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STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Philip L. Bartlett, II
CHAIRMAN

R. Bruce Williamson
Randall D. Davis
COMMISSIONERS

Harry Lanphear
ADMINISTRATIVE DIRECTOR

January 31, 2020

Honorable Mark W. Lawrence, Senate Chair
Honorable Seth A. Berry, House Chair
Energy, Utilities and Technology Committee
100 State House Station
Augusta, Maine 04333

Re: Report Related to Abandoned Utility Poles and Associated Facilities

Dear Senator Lawrence and Representative Berry:

On May 16, 2019, the Governor signed into law L.D. 1206, *An Act Regarding Utility Poles in Public Rights-of-way*, now Public Law 2019, chapter 128. Section 2 of the Act requires the Public Utilities Commission to submit to the Joint Standing Committee on Energy, Utilities and Technology a report regarding orders adopted or other actions taken by the commission during calendar year 2019 to address issues related to abandoned utility poles and associated facilities, as that term is defined in the Maine Revised Statutes, Title 35-A, section 2502, subsection 3, in the public right-of-way.

Attached is the Commission's report. If you have any questions, please do not hesitate to contact us.

Sincerely,

Philip L. Bartlett II, Chairman

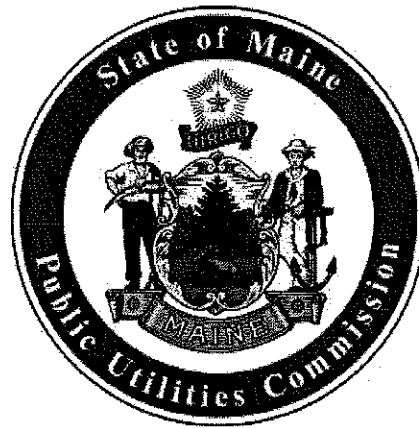
On behalf of the Chairman
R. Bruce Williamson, Commissioner
Randall D. Davis, Commissioner
Maine Public Utilities Commission

Attachment

cc: Energy, Utilities and Technology Committee Members
Lucia Nixon, Legislative Analyst

MAINE PUBLIC UTILITIES COMMISSION

REPORT RELATED TO ABANDONED UTILITY POLES AND ASSOCIATED FACILITIES



**Presented to the
Joint Standing Committee on
Energy, Utilities and Technology
January 31, 2020**

I. INTRODUCTION

On May 16, 2019, the Governor signed into law L.D. 1206, An Act Regarding Utility Poles in Public Rights-of-way (Act).¹ Section 2 of the Act states:

Sec. 2. Report. No later than January 31, 2020, the Public Utilities Commission shall submit to the Joint Standing Committee on Energy, Utilities and Technology a report regarding orders adopted or other actions taken by the commission during calendar year 2019 to address issues related to abandoned utility poles and associated facilities, as that term is defined in the Maine Revised Statutes, Title 35-A, section 2502, subsection 3, in the public right-of-way. Commission actions may include amendments to commission rules regarding removal or relocation of utility poles and any associated facilities located within the public right-of-way and restoration of a pole site to a safe condition. The report may include findings and recommendations, including suggested legislation. The committee may report out a bill to the Second Regular Session of the 129th Legislature related to the report.

The Commission hereby submits its report to the Energy, Utilities and Technology Committee regarding abandoned utility poles and associated facilities.

II. NOTICE OF INQUIRY

On August 28, 2019, the Commission opened a Notice of Inquiry (NOI) to solicit information and comments from interested persons to aid the Commission in this effort (Docket No. 2019-00223). The Commission sought information on a variety of issues including pole owners' terms and conditions or policies and procedures regarding the removal or abandonment of utility poles and/or accompanying facilities or debris, including any time periods for removal, and the number of utility poles needing to be removed in Maine. The Commission also sought comment on whether Maine should adopt a similar approach to that of Massachusetts and New Jersey and whether the Maine Commission could adopt such an approach by rule under its existing statutory authority or whether legislative authority would be necessary. Massachusetts law provides:

"[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; provided, however, that for any approved commercial or industrial construction project, the completion of which is expected to take longer than one year, said company shall be required to remove such pole within six months from the date of installation of the new pole. The owner of such pole shall notify all other users of the starting date of such removal and installation work at least 48 hours prior to the commencement of such work, and said owner shall require all other users to remove their wiring

¹ Public Law 2019, c. 128.

and other attachments from the poles in a timely manner.

Mass. Gen. Laws Ann. 164, § 34B (West 2019).

New Jersey statutes provide:

c. After completing the placement, replacement or removal of a pole or an underground facility pursuant to this section, the public utility shall remove from such right of way any pole or underground facility no longer in use as well as any other debris created from such placement, replacement or removal and restore the property including, but not limited to, the installation of a hot patch as needed to restore the property within the right of way to its previous condition as much as possible. As used in this section, "hot patch" means the installation of a mixture of asphalt to restore property within the right of way to its previous condition subsequent to the construction or excavation of a site required for the placement, replacement of a pole or an underground facility pursuant to this section....

e. In the event a public utility does not meet the requirements of subsection c. of this section concerning the removal of debris and the restoring of property including, but not limited to, the installation of a hot patch, within a right of way to its previous condition within 90 days of placement, replacement or removal of a pole or an underground facility, the municipality shall be authorized to impose a fine up to an amount not to exceed \$100 each day until the requirements of subsection c. are met, except that if the public utility is unable to complete the installation of a hot patch due to the unavailability of asphalt material during the period of time from November through April, the public utility shall not be required to complete the hot patch installation until 60 days immediately following the end of the November through April period. At least five business days prior to the end of the 90-day period established by this subsection, the municipality shall notify the public utility that the penalties authorized by this subsection shall begin to be assessed against the utility after the end of the 90-day period unless the utility complies with the requirements of subsection c. of this section...

N.J. Stat. Ann. § 48:3-17a (West 2019).

Written comments were due September 23, 2019. The Commission received comments from the City of Portland, the Telecommunications Association of Maine (TAM), Emera Maine, Central Maine Power (CMP) and Northern New England Company, LLC d/b/a Consolidated Communications-NNE (Consolidated). Based on these comments, the Commission sought additional information from stakeholders. Additional comments were filed December 11 and December 20, 2019 by TAM, CMP, Emera Maine and Consolidated.

III. KEY ISSUES RAISED BY COMMENTERS

A. Massachusetts and New Jersey Statutes

The City of Portland, which stated it has an ongoing problem with the removal of utility poles throughout the City, commented that an approach similar to that of Massachusetts and New Jersey in Maine would be helpful and supported having a fine provision. The City of Portland commented that once facilities have been relocated to a new pole it can take a year or longer for the out of service pole to be removed and that as of January 2019, there were over 400 poles that needed to be removed in Portland, many of which, the City stated, have deteriorated to the point where they are unsafe and need to be removed immediately. Emera Maine stated that its practice is to remove any pole it determines creates a safety hazard as quickly as possible. CMP similarly stated that abandoned or dual poles that are brought to its attention as immediate safety hazards are dealt with as quickly as possible and that CMP is not aware of any in this category. TAM stated that it wasn't clear whether a statutory solution to this issue was required but agreed the issue needs to be resolved. Emera Maine stated that an approach similar to that of Massachusetts and New Jersey would establish unnecessary burdens, potentially increase costs to ratepayers, and be unnecessary.

CMP commented that, in its view, the pole owner should not be solely responsible for the administration of pole removals as the Massachusetts and New Jersey statutes dictate and, as a result, CMP would not advocate for the prescriptive pole removal policies that these states have adopted. Instead, CMP stated that a collaborative approach between all parties would be more appropriate and suggested that, with perhaps the help of the Commission, all parties could come together in a collaborative way to address the pole removal concerns raised in the NOI.

CMP and Emera Maine both pointed to the Maine Department of Transportation (MDOT)'s Utility Accommodation Rules² regarding out of service utility poles. These rules govern utility poles located along State and State-aid highways under MDOT's jurisdiction. They also govern the accommodation of facilities in compact areas³ when municipalities have not adopted more stringent local rules. Section 7(5) of MDOT Utility Accommodation Rules provides, in relevant part:

5. Utility Pole or Utility Pole Structure Replacement and Wire Transfers:

Unless otherwise approved by MaineDOT, all wire transfers and removal of replaced poles shall occur within one year from the installation date of the new pole(s) All replaced poles are deemed Out of Service upon transfer or removal of all wires and/or cables and must be removed from the Highway limits in accordance with Section 7(4), *Out of Service Facilities*.

² Maine Department of Transportation Utility Accommodation Rules, 17-229 C.M.R. ch. 210 (2018).

³ Compact area is defined as "[a]n area in which a Municipality has the responsibility for maintenance of state and state-aid roads. Factors that define a Compact area are specified in 23 M.R.S. § 754. A current list of Municipalities having Compact Areas is available on the MaineDOT Utilities Website." *Id.*

17-229 C.M.R. ch. 210, § 7(5). Section 7(4) of MDOT Utility Accommodation Rules provides, in relevant part:

4. Out-of-Service Facilities

All Facilities and Appurtenances taken out of service and located either aboveground or attached to Highway Structures shall be removed within 60 days of their last use. If a Utility is required to obtain MPUC approval, the Facilities and Appurtenances may be removed within 60 days of the granting of the approval, providing the process is initiated within 60 days of their last use

17-229 C.M.R. ch. 210, § 7(4).

Emera Maine stated that its practice is to comply with MDOT's rules where possible with respect to utility poles including those located along town roads even though those are not within MDOT's jurisdiction. The Company commented that when a pole replacement is necessary, it sets the new utility pole and then transfers its electric facilities to the new pole. Upon completion of installation of a new pole and transfer of its facilities to the new pole, Emera Maine sends out transfer notifications to all other attaching entities and those entities are required to timely remove and transfer their facilities. The attaching entities notify Emera Maine when the transfer of their facilities is complete. The Company also noted that Consolidated, as joint-owner of the pole, removes and transfers its facilities at its convenience and Emera Maine will then remove the out of service pole. Emera Maine noted that given the multiple number of attachments and parties involved, the process relies on the cooperation and coordination among a number of entities. The Company also stated that its contractors field survey utility poles on a yearly basis and that after all attaching entities' and Consolidated's facilities are transferred, the out of service utility poles are identified for removal and Emera Maine contractors remove the poles. Consistent with its policies and the MDOT rules, Emera Maine stated that it endeavors to complete the process within one year of the installation of a new pole, which it does in most cases.⁴ The Company stated that this process works well in its territory and that legislating mandatory timeframes can't take into consideration the multiple reasons why delays may occur and would potentially greatly increase the Company's costs of maintaining utility facilities in the public rights-of-way which in turn would increase costs to ratepayers.

Emera Maine noted that its pole license attachment agreements require third-party attaching entities to timely remove and relocate attachments to new poles. CMP also noted that pole removal procedures are dictated in joint occupancy agreements between CMP and incumbent local exchange carriers (ILECs) and pole attachment agreements with attachers. CMP noted in some cases, CMP and the ILEC jointly share ownership of the pole with one party assuming maintenance responsibilities in specified areas, and unless otherwise agreed, the maintaining party is responsible for the final removal of the pole once all other attachers

⁴ Emera Maine noted that exceptions are typically the result of issues beyond the Company's immediate control such as third-party construction delay, the need to coordinate with a MDOT or municipal road construction schedule, developer scheduling issues and delays, the need to coordinate with other utilities and Dig Safe requirements, local municipal permitting or other impediments.

are transferred to the new pole. Similarly, Emera Maine noted that with respect to jointly-owned utility poles it has with Consolidated, the two companies have entered into agreements designating geographic maintenance territories for each joint-owner and pursuant to those agreements, either Emera Maine or Consolidated is responsible for the maintenance of the jointly-owned poles in their respective maintenance territories.

Consolidated stated its policies and procedures require Consolidated to remove old poles and debris for Consolidated owned as well as jointly-owned poles in Consolidated's maintenance area but do not specify any timeframes.

B. Statewide Notification System

CMP commented that Connecticut has mandated the use of a statewide notification system called AldenOne for facilities' transfer notifications and that New York uses the National Joint Utility Notification System (NJUNS). CMP thought that many of the barriers to pole removal could be eliminated if pole owners and attachers collaborated across a common software platform noting that all parties could access the system to create notifications, complete work, run reports and track progress. Such a system would also enable those companies not completing pole transfers in a timely manner to be concretely identified. CMP also stated that such a system must also be able to process the complexities of modern pole attachment conditions such as boxing and wireless attachments and that all attaching companies must be required to use a statewide notification system, including private attachers and municipalities, otherwise the workflow will break down.

Consolidated stated that the most important thing the Commission can do to improve the current situation regarding the removal of utility poles is to implement a statewide notification system such as NJUNS and that the Commission should mandate participation. In doing so, Consolidated stated, the Commission can improve the communications between utilities, municipalities and attachers and ensure that everyone in the State can have a clear understanding of who is the next party responsible to transfer its attachments. Consolidated noted that frequently when it receives inquiries from municipalities or others, it is required to drive to the location and review the poles and that in most cases there is an entity above Consolidated on the pole that is required to move its facilities. Consolidated has to notify that party and may or may not hear back following that entity's transfer of its facilities. Consolidated stated that if the State maintained a database of this information, any entity could simply run a "next to go" report to establish whether it is its turn to move its facilities noting that 30 states, including New Jersey and Massachusetts, are members of NJUNS.

Emera Maine also stated that for a statewide notification system to be effective all attaching entities must be required to participate, both in its use and in sharing its costs, and that the Commission and/or pole owners have a means to enforce compliance. Emera Maine stated that a mandate from the Commission would help ensure the effectiveness of any pole attachment notification system. The Company also stated that it does not believe

NJUNS is the best notification system stating it finds NJUNS outdated and that it lacks the capacity of other notification systems on the market.

TAM similarly commented that a statewide notification system such as NJUNS is only useful if all entities attaching to poles participate and that the most effective way to implement such a system would be for the Commission to make participation in the system a mandatory condition of being permitted to attach to utility poles. CMP also stated that it is unlikely that such an initiative would be successful without direction from the Commission and recommended that the Commission consider reopening its pole attachment rule, Chapter 880, and address this issue through the rulemaking process adding that without such a process and the Commission's oversight it is highly unlikely that parties will reach agreement on the best route forward.

CMP stated that any cost for such a new system should be recoverable. Emera Maine also noted the issue of cost recovery, whether as a pass through to attaching entities or through rate relief, which may require Commission approval. Consolidated also stated that all pole attachers should contribute to such a system.

CMP also suggested that instead of each communications company sending crews to transfer its own equipment, all parties could agree to contract with a single entity to do all the transfers and remove the pole at the same time. This is known as "one-touch, make-ready." CMP suggested that the electric company could initiate this process quite efficiently after its wires are removed and it would likely be more cost effective than multiple companies dispatching crews to the same pole.

Finally, Emera Maine stated that it is less convinced that a statewide system is warranted given the difference in practices and underlying agreements with attaching entities. Emera Maine noted it has had relative success with third party attaching entities timely making transfers consistent with its protocols and procedures and believes it is in a better position than other pole owners with respect to out of service utility poles and that its needs differ from other pole owners with respect to a notification system. Emera Maine stated that it would support Commission regulations mandating that all pole owners and attaching entities participate in a territory-wide notification system managed by pole owners in their service territory. More specifically, Emera Maine stated it would support a Commission order or rule mandating the implementation and use of a state of the art notification system provided that i) the cost of such a system does not fall solely on Emera Maine as the pole owner or that assurances of cost recovery are put in place; ii) the Commission does not designate NJUNS as the chosen notification system but rather allows pole owners to review and recommend the appropriate technology and notification system for their respective service territory; and iii) all attaching entities are mandated to participate in its use.

C. Commission Authority

CMP stated that in its opinion, certain aspects of the Massachusetts and New Jersey statutes likely could be addressed through a Commission rulemaking, however, requirements regarding penalties would require specific legislative statutory authority.⁵

While Consolidated did not specifically comment on the question regarding the Commission's current authority, the Company stated that it does not support implementing mandates and fines prior to the implementation of a joint notification system with mandated participation. Consolidated commented that without good information regarding the actual cause for the delay in removing the pole, the Commission is unable to adequately assign fault. The Company noted that it and the power companies are required to create space for numerous third party attachers on utility poles and that the pole owners are unable to manage their pole plant without the coordination and cooperation of all these parties and that there are too many parties to coordinate. Consolidated also noted that implementation of a joint notification system would be a simple fix to improve this communication. Consolidated noted that in the alternative, any consideration of a penalty or fine should occur only after the issue has been communicated, it has been established that the utility is the cause of the delay in removing the pole and the utility has been given a reasonable opportunity to address the issue.

D. Number of Out-of-Service Poles Needing Removal

Emera Maine stated that it has removed approximately 4,000 out of service utility poles since 2013 and stated, at the time of filing its comments on December 11, 2019, that there were currently 1,511 out of service poles in Emera Maine's maintenance territory. The Company stated that the vast majority of these poles are poles in the process of having attaching entities coordinate removal and relocation of their attachments and that approximately 323 are poles where all attaching facilities have been removed.

CMP stated the number of abandoned poles, where all attachers have been transferred off the pole and the pole is ready for CMP to remove it, varies constantly so it's not practical to give an exact number. Having said that, CMP noted that there is an average inventory of about 3,000 poles in this category and CMP removes on average about 3,000 poles per year. Dual poles, where CMP has transferred its wires and is waiting for communications companies to transfer their facilities varies constantly but CMP estimated that, at the time of filing its comments on December 11, 2019, the Company had approximately 15,366 poles in this category. Consolidated stated that its records, at the time it filed comments on December 20, 2019, indicate that there are approximately 9,300 poles in the State that have been set and are awaiting some type of work to ultimately be removed, either by Consolidated or another pole owner/attacher. Consolidated did not comment of the number of poles where all attaching facilities have been removed and the replaced pole is awaiting removal.

⁵ CMP noted that this was its initial response to the question and that the Company reserved the right to supplement its answer should this issue move beyond the report to the Legislature.

IV. CONCLUSION

The Commission, in its Inquiry, looked at whether Maine should require specific timeframes for facilities to be transferred to new poles and for the out of service poles - those that have had all wires and facilities relocated to a new pole - to be removed. Nearly all the commenters, however, urged the Commission to take a more comprehensive approach and deal with this issue as part of a broader discussion about ways to have more efficient communications and transferring of facilities by pole owners and attachers, perhaps by mandating their participation in a statewide, or territory-wide, notification system. As a result, the Commission intends to examine these issues further in its upcoming rulemaking proceeding related to Chapter 880, the Commission's pole attachment rule.