



**Northeast
Utilities System**

Attachment A

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July 12, 2011

Ms. Kimberly Santopietro
Executive Secretary
Public Utilities Regulatory Authority
Ten Franklin Square
New Britain, CT 06051

Re: Docket No. 07-02-13PH02, DPUC *Review Of The State's Public Service Company
Utility Pole Make Ready Procedures-Ph02*

Docket No. 11-03-07, DPUC *Investigation Into The Appointment Of A Third Party
Statewide Utility Telephone Pole Administrator For The State Of Connecticut*

Notice of Compromise Reached between CL&P, UI, AT&T and Fibertech to Implement
Pilot Program on Temporary Pole Attachments

Dear Ms. Santopietro:

This filing to the Public Utilities Regulatory Authority ("Authority") reflects a compromise that was reached between Fiber Technologies Networks L.L.C. ("Fibertech") and The Connecticut Light and Power Company ("CL&P"), The United Illuminating Company ("UI"), and SNET d.b.a. AT&T Connecticut ("AT&T") concerning the implementation of a six-month trial pilot program that would allow Fibertech to install temporary pole attachments.

1. Background

On Tuesday, May 10, 2011, the Authority convened a technical meeting in Docket No. 07-02-13PH02 in which Fibertech requested approval from the Authority for its proposal to install temporary attachments on utility poles. At that May 10, 2011 technical meeting, Fibertech updated the Authority on the technical and policy information which it had presented on temporary attachments at numerous meetings held during the preceding year with representatives of the pole owners and other pole attachers.

At the May 10, 2011 technical meeting, Fibertech argued that the Authority should support Fibertech's proposal since: (i) temporary attachments have previously been allowed in several other jurisdictions; (ii) a detailed report from Alan Clapp, an expert with considerable experience with the National Electrical Safety Code ("NESC"), confirmed the consistency of temporary attachments with the NESC; (iii) a study completed by Fibertech on applications submitted during 2010 showed that the pole owners had frequently failed to meet the Authority's mandated time frames for the issuance of pole attachment licenses; and (iv) limiting the use of temporary attachments to situations in which the existing time frames had not been met would not eliminate

the pressing need of competitive companies such as Fibertech to be able to provide service to customers in situations involving urgent customer need or provide it with reasonable access to poles.

The pole owners objected to Fibertech's proposal for temporary pole attachments on a number of grounds, including for example that: (i) Connecticut already has the fastest time frames in the nation for processing pole attachment applications and the FCC's April 7, 2011 pole attachment order in Docket Nos. WC Docket No. 07-245 and GN Docket No. 09-51 ("FCC Order") provides pole owners in other states with more time to process pole attachments, (ii) there is no volume cap on the number of pole attachment applications that attachers can submit to the pole owners, which continues to be a very serious concern for the pole owners and which the pole owners reserve the right to raise in the future before the Authority's Mediation Team or the Authority itself, (iii) the FCC Order does not authorize temporary attachments, (iv) the pole owners disagreed with the accuracy of the data in Fibertech's study, and (v) allowing temporary attachments could potentially result in a situation in which temporary attachments are used more frequently than anyone anticipated and it could cause some existing pole attachers to not perform their make-ready work in accordance with the Authority-mandated time frames because such existing pole attachers recognize that if they fail to meet their make-ready work deadlines a pole attacher applicant may be allowed to attach to poles using temporary attachments.

At the conclusion of the May 10, 2011 technical meeting, the Authority asked the pole owners and Fibertech to negotiate with the Authority's Mediation Team to determine whether a mutually acceptable resolution could be reached.

2. Description of the Compromise Implementing the Pilot Program for Temporary Attachments

In compliance with the Authority's request, Fibertech and the pole owners (i) exchanged revised drafts of the pole owners' March 30, 2011 Temporary Pole Attachment Guideline ("Guideline"), (ii) met with the Mediation Team on June 8, 2011 and (iii) had a conference call with the Mediation Team on June 16, 2011.

As a result of those efforts, Fibertech and three of the pole owners – CL&P, UI and AT&T – reached agreement on revisions to the attached Guideline.¹ The attached Guideline implemented on July 1, 2011 a six-month trial pilot program that allows (under the circumstances specified in the Guideline) temporary pole attachments to be installed. The results of the pilot program will be reviewed and discussed with all parties and the Authority at the end of the pilot program.

CL&P, UI and AT&T each continue to have concerns about the use of temporary attachments, and Fibertech continues to have concerns about the absence of an option to use temporary attachments before the expiration of the 90 day make-ready time frame. In order (i) to support the Authority's goal of facilitating the implementation of this technology, (ii) further demonstrate that each of these pole owners are cooperating in good faith, and (iii) to address the

¹ For the reasons Verizon provided at the May 10, 2011 technical meeting, it would not allow temporary attachments in the portion of Greenwich served by Verizon.

concerns Fibertech raised in Docket Nos. 07-02-13PH02 and 11-03-07 about the time period required to process its pole attachment applications, all participants have temporarily (but not indefinitely) put aside the above-described concerns in order to implement this pilot program.

CL&P, UI, AT&T and Fibertech wish to thank the Authority's Mediation Team, which is comprised of Messrs. Neeley and Jasinski and Ms. Luccina, for their continued assistance in helping the parties resolve or narrow disputed issues. The Mediation Team provided invaluable assistance during this process.²

Respectfully submitted,

Vincent P. Pace

Vincent P. Pace
Senior Counsel
On Behalf of CL&P

Accepted and Agreed to by:

Glenn T. Carberry

Glenn T. Carberry
Tobin, Carberry, O'Malley, Riley & Selinger, P.C.
Counsel for Fiber Technologies Networks, L.L.C.

Attachment: Temporary Pole Attachments Guide dated July 1, 2011

cc: Service List

² The Guideline reflects a compromise of disputed issues and claims between CL&P, UI, AT&T and Fibertech. None of these parties are waiving their rights in the future to seek relief from the Mediation Team or the Authority.

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Purpose:

This document provides general guidance to pole owners and attachers for temporary pole attachments.

The temporary attachment process is proposed as a pilot program from the date of agreement between the parties until December 31, 2011. Once the pilot has been completed, the pole owners agree to convene a meeting or conference call with interested third party attachers in early 2012 to discuss the results of the pilot, discuss any proposed changes to these guidelines and discuss whether (and the circumstances under which) these guidelines might become permanent.¹

1. Definition:

Temporary attachments are an alternative to complete pole attachment licenses that have not been released within the Connecticut Department Of Energy And Environmental Protection, Public Utilities Regulatory Authority (which is the successor to the Department of Public Utility Control) ("PURA") mandated time frames. They may be permitted under specific conditions.

Temporary attachments are never permanent nor are they considered permanent.

¹ The three pole owners participating in the pilot program are The Connecticut Light and Power Company, The United Illuminating Company and the Southern New England Telephone Company d.b.a AT&T Connecticut. Verizon New York, Inc. has not agreed to participate in the pilot program.

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2. National Electric Safety Code (NESC) Requirements:

A. *General:*

The NESC recognizes that temporary facilities may be allowed. See NESC Rules 014B and 230A1.

Temporary attachments must meet all NESC requirements. The resulting installation must meet the requirements of the current NESC edition or a previous edition that is currently applicable to the existing installation. See Rules 013B2 and 013B3. The previously applicable edition may or may not be the edition in effect at the time of the original installation (the installation may have been required to be brought into compliance with a later edition or was upgraded by choice to a later edition).

Temporary attachments are only allowed if they do not either create a NESC violation or make an existing one worse.

All temporary attachments must use an existing hole in the pole or be installed using lag bolts. In no cases shall a new through hole be drilled in the pole for temporary attachments.

B. *Grade of Construction:*

Temporary attachments shall be constructed in accordance with the requirements of NESC Grade B construction in all cases.

C. *Clearances and Other:*

NESC Rule 230A1 requires temporary installations to have the same clearances as permanent installations on the pole.

NESC Interpretation Request 548 issued in 2009 clearly states that attachments can be made to structures having an existing NESC clearance violation if the new attachment will not itself violate clearance, grounding or strength requirements or exacerbate existing problems on the structure. However, if the existing structure has a structural violation, the structural violation must be corrected before other work is done on the structure.

Temporary attachments must be made on crossarms, alley arms or brackets. The attachment of the crossarms, alley arms or brackets to the pole must meet all NESC Grade B requirements and not create a NESC violation.

NESC Rule 235H2 states that the "clearance between the conductors, cables, and equipment of one communication utility to those of another, anywhere in the span, shall be not less than 100 mm (4 in), except by agreement between the parties involved."

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3. Regulatory Requirements:

Temporary attachments must meet all federal, state, county and municipal codes and regulations.

4. Temporary Attachment Process:

A. *General:*

Temporary attachment approvals must be requested on a case by case basis between the pole owners and the attachers. Blanket temporary attachment authorizations will not be given. Consideration for temporary attachments will be given upon the expiration of PURA make-ready time frames.

Temporary attachments shall be placed so as not to impede other owners/attachers from completing the required make ready work or accessing their facilities on the pole. Also, temporary installation will not proceed if the attachment would violate (i) the NESC Requirements, (ii) other elements of this process, (iii) Other Requirements of these guidelines or, (iv) otherwise be unfeasible on a particular pole.

Temporary attachments shall not be installed until any necessary guying is in place. This may be waived if all parties agree on an alternate temporary solution.

Only one temporary attachment will be allowed on a pole at one time.

Attachers will provide specific examples of temporary attachment methods and materials they will use that meet NESC code requirements, and keep such technical information on file with the pole owners.

Attachers shall pay any additional pole owner costs associated with the temporary attachments.

B. *Temporary attachment requests shall be submitted on a standard form to all pole owners at the appropriate stage of the licensing process for the particular type of situation involved. Communications:*

Attachers and pole owners will maintain regular communications regarding construction schedules.

Attachers may request approval for temporary attachments from the pole owners when the PURA mandated time frames have been exceeded or up to five business days in advance of such deadlines upon the mutual determination of the pole owners, other incumbent attacher(s), and the new attacher that the time frames will not be met.

Upon receiving a completed request for permission to install a temporary pole attachment that contains all of the information requested by this Guide and such other

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information as is reasonably necessary for a pole owner to evaluate the request, the pole owner shall provide its response within 10 days of receiving the request.

If any pole owner denies a prospective attacher's request to install a temporary attachment then such denial shall be made via e-mail or otherwise in writing issued to the attacher and shall be for reasonable cause such as, including but not limited to, the creation of a new non-compliant condition with the NESC or an inconsistency with the other requirements of this guide. Any denial of a request to install a temporary attachment may be submitted for dispute resolution in accordance with Section 5(C) below.

C. *Dispute Resolution*

If, after the expiration of the PURA's deadline for the completion of make-ready work, a pole owner denies a prospective attacher's request to install a temporary attachment, then any time thereafter the attacher may submit the dispute for resolution to (i) the PURA's Pole Attachment Mediation Team or (ii) seek any other remedy that may be available to the attacher at law or in equity, including petitioning the PURA to initiate a docket. The PURA's Pole Mediation Team's resolution of a dispute shall be implemented immediately by the affected parties, provided that any party objecting to the decision of the PURA's Pole Mediation Team reserves the right to seek further review of, or to challenge, said decision by seeking relief from the PURA or a court of competent jurisdiction.

D. *Reprioritization of Application Work by Third Party Attachers*

If a third party attacher determines that it is necessary or appropriate to reprioritize its existing workloads to provide expedited service to a particular customer ("Specified Customer"), then (i) the attacher can request that each affected pole owner re-prioritize and re-order the attacher's existing pole attachment applications then pending in the queue so that the pole attachment application for the Specified Customer is given priority, (ii) each affected pole owner will use commercially reasonable efforts to provide priority treatment to the Specified Customer, provided that a pole owner's agreement to attempt to provide priority treatment to a Specified Customer's application does not mean that a pole owner is agreeing to provide (or is guarantying that) the attacher's attachment(s) for the re-prioritized work will be made prior to the expiration of the PURA's applicable make-ready time frame(s), (iii) the attacher agrees that -- because the attacher's other pole attachment applications were re-prioritized in order to give priority to an application for a Specified Customer -- a pole owner's failure to process these other applications within the applicable PURA time frames shall not be deemed to be non-compliance by such pole owner with the PURA's time frames, and (iv) because providing priority to Specified Customers is expected to occur infrequently, if a pole owner reasonably concludes that an attacher is over-using or abusing this provision for re-prioritization, then the pole owner shall be entitled to submit the dispute for resolution under subsection (C) above and restrict or suspend this provision for work re-prioritization during the pendency of the dispute.

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5. Other Requirements:

Temporary attachments must meet the terms of Licensee's Pole Attachment Agreement with the pole owner(s).

If specified by a pole owner, temporary attachments must meet the requirements of the Telcordia Blue Book – Manual of Construction Procedures.

Temporary attachments shall be replaced with permanent attachments within 45 days after notification is provided to the attacher that all make ready work has been completed. Any temporary attachments remaining after the expiration of this 45 day period may be removed by the pole owners at cost to the attacher(s). If the attacher does not remove or otherwise make permanent their temporary attachments within 45 days they lose their privilege to make additional temporary attachments until all delinquent attachments are remedied. If multiple, or repeated delinquent attachments are not promptly remedied then attachers lose their privilege to make additional temporary attachments.