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April 4, 2023

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

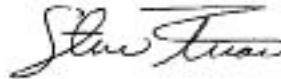
Re: D.T.C. 22-4 – CRC Communications LLC d/b/a OTELCO v. Massachusetts  
Electric Company d/b/a National Grid and Verizon New England Inc.

Dear Ms. Green,

On behalf of Massachusetts Electric Company d/b/a National Grid (“National Grid” or the  
“Company”), enclosed is the Company’s Response to OTELCO’s Motion for Enforcement.

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**

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CRC COMMUNICATIONS LLC, D/B/A	)	
OTELCO	)	
	)	
<i>Complainant,</i>	)	
	)	
v.	)	D.T.C. 22-4
	)	
MASSACHUSETTS ELECTRIC COMPANY	)	
D/B/A NATIONAL GRID AND	)	
VERIZON NEW ENGLAND INC.	)	
	)	
<i>Respondents</i>	)	
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**RESPONSE OF MASSACHUSETTS ELECTRIC COMPANY D/B/A  
NATIONAL GRID TO MOTION OF CRC COMMUNICATIONS LLC D/B/A OTELCO**

**I. INTRODUCTION**

Massachusetts Electric Company, d/b/a National Grid (“National Grid” or the “Company”), submits its response to the February 21, 2023 pleading filed with the Department of Telecommunications and Cable (“DTC” or “Department”) by CRC Communications LLC d/b/a OTELCO (“OTELCO”) entitled, “Motion for Enforcement of the Final Order in D.T.C 22-4” (“Motion”).<sup>1</sup>

On October 11, 2022, the DTC issued a final order in the pole attachment complaint (“Complaint”) filed on April 14, 2022, by OTELCO against National Grid and Verizon New England Inc. (“Verizon”) (the “Order”). In the Order, the DTC granted in part and denied in part OTELCO’s Complaint. No motions for reconsideration or clarification were filed in the

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<sup>1</sup> By email dated March 21, 2023, Hearing Officer Bendetson established April 4, 2023 as the deadline for National Grid and Verizon to file responses to OTELCO’s Motion for Enforcement, and for any intervenor comments.

proceeding, and no party filed an appeal of the Order. For the reasons explained herein, the DTC should deny OTELCO's Motion on the following grounds: (1) the Motion is not permitted by the DTC's procedural regulations; and (2) the Motion exceeds the scope of the DTC's decision in D.T.C. 22-04, is based on an erroneous interpretation of several rulings and findings in the Order, and is supported by incorrect facts.

National Grid has made every effort to comply with the Order and has acted in good faith in its dealings with OTELCO to move OTELCO's pole attachment project forward. On November 15, 2022 (within a month of the Order), to accommodate OTELCO, National Grid offered to reroute the original applications to its Design group for resurvey and redesign, rather than require OTELCO to submit new applications, allowing OTELCO to avoid application fees and potentially save time. National Grid also provided a written analysis of its boxing determinations on a pole-specific basis for each of Poles 2, 3, 4, and 10, as the DTC directed. In response to OTELCO's request in its October 24, 2022 email to "box poles designated for replacement to avoid the expense of replacement," National Grid explained the need to resurvey the poles in OTELCO's applications, at OTELCO's cost, because the original surveys did not evaluate for boxing on a pole-by-pole basis, and were based on field conditions as they existed in 2021 and 2002. National Grid also explained the need to update the outdated make-ready estimates to reflect current field conditions, as well as updated labor rates and unit costs. National Grid specifically noted that the revised make-ready estimates would include findings on the feasibility of boxing poles scheduled for replacement resulting from the resurveys.

OTELCO's applications have not moved forward since the Order, not due any intransigence, delay tactics or inaction on the part of National Grid, but because OTELCO objects to National Grid resurveying the poles in its original applications and refuses to accept its

obligation to compensate National Grid for the cost of the resurveys. In every written and oral communication since the Order, National Grid has emphasized its desire to work with OTELCO to restart the application process and move forward expeditiously with OTELCO's pole attachments that had effectively stalled in April 2022 when OTELCO filed the initial Complaint.<sup>2</sup> At several points during teleconferences this winter, National Grid encouraged OTELCO to prioritize its pole attachment projects in order of importance and urgency, to better facilitate National Grid's ability to schedule OTELCO's projects as early as possible and ensure the availability of the necessary resources, in light of other construction work already in progress. While National Grid pointed out that other work had surpassed OTELCO's applications in the queue, including non-pole attachment construction work, the Company assured OTELCO that OTELCO's applications would not be relegated to the "back of the line," but would be scheduled as soon as possible and run in parallel with work on other projects. Because OTELCO refuses to agree to the need for resurveys and refuses to compensate the pole owners for the costs of the resurveys, OTELCO has failed to progress the restart of its pole attachment applications.

## **II. ORDER IN D.T.C. 22-04**

The following is a summary of the key findings and directives in the Order that are relevant to OTELCO's Motion:

### **A. "Boxing" or "Opposite Side Construction" on Poles**

The Department did not require the pole owners to allow boxing on all poles that OTELCO seeks to box (Order at 17).

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<sup>2</sup> The Company continued to work on OTELCO's applications to facilitate approval of the make ready designs and B2 Make Ready Work Estimates even after OTELCO filed the complaint on April 14, 2022, but OTELCO failed to return the B-2 Estimates within the required 14 days. Although OTELCO took no action to move the applications forward while the complaint was pending, National Grid did not exercise its right to cancel OTELCO's applications.

The DTC denied OTELCO's request to box any pole that may be accessible by "bucket truck, lift, or ladder" and found that OTELCO's general request for boxing was inconsistent with Department precedent (Order at 23).

The DTC required the pole owners to support any determinations to deny boxing "with sufficient reasoning" (Order at 21); Sufficient reasoning requires "more than a general preference for pole replacement, general claims of additional network burden, or claims of additional financial burden" (Order at 17).

National Grid was directed to provide specific reasons why Poles 2, 3, 4, and 10 cannot be boxed "when requested to do so by OTELCO" (Order at 21).

To provide pole-specific boxing determinations, pole owners should be afforded "an opportunity to revisit [the] poles" (Order at 21).

Pole owners can bill OTELCO for increased boxing costs, finding "the pole owners will be compensated for any costs that boxing adds" (Order at 19).

#### **B. Detailed Breakdown of Make-Ready Estimates**

The DTC held National Grid's refusal to provide detailed breakdowns of make-ready costs upon request of OTELCO was unreasonable (Order at 46).

The DTC directed National Grid to provide breakdowns of make-ready estimates, on a task-specific and pole-specific level, if requested by OTELCO (Order at 46).

#### **C. Make-Ready Timelines**

The DTC held that OTELCO's request for notice of access to the pole owners' poles within 45 days of its pole applications was moot (Order at 47).

The DTC denied OTELCO's request to require complete pre-construction surveys and engineering within 45 days on grounds the request was made for the first time on brief (Order at 48).

### **III. FACTUAL BACKGROUND**

The following is a timeline of events since the Department's Order:

#### **October 24, 2022:**

OTELCO requested via email that National Grid provide cost breakdowns on task-specific and pole-specific levels for applications that were summarized in an Excel file attached to OTELCO's email. The report was "broken out by summary by each municipality, with additional tabs for where make-ready has been received and not received," and the Company was asked to start with the Northampton applications.

OTELCO also requested in the same email that National Grid “pursuant to the [Order] . . . box the poles designated for replacement to avoid the expense of replacement.”

November 15, 2022:

- In compliance with the Department’s directive to provide specific reasons in support of the Company’s initial determination for declining to box Poles 2, 3, 4, and 10, National Grid provided a document entitled, “National Grid’s Response to OTELCO’s Request to Box Four Poles (T.8/E.68, T.3/E.73, T.276/E.64 and T.7/E.19).”
- National Grid stated that a resurvey of the poles in OTELCO’s pending applications will be necessary, at OTELCO’s cost, to determine whether it will be feasible to box any poles designated for replacement, as OTELCO requested.
- National Grid stated that the original make-ready estimates were no longer accurate do to the passage of time, and needed to be updated based upon current unit costs of equipment and labor costs.
- National Grid stated that the revised make-ready estimates will include National Grid’s reasons for any findings related to the feasibility of boxing poles scheduled for replacement that would result from the resurveys.

December 13, 2022:

Teleconference with OTELCO, National Grid and Verizon.

National Grid reiterated the key points from its November 15, 2022 email:

OTELCO’s applications must be rerouted for resurvey and redesign;

Make-ready estimates must be updated to reflect current labor rates, unit costs and updated survey data;

Resurvey of poles is required to make determinations on boxing; resurvey of poles is required to assess impact on adjacent poles; initial survey did not evaluate for boxing on a pole-by-pole basis;

National Grid cannot meet the timeframes requested by OTELCO until OTELCO agrees to pay for updated make-ready costs, and for the costs of the surveys;

National Grid cannot provide a task-specific breakdown on outdated/stale make-ready estimates that were based upon the original surveys.

January 13, 2023:

Teleconference with National Grid, OTECLO and Verizon.

National Grid reiterated the points made in the December 13, 2022 call related to the need for the resurveys due to constantly changing conditions in the field, and because boxing was not evaluated as part of the initial surveys.

National Grid pointed out that OTELCO's opposition to the resurveys seemed to be premised on an incorrect and overly expansive reading of the Order – *i.e.*, that the Order gave OTELCO the right to require the pole owners to allow boxing on all poles. National Grid acknowledged that the Order required the pole owners to support decisions to deny boxing with sufficient reasoning, and could no longer rely on a general policy against boxing, but that the Department had rejected OTELCO's general request for boxing.

National Grid also reiterated the importance of OTELCO providing a list of priority projects for resurvey and make-ready so that the Company could work OTELCO's projects into its construction schedule. The Company noted it had made the same request of OTELCO in December and again encouraged OTELCO to provide a list of priority applications as soon as possible if their goal was to expedite processing their applications.

Prior to closing the call, OTELCO stated it would discuss internally National Grid's request for a list of priority projects.

February 15, 2023:

National Grid sent an email to OTELCO following up on the January 13, 2023 meeting, reiterating its suggestion for a list of prioritization of work for resurveying and make-ready. OTELCO failed to respond.

February 21, 2023:

OTELCO filed the instant Motion for Enforcement of Final Order.

#### **IV. ARGUMENT**

##### **A. OTELCO's Motion is Procedurally Defective and Should be Dismissed.**

OTELCO requests that the DTC "enforce" the Order by: (1) prohibiting National Grid and Verizon from conducting new preconstruction surveys to determine the feasibility of boxing poles scheduled for replacement, and requiring OTELCO to pay for these surveys; (2) allowing

OTELCO to engage in self-help to construct its attachments by boxing poles under various circumstances; (3) imposing amendments to the pole attachments agreements of National Grid and Verizon; and (4) requiring National Grid to provide cost breakdowns of make-ready work on OTELCO's applications by March 15, 2023 (Motion, at 35-39). OTELCO's Motion is a transparent request to reargue and substantively amend the DTC's findings in the Order, months after expiration of the deadline for submission of post-order motions for reconsideration or appeal. OTELCO's Motion should be dismissed because it is procedurally invalid, and the requested relief is without legal basis.

According to the Department's procedural regulations, after issuance of a final order, only motions for recalculation, reconsideration or extensions of the judicial appeal period can be filed, and those motions must be filed within "20 days of service of a final Department Order." 207 CMR 1.10 (9), (10), and (11). OTELCO variably refers to its pleading as a "Motion for Enforcement" or a "Motion for Clarification and Enforcement" (Motion, at 39). Motions for clarification, however, like motions for reconsideration, must be filed within 20 days of a final order. Since the Order issued on October 11, 2022, the deadline for any motions for recalculation, clarification, reconsideration or extensions of the judicial appeal period was October 31, 2022. The instant Motion was filed 133 days after issuance of the final order in D.T.C 22-4. Since OTELCO's Motion was not filed within the deadline prescribed by the Department's procedural regulations, it should be dismissed.

OTELCO also states its Motion is being made pursuant to 207 CMR 1.04(5) (Motion, at 1). Section 1.04(5) of part 207 of the Code of Massachusetts Regulations refers to motions made before a hearing, during a hearing, and to address requests for protection from public disclosure – none of which is applicable to OTELCO's pleading. The applicable DTC regulations do not



discuss or contemplate motions for enforcement after a final order, and the general language of 207 CMR 1.04 cannot be interpreted to allow for motions after a final decision has been rendered. The section of the DTC's procedural regulations which specifically addresses motions within 20 days of a final order is 207 CMR 1.10, not 207 CMR 1.04. As there is no "catch-all" provision in the DTC's regulations that permits motions almost five months after a final order issues, OTELCO's Motion must be dismissed.

OTELCO also relies on 220 CMR 45.04 of the DTC's pole attachment regulations as a procedural basis for its post-order pleading (Motion, at 1). The DTC's pole attachment regulations contain various procedural provisions related to complaints, responses to complaints, and the time limit within which the DTC must issue a final order, but there is no provision for a "motion for enforcement of a final order" after entry of a final order. OTELCO's motion is not a new complaint, but a belated motion in a docket in which a final order has already issued. OTELCO cannot attempt to file a new complaint under the DTC's pole attachment regulations in the guise of a procedural motion in a docket which has already been adjudicated and in which a final order has issued. Accordingly, OTELCO's attempt to find a procedural hook for its Motion in the DTC's pole attachment regulations should be rejected.

OTELCO does not cite to any DTC precedent or Massachusetts court decision in support of its attempt to restart a proceeding after issuance of a final order. Interpreting 207 CMR 1.04(5) or 220 CMR 45.04 to allow parties to file substantive motions more than 20 days after a final order is issued would undermine the orderly adjudication of complaints by the DTC and the finality of agency decisions. As stated by the DTC's predecessor, "there is an important public interest in promoting the finality of Department orders." Dispatch Communications of New England d/b/a Nextel Communications, Inc., D.P.U./D.T.E. 95-59-B/95-80/95-112/96-13, at 8 (1999), citing

Nandy v. Massachusetts Electric Company, D.P.U. 94-AD-4-A at 5 (1994)). The Massachusetts Supreme Judicial Court has also declared that the "finality of administrative decisions is a significant concern - significant to the parties, to the agency, and to the public served by the agency." Alliance to Protect Nantucket Sound, Inc. v. Department of Pub. Utils, 461 Mass. 190, 195 (2011). In fact, granting this Motion would likely be reversible on appeal under G.L. 30A §14 (7)(d) as an "unlawful procedure." Accordingly, the DTC should dismiss OTELCO's Motion on grounds that it will undermine the finality of the DTC's order in D.T.C 22-4 by seeking to relitigate issues already decided, and to litigate new issues after issuance of a final order, and expiration of the appeal period.

**B. OTELCO's Attempt to Relitigate the DTC's Rulings on Boxing Should be Denied**

OTELCO's Motion also fails on the merits because the requested relief exceeds the scope of the Order, asks the DTC to take certain actions that exceed its agency authority, and attempts to create new rights for attachers outside a rulemaking procedure. OTELCO's Motion is not a good faith effort to enforce the decision in D.T.C. 22-4, but rather an attempt to reargue issues already decided, raise new arguments after conclusion of the proceeding, and get special and preferential treatment for pending pole attachment applications. OTELCO's pleading, while styled as a "motion to enforce" a decision, is actually a new pole attachment complaint, and to a lesser extent a request for a rulemaking proceeding. At its core, OTELCO's Motion is an attempt for a second bite at the apple with respect to boxing poles (See Motion at 21-27).

The main issues in dispute between National Grid and OTELCO with respect to boxing on poles are whether new preconstruction surveys need to be performed on the poles in OTELCO's applications, and whether OTELCO should pay for these new preconstruction surveys (Motion, at 2). OTELCO's position that National Grid is required "per the Order" to box all poles designated

for replacement,” without the need for resurveys, and at no cost to OTELCO, is contradicted by the Order (See OTELCO October 24, 2022 E-mail; Motion at 2)

The Department’s rulings in the Order with respect to boxing are clear. The Order states, “[a]s the Department makes clear, it is not requiring the pole owners to allow boxing on all poles that OTELCO seeks to box but is permitting the pole owners to deny boxing with sufficient reasoning.” Order at 17. The Order further states that OTELCO’s general request for boxing is inconsistent with Department precedent, and the DTC expressly denied OTELCO’s request to box any pole that may be accessible by “bucket truck, lift, or ladder.” Order at 23. The DTC directed the pole owners to give attachers specific reasons, on a pole-specific basis, as to why certain poles cannot be boxed when requested to do so, and these reasons “must be more than a general preference for pole replacement, general claims of additional network burden, or claims of additional financial burden.” Order at 21. The Department further stated that to support their boxing determinations, pole owners should be afforded “an opportunity to revisit these poles. Id. Finally, the Department held that the pole owners can bill attachers for the costs of boxing. Id. at 18-19 (“in the event the [pole owners] permit OTELCO to box poles, they can bill OTELCO for the increased costs that boxing causes” and that “pole owners will be compensated for any costs that boxing adds”). Finally, finding that National Grid had not supported its decisions to deny boxing on four specific poles, the DTC directed it to provide specific reasons why Poles 2, 3, 4, and 10 cannot be boxed “when requested to do so by OTELCO.” Id. at 21.

On November 15, 2022, following a field inspection of Poles 2, 3, 4, and 10, National Grid sent OTELCO an analysis of its boxing determinations for each pole. The Company declined OTELCO’s request to box the four poles and supported its determination, on a pole-specific basis, with detailed reasoning, including reference to the applicable provision of the National Electrical

Safety Code (“NESC”) and or the Company’s Electrical Standards and Specifications, as well as a diagram to illustrate the Company’s analysis of its determination for each of the four poles.

As National Grid noted in its November 15, 2022 email, to determine whether it will be feasible to box any poles designated for replacement in OTELCO’s pending applications, a resurvey of the poles would be necessary, at OTELCO’s cost. The DTC expressly stated that the pole owners should be afforded the opportunity to revisit any poles OTELCO requests to box. Order 22-4, at 21 (“The Department *will afford the pole owners the opportunity to revisit these poles*. If the pole owners maintain their position that these poles should not be boxed, they will have the opportunity to provide sufficient, specific reasoning to OTELCO.”)(emphasis added). Accordingly, National Grid has the right to conduct preconstruction surveys on poles OTELCO wants to box and has the right to charge OTELCO for the cost associated with boxing, including the costs of the surveys. Without preconstruction surveys National Grid cannot determine whether a pole designated for replacement is appropriate for boxing and provide “sufficient and specific reasoning in support of its determination.” The DTC should deny OTELCO’s request to prohibit National Grid and Verizon from conducting new preconstruction surveys on poles that OTELCO requests to be boxed as contrary to the Order.

1. National Grid has the Right to Conduct Resurveys to Make Boxing Determinations

To address OTELCO’s October 24, 2023 request to box all poles designated for replacement, National Grid has to resurvey the poles to determine the suitability of each pole for boxing. The preconstruction surveys conducted by National Grid as part of the initial application process did not examine the feasibility of boxing on a pole-specific basis, because the Company’s boxing policy generally prohibited boxing, except in limited circumstances. As the Order directed National Grid to evaluate each pole on an individual basis to assess where boxing may be feasible

from a reliability, safety, or engineering perspective, new preconstruction surveys are necessary to make pole-specific determinations. In the Order, the DTC acknowledged that the pole owners can deny boxing requests and provided a non-exhaustive list of valid grounds for denial: *e.g.*, poles with “sidetaps and guy-wire support;” “corner poles;” or poles on a “steep embankment.” Order at 22. The preconstruction surveys conducted by National Grid for OTELCO’s original applications did not collect or assess information related to sidetaps, guy-wire support, embankments, corner poles or other such detailed information that would enable the Company to make after-the-fact determinations on boxing. National Grid needs to perform new surveys on the poles in order to collect the relevant information needed to evaluate and assess whether there is a specific reliability, safety, or engineering reason why a pole should not be boxed.

OTELCO provides no support for the claim that National Grid already has all necessary information to evaluate OTECO’s request to box all poles designated for replacement, based upon the Company’s original survey data, amassed in the 2021-2022 timeframe (Motion, at 12-13). Regardless of whether the existing preconstruction surveys provide “pole height, class, the location of attachments and other equipment on the poles, and whether poles require make-ready or replacement to accommodate the attachment” (Motion, at 12), the surveys do not provide National Grid with the information it needs to make pole-specific boxing determinations. For example, the original surveys do not include information pertaining to sidetaps, or guy-wire support on the poles or whether any poles are located on embankments. New preconstruction surveys of each pole designated for replacement is necessary because, as the DTC noted, “there are many instances where a pole may be theoretically accessible by bucket truck, lift, or ladder, but a decision not to box the pole would still be reasonable.” Order at 23. A new preconstruction survey ensures that

National Grid has all relevant information necessary to assess whether there is a specific reliability, safety, or engineering reason why a pole should not be boxed, in compliance with the Order.

The Department should reject OTELCO new argument that National Grid and Verizon must develop a “definitive list of objective boxing standards” for review of OTELCO’s boxing requests (Motion, at 22-26). As the Order acknowledges, the determination as to whether a pole is feasible to be boxed is inherently a fact-specific, technical undertaking. The DTC has stated that, “[a]lthough poles inevitably have similarities, there are differences in poles’ surroundings and characteristics” and, consequently, “[a]ll poles are unique.” Order at 13. The DTC has recognized that a boxed pole could be unsafe or “jeopardize the reliability of the network due to the poles’ specific circumstances” even if the pole could be accessed by a bucket truck. *Id.* at 23. The Department should reject the proposal to develop a detailed, one-size fits all standard that attempts to capture all possible situations that would cause boxing to be unreasonable on a pole due to reliability, safety, or engineering reasons.

In its finding that allows the pole owners “the opportunity to revisit these poles,” the Department acknowledged National Grid’s right to resurvey the poles designated for replacement to assess suitability for boxing, on a pole-by-pole basis. See Order at 21. The DTC also acknowledged that National Grid can “refuse to box a pole for reasons of reliability, safety, or generally applicable engineering standards at the individual pole level.” Order at 13. The DTC directed National Grid to “examine OTELCO’s requests to box on a pole-specific basis.” Unless National Grid is able to resurvey the poles designated for replacement, it will be denied the opportunity to satisfy the boxing standard as modified in the Order . When a state agency adopts a new standard in an adjudicatory proceeding, “it must grant the party or parties to [the] adjudicatory proceeding the opportunity to satisfy the requirements of a new rule once that rule ...

is announced.” Boston Gas Co. v. Dep’t of Pub. Utils., 405 Mass. 115, 121 (1989). Once National Grid has collected pole-specific survey data, it will be able to assess which poles designated for replacement can feasibly be boxed, and if it determines that a pole should not be boxed, National Grid will be able “provide sufficient, specific reasoning to OTELCO.” Order at 21. This approach is consistent with the boxing directives in the Order.

## 2. National Grid has the Right to Charge OTELCO for the Resurvey Costs

National Grid’s right to charge OTELCO for the costs of resurveying the poles in OTELCO’s application for suitability for boxing is also supported by the Order. The DTC stated, “in the event the [pole owners] permit OTELCO to box poles, they can bill OTELCO for the increased costs that boxing causes,” and “pole owners will be compensated for any costs that boxing adds.” Order at 18-19. Charging OTELCO for surveys associated with its requests for boxing is consistent with basic cost causation principles, which the DTC has adopted. For example, the DTC has stated that “OTELCO is responsible for the full cost of the make-ready because OTELCO is the cost-causer.” Id. at 41. National Grid cannot make an informed determination whether a pole can or cannot be boxed, and support that determination with specific reasoning, as directed in the Order, unless it conducts new preconstruction surveys and physically revisits these poles. The cost of the resurveys must be charged to the entity seeking to box, which is OTELCO. The DTC should deny OTELCO’s request to prohibit National Grid and Verizon from charging OTELCO for resurveying the poles for suitability for boxing as contrary to the Order.

OTELCO makes the exaggerated and unsubstantiated claim that National Grid and Verizon are requiring OTELCO to pay “hundreds of thousands of dollars” to “perform preconstruction surveys for all poles on 95 previously submitted applications” (Motion, at 2). OTELCO is seeking

to box 1,800 Verizon poles of which 732 poles are jointly owned with National Grid (Motion, at 7). Requiring OTELCO to pay for the cost of resurveying the poles for suitability for boxing is consistent with the finding in the Order that the pole owners will be compensated by the attacher for any costs that boxing adds. The DTC has repeatedly recognized in pole attachment disputes that the entity that causes the cost to be incurred is the entity responsible to pay the costs. Recently, the DTC determined that “OTELCO is responsible for the full cost of the make-ready because OTELCO is the cost-causer, and OTELCO’s attachment is the primary reason the work is being completed.” Order at 41. Previously, the DTE ruled that “the entity seeking to add the new attachment is responsible for the costs associated with the rearrangement or replacement.” Complaint and Enforcement Pole Att. Rulemaking, D.T.E. 98-36, at 44 (2000). Because OTELCO is requesting that a pole be boxed, OTELCO is responsible for the costs associated with determining whether boxing is appropriate for that specific pole. Furthermore, in the Order, the DTC accepted cost causation principles with respect to boxing when it stated: “the pole owners will be compensated for any costs that boxing adds.” Order, at 19. The pole owners need these surveys to assess whether these poles can be boxed, and OTELCO, the entity seeking to box, needs to pay for them.

3. OTELCO’s Proposed Timelines Are Unreasonable and Exceed the Scope of the Order

OTELCO’s demands that National Grid make determinations on OTELCO’s requests to box poles designated for replacement by March 15, 2023 or in the alternative, if preconstruction surveys are performed, that National Grid be required to provide a response to OTELCO by April 29, 2023 (Motion at 36) exceed the scope of the Order. OTELCO’s proposed deadlines are also unreasonable in light of its own recalcitrance over the past several months over its obligation to pay for the costs of resurveying the poles for suitability for boxing. The Department should reject



OTELCO's arbitrary and unreasonable deadlines of March 15, 2023 and April 29, 2023 as unwarranted, and contrary to the Order. Moreover, the DTC has already rejected OTELCO's proposal to require National Grid to perform "pre-construction surveys and engineering within 45 days," noting that OTELCO had raised this proposed deadline for the first time in its reply brief. Order, at 48. The notion that this motion is seeking to "enforce" a deadline by which National Grid must perform its preconstruction survey is nonsensical since the proposed deadline was specifically rejected by the DTC in the same order.

OTELCO's requests that National Grid and Verizon submit reports in this docket within 15 days of when a boxing request is denied, and to allow OTELCO to file objections to any denial for adjudication in this docket, also exceed the scope of the Order (Motion, at 36-37). While the DTC directed National Grid to provide sufficient, specific reasoning to OTELCO if National Grid maintains its position that particular poles should not be boxed, there is no directive requiring National Grid to inform the DTC of its determinations. Order, at 21. If OTELCO disagrees with a pole owner's boxing determination, it has the option to file a complaint under the DTC's pole attachment regulations. The DTC should deny OTELCO's request to modify the pole attachment regulations and accord boxing disputes special procedural treatment.

C. The DTC should Deny OTELCO's Request to Engage in "Self-Help" for Boxing

OTELCO's request to be allowed to engage in "self-help" and box poles on its own initiative if it is dissatisfied with National Grid's response to boxing requests (Motion at 37) exceeds the scope of the Order and should be summarily dismissed. In fact, the DTC has previously denied requests to change its pole attachment regulations to allow pole attachers to engage in self-help. Joint Investigation instituting a rulemaking pursuant to Executive Order No. 562, D.T.C. 19-4/D.P.U. 19-76, at 24-25, 30, 33 (2021). Contrary to its procedural posture,

OTELCO is not seeking to “enforce” the Order but is attempting to change the DTC’s pole attachment regulations through a motion in a closed docket. OTELCO may not use this Motion as a proxy for a rulemaking.

D. OTELCO’s Request to Amend Bilateral Pole Attachment Agreements should be Denied

Finally, the DTC should decline to adopt OTELCO’s request, introduced for the first time in its motion to “enforce” the Order, to make material amendments to the pole attachment agreements of both Verizon and National Grid, (Motion, at 37-39). OTELCO’s belated request in this motion for the DTC to alter the terms of the Company’s bilateral agreement should be dismissed.

E. National Grid has Acted in Good Faith with Respect to Estimates of Make-Ready Work

The Order directed National Grid to “provide cost breakdowns to OTELCO on a task-specific and pole-specific level, if requested by OTELCO.” Order at 46. By email dated October 24, 2022, OTELCO requested, “cost breakdowns on task-specific and pole-specific levels for [applications listed in an Excel file].” National Grid responded by email dated November 15, 2022 noting that the original make-ready estimates were no longer accurate and needed to be updated based upon updated unit costs of equipment and labor, as well as a resurvey of the poles in OTELCO’s pending applications, at OTELCO’s cost. Since the same email included OTELCO’s request to box the poles designated for replacement to avoid the expense of replacement, National Grid further stated that the revised make-ready estimates will include National Grid’s reasons for any findings related to the feasibility of boxing poles scheduled for replacement that would result from the resurveys. OTELCO also demanded in its Motion that National Grid provide cost breakdowns of make-ready work on a task specific and pole-specific basis by March 15, 2023 (Motion, at 39).

To prepare valid and accurate make-ready estimates, National Grid needs to resurvey the poles in OTELCO's application to reflect current conditions in the field, as well as current labor and equipment costs. OTELCO's request for immediate task specific make ready estimates is circular, illogical and unreasonable because any make-ready estimates based upon stale survey data would by definition be obsolete at the time of issuance. Since National Grid cannot commence the resurveys until OTELCO remits the appropriate payment for the resurveys, which OTELCO refuses to do, National Grid cannot produce accurate and current costs breakdowns of make ready work on a task-specific and pole specific basis. Moreover, the same email in which OTELCO asked National Grid to provide detailed make-ready estimates also included OTELCO's request to box all poles designated for replacement. Since the original surveys lack the detail necessary to make the required determinations on boxing, new field surveys, at OTELCO's expense, are required. As National Grid has repeatedly explained to OTELCO, the make-ready estimates originally provided in 2022 are no longer valid and are based upon stale data and expired field surveys. In its November 15, 2022 email National Grid explained that due to the passage of time, the make-ready estimates National Grid provided for the poles in OTELCO's original applications must be updated to reflect current conditions in the field as well as updated unit costs of equipment and labor costs. National Grid further stated that to determine whether it would be feasible to box any poles designated for replacement, a resurvey of the poles in OTELCO's pending applications will be necessary, at OTELCO's cost, and that a cost estimate for resurvey for each application will be issued. National Grid agreed to conduct the resurveys and issue revised make-ready estimates, when OTELCO remits payment of the estimate. The revised make-ready estimates would include National Grid's reasons for any findings related to the feasibility of boxing poles scheduled for replacement.

Many of the original surveys of the poles in OTELCO's applications were conducted between 2021 and early 2022, making some of the data almost two years old, and therefore irrelevant for purposes of pole attachment costs estimation. All of the poles in OTELCO's applications, in particular the poles OTELCO wants to box, therefore, must be resurveyed because conditions in the field will have changed over the past two years. For example, attachments may have been added to certain poles that were not present when the poles were surveyed in 2021 or 2022, or trees may have fallen on poles during storms, requiring poles to be replaced with new poles. The Company's pole network and the configuration of attachments on its specific poles change continually due to weather conditions, subsequent pole attachments or other infrastructure projects. Since field conditions play a significant role in developing make-ready estimates for pole attachments, current survey data that is reflective of current pole condition is essential.

The Department should reject OTELCO's assertion that new surveys are not required due to the passage of time, based on the unsupported hypothesis it is unlikely that other licensees have attached to the affected poles since the original surveys were taken (See Motion at 16-17). OTELCO's position demonstrates a lack of understanding of National Grid's pole network in Massachusetts, or the extent to which the Company's network changes due to weather, infrastructure projects, system repairs or other pole attachment projects. Field surveys must be performed to determine the appropriate make-ready work.

As for OTELCO's request for Osmose to provide OTELCO with the same information it provides National Grid, the information OTELCO would receive from Osmose would not be of particular assistance to OTELCO since it would not capture all the relevant data in determining make-ready work estimates. National Grid will provide OTELO with make-ready work estimates on a task specific and pole-specific basis after they have been updated to reflect current field

conditions and cost increases, which will occur after the new surveys are completed on the poles in OTELCO's application. In that way, both National Grid and OTELCO will have the most accurate estimates possible for the anticipated make-ready work.

In its November 15, email response to OTELCO, National Grid offered OTELCO two options, either to route OTELCO's applications back to Design for resurvey and redesign (which would save OTELCO the cost of new application fees) or, to cancel the pending applications and permit OTELCO to resubmit new applications. Under either scenario, National Grid would perform updated make-ready estimates based upon current costs and field conditions, and upon request, consistent with the Order, National Grid would provide cost breakdowns on task-specific and pole-specific levels based upon updated make-ready costs. Until OTELCO agrees to pay for the resurvey of the poles, therefore, National Grid cannot provide accurate make-ready estimates supported by breakdowns on task-specific and pole-specific levels. OTELCO's refusal to pay for the resurvey costs has created uncertainty as to how and whether OTELCO will proceed with its deployment.

## **V. CONCLUSION**

OTELCO's Motion is procedurally flawed, is not permitted under the DTC's regulations, and is an attempt to introduce new claims that should have been raised during the proceeding. OTELCO's Motion is not a motion to enforce the DTC's Order in D.T.C. 22-4, but is actually an attempt to raise new arguments in support of relief that exceed the scope of D.T.C. 22-4. It is a thinly disguised effort by OTELCO to get special and preferential treatment for its pole attachments. In contrast, National Grid has worked in good faith to implement the Order. Consistent with the Order, National Grid will revisit OTELCO's applications, including its

requests to box certain poles, following new preconstruction surveys of all poles in OTELCO's applications; the cost of which should be charged to OTELCO based on cost-causation principles.

For all these reasons, National Grid requests that the D.T.C. dismiss OTELCO's Motion.

Respectfully submitted,

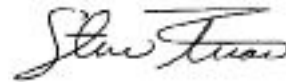
Massachusetts Electric Company  
d/b/a National Grid

By its attorneys,



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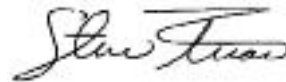
Date: April 4, 2023

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

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



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Dated: April 4, 2023