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August 29, 2023

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

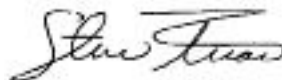
Re: D.T.C. 22-4 – CRC Communications LLC d/b/a OTELCO v. Massachusetts Electric Company d/b/a National Grid and Verizon New England Inc.

Dear Ms. Green,

Massachusetts Electric Company d/b/a National Grid (“National Grid”) and Verizon New England Inc. (“Verizon”) (together the “Companies”) hereby appeal the Hearing Officer Ruling Granting Reconsideration and Reopening Administrative Record Regarding Resurvey Issue dated August 22, 2023 (“Ruling”) to the Commissioner of the Department of Telecommunications and Cable (“DTC” or “Department”). Attached is a copy of the appeal of the Companies and a copy of the Ruling being appealed.

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	)	
	)	
<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>	)	
	)	

**APPEAL OF THE HEARING OFFICER RULING  
AND MOTION TO STAY  
BY MASSACHUSETTS ELECTRIC COMPANY D/B/A NATIONAL GRID AND  
VERIZON NEW ENGLAND INC.**

Massachusetts Electric Company d/b/a National Grid (“National Grid”) and Verizon New England Inc. (“Verizon”) (together the “Companies”) under the provisions of G.L. c. 30A, § 11(8) and 207 C.M.R. 1.06(d) hereby appeal the Hearing Officer Ruling Granting Reconsideration and Reopening Administrative Record Regarding Resurvey Issue dated August 22, 2023 (“Ruling”) to the Commissioner of the Department of Telecommunications and Cable (“DTC” or “Department”) in the above-captioned proceeding. Further, considering the fundamental order finality and due process issues at stake, the Companies respectfully request a stay of filing any new evidence pending the Commissioner’s decision.

The Hearing Officer erred in the Ruling by: (1) allowing the CRC Communications LLC d/b/a OTELCO (“OTELCO’s”) Motion for Enforcement, filed over four months after the Department’s Final Order issued on October 11, 2022 (“Order”), as a motion for

reconsideration; and (2) reopening the record to resolve a new claim by OTELCO that was not raised before the Order issued. As described in more detail below, the Commissioner should reverse the Ruling as there are no “extraordinary circumstances” justifying reconsideration, and allowing such late-filed motions without good cause would substantially weaken the finality of the Department’s orders. Furthermore, the Ruling sets up minimal procedures to adjudicate OTELCO’s new claim, without the safeguards of the Companies’ due process rights provided by the Department’s Pole Attachment Rules and the Massachusetts Administrative Procedures Act. Whether OTELCO’s new claim is adjudicated in this proceeding or another one, the Companies must be afforded those procedural rights.

## **I. PROCEDURAL BACKGROUND**

On October 11, 2022, the DTC issued a Final Order on the pole attachment complaint (“Complaint”) filed on April 14, 2022, by OTELCO against National Grid and Verizon. The Order makes several key findings with respect to OTELCO’s request to “box” or use “opposite side construction” on poles for its attachments:

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

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 “specific reasons on a pole-specific basis” (Order at 21); “[I]f the pole owners have specific safety, reliability, or engineering issues regarding a specific pole, they can deny OTELCO’s request to box that pole, and that denial would be reasonable.” (Id.)

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).

Pursuant to G.L. c. 25, § 5, G.L. c. 166A, § 2, and 207 C.M.R. 1.10 (10), any appeals of the Order, including motions for reconsideration and clarification, were due by October 31, 2022. No party filed a timely appeal or motion within that period. Four months later, on February 21, 2023, OTELCO filed a motion entitled “Motion for Enforcement of the Final Order in D.T.C 22-4” (“Motion for Enforcement”). Among many other things, this motion asked the Department to determine whether it is reasonable for the Companies to require supplemental pole surveys to determine whether any of the poles scheduled for replacement are suitable for boxing under the new standard set forth in the Final Order. On April 4, 2023, National Grid, Verizon, and the DTC’s sister agency, the Department of Public Utilities (“DPU”), filed responses to OTELCO’s Motion for Enforcement, pursuant to the Hearing Officer’s set due date.<sup>1</sup> On April 18, 2023, OTELCO filed a Motion for Leave to File a Reply and Supporting Evidentiary Material (“Motion for Leave”). On May 11, 2023, National Grid, Verizon, and the DPU submitted responses.

The Ruling issued on August 22, 2023: (1) grants reconsideration of the Order for the limited purpose of providing further detail to implement that Order; (2) grants OTELCO’s Motion for Leave to file new evidence regarding the dispute over whether National Grid and Verizon may require OTECLO to pay for new field surveys to make a determination on whether boxing may be permitted; and (3) invites any party or intervenor to file evidentiary documents with the DTC that are not already included in the record by September 21, 2023 on the resurvey issue. The Hearing Officer also issued Information Requests to the Companies to supplement the record regarding

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<sup>1</sup> Prior to 2007, the Department of Telecommunications and Cable (“DTE”) was the predecessor organization of the DTC, and prior to 1996, DTE was named the Department of Public Utilities (“DPU”). The DTC has ruled that it will rely on the precedent established by its predecessor agency, even though that decision was established in non- telecommunications cases. *Statewide Emergency Telecommunications Board*, D.T.C. 07-07, at 7, fn. 5 (2008).

resurvey, also due on September 21, 2023. The Ruling does not provide for an opportunity to submit rebuttal evidence on the resurvey issue or other process under G.L. c. 30A, § 11.

## **II. THE HEARING OFFICER ERRED BY ALLOWING RECONSIDERATION OF THE FINAL ORDER AND REOPENING THE RECORD.**

### **A. The Motions do not present any extraordinary circumstances justifying reconsideration of the Final Order or reopening the record here.**

The well-established standard on which the Department will consider a motion for reconsideration is that:

Reconsideration of previously decided issues is granted only when extraordinary circumstances dictate that we take a fresh look at the record for the express purpose of substantively modifying a decision reached after review and deliberation.

*Cablevision of Boston, Inc.*, D.T.E. 97-82 at 7 (March 5, 1998) (interlocutory order) (additional citations omitted). The Department has explained that extraordinary circumstances warranting reconsideration include previously unknown or undisclosed facts that would have significant impact upon the decision already rendered and are newly brought to light, or whether an issue was wrongly decided due to the agency's mistake or inadvertence. *Boston Edison Company*, D.P.U. 90-270-A at 2-3; *Massachusetts Electric Company*, D.P.U. 90-261-B at 7 (1991); *New England Telephone and Telegraph Company*, D.P.U. 86-33-J at 2, 25-26 (1989); *Boston Edison Company*, D.P.U. 1350-A at 5 (1983).

The Ruling cites *Cablevision* for the "extraordinary circumstances" standard but then goes on to find that, "Here, the parties' post-order filings have demonstrated that the Department's Order, which was issued on October 11, 2022, left open to dispute several details regarding the implementation of the Order. For this reason, the Department grants reconsideration of the previous Order for the limited purpose of providing further detail to effectuate that Order." *Id.* at 4. However, the lack of detail in the Order regarding future implementation is not extraordinary circumstances justifying reconsideration of the Final Order. An example of

extraordinary circumstances that would justify a motion for reconsideration would be a showing that “a fraud may have been worked on the administrative agency.” *Stowe v. Bologna*, 32 Mass. App. Ct. 612, 616 (Mass. App. Ct. 1992). A Final Order that left open certain details regarding implementation does not come close to constituting extraordinary circumstances.

The Final Order fully addressed all of the issues alleged in OTELCO’s complaint in this action. An order need not contemplate every situation which may occur as a consequence of its directives. In fact, in the regulatory context, companies must routinely change their practices in response to decisions from the DTC and the DPU. A dispute arising from such new practices does not affect the merits of the original order. There is simply nothing extraordinary about an Order which does not address every potential issue that may arise from its implementation in the future.

That the Department did not anticipate in its order that a new dispute might arise in the future as a consequence of the Order is unremarkable. Indeed, the Department was in no position to render a decision on a claim – the reasonableness of conducting new surveys to collect the data necessary to determine whether certain poles may be boxed consistent with the Order – that had not been alleged in any pleading, was not the subject of any evidence or testimony submitted to the Department and had not been briefed. The Department could not have decided that issue in the Final Order, so its failure to do is not an extraordinary circumstance that supports substantively modifying that Order. This is especially so given that denying the Motions would not prejudice in any way the ability of OTELCO to seek relief on its alleged claim by filing a new complaint with the Department under the Pole Attachment Rules. That would also ensure the Companies the procedural rights afforded them under those Rules and the Administrative Procedures Act.

B. Granting the Motions without a showing of good cause substantially weakens the finality of the Department's decisions.

When a motion for reconsideration is late filed, the movant must meet the standard for reconsideration and also provide good cause for the lateness of the motion. *Global NAPS-Verizon*, D.T.E. 02-21-A, at 6 (2003). "Good cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of any underlying statutory or regulatory requirement and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party." *Id.*, at 6, fn. 4. OTELCO has made no showing of good cause here. It asserts in the Motion for Leave, at ¶ 7, that the details regarding potential safety, network or engineering issues on specific poles were "not put in issue until the Pole Owners claimed they did not have sufficient information to evaluate OTELCO's requests...." However, the Companies informed OTELCO of the need for additional surveys during their first discussion of OTELCO's request to box these poles, on November 30, 2022. OTELCO has offered no basis, let alone good cause, why it delayed an additional three months before filings its motion.

Moreover, the Ruling does not properly consider the damaging effect that granting the late-filed motions has on the finality and "resolving force" of the Department's decisions. The Massachusetts Supreme Judicial Court has 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). An administrative agency "stood on firm ground in requiring demonstration of a compelling reason to reopen" the record "after the agency's final decision has issued." *Id.*, at 195. Massachusetts courts have further recognized that "the power [to reopen hearings] must be

sparingly used if administrative decisions are to have resolving force on which persons can rely.” *Stowe v. Bologna*, 32 Mass. App. Ct. 612, 616 (1992).

Granting OTELCO’s Motion, where OTELCO has offered no reasonable basis for its lengthy delay in filing and where denial of the Motion would not prejudice any rights of OTELCO (because it would still be free to seek adjudication of its alleged claim by filing a new complaint under the Department’s rules), would set a poor precedent and would raise doubts as to the force of the Department’s orders. In fact, unless this Ruling is reversed, the Department should expect more of these types of Motions in the future, creating a regulatory environment of uncertainty for all interested parties.

Furthermore, the Ruling improperly relies on *Cablevision*, *Doe*, and *Stowe*. The Ruling states that the DTC may “grant reconsideration *at any time* where ‘extraordinary circumstances’ dictate that the Department ‘take a fresh look’ at a proceeding after issuing a final order. *Id.*, citing *Cablevision*, *supra* (emphasis added). The Ruling also cites to *Doe v. Sex Offender Registry Bd.*, 99 Mass. App. Ct. 533, 537-538 (2021), quoting *Stowe v. Bologna*, 32 Mass. App. Ct. 612 (Mass. App. Ct. 1992), for the proposition that “administrative agencies possess an inherent power to reconsider their decisions.”

In *Cablevision*, the Department *denied* a timely motion for reconsideration both on substantive grounds (finding no extraordinary circumstances present) and separately on the procedural ground that the motion did not comply with the Department’s rule. See *Cablevision* at 5-7. Further, the motion to reconsider in *Cablevision* was filed one day after the relevant order was issued, and there was no issue as to its timeliness, so the decision does not support a conclusion that the Department may allow a late-filed motion for reconsideration without considering the harm that doing so would visit on the finality of Department orders. Therefore,

*Cablevision* is not precedent for approving the late-filed motion for reconsideration here.

Nor does *Doe* support the Ruling here. The issue in that case was whether the plaintiff would be allowed reconsideration of his classification as a level-three sex offender. See Doe, supra, at 537-538. Although the Appeals Court noted that the agency there had authority to revisit its prior decision in order “to mitigate a miscarriage of justice,” *id.* at 538, it nevertheless upheld the agency’s refusal to reopen that decision. OTELCO faces no “miscarriage of justice” here in any event, in light of its ability to file a new complaint under the Pole Attachment Rules.

Further, although *Stowe v. Bologna* recognized that “administrative agencies possess an inherent power to reconsider their decisions,” it also stated that through its “procedural rules” an administrative agency will “prescribe reasonable criteria and time limits for reconsideration.” *Stowe v. Bologna*, 32 Mass. App. Ct. 612, 619 (Mass. App. Ct. 1992). *Stowe* recognizes that administrative agencies can reconsider a decision but it does not give an agency *carte blanche* to ignore its own procedural rules or precedent to do so.

On this issue, the Department should heed the advice of the DPU, which noted that they “shared the same procedural regulations until 2017” and “the same precedent prior to the reorganization that took place in 2007” (DPU Comment Letter, D.T.C. 22-4, at 2, fn.1 (April 4, 2023)). The DPU recommended that the DTC not allow the Motion for Enforcement or Motion for Leave, stating:

“Through its Motion [for Enforcement], submitted several months after the 20-day filing deadline, OTELCO improperly seeks to reargue issues already decided by the DTC in this proceeding and raises new issues for the first time.” DPU Comment Letter, D.T.C. 22-4, at 3 (April 4, 2023) (emphasis added).

“[W]ell-established administrative practice for our agencies and basic due process considerations require denial of a request to admit new evidence on a closed record involving an issue that was not adjudicated by the parties in the underlying proceeding. Further, admittance of any new evidence at this stage of the proceeding, nearly seven months after issuance of the final Order, would be highly

irregular and improper and likely a violation of the State Administrative Procedure Act, G.L. c. 30A.” DPU Comment Letter, D.T.C. 22-4, at 2 (May 10, 2023) (emphasis added).

Therefore, DPU, which is bound by similar precedent and regulations as the Department, came to the exact opposite conclusion as the Ruling. The Ruling is erroneous and should be reversed.

### **III. THE RULING FAILS TO COMPLY WITH THE MASSACHUSETTS ADMINISTRATIVE PROCEDURES ACT**

An agency decision must be set aside or modified if the substantial rights of any party may have been prejudiced because the agency decision is, *inter alia*, made upon unlawful procedure, unsupported by substantial evidence, unwarranted by the facts, arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with law. M.G.L.A. 30A § 14.

As described above, the Ruling does not explain how the “several details regarding the implementation of the Order” constitutes “extraordinary circumstances” to justify reconsideration. In addition, the process laid out in the Ruling for the Department to decide OTELCO’s new claim does not afford the Companies the procedural rights granted them by the Administrative Procedures Act and the Department’s regulations. The Ruling asks for new evidence on the resurvey claim, but it fails to provide any opportunity to offer rebuttal, in the form of rebuttal evidence or argument, to any evidence that may be offered. See M.G.L.A. 30A § 11(1) (parties shall be afforded “reasonable opportunity to prepare and present evidence and argument”) and § 11 (3) (providing for “the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, and to submit rebuttal evidence.”). The Companies have not waived any of these rights, in that the resurvey issue was not raised in the pleadings and only arose as a result of the Order.

**IV. THE DEPARTMENT SHOULD STAY THE REQUESTS FOR ADDITIONAL EVIDENCE PENDING AN ORDER ON THIS APPEAL.**

Pending the Commissioner's determination on the Companies' appeal of the Ruling, the Companies request a stay of the proceeding with respect to: (1) responding to the DTC's Third Set of Information Requests due on September 21, 2023; and (2) allowing any interested party to file new evidence regarding resurveys by September 21, 2023. Ruling at 5-6. Given the fundamental procedural issues at stake, the introduction of untimely evidence with no opportunity for rebuttal would eliminate core rights of the Companies afforded under G.L. c. 30A. To move forward with this fundamentally flawed process would be administratively inefficient for all the parties and the Department. For these reasons, no further evidence should be submitted until the Commission's decision on this appeal.

**V. CONCLUSION**

For all these reasons, the Companies request that the Commissioner find that the Motion For Enforcement and its Motion for Leave were granted in error and that the Commissioner deny those motions.

Respectfully submitted,

VERIZON NEW ENGLAND INC.  
d/b/a VERIZON MASSACHUSETTS

By its attorney,



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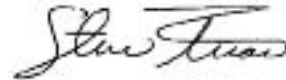
MASSACHUSETTS ELECTRIC  
COMPANY d/b/a  
NATIONAL GRID

By its attorneys,



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Date: August 29, 2023



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

D.T.C. 22-4

August 22, 2023

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

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

**I. Introduction and Procedural History**

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

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

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

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

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

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

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

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

## II. Motion for Enforcement

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

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

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

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

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

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

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

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

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

**IV. Conclusion**

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

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

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

NOTICE OF RIGHT TO APPEAL

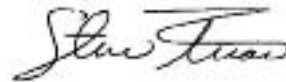
Under the provisions of G.L. c. 30A, § 11(8) and 207 C.M.R. 1.00, any aggrieved party may appeal this Ruling to the Commissioner by filing a written appeal with supporting documentation within five (5) days of this Ruling. A copy of this Ruling must accompany any appeal. A written response to any appeal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

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

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>	)	
	)	

**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: August 29, 2023