The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 03-87 November 28, 2003

Report of the Department of Telecommunications and Energy relative to reducing the number of double utility poles within the Commonwealth, pursuant to Chapter 46 of the Acts of 2003, Section 110.

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I. INTRODUCTION

On July 31, 2003, Chapter 46 of the Acts of 2003, "An Act Providing Relief and Flexibility to Municipal Officials," St. 2003, c. 46, was enacted. Section 110 of this Act requires the Department of Telecommunications and Energy ("Department") to issue a report to the Committees on Ways and Means and the Joint Committee on Government Regulations relative to reducing the number of double utility poles within the Commonwealth ("Section 110").[1] The report must include (1) Department recommendations and proposed legislation for the enforcement of G.L. c. 164, § 34B, including penalties and waivers, and (2) an analysis of whether local enforcement by ordinance or by-law is preferable to statewide enforcement of G.L. c. 164, § 34B.[2]

On September 30, 2003, the Department conducted a public hearing and technical conference. Interested persons were given the opportunity to submit written comments by October 9, 2003. Public comments were filed by the following: Town of Amesbury; Town of Framingham; Town of Lexington; the Lexington Electric Utility Ad Hoc Committee; City of

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[1] Utility poles typically require replacement because (1) the existing pole is no longer structurally sound due to age or a motor vehicle accident, (2) the existing pole lacks space for new attachments, (3) the existing pole cannot accommodate an electric distribution system upgrade, or (4) a municipality's construction project, road-work, or related activity requires the installation of a new pole (see Appendices C-5, at 5; C-8, at 3). A double pole exists when a new pole is installed next to an existing pole in order to support the existing pole or allow for the transfer of facilities from the existing pole.

[2] General Laws c. 164, § 34B requires in part, that a utility company "engaging in the removal of an existing pole and the installation of a new pole in place thereof shall complete the transfer of wires, all repairs, and the removal of the existing pole from the site within 90 days of the installation of the new pole."

Malden; Town of Milton; City of Newburyport; Town of North Attleboro; City of Revere; Town of Scituate; Town of Southbridge; Town of Stoneham; Town of Sudbury; City of Worcester; and Mr. Martin Hanley of Dedham (Appendix B). The following utility pole owners filed comments: Boston Edison Company, Cambridge Electric Light Company, and Commonwealth Electric Company d/b/a NSTAR Electric ("NSTAR"); Fitchburg Gas and Electric Light Company ("FG&E"); Granby Telephone and Telegraph Company ("Granby"); Massachusetts Electric Company and Nantucket Electric Company ("MECo"); Russell Municipal Electric Company; Taconic Telephone Corporation; Verizon Massachusetts ("Verizon"); and Western Massachusetts Electric Company ("WMECo") (collectively, the "pole owners") (Appendix C).

II. DOUBLE POLE STATUS IN MASSACHUSETTS

On January 9, 2002, in response to an increasing number of municipal complaints concerning double poles, the Department directed NSTAR, FG&E, MECo, Verizon and WMECo, as pole owners, to provide an inventory of double poles in each municipality, and to provide a report describing their practices for (1) notifying attachees[3] of the requirement to transfer facilities to a new pole, and (2) ensuring the prompt removal of the old pole when all the facilities have been transferred. On April 9, 2002, the pole owners provided their

[3] Attachees include inter alia, electric companies, telephone companies, cable providers, competitive telecommunication carriers, city or town departments, alarm companies, and other private businesses.

inventory of double poles, and a description of each company's practice for attachee notification.[4]

The Department met with the pole owners to discuss mechanisms which would facilitate the efficient removal of double poles in the Commonwealth. The pole owners offered to work collectively to implement a statewide system for coordinated double pole management. Of particular concern and importance to the Department was the ability to design a system that would facilitate the pole owners' ability to comply with G.L. c. 164, § 34B, as well as to eliminate the backlog of double poles.

As a result of these initiatives, the pole owners entered into an agreement with InQuest Technologies, Inc. to use its Pole Lifecycle Management system ("PLM").[5] Information concerning a double pole is entered into the PLM's web-based database and each attachee is notified electronically, in turn, when it is time to transfer its facilities according to a previously established prioritization. The PLM system is designed to provide the tools for pole owners to better enforce the terms of pole attachment agreements[6] so that all facilities can be transferred and old poles removed in a timely manner. The pole owners met with the Department on

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4 The number of double poles that existed at the time G.L. c. 164, § 34B, was enacted, included in this inventory, is referred to as the "backlog" of double poles.

5 The PLM system reports are attached to this report (see Appendix C-8).

6 Attachees, other than municipalities, enter into individually negotiated license agreements with pole owners that provide terms and conditions for pole attachments. See A-R Cable Services, et al., D.T.E. 98-52 (1998).

several occasions to report on the development of the PLM system, and on February 22, 2003, the PLM system was placed in service.

There are approximately 1,228,684 utility poles in Massachusetts. The pole owners report that, as of October 14, 2003, there were approximately 25,686 double poles in Massachusetts (about 73 per municipality), of which 23,731 are jointly owned by Verizon and other pole owners (Appendix C-8, at 4; see also Appendices C-3 through C-10). Verizon reported that there are 1,955 solely-owned double poles; 1,826 of which are owned by Verizon, 65 by NSTAR, 62 by MECo, and two by FG&E. Verizon states that it is solely responsible for setting and removing approximately 40 percent of all poles in Massachusetts, and that 33 percent of the 25,686 double poles identified by the PLM are located in Verizon's "sole set" areas (Appendix C-8, at 4). The current total of double poles includes the backlog of double poles that existed at the time G.L. c. 164, § 34B was enacted.

III. ENFORCEMENT

A. Introduction

As noted, Section 110 requires that this report include an analysis of whether local enforcement by ordinance or by-law is preferable to statewide enforcement of G.L. c. 164, § 34B. The Department recommends statewide enforcement for the reasons discussed below.

B. Comments

1. Municipalities

The municipalities argue that the pole owners have been slow, even unresponsive, in their attempts to reduce the number of double poles (Appendices B-3; B-4, at 2; B-5a at 1; B-8, at 1; B-9, at 2; B-10; B-11; B-13, at 1; B-14, at 1; B-15). According to the municipalities, the number of double poles in their communities is a longstanding problem that presents not only an aesthetic issue, but also a safety concern (Appendices B-2, at 12-13, 36-37; B-5a at 1; B-6; B-8, at 1; B-9, at 1; B-11; B-13, at 1). For this reason, the municipalities recommend stricter enforcement of G.L. c. 164, § 34B (Appendices B-3; B-5a at 3; B-6; B-7, at 1-2; B-8, at 2; B-10; B-13, at 1-2).

Some municipalities argue that local enforcement of G.L. c. 164, § 34B would make the enforcement process more efficient by enabling the communities to direct the removal of double poles immediately (Appendices B-5a at 5; B-6). Lexington likens a double pole left in place for more than 90 days to an illegally parked car, and argues that the municipality should be able to issue non-criminal fines, similar to parking tickets, through a designated officer

(Appendix B-5a at 5). Moreover, Lexington suggests that the municipalities be given additional authority under G.L. c. 86, § 7 to hire a contractor to transfer facilities and remove the double poles itself (Appendices B-2, at 27; B-5a at 5).

Other municipalities, however, express a preference for statewide Department enforcement of G.L. c. 164, § 34B as consistent with the Department's authority to regulate utilities (Appendices B-8, at 2; B-13, at 1-2). In support of statewide enforcement, Somerville notes the administrative burdens municipalities will face managing and enforcing the 90-day statutory double pole removal requirement (Appendix C-1, at 63). Further, because of technical complexities and liability for service outages that could affect public safety, Somerville opposes granting municipalities the authority to transfer wires and remove double poles (Appendix C-1, at 64).

2. Pole Owners

Most pole owners state that the double pole issue is a statewide problem that must be managed by the Department to ensure consistent rules and processes throughout a pole owner's service territory (Appendices C-3, at 8; C-5, at 3; C-8, at 12; C-9, at 7). The pole owners further state that municipalities lack the expertise and experience to adequately and safely transfer facilities and remove double poles (Appendices C-3, at 9; C-5, at 4, 8; C-8, at 11).

NSTAR states that the pole owners' contractual agreements with attachees concerning procedures for the installation, transfer, and removal of facilities must be taken into account when considering any enhanced enforcement mechanisms (Appendix C-3, at 4). NSTAR's pole-attachment license agreements provide a remedy if third-party attachees fail to transfer

their attachments in a timely manner (i.e, attachees are charged for the cost of the transfer) (Appendices A-6; C-3, at 4-5). Therefore, NSTAR argues that the enforcement of G.L. c. 164, § 34B should remain with the Department (Appendix C-3, at 4).

Verizon argues that allowing a municipality to hire an outside contractor to remove all facilities from a pole could result in outages, raising serious public safety and network concerns (Appendix C-8, at 10). The pole owners note that at least one municipality (Somerville) recognizes that any proposal for municipal authority to transfer facilities and remove the double poles would create liability issues (Appendices C-3, at 9; C-8, at 10-11).

C. Analysis and Recommendations

General Laws c. 164, § 34B, requires, in relevant part, that a "distribution company or a telephone company engaging in the removal of an existing pole and the installation of a new pole in place thereof shall complete the transfer of wires, all repairs, and the removal of the existing pole from the site within 90 days from the date of installation of the new pole." Section 110 requires that the Department provide an analysis of whether local enforcement by ordinance or by-law is preferable to statewide enforcement of G.L. c. 164, § 34B. As discussed below, the Department recommends continued statewide enforcement of G.L. c. 164, § 34B, in order to ensure uniform and efficient services to the public.

The Department has broad authority to regulate and supervise the activities of telephone and electric distribution companies. G.L. c. 164, § 76; G.L. c. 159, § 16. Costs associated with poles, the replacement and removal of poles, and the related transfer of wires, are

normally included in the utility's rates, and are subject to Department review and approval pursuant to the Department's ratemaking authority, G.L. c. 164, § 94, G.L. c. 159, §§ 14, 17, 19, 20. Finally, G.L. c. 166, § 25A ("Massachusetts Pole Attachment Statute") provides the Department with authority to regulate the rates, terms, and conditions applicable to attachments, and requires that the Department consider the interests of subscribers of cable television services as well as the interests of consumers of utility services.

Consistent with the Massachusetts Pole Attachment Statute, the Department has promulgated regulations entitled "Pole Attachment, Duct, Conduit and Right-Of-Way Complaint and Enforcement Procedures" that are intended to ensure that telecommunications carriers and cable system operators have nondiscriminatory access to poles, ducts, conduits, and rights-of-ways owned or controlled, in whole or in part, by one or more utilities with rates, terms and conditions that are just and reasonable. 220 C.M.R.§§ 45.00 et seq.; see Greater Media, Inc. v. Department of Public Utilities, 415 Mass 409 (1993); A-R Cable Services et.al, D.T.E. 98-52 (1998); Cablevision of Boston Inc., et al., D.P.U./D.T.E. 97-82 (1998). Thus, any transfer of wires related to the replacement and removal of utility poles pursuant to G.L. c. 164, § 34B must be consistent with the requirements of the Massachusetts Pole Attachment Statute and 220 C.M.R.§§ 45.00 et seq.

Regulation of electric distribution and telephone utilities, the removal and replacement of poles, and the transfer of wires to the replaced poles are subject to comprehensive Department authority. G.L. c. 164, §§ 34B, 94; G.L. c. 166, § 25A; 220 C.M.R. 45.00 et seq. A fundamental policy of the Department is to ensure uniform and

efficient utility services to the public. New England Telephone and Telegraph Company v. City of Lowell, 369 Mass 831, 834, 835 (1976); Boston Edison Co. v. Sudbury, 356 Mass. 406, 420, 253 N.E.2d 850 (1969). Pole owners operate across multiple municipalities. Individual municipal ordinances or by-laws enforcing the removal of poles and the transfer of wires, while designed to further legitimate local interests, would frustrate this fundamental policy. See Boston Gas Company v. City of Newton, 425 Mass. 697 (1997); Boston Gas Company v. City of Somerville, 420 Mass. 702 (1995) (Supreme Judicial Court invalidated municipal ordinances as inconsistent with and pre-empted by G.L. c. 164). Presently, under Const., Art. 89, § 6, municipalities may not adopt by-laws or ordinances that are inconsistent with "the State's regulatory scheme for public utilities." Boston Gas Company v. City of Somerville, 420 Mass. 702, 703 (1995). A statutory grant to authorize municipal regulation of double poles is likely to see substantial variation in implementation and enforcement by the 351 cities and towns. The prospect for claims of inconsistency with "the State's regulatory schemes for public utilities" is far from negligible, but is also a risk that is easily avoided by leaving the Department authority intact.

Finally, the Department has oversight with respect to public safety and the reliability of the investor-owned electric distribution and telecommunication network. Municipal involvement with the removal of poles and wires would make the Department's oversight in these areas more complicated. Further, pole owner compliance with differing municipal requirements could increase costs to pole owners. The Department has jurisdiction to assess the cost implications of utility requirements. For these reasons, the Department recommends

continued statewide enforcement of G.L. c. 164, § 34B, rather than a redistribution of authority that would "Balkanize" responsibility for what is now integral. Declining to "Balkanize" authority would be consistent with the overall statutory scheme. Pereira v New England LNG Company, Inc., 364 Mass. 109, 121 (1973); New England LNG Company v City of Fall River, 368 Mass 259, 265 (1975).

IV. REDUCING THE NUMBER OF DOUBLE POLES

A. Introduction

Section 110 requires that the Department recommend proposed legislation relative to reducing the number of double poles, including penalties and waivers.[7] As discussed below, the Department does not recommend any proposed legislation at this time. If appropriate, the Department will recommend proposed legislation after the PLM has had an opportunity to yield results that can identify the root cause of the double pole problem in Massachusetts. At that time, any penalties can be properly targeted.

B. Comments

1. Municipalities

The municipalities argue that a penalty provision is necessary for the effective enforcement of G.L. c. 164, § 34B (Appendices B-3; B-4, at 3; B-5a at 3; B-7, at 1; B-8, at 2; B-10; B-13, at 1-2). The municipalities urge the Department to recommend the establishment of a schedule of fines to address the failure of pole owners to comply with the statute

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[7] While G.L. c. 164, § 34B establishes a 90-day removal period on a going forward basis, a significant concern remains – namely the elimination of the double pole backlog that existed at the time G.L. c. 164, § 34B was enacted.

(Appendices B-5a at 3-4; B-8, at 2; B-13, at 1). Some municipalities argue that a statewide penalty structure prevents inconsistency among the cities and towns with respect to individual enforcement mechanisms and fines, and allows for a more coordinated effort to reduce the number of double poles (Appendices B-5a at 3-4; B-13, at 2). Stoneham argues that if the existing law is amended to provide municipalities with the right to impose civil fines, then the current state limit on fines and penalties a municipality can impose (i.e., $300 pursuant to G.L. c. 40, § 21) is far too low to be an effective deterrent (Appendix B-13, at 2). Lexington recommends that the penalty structure consist of a daily fine, increasing over time for each day a pole owner is in violation of the statute (e.g., $20 per day first 30 days, $30 per day for the second 30 days, and $40 per day thereafter) (Appendix B-5a at 4). Milton, on the other hand, suggests that a fine of $100 per day is necessary to provide an effective deterrent (Appendix B-7, at 1).

Municipalities differ in whether the revenue from fines and penalties should be distributed to the municipalities, the Commonwealth, or split between the Commonwealth and the municipality (Appendices B-5a at 5; B-10; B-13, at 2). Rather than collecting fines, Lexington proposes that any penalties be applied as a credit to the municipality's utility bill (Appendix B-5a at 5). Lexington also argues that any costs incurred by a municipality in transferring facilities to a new pole should similarly be deducted from the municipality's utility bill (Tr. 2, at 2). Lexington further recommends a "stop the clock" provision when calculating fines or penalties to allow for conditions beyond a utility company's control that

would prevent the removal of the double pole within the statutory 90-day deadline (e.g., natural disasters or labor actions) (Appendix B-5a at 4-5).

2. Pole Owners

As part of their effort to reduce the number of double poles, the pole owners indicate that they have recently made some modifications to their double pole practices to increase efficiency (Appendices C-3, at 5; C-4, at 1-2; C-5, at 7; C-9, at 5). Pole owners note that the removal of double poles was never a simple task. They argue that this task has become increasingly complex because of the growing number of attachees, which may include municipal systems and multiple telecommunications providers (Appendices C-3, at 4; C-5, at 5; C-8, at 5). Pole owners explain that facilities must be transferred in a strict order based on the order of attachment, and that removing a double pole requires precise coordination among all parties (Appendices C-3, at 4; C-5, at 5; C-8, at 4). Thus, unresponsiveness or delay by one attachee necessarily impedes action by attachees next in the queue and causes reassignment of work crews assigned to a relocation task when a prior attachee has not completed his relocation tasks as expected.

The pole owners recommend a transition period prior to the imposition of any corrective measures to allow sufficient time to improve upon and gain experience from the existing statewide PLM system (Appendices C-3, at 7; C-4, at 3; C-5, at 10; C-8, at 9; C-9, at 6). The pole owners state that the ongoing improvement of the PLM system will enable better management of the double pole removal process by allowing more efficient

communication of accurate and timely information to attachees (Appendices C-3, at 4; C-4, at 2; C-5, at 3; C-8, at 7-8).

The pole owners also argue that it is premature for the Department to recommend the adoption of penalties for pole owners who fail to remove double poles within 90 days (Appendices C-3, at 10; C-5, at 10-11; C-8, at 9; C-9, at 4). Pole owners argue that to impose fines solely on them, but not fine the attachees who fail to transfer their facilities in a timely manner, would be an unfair, unreasonable, and an ineffective approach to enforce G.L. c. 164, § 34B (Appendices C-3, at 10-11; C-8, at 9). In addition, NSTAR states that the imposition of penalties by the Department can occur only after determination of culpability in the context of an adjudicatory hearing (Appendix C-3, at 11).

MECo explains that its pole attachment agreements allow it to transfer attachees' facilities if the attachees fail to complete their transfers in a timely manner, and to charge the attachees for the cost of the transfer (Appendix C-5, at 6; see also Appendix A-6). However, MECo states that it has not availed itself of this contractual remedy because it would be administratively burdensome to collect reimbursement from attachees (Appendix C-5, at 6).[8] MECo further adds that it lacks sufficient expertise in communications technology to safely transfer communications facilities (Appendix C-5, at 6). Therefore, if the Department

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[8] However, the pole owners state that they have no written agreements with municipalities that place facilities on their poles and that the transfer of municipal attachments is not governed by enforceable contractual terms (Appendices C-3, at 11; C-5, at 11). As a result, MECo suggests that pole owners should be given explicit authority to transfer an attachee's facilities at the attachee's expense (Appendix C-5, at 11).

determines that further regulatory or legislative action is required, MECo recommends that any enforcement provisions be directed at the party responsible for the delay, whether that party is a pole owner or an attachee (Appendix C-5, at 11). Finally, MECo argues that any enforcement provision should allow for waiver in the event of circumstances outside of the pole owners' and attachees' control, including work stoppages and adverse weather conditions (Appendix C-5, at 11).

The pole owners reject Lexington's penalty proposal as "impractical, unreasonable and unlawful" (Appendices C-3, at 9; C-5, at 11; C-8, at 10). Further, the pole owners argue that allowing cities and towns to adopt their own set of rules and fees regarding the removal of double poles would be confusing, fragmented and, unmanageable (Appendices C-3, at 9; C-5, at 9; C-8, at 11-12). As much of the transfer work needed is outside of the pole owners' control, the pole owners recommend that the Department reject any proposal to impose penalties solely on pole owners (Appendices C-3, at 10; C-5, at 11; C-8, at 12).

C. Analysis and Recommendations

The PLM system is a valuable communications and management tool that has the potential to reduce the number of double poles in the Commonwealth. The PLM provides, for the first time, a common, statewide database of double poles and attachments. Under the PLM, project management functions are mechanized, and the inefficient manual notification of attachment transfers required by double pole removal are eliminated. All users, including municipalities and attachees, have access to the PLM database and can directly input updates.

Finally, the PLM system provides an on-line tracking process that allows attachees and pole owners to view the status of their respective poles and attachments.

However, the PLM system is relatively new (it has been in operation for less than one year)[9] and, as indicated by the commenters, needs further adjustment in some areas such as improved accuracy of data entry and added reporting formats. The PLM system has not been in operation long enough for the Department to assess whether the system, in its current form or with additional modifications, is an adequate tool to ensure compliance with G.L. c. 164, § 34B or to eliminate the backlog of double poles. Accordingly, the Department recommends that a penalty mechanism not be implemented until there is additional experience with the operation of the PLM. With this additional experience, the Department hopes to identify the root causes of the double pole problem in Massachusetts so that any penalties can be properly targeted.

In addition to the PLM system, pole owners also must demonstrate that they are complying with G.L. c. 164, § 34B. To this end, the Department will require pole owners to file semi-annual reports on the status of double poles. Moreover, to facilitate the elimination of the backlog of double poles, the Department will require pole owners to submit within 60 days of this Report detailed plans for eliminating the backlog of double poles as soon as

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[9] The PLM system's application to all pole owners and their attachees was a direct outgrowth of the major distribution upgrades performed by NSTAR in the Town of Brookline during 2001-2002. As poles in Brookline are Verizon-set, Verizon facilitated NSTAR's improvements by adding new poles. The Department sought to ensure that the effort to resolve service problems did not leave a residue of numerous double poles.

reasonably practicable. The Department will examine these plans and determine their reasonableness as part of the ongoing investigation of the double pole problem and the PLM discussed above.

With respect to the root cause of the double pole problem, pole owners credibly allege that double pole removal is often delayed by the failure of attachees to transfer their facilities in a timely manner. While further study of the role of attachees in the double pole problem is needed, we make some initial observations here. G.L. c. 164, § 34B requires a "distribution company or a telephone company" (i.e., the pole owner, not the attachee) to "complete the transfer of wires, all repairs, and the removal of the existing pole from the site within 90 days from the date of the installation of the new pole." Because the language of G.L. c. 164, § 34B addresses only the requirements of pole owners with respect to double poles (i.e., "distribution company or a telephone company"), any penalty provision added to this statute may not reach a large class of likely contributing parties (i.e., attachees). Because the removal of a double pole requires the coordinated actions of pole owners and attachees, including municipalities, the Department observes that an amendment to G.L. c. 164, § 34B apportioning some responsibility to the attachees may be necessary in order to provide all parties with the incentive to promptly transfer their facilities.

We recognize, however, that pole owners are not wholly without remedy against their attachees for delays. Most entities seeking to attach facilities to a pole must first enter into a license agreement with the pole owner. The license agreement contains the rates, terms and

conditions for attaching, maintaining, and removing facilities from utility poles.[10] The pole owners have stated that their license agreements typically grant the owner the authority to transfer, at the attachees' expense, the facilities of any attachee that fails to meet its transfer obligations in a timely manner, where failure contributes to the delay in removing a double pole. In such a case, should an attachee be in breach of the terms of the agreement, it is the responsibility of the pole owner to enforce the terms. Therefore, although the Department recommends against a penalty at this time, pole owners must strictly enforce any remedies in their existing license agreements as one means to eliminate double poles.[11]

With respect to those entities that do not have license agreements (e.g., municipalities), pole owners and municipalities should engage in good faith negotiations to provide for the timely transfer of municipal facilities. When a municipality is unable to transfer its facilities in a timely manner, and thereby contributes to a delay in removing a double pole, a waiver from

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[10] These licenses, and their respective terms and conditions, are individually negotiated. The Department has the authority to resolve disputes concerning these licenses. See A-R Cable Services et al., D.T.E. 98-52 (1998); Greater Media, Inc., D.P.U. 91-218, at 30-31 (1992). In addition, the Department has the authority to alter a license agreement if it finds the rates, terms or conditions to be unreasonable or unjust. G.L. c. 166, § 25A; Greater Media, Inc. Department of Public Utilities, 415 Mass 409 (1993). Attached to this report is a sample license agreement (Appendix A-6).

[11] If the enforcement of remedies in existing license agreements proves ineffective, it may then be appropriate to seek express statutory authority (to augment the Department's general authority to regulate the rates, terms and conditions of pole attachment licence agreements) in order to ensure that, after adequate notice, pole owners acting in good faith to transfer the facilities of any attachee to comply with G.L. c. 164, § 34B, are held harmless.

the requirements of G.L. c. 164, § 34B, for the pole owner might be appropriate because the pole owner has no contractual means to compel the municipality to act.

V. CONCLUSION

At the public hearing and technical conference held on September 30, 2003, representatives from both the municipalities and utility companies presented a number of issues that require further Department investigation. These issues include the following: (1) the causes of delay in removing double poles; (2) the responsibilities of attachees and pole owners for transferring facilities and removing old poles; (3) the relationship between municipal attachees and pole owners, including pole owners' concerns about transferring municipal public safety attachments; and (4) the applicability of any penalty provision to pole owners and attachees, including municipalities. It is apparent that pole owners need to establish better communication with municipalities concerning: (1) the accuracy of information entered into the PLM system; (2) the transfer of municipal facilities to new poles; and (3) the establishment of realistic and reasonable schedules for the removal of double poles. The Department must address these issues before proposing any legislation (including potential penalties and waivers) that would be both reasonable and effective in enforcing the enforcement of G.L. c. 164, § 34B.[12] Through enhanced pole owner reporting requirements and use of the PLM system,

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[12] The imposition of penalties would raise a number of additional considerations. For example, should a penalty be imposed for failure to remove poles in a timely matter, consideration must be given to the status of the backlogs, and whether the penalty should apply to only new poles. In addition, additional analysis is needed to determine the amount of penalty or fine that would act as an appropriate incentive to reducing the number of double poles.

the Department will continue to collect information to determine the cause of the proliferation of double poles. This information will result in a more comprehensive and reasonable approach to the removal of the 25,686 existing double poles in Massachusetts and the timely removal of all newly set double poles.

The Department appreciates the opportunity to present this Report to the Committees on Ways and Means and the Joint Committee on Government Regulations. Although the Department has not recommended any legislative action at this time, we will continue to work closely with municipalities, pole owners and others to reduce the number of double poles within the Commonwealth, as required by G.L. c. 164, § 34B.

Respectfully Submitted,

_____/s/_____
Paul G. Afonso, Chairman

_____/s/_____
James Connelly, Commissioner

_____/s/_____
W. Robert Keating, Commissioner

_____/s/_____
Eugene J. Sullivan, Jr., Commissioner

_____/s/_____
Deirdre K. Manning, Commissioner