COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

Joint Investigation by the Department of Public Utilities and the Department of Telecommunications and, Cable on their own motion, instituting a rule making pursuant to G.L. c. 30A, § 2, 220 CMR 2.00, and 207 CMR 2.00, to amend 220 CMR 45.00: Pole Attachment, Duct, Conduit, and Right-of-Way Complaint and Enforcement Procedures.	D.P.U. 26-10/D.T.C. 26-1
Joint Notice of Inquiry by the Department of Public Utilities and the Department of Telecommunications and, Cable on their own motion, to explore utility pole attachment, conduit access, double poles, and related considerations applicable to utility work conducted on, public rights-of-way in the Commonwealth	D.P.U. 25-10/D.T.C. 25-01

REPLY COMMENTS OF NSTAR ELECTRIC COMPANY D/B/A EVERSOURCE ENERGY MASSCHUSETTS ELECTRIC COMPANY AND NANTUCKET ELECTRIC COMPANY EACH D/B/A NATIONAL GRID AND FITCHBURG GAS AND ELECTRIC LIGHT COMPANY D/B/A UNITIL

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I. INTRODUCTION

NSTAR Electric Company d/b/a Eversource Energy ("Eversource"), Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid (" National Grid"), and Fitchburg Gas and Electric Light Company d/b/a Unitil ("Unitil") (collectively, "Companies," "Electric Distribution Companies," or "EDCs") hereby submit to the Department of Public Utilities (the "DPU") and the Department of Telecommunications and Cable (the "DTC") (acting jointly as the "Departments") their joint reply comments in the above-captioned proceedings.

II. PROCEDURAL BACKGROUND

On January 17, 2025, the Departments issued an Order Instituting Joint Notice of Inquiry pursuant to their own motions to explore utility pole attachment, conduit access, double poles, and related considerations applicable to utility work conducted on public rights of way in the Commonwealth. Joint Inquiry, D.P.U. 25-10/D.T.C. 25-1 at 1 (2025). After receiving initial comments and reply comments from various parties, and conducting a technical session, on March 6, 2026, the Departments opened a joint rulemaking docketed as D.P.U. 26-10/D.T.C. 26-1, and sought comment on their proposed revisions to their joint regulations, 220 CMR 45.00: Pole Attachment, Duct, Conduit and Right-of-Way Complaint and Enforcement Procedures. Joint Investigation, D.P.U. 26-10/D.T.C. 26-1 at 1 (2026). In addition, through their pending inquiry proceeding, D.P.U. 25-10/D.T.C. 25-1, the Departments sought further comment on: (1) a draft Amended and Restated Memorandum of Agreement to be entered into by the agencies; and (2) potential, non-binding alternative dispute resolution ("ADR") provisions that can be implemented by the Departments. The Departments established a deadline of May 12, 2026 for initial comments to be filed.

By May 12, 2026, the EDCs, and 23 other commenters filed initial comments. These commentors were: Verizon New England Inc. d/b/a Verizon Massachusetts ("Verizon"), New England Connectivity and Telecommunications Association ("NECTA"), CRC Communications LLC d/b/a GoNetSpeed ("GNS"), Cellular Telecommunications and Internet Association ("CTIA"), Advanced Communications Law & Policy Institute at New York Law School ("ACLP"), Zayo Group, LLC ("Zayo"), ExteNet Systems, LLC. ("ExteNet"), Gateway Infrastructure LLC d/b/a Gateway Fiber ("Gateway"), Massachusetts Municipal Association ("MMA"), Municipal Electrical Association of Massachusetts ("MEAM"), Cape Light Compact JLP ("Compact"), WiredWest, Town of Nantucket ('Nantucket"), Town of Charlemont "Charlemont"), Town of Cohasset ("Cohasset"), Town of Brookline Department of Public Works (Brookline"), Cape Cod Technology Council, Inc. ("CapeCod Tech"), OpenCape Corporation ("OpenCape"), It's Electric Inc., Voltpost Inc., International Brotherhood of Electrical Workers Second District ("IBEW"), State Representative Jack Lewis, Seth Parker, and Latinos for Education. On May 27, 2026, the Departments conducted a public hearing on their proposed pole attachment regulations. At the hearing, representatives of the following entities made public comment: MEAM, Charlemont, OpenCape, Voltpost, GNS, Ripple Fiber, CTIA, and NECTA. Their oral comments made on behalf of these entities were consistent with the written initial comments filed on their behalf.[1] In addition, Zachary Crowley, the chief of staff of State Senator Dylan Fernandes, made public comment in support of OpenCape.

The EDCs provide these joint reply comments on the proposed revised pole attachment regulations. The EDCs' joint reply comments are organized into ten sections: (I) Introduction; (II) Procedural Background; (III) Broadband in Massachusetts, (IV) Pole Attachment Process, (V)

[1] Ripple Fiber did not submit written comments.

Pole Disputes, (VI) Double Poles, (VII) Telecom-MLP, (VIII) EVSE, (IX) Miscellaneous, and (X) Conclusion. The section of the Pole Attachment Process is further divided into nine subsections: (A) Timelines and General Process, (B) Deviations and Government Approvals, (C) Advance Notice, Meet and Confer, (D) Aggregation of Applications, (E) OTMR, (F) Make-Ready and Survey Estimates, (G) Self-Help Make Ready in the Power Space, (H) Electrical Contractors, and (I) Boxing. The EDCs seek to reply herein to each and every issue or point raised by stakeholders in their comments. However, the EDCs' silence on any point made or issue raised should not be construed as support for the perspective of a stakeholder on that issue.

III. BROADBAND IN MASSACHUSETTS

In their initial comments, various entities expressed general support for the proposed pole attachment regulations. For example, OpenCape "strongly supported the proposed revisions" and stated they were "overwhelming pro-deployment" (OpenCape In. Comm., at 2-3). CTIA indicated it "largely supports" the proposed regulations (CTIA In. Comm., at 2). Latinos for Education also supported the proposed regulations (Latinos In. Comm., at 1). In addition, the EDCs indicated that "in general, the Departments' proposed regulations properly balance the need for timely deployment of broadband and the need to ensure the safety and reliability of the electrical system ("EDCs In. Comm., at 3). However, certain entities have recommended dramatic changes to the proposed regulations which would negatively impact the safety and reliability of the electric system. In their quest for speedier broadband deployment, they have even recommended that timelines not be extended to fully take into account state and local government permitting. One referred to "government permitting" as "an unnecessary block" (NECTA In. Comm., at 25).

Under G.L. c. 166, §25A, the interest of consumers of electric utility services must be considered, and the safety and reliability of the electric system preserved. Pole attachment

regulations must balance the need for timely deployment of broadband and the need to ensure the safety and reliability of the electric system. In fact, without a reliable electric system, there will not be a reliable broadband network. Therefore, substantial weight must be given to the comments of EDCs, MEAM and IBEW as it pertains to the impact upon safety and reliability.

Certain entities have submitted comments seeking radical changes to the proposed pole attachment regulations. One justification offered for these sweeping changes is that Massachusetts broadband prices are among the highest in the country and portions of the state are unserved by broadband (GNS In. Comm., at 4). These claims are misleading. GNS cites to a website that actually lists Massachusetts as having an average broadband price, not among the highest. GNS provides no real support for its claims.

In fact, its claims contradict other analyses. For example, Broadband Search, which provides comprehensive information on broadband, ranked Massachusetts as the third lowest state in the nation when it comes to internet costs.[2] Also, Broadbandnow has specifically recognized Massachusetts for having high access to low-priced broadband.[3] Uswitch, which is an online comparison and switching service that helps consumers compare prices, ranked Massachusetts as the very best state in the nation for best-value broadband, and the third fastest state in the nation when it comes to broadband speed.[4] Broadbandnow, a research firm which conducts independent research into the current state of broadband, ranked Massachusetts as the 4th best state in the nation in regards to broadband.[5]

[2] https://www.broadbandsearch.net/blog/internet-cost-by-state

[3] https://broadbandnow.com/research/best-states-with-internet-coverage-and-speed

[4] https://www.uswitch.com/broadband/studies/the-us-broadband-index/

[5] https://broadbandnow.com/research/best-states-with-internet-coverage-and-speed

Furthermore, although ACLP has advocated for radical changes to the proposed pole attachment regulations, ACLP had to admit that "by **every** metric, broadband availability in the state is robust and continuing to improve" (ACLP In. Comm., at 4 (emphasis added)). ACLP determined that "over 95% of units in the state can choose from at least two terrestrial fixed providers (e.g., fiber, cable, fixed wireless) capable of delivering at least 100/20 Mbps service" and "broadband prices have barely grown over the last decade" (id.).

As to claims that portions of the state are unserved by broadband, the fact is that FCC National Broadband Map demonstrates the ubiquitous deployment of broadband in Massachusetts.[6] Even ACLP noted that "fixed broadband of at least 100/20 Mbps is available to 99.1% of units in the state, and "only 3,286 broadband serviceable locations (BSL) remain without service in the state, most of which will served in the coming years by BEAD-funded projects" (ACLP In. Comm., at 4). In addition, ACLP stated that "nearly 99% of BSLs in the state have access to a gig connection" (id.).

The evidence is overwhelming. Massachusetts is among the top states in the nation for the deployment of ubiquitous, low priced and fast broadband. In fact, one could argue that Massachusetts is better than nearly every state in the country including the FCC states cited repeatedly by various entities. Therefore, radical changes to the proposed pole attachment regulations are entirely unjustified. There is no need to risk undermining safety and electric reliability through a watered-down version of the proposed regulations. As stated earlier, in general, the proposed regulations strike the right balance.

[6] https://broadbandmap.fcc.gov

IV. POLE ATTACHMENT PROCESS

A. TIMELINES AND GENERAL PROCESS

In their initial comments, five entities, other than the EDCs, addressed the timelines in the proposed regulations: NECTA, GNS, ACLP, Zayo, and OpenCape.

While calling the proposed regulations "a significant and welcome step," NETCA argued for shortening the timelines in the proposed regulations in line with those set by the FCC (NECTA In. Comm., at 5, 10-33, 53). NECTA alleged that proposed regulations have timelines that are significantly longer than the FCC (id., at 10-11). NECTA also argued that the proposed regulations significantly differ from those in neighboring states and will burden attachers (id., at 28-30). NECTA claims that the current Massachusetts pole attachment regulations allow attachers and pole owners to mold their processes in Massachusetts to match other states (id., at 29). Lastly, NECTA claims that there are no significant issues that are unique to Massachusetts which would require it to have regulations that differ from others states.

While acknowledging that the proposed regulations have "taken an important step" by establishing deadlines, GNS also argued for shortening the timelines in the proposed regulations in line with those set by the FCC (GNS. In. Comm., at 7-14). GNS alleged that the proposed regulations would lead to deployment timelines twice as long as the FCC's timelines and would closely track the amount of time it takes to deploy broadband in Massachusetts now (id., at 11-12).

While admitting that "by every metric, broadband availability in the state" of Massachusetts "is robust and continuing to improve," ACLP also argued that the Departments should more align their regulations with those developed by the FCC, and argued they were unduly burdensome compared to other states (ACLP In. Comm., at 2, 4, 7-8).

Zayo complained about the complexity of the timelines (Zayo In. Comm., at 2-3). OpenCape supported the shorter timelines for small and regular orders, but wanted default

timelines for larger orders if negotiations stalled (OpenCape In. Comm., at 2, 4). These arguments are flawed.

For the first time in Massachusetts, there will be regulations establishing a comprehensive set of timelines in the pole attachment process. These proposed timelines properly balance the need for timely deployment of broadband and the need to ensure the safety and reliability of the electric system. The proposed regulations are based on FCC regulations, and, where appropriate, deviate from the FCC's regulations, just as neighboring states' regulations do. Although these timelines will not be identical to the FCC's deadlines, they are based on the FCC's rules and will speed up broadband deployment in Massachusetts. For example, in D.P.U. 25-10/D.T.C. 25-1, Eversource estimated it takes 397 days to complete the pole attachment process for applications involving 50 to 200 poles (D.P.U. 25-10/D.T.C. 25-1, Eversource In. Comm., at 10). Using NECTA's calculation of a mid-sized order involving 301 poles to 3,000 poles, it would take 245 days to 305 days under the proposed regulations (NECTA In. Comm., at 4, 10-12, Exhibit A). As a result, there should be no doubt that orders would be completed significantly faster under the new timelines than under the current framework. Therefore, the timelines in the new regulations will accelerate broadband deployment in Massachusetts.

Furthermore, Massachusetts having slightly longer timelines than FCC states is justifiable. In the Exhibit A to its Initial Comments, NECTA estimates it will take about 67 days more for mid-size orders and 91 days more for large orders than the FCC. Unlike nearly all the FCC states, Massachusetts has a very ubiquitous broadband network in which poles already have numerous attachments on them. Because space on some poles is becoming more limited, there is more time needed for coordination amongst all parties, more need for make-ready work, and the need for more complex make-ready work. Also, Massachusetts faces the challenge of having extensive

local permitting requirements and a DOT permitting process, which affects about 25 percent of all pole attachment applications, and can take on average 272 days. This level of permitting exists to ensure that work in the public right-of-way is performed safely, coordinated with other infrastructure, and does not create long-term impacts to roads, traffic, or public safety. This situation may not exist to the same degree in FCC states or other neighboring states. Faster permitting may occur in certain states because of simpler conditions, fewer review requirements, and centralized governmental authority. Therefore, there is a need for longer pole attachment timelines in Massachusetts than in other states, particularly FCC states.

Also, the assertion that the current Massachusetts pole attachment regulations allow attachers and pole owners to mold their processes in Massachusetts to match other states is inaccurate. Both Eversource and National Grid have noted differences in the pole attachment process in Massachusetts, compared to Connecticut, New Hampshire and New York ((D.P.U. 25-10/D.T.C. 25-1, National Grid In. Comm., at 12, 15; Eversource In. Comm., at 10-11, 15). If the current Massachusetts pole attachment process were truly superior for attachers compared to what the Departments have proposed in these regulations, NECTA would be advocating to retain the current process. The truth is that, generally, the proposed regulations strike a balance between the need for broadband deployment and the need to ensure the safety and reliability of the electric system.

GNS focuses is on very large orders involving more than 5,000 poles and makes various calculations as to the length of time these orders would take to be completed under the proposed Massachusetts regulations compared to the FCC's regulations (GNS. In. Comm., at 9-10). These calculations are entirely speculative and irrelevant. In fact, they seem to contradict NECTA's own calculations for large orders which indicate they could be done within 404 to 464 days (NECTA

In. Comm., at 4). Also, under the proposed regulations, the timelines for very large pole applications must be negotiated in good faith between pole owners and the applicant. This is not unusual. In neighboring Connecticut, the timelines for application batches of more than 3,000 poles are developed through good faith negotiation. PURA Investigation of Third-Party Pole Attachment Process, Docket No. 19-01-52RE01, at 24 (2022). In fact, the EDCs reiterate their recommendation that the proposed regulations be modified so that all orders of 3,000 or more, large and very large orders, should have a timeline developed through good faith negotiation. Even assuming GNS is correct that the timelines in the proposed regulations closely track the current pace of broadband deployment in Massachusetts, it does not matter because Massachusetts is one of the top states in the nation for the deployment of ubiquitous, affordable, and high-speed broadband.

ALCP admits that "by every metric, broadband availability in the state" of Massachusetts "is robust and continuing to improve," but then argues that the Departments should more closely align their regulations with those developed by the FCC (ACLP In. Comm., at 2, 4). As explained above, this is unjustified. Also, as noted by the EDCs in their reply comments in D.P.U. 25-10/D.T.C 25-1, in 2018 the FCC significantly revised its regulations in the hopes of bridging the large digital divide which existed in many large rural states across America. Today, under the current pole attachment process, Massachusetts is without question a leading state in the nation when it comes to broadband. There is no need to simply copy and paste FCC regulations onto the Massachusetts regulatory framework.

ACLP notes various differences between the proposed regulations and pole attachment regulations in neighboring states, and argues that the proposed regulations will be unduly

burdensome on attachers (ACLP In. Comm., at 7-8). However, these differences can be explained and justified.

First, ACLP noted that in Massachusetts, the DPU and DTC will jointly adjudicate disputes, whereas in other states, a single entity—the PUC—handles this function. It is true that in other states one regulatory agency has jurisdiction over both telecommunications and electricity while in this state the jurisdiction is split. However, it is unclear why having two entities with a combined expertise comparable to or greater than that of PUCs in other states to adjudicate disputes would be inherently burdensome to attachers.

Second, ACLP noted that there are three size categories of orders in most other states but there would be five in Massachusetts. It is unclear why allowing attachers to have more order options, and the ability to file smaller orders within a short timeline is inherently burdensome to attachers. Smaller orders enable earlier project completion. In fact, OpenCape supports the shorter timelines associated with the smaller orders, (OpenCape In. Comm., at 2).

Third, ACLP indicated that the advance notice and meet and confer requirements are absent in other neighboring states but would be required in Massachusetts. These requirements, as will be explained later in these reply comments, are justified. The burden on attachers to provide advance notice and engage in meet-and-confer processes with relevant stakeholders is far outweighed by the benefit of enabling pole owners and local officials to adequately prepare for new broadband deployment plans. In fact, providing advance notice and engaging meet and confer should ultimately benefit attachers since fulfilling these requirements should help their broadband networks to be deployed faster.

Fourth, ACLP pointed out that OTMR is available for large orders in other states but unavailable in Massachusetts. This is irrelevant. Both Eversource and National Grid have

indicated that OTMR has not occurred in certain neighboring states (D.P.U. 25-10/D.T.C. 25-1, National Grid In. Comm., at 12; Eversource In. Comm., at 12, 15).

Fifth, ACLP asserted that dispute resolution in Massachusetts may take longer than in other states. As will be explained later in these reply comments, the fact is that a pole attachment complaint process that results in a binding decision must allow for sufficient time for the parties to exercise all their rights under G.L. c. 30A §11. One week or one month is not enough time for a party to properly exercise all their statutory due process rights.

Lastly, ACLP indicated that Massachusetts is the only state that permits a complaint be converted to a rulemaking. As will be explained later in these reply comments, this option will likely not be exercised with any frequency. Therefore, the major differences pointed out by ACLP between the Massachusetts proposed regulations and those of neighboring states are either irrelevant, immaterial, not unduly burdensome, or required by state law.

As to Zayo's general concern about the complexity of the proposed timelines and regulations, some complexity is necessary to ensure safety and electric reliability are not impacted. Also, as stated earlier, Massachusetts has a very ubiquitous broadband network in which poles already have numerous attachments on them. Therefore, the pole attachment process will inherently be more complex. In addition, Massachusetts faces the challenge of having extensive local permitting requirements and a DOT permitting process. All these factors contribute to process that is somewhat more complex.

OpenCape's request for default timelines for larger orders in the event negotiations is unworkable. There could be a wide variation in the number of poles for very large orders. If negotiations stall, the parties will be able to go to ADR for quick mediation.

B. DEVIATIONS AND GOVERNMENT APPROVALS

In their initial comments, five entities, other than the EDCs, addressed deviations from the timelines and specifically local permitting and government approvals in the proposed regulations: NECTA, GNS, Zayo, Verizon and Brookline. NECTA criticized the proposed regulations which allow pole owners to deviate from make-ready timelines for "good cause" as too open-ended, that the listed reasons in the proposed regulations for deviations are unclear and undefined, and that there is no limit on the amount of time a pole owner is allowed to deviate (NECTA In. Comm., at 30-32). NECTA recommended that the deviation provision be narrowly interpreted and include a maximum deviation period (id.). NECTA also argued that make-ready timelines should include the time needed for local permits (i.e., that the time to obtain local permits be part of the total amount of time for make-ready in the timeline), and opposed having the make-ready timelines for pole owners begin after they have received government approval (id., at 11, 23-25).

GNS also objected that under the proposed regulations, the timeline for make-ready work would not begin until after receipt of required governmental approvals, which differs from the FCC and other states (GNS In. Comm., at 8). Zayo also criticized the deviation provisions as being too broad, and that the timelines do not begin until all government approvals are obtained (Zayo In. Comm. at 4).

Meanwhile, Verizon recommended that deviations from timelines be explicitly allowed if an existing attacher or another pole owner has not completed their make-ready (Verizon In. Comm., at 8). Also, Brookline, indicated that attachment timelines should not be allowed to override municipal permitting, traffic management, police detail requirements, moratoria, restoration standards, or sequencing of work in the public right-of-way (Brookline In. Comm., at

3). The arguments made against allowing pole owners to deviate from timelines and waiting for approvals from government authorities are unfair, impractical, and at times border on absurd.

The proposed regulations correctly recognize that events and actions beyond the control of EDCs are good cause for deviation from timelines. It is impractical to hold EDCs to timelines if events or actions beyond their control occur which make meeting deadlines infeasible. It is also impractical to expect the regulations to list every possible situation where events or actions beyond the control of the EDC would occur and would constitute good cause for an EDC to deviate from a timeline. This is why the term "good cause" is used. The term allows for necessary flexibility in the regulations to address a multitude of situations. That is why the term "good cause" is used in a wide range of legal matters involving procedure, employment, family, and housing.

If pole owners were to abuse their ability to deviate from timelines for good cause, there is a safeguard: the Departments. If a dispute arises, it will be the Departments that will decide whether good cause exists or not. For that matter, there is no need to further define the five listed grounds in the proposed regulations, which allow for a deviation. If an EDC were to improperly interpret this section of the proposed regulations, that EDC could be challenged, and the Departments would resolve the issue. Lastly, it is impractical, arbitrary, and unfair to set some kind of time limit on deviations. Because these events or actions are beyond the control of the EDCs, the EDCs cannot be held to a time limit. Imposing a maximum time limit on deviations for EDCs would not cause the DOT to grant a permit any faster, nor would it halt a hurricane or bring an emergency to an earlier end.

Specifically, as to waiting for approvals from government authorities, regulatory timelines must be based in reality. A pole owner will not and should not commence performing make-ready work until it receives all necessary government approvals. NECTA and GNS appear to be

suggesting that pole owners either be held to timelines that ignore the reality that make-ready work can require government approvals, or that pole owners should perform make-ready work for attachers without first getting all necessary government approvals. The EDCs comply with—rather than defy—government permitting regulations. Furthermore, the Departments do not have the legal authority to override local permitting authorities to further broadband deployment. As admitted by NECTA, "the Departments cannot compel a local government to change its permitting sequence or timeline" (NECTA In. Comm., at 24-25). Nor can the Departments impose regulations on pole owners that are essentially impossible to achieve and would require pole owners to ignore permitting authorities. Regulations promulgated by administrative agencies cannot be designed to "punish" regulated entities "who have acted in good faith." Massachusetts Eye & Ear Infirmary v. Commissioner of the Div. of Med. Assistance, 428 Mass. 805, 816-817 (1999). Because the Departments do not have the authority to override government permitting authorities, they cannot impose timelines on EDCs that ignore the pole owners' need for approvals of governmental permitting authorities. Attachers may be frustrated at the amount of time DOT or local governmental authorities take to grant approvals. In FCC states, the amount of time it may take governmental authorities to grant approvals may be less. However, Massachusetts pole attachment regulations should be grounded in reality, not in what attachers would like them to be.

Regarding Verizon's recommendation that deviations from timelines be explicitly allowed if an existing attacher or another pole owner has not completed their make-ready, the EDCs concur with this modification. As previously explained, the proposed regulations correctly recognize that events and actions beyond the control of pole owners are good cause for deviation from timelines. It is not fair to hold pole owners to timelines if events or actions beyond their control occur which make meeting deadlines infeasible. This modification makes explicit what is already in implicit

under the proposed regulations, which is that deviations are allowed if an existing attacher or another pole owner has not completed their make-ready.

As for deviations for existing licensees, NECTA criticized the proposed regulations for permitting existing licensees to deviate from complex make-ready timelines for utility delays, delays caused by other licensees, or safety or service interruptions (NECTA In. Comm. at 32). Instead, NECTA recommends that deviations by existing licensees should only be available where the existing licensee demonstrates that compliance is impossible despite reasonable efforts, and that any extension is limited to the specific poles and work actually affected. This is unnecessary. There will be situations where an existing licensee may need to deviate from the timeline. If an existing licensee were to abuse their ability to deviate from the timeline, they could be challenged, and the Departments would resolve the issue.

As for deviations for applicants, GNS recommended that the regulations be revised to allow applicants the ability deviate from timelines imposed by the rules when events occur outside of their control (GNS In. Comm., at 29). This would be problematic. Events beyond the control of applicants may arise which would cause an applicant to fail to meet deadlines. The EDCs can be flexible with applicants in certain circumstances. However, financing problems are not an acceptable excuse for an attacher to fail to make timely payments for make-ready work estimates. Sometimes, as implied by Gateway in their initial comments, there are situations where an applicant is seeking to deploy their broadband network, but first must wait for another applicant to have their make-ready work completed. It would be unfair to this second applicant to wait for the first applicant to get its financing in order. GNS's recommendation will have unforeseen consequences and will delay rather than accelerate broadband deployment in Massachusetts.

C. ADVANCE NOTICE, MEET AND CONFER

In their initial comments, eight entities, other than the EDCs, addressed advance notice, as well as the meet and confer requirement in the proposed regulations: NECTA, GNS, Gateway, Zayo, Verizon, OpenCape, Brookline, and Nantucket. NECTA opposed the advance notice requirements in the proposed regulations because they went beyond what the FCC has required (NECTA In. Comm., at 16-19). NECTA also opposed advance notice being provided to municipalities and argued that the Departments do not have authority over municipalities (id.). While acknowledging that "coordination among attachers, utilities, existing licensees, and government authorities can be valuable," NECTA opposed a mandatory pre-application meet and-confer requirement, which involves not only pole owners but also existing licensees and appropriate government authorities, applies to mid-sized orders, and must be done within 30 days of the advance notice of an application (id. at 14-15). NECTA argued that: (1) local government authorities may be unwilling or unable to participate in meetings, (2) the term "appropriate government entities" is too broad, (3) a new licensee may not know the identities of existing attachers on the poles to which it seeks access, and involving existing attachers in meetings raises competitive concerns, and (4) it is unclear what the parties are likely to discuss in these meetings, (id., at 16-18). Instead, NECTA recommended any required pre-application meet and-confer be limited to large or very large orders and limit required participation to the new attacher and the pole owner (id., at 19). NECTA also specifically opposed a second meet and confer requirement at the make-ready stage because it could potentially lead to delays (id.).

GNS opposed the advance notice requirements in the proposed regulations because they are longer than what the FCC has required (GNS In. Comm., at 7). GNS recommended that confidentiality provisions requiring that information submitted in advance notices and pole

attachment applications be treated as confidential and used only by personnel with a legitimate operational need to manage the pole attachment processes (id., at 30-31).

Gateway opposed requiring a 90-day advance pre-application notice for large and very large orders (Gateway In. Comm., at 3). Gateway also opposed advance notice and a meet and confer requirements involving all pole owners, attachers and government agencies, and expressed concern that municipalities could use the broadband deployment plans of private attachers to their competitive advantage in deploying their own broadband networks (id.). Gateway suggested imposing confidentiality obligations on municipalities or expressly barring additional applicants from "line jumping" once an applicant complies with advance notice requirements (id., at 3-4). Zayo criticized the advance notice requirements and the meet and confer requirements as unduly burdensome (Zayo In. Comm. at 3). Verizon opposed a second meet and confer requirement at the make-ready stage because it is unnecessary (NECTA In. Comm., at 19, Verizon In. Comm., at 7).

Meanwhile, OpenCape indicated that the advance notice requirements were reasonable for mid-size, large and very large orders, but suggested that meet and confer requirements be optional for BEAD projects (OpenCape In. Comm., at 3). Brookline strongly supported the advance notice and meet and confer requirement with appropriate government authorities (Brookline In. Comm., at 2). Brookline suggested that advance notice provided detail information such as: affected poles, expected construction dates, traffic impacts, expected restoration, the responsible utility and contractor, any planned pole replacement; any expected traffic disruption or lane/sidewalk occupation, any work affecting municipal attachments, streetlights, signs, signals, cameras, or other municipal infrastructure; and any work requiring municipal permits, police details, or municipal coordination (id.). Nantucket supported advance notice being given to governmental authorities, and the meet and confer requirements for governmental authorities (Nantucket In.

Comm., at 6). For the most part, the arguments made against advance notice, and the meet and confer requirements are meritless.

It is appropriate for the Massachusetts pole attachment regulations to require more advanced notice than the FCC's regulations, and to have a more comprehensive meet and confer requirement. Unlike, nearly all the FCC states, Massachusetts has a very ubiquitous broadband network in which poles already have numerous attachments on them. Therefore, a longer period of advance notice and a more comprehensive need to meet and confer is necessary. As a result, advance notice and meet and confer requirements should involve more entities, involve more types of applications, and should take place sooner. In general, these requirements are beneficial because they will require applicants to coordinate with the pole owners and government authorities on their broadband deployment plans. No longer can applicants just drop applications involving hundreds or thousands of poles without first talking with pole owners and local government officials. Pole owners and government officials will now be better prepared.

Also, as stated in the EDC's initial comments in this docket, there are limited number of engineers and contractors who are qualified to perform design work in the power space or perform make-ready work in the power space. Because of the importance of ensuring safety and reliability, there are rigorous minimum qualifications to operate in the power space. Without advance notice for larger applications, EDCs would not be able to organize and coordinate the significant amount of resources needed to process pole attachment applications in a timely manner. Instead, the EDCs' resources would be overwhelmed, and EDCs may have difficulty ensuring that new pole attachments will not negatively impact the safety and reliability of the electric system.

NECTA also argues that it may be difficult to know which government entities to include in these meetings. NECTA claims that an "attacher may not know the full scope of a deployment

project" at the time they provide advance notice and meet and confer with local officials (NECTA In. Comm., at 9). However, before investing millions in a broadband deployment, an attacher should have a clue about how many poles it plans to access and in which municipalities. An attacher should make a good faith effort to notify and meet with relevant government entities from whom it believes it would need approval. A good faith effort standard was suggested by CTIA (CTIA In. Comm., at 4). Also, if a municipality has multiple departments which would need to grant an approval, perhaps an attacher could send a notice to the solicitor of that municipality. In addition, NECTA expressed concern about the lack of clarity about what the parties would discuss in these required meetings. Obviously, these meetings would be a chance for the attacher to discuss and explain their plans with pole owners and government officials and if possible, to address potential problems that may arise. NECTA is critical about the amount of time local authorities can take to permit work. Perhaps, if local officials knew about the plans of various attachers ahead of time and could be prepared for them, local authorities would grant permits faster. It would only benefit the attacher to give notice to and confer with local officials. If a government entity does not want to participate in a meeting, that should not delay a broadband deployment project. What matters is that the government entity had the opportunity to participate.

NECTA does raise a valid concern about a new licensee not knowing the identities of existing attachers on the poles to which it seeks access, and the sharing of competitively sensitive information. To avoid disclosing competitively sensitive information, the EDCs do not share the identity of existing licensees on poles with new licensees or share the deployment plans of new licensees with existing licensees. If the Departments do include existing licensees in meet and confer, non-disclosure agreements will be necessary. Likewise, the EDCs recognize the legitimacy

of confidentiality concerns raised by Gateway and GNS. Requiring municipalities to enter into some type of non-disclosure agreement would be appropriate.

As for the second meet and confer requirement at the make-ready stage, the EDCs do not object to elimination of this meet and confer requirement as recommended by both NECTA and Verizon. As for OpenCape's suggestion for an optional meet and confer for BEAD projects, the EDCs assert that a meet and confer can be beneficial and should be retained. As to Brookline's request for extensive detailed information in the advance notice, it is unlikely that an attacher would have this level of detailed information at the early stage of the process, and therefore, it should not be mandated.

D. AGGREGATION OF APPLICATIONS

In their initial comments, four entities, other than the EDCs, addressed the aggregation of applications: NECTA, GNS, Zayo, and OpenCape. While recognizing the FCC allows for the aggregation of multiple applications filed within in a time period as a single application, NECTA opposed the use of a 60-day period because it creates a rolling window, which creates a risk that applications could be double counted (NECTA In. Comm., at 6-7). Instead, NECTA recommended using a single calendar month to aggregate applications, instead of 60 days, and requested that applications may be aggregated only when they are part of the same planned deployment project, and that aggregation may not restart deadlines for applications that were complete when filed (id., at 7, 10).

GNS also opposed allowing pole owners to treat all applications submitted within 60 days as one application rather than the 30-day time frame under the FCC's rules (GNS In. Comm., at 7). Zayo also expressed concern about the 60-daya aggregation rule because it could cause unrelated applications to be treated as one larger order for purposes of the timelines (Zayo In.

Comm., at 2-3). Meanwhile, OpenCape supported the aggregation rule (OpenCape In. Comm., at 2). The arguments against the aggregation of applications are meritless.

The Departments merely used the FCC's 30-day rule for aggregation and extended it to 60-days. It is unclear why all the issues raised by NECTA would occur if a 60-day time frame is used, but do not occur under the FCC's current 30-day time frame, which appears to be a rolling window. Also, NECTA's recommendation to limit the aggregation of applications to those filed within the same calendar month would lead to obvious gaming of the system. For example, an attacher could file an application with 3,000 poles on March 31st, and then wait to the next day, on April 1st, April Fool's Day, to file another 3,000 poles in the same town, but instead of the application being treated as one very large order, it would be treated as two mid-size orders. Under NECTA's recommendation, the joke apparently would be on the pole owner.

NECTA recommends that the aggregation of applications only be allowed when they are part of the same planned deployment project. However, there may be situations where it is unclear whether various applications filed within a period of time are part of the same project. NECTA also argued that aggregation not be used to restart deadlines for applications that were complete when filed. However, there may be situations when it is unclear whether an application was complete when filed or was really part of larger project.

The proposed aggregation rule exists to prevent gaming of the system by attachers and protect pole owners from having their resources overextended. The aggregation rule states that pole owners "may", not "shall", treat multiple applications filed within a time period as a single application for purposes of the timelines under the proposed regulations. If the EDCs ascertain that multiple small applications from the same applicant are not part of a same project, and are in entirely different areas, and that the EDCs resources can manage them, the EDCs would not need

to treat them as a single application. The EDCs recognize NECTA's concerns, but EDCs would not look to utilize the aggregation rule to treat multiple unrelated small applications in entirely different areas as a single application. Ultimately, if disputes arise, the EDCs will work cooperatively with attachers, and if necessary, the Departments will resolve them through ADR.

E. OTMR

In their initial comments, five entities, other than the EDCs, addressed one-touch make-ready ("OTMR"): NECTA, GNS, IBEW, MEAM and OpenCape. NECTA objected to OTMR not being available for large and very large orders (NECTA In. Comm., at 46-47). NECTA argued that the size of the order does not matter and that the FCC allows OTMR in all orders (id.).

GNS also objected to OTMR not being available for large and very large orders (GNS In. Comm., at 15-17). GNS asserted that it used OTMR extensively in Maine (GNS In. Comm., at 15-17).

Meanwhile, IBEW argued that OTMR work should not involve non-union contractors moving Verizon equipment or other pole owner equipment historically maintained by IBEW represented employees (IBEW In. Comm., at 1). MEAM opposed implementation of OTMR (MEAM In. Comm., at 1). Lastly, OpenCape supported OTMR for small, regular and mid-sized orders (OpenCape In. Comm., at 2). The arguments of NECTA and GNS are irrelevant.

Broadband is not as extensively deployed in Maine as it is in Massachusetts. Because there are fewer communication attachments on poles in Maine, OTMR is a more likely option. It should be noted that GNS makes no mention of using OTMR extensively in Connecticut, which is consistent with Eversource's experience in Connecticut that OTMR is rarely used there. Because of the extensiveness of broadband deployment in Massachusetts, unlike most FCC states, OTMR

is not a practical option for large or very large orders. The proposed regulations recognize this reality.

In fact, the EDCs reiterates that the proposed regulations be modified so that small orders constitute attachment requests of up to 10 poles, and regular orders would be attachment requests between 11 poles to 125 poles. If the number of poles is reduced for small and regular orders, it is more likely that only simple make-ready work will be involved for the pole attachment application. For example, for National Grid, applications which require no-make ready work are overwhelmingly applications consisting of 5 poles or less. By lowering the number of poles in small or regular orders, the Departments would be able "to facilitate greater opportunity for the use of OTMR in Massachusetts." D.P.U. 26-10/D.T.C. 26-1 at 49. In contrast, the recommendations of NECTA and GNS would not achieve the Departments' goal of seeing greater use of OTMR in Massachusetts.

As for IBEW's recommendation, because OTMR does not involve the moving of electrical equipment, the EDCs offer no comment on this issue.

F. MAKE-READY AND SURVEY ESTIMATES

In their initial comments, three entities addressed make-ready and survey estimates: NECTA, GNS, and Verizon. While recognizing that "utilities should not be required to keep applications open indefinitely," NECTA opposed the provision in the proposed regulations permitting an application to be canceled if an attacher fails to pay a survey estimate within 30 days or fails to fully pay a make-ready estimate within 60 days (NECTA In. Comm. 47-48). NECTA claimed it was unaware of "any attacher practices today that these proposals are seeking to remedy" and argued that an attacher may need time to review the estimate, and discuss the estimate with the pole owner (id.). GNS recommended that: (1) applicants should be given 30 days beyond

what is provided in the proposed regulations to review and challenge make-ready work estimates; and (2) limits on true ups in final invoices such as prohibiting final invoices to exceed estimates by more than twenty percent without attacher approval (GNS. In. Comm., at 31-33).

Meanwhile, Verizon recommended that new licensees be given 30 days rather than 60 days to review a make-ready estimates (Verizon In. Comm., at 6). Also, Verizon proposed that pole owners be given 20 days rather than 10 days to provide a make-ready cost estimates (Verizon In. Comm. 6). Verizon explained that additional time is necessary when the new licensee is performing the survey because the utility has to evaluate all of the information the licensee is providing (id.). The proposals by NECTA and GNS related to the payment of estimates, and payment of make-ready work would delay broadband deployment, or are contrary to state law.

There is more than enough time built into the regulations for an attacher to review and pay a make-ready estimate. If a dispute arises, it can be quickly reviewed through ADR. In fact, Verizon recommended that new licensees be given 30 days rather than 60 days to review a make-ready estimate (Verizon In. Comm., at 6). Verizon noted that pole owners have other attachers who are waiting in line to attach to the same poles (id.). If EDCs are not allowed to cancel an application for an attacher who refuses to make a timely payment, it would delay the broadband deployments of other applicants. Although NECTA is not aware of any attacher who has failed to timely pay a make-ready estimate, the EDCs are. Also, allowing applicants an additional 30 days beyond what exists in the proposed regulations to review and challenge make-ready work estimates would only delay broadband deployment. GNS essentially admits that it wants this additional time to review make-ready estimates so that it can demand that the EDCs consider "alternative construction approaches" i.e. boxing (GNS In. Comm., at 32). An additional 30 days would serve no useful purpose. It would only delay the broadband deployments of other applicants patiently

waiting in queue for their pole attachment application to be completed without seeking special treatment. Without the necessary safeguard of timely payments for estimates, attachers will be able to drag out the pole attachment process and negatively impact other attachers anxious and willing to promptly pay make-ready estimates.

As for placing limits on the amount of a true up in a final invoice, it must be rejected as contrary to state law and precedent. Under G.L. c. 166, § 25A, a utility is entitled to "recovery of not less than the additional costs of making provision for attachments" to a pole. It does not say some of its expenses, or expenses equal to no higher than twenty percent than the estimates it provides the attacher. Furthermore, it is a well-established principle that a public utility cannot be required to absorb costs unless it "clearly appears" that it acted in bad faith. See New England Tel. &Tel. Co., v. Dep't of Pub. Utils., 360 Mass 443, 483 23 484 (1971). There is no legal basis to deny EDCs ability to recover all their make ready costs from pole attachers. Requiring EDCs and their customers to be forced to absorb any make-ready costs would be unfair and unlawful.

In the past, certain pole attachers failed to promptly accept EDCs' make-ready estimates. Their delay in accepting the estimates was sometimes so prolonged that the costs of the make-ready work increased after the estimates were issued. Because the new proposed regulations require attachers to make prompt make-ready estimate payments, the possibility of high true-ups should be reduced in the future.

Verizon proposed that pole owners be given 20 days rather than 10 days to provide a make-ready cost estimate (Verizon In. Comm. 6). Verizon explained that additional time is necessary when the new licensee is performing the survey because the utility has to evaluate all of the information the licensee is providing (id.). The EDCs support Verizon's recommendation.

As for surveys, NECTA opposed requiring a detailed, itemized estimate of survey costs, and not allowing pole owners to charge an upfront payment of per-pole fees with the application that would cover the cost of surveys (NECTA In. Comm., at 21-22). NECTA argued that many pole owners require payment of an application fee and per-pole fees concurrently with the application, and do not estimate the exact survey costs for each application (id.). There is some validity to this argument. Some pole owners do not currently provide an estimate of survey costs, and some charge an upfront payment of per-pole fees for the survey with the application. Therefore, this provision in the proposed regulations should be optional, at the discretion of the pole owner, rather than mandatory. However, to be clear, pole owners should be allowed to provide estimates for survey costs, and that a true-up for this survey costs be allowed as well.

G. SELF-HELP MAKE-READY IN THE POWER SPACE

Two entities, other than the EDCs, discussed self-help in the power space: GNS, and Ripple Fiber.[7] GNS objects to the Departments' determination that attachers will not be allowed exercise self-help work in the power space (GNS In. Comm., at 17-21). GNS argues it should be allowed to "manage" contractors approved by the electric utility perform make-ready work in the power space, like FCC states, as well a few other non-FCC states (id., at 17-18). At the hearing, Ripple Fiber also advocated for self-help in the power space. These proposals, if implemented, would endanger safety, electric reliability, and are contrary to state law.

As the EDCs have repeatedly explained, under state law, the EDCs "are responsible for providing … reliable service to customers." Massachusetts Electric Company, d/b/a National Grid, D.P.U. 18-150, at 53, 122 (2019). The EDCs "may not delegate their responsibility" for the safety and reliability of the electric system to others. See Commonwealth Electric Company,

[7] Ripple Fiber raised the possibility of self-help make-ready work in the power space at the public hearing.

D.P.U. 92-3C-IA, at 6 (1995). If a pole attacher's self-help efforts result in reliability failures, those actions could be imputed to the EDC, which could be held ultimately responsible. See Boston Edison Company, D.P.U. 87-1A-A, at 57 (1987). No attacher, including GNS, can be allowed to "manage" work performed in the power space. Allowing pole attachers to manage utility approved contractors to work in the power space would be contrary to the state law. It is that simple.

Furthermore, the Departments have already correctly recognized that the self-help make-ready remedy would not be allowed in the power space because "safety and reliability concerns are greater when work is performed in the electric space." D.P.U. 26-10/D.T.C. 26-1, D.P.U. 25-10-A/D.T.C. 25-1-A, at 55. Also, the Departments already cited to decisions by two neighboring states, Connecticut and New York,[8] which do not allow self-help by attachers for make-ready work in the power space. Id. Also, New Hampshire does not allow self-help remedies in the power space. Therefore, most of the states bordering Massachusetts recognize that self-help in the power space should not be permitted because of the need to maintain the safety and reliability of the electric system. The Departments must not waiver in their commitment to protecting the safety and reliability of the electric system.

H. ELECTRICAL CONTRACTORS

Four entities, other than the EDCs, discussed electric contractors in their initial comments: GNS, CTIA, IBEW and OpenCape. GNS objected that the proposed regulations do not require the EDCs to review or act on a request to add contractors to the list of entities who can perform survey work in the power space (GNS In. Comm., at 20-22). In addition, GNS objected to having to use EDC approved contractor to perform survey work in the power space and separate Verizon

[8] GNS claims that certain New York utilities allow or require attachers to coordinate work performed by utility contractors in the power space (GNS In. Comm., at 20). It is unclear exactly what GNS is asserting. However, National Grid can state unequivocally that in New York, it does not allow attachers to engage in self-help make-ready work in the power space.

approved contractor to perform survey work in the communications space (id.). GNS recommended that EDC approved contractors for surveys should only be utilized if make-ready work will be necessary in the power space (id., at 22).

CTIA recommended that: (1) the approved contractor lists are made publicly available for the benefit of attachers; (2) attachers are given thirty days' notice prior to a utility removing a contractor from its list, so they have ample time to make alternate arrangements. (CTIA In. Comm., at 4). OpenCape requested that objective criteria for contractor qualifications, mandatory minimum of three to five qualified contractors per utility, a 10-day business day timeline for pole owners to act on requests to add contractors to the list of approved contractors, and the ability to engage in municipal or non-profit self-performance (OpenCape In. Comm., at 3). IBEW argued that qualified contractors must: (1) employ properly trained and certified personnel; (2) comply with all applicable OSHA, and NESC requirements; (3) pay no less than prevailing wage; (4) utilize a apprenticeship program with certified payrolls; and (e) operate in compliance with state labor and safety laws (IBEW In. Comm., at 1). The recommendations of GNS and OpenCape, if adopted for the power space, would undermine the safety and reliability of the electric system and should be rejected.

There is no need to establish a process for adding contractors to the list of entities who can perform survey work in the power space. As explained in the EDC's initial comments, the EDCs have established rigorous requirements for those who perform survey work in the power space in order to protect workers, and the public. There are only a limited number of engineers and contractors who are qualified to perform survey work in the power space. As acknowledged by CTIA, the "availability of third-party contractors is largely beyond a utility's ability to control" (CTIA In. Comm., at 4). Specifically, for an individual to be qualified to perform survey work in

the power space requires extensive training, and knowledge of the EDCs' standards. The EDCs know which contractors are capable of safely performing survey work in the power space, and will include them on their list of approved contractors. Creating a mechanism for attachers to request random contractors to be added to a list would not serve a useful purpose because these contractors would not be familiar the EDCs' standards.

Also, it is necessary to have separate groups of contractors to perform survey work for the power space and for communications space. Not all those qualified to perform survey work in the communications space are qualified to perform survey work in the power space. It would be challenging to find one entity to have expertise to properly survey both the power space and the communications space. Also, the idea of only requiring a survey of the power space if make-ready work will be necessary in the power space is illogical. The point of performing a survey of the power space is to determine whether make-ready work in the power space is necessary. GNS is putting the cart before the horse.

As for OpenCape's recommendation to have a mandatory minimum of three to five qualified contractors per utility, the EDCs are opposed to being required to have a minimum number of authorized contractors who can perform survey work in the power space. To protect the workers and the public, the EDCs have established rigorous requirements for those who perform survey work in the power space. Establishing an arbitrary minimum number of authorized contractors who can perform survey work in the power space could have the effect of lowering these standards. In regard to OpenCape's other recommendations regarding criteria and a process for adding contractors, these are unnecessary as it relates to the power space. The EDCs have set strong standards and lowering these standards would put safety and reliability at risk.

As to CTIAs' recommendations that approved contractor lists be publicly available, and attachers be given thirty days' notice prior to a utility removing a contractor from its list, the EDCs have no objection. In regard to IBEW's recommended criteria for a qualified contractor, the EDCs-approved contractors would already meet these criteria.

I. BOXING

In their initial comments, two entities other than the EDCS discussed boxing, MEAM and GNS.[9] MEAM opposed boxing because it creates unsafe conditions for utility workers, and would violate the NESC because it would make the pole unclimbable any repairs (MEAM In. Comm., at 1-2). In addition, MEAM stated that boxing would require the use of more bucket trucks and more personnel to perform repairs on boxed poles when the same work could have been accomplished with a single worker climbing a pole (id.). MEAM also noted that boxing would lead to increased costs for ratepayers when replacing poles for routine maintenance and storm restoration, and result in longer outage and pole replacement timelines.

In contrast, GNS argued that the proposed regulations should require the EDCs to allow boxing (GNS In. Comm. at 28). GNS cites to D.T.C. 22-4, and argues that the FCC, New York and Connecticut allow boxing (id.). Their argument is erroneous.

Not all the EDCs were full parties in D.T.C. 22-4. MEAM was not a party. Also, the DPU was not a co-adjudicator in D.T.C. 22-4. Therefore, it would be inappropriate to adopt in this

[9] At the public hearing, Ripple Fiber seemed to suggest alternative attachment techniques. If Ripple Fiber was suggesting temporary attachments, as stated in EDC's reply comments in D.P.U. 25-10/D.T.C. 25-1, there are safety risks with temporary attachments. Temporary attachments can negatively impact the structural integrity of poles. In addition, temporary attachments can complicate pole maintenance. Furthermore, the existence of temporary attachments on poles complicates the pole attachment process for future attachers. Lastly, a majority of states bordering Massachusetts do not require EDCs to allow temporary attachments. In the few states where the utilities are required to allow temporary attachments, it has been a problem.

rulemaking a boxing policy which was adopted in a proceeding in which all the EDCs and MEAM were not full parties and in which the DPU did not co-adjudicate.

As for GNS's claims about other states and the FCC allowing boxing, there are other states bordering Massachusetts that do not require EDCs to permit boxing. Also, the FCC does not require EDCs to permit boxing. The FCC has adopted a non-discrimination standard whereby pole owners are only required to allow attachers to box to the same extent the pole owner would allow itself to box. In this state, the EDCs have only allowed boxing in very limited circumstances and generally do not support boxing because it creates safety risks and negatively impacts reliability. Boxing makes poles unclimbable for utility workers. Boxing is inconsistent with the standards of the NESC because the underlying assumption of the NESC rules is that climbing is possible on all poles. If a pole is unclimbable, EDCs need additional bucket trucks and personnel to perform maintenance on a pole or restore service after an outage. The additional bucket trucks and personnel required for boxing increase costs to customers and delay restoration time during outages. Boxing should not be permitted to accommodate pole attachers' financial interests because a pole attacher wants to accelerate its construction schedule or eschew payment for customary make-ready work.

Also, GNS wants boxing to avoid paying for new poles which are necessary to provide space for GNS's new attachment. GNS is not seeking to box to serve unserved areas or areas which are served only by two broadband providers. GNS is seeking to box where there are already a number of attachments on the poles, and therefore broadband competition is very robust. Therefore, boxing is not needed to bring broadband to underserved areas or to lower prices through competition.

Furthermore, although boxing may be a cost savings for GNS, it comes at the expense of electric customers. The existence of boxing in Connecticut has caused Eversource to incur additional costs to hire more personnel and bucket trucks and has delayed the restoration of service after outages. In other words, boxing increases storm restoration costs and power outage duration. Massachusetts must put electric reliability and lower costs to electric customers ahead of the financial interests of GNS.

V. POLE DISPUTES

In their initial comments, six entities, other than the EDCs, addressed the pole attachment complaint process and ADR: NECTA, GNS, Zayo, CTIA, ACLP and IBEW. NECTA criticized the Departments for not establishing an ADR in the proposed regulations (NECTA In. Comm., at 35-36). NECTA suggested the adoption of an ADR model comparable to the FCC's Rapid Broadband Assessment Team ("RBAT") process or Maine's Rapid Response Process Team ("RRPT") model, where a decision is made within seven business days of the filing of a complaint (id., at 36-40). NECTA recommended the establishment of an ADR involving an expedited staff-mediated process, a preliminary conference within two business days, interim staff directives, a written determination within a short period; and an expediated appeal process (id., at 40). NECTA opposed the ability of the Departments to convert a complaint into a rulemaking because it could occur in nearly every case (id., at 40-41). If the Departments do convert a complaint into a rulemaking, conversion should be limited to truly novel policy questions and the complaint should proceed to adjudication on a parallel track (id., at 41-42). NECTA also criticized having public notice, intervention, and public comments in formal complaint proceedings because they delay the proceeding and are unnecessary (id., at 42-43). Instead, NECTA would limit interventions and public comment procedures to complaints involving issues of broad industry wide significance

(id., at 43). While acknowledging federal law allows pole attachment complaints to be decided within a 360-day time frame, NECTA recommended that complaints be resolved within 180 days absent extraordinary circumstances (id., at 43-44).

GNS criticized the possibility of a 360-day time frame for resolving complaints (GNS In. Comm., at 34-35). Instead, GNS pointed to the Maine's RRPT model where access disputes are resolved in seven business days, and recommended a 60-day accelerated review process, with a maximum resolution timeframe of 180 days (id., at 35). GNS criticized the ability of the Departments to convert a complaint into a rulemaking (id., at 36-37). GNS expressed concern that the underlying complaint would not be resolved within the timeframe allowed under federal law and a rulemaking would not address past wrongs (id.). GNS opposed the DPU jointly adjudicating pole attachment complaints with the DTC because DPUs' responsibility to ensure safe and reliable electrical service, it would resolve disputes in manner which favors electric utilities (id., at 37-38). In the alternative, GNS suggested a neutral third party be brought in to resolve disputes (id.).

Zayo criticized the Departments for not establishing an ADR or establishing a binding expedited process (Zayo In. Comm., at 4-5). CITA stated that the proposed regulations should include ADR and mentioned the FCC's RBAT process and Maine's RRPT as potential models (CTIA In. Comm., at 5-6). ACLP criticized the possibility that formal pole attachment complaint could take up to year under the proposed regulations (ACLP In Comm., at 9-10). Instead, ACLP recommended that a faster dispute resolution process and pointed to the FCC with its "significant bureaucracy" having adopted a RBAT process where some disputes are resolved within 60 days, and other states like Maine where certain disputes can be resolved within seven business days (id., at 10).

Lastly, IBEW argued that in adjudicating complaints, the Departments must consider whether the use of "low-road" contractors would displace unionized workers and undermine apprentice training requirements or compromise worker and public safety (IBEW In. Comm., at 1).

The EDCs oppose any recommendations by NECTA, GNS, Zayo or ACLP for the Departments to adopt an accelerated binding dispute process. At the outset, the EDCs would note, with the exception of D.T.C. 22-4, the current complaint adjudication process has generally operated well. In the last ten years, only two formal complaints have been filed against any EDC in this state. This lack of formal complaints is evidence that the EDCs have usually resolved disputes with pole attachers without the need for adjudication.

An accelerated binding dispute process is not necessary or justified in Massachusetts. As the EDCs have already explained in these comments, Massachusetts is among the top states in the nation for the deployment of ubiquitous, low priced and fastest broadband. Even ACLP admitted that "by every metric, broadband availability in the state is robust and continuing to improve" (ACLP In. Comm., at 4).

An accelerated binding dispute process would not provide the parties with adequate time to respond to the complaint, conduct discovery, present and rebut evidence, participate in a hearing, and submit briefs, nor would it allow sufficient time for regulators to review the record and issue a written decision. Statutory due process rights are non-negotiable. The time period for a binding pole attachment complaint process must be sufficient for the parties to exercise all their rights under G.L. c. 30A §11, which includes giving parties a "reasonable opportunity to prepare and present evidence and argument", "the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who testify, and to submit rebuttal evidence." All this cannot be done

within seven business days of the filing of a complaint. A non-binding ADR can be accelerated but as the Departments know "any ADR mechanism" can only "supplement parties' due process rights applicable under G.L. c. 30A", not supplant them. See D.P.U. 26-10/D.T.C. 26-1, D.P.U. 25-10-A/D.T.C. 25-1-A, at 4 (2026).

The EDCs oppose NECTA's recommendations regarding public notice, interventions, and public comment. A formal complaint process should provide for public notice, give an opportunity for interested persons to intervene, and allow for public comment. As public utilities, EDC are accustomed to a robust public process. Because any biding decision by the Departments could affect its customers, a process with public notice is appropriate. Also, interventions should be allowed. Situations will arise where issues raised in a complaint affecting one EDC may be of interest to other EDCs. Also, in D.T.C. 22-4, interventions were granted, confidential information was protected, and the original complaint was still adjudicated within 180 days.

The concerns of NECTA, GNS and ACLP regarding the 360-day time frame are unwarranted. Under federal law, pole attachment complaints can be decided within a 360-day time frame. However, the fact that the Departments have up to 360 days to decide a complaint does not mean they will necessarily use the full 360 days. In fact, the original complaint in D.T.C. 22-4, a very complex and litigious case, was adjudicated within 180 days. There is no need to place limitations on the Departments as to when they would use 360 days to decide a complaint.

NECTA and GNS's concerns about allowing the Departments to convert a complaint into a rulemaking are unjustified. If a pole complaint is actually about enforcement of *existing* pole attachment regulations, the Departments would likely not need to convert the complaint into a rulemaking. The need to convert a complaint into a rulemaking arises when a complaint is essentially about *changing* pole attachment regulations. This type of complaint has been rare in

Massachusetts. The only recent example is D.T.C. 22-4, in which a complaint sought to significantly alter long-standing pole attachment practices that have been permitted under the pole attachment regulations. To a certain extent, this rulemaking arose in response to GNS's litigation strategy going back to D.T.C. 22-4. See D.P.U. 26-10/D.T.C. 26-1, D.P.U. 25-10/D.T.C. 25-1, at 16 (2025). When a complaint is really about changing existing pole attachment regulations rather than enforcing the current regulations, there are no past "wrongs" that need to be addressed. In fact, in such a case, the Departments should deny the complaint and convert it to a petition for rulemaking.

GNS's objection to the DPU jointly adjudicating pole attachment complaints is without merit. Under Massachusetts state law, when it comes to pole attachments, the "interest of consumers of [electric] utility services" must be considered. G.L. c. 166 §25A. The DPU is doing its job. GNS is simply upset that Massachusetts has developed a regulatory framework that has led to one of the most ubiquitous, low priced and fastest broadband networks in the country without adopting policies which would undermine electric reliability, or shift costs to electric customers, but profit GNS. Furthermore, reliable electrical service benefits not only utility customers but also pole attachers. Without a reliable electric service, there cannot be a reliable broadband network.

As for a non-binding ADR, the EDCs reiterate their support for the ADR process utilized for distributed generation ('DG"). First, unlike the FCC's RBAT process or Maine's RRPT model, some Massachusetts stakeholders, the EDCs, and the DPU already use this process. Second, the DG ADR process is already spelled out in a tariff and would not need significant alterations. Third, the DPU has already recognized that its DG ADR process is "an unqualified success". Distributed Generation Interconnection, D.P.U. 11-75-F, at 11 (2014). Fourth, unlike the FCC with its "significant bureaucracy," the DPU and DTC are comparatively smaller agencies and do not have

the resources to create a RBAT model. Therefore, the EDCs recommended that the Departments use the DG ADR model for the pole attachment ADR process.

In regard to IBEW's recommendation about considering whether the use of "low-road" contractors would displace unionized workers and undermine apprentice training requirements or compromise worker and public safety, the EDCs do not object to IBEW's request.

VI. DOUBLE POLES

In their initial comments, ten entities, other than the EDCs, addressed double poles: MMA NECTA, GNS, the Compact, Brookline, Nantucket, State Rep. Lewis, Seth Parker, OpenCape and Cohasset. MMA recommended that: (1) municipalities be given explicit authority to access NJUNS for all poles in their community not just poles on which they have attachments; (2) a primary responsible owner be designated for every pole; and (3) a per-diem fine for double poles be implemented (MMA In. Comm., at 2).

NECTA expressed a general concern as to whether NJUNS can be used in the manner set forth in the regulations (NECTA In. Comm., at 49-50). NECTA asserted that it is not proper for the Departments to effectively pick a single software product, NJUNS, among many in the market and demand that it be used (id.). NECTA recommended that the Departments should reconsider the five-business-day NJUNS update requirement for large deployment projects (id.). In addition, NECTA expressed support for a single visit transfer process (id., at 51-52). Lastly, NECTA recommended the establishment of double pole working group (id., at 53).

GNS recommended that a single pole administrator be established, like in Connecticut, and utilities transfer attachers' facilities when they transfer their own (GNS In. Comm., at 22-23). In addition, GNS requested that the practice of not charging attachers a separate fee to participate in NJUNS should be put in the regulations, and rather than specifically designating NJUNS, the pole

owners should be able to select a provider (id., at 24). While supportive of a single visit transfer process managed by a utility, GNS requested that the regulations allow utilities and licenses to enter into voluntary agreements to govern transfers (id., at 24-25). Lastly, GNS stated that charges to licensees be limited to reasonable actual cost recovery, and that transfers not be extended to correction of non-compliant conditions (id., at 25).

The Compact requested additional double pole reporting requirements, and that additional information should include the number of double poles created by each pole access application (Compact In. Comm., at 6-7). Furthermore, the Compact requested that the pole owners provide a chart breaking out the number of double poles based on the year of installation of the double pole, the municipality where the pole is located, and pole owner (id.). The chart would include the date of the last pole inspection and identify the entity who is "Next To Go", and when that entity was notified through NJUNS) (id.). In addition, the Compact wanted the pole owners to report on how many complaints or incident reports they have had in the last three years related to double poles; the average length of time from installation to removal of the double poles in its service territory; and information on triple poles (id.). The Compact also requested that the utilities provide municipal officials with more insight into and ability to provide feedback on the NJUNS database, and how the pole owners approach pole double poles should be scrutinized for how they can be improved to speed up transfers in the utility space (id., at 7-8).

Brookline recommended that a municipality receive a notice whenever a double pole is created, and that this notice should include: the pole number and exact location; the date the double pole was installed; the reason for installation; the utility and all attachers with work remaining; the expected transfer schedule; the statutory deadline for removal; and the projected removal date for the original pole (Brookline In. Comm., at 2). For the reporting requirements, Brookline,

recommended that pole owners be required to provide information: as to newly created double poles; outstanding double poles by municipality, and identification of the party responsible for the remaining transfer removal of aging categories (id., at 3-4). In addition, Brookline requested escalation procedures when double pole deadlines are not meet, and that municipalities be allowed to file complaints and participate in ADR for double poles, and a variety of other issues (id., at 3-4). Next, Brookline argued that there should be complete up-to-date, municipality-accessible records sufficient to identify ownership, responsibility, and status of poles and attachments (id., at 4). Furthermore, Brookline recommended that fines be imposed related to double poles (id.). Lastly, Brookline supported the idea of a single crew for all transfers allowing all transfers to happen in a single mobilization (id., at 5).

Nantucket argued that the Departments should establish: (1) a more detailed and comprehensive process for reporting on double poles, including an accounting of NJUNS accuracy; and (2) a mechanism to ensure that cities and towns can provide formal feedback on double poles in their municipalities (Nantucket In. Comm., at 4). In regard to reporting requirements, Nantucket requested that pole owners provide street addresses, and conditions of double poles, and a list of the street addresses of all double poles in each municipality in the utility's service territory and the proposed timeline for removal (id., at 5). Nantucket also suggested a formal complaint process with the Department that municipalities could use for double poles issues (id.). In addition, Nantucket requested that the Departments explore whether the current process of semi-annual double pole reporting, and double pole tracking and management in NJUNS are sufficient, and whether such processes adequately include cities and towns as stakeholders within a year (id.).

State Representative Jack Patrick Lewis discussed pending legislation pertaining to double poles and noted similarities between the pending legislation, and the proposed regulations (Lewis In. Comm., at 1-3). Representative Lewis specifically noted that the proposed regulations do not include a double pole working group (id., at 3). Also, Seth Parker stated the Departments should require utilities to remove unattached, unnecessary or hazardous wires (Parker In. Comm., at 2). OpenCape requested timelines for pole-replacement, and double pole removal (OpenCape In. Comm., at 3). Cohasset recommend that double poles be removed within a year (Cohasset In. Comm., at 1).

At the outset, the EDCs would indicate the Departments have already declined to implement regulations "involving municipal enforcement of double pole violations." D.P.U. 26-10/D.T.C. 26-1 at 22, fn. 16. Also, as stated in their reply comments in D.P.U. 25-10/D.T. 25-1, the EDCs strongly oppose fines being imposed on EDC pole owners related to double poles. Except in the case of restoration events when crews are diverted, the EDCs are not the reason that double poles are not removed more quickly, and therefore, they should not be fined or penalized in any way if a double pole exists. Delays in the removal of double poles are generally caused by the length of time pole attachers, other than the EDCs, need to transfer their attachments. Some attachers do not transfer their attachments in a timely manner. At times, even municipalities have been unable to transfer attachments in a timely manner. Simply put, EDCs cannot control how long it takes other companies to transfer their pole attachment equipment. Therefore, establishing timelines, and penalizing EDC pole owners for the failure of other attachers to transfer their attachments in a timely manner will not result in a reduction in double poles. In fact, penalizing EDCs, and ultimately their customers, for the conduct of attachers they cannot control is inherently unfair.

Next, as stated in their reply comments in D.P.U. 25-10/D.T. 25-1, the EDCs are opposed to a single or primary pole administrator. In Connecticut, electric distribution companies were designated to be the single pole administrator. As a result, of being designated to be the single pole administrator in Connecticut, Eversource had to hire more staff, and increase its administrative costs. The higher administrative costs incurred by EDCs in order to act as the single pole administrator will eventually lead to higher electric rates for customers. Also, in general, EDCs do not have the experience or expertise to perform work or manage the work performed by others in the communications space. The EDCs would likely still need to work with Verizon.

However, the EDCs do support a "single visit transfer" but only for attachments in the communication space. A single visit transfer process should not be applicable to attachments in the power space. There is a different type of training needed to work in the power space than in the communications space. Any errors in the transfer of equipment in the power space may negatively impact reliability and endanger worker and public safety. Also, the EDCs do not support being responsible for transfer of communications equipment. EDCs and their contractors are not trained in the transfer of communications equipment. Furthermore, the EDCs do not object to GNS's request that the regulations allow utilities and licensees to enter into voluntary agreements to govern transfers. However, there is no need to put into the pole attachment regulations limitations on the ability of pole owners to recover their costs for transferring attachments or restricting the ability of pole owners to correct for non-compliant conditions during transfers.

In regard to NJUNS, it is unclear if the Departments have the authority to give municipalities access to NJUNS for all poles in their community, not just poles on which they have attachments. Also, the Departments may not be able to give municipalities access to complete up-

to-date records sufficient for them to identify ownership, responsibility, and status of poles and attachments in their municipality. The Departments do not regulate NJUNS. That said, the EDCs will work cooperatively with municipal officials regarding double poles and NJUNS, but there may be limitations on how much of the information in NJUNS the EDCs can actually share with municipal officials. Also, the EDCs do not take a position on whether NJUNS should be specifically mentioned in the proposed regulations, but would indicate a preference for NJUNS.

Also, the EDCs support retaining the five-business-day NJUNS update requirement in the proposed regulations. Timely updates to NJUNS should not be treated as optional for attachers. As to the current practice of not charging attachers a separate fee for participation in NJUNS, there is no need to put this practice formally into the pole attachment regulations. In regards to Mr. Parker's request to remove unattached, unnecessary or hazardous wires, it can be unclear to an EDC what is an unnecessary attachment.

As to the assortment of information regarding double poles recommended to be included in the annual reports, they are quite excessive. The information requested is very extensive, extremely detailed, but would be of limited value, and would be very admiratively burdensome to produce and compile. For example, it is unclear why it would be useful to know whether a particular pole access application temporarily results in a double pole. EDCs would not deny a licensee access to a pole simply because it might create a temporary double pole.. It is also unclear what value there is in reporting how many poles are located in each individual municipality. A concerned municipality does not need to know how many double poles are located in other municipalities. It is also unclear how important it is to identify the owner of a double pole, given that such situations typically arise when communications attachers fail to move their attachments in a timely manner. Similarly, the value of identifying the "Next to Go" entity is questionable, as

that designation can change quickly. It is further unclear what benefit would be gained from requiring EDCs to estimate the number of complaints related to double poles or to report the average time between installation and removal. As stated before, the EDCs cannot control how long it takes other companies to transfer their pole attachment equipment. For that reason, the EDCs would have difficulty estimating the transfer schedule or the removal date for the original pole. In general, municipalities are aware when new poles are installed or removed. The Departments should not adopt these recommended reporting requirements regarding double poles.

As for some type of formal complaint process or ADR regarding double poles, this would be impractical. It would be administratively difficult for the Departments to manage. Also, it is unclear what type of legal relief the Departments could order. As stated before, the EDCs cannot control how long it takes other companies to transfer their pole attachment equipment. Of course, as to issues related to the pole attachment process, if a pole owner of attacher files a complaint, a municipality could intervene or provide public comment on the dispute.

The EDCs are committed to reducing double poles. Recently, Eversource changed its process for removing double poles so that Verizon is now responsible for removing the old pole, as is currently the practice in National Grid's service territory. Also, the EDCs appreciate the comments filed by Representative Lewis, and will continue to work cooperatively with him and other legislators to improve the double pole removal process in Massachusetts. In addition, the EDCs will work cooperatively with municipalities in reducing double poles. The ongoing issues related to double poles are complex and could be discussed in a double pole working group. The EDCs and other stakeholders could work cooperatively on reducing double poles in this working group.

VII. TELECOM-ONLY MLP

In their initial comments, two entities, raised issues specific to telecommunications-only municipal light plants: WiredWest and the Charlemont. Both WiredWest and Charlemont requested that the Departments alter the definition of "Licensee" in the proposed regulations so that the definition of "Licensee" includes a "municipal lighting plant that owns and operates a telecommunications system within the limits of its own service territory" (WiredWest In. Comm., at 3-4; Charlemont In. Comm., at 5-8). Both WiredWest and Charlemont argued that they should not be required to pay for the costs of rearranging or moving their attachments due to utility-initiated reliability projects (WiredWest In. Comm., at 5-8; Charlemont In. Comm., at 7-9). Instead, both entities recommended that the costs be recovered from all electric customers in rates (WiredWest In. Comm., at 3; Charlemont In. Comm., at 3-4). Also, WiredWest specifically requested that the words "a pole replacement or upgrade" be included the type of costs a licensee would not be responsible in paying in Section 45.05(4)(c) (WiredWest In. Comm., at 5). Meanwhile, Charlemont specifically requested that the "mid-span poles" be added to the type of costs a licensee would not be responsible in paying in Section 45.05(4)(c) (Charlemont In. Comm., at 8). Lastly, WiredWest requested that a period of forty-five days be utilized to accommodate the warrant process utilized for the payment of municipal light plant bills (WiredWest In. Comm., at 6). These recommendations are contrary to state law and will increase electric rates, so must be rejected.

The definition of "Licensee" in the proposed regulations come from G.L. c. 166, § 25A. The statute expressly limits the definition of "Licensee" to a "municipal lighting plant … that operates a telecommunications system outside the limits of its own service territory." If the General Court wanted a licensee to include a municipal lighting plant that operates a telecommunications system within the limits of its own service territory, it would have said so.

Charlemont noted that the second sentence of the definition of "Licensee" in the proposed regulations "specifically excludes telecom-only MLPs" (Charlemont In. Comm., at 5). However, this second sentence comes almost verbatim from G.L. c. 166, § 25A. WiredWest and Charlemont are asking the Departments to adopt a definition that is obviously inconsistent with the statute. The Departments "are not statutorily authorized" to extend the definitions in G.L. c. 166, § 25A to encompass more entities "absent any legislative support." Greater Boston Real Estate Bd. v. Dep't of Telecomms. & Energy, 438 Mass. 197, 199-200, 203 (2002). In this case, the WiredWest and Town of Charlemont are going even further. They are asking the Departments to extend the definition of licensee to include entities that the General Court specifically excluded. The recommendation of WiredWest and Town of Charlemont must be rejected.

Next, the requested changes of WiredWest and Town of Charlemont to Section 45.05(4)(c) will have unforeseen consequences and will certainly raise rates for all electric customers. They are seeking to include the words "a pole replacement or upgrade" and mid-span poles" in the type of costs that cannot be recovered from a licensee. Therefore, even when a pole is being replaced in order to accommodate a new licensee, the new licensee could not be changed for the pole. Under G.L. c. 166, § 25A, a utility is entitled to "recovery of not less than the additional costs of making provision for attachments" to a pole. In D.T.C, 22-4, the D.T.C. declared, if the "work would not occur but for OTELCO's new attachment … OTELCO is responsible for the full cost of the make-ready because OTELCO is the cost-causer." D.T.C. 22-4, at 41. In fact, in D.T.C. 22-4, the DTC ruled against OTELCO when it objected to being charged for cost of a pole replacement, when there was not enough space for their new attachment. The recommendations of WiredWest and Town of Charlemont are not tailored to specifically address the situations of WiredWest and Town

of Charlemont. Therefore, recommendation of WiredWest and Town of Charlemont must be rejected.

As for WiredWest's request to use a period of 45 days rather than 30 days for the payment, the EDCs would note that only WiredWest has made such a request. It appears for all the other municipalities and MLPs full payment within 30 days of a final invoice is acceptable. Therefore, the EDCs do not support WiredWest's request, which would needlessly delay payment.

VIII. ELECTRIC VEHICLE SUPPLY EQUIPMENT ("EVSE")

In their initial comments, five entities, other than the EDCs, addressed EVSE: (1) Verizon, (2) MEAM, (3) Voltpost, (4) It's Electric, and the Nantucket. Verizon opposed the inclusion of EVSE as an allowable attachment on poles in the proposed regulations (Verizon In. Comm., at 3-4). Verizon explained that EVSE makes it more difficult to inspect poles, will slow down the make-ready and pole maintenance work, and make it more time consuming to replace poles thereby leading to double poles to remain longer in place (id.). Verizon also expressed safety concerns (id.).

MEAM opposed the pole attachment regulations encompassing EVSE (MEAM In. Comm., at 2-3). MEAM stated EVSE would complicate and slow down the pole attachment process, and increase the likelihood of double poles (id.).

Voltpost recommended that pole-mounted EVSE be classified as simple make-ready work eligible for OTMR because EVSE will not cause a service outage and is not installed within the electric power space (Volpost In. Comm., at 1-2). It's Electric recommended that the pole attachment regulations be clarified to allow EVSE on poles, and that pole owners should not be allowed to prohibit them (It's Electric In. Comm., at 1-2). Nantucket supported EVSE being

included in the definition of licensee and the categorization of EVSE as complex make-ready work (Nantucket In. Comm., at 6-7).

The EDCs strongly oppose EVSE being classified as simple make-ready work eligible for OTMR. EVSEs carry a level of electric voltage that is only found in the power space. There are important safety issues in regard to EVSE. Furthermore, EVSE may cause a service outage because its heavy weight may impact the structural integrity of a utility pole. Therefore, EVSE cannot be considered simple make-ready work eligible for OTMR.

Eversource strongly agrees with Verizon and MEAM that EVSE should not, at this time, be permitted as an allowable attachment on poles. As stated by Eversource in the EDCs' Initial Comments, addressing EVSE in the proposed regulations is problematic and premature. It is problematic because an EVSE can negatively impact the operations of the electric system, make it more difficult for workers to climb the pole to perform maintenance or repairs, may impact the structural integrity of poles due to the weight of the EVSE, complicate storm restoration, slow down the current pole attachment process, and increase the likelihood double poles. It is premature because there are a number of complex and important issues that need to be fully examined.

IX. MISCELLANEOUS

This section will address various recommendations made by a variety of entities. Consequently, it is organized by entity and will discuss recommendations by fourteen entities: Verizon, NECTA, GNS, CTIA, Gateway, Ripple Fiber, OpenCape, ExteNet, MEAM, IBEW, the Compact, Brookline, and Cohasset.

A. VERIZON

In their initial comments, Verizon requested that the proposed regulations should not go into effect for at least six months after publication in the Massachusetts Register (Verizon In.

Comm., at 1-3). In support of its request, Verizon explained it needed time for IT upgrades (id.). In addition, Verizon discussed the Massachusetts Broadband Institute ("MBI") Gap Networks Grant Program, and the need for pole owners to process and complete significant make-ready work for grants by the December 31, 2026 deadline (id.). Verizon expressed concern with implementing new changes to pole attachment procedures and systems while trying to meet the Gap Networks deadlines (id.). The EDCs concur with Verizon and agree that new regulations should not take affect for at least 180 days after publication in the Massachusetts Register.

Verizon suggested that the phrase "business days" be used without referencing days that the Departments are closed, which would make it easier to track new proposed timelines (Veriozn In. Comm., at 4). The EDCs do not object to this clarification.

While Verizon supports requiring pole owners to offer electronic payment options to licensees, it also requested that licensees be required to use those electronic payment methods once they are made available by the pole owners. (Verizon In. Comm., at 5). In addition, Verizon requested the reference to "an adequately descriptive writing" in Section 45.05 should be changed to "the utility's required forms" (id.). Also, Verizon requested that references to "written" notice should be changed to "written or electronic" notice (id., at 5-6). The proposed rules require the provision of certain notices and information in several instances. To avoid unnecessary and unrequested work, Verizon also proposes that certain items be made available upon request (id., at 6). The EDCs concur with these requests by Verizon.

Verizon recommended a sliding-scale timeline for the resubmission process for small, regular, and mid-sized orders by adding 15 days per category in order to accommodate the increasing complexity of larger sized orders (Verizon In. Comm., at 6-7). The EDCs supports Verizon's recommendation.

Verizon recommended that the provision which requires the pole owner to provide monthly written updates to new licensees on to the status of any pending permitting and approvals submitted to all government authorities be deleted (Verizon In. Comm., at 6). Verizon explained that the licensee can go directly to the permitting authority to get a status update (id., at 6-7). The EDCs supports Verizon's recommendation.

Verizon recommended the deletion of this proposed Section 45.08(4)(b) (Verizon In. Comm., at 7). Verizon explained that it does not make sense to provide notice when government permits are not required. The EDCs concur with the deletion of the proposed section.

Verizon recommended that additional language should be added to proposed Section 45.08(7)(a) to clarify that licensees require authorization from the pole owners in addition to the applicable authorized government authorities (Verizon In. Comm., at 7). The EDCs concur with this clarification

Verizon recommended that the proposed Section 45.09(2)(f) be deleted (Verizon In. Comm., at 7). Verizon argued that the proposed survey process is redundant because a new licensee is already required to provide utilities with the survey results with their application (id.). The EDCs oppose the deletion of this proposed section. The regulations pertaining to OTMR need to clearly state that a survey must be performed by a contractor included on the contractor lists maintained by each pole owner, and that the pole owners and existing licensees be allowed to be present for any field inspection conducted as part of the survey. This ensures that the survey, as it relates to the power space, was properly done.

Verizon recommended a slight modification to the proposed Section 45.09(3)(d) so as to change the reference to the proposed. Section 45.08(1) because a new application would have to

be created for the poles that would not be able to be worked under OTMR (Verizon In. Comm., at 7-8). The EDCs support this modification.

Verizon indicated that complex make-ready work is not performed by contractors in the communications space (Verizon In. Comm., at 8). In addition, Verizon requested the ability to remove contractors from its list based on past performance (id.). Because these recommendations only pertain to the communications space and Verizon's contractors, the EDCs do not take a position on it.

Verizon proposed additions to the proposed overlashing regulations based on relevant portions of the FCC's overlashing rules (Verizon In. Comm., at 8-9). In addition, Verizon recommended that the word "lowest" be deleted in regards the prohibition on overlashing telephone utility lines on a pole because it is unnecessary. The EDCs concur with these changes.

Verizon proposed that in the annul informational filings, pole owners not be required to identify the number of double poles remaining or the number and type of attachments (i.e., wireline telecommunications, wireless telecommunications, cable television, and municipal) associated with the applications for pole access (Verizon In. Comm., at 9). Also, Verizon explained that pole owners only know the company name but not the services the provider is offering (id.). The EDCs concur with this recommendation.

B. NECTA

In their initial comments, NECTA argued there were various ambiguities in the proposed regulations (NECTA In. Comm., at 26-28). Specifically, NECTA argued that: (1) the Departments should use the word "run" rather than "toll" in relation to make ready timelines at the end of the ten-day period; (2) it is unclear when the make-ready timeline begins to run if no government permits are needed, (3) there should be a deadline for final make-ready invoices must be sent to

attachers; and (4) it is unclear if pole owners can wait to receive make-ready payments before filing necessary permitting applications with government authorities (id.). For the most part, these arguments are without merit.

First, EDCs concur that, for greater clarity, the word "run" should be used rather than "toll" in relation to make ready timelines, but do not agree with NECTA's suggestion to shorten the timeline by ten days. Pole owners need this time to organize resources to perform the make-ready work.

Second, the EDCs concur that the proposed Section 45.08(4)(b) is unclear. Verizon also recommended the deletion of this proposed section (Verizon In. Comm., at 7). The EDCs concur with the deletion of the proposed section.

Third, it would be inappropriate to impose an arbitrary deadline for when an EDC must issue its final true-up invoice for make-ready work. As explained above, G.L. c. 166, § 25A entitles a utility to "recovery of not less than the additional costs of making provision for attachments," and does not limit recovery to costs included in a final invoice issued by any arbitrary deadline. Also, NECTA's attempts to establish a deadline which a final true-up invoice must be sent to an attacher is either a backhanded way to impose an arbitrary deadline on EDCs to complete work in the power space for even very large orders or an attempt to turn make-ready estimates binding. Regardless, this recommendation is inappropriate, may negatively impact safety and reliability, is contrary to state law, and would prevent EDCs from recovering their full costs.

Fourth, pole owners should be allowed to wait to receive make-ready payments from attachers before filing necessary permitting applications with government authorities. It costs the EDCs time and money to submit permitting applications with government authorities. Also, until the attacher accepts the make-ready estimate with a payment, it is possible the attacher could make

changes to its deployment plans, which would change the permitting applications with government authorities. Electric customers should not get stuck paying for the costs of unnecessary permitting applications.

NECTA argued that the proposed 220 CMR 45.08(5)(a) requires the utility to enter into a new or amended pole agreement with the new licensee before issuing notices concerning the upcoming make ready work (NECTA In. Comm., at 33-35). NECTA opposed this requirement because a pole agreement is a prerequisite to the ability to submit pole applications (id.). NECTA recommended that the proposed regulations should be clarified that an existing pole attachment agreement satisfies the requirement under the proposed 220 CMR 45.08(5)(a). EDCs do not see the need for a new or amended pole agreement with a new licensee before issuing notices concerning the upcoming make ready work. However, a new licensee must agree to an EDC's pole agreement prior submitting pole applications.

NECTA recommended that the proposed regulations should include a provision which indicates that for the application review process, an application should be "deemed granted" if decision not reached within the timeline (NECTA In. Comm., at 44-45). This is unnecessary and is too drastic a remedy. There is no evidence that in Massachusetts EDCs are failing to timely review applications for completeness. This type of provision is unnecessary, Also, the remedy of deeming an application granted is drastic. A flawed application could negatively impact worker safety or reliability. It should not be deemed granted because of an administrative oversight.

NECTA recommended that the proposed regulations include a self-help remedy for make-ready cost estimates (NECTA In. Comm., at 45-46). The EDCs do not take a position on this recommendation on the assumption that this self-remedy would only apply to make-ready work in

the communications space. Otherwise, the EDCs would reiterate their strong opposition to any form of self-help make-work remedy in the power space as explained earlier in these comments.

NECTA recommended that all invoices issued by the pole owners provide detailed, itemized costs on a pole-by-pole basis (NECTA In. Comm., at 50-51). NECTA noted that in other jurisdictions invoices for pre-existing violations fail to clearly identify the specific violation at issue or explain why the attacher should bear the associated costs (id.). This is unjustified. The problems in other states do not need to be addressed in this state. EDCs already provide sufficiently detailed invoices regarding pre-existing violations. There is no need to impose on the EDCs further changes in their billing process beyond what is already necessary to implement the currently proposed regulations.

NECTA recommended that the pole owners submit information filings twice annually, and that these semi-annual filings include data such as on the frequency and duration of deviations from make-ready timelines, the frequency of application voiding events, and the outcomes of any disputes or complaints (NECTA In. Comm., at 48-49). These reporting requirements are unnecessary and excessive.

While the EDCs do not object to filing annual reports, semi-annual reports are unnecessary. EDCs are only required to file annual reports on service quality, and reliability. It is unclear why it is vital for reports involving pole attachments to be more frequent. Also, providing data on deviations, application cancellations, and disputes would be excessive. The Departments would be aware of any disputes that arise of the proposed regulations, and of the type of issues in dispute. The Departments do not need data on disputes in filings. Also, information on deviations and application cancelations do not need to be included in reports. If serious issues arise over deviations and application cancelations, the Departments will become aware of them if they rise

to the level of dispute that needed the attention of the Departments. Also, we note that MEAM expressed opposition to informational filings because of their limited resources (MEAM In. Comm., at 3). The Departments should keep in mind the burden extensive regulatory reporting will have on all pole owners.

C. OTHER ENTITIES

In their initial comments, GNS recommended revised regulations in which attachments would proceed unless there is a threat of imminent harm involving a prior attachment of the new licensee (GNS In. Comm., at 26-27). This is inappropriate. The proposed regulations already states that a utility cannot deny a new licensee access because of a preexisting violation not caused by a prior attachment of the new licensee unless the violation involves safety issues or impacts the structural integrity of the pole. Limiting the exception to situations involving only imminent danger is too narrow. The safety of workers and structural integrity of the poles should be not compromised to meet the broadband deployment goals of GNS.

GNS recommended that the new regulations should apply to all pole attachment applications pending at the time the regulations take effect (GNS. In. Comm., at 34). This would be inappropriate and unfair. In order to give everyone time to adjust and all to be put on equal footing, a new regulatory framework should be implemented prospectively. Changing the rules retroactively is inherently unfair, and will advantage a select few over the many. Regrettably, GNS is seeking to give itself an advantage over its competitors by having its previously submitted applications processed under the new regulations. They want the benefit of having their applications submitted before that of their competitors so that their applications would be completed before those of their competitors but also want the benefit of newer streamlined

regulations. The Departments should not go along with GNS's attempt to game Massachusetts regulations for their own benefit to the detriment of their competitors.

In their initial comments, CTIA recommended that the proposed regulations should include a provision which indicates for the application review process, an application should be "deemed granted" if decision not reached within the timeline (CTIA In. Comm., at 2-3). This is unnecessary and is too drastic a remedy. As explained in response to NECTA, a flawed application could negatively impact worker safety or reliability. It should not be deemed granted because of an administrative oversight.

In their initial comments, Gateway strongly supported the longstanding practice of determining makeready placement and associated costs based on the date of application, with subsequent applications by other attachers receiving make ready estimates that assume completion of the work on behalf of the prior applicant (Gateway In. Comm., at 2-3). The EDCs concur with Gateway. This practice is consistent with state law's requirement of non-discriminatory access to poles.

At the public hearing, Ripple Fiber suggested that pole attachment applications of different applicants be reviewed concurrently so that the make-ready work for all applicants can be performed at the same time. The EDCs oppose this recommendation. This recommendation is inconsistent with the longstanding practice in Massachusetts of determining makeready placement and associated costs based on the date of application. Also, it would be complicated to attempt to coordinate make-ready work for multiple entities at the same time for the same poles. Lastly, this recommendation would lead to great uncertainty and negatively impact other attachers. For example, if a make-ready design is developed involving two new attachers, and a make-ready estimate is sent out, but subsequently, one of the attacher decides not to proceed with the make-

ready work, then a whole new make-ready design would need to be drafted and a new estimate developed.

OpenCape requested that an existing licensee request to overlash their own wires be deemed granted if no response is received with fifteen days (OpenCape In. Comm., at 3). In general, the EDCs do not concur with an approach where a request for new attachment is deemed automatically granted because of potential administrative oversight.

In their initial comments, ExteNet recommended that join pole owners be required to adopt a single, uniform application or submission process (ExteNet In. Comm., at 3-4). As stated in their initial comments, in this proceeding, the EDCs will work with Verizon to explore a single application process. However, the immediate creation and adoption of the single application process would be problematic because the EDCs must focus on changing their processes to adapt to the Departments' proposed regulations. Instead, the Departments should allow some time for their new pole attachment regulations to be in operation, before engaging in efforts to have the joint pole owners develop a single application process.

ExteNet also recommended that the pole owners use standardized line-item fields for all survey and make-ready estimates and invoices for ease of review by attachers, and reduce disputes (ExteNet In. Comm., at 4). This is unnecessary. The pole owners have been issuing make-ready estimates and invoices that use different formats for many years with few issues. Also, requiring pole owners to standardize their estimates and invoices would require additional time for negotiation amongst the pole owners. The focus of pole owners should remain on changing their processes to adapt to the Departments' proposed regulations.

In their initial comments, MEAM suggested that electric distribution company pole owners be allowed to reserve more space on their poles for future electric needs (MEAM In. Comm., at 3). The EDCs concurs with MEAM.

Also, MEAM expressed opposition to informational filings because of their limited resources (MEAM In. Comm., at 3). While the EDCs do not object to filing annual reports, the Departments should keep in mind the burden that extensive regulatory reporting will have on all pole owners, and limit the information that needs to be provided in these annual reports to what is truly necessary for the Departments to properly evaluate the pole attachment process in this state.

In their initial comments, IBEW recommended that in annual reporting requirements for pole owners and attachers, that information be provided identifying the contractors used, safety incidents, and hours of work performed by contractor type to ensure compliance with qualification standards (IBEW In Comm., at 1). The EDCs respectfully disagree with the IBEW in regard to imposing additional reporting requirements on the EDCs. It is unnecessary. The EDCs have and will continue to prioritize worker and public safety.

In their initial comments, the Compact suggested clarifying how municipal-owned street-light facilities are treated under the proposed regulations (Compact In. Comm., at 4). Specifically, the Compact suggested that it should be clarified whether and to what extent provisions, involving NJUNS requirements, make-ready work, OTMR, and utility-approved contractors, are intended to apply to municipally-owned street-light attachments (id., at 5). The Compact noted that municipalities currently operate pursuant to existing tariff and contractual arrangements governing street-light attachments, including municipal access to the utility pole (id.). The EDCs do not take a position on this request, but suggest that more process would be needed to fully discuss the issues surrounding municipal-owned street-light facilities.

In their initial comments, Brookline requested that the Departments make it clear in these regulations that any utility or attacher disturbing pavement, sidewalks, curbing, tree roots, landscaped areas, markings, drainage structures, or other affected areas be restored to full municipal standards (Brookline In. Comm., at 3). This request is beyond the scope of this proceeding.

In their initial comments, Cohasset recommend that: (1) all utilities companies provide updated emergency phone and email contact lists; and (2) downed wires reported to utilities by communities must be repaired or made safe within 30 days (Cohasset In. Comm., at 1). These issues go beyond the scope of this rulemaking which is about the pole attachment process. These issues are more relevant in proceedings involving emergency response plans.

X. CONCLUSION

The EDCs appreciate the opportunity to provide the DPU and DTC with these Reply Comments and to assist the Departments as they develop regulations, which properly balance the need for timely deployment of broadband and the need to ensure the safety and reliability of the electrical system.

Respectfully submitted by:

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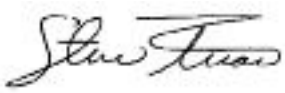

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