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MASS. DEPT OF TELECOMMUNICATIONS & CABLE

July 31, 2008

Mary L. Cottrell, Secretary
Department of Public Utilities
One South Station – 2nd Floor
Boston, MA 02110

Catrice C. Williams, Secretary
Department of Telecommunications and Cable
Two South Station – 4th Floor
Boston, Massachusetts 02110

Re: Memorandum of Agreement Regarding Jurisdiction Over Pole Attachment and Double Pole Disputes

Dear Secretaries Cottrell and Williams:

On behalf of Fitchburg Gas and Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company, and Western Massachusetts Electric Company, we are responding to the request of the Department of Public Utilities ("DPU") and the Department of Telecommunications and Cable ("DTC") for comments on the proposed Memorandum of Agreement ("MOA") which describes a process to share jurisdiction over issues related to pole attachments and double poles. We commend both the DPU and the DTC for developing this MOA and appreciate the opportunity to provide comments. For the most part, we believe that the MOA describes a sensible and workable process. By this letter, we make four recommendations for revisions.

First, we comment generally on the scope of the MOA. The MOA states that it relates to pole attachments and double poles. It does not specifically state whether this includes pole attachment rates. Pursuant to Mass. Gen. Laws c. 166, § 25A, the Department of Telecommunications and Energy ("DTE"), the predecessor to both the DPU and the DTC, is to determine a "just and reasonable rate" for pole attachment costs, which should be "not less than the additional costs of making provision for attachments nor more than the proportional capital and operating expenses of the utility attributable to that portion of the pole, duct, or conduit occupied by the attachment. Such portion shall be computed by determining the percentage of the total usable space on a pole or the total capacity of the duct or conduit that is occupied by the attachment." Clearly, the DPU must make the determination of what these costs are for the electric distribution companies, as it and not the DTC has authority over the rates of electric distribution companies. The pole attachment rate cannot be determined in a vacuum. It is important that the DPU and DTC clarify in the MOA that the DPU will be the rate setting authority for pole attachment rates on electric distribution company owned poles.

Second, we note that in the whereas provisions, the DTC and DPU state that they have agreed on a process to share jurisdiction over pole attachments, and that they have agreed to

develop a process to share jurisdiction over issues relative to double poles. In the numbered paragraphs that follow, the MOA describes the process for sharing jurisdiction over pole attachments, but is silent on the development of the process with regard to double poles. Perhaps paragraph 11, which provides for a "collaborative forum with interested stakeholders to address pole attachment and double pole issues" is meant as the springboard for discussions on how to share jurisdiction over double poles. If this is the case, we recommend that the MOA be revised to specifically state this.

Third, since the process for addressing pole attachments is already delineated in the MOA, we recommend that paragraph 11 be revised to specifically state that the collaborative be limited to pole attachment issues that are germane to the MOA, such as implementation issues that arise under the MOA. This will also aid the DTC and the DPU in determining how well the MOA is addressing the complaints relative to pole attachments, which is necessary should the DTC and DPU wish to renew or modify the MOA pursuant to paragraph 13. We recommend against the current broad language of paragraph 11, which could be interpreted to mean that any and all matters pertaining to pole attachments and double poles would be an appropriate subject of the forum. Specifically stating up front that the collaborative forum will be used (1) to develop the process to share jurisdiction over issues relative to double poles and (2) to review implementation issues that arise under the MOA with regard to pole attachment complaints will provide valuable direction to the collaborative. We suggest that with this direction it should be up to the collaborative to weigh the pros and cons of selecting a facilitator and setting a procedural schedule and it is not necessary or warranted to proceed to that level of detail in the MOA.

Fourth, we note that the MOA contemplates that whether the DPU or the DTC has jurisdiction over a pole attachment depends on the nature of the attachment. Broadly speaking, the DTC has jurisdiction over attachments relating to telecommunications, and the DPU has jurisdiction over attachments relating to electricity. This may be a workable way to divide jurisdiction. However, there are cases where the attachment to be made on a pole used for the provision of electric service must be reviewed for the effect of the attachment on the safety and reliability of the electric system. We believe that the DPU has expertise on this subject, and recommend that the DPU have responsibility for this review in all cases. For pole attachment complaints under the jurisdiction of the DTC, where a question has been raised concerning safety and reliability, an opinion by the DPU that the attachment would not negatively impact the safety and reliability of the electric system should be a condition precedent to an order by the DTC. To accomplish this recommendation, we recommend adding the following sentences to the end of paragraph 4 of the MOA:

> In those cases where the attachment is to be made to a pole used for the provision of electric utility services, and a question has been raised as to the safety and reliability of the electric system, the DPU shall determine whether the attachment would negatively impact the safety and reliability of the electric system. A DPU determination that the attachment would not negatively impact the safety and reliability of the electric system shall be a condition precedent to a ruling by the DTC allowing the attachment.

We look forward to working with both the DPU and the DTC under the MOA. Thank you very much for your time and attention to this matter.

Very truly yours,

NATIONAL GRID
By its attorney,

s/ Amy Rabinowitz
Amy Rabinowitz
Assistant General Counsel
National Grid
201 Jones Road
Waltham, MA 02451

UNITIL
By its attorney,

s/ Gary Epler
Gary Epler
Chief Regulatory Counsel
Unitil Service Corp.
6 Liberty Lane West
Hampton, NH 03801-1720

NSTAR ELECTRIC COMPANY
By its attorney,

s/ Neven Rabadjija
Neven Rabadjija
Associate General Counsel
NSTAR Electric & Gas Corporation
800 Boylston Street, 17th Floor
Boston, MA 02199

WESTERN MASSACHUSETTS
ELECTRIC COMPANY
By its attorney,

s/ Stephen Klionsky
Stephen Klionsky
Senior Counsel
Western Massachusetts Electric Company
100 Summer Street, 23rd Floor
Boston, MA 02110-2131

cc: Service List