



account for their unique position in the broadband ecosystem as small, telecommunications-only municipal light plants bringing an essential service to unserved and underserved inhabitants and businesses in Western Massachusetts. Accordingly, these initial comments, along with the attached suggested revisions to the Departments' proposed revisions to 220 CMR 45.00 are submitted in furtherance of that position. See Exhibit 1, WiredWest Proposed Revisions to 220 CMR 45.00.

I. INTRODUCTION

WiredWest appreciates the opportunity to provide comments in this proceeding.

WiredWest believes that this is an important opportunity for the Departments to clarify and ensure that the Towns are on equal footing with other providers.

The pole attachment regulations were in place well before any statutory changes were made permitting the Towns to engage in the provision of telecommunications services. The Towns were formed as municipal light plants pursuant to the provisions of G.L. c. 164, § 47E, since there were no other providers willing or able to provide service to the inhabitants, government entities and businesses in the Towns. Thus, they became the providers of "only" resort in unserved and underserved areas in a portion of the state that was lacking this essential service. The Towns themselves do not provide electric service; therefore, all of the Towns' fibers are attached to poles owned by Eversource, National Grid and/or jointly with Verizon ("IOUs"). Accordingly, the Towns are in the unique position of operating telecommunications-only municipal light plants without being pole owners themselves in their own service territories. WiredWest believes that the Departments' proposed revisions regarding the definition of "Licensee" should be clarified to account for this unique situation. This would remove any potential doubt regarding the ability of

the Towns to access the poles on the same terms and conditions as other providers, and the ability to utilize complaint and ADR solutions to any disputes with the IOUs.

Another area of significant concern to the Towns relates to rates paid by the Towns to the IOUs for moving fibers when the decision to move them is made by the IOUs, for example, in connection with pole upgrades required to accommodate EVSE or due to state-mandated policies regarding grid modernization measures. These are significant expenses to the Towns and their broadband ratepayers, given their size and relatively small populations. The Towns' ratepayers should not be saddled with the financial implications for electric-industry policy decisions where the Towns have already paid for their own fiber networks, and their subscribers are already paying for the IOUs' distribution plant through electric rates. These expenses should be handled through the IOUs' electric rates as are other state-mandated policy initiatives through the appropriate ratemaking process.

These areas are discussed below, and specific edits are contained in Exhibit 1 to these Initial Comments.

## II. The Definition of "Licensee" Requires Clarification

The proposed definition of "Licensee" in 220 CMR 45.02 reads as follows:

Any person, firm, or corporation, inclusive of wireless providers, other than a utility, that is authorized to construct lines or cables, including EVSE attachments, upon, along, under, and across the public rights-of-way. For the purposes of 220 CMR 45.02: Licensee, 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. A licensee shall be classified as either an "existing licensee," or a "new licensee," depending on the circumstances surrounding a particular attachment or attachment application.

The Towns do not fit the definition of "Utility" under the regulations because they do not own, control or share ownership or control of poles, ducts, conduits, etc. used for supporting or

enclosing lines for the provision of transmission of intelligence. The inclusion of the language in the definition of “Licensee” regarding municipal lighting plants or cooperatives operating “a telecommunications system outside the limits of its service territory... but only with respect to attachments located outside its service territory” could create confusion regarding ability of the Towns, who own and operate municipal light plants, but who do not fit the definition of “Utility” in their own service territories, could not avail themselves of the benefits of being considered a “Licensee” under the proposed regulations because they are operating *within their own service areas*.

Therefore, WiredWest proposes that the following be added to the definition of “Licensee”:

Notwithstanding the foregoing, a municipal lighting plant that owns and operates a telecommunications system within the limits of its own service territory but is not a “Utility” shall be considered a “Licensee” for the purposes of these regulations.

This addition would be consistent with the Departments’ definition of an “Existing Licensee” as “[a]ny person, firm, or corporation, **including a municipality and municipal lighting plant, other than a utility**, with an authorized attachment installed upon any pole or in any duct or conduit owned or controlled, in whole or in part, by one or more utilities [emphasis added].”

There is no legal or logical reason to exclude telecommunications-only municipal light plants who are automatically placed at a disadvantage because they do not own poles or conduit in their own service territories. WiredWest believes the requested addition will remove any question as to whether a telecommunications-only municipal light plant without its own poles and conduit can be treated as a “Licensee” under 220 CMR 45.00.

III. Exclusion of the Towns from Requirements to Pay for Moving Fibers or Replace Poles

Under 220 CMR 45.05(1), "...a utility shall provide a licensee with nondiscriminatory access to any pole, duct, conduit, or right-of-way used or useful, in whole or in part, owned or controlled by it." Pursuant to the proposed 220 CMR 45.05(4)(c):

Any licensee that obtains an attachment to a pole, duct, conduit, or right-of-way 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.

WiredWest submits that no Licensee, including the Towns, should be responsible for the costs of rearranging or replacing their attachments if changes are required not only due to a new attachment or modification of an existing attachment caused by the pole owner (which would appear to necessarily mean a Utility) but also where required because a new or upgraded pole is required for a new attachment or modification of an existing attachment.

Further, the Towns should be required to pay the costs of rearranging or moving their attachments only where necessitated by the actions or license applications of the Towns. The language of 220 CMR 45.05(4)(c) should make clear that where a Utility already has plans to replace poles, because they do not comply with industry standards and codes, or they have reached the end of their useful lives, those replacements or upgrades would need to happen regardless if there were attachers; this is the reality of electric infrastructure and managing utility plant the costs of which are recovered through electric rates. Utilities should not be permitted to place this financial burden on attachment owners when such upgrades and/or replacements are part of their utility operations regardless of whether attachments are present. Accordingly, WiredWest requests that the following language be inserted into 220 CMR 45.05(4)(c) before the phrase "new attachment": "a pole replacement or upgrade."

IV. Request for Comments on G.L. c. 41, § 56 Payment Issues and Other Clean-up Comments

On page 51 of the Request for Comments, the Departments requested comments on the payment provisions of 220 CMR 45.08(3)(c)(4). WiredWest notes that G.L. c. 164, § 56 contains provisions regarding the payment procedures applicable to municipal light plant expenses. G.L. c. 164, S 47E provides, in relevant part: “Wherever apt, the provisions of this chapter and chapter 44, which apply to the operation and maintenance of a municipal lighting plant, shall apply also to the operation and maintenance of such telecommunications system.” While all revenues received by any kind of municipal light plant can only be used for municipal light plant purposes, the municipal light plants do not hold the actual “checkbook” for bill payments. G.L. c. 164, § 56. Even though their funds should be accounted for separately, their bills are ultimately paid the town treasurer.

The Supreme Judicial Court has held that municipal light plant finances are governed by c. 164, and not the procedures of c. 44 governing municipal finance,<sup>2</sup> the procedures of G.L. c. 41, § 56 apply to light plants and require the payment of their expenses to go through a warrant process for payment by the treasurer. Regardless of whether a municipal light plant is following the procedures in c. 164 and/or c. 44, § 53F<sup>1/2</sup> pertaining to enterprise funds, the reality is that the warrant process can take more than thirty (30) days from receipt of a bill to payment. Some town treasurers may only process payments bi-monthly. Accordingly, WiredWest suggest that a period of forty-five (45) days be utilized to accommodate the warrant process utilized for the payment of municipal light plant bills. This should apply not only to payments for licenses and make-ready

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<sup>2</sup> See e.g., Municipal Light Commission of Peabody v. City of Peabody (“Peabody”), 348 Mass. 266, 273 (1964).

work, but also for any fees assessed in connection with attachments by telecommunications-only municipal light plants such as the Towns.

WiredWest also wishes to offer comment on 220 CMR 45.13, which states in relevant part that the provisions of 220 CMR 45.02 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...or attachment agreements that conflict with applicable state law or these regulations.” It is unclear how the Departments intend for 220 CMR 45.02 through 45.12 to apply to existing pole attachment agreements, some of which are long-term; or to applications in process. WiredWest would appreciate clarification as to the effective dates that the terms and conditions of the proposed regulations will be effective for existing agreements.

V. CONCLUSION

For the foregoing reasons, WiredWest requests that the Departments implement the requested revisions to the proposed regulations as reflected in Exhibit 1 hereto.

Respectfully submitted,

WIREDWEST

By its attorneys,

/s/ *Diedre Lawrence*

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DPU-DTC Joint Proposed Amendments to Regulations

220 CMR 45.00

WIREDWEST PROPOSED REVISIONS

[NOTE: ONLY IMPACTED PAGES ARE INCLUDED]

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[Changes appear on following pages]

Licensee. Any person, firm, or corporation, inclusive of wireless providers, other than a utility, that is authorized to construct lines or cables, including EVSE attachments, upon, along, under, and across the public rights-of-way. For the purposes of 220 CMR 45.02: Licensee, 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. A licensee shall be classified as either an “existing licensee,” or a “new licensee,” depending on the circumstances surrounding a particular attachment or attachment application. Notwithstanding the foregoing, a municipal lighting plant that owns and operates a telecommunications system within the limits of its own service territory but is not a “utility” shall be considered a “licensee” for the purposes of these regulations.

Existing Licensee. Any person, firm, or corporation, including a municipality and municipal lighting plant, other than a utility, with an authorized attachment installed upon any pole or in any duct or conduit owned or controlled, in whole or in part, by one or more utilities.

New Licensee. Any person, firm, or corporation, including a municipality and municipal lighting plant, other than a utility, requesting to install a new or upgraded attachments upon any pole or in any duct or conduit owned or controlled, in whole or in part, by one or more utilities. A new licensee includes any existing licensee that submits an application to one or more utilities to install a new attachment upon a pole or in any duct or conduit owned or controlled, in whole or in part, by the utilities.

Make-Ready. The modification or replacement of a pole, or of the lines or equipment on a pole, to accommodate new or upgraded telecommunications, including those of advanced telecommunications capability, and cable television attachments.

1. Complex Make-Ready. Transfers and work within the communications space that would be reasonably likely to cause a service outage(s) or damage to any attachment or pole, including, but not limited to, the splicing of an existing attachment, the relocation of an existing wireless attachment, or the relocation of an EVSE attachment. An attachment

application shall be considered to require complex make-ready if it necessitates work a rate, term, or condition of the attachment agreement between the licensee and the utility;

2. any change in attachment rates, terms, or conditions; or
  3. any modification of facilities other than the exceptions enumerated under 220 CMR 45.05(4)(d).
- (b) Any existing licensee that adds to or modifies its existing attachment after receiving such notification shall bear a proportionate share of the costs incurred by the owner in making such pole, duct, conduit, or rights-of-way accessible.
- (c) Any licensee that obtains an attachment to a pole, duct, conduit, or right-of-way shall not be responsible for the costs of rearranging or replacing its attachment if such changes are required due to a pole replacement or upgrade or 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.
- (d) Exceptions: A utility may provide to an existing licensee or an entity with an unauthorized attachment less than 60 days' written notice of removal, change, or modification if such removal, change, or modification of the attachment is due to routine maintenance, an emergency, the need to accommodate a small or large clean energy infrastructure project, or the need to accommodate make-ready for an application submitted pursuant to 220 CMR 45.08: Utility Poles – Non-OTMR Option or 220 CMR 45.09: Utility Poles – OTMR Option. A utility shall make a good faith effort to identify the owner of an unauthorized attachment. If, after such effort, the owner cannot be identified, the utility may remove the attachment without providing 60 days' prior notice.
- (e) When a utility provides an existing licensee with less than 60 days' written notice, the utility shall make reasonable efforts to provide the licensee with as much notice as practicable under the circumstances.

1. If the new licensee has not paid in full a make-ready cost estimate within 60 days of receiving the estimate, then the new licensee's application and any corresponding survey work conducted in response to the application may be voided by the utilities. If a utility seeks to void a new licensee's application or any corresponding survey work conducted in response to the application, it shall notify the new licensee and any jointly-owning utility by written notice that clearly identifies the date on which the application or survey work is void.
  2. Municipal New Licensee. Pursuant to M.G.L. c. 41, § 56, written notice of acceptance of a make-ready cost estimate shall satisfy the requirements of 220 CMR 45.08(c) in lieu of payment when the new licensee is a municipality, or any political subdivision thereof. Payment in full shall be provided by such a new licensee within 45 days of receipt of a final invoice provided pursuant to 220 CMR 45.08(3)(d).
    - (b) Final Invoice. After the utility completes make-ready to accommodate the new licensee's attachment, the utility shall provide the new licensee with a detailed, itemized final invoice of the actual make-ready charges incurred, on a pole-by-pole basis where requested, to accommodate the new licensee's attachment. If the utility incurs fixed costs that are not reasonably calculable on a pole-by-pole basis, the utility may instead present those costs on a per-job basis for those fixed costs. The utility shall provide documentation that is sufficient to determine the basis of all charges, including any material, internal and external labor costs, gas mileage, and other related costs that form the basis of its invoice, and explain with documentary support and corresponding calculations any substantial overages from the initial estimates.
    - (c) A utility may not charge a new licensee to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards or guidelines if the non-compliance is due to work performed by an entity other than the new licensee prior to the new attachment.
- (2) Permitting and Governmental Approvals.
- (a) Required.

D.P.U. 26-10/D.T.C. 26-1

WIREDWEST INITIAL COMMENTS  
EXHIBIT 1