KEEGAN WERLIN LLP

ATTORNEYS AT LAW

99 HIGH STREET, Suite 2900

BOSTON, MASSACHUSETTS 02110

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(617) 951-1400

TELECOPIER:

(617) 951- 1354

August 18, 2022

Shona D. Green, Secretary
Department of Telecommunications and Cable
1000 Washington Street, Suite 820
Boston, MA 02118

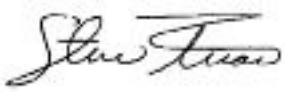
Re: D.T.C. 22-4 – CRC Communications LLC d/b/a OTELCO v. Massachusetts Electric Company d/b/a National Grid and Verizon New England Inc.

Dear Ms. Green,

On behalf of Massachusetts Electric Company d/b/a National Grid ("National Grid" or the "Company"), enclosed is the Company's Initial Brief in this proceeding.

Please contact me with any questions.

Very truly yours,



Steven Frias

cc: William Bendetson, Hearing Officer, Department of Telecommunications and Cable
Service List, D.T.C. 22-4

COMMONWEALTH OF MASSACHUSETTS
Before the
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

CRC COMMUNICATIONS LLC, D/B/A OTELCO	)	
	)	
Complainant,	)	
v.	)	D.T.C. 22-4
MASSACHUSETTS ELECTRIC COMPANY D/B/A NATIONAL GRID AND VERIZON NEW ENGLAND INC.	)	
Respondents	)	

INITIAL BRIEF OF MASSACHUSETTS ELECTRIC COMPANY D/B/A NATIONAL GRID TO COMPLAINT OF CRC COMMUNICATIONS LLC, D/B/A OTELCO

Contents

INITIAL BRIEF OF MASSACHUSETTS ELECTRIC COMPANY D/B/A NATIONAL GRID

Massachusetts Electric Company d/b/a National Grid ("National Grid" or "Company") hereby submits its Initial Brief in the above-captioned proceeding regarding the Pole Attachment Complaint and Petition for Expedited Treatment (the "Complaint")[1] of CRC Communications LLC, d/b/a OTELCO ("OTELCO" or the "Complainant") filed with the Department of Telecommunications and Cable (the "DTC") on April 15, 2022.

The Complaint should be denied and the Department should find that National Grid's pole attachment policies and practices are consistent with Massachusetts law and regulations, and with standard industry practices in Massachusetts. The Department should further find that National Grid is handling and processing OTELCO's requests for pole attachments in the same manner it has processed pole attachment applications in Massachusetts for many years - evenhandedly, fairly and without discrimination or favoring one attacher over another. In denying the Complaint the Department must find: (1) National Grid did not impose "discriminatory, unjust and unreasonable terms and conditions governing the construction specifications and related make-ready work for attaching to National Grid's . . . utility poles" (Complaint at 1); (2) National Grid's engineering contractor, Osmose Utilities Services, Inc. ("Osmose"), did not improperly attribute remediation of pre-existing pole clearance conditions and plant upgrades to OTELCO under the "guise of make-ready costs" (id.); (3) National Grid's decision to decline OTELCO's proposal to employ boxing, or opposite side construction, to lower its costs was not unreasonable (id. at 4); (4) National Grid's response to OTELCO's request for a detailed breakdown of the costs attributable to Make-

[1] The Complaint was filed against National Grid and Verizon New England Inc. ("Verizon"). National Grid's Initial Brief is limited to the facts and allegations pertaining to National Grid.

Ready Work on each pole was not unreasonable (id.); and (5) OTELCO should not be permitted to attach below Verizon on poles (id.).

The Department should also deny OTELCO's Complaint because it goes far beyond an attacher's request for review of its application under the applicable pole attachment regulations; OTELCO is asking the DTC to make sweeping changes to Massachusetts pole attachment policies for its own benefit, at the expense of all other pole users. Current Massachusetts policy appropriately balances the need to prioritize public safety, including the safety of workers, and reliability of the electric distribution system, while facilitating the orderly and safe attachment of broadband technologies to utility poles. If the DTC were to find in favor of OTELCO, it would: (1) jeopardize the reliability of the electric distribution system; and (2) shift costs for which attachers are responsible onto the utilities' electric customers.

I. Introduction and Procedural Background

OTELCO filed its Complaint against National Grid and Verizon New England Inc. ("Verizon") with the DTC on April 15, 2022 and served it on National Grid on April 14, 2022. National Grid and Verizon filed responses to the Complaint on May 12, 2022 ("National Grid Response" and "Verizon Response," respectively). Throughout discovery, National Grid responded to 106 information requests propounded by the DTC, the Department of Public Utilities ("DPU"), and OTELCO. Verizon responded to 99 information requests. OTELCO responded to 61 information requests. In addition, OTELCO submitted initial and rebuttal testimonies from David Allen, Lawrence Slavin and Thomas Perrone. National Grid submitted joint rebuttal testimony from G. Paul Anundson, Joy A. Banks, and Fredrick Griffin. Verizon submitted joint testimony from David L. Wolanin and John P. Gallagher. The procedural schedule set initial briefs

due on August 18, 2022 and reply briefs due on September 8, 2022, and an order is expected by October 11, 2022.

In sum, OTELCO cites to no Massachusetts caselaw or authority to support its claims that National Grid is violating Massachusetts pole attachment laws and regulations. In the absence of Massachusetts precedent, OTELCO relies on inapposite Federal Communications Commission (the "FCC") precedent and decisions of other states, many of which OTELCO misinterprets or misapplies, to bootstrap its list of grievances.

Pursuant to G. L. c. 166, § 25A, Massachusetts regulates pole attachments through the DTC and DPU. Massachusetts regulators have stated that while rulings of the FCC may provide useful guidance on an issue pertaining to pole attachments, Massachusetts is not bound by the FCC's interpretations and is free to depart from the federal approach when justified, on state policy grounds. See A-R Cable Services, Inc., D.T.E. 98-52, at 8 (1998) ("A-R Cable"); Media One, D.P.U./D.T.E. 97-82, at 18 ("Media One"). Furthermore, both the DTC and DPU have recognized that prior to the adoption of any new policy pertaining to pole attachments, they must "thoroughly investigate the potential impacts" on "public safety and electric reliability." Joint Investigation instituting a rulemaking pursuant to Executive Order No. 562, D.T.C. 19-4/D.P.U. 19-76, at 33 (2021).

OTELCO does not offer any valid legal arguments to refute two undeniable facts: first, National Grid's pole-attachment practices are consistent with standard industry practices for pole attachments in Massachusetts and with Massachusetts regulations; and second, National Grid is handling and processing OTELCO's requests for pole attachments in the same manner it has processed pole attachment applications in Massachusetts for many years. The Complaint has no legal basis and should be denied.

OTELCO effectively asks the DTC to make sweeping changes to Massachusetts pole attachment policies in a proceeding to adjudicate the complaint of a single attacher. Massachusetts appropriately balances the need to prioritize safety, including the safety of workers, and reliability of the electric distribution system, while facilitating the orderly and safe attachment of broadband technologies to utility poles. If the DTC were to find in favor of OTELCO, there would be at least two major, negative policy impacts: (1) it would lead to the adoption of pole-attachment practices that would jeopardize the safety and reliability of the electric distribution system; and (2) such a radical policy change would alter the make-ready cost allocation model for pole attachments in Massachusetts, and shift costs for which attachers are responsible onto the utilities' electric customers.

OTELCO is attempting to evade its responsibility to pay for Make-Ready Work where such work includes the cost of replacing National Grid's existing and functional poles where OTELCO's proposed attachment would exceed the poles' capacity, clearance, or loading. Under the terms of the standard attachment agreement executed by OTELCO and National Grid the "…grant of access to a Pole will be contingent upon [OTELCO's] agreement to pay for Make-Ready Work…" (National Grid Response, Exh. NG-1, at § 3.5). Make-Ready Work is defined as "…the work required to accommodate Licensee's Attachment(s) on Pole(s), including rearrangement and/or transfer of existing Attachment(s) on a Pole, **replacement of a Pole** or any other changes required to accommodate Licensee's Attachment(s) on Pole(s) (id. at § 1.16 (emphasis added)).

OTELCO's responsibility with respect to payment for Make-Ready Work under the standard attachment agreement is consistent with the cost-recovery rules embodied in the regulations at 220 C.M.R. §§45.00, which require new attachers, and not existing attachers, to bear

the costs associated with a new licensee. For example, 220 C.M.R. § 45.03(3)(c) states that, "any licensee that obtains an attachment to a pole, duct, conduit, or right-of-way shall not be required later to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity."

National Grid's poles in Belchertown, Granby, Palmer, Wilbraham, and Northampton, some of which are 35-foot poles, are still fit for purpose and provide reliable electric service to National Grid's customers in those towns (National Grid Response at 4). OTELCO makes no showing that the existing poles are in poor condition, or in need of remediation or replacement to address pre-existing violations. The replacement poles National Grid identified in its make-ready estimates provided to OTELCO are required to accommodate OTLECO's facilities because there is no space remaining on the existing poles (id.). The DTC should find that National Grid's actions and procedures in processing OTELCO's application for pole attachments, including the estimates in support of the make-ready costs, are consistent with the DTC and DPU's pole attachment regulations in 220 C.M.R. §§45.00, and Massachusetts' approach for allocating cost responsibility for pole replacements and other Make-Ready Work to the "cost causer," the party which causes and directly benefits from the installations.

The alternative pole attachment methods espoused by OTELCO, solely to drive down its costs, would jeopardize the safety of those who work on these poles, weaken the reliability of the electric distribution system, and increase costs to maintain reliable electric service (Exhs. NG-Rebuttal-1, at 7-12; DPU-NG-1-2; DTC-NG-1-23; DTC-NG-1-27; DTC-NG-2-3). OTELCO's proposed alternative "less expensive" pole attachment methods, in particular "boxing" or "opposite-side construction," are contrary to the National Grid's construction standards, which are

consistent with the National Electric Safety Code ("NESC") and are essential to preserving system reliability and worker safety (Exhs. NG-Rebuttal-1, at 7-12; Attachment DTC-NG-1-32). Although National Grid's prohibition against boxing may not be absolute, National Grid only allows the practice in extremely limited circumstances. To allow boxing, National Grid considers several factors set forth in its Operating Procedures – Boxing of Joint Owned Poles (Attachment DTC-NG-1-32). The Operating Procedures are clear, however, that "[b]oxing is not permissible solely to accelerate a construction schedule or avoid customary make-ready work" (id.).

As an electric distribution utility, National Grid's obligation to provide safe and reliable service to its customers is paramount. Fitchburg Gas and Electric Light Company d/b/a Unitil-2008 (Winter Storm), D.P.U. 09-01-A, at 6 (2009). This obligation includes restoration of service in a safe and timely manner when electric service has been disrupted by a major storm, and boxing of poles will hamper the work and prolong outages. Massachusetts Elec. Co. v. Department of Pub. Util., 469 Mass. 553, 555 (2014); see M.G.L. c. 164, § 85B (company shall have an emergency response plan designed for the reasonably prompt restoration of service in the case of an emergency event). National Grid will not and cannot derogate from its public service obligation in order to accommodate the request of a single attacher seeking to minimize its budget. Other than its desire to reduce its project costs, OTELCO provides no justification for National Grid to compromise its existing construction standards by allowing alternative, ill-advised attachment methods which would leading to increased storm restoration times and increased costs to electric customers.

National Grid supports the expansion of broadband, voice, and data services to all areas of Massachusetts, in a safe, equitable, non-discriminatory manner, provided that electric customers are not subsidizing pole replacement costs that should be borne by third-party attachers for whose

sole benefit the costs were incurred. In fact, there are three other broadband providers already attached on National Grid poles in the municipalities where OTELCO has applied to attach - Verizon, Comcast, and Charter - that completed their attachments without resorting to boxing (Exh. NG-Rebuttal-1, at 14-15). Therefore, National Grid's general prohibition on boxing has not negatively impacted or prevented other providers from deploying broadband in National Grid's service territory (id.).

Furthermore, with the exception of OTELCO, National Grid has no records of requests of other potential attachers to use boxing (id.; Exh. OTELCO-NG-1-9). There is no evidence that inability to box poles prevents or restricts the deployment of broadband in Massachusetts (id.). It is equitable and appropriate for third-party attachers, such as OTELCO, operating in a competitive market to bear the costs for building out their own networks, including utility make-ready costs. There is no rational basis to impose even a portion of such costs on electric customers who derive no direct benefit from the premature replacement of existing and functional utility poles that would continue in service for the remainder of their useful life, but for a third-party attacher's project. The DTC should reject OTELCO's transparent attempt to shift responsibility for the costs National Grid will be required to expend for the sole benefit of OTELCO onto all electric customers, and OTELCO's efforts to adopt pole attachment methods which would undermine electric system reliability.

III. Arguments

A. National Grid is Processing OTELCO's Attachment Applications in an Equitable, Reasonable and Non-Discriminatory Manner, and in Compliance with Applicable Law

The DTC should reject OTELCO's unsupported allegation that National Grid imposed "unjust, unreasonable and discriminatory terms and conditions governing the construction

specifications and related make-ready work" for attaching its facilities to the Company's poles (Complaint at 1, Count I, ¶90). Although OTELCO couches its request as seeking non-discriminatory treatment from National Grid, in fact, OTELCO is asking National Grid for preferential treatment not accorded to other attachers. OTELCO has been unable to establish that National Grid's third-party attachment process and standards violates Massachusetts law or regulation. For this reason, OTELCO's claims should be denied.

Pursuant to M.G.L. c. 166, §25A, and 220 C.M.R. § 45.03, National Grid is required to provide OTELCO with non-discriminatory access to the "poles, ducts, conduits, or rights of way" that National Grid owns or controls. However, National Grid's obligation is not absolute and does not translate into an unqualified right for OTELCO to attach its facilities to the National Grid's poles without bearing its share of the incremental costs, or to impose alternative "solutions" to necessary pole replacements that would compromise the reliability of the Company's electric system and increase costs for the Company's customers. National Grid may deny a licensee access to its poles, ducts, conduits, or rights-of-way, on a nondiscriminatory basis for valid reasons of "inadequate capacity, safety, reliability and generally applicable engineering standards; or for good cause shown." See 220 C.M.R. § 45.03(1). Section 25A of chapter 166 further states, that "[U]pon denial of access for reasons of inadequate capacity, the utility shall, *at the expense of the wireless provider*[2], expand the capacity of its poles, ducts, conduits, or rights-of-way to allow access by the wireless provider where such capacity may be reasonably expanded by rearrangement or replacement" (emphasis added). National Grid's policy against alternative construction configurations that increase reliability risks, and requiring licensees to pay their attachment costs

[2] The term "wireless provider" is defined as "[a]ny person, firm or corporation other than a utility, which provides telecommunications service". See also 220 C.M.R. § 45.02.

is not discriminatory; to the contrary, it is even-handed application of its pole attachment policies and is consistent with Massachusetts law.

The Complaint failed to state a case for how National Grid has violated Massachusetts law or regulation, and OTELCO has failed to rehabilitate its unsubstantiated claims in its subsequent filings or through the discovery process. OTELCO has not cited a single Massachusetts case or regulatory order to support the claim that National Grid's processing of OTELCO's pole attachment application violates Massachusetts law. OTELCO is not seeking to enforce current Massachusetts pole attachment law but rather is using this proceeding to tailor the law to suit its own business practices. Moreover, OTELCO is not seeking nondiscriminatory treatment or equitable application of the applicable laws and regulations; its claim is a blatant request for preferential treatment and to create an exception to the applicable laws and regulations to reduce its attachment costs. The DTC should find that a proceeding to adjudicate the complaint of a single attacher is not the appropriate forum to implement dramatic changes to Massachusetts pole attachment policies that will impact all attachers, other pole users, and utility customers.

B. OTELCO's "Boxing" and "Alternative Attachments Solutions" are Contrary to National Grid's Construction Standards, Would Degrade the Reliability of the System, and Increase Costs for Electric Customers.

The Department should reject OTELCO's allegation that National Grid arbitrarily and unreasonably rebuffed OTELCO's proposals to employ "opposite-side construction," also referred to as "boxing," as a safe, reliable and lower cost alternative to accommodate OTELCO's attachments (Complaint at 13, ¶28, and 16-20 ¶¶ 37-49; see also Count I). Boxing techniques involve placing attachments on both the road and field side of the same pole and, by definition, therefore, create a potentially hazardous operating condition for employees servicing the poles

(Exhs. NG-Rebuttal-1, at 7; Attachment DTC-NG-1-32). Safety should not be compromised because OTELCO wants to lower the cost of the necessary Make-Ready Work for its attachments.

The DTC should also specifically reject OTELCO's request to override the Company's operational policies and permit "boxing" for the OTELCO attachments. Allowing boxing for OTELCO will set a precedent for widespread boxing across the Commonwealth that will be applicable to all pole owners, many of whom do not have full party status in this proceeding. The DTC should reject OTELCO's efforts to portray itself as a victim of discriminatory treatment by National Grid and find the reverse; OTELCO is requesting preferential treatment from National Grid, and seeking to be treated differently than other attachers in Massachusetts.

National Grid presented evidence that a decision by the DTC to change Massachusetts policy and require National Grid to permit boxing would: (1) create hazardous conditions for utility workers and third-party attachers by restricting or eliminating the ability to climb poles; (2) increase the routine maintenance costs and storm restoration costs for National Grid and its customers; (3) increase the costs to National Grid and its customers to replace poles; and (4) increase the amount of time National Grid must dedicate to maintain and repair its facilities, including during storm restoration events, and to replace poles (Exh. NG-Rebuttal-1, at 6-12). OTELCO is seeking to shift the costs of deploying its networks in Massachusetts to National Grid and its customers, while increasing National Grid's safety and reliability risks and hindering its ability to provide safe and reliable service to its customers (id.)

i. Boxing Complicates Routine Maintenance and Storm Restoration

The use of "boxing" techniques will make a pole unclimbable by electric utility workers, frequently making maintenance and restoring service during outages in severe weather difficult or impossible (Exh. NG-Rebuttal-1, at 8-9). For these reasons, communication company attachments

are placed on the same side of the pole with twelve-inch vertical separation between attachments (Exh. DTC-NG-1-32 (Att.), at 1). The road-side face of the pole is the preferred side for attachments, and not the "opposite" side (id.).

National Grid's primary concern with boxing is the impact on the ability to deliver reliable electric service by protecting the ability to maintain and repair the electrical facilities (Exh. NG-Rebuttal-1, at 7-8). To that end, National Grid allows boxing only where all sides of the pole are accessible by bucket trucks on a year-round basis, and particularly when there is significant snow accumulation on the ground (National Grid Response at 23). National Grid's ability to reach and repair its facilities during service interruptions is critical to restoring power and heat for customers during winter storm emergency events (id.).

Additionally, pole strength must not be impaired by the presence of too many holes too close together in the pole (id.). The underlying assumption in the NESC rules is that climbing is possible on all poles (Exh. NG-Rebuttal-1, at 9). NESC Rule 236 (a)(1) requires a climbing space "past any conductors, support arms, or other parts" (id.). The rest of the rule specifics the requirements for the size and location of this climbing space on poles (id.). A boxed pole is inconsistent with the NESC because there is insufficient climbing space and attempting to climb a pole that is boxed would be considered unsafe (id.). Therefore, boxing is not consistent with the NESC and can negatively impact employee safety (id.).

Because of these problems associated with boxing, National Grid does not allow boxing except in extremely limited circumstances that are reviewed on a case-by-case basis (Exhs. NG-Rebuttal-1, at 7; Attachment DTC-NG-1-32). National Grid does not permit boxing "solely to accelerate a construction schedule" or to "avoid customary make-ready work" – essentially the reasons the OTELCO seeks to box here. See Exh. Attachment DTC-NG-1-32. National Grid does

not permit boxing because it "can create unsafe working conditions," "complicates the process of pole replacement and removal, increasing costs for all utilities involved," and "results in delays in performing work that can increase cost and impact restoration and system reliability." Exh. Attachment DTC-NG-1-32. Similarly, IOP No. 8 of the Joint Ownership Agreement between National Grid and Verizon states that boxing "can create an unsafe condition, it is permissible only on a case-by-case basis if it is only the viable alternative." Exh. Attachment DTC-NG-1-2.

OTELCO's arguments in support of its cost-saving boxing proposal are flimsy and irrelevant. OTELCO claims that the FCC does not allow boxing to be prohibited and cites decisions by other states that suggest boxing is permitted (Complaint at 16-20, ¶¶ 37-49). Massachusetts is not bound by the FCC's decisions and is free to depart from the federal method when justified on state policy grounds. See A-R Cable, D.T.E. 98-52, at 8; Media One, D.P.U./D.T.E. 97-82, at 18. Similarly, Massachusetts is not bound by decisions in other states. Also, the DTC and DPU have recognized that before adopting any policy related to pole attachments it needs to "thoroughly investigate the potential impacts" pertaining to "public safety and electric reliability." D.T.C. 19-4/D.P.U. 19-76, at 33.

The obligation of electric distribution companies to provide safe and reliable electric service, at reasonable cost, is the cornerstone of public utility regulation in Massachusetts and throughout the country (National Grid Response at 23; Exh. NG-Rebuttal-1, at 7-8). The DTC should reject OTELCO's attempt to alter this long-standing paradigm that was established to protect utility customers just to reduce its project costs. The evidence is unrefuted that boxing inhibits the ability of utility personnel to reach and repair facilities during service interruptions, increases safety risks, and increases storm restoration times (National Grid Response at 23, Exh. DPU-NG-1-2). Quickly restoring service after a storm event is challenging because resources are

constrained during widespread outages, and boxing will only exacerbate already difficult operations (Exh. NG-Rebuttal-1, at 10). National Grid will need more bucket trucks to perform repairs on boxed poles that could have been accomplished with a single worker climbing a pole (id.). Currently, National Grid's standard practice is to have one bucket truck with two workers, where one worker climbs the pole and another crew member works from a bucket truck (id.). However, if a pole is boxed, for any work above the communication space, two bucket trucks with four workers will be required (id.). This would increase the cost of any job on a pole that is boxed and slow down work progress, since now fewer bucket trucks are available to perform work simultaneously (id.). Boxing will not only increase the costs of storm restoration, but also increase the amount of time it takes to restore power (id., at 11). Boxing will increase the cost for National Grid to provide reliable electric service and impede National Grid's ability to restore power for customers after storm emergency events (id.)

Safety and reliability must take precedence to reducing costs for pole attachers. 220 C.M.R. §45.03 expressly permits a utility to deny a licensee "access to its poles, ducts, conduits, or rights-of-way, on a nondiscriminatory basis for … reasons of ***safety, reliability***, generally applicable engineering standards" (emphasis added). National Grid's policy on boxing complies with Massachusetts law.

Moreover, the FCC and other state decisions to which OTELCO cites actually acknowledge that boxing is not always permitted. In fact, as quoted by OTELCO, the FCC decision states that boxing should only be permitted "where the utility, at the time of an attacher's request, employs such techniques itself" (Complaint, at 18, ¶ 42). Similarly, in New Hampshire, pole owners are only required to allow boxing in a manner "consistent with the restrictions it places on its own practice of boxing poles" (Complaint, at 19, ¶ 45). The objective of this policy is to

prohibit discriminatory treatment and to ensure that pole users are not subjected to more restrictive rules than the owners follow themselves. Also, many other states do not require pole owners to permit boxing (Verizon Response at 16; Exh. NG-Rebuttal-1, at 13).

The DTC should also reject OTELCO's allegation that National Grid has permitted boxing on its poles (Exhibit F of Declaration of David Allen; see also Exh. David Allen Testimony at 14). Of the poles identified by OTELCO as being boxed, only four are owned by National Grid (Exh. OTELCO-NG-2-7). The Company did not authorize boxing on these four poles and the boxing occurred prior to 2012 when the Company formalized its policy generally prohibiting boxing (id.; OTELCO-NG-2-8). Furthermore, the Company has determined that the few poles OTELCO could identify as being boxed constitute interference under IOP #8 of the of the Joint Ownership Agreement between National Grid and Verizon (Exh. Attachment OTELCO-2-7 (Corrected)). Verizon has acknowledged that these poles should not have been boxed and will take steps to eliminate the boxing from these poles in the future (Exh. OTELCO-VZ-2-7).

National Grid's obligation to provide safe and reliable service to its customers includes restoring service in a safe and timely manner when electric service has been disrupted by a major storm. Fitchburg Gas and Electric Light Company d/b/a Unitil- 2008 (Winter Storm), D.P.U. 09-01-A, at 6 (2009); Massachusetts Elec. Co. v. Department of Pub. Util., 469 Mass. 553, 555 (2014). The judgment of National Grid's operations management that boxing will inhibit and degrade the safety and reliability of the distribution system should be given substantial weight. National Grid is the only party in this proceeding that has experience with and responsibility for providing safe and reliable electric distribution service, both during blue sky and during storm restoration activities (Exh. NG-Rebuttal-1, at 7-8). The precedent is clear that the DPU defers to the judgment and expertise of regulated utility companies when it comes to operating and maintaining their

systems safely and reliably. Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, D.P.U. 18-153, at 5 (2022) ("A determination of reasonableness and prudence may not properly be made on the basis of hindsight judgments, nor is it appropriate for the Department to merely substitute its own judgement for the judgment of the management of the utility."); Boston Gas Company and Colonial Gas Company d/b/a National Grid, D.P.U. 13-78, at 13 (2014) ("The Department reiterates that it. . .will not substitute its judgment for that of a utility manager as to how best to fulfill service obligations to operate its system safely and reliably."); Investigation by the Department of Public Utilities on its own Motion into Distributed Generation Interconnection, D.P.U. 11-11-E at 15 (2013) ("Because they have the most knowledge about their customers and their electric distribution infrastructure, the Distribution Companies are best situated to determine what constitutes optimal interconnection [to the electric distribution system.]"); Boston Gas Company, Essex Gas Company, and Colonial Gas Company, d/b/a National Grid, D.P.U. 10-55, at 128-129 (2010) ("The Department will not substitute its judgment for utility management's job as to how best to meet and fulfill its service obligations to maintain and operate its system consistent with safety, reliability and other considerations."); Bay State Gas Company, D.T.E. 05-27, at 36-37, 39, 46 (2006) ("The Department will defer to the Company's management judgment on the appropriate pace of replacing its unprotected steel infrastructure in order to provide ratepayers the greatest level of safety and reliability of service at the lowest possible cost.").

In contrast, OTELCO's opinion regarding how boxing may impact safety and reliability should be disregarded because OTELCO has no stake in, understanding of, or experience with the management or performance of an electric distribution system. OTELCO has displayed complete ignorance of pole construction, operation of an electric distribution system for the benefit of

millions of customers, and a disregard for safety. For example, one of OTELCO's witnesses makes a general assertion that "I am unaware of any outage caused by facilities being Boxed in Connecticut, and in our experience, boxing has not delayed restoration of service in emergency or storm events" (Exh. Testimony of Perrone, at 4, lns. 6-7). While it is not surprising that OTELCO is unaware of the impact of boxing on storm restoration times, because it has no expertise and plays no role in emergency storm restoration, the Company's evidence refutes OTELCO's baseless assumption. On another occasion, an OTELCO representative asked if National Grid could "put safety aside" to think about how to lower make-ready costs for OTELCO (Exh. NG-Rebuttal-1, at 23). Further, OTELCO seems to take a rather cavalier attitude towards unauthorized attachments and how they may impact electric reliability by stating "OTELCO or its affiliate, will attach in a manner that is not technically compliant" and "when such non-compliance is discovered … that, in fact, its attachment is in violation, it will correct the violation" (Exh. NG-OTELCO-2-2). As OTELCO has no stake in the reliability of the electric distribution system, its opinions on boxing's impact on the safety and reliability of the electric system should be given little weight.

Boxing also creates other issues. Existing communications attachments placed on one face of a pole are installed with a spacing of 12 inches from center-to-center (National Grid Response at 22). Installing an additional attachment on the opposite side of the pole requires an additional hole in the pole in line with the existing holes, creating a weakness in the pole where the wood may slot along the wood grain structure (id.; Exh. NG-Rebuttal-1, at 14). Potential physical conflicts between the hardware, bolts, nuts washers and wire support hardware, are also created by the closely spaced hardware present when a pole is boxed (National Grid Response at 22). National Grid does not allow boxing based on the operational issues and hazards it creates for the provision of safe and reliable distribution service. National Grid's boxing policy is non-

discriminatory and is evenly applied to all third party attachers. For the above reasons, Count I of OTELCO's Complaint should be denied.

ii. Boxing Complicates Pole Replacements

Boxing poles also creates difficulties when poles need to be replaced. In general, National Grid uses a method called cut-and-kick to replace poles (Exh. DTC-NG-1-23). The existing pole is supported with a crane while the pole is cut near the groundline (id.). The existing pole butt, the piece still in the ground, is removed and the new pole is set in the same location (id.). The existing pole is lashed to the new pole for support (id.). Pole users will then transfer their facilities to the new pole, from the top of the pole down, with each pole user taking a small section of the pole away with them (id.).

When a pole is boxed, cut-and-kick cannot be used because the new pole cannot be lashed to the new pole because of the wires in the communication space on both sides of the pole (Exh. DTC-NG-1-23). In this situation, the new pole must be placed out of line with the existing pole making each of the transfers more difficult, affecting every other user of the pole (id.). The new pole must be set in a new hole near the existing pole while the existing pole is leaned over slightly to allow the new pole to be set in line with the other poles in the line (id.). As with cut-and kick sets, each entity transfers its facilities beginning at the top of the pole (id.). Because a separate hole is required, the new pole must be set at least a few feet along the line from the existing pole (id.). This means that as each attachment is brought to the new pole, all its attachment hardware must be relocated to line up with the new pole, rather than being in place as with a cut-and-kick pole (id.). Also, the wires on the far side of the pole must be brought over the top of the old pole to reach the new pole (id.). This means that those attaching communication entities must use a bucket truck to transfer their equipment rather than working only from a ladder as they frequently

do (id.). Thus, costs for replacements of boxed poles are driven up for all attached communication entities, as well as National Grid and its customers (id.). For the above reasons, Count I of OTELCO's Complaint should be denied.

C. National Grid's Make-Ready Costs Appropriately Charge OTELCO for its Cost-Causing Attachment Work

There is no support in the record for OTELCO's allegation that National Grid is improperly billing OTELCO for Make-Ready Work on numerous poles "to correct pre-existing NESC violations, or to facilitate National Grid's upgrade of its electrical facilities from open secondary to tri-plex" (Complaint at 14, ¶¶ 30-32, 63; see also Count II). National Grid has demonstrated that it has clear policies for charging the cost-causing third-party attacher for incremental make-ready work, the processes for addressing pre-existing clearance violations and when tri-plex is used, the cost allocation review, and the details provided for make-ready estimates. OTELCO's claim is unfounded and should be rejected.

i. Pre-existing Violations Claim

When a new attacher seeks to attach to a pole, Make-Ready Work may be necessary to ensure that the pole can accommodate the new attachment. Make-Ready Work can include a variety of activities, such shifting existing facilities and installing poles. Make-Ready Work performed solely to accommodate a new attacher and maintain a pole in compliance with applicable clearance and safety codes is billable Make-Ready Work to the new attacher (National Grid Response at 16-17).

If there is a pre-existing clearance issue on a pole where a third party attacher wants to add an attachment, National Grid follows this practice:

(a) if there is no space on the existing pole to resolve a non-compliance issue, National Grid does not charge the attacher for a new taller pole, since one would have been necessary anyway to fix the issue; and

(b) if there is space on the existing pole to resolve the compliance issue, and a new taller pole is needed to add the new attachment, then the attacher will bear the cost of the new pole, as the attacher is the cost-causer for the new pole (Exhs. NG-Rebuttal-1, at 23-24; OTELCO-NG-1-19).

National Grid (and its customers) are responsible for the cost of replacing a pole where the pole is beyond its useful life (Exh. NG-Rebuttal-1, at 24). Additionally, National Grid's practice is to take the responsibility for replacing a pole that has a pre-existing violation that would prevent installation of a new attachment (id.) In such instance, National Grid bears the cost of installing a new pole of the same height and class as the old pole, while the attacher would bear the incremental costs (if any) of a taller pole to accommodate its attachment (id.). Consistent with this practice, the Make-Ready Work pertaining to OTELCO's pending pole attachments has nothing to do with charging OTELCO to correct for pre-existing clearance violations.

In fact, of the 6,610 poles for which OTELCO sought to attach, only 444 poles involved any pre-existing clearance violation or only 6.7 percent (Exhs. NG-Rebuttal-1, at 27-28; Attachment DTC-NG-1-21). Therefore, the possibility that OTELCO is being charged for make-ready work for a pole with a pre-existing NESC violation, where there is sufficient space to accommodate the placement of OTELCO's attachment, is low (id., at 27-28). The reason for the pole replacements reflected in National Grid's Make-Ready Work estimates is because there is not enough space on the existing poles to accommodate OTELCO's facilities (id., at 28). If existing poles are not sufficiently tall to accommodate the addition of OTELCO's facilities, then taller

replacement poles are required, the cost of which must be borne by the cost-causer, i.e., OTELCO (id.). National Grid's make-ready estimates for OTELCO do not correct pre-existing NESC violations on poles.

OTELCO offers no support for the assertion that National Grid's make-ready estimates are to correct pre-existing NESC violations on several poles, beyond an inconclusive claim in the declaration of David Allen pointing to an Excel spreadsheet as Exhibit C that he avers, without support, contains "representative poles where OTELCO is being charged to rearrange existing facilities that did not meet NESC required separation of communications lines from energized power facilities" (Declaration of David Allen, at 4; see also Complaint at 14-15, ¶32). In the National Grid Response, Exhibit NG-4, National Grid responded to each of the OTELCO's allegations in Exhibit C of inappropriately charging OTELCO for pre-existing NESC violations. As shown, no such pre-existing violation corrections were charged to OTELCO because the work charged is necessitated by adding OTELCO's attachment, and thus the Make-Ready Work is fully billable to OTELCO since it is the cost-causer.

Requiring OTLECO to pay for the costs of a new pole is consistent with basic cost-causation principles, predictability, and fairness (Exh. NG-Rebuttal-1, at 29). But for OTELCO's pole attachment request, there would be no need for a new pole (id.). The entity that is causing the costs to be incurred should be responsible for paying the costs (id.), Granting OTELCO's request would shift costs to National Grid and its customers, without justification (id.).

Furthermore, OTELCO should not receive a discount if a pole is replaced and the cost of rearranging the facilities on the old pole to remedy non-compliance is avoided (see Exh. David Allen Testimony at 12). At the outset, the entity that might avoid some cost is not the pole owner but another attacher on the pole (Exh. Verizon Panel Direct Testimony, at 22). For example, if the

CATV attachment on the old pole is too high and needs to move down, but the pole has to be replaced to accommodate OTELCO's new attachment, the CATV provider would be able to transfer its facility directly to the new pole, instead of first moving the facility down to a compliant position on the old pole and then transferring it to the new pole (id., at 22-23). In that case, the CATV provider would avoid a move on the pole, and save some costs, but the pole owner would not save any costs (id., at 23). Furthermore, the costs charged to OTELCO in that scenario – for replacing the pole and transferring the facilities to the new pole – would be the same whether the CATV provider moves down the old pole first and then to the new pole or whether it transfers its attachment directly to the new pole from its non-complaint position on the old pole (id. at 23). Whether the pre-existing attacher saves money or not, it is OTELCO – and no one else – that is causing the pole to be replaced, and OTELCO is responsible to pay the full costs of the replacement work (id.).

As an electric distribution company, National Grid has an obligation to deliver reliable electric service to customers at just and reasonable rates (Exh. NG-Rebuttal-1, at 29). Incurring unnecessary or unreasonable costs, by subsidizing the costs of a single attacher, does not lead to just and reasonable rates and, therefore, is not consistent with this fundamental obligation (id.). In fact, in a future base rate proceeding, the DPU could deny National Grid recovery of costs appropriately chargeable to OTELCO but passed on to the utility customers (id.). On behalf of its customers, National Grid has an obligation to ensure that all the costs for Make-Ready Work caused by a pole attacher is charged to the attacher (id. at 30). National Grid's requirements related to Make-Ready Work are designed to ensure that National Grid fulfills that obligation (id.).

According to its practice, National Grid is accountable for *existing* substandard or defective poles and the practice serves to streamline the pole attachment process to provide for efficient and

fair cost allocation among cost-causing parties, including third-party attachers, such as OTELCO. The mechanism is rooted in sound cost-causation principles, predictability, and fairness, and it is not for utilities to avoid future pole replacement costs that it would incur in the normal course to maintain its infrastructure by shifting the burden to broadband providers (National Grid Response at 18).

Accordingly, the DTC should reject OTELCO's spurious allegation that it is being billed to correct for pre-existing violations of NESC standards under the guise of make-ready. The Company's make-ready estimates reflect the costs of replacing existing and functional utility poles where OTELCO's attachment would exceed National Grid's poles' existing capacity, clearing, or loading requirements. The DTC should preserve the cost allocation rules reflected in 220 C.M.R. §§45.00, and require OTELCO to bear the costs of Make-Ready Work that is solely needed to attach its own facilities.

ii. Upgrading of Facilities Claim

OTELCO's claim that National Grid is using the attachment of OTELCO's facilities to "facilitate National Grid's upgrade of its electrical facilities from open secondary to tri-plex" is inaccurate (Complaint at 14, ¶30; see also Count II). In some instances, National Grid will propose Make-Ready Work that includes replacing open-wire secondary with triplex construction (Exhs. DTC-NG-1-17, DTC-NG-2-9, DTC-NG-2-18). This replacement creates additional space on a shared pole to allow an additional communication attachment (Exh. DTC-NG-1-17). As a result, there is additional space on most poles. If the new 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, then the attacher will cover the costs of the triplex upgrade (Exh. DTC-NG-2-18). The triplex provides the space required for the applicant's attachment without National Grid

needing to install a taller pole for clearance, in some cases, and therefore is appropriately charged to the applicant (id.). National Grid's current construction standards use triplex secondary rather than open wire secondary principally to maximize available space on poles. This space is available for all pole users, including for communication attachers, such as OTELCO (National Grid Response at 21). For the above reasons, Count II of OTELCO's Complaint should be denied.

iii. Make-Ready Estimate Details

OTELCO also takes issue with National Grid's make-ready estimates, arguing that insufficient detail is provided (Complaint at 14-15, ¶¶ 70-73; see also Count III). This is factually incorrect. National Grid provides make-ready estimates that show: total make-ready costs; the pole location; whether the work is billable to the applicant; the description of the work requested; the existing heights of the attachments on the pole; and any adjustments to the existing attachments required (Exhs. NG-Rebuttal-1, at 24; NG-Rebuttal-2-a; NG-Rebuttal-2-b). National Grid also provides make-ready work costs for additional needed components, on a job level, for police detail, forestry work, outages, swamp matting, and any other miscellaneous charges (Exh. NG-Rebuttal-1, at 24-25).

OTELCO claims that it needs unit costs with pole-by-pole details, in addition to the fields above, so that OTELCO can determine what is driving the make-ready costs, if it is charged solely for its attachment work, and to assess whether alternative construction would reduce costs (Exh. Testimony of David Allen, at 9). National Grid is willing to provide additional cost breakdown, in its sole discretion, when the cost is unusually high (Exh. DTC-NG-2-6). It is unreasonable to require National Grid to automatically provide a granular detailed pole by pole estimate to all attachers because of the volume of third-party attachment work National Grid must complete (id.). Dedicating time to provide that level detail for each pole would significantly delay the make ready

invoicing process; significantly slow down the cycle time for pole attachments for all attachers; and increase costs to the attachers (id.; Exh. NG-1-30).

Additionally, OTELCO is misconstruing what happened in its alleged six examples of billing errors (Exhs. Testimony of David Allen, at 11-12; NG-Rebuttal-1, at 28-29; DTC-NG-2-6). OTELCO is claiming that it was improperly charged for make-ready work that involved pre-existing NESC violations, which is incorrect as the make-ready design process had not yet been completed (Exhs. DTC-NG-2-6; NG-Rebuttal-1, at 28-29). In the typical process, Osmose designs the job, designates which elements are billable and non-billable, and submits that plan to National Grid Design for final review and confirmation (id.). During that final review, National Grid confirms or changes any elements which were inadvertently miscategorized by Osmose as billable versus nonbillable (id.). The second level of review by National Grid is a control measure to make sure make-ready costs are billed appropriately (id.). In those six instances, OTELCO reviewed Osmose's design plans ***prior to submittal*** to National Grid Design (id.). When National Grid reviewed Osmose's plans, it recategorized certain items as non-billable, per the standard process (id.). Essentially, OTELCO is claiming there was an issue with designations of make-ready costs before the entire process was completed.

Also, OTELCO's claims that National Grid should provide the same level of detail as its affiliate in New York, but fails to account for the inherent differences between these jurisdictions that led to a difference in make-ready estimates (Exh. David Allen Testimony, at 7). First, National Grid declined OTELCO's request to allow Osmose to provide the level of cost detail to OTELCO in Massachusetts that it provides to OTELCO in New York because the significant effort required to do so would delay survey and design timelines for not only OTELCO, but all other attachment requests (Exh. DTC-NG-2-5). Second, the New York Public Service Commission ("PSC") has

different requirements for make-ready cost detail, does not govern National Grid in Massachusetts, and likewise National Grid does not have the resources to accommodate such a request (id.). National Grid applies this process on a nondiscriminatory basis to all similarly situated attachers in Massachusetts, including OTELCO; providing this additional service to OTELCO would amount to preferential treatment (id.). Furthermore, New York and Massachusetts have different regulatory constructs making a true apples-to-apples comparison difficult (Exhs. NG Rebuttal-1 at 26; DTC-NG-2-5). As a result, additional resources are dedicated to New York work, which comes at an increased cost to New York attachers, and can extend the timeframes for attachments because of the workload and distribution of work (id.). In New York, make ready work is handled in a different manner and by different parties, sometimes contractors and not National Grid internal staff, accounting for different work products and levels of detail (id.).

Additionally, not providing OTELCO with a unit cost pole-by-pole detailed cost breakdown of Make-Ready Work is not a violation of Massachusetts law. There is no requirement in the pole attachment regulations, in DTC precedent, or in National Grid's Attachment Agreement to provide detailed cost estimates. The only support OTELCO offers for its grievance that the make-ready estimates lacked detail is a footnote to a FCC rule and a rule in Maine. As previously noted, Massachusetts is not bound by FCC decisions or other states' decisions or interpretations regarding pole attachments. Moreover, National Grid acknowledged OTELCO's desire for greater granularity in make-ready estimates for what is understandably a large project, and provided a detailed breakdown of the estimated costs required for a sample of applications for OTELCO to use for comparative purposes and apply across all its pending applications for the entire project (Exh. NG-Rebuttal-1, at 26).

National Grid's make-ready estimates appropriately charge the cost-causer for the work required to accommodate its attachments, with sufficient detail. As OTELCO has provided no support for National Grid's alleged violation of Massachusetts law, or of the terms of its own Attachment Agreement, Count III of OTELCO's Complaint should be denied.

D. National Grid Processes OTELCO's Applications in Accordance with the Attachment Agreement

OTELCO's criticisms of how National Grid processed its applications are unfounded. Specifically, OTELCO erroneously asserts that National Grid has not "complied with the 45-day access timeline" for processing pole attachment applications (Complaint, at 11, ¶ 22). OTELCO also questions the impartiality of the Make-Ready Work estimates provided by Osmose alleging, without foundation, that Osmose is "beholden" to National Grid because it is an approved third-party contractor (Complaint at 11, n. 22). OTELCO also argues that National Grid improperly failed to provide OTLECO with a detailed cost estimate of Make-Ready Work for each pole (Compliant at 25-26, 31-32, ¶¶ 70-73, 98-102, Count III). The DTC should reject each of these assertions and find that National Grid has, and is continuing to, process OTELCO's applications in accordance with the terms of the Attachment Agreement, and in compliance with Massachusetts law and regulations.

National Grid administers its third-party attachment procedures consistently and uniformly to all providers, including OTELCO, on a non-discriminatory basis by executing a standard form agreement, entitled "The Wired Aerial License Agreement" (National Grid Response, Exh. NG-1). Contrary to OTELCO's characterization (see Complaint at 8-9, ¶12), the terms and conditions in the standard form agreement are consistent with Massachusetts law governing pole attachments and, when consistently and uniformly applied, provide non-discriminatory access to National Grid's poles and facilities for all third-party attachers.

Although National Grid will consider certain minor and reasonable requests for modifications to the standard form language, the Company will not agree to significant modifications to the terms of its standard agreement which could result in preferential treatment for one attacher compared to another similarly situated attacher, which would be *per se* discriminatory (National Grid Response at 11-12). For this reason, the Company declined to adopt OTELCO's proposed redlined modifications of the form agreement which would have resulted in material changes to the standard terms and conditions. Therefore, to preserve the integrity of the process, the final National Grid-OTELCO Attachment Agreement that the parties executed on January 18, 2022, included with National Grid's Response as Exhibit NG-1 (id. at 12), reflects the Company's standard format.

As to OTELCO's claim regarding the 45-day timeline, National Grid met the timeline set forth in 220 C.M.R. § 45.03(2). The regulation states:

> Requests for access to a utility's poles, ducts, conduits, rights-of-way owned or controlled, in whole or in part, by one or more utilities must be in an adequately descriptive writing directed to an appropriate named recipient designated by the utility. A utility is required to make such a designation. <u>If access is not granted within 45 days of the request for access, the utility must confirm the denial in writing by the 45th day.</u> The utility's denial of access shall be specific, shall include all relevant information supporting its denial, and shall explain how such information relates to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards. (emphasis added)

In claiming that National Grid has failed to comply with "the 45-day access timeline," OTELCO is misinterpreting the reference to "45 days" in this section of the regulations (National Grid Response at 13). It is not an "access timeline", it is a "denial timeline." The language is clear that that a pole owner must notify a prospective attacher that access to a pole <u>is denied</u> within 45 days. National Grid did not deny OTELCO access to its poles; to the contrary, National Grid has worked extensively with OTELCO to determine the Make-Ready Work required for OTELCO's 94

applications and almost 8,000 poles, which is still ongoing (id.).[3] Therefore, OTELCO's claim that National Grid violated the 220 C.M.R. § 45.03(2) timeline should be rejected.

The magnitude of OTELCO's pole attachment applications should be emphasized. As of July 15, 2022, OTELCO has submitted about 100 pole attachment applications in the SmartApp portal, involving 6,852 poles in the municipalities of Belchertown, Northampton and Palmer (Exh. NG-Rebuttal-1, at 17). By comparison, National Grid typically processes 991 pole attachment applications (totaling 9,179 poles) in a given year (id.). Furthermore, of the 6,852 poles covered by OTELCO's applications, 1,734 poles will require make-ready construction work prior to OTELCO's attachment and that construction work is estimated to take approximately 44,959 hours (id.). This level of construction work translates to 1,123 weeks (based on 40-hour work weeks), or almost three years of work, assuming each project is completed sequentially, with no interruptions for storm response or other emergency work (id.). OTELCO's pole attachment application represents one of the largest attachment projects National Grid has processed in many years (id.).

Considering the scale of OTELCO's project, National Grid is processing the pending applications reasonably, thoroughly, and expeditiously, and pursuant to the terms of the Attachment Agreement (Exh. National Grid Response at 13). National Grid's timeline for processing third-party attacher applications is clearly delineated in the Attachment Agreement, provided with the National Grid Response as Exhibit NG-1, and is summarized below:

- "Licensor reserves the right to refuse to grant a license for attaching Attachment(s) to a pole or refuse authorization for relocating, materially altering, or replacing attachments to a pole when Licensor determines that the pole lacks capacity, or for reasons that relate to safety, reliability, or engineering standards. Licensor's grant

[3] Since National Grid was first made aware of OTELCO's potential project plans in September 2020, the Company has met and coordinated with OTELCO periodically to facilitate its project, including at least 14 meetings and numerous emails (id.).

of access to a Pole will be contingent upon Licensee's agreement to pay for Make-Ready Work . . ." ¶3.5.

- Within 14 days after Licensor provides written notice to Licensee that access to a pole has been granted, Licensor must provide an estimate of Make-Ready Work to Licensee. Make-Ready Work will comply with National Electric Safety Code ("NESC") and Licensor's constructions standards**.** ¶3.6

- Within 14 days from receipt of Licensee's estimate of Make-Ready Work, Licensee must accept or reject the estimate; failure to act within the required timeframe risks cancelation of an application. ¶3.7

- Licensor retains the right to extend the Make-Ready Work timeframes set forth above, in its sole discretion, that additional time is necessary to complete the Make-Ready Work. ¶3.11

(id. at 13-14). OTELCO's approximately 100 applications, spanning almost 8,000 poles across five municipalities, constitute a substantial amount of work that requires evaluation, design, and Make-Ready Work invoicing. The Attachment Agreement specifically contemplates that longer Make-Ready Work timeframes may be necessary, in National Grid's sole discretion (National Grid Response, Exh. NG-1, ¶3.11**)**. For a project of this size, National Grid's extension of the timeframes for processing OTELCO's Make-Ready Work estimates was reasonable.

Moreover, OTELCO has essentially failed to complete its applications. OTELCO has not complied with the requirement under Paragraph 3.7 of the Attachment Agreement to accept or reject National Grid's estimates of Make-Ready Work within the required 14-day period (Exh. NG-Rebuttal-1, at 18). Certain Make-Ready estimates have been outstanding in OTELCO's hands for six months (National Grid Response at 14). Despite repeated notices and reminders from National Grid over the six-month period, OTELCO has declined to accept the Make-Ready Work cost estimates (id.). Notwithstanding OTELCO's failure to comply with paragraph 3.7 of the Attachment Agreement, as required under M.G.L. c. 166, §25A, and 220 C.M.R. § 45.03, National Grid followed the correct procedures for processing OTELCO's approximately 100 attachment

applications, which are still pending and awaiting completing, contrary to OTELCO's allegations of imminent cancelation (id.).

The Make-Ready Work cost estimates were reasonable, reliable, and followed National Grid's standard processes (National Grid Response at 14). For large pole attachment projects, such as OTELCO's, National Grid employs an applicant-directed design ("ADD") model which streamlines the process by allowing the customer to work directly with a "Design Contractor," effectively delegating the project management and procurement of labor and materials to the contractor (Exh. NG-Rebuttal-1, at 22). Under ADD, the third party attacher, through a contract with the Design Contractor, has greater control over the costs charged for labor and materials required to complete a pole replacement. The benefits of using the ADD process include:

- **Less handoff** – Applicant can work directly with the Design Contractor rather than have National Grid as the "middle-man" between the two parties, creating less delays in the application process.
- **Better controlled priority** – Applicants can work with Design Contractor to determine priority of their applications over others, rather than using National Grid's standard batch process policy (i.e., first in, first out).
- **Flexible application submittal** – Applicants can work directly with the Design Contractor to split pole applications or remove pole(s) prior to the telecommunications reconciliation or prior to submitting to National Grid Design, rather than following the business-as-usual process, where the Design Contractor submits to National Grid Design, gets the design approved, and then reworks the application to require another National Grid Design approval.
- **Streamlines field survey and design** – Applicant can choose one or multiple ADD Design Contractors and strategically assign work to one or multiple based on the Applicant's needs and volume of work.

(National Grid Response at 14-15; Exh. NG-Rebuttal-1, at 22). In this case, OTELCO elected to use the ADD process with Osmose, a Design Contractor (National Grid Response at 15). As a National Grid approved contractor, Osmose is familiar with National Grid's standards and policies (id.). OTELCO's characterization that Osmose is "beholden" to National Grid, however, is

unfounded and designed to undermine the integrity of Osmose's Make-Ready Work cost estimates (id.). Osmose is simply one of National Grid's approved Design Contractors employed to execute the design of Make-Ready Work (id.). National Grid's only role is to approve the proposed Make-Ready design for each attachment and reimburse the third-party attacher or directly pay its contractor for its share, if any, of non-billable Make-Ready Work (id.). There is no validity to the notion that National Grid is somehow taking advantage of OTELCO through the ADD arrangement or profiting in any way from the arrangement and contract between OTELCO and Osmose (id. at 15-16).

E. OTELCO's Request to Install its Facilities Below Verizon's Facilities

OTELCO alleges that Verizon refused to let OTELCO install facilities in the space below Verizon, and that it should be allowed to attach below Verizon's wires (Complaint at 20-22, ¶¶ 50-60; see also Count I). OTELCO's request should be denied.

Under the joint pole ownership agreement between Verizon and National Grid, Verizon is responsible for removing the last piece of wood from the old pole after all transfers to the new pole are complete (Exh. NG-Rebuttal-1, at 30; see also Exh. DTC-NG-1-2 (Att.), at 18). With its location as the lowest attachment on the pole, Verizon can control this work by scheduling it in conjunction with its transfers to the new pole. Putting a separate party between Verizon's transfers will make coordinating this work more difficult for Verizon and may result in the old pole section, often called a "double pole" or "double-wood," remaining in the field longer than would otherwise be necessary. OTELCO's request would not only complicate and prolong the process of pole replacement, it would also lead to additional double pole complaints from local communities (id.; National Grid Response at 25).

Being able to attach below Verizon's wires is unlikely to significantly address OTELCO's issues regarding Make-Ready Work. Historically, Verizon has attached as the lowest party on shared poles, which provides operational efficiencies. In general, Verizon's attachments are located as low on the poles as possible while still maintaining adequate ground clearance in the spans between the poles (Exh. NG-Rebuttal-1, at 30-31). While it may be possible for OTELCO to attach below Verizon on some individual poles, it is unlikely that space for an additional attachment below Verizon's lowest wire on poles is available over significant areas (id.). For these reasons, National Grid supports Verizon's decision to remain the final attacher on a pole.

VII. Conclusion

OTELCO's Complaint fails to show that National Grid violated Massachusetts law or regulation. National Grid's treatment of OTELCO's pole attachment requests is consistent with how it has managed pole attachments for many years in Massachusetts. Through its Complaint, OTELCO is not seeking non-discriminatory treatment; it is seeking preferential treatment. In fact, through its Complaint, OTELCO is requesting that the DTC change pole attachment policies currently followed in Massachusetts. If the DTC were to find in favor of OTELCO, there would be significant negative policy consequences for electric customers. First, it would lead to the adoption of pole attachment practices which would undermine safety and electric reliability. Second, it would change the cost allocation method associated with Make-Ready Work for pole attachments and shift costs for which OTELCO is responsible onto electric customers.

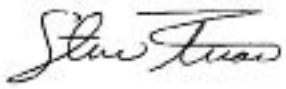
For all these reasons, National Grid requests that the DTC deny OTELCO's Complaint and Requests for Relief.

Respectfully submitted,

Massachusetts Electric Company
d/b/a National Grid

By its attorneys,

Andrea G. Keeffe, Esq.
National Grid USA Service Company, Inc.
40 Sylvan Road
Waltham, MA 02451
(781) 907-2123
Andrea.Keeffe@nationalgrid.com



Steven Frias, Esq.
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, Massachusetts 02110
(617) 951-1400

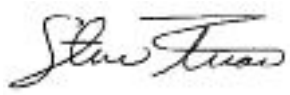
Date: August 18, 2022

COMMONWEALTH OF MASSACHUSETTS
Before the
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

CRC COMMUNICATIONS LLC, D/B/A OTELCO	)	
Complainant,	)	
v.	)	D.T.C. 22-4
MASSACHUSETTS ELECTRIC COMPANY D/B/A NATIONAL GRID AND VERIZON NEW ENGLAND INC.	)	
Respondents	)	

CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically served the foregoing documents upon the Service List for the above-captioned proceeding, in accordance with the requirements of 207 CMR 1.05.



Steven Frias, Esq.
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, Massachusetts 02110
(617) 951-1400

Dated: August 18, 2022