

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

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

**OPPOSITION OF VERIZON MA TO MOTION
FOR ENFORCEMENT OF THE FINAL ORDER**

Verizon New England Inc., d/b/a Verizon Massachusetts (“Verizon MA”) opposes the “Motion for Enforcement of the Final Order in DTC 22-4” filed by OTELCO in the above proceeding on February 21, 2023 (“the Motion”).

The Motion fails on both procedural and substantive grounds. First, the Motion is not properly before the Department. It comes months after the Department issued the Final Order in this docket on October 11, 2022 (“the Order”), and months after the time periods in which to seek reconsideration or take an appeal expired. *See* 207 CMR § 1.10(10) and (11). In an effort to circumvent the Department’s rules and deadlines, the Motion claims to seek “enforcement” of the Order, but the extensive relief OTELCO actually requests in the Motion has no basis in any directive in the Order and in at least one respect was rejected outright in the Order. *See* Argument Part I, below.

The Motion also fails on the merits. OTELCO’s key claim is that Verizon MA and National Grid (“the Pole Owners”) have violated the Order by requiring supplemental pole surveys in order to evaluate a new request by OTELCO to box 732 specifically-identified poles. Nothing in the Order, however, prohibits supplemental surveys or finds that they would not be

appropriate in the present circumstances. To the contrary, supplemental surveys are necessary here because the original surveys were conducted before the Order was issued and do not provide the information needed to determine whether the poles at issue are suitable for boxing under the standard established in the Order. Specifically, the original surveys do not indicate whether there are conditions on a pole that would raise specific safety, reliability, or engineering issues regarding that pole if the pole were to be boxed. *See* Argument Part II.A, below.

O TELCO's other claims fare no better. It asserts that Verizon MA's standards for assessing new requests to box poles are discriminatory, subjective and incomplete, but those standards are directly based on the ruling in the Order that Verizon MA reasonably declined to allow boxing of specific poles that have side-taps, are corner poles or stand on an embankment. O TELCO failed to testify or argue in briefs that these objections are discriminatory, and the Department should not consider it now. Nothing in the Order, moreover, entitles O TELCO to an exhaustive or definitive listing of all conditions in the field that might disqualify a specific pole from being boxed. And the Department should reject O TELCO's latest effort to introduce new evidence, allegedly showing discrimination in Verizon MA's boxing policy, many months after the record in this case was closed – just as the Department rejected O TELCO's previous such effort. *See* Argument Part II.B, below.

O TELCO's claims that the Pole Owners' have failed to "promptly" evaluate its new request to box poles and that their general make-ready process takes too long are not supported in the record. The Pole Owners are not further along in addressing O TELCO's new request to box certain poles only because O TELCO refuses to accept the need for supplemental surveys. The Order does not dictate the procedure by which the Pole Owners must address requests to box poles in any event, nor does it purport to decide whether the Pole Owners' overall make-ready

performance is reasonable. That is not surprising, given that these claims were not included in the Complaint. As it happens, however, Verizon MA has demonstrated in this case that its make-ready performance is more than reasonable. *See* Argument Part II.C, below.

THE FACTS

On October 25, 2022, two weeks after the Department issued the Order, Verizon MA received an email from OTELCO “requesting reconsideration of the make-ready determination of several of the pole replacements in applications pending in Massachusetts. OTELCO seeks to box the poles to avoid replacement.” *See* Declaration of David Allen dated February 21, 2023 (“Allen Decl.”), Exhibit A. Spreadsheets attached to the email identified more than 1,800 poles to be boxed, including 732 poles in National Grid service areas, *see* Motion at 7, encompassing all of the poles that were scheduled for replacement in Verizon MA’s make-ready estimates. The October 25 email was the first time OTELCO had asked to box these poles.

In response, Verizon MA stated that it “is willing to reconsider our current make-ready determination for the poles identified in the attachments” and went on to explain that it would need to resurvey the poles “[i]n order to determine whether these poles are suitable for boxing....” *See* email from David Wolanin to Debbie Brill-Poulin dated November 14, 2022, included in Allen Decl. Ex. A. Verizon MA also explained the administrative process it would need to follow to obtain the new surveys and issue new make-ready estimates, “which will identify any poles allowed to be boxed and also include the basis for any finding that a pole scheduled for replacement is not suitable for boxing.” *Id.* Verizon MA also offered to meet with OTELCO and the other pole owners.

There followed a series of conference calls between OTELCO, Verizon MA and one or the other of National Grid or Eversource, depending on the call. On the first call, on November

30, Verizon MA explained that new pole surveys were needed because while the original pole surveys show the height of each attachment on each pole, they do not include information Verizon MA would need to determine whether a particular pole would be suitable for boxing under the Order, such as the lay of the land and the direction(s) of the lines on the poles. Verizon MA also explained that boxing a pole may affect the planned height of the attachments on the poles on either side of the pole to be boxed and potentially an entire line of poles. Because Verizon MA's back-office systems do not have the ability to automatically issue new survey estimates, order new pole surveys or reconcile the results of the new surveys with the results of the original surveys, Verizon MA initially stated that OTELCO would need to cancel the applications affected by its new boxing request and resubmit them. An OTELCO representative said that they understood the need to re-survey the poles they wanted to box and those on either side, but that there should be no need to resurvey other poles in an application. OTELCO also protested the cost and time it would take to cancel and resubmit the affected applications.

On the November 30 call and in a later email, OTELCO asked for additional information regarding the status of its applications and Verizon MA's process for addressing OTELCO's new boxing request. Verizon MA responded with a lengthy email on December 13, 2022, in which, among other things, it laid out the standards it intended to apply in considering OTELCO's new boxing request and agreed that OTELCO could accompany Verizon MA's vendor on the supplemental field surveys. *See* email from David Wolanin to David Allen dated December 13, 2022, included in Exhibit A to the Allen Decl. Attached to the email was a detailed spreadsheet showing the status of each OTELCO application (for both Eversource and National Grid municipalities), including for each application the number of poles to be set by each pole owner, comments as to the status of the application and, for applications that had been sent to

construction, an estimate of the percentage of work completed to date and the number of poles that had already been replaced. This information was intended to “help OTELCO choose which applications it might want to cancel and resubmit and which ones it wants to move forward on.” *See id.* The spreadsheet itself is included in Allen Decl. Ex. B. as file “Otelco Status 12.9.22.”

Additional calls were held on December 13, 2022, and January 13, 2023, at which the Pole Owners, Eversource and OTELCO continued to try to reach agreement on a process for addressing OTELCO’s new boxing request. On the December 13 call, for example, Verizon MA reiterated that the original pole surveys do not include information necessary to assess whether a particular pole was suitable for boxing under the Order, and specifically that they do not state whether a pole is a corner pole, has side-taps or is on an embankment. National Grid explained that supplemental surveys were also needed because conditions change on the poles over time, and the original surveys were getting stale.

In response to the concerns OTELCO had expressed regarding the cost and speed of the process, Verizon MA developed a work-around for initiating the supplemental surveys and stated on the January 13 call that OTELCO would not need to cancel and then resubmit its applications. Verizon MA also explained that it would work with its survey vendor, Pike, to dedicate staff solely to performing the supplemental surveys, so that this work for OTELCO would not “go to the back of the line” but would be addressed in parallel with survey work on other projects, such as make-ready surveys for other third-party attachers.¹ In addition, Verizon MA proposed to plan the new surveys to cover only the poles OTELCO seeks to box and those to the immediate right and left, and to leave it to the surveyors in the field to determine whether additional poles

¹ Theoretically, this dedicated team would also work on supplemental surveys for other applicants who ask to box poles that had been surveyed before the Order was issued. To date, however, no applicant other than OTELCO has made such a request.

need to be surveyed. OTELCO expressed concern that it still could not predict how many poles it would be able to box, so Verizon MA proposed that the parties run one or two applications selected by OTELCO through the new process as a trial to see how many of the subject poles would qualify to be boxed. At the end of the call, OTELCO stated that it would need to consider how it wished to proceed. The Motion followed a month later.

ARGUMENT

I. The Motion is not properly before the Department and must be denied.

The Motion was filed on February 21, 2023, far too late to be considered in this docket. The Department had issued the Order more than four months previously, and no party sought reconsideration or took an appeal within the 20-day timeframes provided in the Department's rules. *See* 207 CMR § 1.10(10) and (11). In addition, and despite its title, the Motion does not seek to enforce any directive or requirement imposed on the Pole Owners in the Order. Rather, the extensive relief OTELCO actually requests in the Motion has no basis in, and goes far beyond, anything provided in the Order.

Among many other things, the Motion asks the Department: (1) to require the Pole Owners to decide OTELCO's new boxing request by March 15, 2023; (2) to prohibit the Pole Owners from conducting supplemental surveys to determine if the affected poles are suitable for boxing under the standard established in the Order; and (3) to require the Pole Owners to report to OTELCO and the Department on any boxing request that they deny. *See* Motion at 36. The Order itself, however, imposes no such deadline, prohibition or reporting requirement. Indeed, the Order rejected almost all of the claims in the Complaint, including OTELCO's general claim that it should be allowed to box any pole accessible by bucket truck. *See* Order at 13, 23. The only relief of any kind that the Order granted on the Complaint with respect to Verizon MA was the finding that the Pole Owners had not offered sufficient grounds to deny OTELCO's request

to box four specific poles. Even on that issue, however, the Department noted that, “[t]o clarify, the Department is not directing the pole owners to box these four poles.” Order at 21. On the issue of boxing, then, the Motion does not seek to enforce any directive or requirement in the Order but seeks relief wholly new to this case, not sought in the Complaint or granted in the Order.

The Motion also asks the Department to impose deadlines on the make-ready process, provide OTELCO a right to self-help, implement a One-Touch Make-Ready (“OTMR”) regime, and reform the Pole Owners’ attachment agreements. *See* Motion at 30-33 and 36-39. The Order itself provides no such relief. In fact, the Department already rejected in the Order OTELCO’s similar demand to impose “commercially reasonable timeframes” on the make-ready process, on the ground that no such claim was stated in the Complaint. *See* Order at 49. That reasoning still applies, and the Department should again reject OTELCO’s efforts to assert claims and obtain relief not sought in the Complaint.

Because the Motion does not seek to enforce any directives in the Order but in fact seeks wholly different and further relief either not addressed in the Order or rejected in the Order, it is not a motion the Department can consider in this proceeding many months after the Order was issued, with no timely motion for reconsideration or appeal pending.

II. The Motion fails on the merits. None of its claims has any basis in law or fact.

A. The Pole Owners’ requirement of conducting supplemental surveys is consistent with the Order.

OTELCO asserts that the Pole Owners are in violation of the Order by requiring supplemental surveys in order to evaluate OTELCO’s new request to box 732 poles and by requiring OTELCO to resubmit its pole attachment applications. *See* Motion at 12. These claims are inconsistent with the Order and the facts. The Order does not prohibit the use of

supplemental surveys, and new surveys are necessary because the original surveys do not show whether a specific pole is suitable for boxing under the Order. Boxing a pole may affect where OTELCO may attach to the neighboring poles, which need to be resurveyed as well. Changes on the poles since the original surveys were conducted must also be accounted for in order to determine the appropriate make-ready work to prepare the poles for OTELCO's new attachments.²

1. Supplemental surveys are necessary because the original surveys do not provide the information needed to determine whether poles are suitable for boxing under the standard established in the Order.

The Pole Owners cannot properly determine whether any of the poles OTELCO now wants to box is suitable for that treatment under the standard established in the Order – *i.e.* whether boxing a particular pole would raise “specific issues of safety, reliability or engineering specific to [that] pole,” Order, at 21 – without conducting supplemental surveys, because the original surveys lack the relevant information.

OTELCO asserts that the Pole Owners are in violation of the Order because they “refuse to evaluate OTELCO’s pole attachment applications involving boxing requests based on the already completed preconstruction surveys....” Motion at 12. Nothing in the Order, however, makes any finding on whether the original surveys, which were conducted before the Order was issued and before OTELCO asked to box these poles, provide a sufficient basis for evaluating OTELCO’s new request, and OTELCO does not point to any language in the Order prohibiting the use of supplemental surveys.

² OTELCO’s claim that the Pole Owners require it to cancel and resubmit its applications is demonstrably false. As noted above, Verizon MA told OTELCO on January 13 that it would *not* need to cancel or resubmit its applications. And OTELCO’s own witness agrees. *See* Allen Decl., ¶ 22, stating that on the January 13 call, “Verizon also reiterated that poles would need to be resurveyed, but proposed that, rather than canceling all applications, they would resurvey the poles without requiring cancellation and reapplication.” National Grid has not required resubmission either.

On the contrary, the Order makes it necessary to collect additional information in order to evaluate OTELCO's new request. The Department held in the Order that it "considers the question of whether it is reasonable to refuse to box a pole for reasons of reliability, safety, or generally applicable engineering standards at the individual pole level." Order at 13. The Department further ruled that the Pole Owners may not deny a request by OTELCO to box a pole (rather than pay for it to be replaced) due to general concerns, such as cost or network reliability, but that if they 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." Order at 21. Applying that standard to the 14 poles that OTELCO offered as examples of poles it should be allowed to box, the Department held that the Pole Owners' objections to ten of these poles were reasonable. *Id.* at 21. Specifically, the Department found that Verizon MA had reasonably declined the request to box poles that have side-taps, are corner poles (poles where the line changes direction) or are located on an embankment. *Id.* at 22. As the Department put it, "For these poles, Verizon provides specific safety, reliability, or generally applicable engineering reasons for denying boxing." *Id.*

The original surveys for the poles now at issue do not indicate whether a pole has side-taps, whether the pole is a corner pole, whether the pole is on an embankment, or whether any other condition exists on or at the pole which, were the pole to be boxed, would raise specific issues of safety, reliability or engineering specific to that pole. For example, the surveys do not show whether the pole is a riser pole, where the facilities of one or more attachers run vertically up the pole from the ground. The surveys do not include this information because they were conducted before the Order established the standard on which to assess a request to box a pole

rather than replace it, and long before OTELCO asked to box these poles.³ At that time, there was no reason to collect this information.⁴

OTELCO asserts that the original surveys are sufficient, but it's reasoning is faulty.

OTELCO argues that:

the preconstruction surveys provide the following information: 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. ... This is precisely the information needed to evaluate OTELCO's boxing requests.

Motion at 12-13, citations omitted. But OTELCO is incorrect. None of the information listed by OTELCO – pole height, class etc. – indicates whether the line changes direction at the pole or whether the pole is on an embankment. And while the original surveys do include the height of each attachment on the pole, they do not indicate whether any of the attachments are for lines that run in directions different from the main line, in other words whether there are side-taps on the pole. Consequently, the information in the original surveys is insufficient to determine whether any of the 732 poles OTELCO now seeks to box are suitable for that treatment under the standard set in the Order. Additional information from the field is required.

2. Poles to the immediate side of poles that OTELCO wants to box need to be resurveyed, and all poles affected by potential boxing should be resurveyed.

The poles on either side of the ones OTELCO now wants to box also need to be resurveyed, because if OTELCO is allowed to box a pole, its attachment would likely be at a

³ To be clear, OTELCO's October 25 email marked the first time OTELCO requested to box these poles. OTELCO asserts that it "determined which poles were prime candidates for boxing (the poles with the most costly and time consuming makeready work). On February 2, 2022, OTELCO requested to box those specific poles." Motion at 14-15, citation omitted. That allegation does not actually assert that OTELCO asked to box the 732 poles at issue here, in February of 2022 or at any other time before October 25, 2022.

⁴ Going forward, Verizon MA has expanded the scope of information to be collected in make-ready surveys to include the type of information discussed above for poles that the surveyor believes may need to be replaced to accommodate the proposed new attachments. That way, there should be no need for a supplemental survey if the applicant later asks to box any of those poles.

lower height than if the pole were replaced with a taller pole as the current make-ready plan anticipates. That would, in turn, affect where OTELCO can attach to the neighboring poles. Those poles need to be resurveyed to determine whether the existing facilities need to be and can be rearranged to accommodate the new attachment height while maintaining proper mid-span clearance requirements. In addition, if the problem of OTELCO “weaving” its facilities back and forth from the street side to the field side of a line of poles is to possibly be addressed simply by boxing the entire line as OTELCO suggests, *see* Motion at 19, then the entire line needs to be resurveyed to determine whether each of the poles is suitable for boxing in its own right – for example, whether those poles have side-taps, are corner poles or are on an embankment.

The poles OTELCO now wants to box and their neighbors should also be resurveyed to account for any changes to the poles or the attachments on them that may have taken place since they were originally surveyed. Many of the original surveys were conducted in 2021 and early 2022, and the data in them is now more than a year old. Verizon MA’s pole network and the configuration of attachments on specific poles are continually changing, as a result of new third-party attachments, work by the Pole Owners to upgrade, harden and expand the network, government projects, the direct effects of storms (*e.g.*, greater sag in lines hit by falling tree limbs) and rebuilding poles and lines in response to storm and other damage. Those changes may affect the nature of the make-ready work that is necessary to accommodate the proposed new attachments.⁵

⁵ Verizon MA would be more comfortable re-surveying all of the poles in OTELCO’s applications. In light of OTELCO’s desire to move this project forward, however, Verizon MA proposed the compromise under which the parties would plan to survey only the poles OTELCO wishes to box plus the poles on either side, and leave it to the surveyors to decide in the field whether they need to survey additional poles.

O TELCO asserts that supplemental surveys are not justified by the passage of time, arguing that make-ready construction takes so long that it is unlikely that other licensees have attached to the affected poles since the original surveys were taken. *See* Motion at 16-17. That reflects an overly simplistic understanding of the pole network in Massachusetts. New third-party attachments are just one way in which pole configurations change over time. As explained above, the network is constantly evolving as a result of weather, government projects and upgrades, expansions, rebuilds and repairs by the Pole Owners. Any resulting changes on the affected poles must be accounted for in order to determine the appropriate make-ready work.

O TELCO misses the boat in arguing that the Pole Owners already know what work has been done on the poles. *See* Motion at 17-18. While Verizon MA maintains records of the individual projects it has performed on its network or has licensed, the company has no business need to track every change on each of its poles over time and therefore does not maintain such a database. O TELCO also errs in seeking to blame the Pole Owners for delaying work on its project by rejecting O TELCO's general request in February of 2022 to box poles. *See id.* at 20. The Department too rejected that request – along with O TELCO's request to attach its facilities below those of Verizon MA. *See* Order at 13, 22, 23, 26. The only claim against Verizon MA in the Complaint that the Department did not reject was O TELCO's argument that it should be allowed to box four specific poles. It was O TELCO's choice to withhold payment on the great majority of the make-ready estimates issued by the Pole Owners and therefore to not commence construction on those applications. The Pole Owners should not be blamed for that decision or for enforcing their long-standing pole attachment policies in the absence of a Department ruling on the subject.

3. The supplemental surveys are necessary solely to address OTELCO's request to box poles. As the cost causer, OTELCO must be held responsible for the costs of the surveys.

OTELCO asserts, without explanation, that the Pole Owners should be required to absorb the costs of any supplemental surveys that may be required. The only reason Verizon MA needs to conduct the surveys, however, is to evaluate OTELCO's request to box poles. OTELCO is the sole cost-causer of the resulting survey expenses and should be held responsible for those costs. *See e.g.*, the Order at 40-41, noting that M.G.L. c. 166, § 25A requires pole owners to expand the capacity of their poles to accommodate new attachments – at the expense of the attacher. *See also id.* at 18-19, holding that “in the event [the Pole Owners] permit OTELCO to box poles, they can bill OTELCO for the increased costs that boxing causes.”

B. The Department should reject OTELCO's efforts to insert new claims into this case, including that the Pole Owners' post-Order conduct is discriminatory, and relitigate issues already addressed in the Order.

OTELCO alleges that “The Pole Owners' actions following the issuance of the Order are wholly inconsistent with [the non-discriminatory access provisions of M.G.L. c. 166, § 25A] and with the DTC's specific guidance regarding evaluation of boxing requests in the Final Order.” Motion at 21. Yet OTELCO fails to identify any provision in the Order that the Pole Owners have allegedly violated. Instead, it offers a mish-mash of unsupported claims, purported new evidence and arguments which were made or should have been made before the Department made its decision in this case. The Department should reject OTELCO's improper efforts to relitigate the case and to litigate wholly new claims never before asserted.

OTELCO claims that the standards that Verizon MA intends to apply in assessing OTELCO's new request to box poles under the Order are “vague and easily susceptible to inconsistent and discriminatory application.” Motion at 22. It also objects that the list of specific

conditions Verizon MA intends to consider in evaluating OTELCO's request might change over time and is not exhaustive.

OTELCO's arguments fails for any number of reasons. First, the Order itself states a general standard by which to assess requests to box poles and does not purport to identify all possible conditions on a pole that might raise "specific safety, reliability or engineering issues regarding a specific pole," nor does the Order impose any obligation on the Pole Owners to develop such a list. Verizon MA only provided its current listing to OTELCO in December as a courtesy to assist OTELCO in deciding to what extent it wished to move forward with its new request to box 732 poles. OTELCO may not like it, but the fact remains that Verizon MA cannot know, in advance of a survey, whether there are conditions on its poles, not included in Verizon MA's list, that would raise specific safety, reliability or engineering issues on a specific pole and preclude boxing of that pole. As Verizon MA explained to OTELCO, "Pole surveys may reveal additional conditions that we may need to consider in assessing whether to allow a pole to be boxed." *See* Wolanin December 13, 2022, email, included in Allen Decl. Ex. A.

Second, many of the standards Verizon MA intends to apply are the very conditions that the Department found in the Order to be reasonable grounds for declining a request to box a pole. *See* Order at 21. So the Motion does not seek to enforce the Order but to overturn it. OTELCO has no right to such relief outside of an appeal. Verizon MA first objected to boxing poles that have side-taps, are corner poles or are on an embankment in its Response to the Complaint filed on May 11, 2022. OTELCO had full opportunity to respond to these objections in testimony and briefs but failed to do so. It has offered no grounds why it should be allowed to make a collateral attack on those objections and on the Order that approved them at this late date. In addition, OTELCO's argument is pure speculation of how OTELCO thinks Verizon MA may apply its

standards going forward, when Verizon MA has not yet actually applied those standards to any request to box a pole.

O TELCO's lengthy attack on Verizon MA's old written policies on boxing, Motion at 23-25, fails for similar reasons. Those policies too were submitted to the Department with Verizon MA's Response in this case, and O TELCO's argument is merely an attempt to relitigate issues that were, or could have been, raised in testimony or briefs long before the Order issued. The Department has often held that such an argument is not available even on a motion for reconsideration, which O TELCO did not bother to file here. *See e.g., Petition of the Board of Selectmen of the Town of Middlefield, D.T.E./D.T.C. 06-6, (2008) at 3-4, citing Commonwealth Electric Company, D.P.U. 92-3C-1A at 3-6 (1995); Boston Edison Company, D.P.U. 90-270-A at 3 (1991); Boston Edison Company, D.P.U. 1350-A at 4 (1983); and Western Massachusetts Electric Company, D.P.U. 85-270-C at 18-20 (1987).*

O TELCO also alleges that Verizon MA's boxing policy is inconsistent with its practice in installing its own facilities, based on photographs that are not in the record. *See* Motion at 25. O TELCO had full opportunity to offer this information in evidence under the Procedural Schedule issued in this case, and it offers no explanation now why it failed to do so. The Department previously rejected a prior effort by O TELCO to slip into the record information that could have been, but was not, submitted when the record was open. *See* Hearing Officer Ruling on Motion of Verizon to Exclude O TELCO's Supplemental Response to DTC-OTEL 1-14 From the Record, dated September 2, 2022. The Department's reasoning in that order applies even more so here, long after the Final Order was issued in this docket.

Equally meritless is O TELCO's claim that the Pole Owners "will not consider [O TELCO's] applications based on their original filing date, but will instead force O TELCO to

the back of the line for all such attachment applications involving boxing,” Motion at 27, and that such treatment is unreasonable and may be discriminatory. *See id.* This claim, of course, was not stated in the Complaint and cannot be asserted now. *See e.g.*, Order at 48-49. Second, nothing in the Order purports to dictate to the Pole Owners the order in which they must address pole attachment applications. Third, OTELCO has its facts wrong, as OTELCO knows.

National Grid explained to OTELCO on the parties’ conference calls that it would not send OTELCO’s applications to the back of the line. And Verizon MA advised OTELCO on the January 13 call that Verizon MA would work with its vendor to dedicate staff solely to the supplemental surveys for OTELCO, so that this work would not “go to the back of the line” but would be done in parallel with survey work on other projects. Fourth, OTELCO’s claim that the Pole Owners *might* discriminate against OTELCO is purely speculative and offers no legitimate basis for relief.

C. There is no basis for the broad and far-reaching relief OTELCO seeks in the Motion, and that relief is not available in this proceeding in any event.

OTELCO demands that the Department impose a series of make-ready survey and construction deadlines on the Pole Owners, allow OTELCO to exercise self-help on the poles and, going forward, reform the Pole Owners’ attachment agreements to remake the entire make-ready process and adopt the One-Touch Make-Ready system in Massachusetts, all on the alleged grounds that the “Pole Owners cannot, or will not, promptly evaluate OTELCO’s boxing requests, as required by the Final Order, and complete make-ready in a reasonable time frame,” Motion at 31, and other equally spurious claims that were not included in the Complaint and are not properly before the Department now. *See id.* at 30.

OTELCO’s claims are groundless, and there is no basis for the massive relief it seeks. Contrary to OTELCO’s claim, the Department did not address the procedure that the Pole

Owners should apply to future requests to box poles, promptly or otherwise. And the Order did not discuss whether pole surveys conducted before the Order issued would need to be supplemented with additional information from the field in order to evaluate such future requests. Indeed, Verizon MA demonstrated above that, in this instance, supplemental surveys are necessary to apply the standard stated in the Order. Verizon MA has not yet made any decisions on OTELCO's new request to box poles solely because OTELCO has refused to agree to, and pay for, supplemental surveys.

Likewise, nothing in the Order directs the Pole Owners to "complete make-ready in a reasonable time frame," and the Complaint did not seek such relief. It is far too late in this proceeding for OTELCO to assert a new claim in this case. Indeed, OTELCO previously tried to argue in this proceeding that the Pole Owners' make-ready process is "unreasonably slow," *see* Initial Brief of OTELCO dated August 18, 2022, at 13, and asked the Department to impose "commercially reasonable timeframes" on that process. The Department rejected that claim in the Order because it had not been included in the Complaint. *See* Order at 49. That reasoning was sound and bars OTELCO's latest attempt to expand this case beyond the claims stated in the Complaint.

In any event, Verizon MA has previously demonstrated that its make-ready performance is more than reasonable in light of the various other obligations imposed on its limited resources. *See* Brief of Verizon MA, dated August 18, 2023, at 21-22.

The other grounds on which OTELCO seeks relief have no merit either. As demonstrated above, its bald assertion that "[t]he Pole Owners refuse to allow attachers to use the same construction methods existing on poles today," Motion at 30, is based on information that is not in evidence and that the Department has previously rejected. And OTELCO's claim

that “Verizon is unwilling to consider any option to leverage existing data to streamline the work and instead insists upon the most costly (to OTELCO) and time-consuming approach,” Motion at 31, is false. Verizon MA has gone to great lengths to develop a unique, streamlined process to collect the minimum information needed to assess OTELCO’s new request to box poles. Verizon MA devised a system work-around so that OTELCO would not need to cancel and resubmit its applications. Verizon MA has offered to limit the scope of the supplemental surveys to just those poles OTELCO wishes to box and the ones on either side, thereby leveraging existing data regarding all of the other poles in the applications. Verizon MA has offered to assign dedicated resources to those surveys in order to speed them along. Verizon MA has also offered to test this system on a few applications selected by OTELCO, so OTELCO could better assess the potential cost-savings of boxing poles.

In sum, there is no basis in fact or law for the massive relief OTELCO seeks.

CONCLUSION

For the above reasons, the Department should deny the Motion.

Respectfully submitted,

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