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May 12, 2026

DELIVERED ELECTRONICALLY

Kerri DeYoung Phillips and Scott Seigal
Hearing Officers
Department of Public Utilities
One South Station, 3rd Floor
Boston, Massachusetts, 02110

William Bendetson
Hearing Officer
Department of Telecommunications and Cable
1000 Washington Street, Suite 600
Boston, Massachusetts, 02118

Re: D.P.U. 26-10/D.T.C. 26-1, D.P.U. 25-10/ D.T.C. 25-1 – the Town of Charlemont's Comments

Dear Hearing Officers Phillips, Seigal, and Bendetson:

On behalf of the Town of Charlemont (the "Town"), please find enclosed the Town's Comments in response to the Department of Public Utilities (the "DPU") and Department of Telecommunications and Cable's (the "DTC") (collectively, the "Departments") Notice of Public Hearing and Request for Comments, issued on March 6, 2026 in Dockets D.P.U. 26-10, D.T.C. 26-1, D.P.U. 25-10, and D.T.C. 25-1. The Town appreciates the Departments' review and amendments to 220 CMR 45.00 et seq. and their interest in establishing rules that contemplate Municipal Lighting Plants ("MLPs") as well as other stakeholders' interests in these proceedings.

By way of background, the Town built and currently maintains its Town-owned fiber-optic network. The Town has operated the fiber-optic network since 2021, having invested approximately $3.3 million in building this network, which benefits all of the Town's residents and businesses. The project was funded entirely by the Town's taxpayers, with additional support from state and federal grants.

The fiber-optic network operates under the control of the Town's internet-only MLP ("Charlemont MLP"). The Town owns the network assets, while operations are subcontracted to a network operator/internet service provider ("ISP/NO"), currently Westfield Gas and Electric, the MLP of the town of Westfield, Massachusetts, also known as Whip City Fiber.

The majority of the Town's network infrastructure consists of aerial fiber-optic cable attached to approximately 1,500 utility poles located in the public Right-of-Way ("ROW"). The Town's incumbent Electric Distribution Company ("EDC") is Massachusetts Electric Company d/b/a National Grid ("National Grid") and the incumbent local-exchange carrier ("ILEC") is Verizon New England Inc. ("Verizon"). Most of the utility poles in the Town are jointly owned by National Grid and Verizon. The Town and Charlemont MLP have separate license agreements with National Grid and with Verizon governing the Town's attachments to the utility poles in Charlemont. Together, the Town and Charlemont MLP are considered the "licensee" to the agreements governing attachments to the utility poles in the Town.[1]

As set forth below, the Town and Charlemont MLP, as well as many other towns and MLPs, are uniquely situated in a manner that the current regulations do not adequately address, resulting in significant impacts on these municipal bodies.

I. Certain EDC Projects Burden the Town and the Town's Ratepayers Inequitably

Recently, several projects have been initiated by National Grid to upgrade parts of the electrical grid in areas within Charlemont and/or neighboring towns. Some of these projects are large (spanning tens of miles, hundreds of poles, and multiple towns) and some are smaller, though still affecting dozens of poles. As part of these upgrade projects, the Town-owned fiber-optic network needs to be relocated to new replacement poles and also attached to new mid-span poles when these are installed to increase the weight capacity of the utility line. National Grid refers to these types of projects as "reliability projects."

National Grid has taken the position that, under the Town's current license agreement and applicable regulations, the costs for moving, reattaching, or attaching the Town's cables to these poles for reliability projects must be borne by the Town.

This imposes a substantial burden on the Town for several reasons:

1. The costs can be significant. With respect to one recent project, the Town asked its network operator (Whip City Fiber) to estimate the cost of moving the Town's infrastructure. The estimated cost was $108,000, a substantial sum relative to the Town's broadband budget.

[1] As the Town and Charlemont MLP are both considered the single licensee to the agreements in which their attachments are governed and are the basis of concern in these Comments, herein the "Town" will refer to both the Town of Charlemont and Charlemont MLP.

This estimate assumes that there will be sufficient slack cable in the Town's fiber cabling to accommodate the new utility paths chosen by National Grid. If sufficient slack is not available, either new cabling will need to be installed, or new sections of fiber-optic cable will need to be spliced in, which not only increases the cost but will also degrade performance over time and reduce the useful life of the Town's network.

2. The costs are unpredictable. For each project, National Grid has been unable to tell the Town, up front, the entire scope of the project, how many poles will be affected, and whether the relocation of the utility line will necessitate replacing or splicing Town fiber.
3. The Town has no control over these costs. The Town is not consulted on the design of any upgrades and has no way to intercede or request changes to any proposed projects in an effort to control costs. There is no incentive for National Grid to consider the cost of relocating the Town's fiber network when designing and carrying out a project. This can increase the number of times the Town needs to deploy crews to perform work, and particular design choices might reduce costs for National Grid while necessitating expensive fiber splicing or fiber cable replacement, which becomes the responsibility of the Town.

A. The current regulations and EDC framework for relocation costs inequitably distribute costs.

The Town is currently required to pay for these reattachment costs for reliability projects that benefit the entire Commonwealth of Massachusetts, despite having no say or control over the projects being chosen and receiving no direct benefit (or detriment). In this regard, for these particular project types, the Town's ratepayers are subsidizing the entire ratepayer population of Massachusetts, despite the subsidization consuming a substantial portion of the Town's annual budget. The current cost allocation framework is inequitable where the utility initiates a large-scale reliability project spanning multiple towns and relocating attachments is a necessary part of such a project, but the cost is placed solely on the Town in which those attachments are located.

At the same time, National Grid already has a rate recovery pathway for reliability projects such as this through its Infrastructure, Safety, Reliability, and Electrification ("ISRE") reconciling mechanism, approved by the Department of Public Utilities ("Department") on September 30, 2024 in Docket No. D.P.U. 23-150 ("D.P.U. 23-150 Final Order"). For example, ISRE's Category 4 – System Capacity and Performance – identifies particular recoverable investments, such as "installation of new equipment, such as… reclosers that limit the customer impact associated with a service event," and "FLISR deployment and resiliency projects," which are substantially similar to the reliability projects currently being contemplated by National Grid. *See* D.P.U. 23-150 Final Order, at 25-26, citing Exh. NG-CPIP-1.

A regulatory gap currently exists where these reliability projects are paid for by towns yet benefit all ratepayers, and the regulations do not provide an equitable pathway for towns to ensure that

their ratepayers are not being unfairly burdened with costs to relocate services that those ratepayers have already paid for.

Closing this regulatory gap, as described herein, is a fair and equitable solution. National Grid has the ISRE mechanism, and other Massachusetts electric distribution companies undoubtedly have similar mechanisms in place to recover costs for certain projects that benefit all of the ratepayers within the utility's service area. As it currently stands, towns, including the Town of Charlemont, are unfairly providing benefit to the rest of the reliability-project-initiating utility's ratepayers by paying for costs of relocating attachments so that the utility may upgrade the grid for the benefit of all ratepayers. While the issue discussed herein is specific to reliability projects, the Town recognizes that it may not be the only type of project for which this gap exists. Because the utilities already have recovery mechanisms in place, as approved by the Department, for specific capital projects, the Town believes that such projects should be recovered in full across a utility's rate base, rather than requiring a town to bear the cost of relocating poles for a project it did not initiate and from which it does not take sole benefit.

B. The Town and Charlemont MLP's License Agreements create further uncertainty and demonstrate the importance of an equitable and inclusive regulatory framework.

In addition to the concerns noted above, there is some ambiguity in the Town's license agreements with National Grid and Verizon, respectively. Most of the utility poles in Charlemont are jointly owned by National Grid and Verizon, and the Town has separate license agreements with both entities. The Town's license agreement with Verizon states that the costs for these reliability projects should be reimbursed by the entity initiating the project, including when the project is initiated by any joint owner of the utility poles, such as National Grid. Specifically, the Verizon Licensing Agreement states that the Town "shall not be required to bear any of the costs of rearranging its facilities if such rearrangement is required as a result of an additional occupancy by any entity including Licensor or other licensees" and that costs "shall be borne by the entity or entities requesting rearrangement." Section 7.1.7 reinforces this, explicitly covering rearrangements required by "the Licensor, Joint Owner(s) or Joint User(s)." On the other hand, National Grid's Licensing Agreement, in reference to the very same joint-owned poles, states when "Licensor, or another party with whom it has a Joint Use agreement, for its own service requirements" needs to attach additional facilities, the Town must rearrange or transfer its attachments "at Licensee's sole expense."

The ambiguity between the agreements, in reference to the same poles and attachments, illustrates the need for Department regulations to directly address these types of situations, especially as they affect towns and municipal attachers, where one-size-fits-all regulations create inequitable outcomes for a town's ratepayers.

II. Town of Charlemont's Comments in Response to the 220 CMR 45.00 et seq. Amendments

A. The current and proposed language of 220 CMR § 45.03(3)(c) and 220 CMR § 45.02 does not capture towns or MLPs meaningfully.

The existing DPU regulations already address to some extent the situations described above. For third-party attachments, 220 CMR § 45.03(3)(c) currently states:

> (c) any licensee that obtains an attachment to a pole, duct, conduit, or right-of-way shall not be required later to bear any of the costs of rearranging or replacing its attachment, if such rearrangement or replacement is required as a result of an additional attachment or the modification of an existing attachment sought by any other entity, including the owner of such pole, duct, conduit, or rights-of-way;

This would seem to provide grounds for the Town and/or Charlemont MLP to file a complaint with the Department regarding a pole owner's stance on whether the Town should bear the cost of such rearrangements. However, the definition of Licensee in the current CMR 220, section 45.02 reads as follows:

> Licensee. Any person, firm or corporation other than a utility, which is authorized to construct lines or cables upon, along, under and across the public ways. For the purposes of 220 CMR 45.02: Licensee, shall also include a municipal lighting plant or cooperative that operates a telecommunications system outside the limits of its service territory pursuant to M.G.L. c. 164, § 47E, but only for those attachments that are outside its service territory.

The second sentence above specifically excludes telecom-only MLPs, operating lawfully within their towns, from the definition of Licensee in CMR 220 section 45. This creates a number of issues throughout the regulations.

As noted in the order issued by the Department of Public Utilities and the Department of Telecommunications and Cable ("DTC") (collectively referred to as the "Departments") to initiate this rulemaking, this definition creates a situation where telecom-only MLPs are considered "non-Licensee attachers". Despite being covered by a license agreement(s) and in all other respects acting as Licensees under the regulations, telecom-only MLPs are effectively neither required to fulfill the responsibilities of Licensees, nor are they eligible to claim the benefits of protections granted to other licensees, for example under existing 220 CMR 45.02(3)(c).

Currently, Charlemont MLP takes on all of the responsibilities of Licensees as described both under the current regulations and the proposed amended regulations, participating, for example, in the NJUNs and DigSafe systems.

In the proposed amended regulations, there is a new and detailed complaint process. However, this process is written under the presumption that the Complainant (as defined in section 45.02) is either a Utility or a Licensee. As a "non-Licensee attacher," it would appear that a telecom-only MLP like Charlemont MLP would have no standing to bring a complaint, despite having licensed attachments to substantially all of the utility poles in the Town.

The exclusion of telecom-only MLPs from the definition of Licensee seems to be a result of the definition being carried over from M.G.L. c. 155, § 25A, which was initially enacted in 1978 as part of the Commonwealth's certification to the FCC that Massachusetts would regulate pole attachment rates, terms, and conditions.[2] The definition of Licensee in Chapter 166 is based on whether an entity needs to apply for a license to erect a utility pole in the public right-of-way, and in that context, MLPs were properly excluded from this requirement for poles within their designated service territories because MLPs that own poles are themselves "utilities" under statute. In the context of 220 CMR 45.00, however, this distinction does not carry over in a way that makes sense. 220 CMR 45.00 is intended, among other purposes, to regulate the interactions between third-party attachers (entities with a license to attach) and the utilities that own the poles and to ensure non-discriminatory access to utility poles. The important distinction in this section is between the utility or utilities that own each utility pole and any and all licensed attachers who have been granted permission to attach to the utility poles. A telecom-only MLP that does not own the poles to which it attaches is functionally identical to any other licensed third-party attacher, and should be treated as such under the regulations.

Indeed, the Departments themselves have recognized this issue. When the Departments initiated the earlier inquiry in D.P.U. 25-10/D.T.C. 25-1 on January 17, 2025 ("Order Opening Further Inquiry"), the redlined draft amendments to 220 CMR 45.00 released by the DTC on June 18, 2025 proposed changing the term "Licensee" to "Attacher" in section 45, consistent with the functional intent of the regulations. Furthermore, the proposed amended regulations already define "Existing Licensee" and "New Licensee" to expressly include "a municipality and municipal lighting plant" — yet the overarching "Licensee" definition continues to exclude telecom-only MLPs operating within their service territory, creating an internal inconsistency within the proposed regulations themselves, and potentially excludes the Charlemont MLP and other similar entities from the protections in 220 CMR 45.00 regarding nondiscriminatory access in § 45.05(1); the 60-day notice requirement in § 45.05(4)(a); cost protections under § 45.05(4)(c); the new licensee pole replacement cost protections under § 45.08(7)(c); the complaint procedure in § 45.15, and the § 45.13's presumption of reasonable contract terms, including that utilities cannot establish terms that conflict with the regulations in 220 CMR 45.00.

[2] *See* FCC, *States That Have Certified That They Regulate Pole Attachments,* WC Docket No. 10-101, Public Notice, DA 22-630 (37 FCC Rcd. 6724) (June 13, 2022).

Additionally, the Departments have specifically recognized the unique position of broadband-only MLPs in the proposed regulations. The Order Opening Further Inquiry notes that "municipalities and broadband-only MLPs seeking to attach to utility poles, especially for larger projects, may be subject to certain statutory limitations not applicable to other entities seeking to attach to utility poles." *See* Order Opening Further Inquiry at 50. The Departments classified the towns of Charlemont, Leverett, Shutesbury, and WiredWest as "broadband-only MLPs" and specifically solicited input from them. This recognition underscores that the Departments are well aware that telecom-only MLPs are active participants in the pole attachment regulatory framework and should be afforded full Licensee protections.

The Departments' proposed regulations also already provide a framework for cost responsibility during utility-initiated projects. Proposed regulation § 45.05(4)(c) provides that any licensee "shall not be responsible for the costs of rearranging or replacing its attachment if such changes are required due to a new attachment or the modification of an existing attachment requested by another entity, including the owner of such pole, duct, conduit, or right-of-way." However, this provision does not explicitly address utility-initiated reliability projects that involve pole replacements or mid-span pole additions — the very situation Charlemont faces — leaving a gap that should be filled by the regulations.

B. Proposed revisions to 220 CMR § 45.02 and 220 CMR § 45.05.

To address the foregoing concerns, the Town requests that the Departments make two important changes to the proposed draft regulations.

The first requested revision is to change the definition of "Licensee" in § 45.02 to remove the exclusion for MLPs operating within their service territory. Specifically, change the definition of Licensee to remove the following sentence from the proposed amendments:

> For the purposes of 220 CMR 45.02, the term shall also include a municipal lighting plant or cooperative that operates a telecommunications system outside the limits of its service territory pursuant to M.G.L. c. 164, § 47E, but only with respect to attachments located outside its service territory.

If this change would create conflicts with the definition of Licensee in M.G.L. c. 166, § 25A, the Town alternatively requests changing the term used in 220 CMR 45.00 to "Attacher" as was used in the earlier draft changes to the regulations. The functional use of the term Licensee in 220 CMR 45.00 in substantially all cases is to distinguish entities that own licensed attachments from the utilities that own the poles to which they are attached.

An alternative would be to explicitly state that telecom-only MLPs should be considered a Licensee with respect to any utility pole for which the MLP has been granted a valid license to attach and when the MLP has no ownership interest in the utility pole.

Secondly, the Town requests that the Departments amend proposed § 45.05 (Responsibilities of Utilities), subsection 3(c) to cover not only new attachments and changes to existing attachments, but also to include the addition of mid-span poles to increase the weight-bearing capacity of an existing utility line. The Town requests the following language be added:

> Any existing licensee that has attachments to substantially all of the poles, ducts, conduits or rights-of-way along a utility path shall not later be required to bear any of the costs of upgrading or rearranging its attachments if such rearrangement or attachment is required as a result of additional attachments or the modification of any existing attachments sought by another entity, including the owner of such poles, ducts, conduits or rights-of-way. This shall include the addition of new mid-span poles within a utility path to increase resiliency or weight-bearing capacity or relocation of a utility path to improve its reliability or carrying capacity. This shall not include extensions of a utility path to locations not previously served by or through that utility path.

Notably, the proposed regulations already contain analogous protections for new licensees. Proposed § 45.08(7)(c) provides that a new licensee shall only be responsible for the cost of removing an existing pole when the pole is replaced "as part of *make-ready* necessitated solely by the new licensee's application," (*emphasis added*) and lists five specific circumstances where a pole replacement is deemed not to be necessitated solely by a new licensee's application, including: (1) the replacement is otherwise required by law; (2) the existing pole fails applicable engineering standards such as those in the NESC; (3) a change to a utility's internal construction standards necessitates replacement; (4) the pole must be replaced due to road expansion, property development, storm hardening, or grid modernization; or (5) the pole is already on the utility's internal replacement schedule. These protections reflect the principle that a licensee should not bear costs driven by actions of the pole owner or external requirements — a principle that applies with equal force to existing licensees whose attachments must be relocated for utility-initiated reliability projects.

Under the Commonwealth's Clean Energy and Climate Plan for 2050, substantial improvements to the electric grid will be required statewide, and the need for additional mid-span poles or other improvements are likely to be widespread. While mid-span poles are technically new infrastructure, in practice, all existing attachers need to attach to new mid-span poles as a good engineering practice and to maintain appropriate sag distances. Moreover, proposed § 45.13 (Terms and Conditions Presumed Reasonable) provides that the regulations established in 220

CMR 45.04 through 45.12 "are presumed to be reasonable terms and conditions for non-discriminatory pole access" and that "[a] utility shall not establish rates, terms or conditions related to attachment applications or attachment agreements which conflict with applicable state laws or these regulations." If the regulations are amended to clearly address cost responsibility for utility-initiated reliability projects, the regulations will overall be brought into conformity to close the current regulatory gap.

III. Additional Considerations.

The Town offers a few additional considerations for the Departments' review:

1. The current regulatory gap regarding the licensee definitions creates a perverse incentive in utility project design. When a utility proposes a project to increase the reliability or capacity of a utility line, the utility is required to consider the impacts on third-party attachers — but only on those attachers that qualify as "Licensees" under the current definition. Because telecom-only MLPs fall outside that definition, there is no regulatory incentive for the utility to account for the MLP's relocation costs when designing a project. This can result in project designs that minimize the utility's own costs while imposing expensive fiber splicing, cable replacement, or additional crew deployments on the municipality — costs that could be reduced or avoided through more thoughtful project design if the utility were required to consider all affected attachers equally. Despite having a recovery mechanism available through other means, utilities would likely be more cost-efficient where cost recovery is from ratepayers as a whole as opposed to MLPs. The Department of Public Utilities would also be afforded greater prudency review of such projects.

2. The Town acknowledges that utilities have expressed concerns about relocating the attachments of other entities due to liability. The Town does not propose that any party should be responsible for physically moving equipment owned by another party. Rather, the Town proposes that the regulations focus on fair reimbursement of reasonable costs incurred by the attacher performing its own relocation work. The MassDOT model demonstrates that this approach works well in practice: when roadway projects require utility relocations, each utility and third-party attacher is responsible for relocating its own infrastructure, with reasonable costs reimbursed by MassDOT as part of the project budget. The same reimbursement framework can and should apply to utility-initiated reliability projects affecting licensed municipal attachments.

3. It is also important to recognize the unique position of municipalities as stewards of the public ROW. The municipality grants utilities permission to install utility poles within public rights-of-way through pole hearings conducted under M.G.L.

c. 166. The current cost allocation framework promotes conflicts between utilities and municipalities that have telecom-only MLPs — conflicts that the Town has observed firsthand in utility pole hearings. In many cases, the Town would like to wholeheartedly support improvements to the electrical grid for increased capacity and reliability. However, the Town also has a fiduciary duty to minimize costs to the broadband ratepayers served by the Town's network. A more equitable allocation of reliability project costs would reduce these adversarial dynamics and foster a more productive working relationship between municipalities and utilities, advancing both grid reliability and broadband deployment goals — two priorities that the Commonwealth has identified as essential to its residents.

IV. Conclusion

The Town appreciates the Departments' and other stakeholders' continued dedication to improving the regulatory landscape as it pertains to these issues. The Town looks forward to continuing discussions on this matter.

Please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Anna Rendell-Baker

Anna Rendell-Baker
Duane Morris LLP

Counsel for Town of Charlemont

Cc: Service List