unreasonable and discriminatory in violation of M.G.L. 166 § 25A, the Department’s pole attachment regulations and the Commission’s October 11, 2022 Final Order (“Final Order”) in this proceeding. Additionally, the Department should find that National Grid’s refusal to provide itemized cost break downs of its previously provided make-ready work estimates is unreasonable in violation of M.G.L. 166 § 25A, the Department’s pole attachment regulations and the Final Order. Unless and until the Pole Owners are compelled to comply with the Department’s Order, Massachusetts citizens, businesses and institutions will continue to be deprived of access to educational, social, economic, and medical services made possible by OTELCO’s state-of-the-art broadband network.

I. INTRODUCTION AND SUMMARY

“Implementation of the Department’s Order, and the pole attachment statute itself, relies on cooperation among parties as they enter into a rental relationship.”¹ The Pole Owners continue to fail to grasp this sensible observation. All of the information necessary for the Pole Owners to assess OTELCO’s requests to box 732 poles otherwise designated for replacement, as well as any neighboring poles that require boxing to avoid mid-span clearance issues, already exists, either in the record of this proceeding or the Pole Owners’ possession. Specifically, in addition to the extensive information submitted by OTELCO in this proceeding on May 15, 2024, which includes the detailed survey reports of each Pole Owner’s contractor (Exhibit 5s and Form 3s) for every pole on OTELCO’s applications, IKE photographs and survey data collected by OTELCO’s contractor for each pole on OTELCO’s applications, as well as more extensive Pole Owner information for the majority of these same poles that was independently obtained by OTELCO (O’Calc Reports and Verizon Prelims) (collectively referred to herein as “Survey information” or “Surveys”), the Pole Owners acknowledge having additional more recent information that may be relevant to OTELCO’s attachment requests, including more recently performed third party attachment surveys as well as records that the Pole Owners are obligated to maintain concerning any revisions or upgrades to their poles, including work done in the course of storm restoration.

Contrary to the Pole Owners’ arguments, this extensive Survey information includes all of the information reasonably necessary to assess OTELCO’s boxing requests, even using Verizon’s “as of now” criteria for assessing boxing which, until now, has not been applied solely to rule out boxing but rather to assess its use consistent with the Department’s instruction to allow boxing that does not present a specific safety, reliability or generally applicable (i.e., non-discriminatory)

¹ DTC Order on Appeal of Hearing Officer’s Ruling at 9.

engineering concern. Indeed, the information includes the heights of all existing facilities attached to the poles measured to the nearest inch, a description of the type of facility attached (i.e., communications line, electrical line, streetlight, equipment, terminal, transformer), the type of attachment (strand riser, guy, opposite side construction), indicators as to whether the pole includes a side-tap or is a corner pole, mid-span clearance information, and information to assess whether the pole is bucket truck accessible. As the Pole Owners would prefer to use the information to preclude the use of boxing, they refuse to even consider its value for anything else.

Instead, the Pole Owners assert that the Survey information is too stale to use for any purpose other than denying OTELCO's boxing requests. They complain that some of the data is over two years old and that using it would run counter to their "general threshold for what should be considered expired data," i.e., 180 days. They say this without acknowledging that their own application processing timelines nearly always exceed 180 days from survey completion, or accepting any responsibility for the age of the Survey information (entirely the result of the Pole Owners' unreasonable denial of boxing at the outset and later refusal to abide by the Department's Final Order), or that the Survey information, combined with more current information clearly in the Pole Owners' possession, is entirely adequate for purposes of evaluating OTELCO's attachment requests, since modifications can be made in the field, as is always the case given the natural lag in the time between a survey's conclusion and the Pole Owners' performance of make-ready work.

In fact, despite their general assertions that pole conditions may have changed since the Surveys and engineering was completed, due to storm restoration, other third party attacher applications or even "unauthorized attachments," they failed to provide a single piece of evidence demonstrating that a pole condition has changed in a manner that impacted OTECLO's request to box poles otherwise identified as requiring replacement. This is because it is highly unlikely that

any relevant condition had changed. A pole that was bucket truck accessible in 2021 or 2022, is nearly certainly buck truck accessible today. A pole that required replacement to accommodate a new third party attachment in 2021, would not have been attached to by another third party unless the pole was replaced (rendering the boxing request moot) or boxed (which, in addition to being discriminatory, would further weaken any argument against boxing). Even under the most expeditiously processed applications, the same pole conditions could change that might theoretically change in two years. Moreover, two years had not passed at the time the Department issued its Final Order, and OTELCO requested the Pole Owners to evaluate its boxing requests.

Indeed, in November 2022, when OTELCO first approached the pole owners and asked them to comply with the Department's Final Order, the survey data for the majority of the applications was less than a year old. In Palmer, the earliest survey completion date for OTELCO's application to poles was December 29, 2021 and the most recent one had only been completed in May 2022 (just five months prior to the Final Order). Yet the Pole Owners unreasonably and discriminatorily insisted that that OTELCO pay to resurvey and redesign all of the poles in its applications forcing OTELCO to file its Motion to Enforce the Final Order, further delaying the use, and resulting in the increased age, of the extensive existing Survey information.

If any of the Survey information is too stale, it is the sole fault of Verizon and Grid, which have misrepresented their boxing policies, standards and practices throughout this proceeding, giving rise to the delays and Survey data maturity. Consistent with the Department's admonition in its Order granting reconsideration of the Final Order, "[i]t would be unreasonable, and bad policy, to punish OTELCO" for the Pole Owner's unreasonable actions and apparent bad faith giving rise to the delays in this proceeding.

If the DTC decides that the existing Survey information needs to be updated, the Department should adopt the process proposed by OTECLO's witnesses in their rebuttal testimonies. Specifically the Pole Owners should be required to share, with OTELCO and the Department, any more complete and/or current information in their possession not already provided to OTELCO, and OTELCO should be allowed to use its own qualified contractor, Mountain Limited, to do as much of any required updating work as possible using Desktop Engineering, with field visits only required if reasonably determined to be necessary in the sole discretion of OTELCO's contractor. Verizon and Grid should be solely responsible for the cost.

While National Grid is certain to claim that its rate payers should not be forced to pay for surveys to assess OTELCO's attachment requests, that is not the only way to cover the cost of National Grid's mistakes in this proceeding. As an investor owned company, National Grid will be forced to reckon with its Board and investors. Similarly, unless Verizon pays for any newly required surveys and engineering, it will have succeed in quelching its competition, in direct contravention of a key foundational purpose of pole attachment regulation.

In addition to directing the Pole Owners to promptly and expeditiously process OTELCO's boxing request, they should be ordered to allow OTELCO to attach temporarily if necessary to gain required clearance where it can do so in compliance with the NESC. Each roadblock the Pole Owners have added to OTELCO's deployment has cost OTELCO and Western Massachusetts dearly. If OTELCO cannot build its network immediately, **START CONFIDENTIAL ***** END CONFIDENTIAL**. Each roadblock also illustrates the Pole Owners' complete disregard for Massachusetts law governing pole attachments. For these reasons and as more fully set forth herein, OTELCO's respectfully urges the Department to grant its requested relief.

II. PROCEDURAL HISTORY

OTELCO's path to deployment in Western Massachusetts has proven to be a long and winding road, fraught with unnecessary roadblocks. At each turn OTELCO has faced obfuscation from the Pole Owners – starting with the original falsehood that the Pole Owners never allow boxing on their jointly owned poles. Since then, the Pole Owners have continued to misrepresent the scope of information available to assess OTELCO's boxing requests and have refused to share crucial preconstruction Survey information that was collected at OTELCO's expense.

A. OTELCO's Original Complaint

OTELCO filed its original complaint in this matter on April 15, 2022, seeking DTC intervention to compel the Pole Owners to allow access to pole infrastructure on just, reasonable and nondiscriminatory terms.² Specifically, when faced with exorbitant make-ready charges that would likely render OTELCO's deployment plans unachievable, OTELCO requested to box poles identified as otherwise needing to be replaced, thereby reducing costs and making OTELCO's deployment feasible, while making the most efficient use of the existing pole. The Pole Owners told OTELCO in no uncertain terms that they did not allow boxing and would not consider OTELCO's requests to box poles, without regard to whether a pole could be boxed without creating a specific safety, reliability or engineering condition.³ The primary objective of OTELCO's Complaint was to compel both Verizon and National Grid to consider OTELCO's proposals to utilize opposite side construction, or "boxing," in certain circumstances, so that OTELCO could more quickly and cost-effectively attach to poles. OTELCO also requested that National Grid

² See *CRC Communications d/b/a OTELCO's Pole Attachment Complaint and Request for Expedited Treatment* ("Complaint") (Apr. 15, 2022).

³ The Pole Owners refused to consider boxing requests during a joint meeting on February 2, 2022, and thereafter claimed they never allow boxing and refused to reconsider or continue a dialogue with OTELCO on alternative construction practices to reduce the excessive make-ready charges. See Declaration of David Allen, ¶¶ 7, 8 ("Initial Allen Decl.") (Apr. 14, 2022); see also Allen Prefiled Testimony, at 15:5-7.

provide itemized cost-breakdowns of its make-ready work estimates for each pole, so that OTELCO could verify the accuracy of the charges, and also evaluate the most costly poles, to determine whether a more cost-efficient deployment plan was possible.⁴

B. DTC Final Order

The DTC issued what OTELCO presumed would be its Final Order on October 11, 2022, granting in part and denying in part OTELCO's Complaint.⁵

1. *Opposite Side Construction*

The DTC determined that the “general reasons to deny boxing that the pole owners have offered throughout the proceeding [were] inadequate” and “demonstrate[d] merely a generalized preference for pole replacement.”⁶ It found the explanations the Pole Owners gave for declining to box certain poles were “insufficient without more for the Department to deem the denial of boxing reasonable.”⁷ The DTC also found that boxing under the guidance of the Final Order “will not be inconsistent with the safety standards of the NESC given the discretion the Department has left to the pole owners to deny boxing with *reasonable* justification”⁸ and clarified that “there is no dispute that there are in fact boxed poles in Massachusetts.”⁹ Having found *all* of the general reasons given for denying boxing to be “inadequate,”¹⁰ the Department reminded the parties that “there is a public interest in increased access to poles”¹¹ and directed the pole owners to allow boxing on all

⁴ National Grid informed OTELCO that it would not provide invoice details for make-ready invoices. *See* Initial Allen Decl. ¶ 9.

⁵ *See* D.T.C. 22-4, Final Order (“Final Order”) (Oct. 11, 2022).

⁶ *Id.* at 14-15.

⁷ *Id.* at 14.

⁸ *Id.* at 15-16 (emphasis added) (citing Verizon's admission that boxing can be done consistent with the NESC).

⁹ *Id.* at 16.

¹⁰ *Id.* at 14-21.

¹¹ *Id.* at 20.

poles that OTELCO seeks to box absent “sufficient”¹² and “specific reasons on a pole specific basis.”¹³

2. Detailed cost breakdowns required

The DTC also found National Grid’s refusal to provide cost breakdowns at the task-specific and pole-specific level, as opposed to the aggregated application level, to be unreasonable.¹⁴ The DTC further stated that National Grid’s refusal to provide detailed cost estimates up front, combined with its failure to provide a true-up mechanism on the backend, is unreasonable.¹⁵ Accordingly, the DTC ordered that National Grid must provide cost breakdowns on a task-specific and pole-specific level, if requested by OTELCO.¹⁶

C. OTELCO’s Motion for Enforcement of DTC Final Order

Despite the Final Order directives, in November 2022, the Pole Owners refused to evaluate OTELCO’s boxing requests on a pole specific basis using the extensive survey information collected at OTELCO’s sole expense, instead demanding that OTELCO pay for additional preconstruction surveys and engineering analysis prior to any further action being taken on OTELCO’s applications.¹⁷ National Grid also refused to provide itemized cost breakdowns of its previously provided make-ready estimates.

1. OTELCO Urges the DTC to Prohibit the Pole Owners’ Resurvey Requirement

Shortly after it became clear that the Pole Owners would not negotiate the issue of resurveys in good faith, OTELCO filed its Motion for Enforcement of the DTC’s Final Order on February 21, 2023, requesting that the DTC prohibit the Pole Owners’ blanket requirement to conduct resurveys

¹² *Id.* at 17.

¹³ *Id.* at 21.

¹⁴ *Id.* at 45.

¹⁵ *Id.* at 46.

¹⁶ *Id.*

¹⁷ Declaration of David Allen at ¶¶7-8 (Feb. 21, 2023) (“Second Allen Declaration” or “Second Allen Decl.”)

and engineering at OTLECO's cost and instead to order the Pole Owners to promptly evaluate OTLECO's boxing requests.¹⁸ OTELCO further requested the DTC require National Grid to provide cost breakdowns on a task and pole-specific level, as requested by OTLECO and required by the Final Order.¹⁹

At the time of filing, OTELCO had exhausted all efforts to cooperatively resolve this matter – including requesting that Verizon and National Grid leverage the existing data in the preconstruction surveys – all to no avail.²⁰ Specifically, Mr. Allen made the point that there would be no need to collect data that the parties already had in their possession, and requested that the focus be on the scope of work that is needed to address any potential changes.²¹ Verizon indicated that it was unwilling to negotiate a scope of work with its contractor (Pike Telecom & Renewables, LLC), adding that it is “because of you that we have to do this work.”²² In short, the Pole Owners, armed with all the information necessary to evaluate OTLECO's boxing requests on the merits at that time, flatly refused to consider the requests until OTLECO agreed to pay for entirely new preconstruction surveys for all applications, thereby setting up the next year and a half of continued litigation.

In its Motion for Enforcement, OTELCO argued there was no need for additional surveys for the following primary reasons:

- The existing preconstruction surveys contain all necessary information to evaluate OTELCO's boxing requests;
- Delays of more than one year prior to completion of make-ready work are common practice in Massachusetts; and,
- Pole Owners should be aware of any significant modifications to the poles included in OTELCO's applications.

¹⁸ *OTELCO's Motion for Enforcement of the Final Order in DTC 22-4* (“Motion for Enforcement”)(Feb. 21, 2023).

¹⁹ *See id.* at Section V.(j), pg. 39.

²⁰ *See generally* Second Allen Declaration.

²¹ *See id.* at ¶21.

²² *Id.*

OTELCO further argued that, to the extent any new information was needed, the Pole Owners, not OTELCO, should be required to pay for any additional surveys because the Pole Owners, in misrepresenting their boxing policies, were responsible for the delays leading to the age of the Survey information.²³ Anticipating the likely event that the Pole Owners would further delay OTELCO by refusing to promptly and reasonably evaluate OTELCO's boxing requests, OTELCO requested the DTC to retain jurisdiction over any disputes regarding denials of boxing requests.²⁴ OTELCO further requested remedies – including self-help, use of qualified contractors, and OTMR – designed to expedite OTELCO's deployment and salvage its hopes of providing services in Western Massachusetts.²⁵

2. Pole Owners Claim Existing Surveys Lack Needed Information

The Pole Owners responded to OTELCO's Motion for Enforcement by arguing that the Survey information lacked certain data that they needed to evaluate OTELCO's boxing requests. Specifically, Verizon argued the Surveys lacked information as to whether risers or side-taps were present, whether the pole was on an embankment, or whether it was a corner pole.²⁶ National Grid parroted these concerns, stating it did not have the information needed to evaluate boxing requests, such as side-taps, guy wire support, and whether a pole is on an embankment or a corner pole, "or other such detailed information that would enable the Company to make after-the-fact determinations on boxing."²⁷ Neither Pole Owner produced copies of the actual preconstruction surveys or related information to prove such information was unavailable – as they claimed. Nor

²³ Motion for Enforcement, at 20-21 ("Verizon and National Grid should not be permitted to use the delays that they orchestrated to justify *further delaying* consideration of OTELCO's requests.")

²⁴ *Id.*, Section V. (d) at 36-37.

²⁵ *Id.*, Section V. (e)-(i) at 37.

²⁶ Opposition of Verizon MA to Motion for Enforcement of the Final Order at pg. 5 (April 4, 2023).

²⁷ Response of Massachusetts Electric Company d/b/a National Grid to Motion of CRC Communications d/b/a OTELCO, at 12 ("National Grid's Initial Response") (April 4, 2023).

did the Pole Owners indicate that additional information about the poles in OTELECO's applications, beyond that included in the Form 3s and Exhibit 5s, was in their position. To the contrary, National Grid even went as far as stating "the information OTELECO would receive from Osmose would not be of particular assistance to OTELECO."²⁸

3. OTELECO Obtained O'Calc Reports

In response to the Pole Owners' claims, and despite their prior protestations when OTELECO previously requested them to provide the preconstruction surveys (paid for by OTELECO), OTELECO requested that National Grid's contractor, Osmose, provide its survey reports to OTELECO directly. Osmose then produced numerous "O'Calc Reports" consisting of detailed pole loading analyses -- which told a markedly different story. A wealth of additional information -- all garnered from the original preconstruction surveys -- had been at the Pole Owners' fingertips the entire time.²⁹ This information directly contradicted the Pole Owners' claims that they lacked detailed information on the poles, including whether the poles had side-taps, whether the pole is a corner pole, and whether the pole is on an embankment.³⁰

D. DTC Order Granting Reconsideration and Reopening Record

1. DTC Granted Reconsideration of the Final Order

The DTC, in considering OTELECO's Motion for Enforcement, chose to treat it as a motion for reconsideration of its Final Order, acknowledging that many aspects of the implementation of the Final Order were left open to interpretation.³¹ The DTC therefore granted reconsideration of its previous Order for the limited purpose of providing further detail to effectuate that Order.³²

²⁸ *Id.* at 19.

²⁹ *See id.*, Attachment 2, Declaration of Lawrence M. Slavin, PhD at ¶¶7-8 (April 18, 2023).

³⁰ *Id.*, Attachment 2, Declaration of Larry Slavin, PhD, ¶¶6-8 (April 18, 2023).

³¹ Hearing Officer Ruling Granting Reconsideration and Reopening Administrative Record Regarding Resurvey Issue at 4 ("Reconsideration Order")(Aug. 22, 2023).

³² *Id.*

2. DTC Reopened the Record on Resurveys and Issued Information Requests to the Pole Owners

The DTC further granted OTELCO's April 18, 2023 motion and reopened the record to submission of evidence on the resurvey issue and whether Pole Owners can require OTELCO to pay for additional surveys.³³ The DTC also propounded its Third Set of Information Requests to the Pole Owners regarding the resurveys and related issues.³⁴

3. The Pole Owners Appeal of the Reconsideration Order

Verizon and National Grid filed a joint appeal of the DTC's Reconsideration setting forth four primary reasons for why the Department's Hearing Officer erred in allowing reconsideration and a stay was granted pending the outcome of the appeal.³⁵ The Department rejected each of the Pole Owners' arguments and the appeal was ultimately denied, "in its entirety."³⁶ Following the appeal of the Hearing Officer's Order, the Pole Owners were required to respond to the DTC's Third Set of Information Requests and the parties were given the opportunity to submit all evidence relevant to the resurvey issue by May 15, 2024.³⁷ The deadline for submission of Rebuttal Evidence was May 29, 2024.³⁸

a. Pole Owners Failed to Submit Any Surveys

The Pole Owners responded to the DTC's Third Set of Information Requests, but, once again, failed to submit any of the preconstruction survey materials in their possession.

³³ *Id.* at 5.

³⁴ DTC's Third Set of Information Requests (Aug. 22, 2023).

³⁵ *See* Appeal of the Hearing Officer Ruling and Motion to Stay of Massachusetts Electric Company d/b/a National Grid and Verizon New England, Inc. (Aug. 29, 2023); Order Granting Stay (Sept. 5, 2023).

³⁶ *See also* Dept. Order on Appeal of Hearing Officer's Ruling (April 26, 2024).

³⁷ DTC Procedural Schedule (May 1, 2024).

³⁸ *Id.*

b. OTELCO Submitted All Survey Information in its Possession

OTELCO, for its part, submitted all Survey information in its possession and provided supporting declarations and testimony explaining the use of such information in evaluating the safety, reliability and generally applicable engineering concerns related to its attachment requests.³⁹

4. Final Briefing Schedule

The DTC Scheduling Order further provides that the parties may file their initial briefs on June 7th, followed by Reply Briefs due on June 14th.⁴⁰

III. ARGUMENT

The Surveys contain all information needed to fairly evaluate the safety, reliability and generally applicable engineering concerns associated with all of OTELCO's pole access requests – including its requests to box poles otherwise identified as requiring replacement to accommodate a new fiber attachment. The Surveys are not outdated and should be relied upon to move forward with OTELCO's deployment without further, inexcusable delays. To the extent pole conditions have changed due to additional attachments, capital work or storm restoration, the Pole Owners should have knowledge of any of those changes in their own records. In any event, any changed pole conditions impacting OTELCO's requests can and should be addressed in the field expediently – just as they are when conditions change due to the Pole Owners' lengthy attachment application processing timelines. Requiring resurveys to address the *theoretical possibility* that poles have changed in a way that impacts OTELCO's attachment requests guarantees additional costs and delays. To the extent the Survey information requires updating, the Pole Owners, as the parties

³⁹ See *OTELCO's Confidential Response to Order Adopting Procedural Schedule* ("OTELCO's Response to Procedural Schedule") (May 14, 2024).

⁴⁰ DTC Procedural Schedule at 1.

responsible for delaying OTELECO's deployment through their repeated misstatements and delay tactics, must be held accountable for the attendant costs. OTLECO also urges the DTC to order National Grid to comply with the Final Order's explicit directive that pole and task specific cost breakdowns be provided to OTLECO for the previously provided estimates, as requested, so that OTLECO can fully evaluate the reasonableness and costs of its deployment plan.

A. No Additional Survey Information Is Required to Evaluate OTELECO's Pole Access Requests

1. *All Information Needed to Evaluate OTELECO's Pole Access Requests is in the Record or in the Pole Owners' Possession*

In order to evaluate pole access requests, pole conditions are reviewed and analyzed to determine available capacity to accommodate new attachments consistent with governing standards, including the NESC and the Telcordia Blue Book.⁴¹ This process is commonly referred to as the pre-construction survey process. As explained by OTELECO witnesses Joseph Teed, Samuel DeJesus and Kyle Reagan, the information collected during the pre-construction ("Survey information" or "Surveys") consists of detailed information about each pole, including but not limited to the specific heights of all existing attachments, whether the pole is guyed, whether a riser or equipment exists on the pole, and the age and condition of the pole itself.⁴² The Survey information also includes photographs of every pole – in many cases multiple photographs from different angles – showing the attached facilities, the adjacent spans and in most cases the groundline surface.⁴³ Qualified personnel can evaluate this information to determine the NESC

⁴¹ See Rebuttal Testimony of Joseph Teed at 3:13-16 ("J. Teed Rebuttal") (May 29, 2024).

⁴² See J. Teed Rebuttal at 4:2-5; see also OTLECO's Response to Procedural Schedule, *Attachment A*, Declaration of Samuel DeJesus at ¶¶ 4-6 ("S. DeJesus Decl.") and *Attachment B*, Declaration of Kyle Reagan at ¶4 ("K. Reagan Decl.") (May 15 2024).

⁴³ See S. DeJesus Decl. at ¶7 (IKE Photos can be found in the "IKE FILES" subfolders for each community, under the "images" tab, column K, labelled "compositeImageUrl" by copying and pasting the link or clicking on it.)

compliant design of additional attachments taking into consideration safety, reliability and generally applicable engineering concerns.⁴⁴

In this case, extensive Survey information was collected at OTECLO's sole expense (OTELCO paid approximately \$861,877 the Pole Owners and their contractors for the Surveys and designs) to evaluate OTELCO's attachment requests, including by Verizon's contractor Pike Telecom & Renewables, LLC ("Pike"), National Grid's contractor Osmose Utilities Services, Inc. ("Osmose"), and OTELCO's own contractor, CHR Solutions ("CHR"). The Survey information includes detailed analysis of each pole created between July 2021 and May 2022, as well as pictures of each pole from the same relative time period. OTELCO submitted all Survey information in its possession in response to the Hearing Officer's Scheduling Order. These Surveys provide all information needed to review OTELCO's access requests, including its boxing requests.⁴⁵ Specifically, OTELCO provided the following:

- **“Exhibit 5s”** prepared by National Grid's contractor Osmose, which include the pole number (where available) and location (i.e., street address and GPS coordinates); pole size (i.e., pole height); voltage and height (measured to the nearest inch) of electric attachments; the height (measured to the nearest inch) on the pole of each municipality, fiber, cable television system (“CATV”) and telephone company (“Telco”) attachments and proposed adjustments to each such facility, if any; required clearance between communications and electrical facilities; back span length; clearance to the top communications attachment;

⁴⁴ J. Teed Rebuttal at 5:19 – 8:10 (See generally Desktop Engineering review of J. Teed); *See also* K. Reagan Decl. at ¶5.

⁴⁵ *Id.* at 5:7-18.

proposed height of new attachment; and a description of the proposed make-ready work for each pole;⁴⁶

- **“Verizon Form 3s”** prepared by Verizon’s contractor Pike, which provide the pole’s number (where available) and location (by street address and GPS coordinates); pole height; pole class; placement year; attachment height of existing attachments on poles requiring make-ready work including, but not limited to communications and electrical lines, cabinets, transformers, distribution terminals, streetlights, guy wires and risers; proposed attachment height; and required make-ready for Verizon and existing attachers;⁴⁷
- **“Verizon Prelims”** prepared by Verizon’s contractor Pike, which contain all of the information included on the Verizon Form 3s, as well as additional information including, for every pole (not just those requiring make-ready work) the height of all attachments in the electric company space measured to the nearest inch; the height of all of the attachments in the “Licensee Space” measured to the nearest inch; the height of all attachments in the “Telephone Co. Space” measured to the nearest inch; and information about existing mid-span separations between existing communications lines;⁴⁸
- **“O’Calc Reports”** prepared by National Grid’s contractor Osmose; which include extensive and detailed information about the pole and the facilities attached to the pole including all of the information set forth in the Exhibit 5s as well as, among other things: the pole class; the pole’s setting depth; whether a guy wire is attached

⁴⁶ S. DeJesus Decl. at ¶4.

⁴⁷ *Id.* at ¶5.

⁴⁸ *Id.* at ¶6.

to the pole; the pole's remaining load capacity; a list of each power and communications facility attached to the pole including cables (type and bundle size), transformers, crossarms and insulators; a description of the load capacity percentages used by attached power and communications cable, and detailed load components for each attached facility including the height, horizontal offset, cable diameter, cable weight, the cable sag at maximum temperature, the cable weight, the lead/span length, the span angle, the wire length, tensions and moments. The O'Calc reports also include an analysis of any pole buckling;⁴⁹ and,

- **“IKE Files”** prepared by OTELCO's contractor CHR Solutions, which provide pole identification numbers (where available), locations by address and GPS coordinates, full photographs of each pole displaying the base of the pole that are marked with attachment heights (referred to as “IKE Photos”), as well as a listing of electrical facilities on the pole, the precise heights of the lowest electrical conductor, any streetlight and each communications cable, and span lengths.⁵⁰

As explained by Mr. Teed in his testimony, the existing Survey information can be utilized to conduct a desktop review of the pole conditions and to determine the appropriate location of the proposed attachment.⁵¹ Upon information and belief, this is the process that Osmose and Pike used to identify any necessary make-ready work after completing the Surveys. This process, referred to herein as “Desktop Engineering,” can be performed by a qualified individual using the existing Survey information, to assess whether a pole can be boxed.⁵²

⁴⁹ K. Reagan Decl. at ¶4.

⁵⁰ S. DeJesus Decl. at ¶7.

⁵¹ J. Teed Rebuttal at 3:10-18.

⁵² *Id.* at 3:19-21.

Indeed, Mr. Teed reviewed the existing Survey information and was able to evaluate any potential safety, reliability or generally applicable engineering concerns and provide recommended locations for OTLECO's attachments on poles that OTELCO has requested to box.⁵³ As Mr. Teed demonstrated, the existing Survey information includes all of the information needed to determine that a pole may be boxed consistent with the NESC and Telcordia Blue Book, including the existing attachment heights, the equipment attached to the poles (which included "large equipment in the communications space," risers and streetlights), attached guy-wires (including which direction they extended), whether the pole was already boxed, and whether the pole was a corner pole or was on an embankment.⁵⁴ Using this Desktop Engineering process, Mr. Teed analyzed the pole conditions and determined where attachments could be made to the poles.⁵⁵ As demonstrated by the Desktop Engineering process, there is ample information in the Surveys to evaluate OTELCO's proposed attachments, including whether an individual pole can be boxed, and whether neighboring poles can and should be boxed. No further information is required to determine whether the poles can safely accommodate additional attachments.⁵⁶

2. Verizon's As of Now Conditions in Existing Surveys

Verizon witness David Wolanin provided a list of factors that he stated Verizon would consider in assessing boxing requests. Mr. Wolanin referred to the presence of a conduit riser, large equipment, or side-taps, and whether the pole is on an embankment or is a corner pole, and whether the pole is already boxed, as conditions that Verizon will "as of now" use to *assess* boxing requests ("As of Now Conditions").⁵⁷ As discussed in Section III.E., since providing the As of Now

⁵³ *Id.* at 5:19 – 8:10.

⁵⁴ *Id.* at 6:21-8:8.

⁵⁵ *Id.* at 6:14-20.

⁵⁶ *Id.* at 5:7-18.

⁵⁷ See Rebuttal Testimony of Dr. Lawrence M. Slavin, PhD, at 5:1-18, *citing* Attachment B to Declaration of Dr. Lawrence M. Slavin (February 21, 2023) (email of December 13, 2022 from D. Wolanin to D. Allen listing conditions that will be considered in assessing boxing requests).

Conditions, Verizon has changed its tune – now describing the criteria as “disqualifying conditions” that merit rejection of boxing requests without any analysis of the specific pole conditions based on the existing Survey Information. Both Verizon and National Grid argued that the existing Surveys do not contain sufficient information on these As of Now Conditions to grant OTELECO’s requests and resurveys are required at OTELECO’s cost to collect this information.⁵⁸ That is simply not true.

As explained by Mr. Teed, information on the As of Now Conditions are all available in the existing Survey materials.⁵⁹ OTELECO personnel reviewed the conditions of every pole and submitted a Boxing Data Compilation Spreadsheet, which lists the As of Now Conditions present on each pole.⁶⁰ Information on each of these conditions is present in the Exhibit 5s, Verizon Form 3s and Verizon Prelims, as well as the O’Calc Reports, IKE files and photographs.⁶¹ In walking through the Desktop Engineering process, Mr. Teed identified the specific locations of each of these pole conditions in each of the separate surveys.⁶²

In fact, Mr. Teed observed that the multiple surveys provided redundant information and noted that it would be more efficient to have a single contractor collect all such information on a single spreadsheet.⁶³ Whether risers, transformers or other equipment is attached to the poles and the precise height of such equipment is provided in the Exhibit 5s, the Verizon Form 3s and Prelims, and the available O’Calc Reports.⁶⁴ The existence of side-taps and guy wires (indicating an angle

⁵⁸ National Grid Response at 12 (Surveys did not collect or assess information related to side-taps, guy wire support, embankments or corner poles “or other such detailed information that would enable the company to make after-the-fact determinations of boxing”); see also Verizon Opposition at 5 (Verizon argued surveys do not show whether a pole has side-taps, is a corner pole or is on an embankment or is a riser pole).

⁵⁹ J. Teed Rebuttal at 4:15-5:6;

⁶⁰ S. DeJesus Decl. at ¶10.

⁶¹ *See generally* S. DeJesus Decl. at ¶¶ 4-6; K. Reagan Decl. at ¶ 4.

⁶² J. Teed Rebuttal at 5:21 – 8:10, (Mr. Teed identifies the exhibit, tab, column and row of each pole condition, including existing attachment heights, attached equipment such as street lights, risers and guy wires as well as embankments and mid-span information).

⁶³ *Id.* at 5:10-18.

⁶⁴ *Id.* at 4:1-14.

or change in direction) are also identified on those same Surveys.⁶⁵ Each of these conditions is also visible on the IKE photographs, photos accompanying the O’Calc Reports, and Google Earth and Google Maps photographs as well.⁶⁶

3. *Mid-span Information is Included in the Verizon Prelims, O’Calc Reports and Photographs*

Mid-span information also is reviewed in determining whether there is adequate separation between communications facilities when designing additional attachments – whether such proposed attachments are constructed on the street side, the field side, or crossing from one side to the other in a pole line.⁶⁷

Mid-span clearance information is available in the Verizon Prelims as well as the O’Calc Reports.⁶⁸ Mid-span clearances can also be evaluated based on photographs, as well as in the field upon performance of make-ready or construction of attachments, as mid-span separations are maintained by “sagging in” the lines appropriately.⁶⁹ Necessary modifications can be made in the field to address concerns regarding mid-span separations.⁷⁰ This is no different than the process for designing and constructing attachments that are not boxed and lack mid-span information in the existing Surveys.⁷¹ Notably, mid-span separations are much more likely to have issues when constructing all attachments on the street side of the pole, as opposed to boxing some attachments. As Dr. Larry Slavin noted early in this matter, it is more difficult to maintain the desired separation between lines attached directly above each other, rather than simply crossing at a mid-point.⁷²

⁶⁵ J. Teed Rebuttal at 7:2; Reagan Decl. at ¶4; *see also* Declaration of Lawrence M. Slavin, PhD at ¶7 (April 18, 2023).

⁶⁶ J. Teed Rebuttal at 4:1-14; *see also generally* S. DeJesus Decl. at ¶8.

⁶⁷ *Id.* at 4:5-6 and 6:7-10.

⁶⁸ *Id.* at 4:5-6; K. Reagan Decl. at ¶ 4.

⁶⁹ *See* J. Teed Rebuttal at 6:20.

⁷⁰ *Id.* at 9:8-10.

⁷¹ *See* J. Teed Rebuttal at 3:10-18; 9:5-10.

⁷² Pre-filed Responsive Testimony of Dr. Lawrence Slavin at 2:14-16 (Aug. 1, 2022).

Moreover, mid-span clearance issues can also be mitigated at the time of construction by boxing poles in a line until crossover from the field side to the street side is achieved with the desired separation at the mid-span.⁷³ Indeed, there are examples in the record of Verizon and National Grid joint use poles boxed in a line that demonstrate this is an accepted practice.⁷⁴ Not only are attachers vested with self interest in ensuring that separations are maintained, pole owners may conduct post inspection surveys for their own peace of mind.

To the extent such information is not collected on each and every pole span,⁷⁵ it is likely because no mid-span issues were identifiable and the information was not needed. If no midspan clearance issues were present for a standard attachment, they would not be present for boxing.⁷⁶ In any event, mid-span clearance issues can be evaluated where such information was deemed necessary to collect, and where not available, photographs of all spans can be reviewed to gauge possible separation issues.⁷⁷ If an attachment was added after photographs were taken, the Pole Owners' records should reflect that. Moreover, qualified contractors can, and routinely do, make adjustments in the field with any necessary consultation with and direction from pole owners, to address potential separation issues, as discussed in Section II.C.3 of this brief.

4. *Surveys to Determine Bolt Hole Dimensions for Hot Sticking are Unnecessary*

Rasing yet another roadblock, for the first time, National Grid witness Joy Banks asserts that “boxing reviews will require hot stick heights for the top two bolted attachments to confirm

⁷³ J. Teed Rebuttal at 7:22-8:2; Declaration of Lawrence M. Slavin, PhD at ¶19 (“L. Slavin Decl.”)(Feb. 21, 2023).

⁷⁴ L. Slavin Decl. at ¶22.

⁷⁵ As explained by OTLECO witness Samuel DeJesus, the Verizon Prelims were not provided to OTELCO as a matter of course by Verizon and OTELCO does not have all Verizon Prelims. Verizon, upon information and belief, has Verizon Prelims performed for all pole attachment applications. An evaluation of the available mid-span clearance information necessarily requires that Verizon produce all such information in its possession, including all Verizon Prelims. *See generally* S. DeJesus Decl. at ¶6.

⁷⁶ L. Slavin Decl. at ¶22.

⁷⁷ J. Teed Rebuttal at 6:7-10.

minimum 13 inches of spacing exists surface-to-surface, i.e., 14 inches of spacing through bolt to through bolt.”⁷⁸ She also states that information is needed regarding the bolt hole dimensions in order to evaluate OTELCO’s boxing requests.⁷⁹ At the same time, Ms. Banks acknowledges that “the average bolt is 5/8 inches” and provides no testimony that bolt holes vary from pole to pole. Nor has it been established that OTECLO would box poles within the power space on the pole (OTLECO certainly has no desire to do so), which Ms. Banks’ hot-sticking requirement suggests. Of course, NESC compliant construction requires a minimum clearance between communications lines and energized electrical conductors that exceeds 14 inches (except for grounded streetlights where the separation can be less), and OTELCO would maintain required NESC clearances regardless, using the existing Survey information, and the average bolt hole size to the extent that actually factors in to any analysis. Moreover, OTELCO, like other third party attachers and their contractors, is required to check the voltage of any potentially energized equipment or hardware located within 20 inches above their proposes attachments⁸⁰ and would do so as a matter of course.

Dr. Larry Slavin disagrees that additional hot sticking is required to evaluate boxing under the NESC or the Telcordia Blue Book, noting that requiring “a minimum 13 inches of spacing exists surface-to-surface, i.e., 14 inches of spacing through bolt to through bolt” is “apparently a new requirement and is not listed in National Grid’s Operating Procedures Boxing of Joint Owned Poles.”⁸¹ Dr. Slavin specifically refers to the Telcordia Blue Book (which Ms. Banks cites, along

⁷⁸ National Grid Response to DTC-NG-3-9(B) (May 15, 2024; prepared by or under the supervision of Joy Banks) (“Banks Opening Testimony”) at n. 3.

⁷⁹ *Id.*

⁸⁰ See <https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.268> at 1910.268(m)(3)(i) (“Metal power conduit on joint use poles, exposed vertical power ground wires, and street light fixtures which are below communications attachments or less than 20 inches above these attachments, shall be considered energized and shall be tested for voltage unless the employee can visually determine that they are bonded to the communications suspension strand or cable sheath.”)

⁸¹ L. Slavin Rebuttal at 5:14-20.

with the National Electrical Safety Code (NESC)⁸², which shows typical back-side construction (Figure 3-1), with a vertical spacing between bolts “not less than 4 in.”⁸³

Thus, National Grid’s new claim that bolt hole dimensions are needed to evaluate boxing requests is unsupported by Ms. Bank’s own testimony, which suggests an average bolt hole size may be presumed when applying the Blue Book or the applicable NESC vertical spacing standards. Ideally, OTLECO would like to presume the Pole Owners would not arbitrarily claim new information must be collected without a compelling need for that information. However, the benefit of the doubt has been stretched to its limits on these issues. It would be unjust and unreasonable to require the performance of new surveys solely to collect bolt hole dimensions. Further, to the extent bolt hole dimensions were critical information for vertical separations, it again begs the question why such information is not always collected for consideration of any proposed attachments, either street or field side of the pole. As such, OTLECO urges the Department to disregard National Grid’s insistence that hot stick measurements and bolt hole dimensions be required prior to evaluation of OTLECO’s boxing requests.

B. The Existing Survey Information is Still Viable and Should be Relied Upon

The Pole Owners argue that the preconstruction Surveys are out of date and cannot be relied upon because there have been changes to the pole conditions since the preconstruction surveys were initially conducted in 2021 and 2022. The Pole Owners’ position is blatantly inconsistent with their standard practices in processing access requests, which is extensively prolonged in the best of circumstances. Furthermore, to the extent pole conditions have changed due to capital work, licensing of new attachments, or storm restoration, the Pole Owners should be aware of all such

⁸² National Grid Response to DTC-NG-3-11(D) (“All attachments shall conform to all applicable federal, state, county, and municipal codes and regulations, as well as those found in the most current edition of the National Electric Safety Code (NESC), the Telcordia Blue Book – Manual of Construction Procedures”)

⁸³ *Id.* at , Attachment B.

changes. To the extent there are any changed pole conditions they cannot identify through a search of their own records – modifications can and should be made in the field to address such changes. The Pole Owners insistence upon expensive resurveys and drawn out redesign processes to save OTELCO time and expense of encountering any possible changed conditions is wholly nonsensical.

1. Pole Owners Routinely Take Years to Process Pole Attachment Applications

As has been apparent from the filing of OTELCO’s Complaint, the Pole Owners do not, and will not, abide by any set timeline for processing applications and completing make-ready work.⁸⁴ As such, the typical time period that elapses between the performance of preconstruction surveys and make-ready work or constructions of attachments, both of which are relying upon the survey information for completion, stretches far beyond the 180 day period cited by National Grid as the time when resurveys are reviewed if work is not yet scheduled.⁸⁵

In this case, the relevant pole attachment applications were predominantly filed between mid-2021 and early 2022. As explained in OTELCO’s Motion for Enforcement, National Grid takes an average of 241 days from the time the preconstruction survey is initiated until the make-ready estimate is provided.⁸⁶ In other words, the Survey information is already more than 180 days old in contravention of National Grid’s “assertion that it reviews the viability of make ready at 180 days after survey is complete.”⁸⁷ This does not even account for the make-ready work, which National Grid schedules at least a year in advance from the date that make-ready estimates are

⁸⁴ See Declaration of David Allen at ¶24 (“D. Allen Decl.”)(Feb. 21, 2023)(Mr. Allen states National Grid plans make-ready a year in advance, thus he was told in Jan of 2022 that if make-ready were paid by April of that year, he could expect work to begin in 2024).

⁸⁵ National Grid Responses to DTC-NG-3-14(A) and DTC-NG-3-15 (citing 180 days as a “general threshold for what should be considered expired data.”)

⁸⁶ See Allen Prefiled Testimony, at 6:10-13; see also D. Allen Decl. at ¶36.

⁸⁷ See Exhibit _ DTC-NG-3-14.

paid.⁸⁸ Verizon takes approximately 179 days to submit the make-ready estimate to OTELCO,⁸⁹ as it concedes.⁹⁰ Based on these extensive delays in the survey and engineering phase, and on its experience in other markets, OTELCO has no reason to expect that Verizon completes its make-ready work in less than the one-plus year from payment that National Grid schedules. Under current Pole Owner practices, the Survey information will always be more than 18 months old at the time OTELCO is allowed to attach. In fact, the delays between OTELCO's application filings and responses from the Pole Owners can stretch far beyond these averages.⁹¹ Thus, if new surveys were *always* required after six months had passed (the 180 day period now cited by National Grid⁹²), or *even 18 months* had passed, as it would when you consider the initial time for the make-ready estimate plus one year for scheduling make-ready work (the only example cited by Verizon as requiring resurveys was after 18 months had expired) then an additional *two surveys*⁹³ would typically be needed for access to a single pole, due to the routine Pole Owner delays in processing applications.

Moreover, as set forth below in Section III.C.1 of this brief, the Survey information was far from dated at the time OTELCO first requested to box poles otherwise scheduled to be replaced, and was also not "outdated" at the time the DTC issued its Order requiring the pole owners to evaluate OTELCO's boxing requests to determine where boxing poles could be done consistent with safety, reliability and generally applicable (i.e., non-discriminatory) engineering standards.

⁸⁸ National Grid Response to DTC-NG-3-11(D).

⁸⁹ See Allen Prefiled Testimony, at 6:10-13; see also D. Allen Decl. at ¶36.

⁹⁰ See Verizon Response to DTC-Verizon 3-5 (Verizon generally completes the survey within one month of payment by OTELCO and issues its make-ready estimate within "four to six" months).

⁹¹ See D. Allen Decl., Exh. E (spreadsheet showing delays for response times stretching to over a year from requested design to submission of make-ready estimates).

⁹² National Grid Response to DTC-NG-3-14(A).

⁹³ See Allen Prefiled Testimony at 4:207 (OTLECO has already paid for two separate surveys to access each pole). Initial Allen Decl. ¶ 10; D. Allen Decl. ¶ 9, (OTELCO also engaged and paid its own contractor, CHR Solutions, to conduct an independent analysis of OTELCO's proposed attachments.).

The Pole Owners' claims that resurveys are common practice (despite their extremely limited example) is also nonsensical in light of the extensively drawn out process third party attachers face when requesting access to poles. To wit, in testimony previously filed in this proceeding, National Grid estimated the make-ready work needed for OTELCO's applications will take *at least three years* to complete.⁹⁴ Verizon testified that 10 years was perfectly reasonable timeframe for completion of the Massachusetts Broadband Institute network.⁹⁵ Thus, even if resurveys are completed, they will once again be "outdated" prior to make-ready work completion.⁹⁶ As Verizon witness David Wolanin testified, "The longer the time between the survey and the make-ready work, the more likely it is that there will be changes on the poles that affect the work to be performed."⁹⁷ Based on the Pole Owners' extended delays in scheduling and commencing make-ready work, resurveys would always be required. Taken to its logical conclusion, the Pole Owners' unwritten, *ad-hoc* 180-day standard would result in resurveys approaching an infinite number, bounded only by the applicant's endurance and bank account, as make-ready will never be completed within 180 days of measuring the poles.

It is apparent that, where delays are built in to the application processing timeline due to the Pole Owners actions (such as their remarkably inefficient reconciliation process and the extended delays in scheduling and commencing make-ready work), they do not insist upon resurveys. However, where their proposed make-ready design is questioned by attaching entities, they raise the issue of survey viability and refuse to utilize the existing surveys. Importantly, in doing so they disincentivize any attempt by attachers to challenge their make-ready determinations, including

⁹⁴ See Ex. NG-Rebuttal-1 at 20; Allen Decl. ¶ 39; National Grid Panel at 17:4-13.

⁹⁵ See OTELCO Reply Brief at 5, *citing* Verizon Panel Testimony at 26:13-16.

⁹⁶ CITE Pole Owners assertions that pole conditions will change needed make-ready work.

⁹⁷ Rebuttal Testimony of David L. Wolanin at 5:11-12 ("D. Wolanin Rebuttal")(May 29, 2024).

shifting costs of expensive pole replacements to attachers even where less costly alternatives are easily identifiable. A cynic might even suspect that is exactly the goal of the Pole Owners.⁹⁸

Notably, the only example provided by Mr. Wolanin in his testimony was a single instance where resurveys were conducted due to the original surveys being 18 months old, which resulted in substantial changes to the work.⁹⁹ While OTELCO cannot speak to the necessity of resurveys without more information (especially given that the Pole Owners acknowledge that resurveys are conducted if an attacher requests a change in the scope of work), OTELCO witness David Allen explained that, often times OTELCO pays unreasonable fees in order to access poles as opposed to having OTELCO's deployment delayed for an indeterminate time.¹⁰⁰ As such, Mr. Wolanin's testimony, which does not explain the cause of the delay or whether the attacher requested a change in the make-ready work, does not establish the reasonableness of charging an attacher for such resurveys. Rather, it highlights that unless an attaching entity challenges the reasonableness of the proposed make-ready charges, it must be prepared to submit to unreasonable practices and charges.

2. Pole Owners Should be Aware of Changes in Pole Conditions

Although both Pole Owners argue that there may have been numerous changes to the pole conditions since the original preconstruction surveys were performed two to three years ago, the Pole Owners should have maintained records of the cited changes.

Verizon states it has licensed additional third party attachments since OTELCO's preconstruction surveys were performed in 2021 and 2022.¹⁰¹ Verizon confirms that these licenses were issued in Belchertown, Palmer and Northampton, but only states the issued licenses *may*

⁹⁸ See Initial D. Allen Decl. at ¶7 (David Allen states that during a meeting on February 2, 2022 with Verizon Engineering's David Wolanin, Mr. Wolanin stated Verizon's make-ready engineering "cannot be questioned by OTELCO.").

⁹⁹ D. Wolanin Rebuttal at 5:12-15

¹⁰⁰ D. Allen Rebuttal at 9:10-19.

¹⁰¹ Verizon Response to DTC Verizon-3-2.

overlap with OTELECO's requested poles, and some of these poles *may* have been replaced.¹⁰² Verizon also states changes to the network occur due to planned upgrades, hardening of the network and storm restoration.¹⁰³

National Grid likewise states it has completed numerous capital projects, had 68 storm events, and performed additional third party attachment work, but offers no records of this work.¹⁰⁴ National Grid has licensed 5 applications which contain poles that overlap with OTELECO's requested poles,¹⁰⁵ but does not identify the specific poles which overlap with OTELECO's request, or give the number of poles licensed on each of the 5 applications.

Verizon and National Grid should have records of all the changes to pole conditions described. Maintenance of records of work conducted on utility poles is not only a best practice for any service provider, it is a legal requirement¹⁰⁶ for public utilities,¹⁰⁷ such as National Grid.¹⁰⁸ Specifically, National Grid is required to maintain records of permits for use of its plant for six years after termination.¹⁰⁹ Both Pole Owners acknowledge they have issued additional licenses for pole attachment applications filed after OTELECO's preconstruction surveys were performed. The Pole Owners should maintain records of their licenses and be able to identify which poles they are issued for – especially since National Grid has already recognized there is overlap between the issued licenses and the poles which OTELECO has requested attachment.

¹⁰² Rebuttal Testimony of D. Wolanin at 3:18 – 4:1.

¹⁰³ *Id.* at 4:6-10.

¹⁰⁴ Direct Testimony of Joy Banks at 3:14 -16.

¹⁰⁵ National Grid Response to DTC Information Request DTC NG-3-2(B).

¹⁰⁶ *See* 220 CMR 75.05 Records Retention Schedule (work orders and other operations and maintenance records required to be maintained for 6-10 years).

¹⁰⁷ National Grid is a public utility as defined in 220 CMR 75.02.

¹⁰⁸ *See* 220 CMR 75.01 (public utilities are subject to the jurisdiction of the Department of Public Utilities (“DPU”) and bound by the requirements of 220 CMR 75.)

¹⁰⁹ *See* 220 CMR 75.05 Records Retention Schedule

Joy Banks testifies as to National Grid’s completion of capital projects in Belchertown, Palmer and Northampton, in the past two to three years, stating that items such as risers, crossarms, transformers, among others, could currently be in the field compared to years ago, and lists the number of projects and construction hours associated with these communities.¹¹⁰ It strains credulity that Ms. Banks is able to recite that National Grid completed 483 jobs and worked approximately 30,620 hours on capital projects since October of 2022 – but cannot identify a single pole that such work was completed on.

With regard to any capital work, upgrades or storm restoration, the Pole Owners should, at the very least, maintain records of which poles were the subject of these activities and associated work orders.¹¹¹ In order to complete the described work they must have done surveys, drawings, blueprints, or drawn up engineering plans. There should be records of how the poles and attachments were modified or moved, including post-construction inspections or photographs of the modified poles. How did Ms. Banks know of the 483 capital projects, if not from records of the activities? Ms. Banks testifies that National Grid “does not have a centralized system that cross-references all work and field touch points such as capital work, third-party attachments, and storm restoration”¹¹² and National Grid provides no relevant details as to the specific poles that were the subject of the described capital work. It is perplexing that both Pole Owners, who repeatedly insist there are likely numerous changes to the pole conditions, claim to be unable to identify any poles that they have worked on or provided licenses to third party attachers.

The Pole Owners should not be rewarded for their professed inability to identify changes they’ve made to their own pole infrastructure, but should instead be ordered to produce all relevant

¹¹⁰ Banks Direct at 8:10-9:4.

¹¹¹ See 220 CMR 75.05 (26)(b) (Public Utilities are required to maintain work orders pertaining to maintenance and other utility operations for six years).

¹¹² Banks Direct at 6:15-17.

records regarding changes to pole conditions since the preconstruction surveys were conducted identifying specific changes to the poles to which OTELCO seeks to attach. It should be recognized that the Pole Owners have refused to simply provide such information, and have further objected to OTELCO's attempts to place such information before the DTC. At this point in the proceeding, the Pole Owners should have provided all relevant documentation, but instead have continued to hide the ball as to what information is in their possession. OTELCO notes that in his testimony, Mr. Wolanin states that the Exhibit 5s and Form 3s "are based on the original field surveys" and the data in the Verizon Prelims also "comes from the original field surveys."¹¹³ These statements indicate there are *even more records* from which the data in the Surveys was taken – documents that the Pole Owners are still withholding.

In short, OTELECO has no confidence that the Pole Owners will provide any relevant documentation without being ordered to do so, *and penalized* if they fail to comply with such order. Resurveys should not be needed to record information that the Pole Owners should already have in their own records, and the Pole Owners should be required to provide all relevant Surveys or other records on pole conditions immediately. Indeed, the failure of the Pole Owners to provide any evidence of a single pole materially changed by capital improvements, other applications, weather events, or any other reason compels one conclusion: there aren't any.

3. *Possible Changes to Poles Slated for Replacement Would Be Rare and Would Not Prevent Boxing*

Although the Pole Owners describe several potential changes to poles which could prevent OTELCO from attaching without resurveys, there are few changes that could potentially occur to poles designated for replacement – and those limited changes would likely not impede OTELECO's ability to safely box the poles in question.

¹¹³ Wolanin Rebuttal at 2:20-3:6.

OTELCO has requested to box those poles that are designated for replacement. As such, the poles should not have new attachments in the communications space, unless, of course, the new attacher was allowed to box the pole. Alternatively, if a pole was replaced since the preconstruction survey was performed, OTELCO should either be able to attach to the pole on the street side (if additional capacity exists due to replacement with a taller or stronger pole), or OTELCO should still be able to box the pole, if doing so makes sense and it is determined that no safety, reliability, or generally applicable engineering concerns would prevent boxing.¹¹⁴

With regard to OTELCO's other access requests that do not contemplate boxing, there should be no other third party attachers in line ahead of OTELCO. However, if the Pole Owners have fully processed another third party application, completed make-ready, licensed the attachment and construction has been completed – then the Pole Owners would necessarily have a preconstruction survey showing the pole conditions that was conducted after OTELCO's original Surveys *and* the proposed design and placement of the newly licensed attachments *as well as* any post-construction that was conducted by the Pole Owners. As discussed in Section III.B.2. of this brief, the Pole Owner must have all of this information and should be required to produce it – not simply rely upon its hypothetical, unproved existence to justify resurveys resulting in increased delay and additional cost to OTELCO.

Verizon witness Wolanin raises the specter of possible unauthorized attachments as justification for conducting resurveys.¹¹⁵ If the mere possibility that any *potential change* justifies the delay and expense of resurveys, then it would be, practically speaking, always impossible to extend networks at a reasonable cost. As expressed by the Pole Owners, pole conditions are always

¹¹⁴ L. Slavin Decl. at ¶25.

¹¹⁵ A review of Dockets before the Department initiated after 22-4 did not reveal any cases brought by Verizon against any unauthorized attacher in the towns at issue here.

changing. The question is not whether there is a remote chance of encountering a change – the question must be what to do when encountering such possible (but unlikely) changes in the field. Although the Pole Owners imply changed conditions abound in the field – there are several pole conditions that simply would not change for many years even if the Pole Owners arguments regarding changes due to capital work, additional attachments and storm restoration are given full credit. An obvious example, would be whether the pole is on an embankment. Similarly, the pole’s angle in relation to the other poles on the line would not change unless the pole is replaced and relocated. As discussed by Dr. Slavin, if poles are replaced, it is often with a taller, stronger pole that would have additional capacity, which would likely moot OTELCO’s boxing request for that pole.¹¹⁶ If equipment on the pole, such as risers or transformers, are replaced due to storm restoration needs, they will likely be replaced in the same location on the pole. Likewise, if a pole has side-taps/guying, it is likely that support will not be removed from the pole or that the direction will be changed. With regard to any of these issues, the question is not whether it is possible changes occurred – the proper evaluation is how to move forward and address any possible changes in the most reasonable, cost efficient and expedient method possible to ensure broadband networks will not suffer from needless delays.

Furthermore, to the extent a modification or even a full redesign of the proposed attachments is necessary due to the presence of an unauthorized attacher – that attacher would be responsible for the costs associated with the changes their unauthorized attachment necessitated. This is a far more reasonable approach than the Pole Owners preferred resurveys, which will delay OTELCO’s deployment and would, unless otherwise ordered by the DTC, cost OTELCO many hundreds of thousands of dollars.

¹¹⁶ L. Slavin Rebuttal at 4:7-11.

Finally, Mr. Wolanin testifies that many of the poles OTELECO wishes to box have already been replaced.¹¹⁷ As stated, OTELECO would, of course, modify its proposed attachments to be constructed on the street side, where capacity now exists to do so. As discussed in Section III. B.2 of this brief, the Pole Owners should have records identifying which poles have been replaced and should produce those records promptly.

Despite the Pole Owners protestations that all of these changes likely constitute significant modifications to the pole infrastructure that renders the original preconstruction surveys unreliable and thus justifies performing resurveys at OTELECO's expense, they do not produce any evidence documenting these changes.

Notwithstanding any delays in commencing such work, all of the poles in question required *extensive make-ready* work, which is the reason OTELECO requested to box them in the first place. It is unlikely that make-ready could be completed on these poles, based on the Pole Owners' practice of scheduling make-ready work out at least *a full year*. Further, OTELECO's agreement with Verizon provides that more complex or extensive make-ready, such as pole replacements, routinely takes longer than six months to complete.¹¹⁸ In reality, the likelihood another party has attached to the relevant poles after OTELECO completed its preconstruction surveys is remote at best, and would in fact be *prima facie* evidence of discriminatory conduct favoring that hypothetical (and, in all likelihood, nonexistent) attacher.

¹¹⁷ Wolanin Direct at 3:21-4:1.

¹¹⁸ See Verizon Agreement at 10, Section 5.4 ("Licensor shall make every reasonable effort to complete Make-Ready Work within six (6) months of receipt of payment for Make-Ready Work from Licensee, except for reasons beyond Licensor's control."); See also Allen Decl. ¶¶ 36, 37.

C. The Proposed Resurveys Would Create Unreasonable Delays and Costs for OTELCO

1. Pole Owners Lack of Transparency and Cooperation Created Delays

This proceeding was born of a complete lack of transparency and effective cooperation on the part of the Pole Owners with regard to whether boxing was permissible on their joint pole infrastructure. Not only did both Pole Owners falsely state that they do not allow boxing on their poles under any circumstances, they failed to mention that they themselves have boxed their own poles.¹¹⁹ Indeed, the DTC, in its Order finding that general denials of boxing were not allowed, described several of the pole owners' practices as "unreasonable." Only after OTELCO filed its Complaint, and when confronted with photographic evidence of Verizon's boxing, Verizon and National Grid finally produced their own boxing policies.¹²⁰ Then, after the DTC directed the Pole Owners to evaluate OTELCO's boxing requests, the Pole Owners refused to take any further action on OTELCO's applications unless and until OTELCO agreed to pay for resurveys of all pole attachment applications.¹²¹ At that time, the Pole Owners asserted the preconstruction surveys were outdated due to the passage of time and refused to leverage the existing Surveys in any way to minimize the costs and delays the resurveys would inevitably entail.¹²²

Only in responsive pleadings did the Pole Owners claim that the existing Surveys failed to show critical information, such as the presence of risers, side-taps, guy wires and whether the pole is on an embankment or is a corner pole.¹²³ Again, the Pole Owners' claims proved to be

¹¹⁹ See Initial Allen Decl. at ¶7 ("Verizon indicated it will not and does not ever allow opposite side construction on its poles").

¹²⁰ See Response of Verizon to Pole Attachment Complaint and Declaration of David Wolanin, Exhibits A, B and D (May 12, 2022); National Grid's Response to OTELCO's Request for Information 1-32 (July 12, 2022).

¹²¹ Second Allen Decl. at ¶¶7-8.

¹²² *Id.* at ¶¶7-8, 10.

¹²³ National Grid Response at 12 (Surveys did not collect or assess information related to side-taps, guy wire support, embankments or corner poles "or other such detailed information that would enable the company to make after-the-fact determinations of boxing"); see also Verizon Opposition at 5 (Verizon argued surveys do not show whether a pole has side-taps, is a corner pole or is on an embankment or is a riser pole).

demonstrably false, as all of this information is available in the existing Surveys and Desktop Engineering can be performed to design proposed field-side pole attachments where feasible, while taking into consideration any safety, reliability and generally applicable engineering concerns that boxing the pole may raise.¹²⁴ Now, after OTELCO has produced and identified the specific location of all the “As of Now Conditions” that supposedly justified resurveys, the Pole Owners are doubling down on their claim that the Survey data is outdated and therefore unreliable, and raising additional concerns that do not merit further response, such as the possibility of unauthorized attachments on the poles and the need to know “bolt hole dimensions” in order to consider vertical separations between facilities.

At this point, the repeated delays caused by the Pole Owners lack of transparency and cooperation are painfully apparent. When viewed in the context of their recent testimony and responses to the DTC’s Third Set of Information Requests, it is clear that the “standard” by which the Pole Owners determined resurveys were required and their past example of an attacher agreeing to pay for resurveys after 18 months, is not a valid basis for comparison with their demands that OTELCO pay for resurveys in this matter. Here, any possible need for resurveys is due entirely to the Pole Owners’ actions – not OTELCO’s.

A review of the “date prepared” information provided in the “Attachment Sheet Information” tab of the Exhibit 5s, illustrates that the Pole Owners prematurely claimed that OTELCO’s surveys were out of date and demanded resurveys at OTELCO’s costs, rather than simply evaluating OTELCO’s boxing requests in accordance with the directives of the Final Order. The dates each Exhibit 5 was prepared are noted by application name in the “Exhibit 5s Date

¹²⁴ J. Teed Rebuttal at 3:10-18.

Prepared Data” Excel attached hereto as *Attachment 1*, and a timeline of the survey age coupled with the Pole Owners’ claims is attached hereto as *Attachment 2 “Timeline Entries”*.

The existing Exhibit 5 surveys were only between 6 and 16 months old when Verizon and National Grid first argued that all of the surveys must be performed again at OTELECO’s cost.¹²⁵ To explain, the earliest survey was conducted on July 26, 2021¹²⁶ in Belchertown.¹²⁷ On October 24, 2022, when OTELECO requested the Pole Owners evaluate its boxing requests in accordance with the Final Order, the oldest survey in the group was 15 months old, and the most recent survey was only 160 days old (less than 6 months). The Pole Owners demanded resurveys be conducted for all of OTELECO’s applications on or about November 14, 2022.¹²⁸ Thus, for the *oldest* Exhibit 5 survey, the amount of time that had elapsed was less than 18 months – the amount of time that had elapsed before conducting the resurveys in the only example cited by Mr. Wolanin wherein resurveys were conducted. In contrast, the most recent survey in OTELECO’s submission was prepared on May 17, 2022, in Palmer.¹²⁹ At the time the Pole Owners insisted upon resurveys for all OTELECO’s applications this survey was only about 180 days old. Importantly, David Allen pointed out that OTELECO had received make ready invoices based on the preconstruction surveys just 20 days before being told in a phone conference with Verizon and National Grid that the surveys were outdated and could no longer be relied upon.¹³⁰ The Pole Owners refusal to process

¹²⁵ See *Attachment 1* (Each tab contains Exhibit 5 prepared by dates for the listed community).

¹²⁶ OTELECO notes that National Grid’s Joy Banks lists the start date of the surveys as June 12, 2021, rather than July 26, 2021. See Testimony of Joy Banks at 8:1-2 (May 15, 2024). It is assumed Ms. Banks is referring to original survey documents which OTELECO was not provided. OTELECO cannot verify Ms. Banks table of survey dates without being given access to the source of such data, but can confirm that the Exhibit 5s and Form 3s were dated close to the time periods listed.

¹²⁷ *Id.* (Belchertown, entry “BETO A3_1 National Grid Final MR Determination”).

¹²⁸ D. Allen Decl. at ¶¶7-8

¹²⁹ See *Attachment 1* (Palmer, entry “PALM B3_3_FINAL_06-24-22”).

¹³⁰ D. Allen Decl. at ¶25.

O TELCO's applications until O TELCO funded resurveys of all of its applications, which they now estimate at a cost of well over \$500k, is at best arbitrary, and "at best" seems to be losing the race.

Moreover, the Pole Owners have had the affirmative obligation to only deny pole access for reasons of safety, reliability and generally applicable engineering concerns all along – yet they continue to resist compliance with this straightforward requirement. If they had simply applied this standard at the time O TELCO originally requested to box poles otherwise identified as requiring replacement, rather than claiming to disallow all boxing, this case would never have been filed, and O TELCO's deployment could have proceeded in a cost efficient manner. Unfortunately, that did not happen. What's more, when O TELCO first requested to box poles and Verizon falsely stated it does not ever allow boxing on its poles – O TELCO's oldest survey was a mere 191 days old (and its latest performed survey was still in the womb). In examining the timing of these events, it cannot be denied that, but for the Pole Owners' misstatements, the Surveys would not be "outdated" as they claim. The Pole Owners could have rectified their mistakes after being directed by the DTC to consider boxing on a pole by pole basis, using the then relatively young survey data, but instead they chose to require O TELCO to resubmit its applications and pay to resurvey every single pole its applications, claiming the necessary information did not exist. When confronted with the fact that information does in fact exist – in their own survey information – the pole owners again claimed it is now too old to use (except to deny O TELCO's boxing requests).

Even now, Verizon is attempting to distance itself from the evidence of its own boxing on poles – claiming that the photographs are not useful to the DTC.¹³¹ O TELCO urges the DTC to take note of Verizon's refusal to fully acknowledge the fact that they box their own poles, as well

¹³¹ D. Wolanin Rebuttal at 9:3-9.

as their many other misstatements and delay fraught tactics. The Pole Owners should be held accountable for their obstructionist actions, not rewarded for them.

2. *Resurveys Will Not Save Costs or Time*

The Pole Owners both argue that OTELCO must pay for entirely new preconstruction surveys for all access requests, which National Grid estimates will cost at least \$526,089.90, or \$229,511.62 for resurveys of just those poles which OTELCO requests to box.¹³² Verizon estimates charging OTELCO \$258,000 – \$290,000 for resurveys of all access requests, and \$76,000 – \$86,000 for only poles which OTELCO proposes to box. The Pole Owners now claim that their demands for resurveys will actually be in OTELCO's best interests, as they anticipate there will necessarily be more costs and delays if the resurveys are not conducted, due to encountering changed pole conditions requiring redesign, than if OTELCO simply moves forward with resurveys of the poles. Perhaps, however, this argument should be taken as a warning to OTELCO (and other would be attachers): accede to their demands, or there WILL be more delay and cost.

As a threshold matter, it must be noted that OTELCO has already paid National Grid's contractor, Osmose, \$589,142.06 for preconstruction survey work. OTELCO has paid Verizon \$272,735.00 for survey fees.¹³³ These figures are not inclusive of the application fees or the additional fees OTELCO has paid CHR Solutions to provide survey information that OTELCO paid for in order to evaluate the Pole Owners' proposed make-ready work.

Now, the Pole Owners appear to assert that conducting resurveys, which they estimate will cost another half million dollars, will actually save OTELCO time and money in the long run. OTELCO does not disagree that, if the Pole Owners described process of halting work in the field

¹³² National Grid's Response to DTC Information Request NG-3-11.

¹³³ D. Allen Rebuttal at 10:18-21.

and placing OTELCO's access requests in redesign queue for weeks at a time is made reality – there will be extended delays and increased costs associated with any significant pole changes encountered. However, if modifications are made in the field, as described in Section III.C.3. of this brief, then such delays and costs can be minimized.

As explained by OTELCO witness Joe Teed, if a qualified contractor is permitted to make appropriate modifications in the field to address possible changed conditions, then the delays and associated costs should be minimal.¹³⁴ The use of contractors directed by attaching entities to perform this type of work has become increasingly common as utility workforces are unable to keep up with attachment demands. Indeed, a coalition of electric utilities recently proposed that the FCC expand its one-touch make-ready process to include any make-ready work in the communications space.¹³⁵ These same utilities cited to negotiated agreements where they have allowed attachers to direct contractors in performing survey, engineering and make-ready work.¹³⁶ The costs and delays associated with resurveys would far outweigh any additional costs and time expended in making reasonable modifications in the field – as is common practice.¹³⁷

Moreover, if the Pole Owners are required to provide all information in their possession regarding any actual, changed pole conditions, including the full extent of any existing preconstruction survey materials originally collected (such as all of the Verizon Prelims), any additional surveys conducted on behalf of later attachers, and a listing of all work orders and pole replacements related to OTELCO's requested poles, the possibility of encountering unexpected pole changes in the field will be greatly reduced.

¹³⁴ J. Teed Rebuttal at 9:3-20.

¹³⁵ See Opening Comments of Southern Company, Oncor Electric Delivery Company LLC, Entergy Corporation, Duke Energy Corporation, American Electric Power Service Corporation, Ameren Services Company, in FCC Docket 17-84, *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Third Further Notice of Proposed Rulemaking, FCC 23-109, 2023 WL 8803833 (Dec. 15, 2023), dated Feb. 13, 2024.

¹³⁶ See *id.* at 21

¹³⁷ J. Teed Rebuttal at 9:18-20.

3. *Modifications Can and Should be Made in the Field by Qualified Contractors*

In the event any pole conditions have significantly changed, modifications to the attachment design can and should be made in the field at the time of make-ready or attachment construction, if no make-ready work is anticipated. As Mr. Teed testified, the first response in encountering changed conditions would be to reevaluate the attachment design and determine if it can be modified in the field consistent with the NESC and other applicable standards to complete the attachment.¹³⁸ If it can be modified, then modifications should be made and notification of same should be provided to the Pole Owner.¹³⁹ A post-construction inspection may be, and typically would be, conducted at the direction of the pole owner to ensure the constructed attachment is NESC compliant.¹⁴⁰ If a post-construction inspection reveals non-compliance, OTELCO is required by its pole attachment agreement to make any necessary changes.¹⁴¹

Due to the repeated delays caused by the Pole Owners' refusal to promptly and fairly evaluate OTELCO's boxing requests, any path forward may include additional costs and delays that could have been avoided. However, that ship has long sailed. At this point, the most efficient process is to press forward with OTELCO's deployment without any further delay. The Pole Owners' resurvey requirement is one sure way to cause OTELCO further delays and to exponentially increase OTELCO's deployment costs. That should not be permitted.

4. *Any Required Resurveys Should be Paid for by the Pole Owners*

There is no need for additional surveys to be conducted to collect information already in the existing Surveys. As explained, the Survey information is always "outdated" by the Pole Owners'

¹³⁸ *Id.*, at 9:8-11.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 9:11-13.

¹⁴¹ *Id.*

own 180 day benchmark, and any changes in pole conditions should be addressed in the field if they are inconsistent with the planned design.

As recognized by Verizon, “the cost causer” must be responsible for the costs of Resurveys.¹⁴² In this case, as thoroughly set forth in Section III.C.1. of this brief, the Pole Owners repeated misstatements regarding their boxing policies and professed ignorance of the wealth of information in the preconstruction surveys performed at OTELCO’s expense are responsible for delaying OTELCO’s deployment, thereby creating the need, if one even exists, to redo work that OTELCO has already paid for dearly.

To the extent the DTC determines any additional information should be collected, the required Resurveys should be paid for by the Pole Owners, as their lack of transparency, misstatements regarding boxing and the information available in the preconstruction surveys created the delays that gave rise to the need for resurveys in the first place.

D. Cost Breakdowns Required

National Grid provides no credible defense for its failure to provide cost breakdowns in accordance with the DTC’s Final Order. As stated in OTELCO’s Motion for Enforcement, National Grid’s continued refusal to provide the cost breakdown information on a pole-by-pole basis is not reasonable, and it is not acceptable. Nearly 20 months ago, the DTC explicitly required that National Grid *must provide* cost breakdowns to OTELCO on a task-specific and pole-specific level, if requested by OTELCO.¹⁴³

Importantly, cost breakdowns provide OTELCO with the means to properly evaluate the Pole Owners’ proposed make-ready work and to determine whether the charges are reasonable, and whether their planned deployment is feasible, or other routes should be considered. National Grid’s

¹⁴² Verizon Opposition at 13.

¹⁴³ Final Order at 46.

failure to simply provide this data is inexcusable. OTELCO therefore requests the DTC order National Grid to allow Osmose to provide such information directly to OTELCO at the same time it submits such information to National Grid on future applications, and immediately for currently outstanding applications.

E. The Department and OTELCO Cannot Rely on the Pole Owners to Timely Perform Surveys, nor to Fairly Evaluate the Boxing Requests

The record in this matter is replete with evidence demonstrating that the Pole Owners cannot be trusted to quickly perform any additional surveys, nor to fairly evaluate OTELCO's boxing requests. Indeed, their own testimony shows that National Grid estimates "limited" resurveys of the poles OTELCO requested to box (1,992 poles, presumably a "larger project") will take approximately 664 man hours and 171 days (conveniently just below the 180 day threshold) for completion if new surveys are required.¹⁴⁴ Verizon estimates if it resurveys 1,908 poles (OTELCO's request to box 732 poles, less 96 pole replacements, leaves 636 poles plus the surrounding poles), it will take approximately six months to re-issue make-ready estimates for all applications.¹⁴⁵

As both Pole Owners' estimate approximately six months for completion of resurveys, and the Pole Owners general practice is to schedule make-ready work over a year in advance, the resurveys will be approximately 18 months old before make-ready work can be commenced. Thus, unless the Pole Owners plan to amend their standard make-ready scheduling practices, or allow OTELCO to utilize its own contractor to schedule such work more quickly, the resurveys will once again be "outdated" based on the Pole Owners' standards (either National Grid's 180 day standard or Verizon's 18 month resurvey example).

¹⁴⁴ National Grid's Response to DTC Information Request NG-3-11 B and F.

¹⁴⁵ Verizon's Response to DTC Information Request Verizon- 3-8 A and F.

O TELCO fares no better if the Pole Owners' process of halting all field work in the event that changed conditions are encountered in the field is allowed. National Grid witness Joy Banks states that if field conditions have changed, "the crew will send the work back to the Company's design department *until it can be re-engineered based on the current field state.*"¹⁴⁶ Verizon estimates small changes in the field will result in two week delays, while bigger changes will result in a month long delay.¹⁴⁷ The Pole Owners do not offer any guarantees, or even bother to fully estimate the delays that will be created by their current practices,¹⁴⁸ much less commit to completion of the work in a set time. Nor do they suffer any consequences for failing to abide by any reasonable time frame for granting access to poles. But, if they take too long, O TELCO may have to pay for yet another set of surveys

Similarly, when given the chance to simply model for the Department how they would evaluate the boxing requests, National Grid resolutely refused. Specifically, the Department requested National Grid identify poles that are not suitable for boxing *based on the information provided in the O'Calc Reports*. Rather than provide a response *based on the information provided*, as requested, National Grid evaded the question by claiming the O'Calc reports are "outdated" and do not include "clearance details" or "backside pole analysis." This nonresponsive response is disturbing for several reasons. First, even when explicitly directed to do so, National Grid refuses to engage in any analysis of pole conditions related to boxing for the Department's review. In contrast, O TELCO witness Joe Teed provided detailed analysis of three poles using the existing Survey information.¹⁴⁹ Second, National Grid seems unaware of the information contained in the

¹⁴⁶ Rebuttal Testimony of Joy Banks at 6:3-5.

¹⁴⁷ Verizon's Response to DTC Information Request Verizon- 3-9.

¹⁴⁸ See National Grid's Response to DTC Information Request NG-3-12 (National Grid fails to provide an estimated time for redesign if changes encountered in the field, saying cost and delay are variable based on circumstances).

¹⁴⁹ J. Teed Rebuttal at 5:19-8:10.

O'Calc reports, which include attachment heights and clearances – as do several other Surveys in the Pole Owners' possession and submitted by OTLECO in the record.¹⁵⁰ Third, National Grid appears to be unaware that the O'Calc reports provide a 360 degree view of the pole, and all the information for the “backside” analysis is likewise in other Surveys. Again, OTELCO witness Joe Teed fully evaluated the clearances and backside pole conditions in his review of three poles using the existing Surveys and photographs of the poles.¹⁵¹ And fourth, National Grid submitted the same policies it utilized previously for boxing as its Standards for review of boxing. As observed by Dr. Slavin, some of National Grid's Standards implicate safety, reliability and engineering issues, but others do not.¹⁵²

In response to the Department's inquiry “[u]nder what set of circumstances will boxing be allowed?” Verizon's response is equally telling. Verizon asserts that it intends “to not allow OTELCO, or any other attacher, to box a pole if there are side-taps on the pole, if the pole is a corner pole, if there is conduit riser on the pole, if there is a large piece of equipment mounted in the communications space on the pole, or if the pole is on a steep embankment.”¹⁵³ Verizon goes on to list other hypothetical conditions, such as mid-span clearance violations, or other conditions that Verizon “has not yet identified” that would prohibit boxing.¹⁵⁴ Verizon's response says very little about how these conditions relate to safety, reliability or generally applicable engineering concerns, but speaks volumes about Verizon's undying bias against allowing others to box poles. The As of Now Conditions that Mr. Wolanin previously described as “Standards” for “assessing whether a pole scheduled to be replaced may be subject to boxing,”¹⁵⁵ have now been upgraded to

¹⁵⁰ *See Id.* at 3:10-18.

¹⁵¹ *See Id.* at 5:19-8:10.

¹⁵² L. Slavin Rebuttal at 3:6.

¹⁵³ Verizon's Response to DTC Information Request Verizon- 3-8 E.

¹⁵⁴ *Id.*

¹⁵⁵ *See Attachment B*, Decl. of Larry Slavin (Feb. 21, 2022).

“disqualifying conditions” that, without any further analysis of the safety, reliability or generally applicable engineering concerns, Verizon will use to deny boxing requests. Mr. Wolanin’s testimony is clear on this point, as he states that any of the poles listed on OTELECO’s Boxing Data Compilation Sheet that have any of the As of Now Conditions “would result in a specific safety, engineering or reliability issue at that pole if the pole were to be boxed.”¹⁵⁶ Again, Mr. Wolanin does not provide any pole specific analysis – he simply concludes if a certain condition is present he can universally deny a request to box that pole. This type of generalization, without any pole specific evaluation of the safety, reliability or generally applicable engineering concerns, is precisely what the Department’s Final Order sought to prevent. Importantly, Verizon also failed to answer the question asked. The Department requested that Verizon provide circumstances where boxing *will be allowed*. It seems, due to their overt and unapologetic bias against boxing, neither Pole Owner can bring themselves to describe a single set of conditions under which boxing is feasible.

One need not have the gift of prophecy to foresee that, after the delay and expense of the Pole Owner’s demanded resurveys, they will deny most if not all of OTELECO’s boxing requests on arbitrary, discriminatory, or otherwise improper bases. Such behavior will, of course, result in further taxation of the Department’s resources, and further delay in service to waiting consumers in the Commonwealth. Given the record here, the Pole Owners are simply not entitled to the benefit of any doubt.

Fortunately, a sensible remedy is at hand. In an effort to find an expeditious path forward for OTELECO’s deployment, OTELECO’s David Allen contacted System One Holdings d/b/a MOUNTAIN LTD. (“Mountain Ltd”), to discuss their services.¹⁵⁷ Mountain Ltd’s licensed

¹⁵⁶ See D. Wolanin Rebuttal at 6:14-24.

¹⁵⁷ D. Allen Rebuttal at 12:7-8.

professional engineers have extensive field experience in the Northeast with Telecommunications attachers and pole owners alike, providing preconstruction surveys and audits of poles. A description of Mountain Ltd is attached hereto as *Attachment 3*.¹⁵⁸

Although OTLECO does not agree that resurveys are needed, or that OTELCO should be responsible for any costs associated with resurveys, Mountain Ltd is available to assist with whatever tasks remain related to OTELCO's boxing requests including, if reasonably necessary, updating the Survey information. Additionally, Mountain Ltd. is qualified and available to perform Desktop Engineering of OTELCO's boxing requests using the existing Survey information and provide their professional assessment of boxing feasibility for all requested poles, and to the extent necessary, adjacent poles, **in thirty (30) days**.¹⁵⁹

Mr. Allen reiterated that, given how much OTELCO already has paid to date for the existing Survey information, it would be unjust and unreasonable to require OTELCO to bear the expense of such surveys or to be forced to wait for the Pole Owners preferred contractors to conduct such surveys in the time period they proposed.¹⁶⁰

In light of these concerns, OTELCO urges the Department to recognize the critical import of having an impartial, qualified contractor with experience building broadband networks to make determinations regarding boxing requests to ensure the Department's directives in the Final Order are fully implemented, and the continuing need for the Department to maintain jurisdiction over these determinations to avoid future disputes.

¹⁵⁸ *Id.* at 12:9-12.

¹⁵⁹ *Id.* at 12:13-16.

¹⁶⁰ *Id.* at 12:16-20.

IV. RELIEF REQUESTED

WHEREFORE, for the foregoing reasons, OTELECO respectfully requests that the DTC, in reconsidering the implementation of the directives of the Final Order, take the following action to ensure full and complete compliance:

With regard to the Resurvey Issue:

- a) Terminate and prohibit Verizon's and National Grid's blanket requirement that they or their contractors must conduct, and that OTELECO must pay for, new preconstruction surveys for any of its pole access requests;
- b) Order Verizon and National Grid to produce the following information and records in thirty (30) days:

- all information in their possession regarding possible changed conditions on poles, including but not limited to records of third party attachments licensed on or after January 1, 2022, work orders and related information regarding capital projects, upgrades, storm restoration, pole replacement or other records of activities that changed conditions on the poles to which OTELECO has requested access in Belchertown, Palmer and Northampton;
- copies of the original preconstruction surveys conducted for OTELECO's access requests;
- copies of all Verizon Prelims compiled for OTELECO's access requests;
- copies of all Osmose O'Calc reports compiled for OTELECO's access requests;
- copies of any other surveys, notes, or other materials relevant to OTELECO's access requests;
- copies of any surveys conducted for any reason on or after January 1, 2022 for poles to which OTELECO has requested access in Belchertown, Palmer and Northampton;
- a list of all poles by electric pole number to which OTELECO has requested access that the Pole Owners have granted new licenses for use on or after January 1, 2022;

With regard to the evaluation of OTELECO's boxing requests:

c) Order that OTELCO, or a qualified contractor of OTLECO's choice, shall be permitted to conduct a Desktop Engineering review of the existing Surveys, and the information provided by the Pole Owners regarding any changed conditions to Poles, of all of OTELCO's boxing requests, to be completed within thirty (30) days following receipt of the additional information provided by the Pole Owners.

Following this review, OTLECO, or the third party contractor, shall present its determinations as to which poles are boxable and which poles should not be boxed due to safety, reliability and engineering concerns. All parties shall have thirty (30) days to review the results and object to any determinations by submitting pole specific reasons demonstrating that boxing will create a safety, reliability or engineering concern or will not. The parties shall provide their response, if any, to challenges to the boxing determinations within seven (7) days of the challenge filing. The third party contractor (if OTELCO does not conduct review) may also provide a response to any filed challenge to the boxing determinations within seven (7) days.

If either OTELCO or the Pole Owners fail to respond in the allotted thirty (30) day time period, the boxing determination should be deemed binding. Any filed objections with responses to the final boxing determinations should be reviewed by the DTC for a final, binding decision.

With regard to the Final Order requirement to provide pole and task specific cost breakdowns and make-ready payments:

d) Order that, upon completion of the final boxing determinations, National Grid shall issue itemized invoices for all remaining make-ready work on a pole and task specific basis. OTECLO shall be required to pay for 50% of the make-ready estimates up front (to avoid delays associated with any challenged to the reasonableness of the estimated costs) for those poles it decides to use.

With regard to completion of OTELCO's deployment:

e) Upon payment of 50 percent of the invoices, the Pole Owners shall complete any required make-ready work within ninety (90) days . If the Pole Owners are unable to do so, then OTELCO should be permitted to construct temporary attachments and proceed with its deployment immediately and with the full cooperation of the Pole Owners.

In the event the Pole Owners do not reasonably believe they could complete make-ready work within ninety (90) days due to unavailability of their preferred contractors, the Pole Owners shall inform OTELCO immediately and work cooperatively with OTELCO in selecting a neutral third party contractor that is available to begin work immediately, or as soon as possible.

OTELCO shall construct all temporary attachments in a safe and NESC compliant manner, and shall expeditiously convert any temporary attachments to permanent attachments upon completion of required make-ready work.

f) OTELCO's attorneys be awarded attorneys' fees and costs associated with bringing the Motion for Enforcement; and

g) Award any such other relief as the Department deems just, reasonable, and proper.

V. CONCLUSION

Verizon and National Grid's refusal to evaluate OTELCO's boxing requests unless and until each of their contractors conduct, and OTELCO pays for, entirely new surveys and reengineering, is wholly unreasonable and evinces a complete failure to abide by the letter and spirit of the DTC's Final Order. On its own, this would be cause for concern. When added to their misrepresentations (1) that they do not allow boxing under any circumstances, precipitating the need for OTELCO's Complaint at the outset (as found in the Final Order "there is no dispute that there are in fact boxed poles in Massachusetts"); (2) denying the existence of additional pole information directly relevant

to OTELCO's requests (despite OTELCO itself producing the O'Calc Reports and Verizon Prelims); (3) the Survey information does not include the criteria upon which boxing requests may be analyzed (they do); and (4) that the Survey information is too stale to use when their own application processing timelines demonstrate that they must routinely rely upon similarly aged survey information.

The Pole Owners' actions evince a complete and utter disregard for the Commonwealth's laws and the Department's regulations. As stated in the Department's Order on Appeal, "[i]f an Order cannot be effectuated .. parties could disregard the provisions of an order they do not like with no consequences."¹⁶¹ For these and all of the reasons laid forth in this brief, OTELCO requests the Department to grant OTECLO's requested relief.

Respectfully submitted,

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Date submitted: June 7, 2024

¹⁶¹ Order on Appeal at 9.

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2024, I caused a copy of the foregoing OTELCO's Initial Brief to be served via U.S. mail, first-class postage prepaid, in accordance with the requirements of 220 CMR § 1.05(1) on the following:

National Grid
Attn: Joy Banks
Manager, Third Party Attachments
40 Sylvan Road
Waltham, MA 02451
Joy.banks@nationalgrid.com
Tel.: 617-949-6134
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National Grid
Attn: Commercial Legal
Legal Department
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Waltham, MA 02451

Verizon New England, Inc.
Manager – License Administration Group
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Boston, Massachusetts 02114
Attention: Terrence Toland
Title: Agreement Manager
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Terrence.Toland@one.verizon.com
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/s/ Maria T. Browne
Maria T Browne

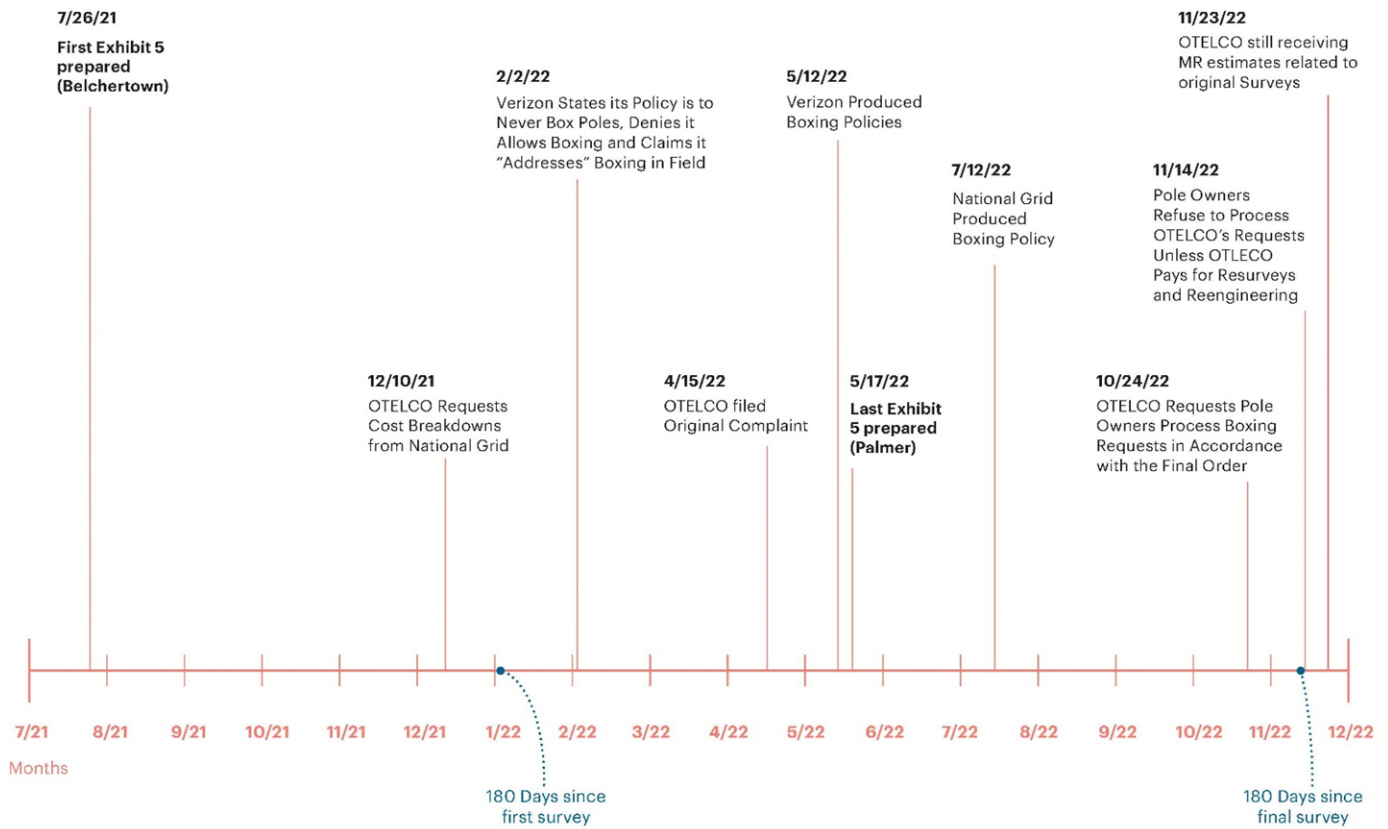
Attachment 1

Exhibit 5s Date Prepared Data

(submitted electronically)

Attachment 2

Timeline Entries



Attachment 3

Mountain Limited Information

Proposal for Third-Party Survey Analysis in Massachusetts ¶

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Presented by: System One Holdings, LLC dba MOUNTAIN, LTD. ¶

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Introduction ¶

MOUNTAIN, LTD., a division of System One Holdings, LLC, is pleased to participate as a third party to GoNetspeed for conducting an independent pole survey analysis in Massachusetts. ¶

¶

About Us ¶

¶

Founded in 1979, Mountain Ltd. is a leading telecommunications engineering company with extensive experience serving telecommunications and broadband internet companies. Our expertise encompasses industry best practices, including in-depth knowledge of the National Electric Safety Code, National Electric Code, Federal Communications Commission regulations, and other pertinent laws and standards governing the installation, operation, and maintenance of electric supply and communication lines, fiber optic lines, and associated equipment. ¶

Mountain Ltd. is a privately owned subsidiary of System One Services, a billion-dollar organization supporting over 4,500 active clients and employing 9,000 consultants. System One's Critical Infrastructure division is dedicated to enhancing, building, and expanding the nation's infrastructure, providing essential services across several key industries, including Power & Utility, Engineering, Procurement & Construction, Telecom, Energy, and Transportation. ¶

¶

Small sample of the clients we serve: ¶

¶

- → **TELCO** - GoNetspeed, Lumen, Brightspeed, Frontier, T-Mobile, Charter Communications, Consolidated Communications, TDS, Windstream, Crown Castle, Zayo, ATC, Conterra, Segra, Wave Broadband (Astound), Grande Communications (Astound) Ziply Fiber, Ritter Communications ¶
- → **ELCO** - CPS Energy, NYSEG, RG&E, Green Mountain Power, Joe Wheeler EMC, NHEMC, Vermont Electric Cooperative, Avangrid ¶

Short list of Mountain's relative experience in this field ¶

- → Over the last 5 years Mountain Ltd. has Engineered over 4.2 million homes, single family and multi-dwelling units, with Fiber (FTTH). This is a mix of aerial and underground engineering that spans across the greater 48 states in the U.S. ¶
- → Having serviced our clients across the United States, there are not many scenarios, if any, that we have not run into when it comes to attaching to poles. Our ability to identify violations, damaged poles, or poles that need to be replaced, is second to none. The safety of the pole owners, and new attachments to poles, is always front and center of our work. ¶
- → Since the beginning of 2023 through April of 2024, in ME and CT, we have delivered over 195,000 surveyed poles to our clients. These clients include Frontier, GoNetspeed Charter, NRTC, Comcast, and Avangrid just to mention a few. ¶
- → We have multiple Professional Engineers (PE) on staff that are licensed in 42 states, including Massachusetts. These Professional Engineers are licensed to perform professional engineering work related to telecommunications and or power distribution, including developmental assignments involving the application of standard techniques, procedures, and criteria in carrying out engineering tasks. Our PE's apply prescribed methods as necessary to recognize discrepancies in results and follow operations through a series of related detailed steps or processes. On a daily basis our PE's provide technical advice regarding design, construction, or program modifications and structural repairs to our clients. ¶
- → We have performed numerous pole audits for different clients where our findings were used in litigation. In some cases, we were able to identify violations, and in other cases we were able to prove violations didn't exist. ¶

¶

Conclusion ¶

Mountain Ltd. is uniquely positioned to provide this critical, independent, and unbiased analysis, leveraging our extensive industry knowledge and proven track record. We look forward to the opportunity to support the infrastructure development efforts in Massachusetts. ¶

¶

Thank you for considering Mountain Ltd. for this important project. We are confident in our ability to deliver a comprehensive and accurate survey analysis that meets industry acceptable standards. ¶