COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

CRC Communications LLC d/b/a OTELCO v. Massachusetts Electric Company d/b/a National Grid and Verizon New England Inc.	D.T.C. 22-4

INITIAL BRIEF OF THE DEPARTMENT OF PUBLIC UTILITIES

I. INTRODUCTION AND ABRIDGED PROCEDURAL HISTORY

On April 14, 2022, CRC Communications LLC d/b/a OTELCO ("OTELCO"), pursuant to G.L. c. 166, § 25A and 220 CMR 45.04, filed a pole attachment complaint with the Department of Telecommunications and Cable ("DTC") against Massachusetts Electric Company d/b/a National Grid ("National Grid") and Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon"). On May 12, 2022, National Grid and Verizon each submitted a response to the complaint disputing OTELCO's assertions and requesting its dismissal. On June 10, 2022, the Department of Public Utilities ("DPU") intervened in this matter pursuant to ¶ 9 of the Memorandum of Agreement ("MOA") executed on October 14, 2008, between the DPU and the DTC. On June 23, 2022, the DTC issued a procedural schedule for the proceeding. National Grid, Verizon, and OTELCO subsequently responded to multiple rounds of discovery, and each submitted pre-filed testimony. Neither the DTC nor the parties required an evidentiary hearing. On August 10, 2022, the DTC approved an

extension to the briefing schedule. The DPU now submits its initial brief in accordance with the revised briefing schedule.[1]

II. BRIEF STATEMENT OF FACTS

A. OTELCO

OTELCO asserts that National Grid and Verizon have each imposed discriminatory, unjust, and unreasonable terms and conditions governing the construction specifications and related make-ready work for attaching to their utility poles, due to improper charges for plant upgrades and/or corrections to pre-existing non-compliance with the National Electric Safety Code ("NESC"), and by National Grid's refusal to provide a detailed pole-by-pole breakdown of make-ready cost estimates similar to the level of detail provided by Verizon (Complaint at 1, 23, 26, 29-60, 84-90). According to OTELCO, in response to its attachment applications, both National Grid and Verizon identified extensive, time consuming, and costly work deemed by them to be necessary to accommodate OTELCO's attachments and declined OTELCO's proposals to use opposite side construction and/or boxing ("boxing") or to attach below Verizon's wires where the attachments would be consistent with governing specifications in order defray the estimated make-ready costs (Complaint at 3-4, 6, 13-14, 23).

OTELCO states that it plans to deploy a broadband fiber network of over 1,000 miles to 115,000 locations in 17 western Massachusetts communities and that, to date, the pole applications it has submitted to National Grid and Verizon represent about 153 of the more

---

[1] The DPU's silence on any issues or arguments raised in this proceeding should not be construed as a particular position on those matters.

than 1,000 route-miles of its planned broadband network (Complaint at 2, 10 & ¶ 19). Although the complaint is specific to applications pending with National Grid and Verizon in a handful of towns, OTELCO states that the issues it is experiencing reflect larger systemic issues with these entities' make-ready processes resulting in delays and disputes over cost-estimates that are, as a result, inhibiting OTELCO's deployment efforts (Complaint, ¶¶ 19-32). OTELCO requests, in part, that the DTC permit OTELCO to attach where there is open space on utility poles, if consistent with safety specifications, including through boxing and placement of fiber below Verizon's wires, and require National Grid to provide invoices with additional pole-by-pole detail (Complaint at 32-33).

B. National Grid and Verizon

National Grid and Verizon each counter that they are processing OTELCO's current attachment applications, which involve more than 6,800 poles owned by National Grid and 22,000 poles owned by Verizon, in compliance with applicable law and in an equitable, reasonable, and non-discriminatory manner based on longstanding practice (NG Response at 10-21; VZ Response at 7-22; Exhs. NG-Rebuttal-1, at 17; DTC-VZ 1-34). Further, National Grid and Verizon dispute that they are charging OTELCO for pre-existing NESC violations or plant upgrades (NG Response at 18-21; VZ Response, ¶¶ 61, 63; Exhs. VZ Wolanin Aff., ¶ 7; NG-Rebuttal-1, at 24; VZ Rebuttal at 22). In particular, both entities contend that, consistent with their existing practices, attachment costs are billed to the cost-causer (NG Response at 16-21; VZ Response, ¶¶ 61, 63; Exhs. VZ Wolanin Aff., ¶ 7; NG-Rebuttal-1, at 24; VZ Rebuttal at 22).

National Grid and Verizon explain that, where violations of pre-existing NESC or other applicable standards occur, if the pole requires replacement to be brought into compliance, then they would not charge OTELCO for the replacement costs; if, however, the non-compliant pole would not be tall enough to accommodate the new attachment, then OTELCO would be required to pay for the pole replacement, because that work was made necessary by the new attachment (NG Response at 16-18; VZ Response, ¶¶ 61, 63; Exhs. VZ Wolanin Aff., ¶ 7; NG-Rebuttal-1, at 23-24; VZ Wolanin/Gallagher at 22). Further, National Grid confirms that it is itself responsible for the cost of replacing a pole where the pole is beyond its useful life but that, while it bears the cost of installing a pole of the same height as the old pole, the attacher would bear the incremental cost, if any, of a taller pole if the taller pole is necessary to accommodate the attachment (Exh. NG-Rebuttal-1, at 24). Similarly, National Grid charges for replacing open-wire secondary with triplex construction if the pole installed is the same height as the old pole and the triplex upgrade is being done to create additional space for the attacher to meet clearance requirements (NG Response at 20-21; Exh. DTC-NG 2-18).

National Grid and Verizon both maintain that they treat third-party attachers in the same manner to provide nondiscriminatory access and that adoption of OTELCO's proposals relating to boxing and placement of wires below Verizon's would jeopardize public and worker safety and weaken the reliability of their networks (NG Response at 11, 21-25; VZ Response at 2-4, 14-19, 23; Exhs. VZ Wolanin Aff., ¶¶ 8-14; NG-Rebuttal-1, at 8; VZ Wolanin/Gallagher at 4, 16, 20). National Grid argues that it has an obligation to deliver reliable service to customers at fair and reasonable rates, and that subsidizing the costs of a

single attacher by shifting costs to National Grid and its customers does not lead to this result (Exh. NG-Rebuttal-1, at 29). National Grid observes that its policies have not prevented the deployment of already-widely-available broadband in Massachusetts, and that existing attachers to its poles have completed their attachments without resorting to boxing (Exh. NG-Rebuttal-1, at 14-15, 22). Regarding wire placement, Verizon identifies potential midspan clearance issues if third-party facilities are placed below its wires, due to sagging of its older copper wires and heavy storm loading concerns, and both National Grid and Verizon observe that the current standard hierarchy of facilities placement on utility poles in Massachusetts provides a consistent means of identifying facilities which facilitates storm restoration and pole replacements (NG Response at 25-26; VZ Response at 17-19; Exhs. VZ Wolanin Aff., ¶¶ 14-15; NG-Rebuttal-1, at 30-31; DPU-NG 1-2; VZ Wolanin/ Gallagher at 14, 17-20).

Regarding the detailed pole-by-pole cost breakdown requested by OTELCO, National Grid argues that the level of detail it provided is consistent with its standard practice and that nothing in the pole attachment regulations, Massachusetts precedent, or in its attachment agreement require National Grid to provide that level of detail, but that it provided a detailed breakdown of the estimated costs required for a sample of applications for OTELCO to use for comparative purposes (NG Response at 16; Exhs. NG-Rebuttal-1, at 24-26; NG-Rebuttal-2a; NG-Rebuttal-2b; DTC-NG 1-29; DTC-NG 1-30). National Grid explains that it does not provide a pole-by-pole estimate to attachers because the cost units constantly change based on materials inventory (Exh. NG-Rebuttal-1, at 25). National Grid also explains that, due to the volume of third-party attachment work, dedicating time to

developing pole-by-pole estimates would significantly delay the make-ready invoicing process and the time to complete pole attachments (Exh. NG-Rebuttal-1, at 25).

With regard to OTELCO, National Grid states that OTELCO's pole attachment applications represent one of the largest attachment projects that it has processed in many years, and that it processes such applications from all requesting attachers on a first-come first-served basis (Exh. NG-Rebuttal-1, at 17, 19). However, for large pole attachment projects such as OTELCO's, National Grid explains that it employs an applicant-directed design model to streamline the application process, whereby it delegates the project management and procurement of labor and materials to the contractor (Exhs. NG-Rebuttal-1, at 22; DTC-NG 1-7). National Grid also states that time spent on new pole attachments is impacted by different variables including project scope, vegetation management and police detail requirements, available materials and resources to perform the work, weather conditions, permitting and payment obligations (i.e., dig safe, Department of Transportation permitting, railroad permitting, environmental permitting, notice of excavation and exchange of notice forms, Federal Communications Commission approval forms), and overlapping work in progress (Exh. NG-Rebuttal-1, at 20-21).

Similarly, Verizon states that OTELCO is not the only third party seeking to attach to its poles, and a project as large as OTELCO's takes time (Exh. VZ Wolanin/Gallagher at 26). Verizon explains that it has finite personnel to devote to outside plant, with multiple demands on those resources including its own network upgrades, maintaining existing infrastructure, and construction in response to municipal and state road and other projects (Exh. VZ Wolanin/Gallagher at 2, 4, 21). Verizon also explains that, by way of example, it

worked closely with the Massachusetts Broadband Institute ("MBI") on a project to attach to over 40,000 of Verizon's poles in western Massachusetts over a 10-year period (Exh. VZ Wolanin/Gallagher at 26).

III. DISCUSSION

A. OTELCO's requested make-ready relief is not appropriate for approval through a complaint proceeding and would require more comprehensive review of pole attachment processes in the state.

As a preliminary matter, the DPU recognizes the need for and fully supports broadband deployment efforts to unserved and underserved areas of the Commonwealth. There is no dispute that broadband has become an essential infrastructure in almost every facet of daily life and the need for equitable access is critical. Exec. Office of Housing & Economic Development ("EOHED") and MBI, Massachusetts Broadband Strategic Plan at 3, available at https://broadband.masstech.org/massachusetts-broadband-strategic-plan (last viewed August 18, 2022) ("Mass. Broadband Strategic Plan");[2] see also Western Mass. Elec. Co., D.P.U. 87-260, at 177 (1988) ("electricity is a basic necessity of life in modern society"); IntraLATA Competition, D.P.U. 1731, at 21, 73-76 (1985) (designating Verizon, then New England Telephone and Telegraph Company, and four small, independent telephone providers, carriers of last resort to ensure the continuation of universal service for basic telecommunications services in Massachusetts). With these considerations in mind, to date, the Commonwealth has dedicated substantial time, energy, and funding towards high-speed broadband deployment throughout the state. See generally Mass. Broadband

---

[2] Pursuant to 207 CMR 1.09(3), the DPU requests that the DTC incorporate by reference into this proceeding the Mass. Broadband Strategic Plan.

Strategic Plan. These activities have included grant funding and extensive participation, along with utilities, service providers, and construction contractors, in a last mile make-ready working group that focused on coordination of the activities required to make space on utility poles in advance of the construction and expansion of broadband networks in 53 central and western Massachusetts communities. See Office of the Governor and EOHED, "Baker-Polito Administration Celebrates Completion of Make-Ready Work, Critical to Extending Broadband to "Last Mile" Towns" (March 24, 2022), available at https://www.mass.gov/news/baker-polito-administration-celebrates-completion-of-make-ready-work-critical-to-extending-broadband-to-last-mile-towns ("March 24, 2022 Press Release") (last viewed August 18, 2022).[3] Over a multi-year period, the working group ultimately impacted 40,000 utility poles in these 53 communities, allowing for the installation of 2,000 miles of fiber-optic cable and access to high-speed broadband to 28,000 households (see Exh. VZ Wolanin/Gallagher at 26). March 24, 2022 Press Release.

Notwithstanding these extensive, multi-year efforts by multiple entities and organizations to facilitate broadband deployment and make-ready work in Massachusetts, OTELCO now brings before the DTC a pole attachment complaint requiring resolution within an abridged timeframe (i.e., 180 days) that effectively requests the DTC to declare that longstanding utility practices within the state, including the terms of the standard form pole attachment agreements used by National Grid and Verizon, are unjust and unreasonable

[3] Pursuant to 207 CMR 1.09(2) and the DTC Commissioner's MBI Board membership, the DPU requests that the DTC take administrative notice of the March 24, 2022 Press Release.

and to provide preferential treatment not otherwise accorded to existing attachers (Complaint at 32-33 & ¶¶ 19, 84-90, Exh. 2; NG Response at 11-12, 26, Exh. NG-1; VZ Response at 4). 47 U.S.C. § 224(c)(3); 220 CMR 45.08. While OTELCO's proposals for relief in relation to boxing and the placement of fiber below Verizon's wires on any open space may align with certain established safety standards in particular circumstances (Exhs. VZ Wolanin/Gallagher at 20; DTC-NG 1-11; DTC-VZ 1-8), National Grid and Verizon have both identified valid public safety and reliability concerns with these proposals, including that these proposed practices reflect minimum safety requirements that are not appropriate in all circumstances, may jeopardize worker and network safety by restricting the ability to climb poles, would complicate emergency restoration work and the existing pole transfer and replacement process that currently utilizes the cut-and-kick method, and conflict with their and NESC's current safety standards and the Telcordia Blue Book (Exhs. DPU-NG 1-2(b); DTC-NG 1-11; DTC-NG 1-32, Att.; DTC-VZ 1-4; DTC-VZ 1-8; DTC-VZ 1-31; OT-NG 1-2; NG-Rebuttal-1, at 6-12, 30-31; VZ Wolanin Aff., Exhs. A&B; VZ Wolanin/Gallagher at 4-8, 19-20).[4] Additionally, safe access to a pole and supporting

[4] Under the existing pole transfer process for poles jointly owned by National Grid and Verizon, Verizon is the "last to go" and executes all pole removals and restoration of the site following the transfer process (Exhs. DPU-NG 1-2; OT-NG 2-5). Utilities in Massachusetts utilize the National Joint Use Notification System ("NJUNS") for the pole attachment and transfer notification process (Exhs. DPU-NG 1-2; DTC-VZ 1-9). NJUNS is a not-for-profit consortium of utility companies created to provide "efficient utility communication" provides software as a service for member utilities to communicate and track field workflow regarding joint utility ventures, including joint pole administration, joint trench coordination, and large project notification (Exh. DPU-NG 1-2). Revisions would need to be made to NJUNS to accommodate the attachment processes proposed by OTELCO (Exhs. DPU-NG 1-3; DPU-VZ 1-3).

facilities is also affected by growing vegetation and weather and seasonal conditions such as snow and ice, and such conditions to access may change over time (Exhs. DPU-NG 1-1, at 2; OT-NG 1-2; OT-VZ 2-1).

As a result of these public safety and reliability considerations, both National Grid and Verizon have long-established processes and agreements in place that limit the use of these attachment methods throughout the Commonwealth, currently applicable to more than 1.3 million poles owned by these entities[5] and the existing attachments to these poles (Exhs. DTC-NG 1-2, Att.; DTC-NG 1-32, Att.; DTC-VZ 1-2, Atts.; DTC-VZ 1-15; OT-VZ 1-1; OT-NG 1-3; OT-NG 1-32, Att.; OT-NG 2-5; OT-NG 2-7; NG-Rebuttal-1, at 7, 18, 30). Broadband deployment efforts, although welcome and necessary, cannot jeopardize worker safety or override the safety and reliability of the electric grid and basic telecommunications services. Consistent with our joint findings in D.P.U. 19-76-A/ D.T.C. 19-4-A, revisions to longstanding utility attachment practices cannot occur without a thoughtful, comprehensive review. See Joint Pole Att. Rulemaking, D.P.U. 19-76-A/ D.T.C. 19-4-A at 33 (December 7, 2021) (declining to adopt particular recommendations involving attachment processes, because the suitability of adoption of any one of the recommendations in Massachusetts had not been determined and would need to be thoroughly investigated for the potential impacts on public safety and electric reliability prior to the potential adoption of any recommendation). Moreover, the precedential value alone of any

---

[5] National Grid identifies ownership of 704,569 poles in the Commonwealth, including 634,274 poles jointly owned with Verizon, and Verizon identifies joint ownership of approximately 1.3 million poles, plus an additional 40,000 solely-owned poles (Exhs. OT-NG 1-1; OT-VZ 1-1).

decision approving OTELCO's proposals would not only implicate the need to revise or disrupt multiple internal processes currently in-place at a larger scale for both National Grid and Verizon employees and third-party contractors in relation to, for example, routine pole replacements and attachment transfer notifications, vegetation management, and storm response practices, but would also call into question existing pole attachment agreements with these entities and potentially the existing practices of other utility pole owners (Exhs. DPU-NG 1-2; DPU-NG 1-5; DPU-VZ 1-2, Atts.; DPU-VZ 1-5; OT-NG 1-6; NG-Rebuttal-1, at 8; DTC-NG 1-33).[6] Such revisions would also have cost implications that may be passed onto electric ratepayers and Verizon subscribers (Exhs. NG-Rebuttal-1, at 29-30; VZ Wolanin/Gallagher at 21).

Furthermore, it is well established in Massachusetts that, within a substantial range, business decisions are matters for a utility company's determination (Exh. DPU-NG 1-5). Fitchburg Gas & Elec. Light Co. v. Dep't of Pub. Utils., 375 Mass. 571, 578 (1978); New England Tel. & Tel. Co. v. Dep't of Pub. Utils., 371 Mass. 67, 84 (1976); New England Tel. & Tel. Co. v. Dep't of Pub. Utils., 327 Mass. 81, 90 (1951); New England Tel. & Tel.

---

[6] While OTELCO's affiliate, Granby Telephone Company ("Granby"), may permit the make-ready practices requested as relief here, Granby's service territory as an incumbent local exchange carrier has historically been limited to a single town in which it currently owns 132 poles (Exhs. DTC-OT 1-4; DTC-OT 1-21). See DTC Competition Status Report at 7, 11 (February 12, 2020), available at (https://www.mass.gov/files/documents/2016/07/vl/competitionreport-combined.pdf (last viewed August 18, 2022) ("DTC Competition Report"). In contrast, Verizon serves 347 cities and towns statewide as an incumbent local exchange carrier, and National Grid provides retail electric distribution service to customers in 172 cities and towns (Exhs. OT-NG 1-1; OT-VZ 1-1). DTC Competition Report at 9, 11, D.P.U. 18-150, at 2.

Co. v. Dep't of Pub. Utils., 262 Mass. 137, 146-148 (1928); Weld v. Gas & Elec. Light Comm'rs, 197 Mass. 556, 560 (1908). The DTC and DPU do not act as an appellate board of directors and, barring extraordinary circumstances, do not interpose ourselves in a utility's daily management decisions. National Grid/KeySpan Merger, D.T.E. 07-30, at 22 (2010); Boston Edison Co., D.P.U. 85-266-A/85-271-A at 11 (1986) (reiterating that it is not the agency's role to make management decisions on behalf of the utility's managers). In the event that either of our agencies would contemplate revisions to longstanding utility attachment processes, then that decision would very likely qualify as a major change to the regulatory standard requiring sufficient warning to the affected utilities in order to enable them to adjust to the new situation. See Boston Gas Co. v. Dep't of Pub. Utils., 405 Mass. 115, 120-121 (1989); New England Tel. & Tel. Co. v. Dep't of Pub. Utils., 371 Mass. at 84.[7] Revision by way of an abridged complaint proceeding does not provide that warning.

In sum, a pole attachment complaint proceeding is not the appropriate forum to grant revision to longstanding utility pole attachment processes applicable statewide, especially for the benefit of a specific attacher and in the timeframe afforded, nor would it provide sufficient warning to utility pole owners to change their established practices. Accordingly, OTELCO's requested relief in relation to boxing and placement of fiber below Verizon's

---

[7] In order to implement such a change, it would also require joint action by the DPU and DTC to develop and promulgate appropriate regulations, policies, and/or procedures, as necessary, consistent with G.L. c. 166, § 25A, that take into consideration the potential impacts on public safety and electric reliability. See MOA, ¶ 6; D.P.U. 19-76-A/D.T.C. 19-4-A at 33.

wires, and on any open space, even if consistent with certain governing safety specifications in particular circumstances, should be denied.

B. National Grid and Verizon's practices are just and reasonable, and the interests of existing utility customers require a denial of OTELCO's complaint.

Pursuant to G.L. c. 166, § 25A and 220 CMR 45.00 et seq., the DTC and the DPU have the joint authority, guided by our MOA,[8] to determine and enforce the reasonable rates, terms, and conditions of the use of utility-owned poles and conduit. In resolving complaints, our agencies must balance the interests of subscribers of cable television, wireless telecommunications, and utility services. G.L. c. 166, § 25A; A-R Cable Servs., D.T.E. 98-52, at 30 (1998); Cablevision, D.P.U./D.T.E. 97-82, at 45 (1998); Greater Media, D.P.U. 91-218, at 32 (1992). In this instance, the scale balances heavily towards the interests of existing utility subscribers due to public safety, reliability, and cost considerations.[9] Additionally, based on the circumstances of this case and the existing practices in the Commonwealth, National Grid and Verizon's denial of OTELCO's

---

[8] Prior to 2007, the current DPU and the DTC were a single agency known as the Department of Telecommunications and Energy, which is the agency referenced in the statute. Because the provisions of 220 CMR 45.00 involve electric, telecommunications, and cable services, the DPU and the DTC use an MOA, in part, to clarify the roles of each agency under those regulations and resolution of complaints filed.

[9] As a point of comparison, OTELCO's complaint involves potential customers located at approximately 115,000 locations (Complaint at 2), although the residents and businesses at these locations may choose to not subscribe to the planned services. In contrast, investor-owned utilities operating in Massachusetts together currently provide electric service to at least 2.5 million existing customers, of which more than half of that total are served by National Grid. See Fitchburg Gas & Elec. Light Co., D.P.U. 19-130, at 2-3 (2020); D.P.U. 18-150, at 1-2; D.P.U. 17-05, at 2.

alternative attachment methods and the level of detail provided by National Grid for its make-ready cost estimates are just and reasonable pole attachment terms and conditions.

Under state law and longstanding precedent, investor-owned utilities regulated by the DPU must provide as part of their public service obligation safe, reliable, and least-cost service to Massachusetts consumers (see Exh. NG-Rebuttal-1 at 29-30). G.L. c. 25, § 1A; Boston Gas Co., D.P.U. 20-120, at 133 (2021); Mass. Elec. Co. & Nantucket Elec. Co., D.P.U. 18-150, at 48-49 (2019); NSTAR Elec. Co. & Western Mass. Elec. Co., D.P.U. 17-05, at 372-373 (2017); Report to the Legislature Re: Maintenance & Repair Standards for Distribution Systems of Investor-Owned Gas & Elec. Distribution Cos., D.P.U. 08-78, at 4 (2009); Rate Decoupling, D.P.U. 07-50, at 5 (2007); Incentive Regulation, D.P.U. 94-158, at 3 (1995); Elec. Industry Restructuring, D.P.U. 95-30, at 6 (1995); Mergers & Acquisitions, D.P.U. 93-167-A at 4 (1994). Additionally, unlike competitive telecommunications carriers and broadband providers like OTELCO, Verizon as an incumbent local exchange carrier as well as investor-owned electric companies like National Grid are subject to more stringent regulatory requirements.

For instance, Verizon for its regulated services and electric utilities like National Grid are subject to service quality requirements and performance standards for which financial penalties may be assessed if specific metrics are not met. See G.L. c. 164, §§ 1I, 1J; 220 CMR 19.00 et seq. (standards of performance for emergency preparation and restoration of service for investor-owned electric and gas distribution companies); Revised Service Quality Guidelines, D.P.U. 12-120-D (2015); Verizon Alt-Reg Plan, D.T.E./D.T.C. 01-31 Phase IV Order at 1 (2016); D.T.E. 01-31 Phase II Order at 99-100

(2003). Over the years, investor-owned electric distribution companies have taken preventative actions to improve resiliency, reduce storm restoration costs, preserve critical municipal infrastructure during emergency events, and increase circuit reliability during blue sky days and storm events, and the DPU has recognized that certain efforts may strengthen a company's distribution system, thus mitigating a portion of the physical damage and financial impacts of future storm events to the benefit of ratepayers. See D.P.U. 17-05, at 578-579; Mass. Elec. Co. & Nantucket Elec. Co., D.P.U. 17-92, at 4-5 (2018); Mass. Elec. Co. & Nantucket Elec. Co., D.P.U. 15-155, at 328 (2016). National Grid has a duty to restore service to its customers in a safe and reasonably prompt manner in the event of a service interruption or outage, and the response of an electric distribution company to a downed wire or downed pole is a critical part of providing a safe restoration response. See 220 CMR 19.03(2)-(3); Mass. Elec. Co. & Nantucket Elec. Co., D.P.U. 18-02-A at 64 (2019); Mass. Elec. Co. & Nantucket Elec. Co., D.P.U. 11-85-A/11-119-A at 59 (2012).[10] In recent years, however, due to climate change, the frequency and severity of major storm events in Massachusetts has increased noticeably since 2009, thus increasing utility costs in part involving storm response measures, system reliability improvements, and mitigation of environmental impacts. See Mass. Elec. Co. & Nantucket Elec. Co./NSTAR Elec. Co.,

---

[10] The purpose of wires-down response is to (1) make the electric utility facilities safe, (2) relieve public safety officials, such as fire and police, from guarding unsafe utility facilities; and (3) de-energize and clear electric wires and facilities so that the municipalities can safely perform their required storm-related duties and activities. D.P.U. 18-02-A at 64. For utilities, few activities are more crucial to public safety than timely response to downed wires. Id.

D.P.U. 21-75/D.P.U. 21-76, at 27 (2021); D.P.U. 18-150, at 414-415; D.P.U. 17-05, at 376-377, 546; D.P.U. 15-155, at 74.

Further, investor-owned electric utilities like National Grid are subject to extensive rate regulation oversight for all customer classes, with base distribution rates established through a comprehensive and complex process that considers numerous regulatory issues. See G.L. c. 164, § 94; 220 CMR 5.00; D.P.U. 18-150, at 1-585. In establishing base distribution rates, pole-related considerations include costs attributed to vegetation management and storm restoration, and costs recovered from Verizon for these activities; replacement of company-owned plant; and revenues from third-party attachers. See D.P.U. 18-150, at 293, 398; D.P.U. 17-05, at 64-68, 598-602; D.P.U. 15-155, at 82, 528 & n.53.

Quite simply, the requirements imposed on regulated utilities and the established practices they utilize are grounded in safety, reliability, and cost considerations, among others, and the preeminence of these established practices do not support a finding here that the attachment terms and conditions required by National Grid and Verizon are unjust, unreasonable, or discriminatory. It is just and reasonable for regulated utilities like National Grid and Verizon to require OTELCO to comply with their existing attachment policies and standards, which do not conflict with existing attachment requirements under Massachusetts law and, based on their management's discretion, align with their public service obligations. Further, as discussed in the prior section, it is not our agencies' practice to substitute our judgment for that of utility management's except in extraordinary circumstances. The budgetary and timing concerns raised by OTELCO in this proceeding, although

understandable, are not extraordinary circumstances. Rather, OTELCO seeks to minimize its own costs by seeking alternative attachment methods and pole-by-pole details at the level requested that have not been afforded to other third-party attachers in the Commonwealth except in very limited circumstances (Exhs. DPU-NG 1-5, at 1; DPU-NG 1-6; DPU-VZ 1-5; DTC-VZ 1-15; DTC-NG 1-32, Att.; DTC-NG 2-2; NG-Rebuttal-1, at 6-8, 15-17, 29-30; VZ Wolanin/Gallagher at 5, 21).

Additionally, the record supports a just and reasonable finding. For instance, the record reflects that, due to public and worker safety and network reliability concerns and cost considerations, National Grid's and Verizon's policies and standards have been to consistently limit the alternative attachment practices suggested by OTELCO (i.e., boxing and the placement of wires below Verizon's) (Exhs. DPU-NG 1-2(b); DTC-NG 1-32, Att.; DTC-NG 1-6; DTC-NG 2-2; DTC-NG 2-20; DTC-VZ 1-3; DTC-VZ 1-4; DTC-VZ 1-8; OT-NG 2-7; OT-NG 2-8; OT-NG 3-4; OT-VZ 2-7; NG-Rebuttal-1, at 6-13; VZ Wolanin Aff., Exhs. A&B). Boxing a pole in the communication space blocks climbing access to the portions of the pole above the communication space and, if implemented, could impair electric utilities' ability to repair facilities located above the communications space on poles (Exhs. DPU-NG 1-2, at 2; DTC-NG 1-27; DTC-VZ 1-3; OT-NG 1-2; NG-Rebuttal-1, at 8). While companies may use alternative means such as bucket trucks to access their facilities, use of bucket trucks has the downside of increasing costs and will not necessarily provide access to every boxed pole, for instance, due to inaccessibility on the field side of the pole or weather-related conditions (Exhs. DTC-NG 1-23; DTC-NG 1-25; OT-NG 1-2). In addition, the use of bucket trucks may have an added downside by constraining storm restoration

activities during widespread outages due to the need for additional bucket trucks in such circumstances (Exhs. OT-NG 1-2; NG-Rebuttal-1, at 9-11). Further, boxing could complicate pole replacements by preventing the use of the current cut-and-kick method and increasing the chances of weaving where multiple replacements are conducted on the same line (Exhs. DTC-NG 1-23; OT-NG 3-4; NG-Rebuttal-1, at 12).

Regarding wire placement practices, the standard hierarchy of facilities placement on utility poles in Massachusetts involves electric facilities at the top, a neutral zone, then municipal and other third-party communications provider attachments, and, finally, telephone provider (i.e., Verizon) facilities at the bottom (Exhs. DPU-NG 1-2; VZ Wolanin/Gallagher at 14). Such an orderly hierarchy practice provides a consistent means of identifying facilities, which is especially relevant for the timely restoration of service during emergency events and for when trucks pull down lines when crossing a road, and it provides a consistent and orderly process for pole attachment transfers resulting from pole replacements through top down "next to go" transfers (Exhs. DPU-NG 1-2; OT-NG 1-13; VZ Wolanin/Gallagher at 14, 16, 20-21). Verizon also identifies potential midspan clearance issues if third-party facilities are placed below its wires, due to sagging of its older copper wires and storm loading concerns, and points to Telcordia Blue Book Section 3.2.1 as the basis for the industry standard hierarchy for communications wire placement on poles (Exhs. DPU-VZ 1-6; VZ Wolanin/Gallagher at 17-19).

The record also reflects that National Grid and Verizon have not improperly charged OTELCO for plant upgrades and/or corrections to pre-existing non-compliance with NESC safety standards (Exhs. DTC-NG 2-1; DTC-NG 2-5; DTC-NG 2-10; DTC-VZ 1-16;

DTC-VZ 1-23; DTC-VZ 1-31; DTC-VZ 1-33; DTC-VZ 2-9; OT-NG 1-19; OT-NG 2-10; OT-NG 3-3; NG-Rebuttal-1, at 29; VZ Wolanin/Gallagher at 21-25). The principles of cost causation and fairness dictate that an attaching entity be responsible for the costs caused to attach its facilities to utility poles. National Grid and Verizon have existing processes in place designed to ensure that improper charges do not occur, and in the instances where it was determined that OTELCO was not the cost causer, the cost estimates were adjusted accordingly (Exhs. DTC-VZ 1-23; DTC-VZ 1-25; DTC-VZ 1-27; DTC-VZ 1-31; DTC-NG 2-6; NG-Rebuttal-1, at 26-30; VZ Wolanin/Gallagher at 27). Moreover, the record reflects that National Grid has provided sufficient detail for its make-ready cost estimates as well as a detailed breakdown of the estimated costs required for a sample of applications for OTELCO to use for comparative purposes, consistent with its existing practices in Massachusetts for third-party attachments (Exhs. DTC-NG 1-29; DTC-NG 1-30; DTC-NG 1-37; DTC-NG 2-5; DTC-NG 2-6; NG-Rebuttal-1, at 24-26; NG-Rebuttal-2a; NG-Rebuttal-2b).

IV. CONCLUSION

For the reasons outlined above, the DPU respectfully requests that the DTC find that National Grid's and Verizon's make-ready requirements are just and reasonable and, accordingly, deny OTELCO's complaint and requested relief.

Respectfully submitted,

DEPARTMENT OF PUBLIC UTILITIES

By its counsel:

/s/ Kerri DeYoung Phillips
Kerri DeYoung Phillips, Esq.
Sandra Callahan Merrick, Esq.

Legal Division
One South Station, Fifth Floor
Boston, MA 02110
kerri.phillips@mass.gov
sandra.merrick@mass.gov

Dated: August 18, 2022