



**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE**

D.T.C. 22-4

August 22, 2023

CRC Communications LLC d/b/a OTELCO v. Massachusetts Electric Company d/b/a National Grid and Verizon New England Inc.

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**Hearing Officer Ruling Granting Reconsideration and  
Reopening Administrative Record Regarding Resurvey Issue**

**I. Introduction and Procedural History**

On April 14, 2022, CRC Communications LLC d/b/a OTELCO (“OTELCO”) filed a pole attachment complaint (“Complaint”) against Massachusetts Electric Company d/b/a National Grid (“National Grid”) and Verizon New England Inc. (“Verizon”) (collectively, “the pole owners”). On October 11, 2022, the Department issued its Final Order (“Order”) granting in part and denying in part OTELCO’s Complaint. Specifically, the Department held that:

1. Opposite-Side Construction (“Boxing”): The Department found that “National Grid and Verizon must examine OTELCO’s requests to box on a pole-specific basis.” Final Order at 13. The Department found that the pole owners’ decision not to box Poles 1, 5, 6, 7, 8, 9, 11, 12, 13, and 14 was reasonable because Verizon provided specific safety, reliability, or generally applicable engineering reasons for denying boxing. Final Order at 22. However, the Department ordered both Verizon and National Grid to give specific reasons on a pole-by-pole basis for why they would not allow boxing on jointly-owned Poles 2, 3, 4, and 10. Final

Order at 21. In order to provide this more specific reasoning, the Department permitted the pole owners the opportunity to revisit these four poles. *Id.* Upon this secondary review, if the pole owners decided that these poles should not be boxed, the Department allowed the pole owners to deny OTLECO's boxing request, provided that the pole owners provided specific explanations to OTELCO regarding why the pole owners were denying the request on a pole-by-pole basis. *Id.* Finally, the Department did not order National Grid to amend its boxing policy for jointly owned poles. Final Order at 13-23.

2. Lowest Attachment: Having found that Verizon's policy that it must be the lowest attacher was reasonable and nondiscriminatory, the Department denied OTELCO's request for relief on this issue. Final Order at 29. The Department also encouraged Verizon moving forward to consistently attach no higher than necessary to comply with applicable clearance standards, though that issue was not before the Department in this proceeding. Final Order at 29.
3. Pre-existing Conditions, Other Facilities Management, and Claims of Charges for Non-Make-Ready Work: The Department granted OTELCO's general request to attach on poles, despite pre-existing noncompliance of other attachers, as long as OTELCO could safely attach in compliance with the NESC without worsening the noncompliance, but only in instances where no make-ready work was needed, and subject to the pole owners' other lawfully imposed attachment terms and conditions as further defined in the Order. Final Order at 31. The Department confirmed that the pole owners should bill OTELCO only for the work needed to make a pole ready for OTELCO's attachment. Final Order at 35-36. Finally, the

Department denied OTELCO's request for a discount on the total make-ready work where the pole owners receive an incidental benefit from that make-ready work, holding that OTELCO was responsible for the full cost of the make-ready expenses as OTELCO was the cost-causer under the statute. Final Order at 41.

4. Request for Detailed Cost Breakdown: The Department found that National Grid's refusal to provide detailed cost breakdowns was not a reasonable condition of attachment. Final Order at 46. Accordingly, the Department ordered National Grid to provide cost breakdowns to OTELCO on a task-specific and pole-specific level, where requested by OTELCO. *Id.*
5. Other Issues: Finally, the Department denied OTELCO's requests regarding make-ready timeframes, a stay, and attorney's fees on procedural grounds. Final Order at 46-50.

On February 21, 2023, OTELCO filed with the Department a Motion for Enforcement of the Order. After responses were filed by the other parties, OTELCO filed a Motion for Leave to File a Reply ("Reply") and Supporting Evidentiary Material ("New Evidence") along with its Reply and New Evidence on April 18, 2023.

For the reasons stated below, the Department hereby grants reconsideration of its October 11, 2022, Order for the limited purpose of clarifying how the parties should implement the Department's Order. The Department also grants OTELCO's Motion for Leave to File a Reply and Supporting Evidentiary Material, as that additional evidence will likely assist the Department in resolving one issue regarding the implementation of the Department's order.

## II. Motion for Enforcement

Although styled as a motion for enforcement, the Department construes OTELCO's February 21, 2023, motion as a motion for reconsideration under 207 CMR 1.10 (10).<sup>1, 2</sup> The Department's procedural regulations authorize a party to file a motion for reconsideration within twenty days of service of a final Department Order. *Id.* The Department's regulations do not guarantee a right to reconsideration outside of the 20-day window specified by 207 CMR 1.10 (10). However, the Department may grant reconsideration at any time where "extraordinary circumstances" dictate that the Department "take a fresh look" at a proceeding after issuing a final order. *Cablevision of Boston, Inc.*, D.T.E. 97-82 at 7 (March 5, 1998) (interlocutory order); *see also Doe v. Sex Offender Registry Bd.*, 99 Mass. App. Ct. 533, 537-538 (2021); *quoting Stowe v. Bologna*, 32 Mass. App. Ct. 612, 615, *aff'd* 415 Mass. 20 (1993) ("In the absence of express or perceived statutory limitations, administrative agencies possess an inherent power to reconsider their decisions.").

Here, the parties' post-order filings have demonstrated that the Department's Order, which was issued on October 11, 2022, left open to dispute several details regarding the implementation of the Order. For this reason, the Department grants reconsideration of the previous Order for the limited purpose of providing further detail to effectuate that Order.

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<sup>1</sup> To the extent that OTELCO raises claims in its February 21, 2023, motion which are not related to the implementation of the Department's October 11, 2022, Order, the Department declines to review such claims as they are beyond the scope of this proceeding and must be filed as a new complaint pursuant to 220 C.M.R. 45.04.

<sup>2</sup> If OTELCO seeks amendment to the Massachusetts Pole regulations through this proceeding, the Department notes that the Department and the Department of Public Utilities ("DPU") share joint authority over pole attachments in Massachusetts, subject to the agencies' Memorandum of Agreement on Pole Attachment Jurisdiction executed on October 14, 2008, and most recently renewed on February 7, 2022. G.L. c. 166, § 25A. Therefore, the Department may not amend the joint pole attachment regulations, 220 C.M.R. 45.00, or related policies outside of a joint rulemaking with the DPU. If the two Departments undertake a joint rulemaking, the Department recommends that OTELCO raise any general policy concerns in such a proceeding. Finally, the Department notes that the Department will not conduct a joint rulemaking with the DPU while the DPU is a party to a related adjudicatory proceeding before the Department, such as this pole complaint, due to limitations on *ex parte* communications.

### **III. Motion for Leave to File a Reply and Supporting Evidentiary Material**

For the reasons stated below, the Department grants OTELCO's Motion for Leave to File a Reply and Supporting Evidentiary Material, as the proffered evidence assists in resolving the dispute between the parties regarding whether National Grid and Verizon may require OTELCO to pay for new field surveys (the "resurveys"). Administrative "agencies have inherent power to reopen their concluded proceedings in compelling situations as justice may require." *Covell v. Department of Social Servs.*, 42 Mass.App.Ct. 427, 433 (1997); *see also Zachs v. Department of Pub. Utils.*, 406 Mass. 217, 227 (1989). Indeed, the Department has wide latitude regarding the admission of evidence as long as it does not result in a denial of substantial justice. *Investigation by the Dep't on its Own Motion to Determine whether an Agreement entered into by Verizon New England Inc., d/b/a Verizon Mass. is an Interconnection Agreement under 47 U.S.C. § 251 Requiring the Agreement to be filed with the Dep't for Approval in Accordance with 47 U.S.C. § 252*, D.T.C. 13-6, Hearing Officer Ruling at 3 (Apr. 17, 2014) (citing *W. Mass. Bus Lines, Inc. v. Dep't of Pub. Utils.*, 363 Mass. 61, 63 (1973)).

Here, the Department finds that a compelling situation exists, as the Department finds that admitting the evidence submitted by OTELCO in its motion is beneficial to resolving the parties' dispute concerning the reasonableness of resurveys. The Department also finds that the evidence is offered in a reasonable time, as the Department did not consider evidence regarding resurveys prior to the issuance of its October 11, 2022, Order. Therefore, the Department grants OTELCO's April 18, 2023, motion and reopens the record in this proceeding for the limited purpose of resolving the parties' dispute regarding resurveys.

To develop the record regarding the resurvey issue, The Department will issue information requests to the parties to supplement the record regarding resurveys.

By September 21, 2023, any party or intervener may file evidentiary documents with the Department which are not already included in the record of this proceeding, under 207 C.M.R. 1.10 (7), if the parties believe such documents will assist the Department in resolving the resurvey issue. The Department finds that good cause exists to permit the filing of such evidence as the parties were not previously on notice that the Department would consider and accept evidence on the resurvey issue.

#### **IV. Conclusion**

For the reasons stated above, the Department hereby grants reconsideration of its October 11, 2022, Order for the limited purpose of clarifying how the parties should implement the Department's Order. The Department also grants OTELCO's Motion for Leave to File a Reply and Supporting Evidentiary Material, as that additional evidence will likely assist the Department in resolving one issue regarding the implementation of the Department's order.

The Department will issue information requests to the parties to supplement the record regarding resurveys. In addition, by September 21, 2023, any party or intervener may file evidentiary documents with the Department which are not already included in the record of this proceeding, under 207 C.M.R. 1.10 (7), if the parties believe such documents will assist the Department in resolving the resurvey issue.

/s/ \_\_\_\_\_  
William Bendetson  
Hearing Officer

### NOTICE OF RIGHT TO APPEAL

Under the provisions of G.L. c. 30A, § 11(8) and 207 C.M.R. 1.00, any aggrieved party may appeal this Ruling to the Commissioner by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal must be filed within two (2) days of the appeal.