

**Chapter 880: ATTACHMENTS TO JOINT-USE UTILITY POLES; DETERMINATION AND ALLOCATION OF COSTS; PROCEDURE**

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**SUMMARY:** This chapter establishes the amounts which pole owners may include in their cost of service for attachments to joint-use utility poles; the allocation of those costs among joint users; the procedure for establishing cost responsibility and rates, the terms and conditions of attachment to joint-use utility poles, and the procedure for resolving pole attachment disputes.

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**ATTACHMENT A - EXPEDITED POLE ATTACHMENT COMPLAINT PROCESS**

**65-407 PUBLIC UTILITIES COMMISSION****Chapter 880: ATTACHMENTS TO JOINT-USE UTILITY POLES; DETERMINATION AND ALLOCATION OF COSTS; PROCEDURE****1. DEFINITIONS**

- A. **Abandoned Joint-Use Utility Pole.** "Abandoned joint-use utility pole" means a joint-use utility pole from which all attachments have been removed.
- B. **Assigned Space.** "Assigned space" on a utility pole is the space assigned by this Rule or by an order in a proceeding under 35-A M.R.S. §711 for the attachments of conductors or circuitry by joint-use entities, consistent with the provisions of the National Electrical Safety Code, Blue Book, or other reasonable practices. Assigned space does not include common space, including the communications worker safety zone. Space which may be available on a joint-use utility pole for an additional attaching entity must not be considered assigned space until an additional attachment is made, but must instead be considered common space.
- C. **Attaching Entity.** "Attaching entity" means a joint-use entity with an attachment to a joint-use utility pole.
- D. **Average Joint-Use Utility Pole.** An "average joint-use utility pole" is a joint-use utility pole which is 37.5 feet long, including the portion of the pole which is in the ground, with 13.5 feet of total usable space.
- E. **Blue Book.** The "Blue Book" is "SR-1421, Blue Book – Manual of Construction Procedures" published by Telcordia.
- F. **Cable Television System.** A "cable television system" is as defined by in Title 47 of the United States Code.
- G. **Common Space.** The "common space" of a joint-use utility pole is space used by all of the joint users in common and consists of the portion of a pole beneath ground level, the portion from ground level to the lowest place on the pole at which a telecommunications circuit may be attached, plus all but 6 inches of the telecommunications worker safety zone. The common space is equal to the length of the pole minus the assigned spaces for each attaching entity. In addition, for the purpose of assigning and allocating space and costs on a joint-use utility pole, space which may be available for an additional attachment, and which would become assigned space if an additional attachment were made, must be considered common space until such an attachment is made.
- H. **Complex Make-Ready.** "Complex make-ready" means any make ready work above the communications space; transfers and work within the communications space that would be reasonably likely to cause a service outage or facility damage, including the splicing of any communication attachment or relocation of an existing wireless attachment; and the replacement of a joint-use utility pole. Any and all wireless activities, including those involving mobile, fixed, and point-to-point wireless communications and wireless internet service providers, are to be considered complex.

- I. **Communications Space.** The "communications space" is the portion on a joint-use utility pole that begins at the bottom of the communications worker safety zone and ends at the lowest point above grade to which a horizontal communications wire can be attached consistent with the National Electrical Safety Code.
- J. **Communication Worker Safety Zone.** The "communication worker safety zone" is a 40-inch vertical space, or other amount as required by the National Electrical Safety Code for the purpose of safety, on which no electric or communications circuitry may be attached. It is located between the areas to which electric conductors and communication circuitry may be attached. All but six inches of the "communications worker safety zone" must be considered part of the common space of a utility pole.
- K. **Electric Utility.** An "electric utility" is as defined in Title 35-A of the Maine Revised Statutes.
- L. **FCC Cable Rate Formula.** The "FCC Cable Rate Formula" is the formula currently set forth in 47 C.F.R. §1.1406(d)(1), and as may subsequently be amended or redesignated by the Federal Communications Commission.
- M. **Information Service Provider.** "Information service provider" means a provider of "information service" as that term is defined in Title 47 of the United States Code.
- N. **Joint-Use Entity.** "Joint-use entity" means a public utility, voice service provider, wholesale or retail competitive local exchange carrier, cable television system, unlit fiber provider, telecommunications service provider or information service provider.
- O. **Joint-Use Software System.** "Joint-use software system means a system (e.g. Alden One) that processes, coordinates, and/or consolidates joint-use utility pole-related data that may include data related to the ownership, geographic location, size, class, and communications and electric facilities on joint-use utility poles to facilitate notifications regarding the placement, replacement, or removal of joint-use utility poles and the placement, replacement, or removal of attachments to joint-use utility poles.
- P. **Joint-Use Utility Pole.** A "joint-use utility pole" is a utility pole on which there are circuit or electric conductor attachments by an electric utility and attachments by one or more joint-use entities. Joint-use utility poles do not include poles whose sole purpose is supporting electrical transmission conductors as defined by the Federal Energy Regulatory Commission. However, if an electric utility under-builds a transmission line with distribution, those poles are considered joint-use utility poles.
- Q. **Large Pole Owner.** "Large pole owner" means Versant Power, Central Maine Power Company, and Consolidated Communications of Maine Company or their successors.
- R. **Make-Ready Work.** "Make-ready work" or "make-ready" means the modification or replacement of a joint-use utility pole, or of the lines or equipment on the joint-use utility pole, to accommodate additional facilities on the joint-use utility pole.
- S. **National Electrical Safety Code.** The "National Electric Safety Code" or "NESC" is published by the Institute of Electrical and Electronics Engineers and approved by the American National Standards Institute Code C2. The NESC is also described in 35-A M.R.S. §2305-A.

- T. **Overlash.** "Overlash" means the tying or lashing of additional communications wires, cables, and facilities to existing communications wires, cables, or supporting strand already attached to poles.
- U. **Pole Attachment.** "Pole attachment" or "attachment" is the physical connection of a facility that a joint-use entity uses to provide communications or electric service.
- V. **Pole Owner.** "Pole owner" means an entity that owns or jointly owns a joint-use utility pole, or controls usable space on a joint-use utility pole.
- W. **Replaced Joint-Use Utility-Pole.** "Replaced joint-use utility pole" means a joint-use utility pole that has been replaced by a new joint-use utility pole. Once the last attachment has been removed from the pole, the pole becomes an abandoned joint-use utility pole.
- X. **Requesting Party.** "Requesting party" means a utility or joint-use entity that is seeking to place attachments on joint-use utility poles.
- Y. **Responsibility Requirement.** The "responsibility requirement" of an attaching entity is the portion of joint-use utility pole costs for which the attaching entity is responsible.
- Z. **Simple Make-Ready.** "Simple make-ready" means make-ready work where existing attachments in the communications space of a joint-use utility pole can be transferred without any reasonable expectation of a service outage or facility damage and where the transfer does not require splicing of any existing communication attachment or relocation of an existing wireless attachment. Simple make ready does not apply to attachments above the communications space or pole replacements.
- AA. **Space Factor.** "Space factor" is the quotient derived from dividing the space occupied by a single attachment on a joint-use utility pole by the total usable space on a joint-use utility pole.
- BB. **Telecommunications Carrier.** "Telecommunications carrier" is as defined in Title 47 of the United States Code.
- CC. **Telecommunications Service Provider.** Telecommunications service provider means a provider of telecommunications service as that term is defined in Title 47 of the United States Code.
- DD. **Telecommunications Service.** "Telecommunications service" is as defined in Title 47 of the United States Code.
- EE. **Telephone Utility.** A "telephone utility" is as defined in Title 35-A of the Maine Revised Statutes.
- FF. **Unlit Fiber.** "Unlit fiber" means one or more strands within a bundle of fiber-optic cable through which an associated light signal or light communication transmission must be provided to provide communications service, but excluding the electronic equipment required in order to render the fiber capable of transmitting communications.

- GG. **Unlit Fiber Provider.** "Unlit fiber provider" means a provider of "unlit fiber." Unlit fiber provider also includes a "dark fiber provider" as defined in Title 35-A of the Maine Revised Statutes.
- HH. **Usable Space.** "Usable Space" means the space on a joint-use utility pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.
- II. **Utility.** "Utility" has the same definition as "Public Utility" in Title 35-A of the Maine Revised Statutes.
- JJ. **Voice Service Provider.** "Voice service provider" is as defined in Title 35-A of the Maine Revised Statutes.
- KK. **Wholesale Competitive Local Exchange Carrier.** "Wholesale competitive local exchange carrier" is as defined in Title 35-A of the Maine Revised Statutes.

## 2. TERMS AND CONDITIONS

- A. **Reasonable Terms and Conditions.** The following terms and conditions are presumed to be reasonable for the joint use of utility poles:
1. **Request.** A pole owner must provide a requesting party with nondiscriminatory access to any joint-use utility pole owned or controlled by it for the attachment of conductors, circuitry, antennas, or other facilities. A request to attach facilities to a joint-use utility pole must be in writing and must provide the pole owner with the information necessary under its procedures to begin to survey the poles to which attachment is sought. A pole owner must review a requesting party's attachment application for completeness before reviewing the application on its merits. A requesting party's attachment application is considered complete if it provides the pole owner with the information necessary under its procedures, as specified in a master service agreement or in requirements that are available in writing publicly at the time of submission of the application, to begin to survey the affected poles.
    - a. A pole owner must determine within 10 business days after receipt of a requesting party's attachment application whether the application is complete and notify the requesting party of that decision. If the pole owner does not respond within 10 business days after receipt of the application, or if the pole owner rejects the application as incomplete but fails to specify any reasons in its response, then the application is deemed complete. If the pole owner timely notifies the requesting party that its attachment application is not complete, then the pole owner must specify all reasons for finding it incomplete.
    - b. Any resubmitted application need only address the pole owner's reasons for finding the application incomplete and will be deemed complete within five business days after its resubmission, unless the pole owner specifies to the requesting party which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The requesting party may follow the resubmission procedure in this

paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the pole owner, and in each case the deadline set forth in this paragraph will apply to the pole owner's review.

Notwithstanding the foregoing, a joint-use entity may submit a request to attach a service drop to a pole within 45 calendar days after the fact, and need not submit a request to overlash to existing facilities, so long as the joint-use entity provides written notice of the overlash within 10 calendar days after making it. The pole owner then has 30 calendar days in which to inspect the overlash and determine compliance.

2. **Survey.** A pole owner must complete a survey and respond to a requesting party within 45 calendar days of receipt of a complete request to attach facilities to its utility poles (or within 60 calendar days, in the case of larger orders as described in Section 2(A)(7) of this Chapter). This response may be a notification that the pole owner has completed a survey of poles for which access has been requested.
3. **Denial.** A pole owner may deny a requesting party access to its poles on a non-discriminatory basis where there is insufficient capacity or for reasons of safety, reliability and generally applicable engineering purposes. A denial must be in writing and must be issued within 45 calendar days of the pole owner's receipt of the request. The denial of access must be specific, must include all relevant evidence and information supporting its denial, and must explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards.
4. **Estimate.** Where a request for access is not denied, a pole owner must present to a requesting party an estimate of charges to perform all necessary make-ready work within 14 calendar days of providing the survey required by Section 2(A)(2) of this Chapter, or in the case where a requesting party's contractor has performed a survey, within 14 calendar days of receipt by the pole owner of such survey. The estimate must be detailed and include documentation sufficient to determine the basis for all charges.
  - a. A pole owner may withdraw an outstanding estimate of charges to perform make-ready work beginning 60 calendar days after the estimate is presented.
  - b. A requesting party may accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.
5. **Make-Ready.** Upon receipt of payment specified in Section 2(A)(4)(b) of this Chapter, a pole owner must notify immediately and in writing all known joint-use entities with existing attachments that may be affected by the make-ready.
  - a. For attachments in the communications space, the notice must:
    - i. Specify where and what make-ready will be performed.
    - ii. Set a date for completion of make-ready in the communications space that is no later than 30 days after notification is sent (or up

to 75 days in the case of larger orders as described in Section 2(A)(7)(c) of this Chapter).

- iii. State that any attaching entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.
- iv. State that if make-ready is not completed within the allotted time period requesting party may complete the specified make-ready.
- v. State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready procedure.
- vi. State that the attaching entity must affix an identification tag to each attachment within five feet of each joint-use utility pole that identifies the joint use entity and contains a contact telephone number, and that the tags must be maintained in a legible condition with current information. Attachers must tag all attachments installed after the effective date of this Chapter upon installation. Attachments installed prior to the effective date of this Chapter must be tagged within seven years of the effective date of this Chapter.

b. For attachments above the communications space, the notice must:

- i. Specify where and what make-ready will be performed.
- ii. Set a date for completion of make-ready that is no later than 90 calendar days after notification is sent (or 135 calendar days in the case of larger orders, as described in Section 2(A)(7)(c) of this Chapter).
- iii. State that any entity with an existing attachment may modify the attachment consistent with the specified make-ready before the date set for completion.
- iv. State that the pole owner has and may assert a right to 15 additional calendar days to complete make-ready.
- v. State the name, telephone number, and e-mail address of a person to contact for more information about the make-ready procedure.

6. **Attachments Above the Communications Space.** For attachments above the communications space, a pole owner must ensure that make-ready is completed within the time periods established in Section 2(A)(5)(b) of this Chapter (or, if the pole owner has asserted its 15-calendar day right, 15 calendar days later).

7. **Compliance with Time Periods.** For the purposes of compliance with the time periods in this section:

- a. A pole owner must apply the time periods described in Sections 2(A)(1)-(6) of this Chapter to all requests for pole attachment up to the lesser of 300 poles or 0.5 percent of the pole owner's poles in Maine.
- b. A pole owner may add 15 calendar days to the survey period described in Section 2(A)(2) of this Chapter to larger orders up to the lesser of 3000 poles or 5 percent of the pole owner's poles in Maine.



- c. A pole owner may add 45 calendar days to the make-ready periods described in Section 2(A)(5) of this Chapter to larger orders up to the lesser of 3000 poles or 5 percent of the pole owner's poles in Maine.
  - d. A pole owner must negotiate in good faith the timing of all requests for pole attachment larger than the lesser of 3000 poles or 5 percent of the pole owner's poles in Maine.
  - e. A pole owner may treat multiple requests from a requesting party as one request when the requests are filed within 30 calendar days of one another.
  - f. A pole owner may add up to 45 calendar days to the make-ready periods described in Section 2(A)(5) if a force majeure event interrupts compliance.
8. **Deviation from Time Periods.** A pole owner or attaching entity may deviate from the time limits specified in this section during performance of make-ready for good and sufficient cause that renders it infeasible for the pole owner or attaching entity to complete the make-ready work within the prescribed time frame. A pole owner or attaching entity that so deviates must immediately notify, in writing, the requesting party and other affected attaching entities, and must include the reason for and date and duration of the deviation. The pole owner or attaching entity may deviate from the time limits specified in this section for a period no longer than necessary and must resume make-ready performance without discrimination when it returns to routine operations. For pole replacements, a pole owner may add 45 calendar days to the make-ready periods described in Section 2(A)(5) of this Chapter for orders requiring the replacement of 10 or fewer poles, or 90 calendar days for orders requiring the replacement of more than 10 but less than 25 poles. For orders requiring the replacement of 25 poles or more, the pole owner and the attaching entity may deviate from the time limits specified in this section for a period no longer than reasonably necessary to perform the pole replacements.
9. **Self-Help.**
- a. **Survey.** If a pole owner fails to respond as specified in Sections 2(A)(2) or 2(A)(3) of this Chapter, a requesting party may hire a contractor to complete a survey so long as it provides the pole owner 10 calendar days' written notice of its intent to do so. If a requesting party exercises this option, the requesting party must permit the pole owner and any affected attaching entities to be present for any field inspections and must provide the pole owner and any affected attaching entities three business days' notice of any field inspections.
  - b. **Make-Ready Work.** If make-ready is not complete within the time period specified in Section 2(A)(5) through (7) of this Chapter, a requesting party may hire a contractor to complete the make-ready:

- i. Immediately, if the pole owner has failed to assert its right to perform remaining make-ready work by notifying the requesting party that it will do so; or
- ii. After 15 calendar days if the pole owner has asserted its right to perform make-ready by the date specified in Section 2(A)(5) of this Chapter and has failed to complete make-ready.

In addition:

- iii. The requesting party must permit the pole owner and any affected attaching entity to be present for any make-ready work and must provide the pole owner and any affected attaching entities five business days' notice of the make-ready work;
- iv. The requesting party must immediately notify a pole owner or affected attaching entity if the make-ready work damages any equipment or causes an outage that is reasonably likely to interrupt service. Upon receiving notice from the requesting party, the pole owner or affected attaching entity may either:
  - 1. Complete any necessary remedial work and bill the requesting party for the reasonable costs related to fixing the damage; or
  - 2. Require the requesting party to fix the damage at its expense immediately following notice from the pole owner or affected attaching entity; and
- v. The requesting party must notify the pole owner and any affected attaching entity of the completion of the make-ready work within 15 calendar days of completion. Such notice must provide the pole owner and any affected attaching entities 90 calendar days from receipt of the notice to inspect the make-ready work, and advise that the pole owner and any affected attaching entities have 14 calendar days from the completion of their inspection to notify the requesting party of any damage or code violation resulting from the make-ready work. The pole owner or affected attaching entity may either complete any necessary remedial work and bill the requesting party for reasonable costs associated with the remediation or require the requesting party to perform the remediation at the requesting party's expense within 14 calendar days of notification.

#### **10. Approved Contractors for Survey and Make-Ready.**

- a. A pole owner may make available a list of contractors it authorizes to perform surveys and make-ready in the communications space on its utility poles in cases involving One Touch Make-Ready under Section 2(A)(13) of this Chapter and in cases where the utility has failed to meet deadlines specified in Sections 2(A)(2) and 2(A)(5) of this Chapter.

Listed contractors must be trained to work with coaxial and fiber optic cable and be reasonably insured or bonded.

- b.** A pole owner may make available a list of contractors it authorizes to perform surveys and make-ready above the communications space on its utility poles in cases where the utility has failed to meet deadlines specified in Sections 2(A)(2) and 2(A)(5) of this Chapter. Listed contractors must be trained and appropriately licensed to work above the communications space and be reasonably insured or bonded.
- c.** If a requesting party hires a contractor for purposes specified in Section 2(A)(9) of this Chapter, the requesting party may choose from the pole owner's list of authorized contractors or request the addition to the pole owner's authorized contractor list any contractor that meets the minimum qualifications in Section 2(A)(10)(f) of this Chapter, and the pole owner may not unreasonably deny such a request.
- d.** If a pole owner does not provide a list of approved contractors for surveys or simple make-ready or no contractor on the pole owner's contractor list is available within a reasonable time period then the requesting party may choose its own qualified contractor that meets the requirements in Section 2(A)(10)(f) of this Chapter. When choosing a contractor that is not on the pole owner's list, the requesting party must certify to pole owner that its contractor meets the minimum qualifications described in Section 2(A)(10)(f) of this Chapter when providing notices required by Sections 2(A)(9) and 2(A)(13) of this Chapter.
- e.** A pole owner may disqualify any contractor chosen by a requesting party that is not on the pole owner's contractor list, but such disqualification must be based on reasonable safety or reliability concerns related to the contractor's failure to meet any of the minimum qualifications described in Section 2(A)(10)(f) of this Chapter or to meet the pole owner's publicly available and commercially reasonable safety or reliability standards. The pole owner must provide notice of its contractor objection within the notice requirements of Sections 2(A)(9) and 2(A)(13) of this Chapter and in its objection must identify at least one available qualified contractor.
- f.** In addition to the requirements in Sections 2(A)(10)(a) and (b) of this Chapter, pole owners must ensure that contractors on their lists as described in this Chapter, and requesting parties must ensure that contractors they select pursuant to Section 2(A)(10)(d) of this Chapter, meet the following minimum requirements:

  - i.** The contractor has agreed to follow published safety and operational guidelines of the pole owner, if available, but if unavailable, the contractor shall agree to follow National Electrical Safety Code guidelines;

- ii. The contractor has acknowledged that it knows how to read and follow licensed-engineered pole designs for make-ready, if required by the pole owner;
  - iii. The contractor has agreed to follow all local, state, and federal laws and regulations including, but not limited to, the rules regarding Qualified and Competent Persons under the requirements of the Occupational and Safety Health Administration rules; and
  - iv. The contractor has agreed to meet or exceed any uniformly applied and reasonable safety and reliability thresholds set by the pole owner, if made available.
- g. A requesting party that hires a contractor for survey or make-ready work must provide a pole owner or affected attaching entity with a reasonable opportunity for a representative to accompany and consult with the authorized contractor and the requesting party.
- h. The consulting representative of an electric utility may make determinations, on a nondiscriminatory basis, where there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering purposes.

#### **11. Non-Compliant Poles and Attachments.**

A requesting party is not responsible for make-ready costs to the extent that those costs are included in the pole owner's maintenance as administrative expenses or booked asset costs. A requesting party is not required to bear the costs of modifying attachments that are on the pole at the time of the requesting party's application but that were not in compliance with applicable safety, engineering, and construction codes and standards at the time of the attachments' construction or installation.

#### **12. Notice.** A pole owner must provide a utility or joint-use entity no less than 60 calendar days written notice prior to:

- a. Any increase in pole attachment rates; or
- b. Any modification of facilities other than routine maintenance or modification in response to emergencies.

#### **13. One Touch Make-Ready Option for Simple Make-Ready.**

For attachments involving simple make-ready, a requesting party may elect to proceed with the process described in this Subsection instead of the process described in Section 2(A)(1)-(9) of this Chapter. It is the responsibility of the requesting party to ensure that its contractor determines whether the make-ready requested in an attachment application is simple make-ready.

**a. Attachment Application.**

- i.** An application for attachment must be submitted in writing and must provide the pole owner with the information necessary to grant or deny the application.
- ii.** A requesting party electing the one touch make-ready option must indicate that it intends to perform one-touch make-ready in its attachment application and must identify the simple make-ready it will perform.
- iii.** A pole owner must review the requesting party's attachment application for completeness before reviewing the application on its merits. An attachment application is considered complete if it provides the pole owner with the information necessary under its procedures, as specified in a master service agreement or in publicly-released requirements at the time of submission of the application, to make an informed decision on the application.
- iv.** A pole owner must complete its review for completeness within 10 business days of receipt of the application and notify the requesting party of that decision. If the pole owner does not respond within 10 business days after receipt of the application, or if the pole owner rejects the application as incomplete but fails to specify any reasons in the application, then the application is deemed complete.
- v.** If the pole owner timely notifies the requesting party that its attachment application is not complete, then the pole owner must specify all reasons for finding it incomplete. Any resubmitted application need only address the pole owner's reasons for finding the application incomplete and must be deemed complete within 5 business days after its resubmission, unless the pole owner specifies to the requesting party which reasons were not addressed and how the resubmitted application did not sufficiently address the reasons. The requesting party may follow the resubmission procedure in this paragraph as many times as it chooses so long as in each case it makes a bona fide attempt to correct the reasons identified by the pole owner, and in each case the deadline set forth in this paragraph shall apply to the utility's review.
- vi.** The pole owner shall review on the merits a complete application requesting one-touch make-ready and respond to the requesting party either granting or denying an application within 15 days of the pole owner's receipt of a complete application (or within 30 days in the case of larger orders as described in Section 2(A)(7)(c) of this Chapter).
- vii.** If the pole owner denies the application on its merits, then its decision shall be specific, shall include all relevant evidence and information supporting its decision, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability, or engineering standards.
- viii.** Within the 15-day application review period (or within 30 days in the case of larger orders as described in Section 2(A)(7)(c) of this Chapter), a pole owner may object to the designation by the

requesting party's contractor that certain make-ready is simple. If the pole owner objects to the contractor's determination that make-ready is simple, then it is deemed complex. The pole owner's objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relate to a determination that the make-ready is not simple.

- b. **Surveys.** The requesting party is responsible for all surveys required as part of the one-touch make-ready process and must use a contractor that is appropriately trained and licensed as well as reasonably insured or bonded and otherwise meets the requirements of Section 2(A)(10)(f) of this Chapter.
  - i. A requesting party may need to perform a survey to determine whether the necessary make-ready work is simple or complex before filing an application for one-touch make-ready.
  - ii. The requesting party must permit the pole owner and any affected attaching entity to be present for any field inspection conducted as part of the requesting party's surveys. The requesting party must use commercially reasonable efforts to notify the pole owner and any affected attaching entities three business days before a field inspection as part of any survey and must provide the date, time, and location of the surveys, and the name of the contractor performing the surveys.
- c. **Make-Ready.** If the pole owner approves the requesting party's attachment application and if the requesting party has provided 15 calendar days' prior written notice of the make-ready to the pole owner and affected attaching entities, the requesting party may proceed with make-ready using a contractor that is appropriately trained and licensed as well as reasonably insured or bonded and otherwise meets the requirements of Section 2(A)(10)(f) of this Chapter.
  - i. The prior written notice must include the date and time of the make-ready work, a description of the work involved, and the name of the contractor being used by the requesting party and must provide the pole owner and any affected attaching entities a reasonable opportunity to be present for any make-ready work.
  - ii. The requesting party must immediately notify a pole owner or affected attaching entity if the make-ready work damages any equipment or causes an outage that is reasonably likely to interrupt service. Upon receiving notice from the requesting party, the pole owner or affected attaching entity may either:
    - 1. Complete any necessary remedial work and bill the requesting party for the reasonable costs related to fixing the damage; or

2. Require the requesting party to fix the damage at its expense immediately following notice from the pole owner or affected attaching entity.
- iii. In performing make-ready work, if the requesting party, the pole owner, or an affected attaching entity determines that any work classified as simple make-ready is actually complex make-ready, then that specific make-ready work must be halted, and the determining party must provide immediate notice to the other parties of its determination and the affected poles. The affected make-ready will then be governed by Section 2(A)(1)-(9) of this Chapter, and the pole owner must provide notice required by Section 2(A)(5) of this Chapter as soon as reasonably practicable.
- d. **Post-Make-Ready Timeline.** A requesting party must notify the pole owner and any affected attaching entities with notice of the completion of the make-ready work within 15 calendar days of completion. Such notice must provide the pole owner and any affected attaching entities 90 calendar days from receipt of the notice to inspect the make-ready work, and that the pole owner and any affected attaching entities have 14 calendar days from the completion of their inspection to notify the requesting party of any damage or code violation resulting from the make-ready work. The pole owner or affected attaching entity may either complete any necessary remedial work and bill the requesting party for reasonable costs associate with the remediation or require the requesting party to perform the remediation at the requesting party's expense within 14 calendar days of notification

#### 14. **Replaced and Abandoned Joint Use-Utility Poles.**

- a. **Replaced Poles.** All attaching entities with attachments above the communications space on a replaced joint-use utility pole must move their attachments to the new pole within 30 calendar days of the setting of the new pole. All attaching entities with attachments in the communications space of a replaced joint-use utility pole must move their attachments to the new pole in a sequential manner. The move process must begin:
  - i. In the case of a pole with attachments above the communications space, within 30 calendar days of the completion of the move of those attachments to the new pole; or
  - ii. In the case of a pole without attachments above the communications space, within 30 calendar days of the setting of the new pole.

Once an attachment is moved, that attacher must so indicate in the joint-use software system, or, in the absence of a joint-use software system, notify the pole owner who in turn must notify the next attacher. Each subsequent attacher must move its attachment within 15 calendar days of notification.

- b. **Abandoned Poles.** The owner responsible for the maintenance of an abandoned joint-use utility pole must remove the abandoned pole within 120 calendar days of the removal of the last communications or electric attachment (whichever is removed last) from the pole. Pole owners must remove poles that were abandoned before the effective date of this Chapter within 180 calendar days of the effective date of this Chapter. If the owner of a pole cannot be determined, the responsibility for removal of the pole lies with the utility responsible for maintenance of the pole.
- c. **Disputes.** Any aggrieved party may bring a dispute regarding the removal of an abandoned pole to the Commission using the dispute resolution provisions of Section 8 of this Chapter.

**B. Unreasonable Terms and Conditions.** The following terms and conditions are presumed to be unreasonable for the joint-use of utility poles:

- 1. **Boxing.** A prohibition on boxing poles (i.e., placing cables on both the road side and the field side of a pole) which can be safely accessed by emergency equipment and bucket trucks or ladders provided that such technique complies with the requirements of applicable codes.
- 2. **Extension Arms.** A prohibition on using extension arms to clear obstacles, improve alignment, or provide space that would not otherwise be available without a replacement pole, to the extent that the installation of extension arms complies with applicable codes.
- 3. **Lowest Pole Position.** A prohibition against attachments below existing attachments, to the extent that space is not available above existing attachments along the proposed route (or most of the route) of the additional attachments.
- 4. **Pole Top Attachments.** A prohibition against pole top attachments and the use of space above the primary or secondary power for wireless attachments, to the extent such proposed pole top installations comply with the NESC.

**C. Presumptions Rebuttable.** A pole owner or joint-use entity may overcome the presumption that a term or condition described in paragraph A or B of this Section is reasonable or unreasonable by presenting clear and convincing evidence that the dispute involves unique circumstances in which applying the presumption would produce an unreasonable or unsafe result.

### 3. APPROVAL OF ATTACHING ENTITIES

Any prospective attaching entity that is not attached to any joint-use utility poles in Maine prior to the effective date of this Chapter must obtain a Pole Attachment License from the Commission prior to attaching to any joint-use utility pole in Maine.



**A. Application Requirements for Attaching Entities.****1. Evidence of Financial Capability.**

All applications by attaching entities must include the entity's most recent financial disclosures. If an attaching entity does not make financial disclosures, it must include the most recent financial disclosures of its corporate parent. If the applicant is a newly formed entity that is not part of another organization, the Commission may accept other documentation to demonstrate financial capability.

**2. Evidence of Technical Capability.**

All applications by attaching entities must include a description of the entity's applicable industry experience, including the experience, if any, of the corporate parent of the attaching entity, and the experience of the individuals that will be responsible for the provision of service in Maine. Industry experience includes the telecommunications industry, electricity industry, pole attachments, and other experience related to pole attachments.

**3. Authorization to Conduct Business in Maine.**

All applications by attaching entities must include evidence that demonstrates that the entity is authorized to conduct business in Maine.

**4. Application Information.** An applicant must provide the following information:

- a. Legal name and name(s) under which the attaching entity does or will do business in Maine;
- b. Business street and mailing address;
- c. Location and mailing address of any office available to the general public or Maine customers of the attaching entity;
- d. Contact person, address, e-mail and telephone number for regulatory matters;
- e. A list of all jurisdictions in which the attaching entity or any affiliated interest of the attaching entity is engaged or has been engaged in deploying pole attachments;
- f. Whether the attaching entity or affiliated interest of the attaching entity has filed for bankruptcy within the past six years;
- g. A copy of the documents which demonstrate the type of organization of the attaching entity (sole proprietor, corporation, partnership, association, or other business form);
- h. The state(s) in which the attaching entity is incorporated or otherwise registered or licensed to do business and a copy of its registration or license number, where applicable; and

- i. The name, business address, and title of each officer and director, partner, or other similar officer.

**5. Commission Review.**

The Commission will review applications and may request additional information. The Commission will issue a license, deny the application, or initiate a formal investigation of the application within 30 calendar days of the submission of a complete application. If the Commission requires additional time for the initial review, the Administrative Director, the Director of Telephone and Water Industries, the Director of Consumer Assistance, or the Presiding Officer assigned to a proceeding related to this Chapter may extend the review period for an additional 30 calendar days. In the event the Commission initiates a formal investigation, it must provide notice to interested persons.

**6. Issuance Criteria.**

The Commission will issue a license unless it finds that the attaching entity has not complied with all applicable licensing requirements of this Chapter, that the attaching entity does not have the financial and technical capability to conduct its business, or that sufficient reason exists to conclude that issuance of a license is not in the public interest.

**7. Term of License.**

Licenses are valid until revoked by the Commission or abandoned by the attaching entity.

**8. Transfer of License.**

A license cannot be transferred without prior Commission approval. A request for transfer of a license must be in writing accompanied by a completed license application from the transferee.

**9. Abandonment of License.**

A licensee cannot abandon service without providing at least 30 calendar days written notice to the Commission.

**4. CALCULATION OF RATES FOR JOINT-USE UTILITY POLES**

In determining a just and reasonable rate for attachments to joint-use utility poles, the Commission will employ the FCC Cable Rate Formula, presuming an average joint-use utility pole with a space factor of 7.4% per foot used by an attachment. Pole top attachments are presumed to occupy one foot of usable space for the purposes of Cable Rate calculations. The use of an average joint-use utility pole, and the one-foot space for pole-top attachments are rebuttable presumptions.

## 5. JOINT-USE SOFTWARE SYSTEM

### A. Use of and Access to the System.

1. Large pole owners must participate in a joint-use software system upon implementation and activation of such a system. Participation by large pole owners includes, but is not limited to, providing pole ownership and attachment data to the system such that the system may be effectively used to facilitate make-ready work, placement and removal of pole attachments, and pole transfers and removals. Once implemented, all attaching entities and prospective attaching entities must use the system when applying for pole attachments, performing make ready work, placing or removing pole attachments, performing pole transfers, or performing pole removals within the service territory of a large pole owner. Pole owners who are not large pole owners may, but are not required, to participate in the joint-use software system. If a pole owner who is not a large pole owner chooses to participate in the joint-use software system, all attaching entities and prospective attaching entities must use the system applying for pole attachments, performing make ready work, placing or removing pole attachments, performing pole transfers, or performing pole removals within the service territory of that pole owner.
2. Once implemented and activated, the joint-use software system must generally be accessible to attachers 24 hours a day, 7 days a week, through the use of conventional office computer systems. Users will not be required to acquire special hardware, and any required software applications must be provided at no or at most nominal cost by the system operator(s).
3. Use of and access to the joint-use software system is subject to:
  - a. the confidentiality provisions in Section 5(B) of this Chapter;
  - b. reasonable measures to protect the security and integrity of the system and its data; and
  - c. reasonable user training requirements.
4. The owner or owners of the joint-use software system must design, implement, and operate the joint use software system in a non-discriminatory manner.

### B. Confidentiality.

Data contained in or submitted to the joint-use software system, including but not limited to pole attachment locations, descriptions, and specifications; pole attachment applications; requests for information and responses thereto; and any maps, plans, drawings or other information, including those that disclose an attacher's plans for where it intends to compete against an incumbent telephone utility, are confidential and subject to the nondisclosure provisions of this Section. All owners, operators, and users of the joint-use software system have a duty not to disclose any information contained in or downloaded or derived from the system except to such personnel that have an actual, verifiable "need to know" in order to respond to requests for information or requests for access. Under no circumstances may an owner, operator, or user of the joint-use software system disclose such information to marketing, sales or customer representative personnel.

**C. Commission Oversight.**

1. The dispute resolution process in Section 9 of this Chapter is available as a non-exclusive means of resolving disputes regarding the joint-use software system.
2. The Commission or its designee may require large pole owners to periodically provide reports regarding the implementation and operation of the system. In addition to information regarding the general operation of the system, such reports may also include:
  - a. modifications to the joint-use software system;
  - b. outages, breakdowns, or failures of the system, results of any investigation thereof, and a description of remedial measures taken; and
  - c. any disputes regarding the joint-use software system and any resolution of those disputes.

**6. SEPARATE CHARGES**

Pole owners must charge attaching entities separately for the following expenses and investments:

- A. Make-Ready Work.** An additional attaching entity or an existing attaching entity placing an additional attachment must be charged reasonable expenses incurred in surveying existing joint-use utility poles or in performing make-ready work. The attaching entity requiring additional space on an existing joint-use utility pole is presumed to be the attaching entity which must incur or be charged for the cost of all make-ready work, unless the other attaching entities otherwise agree.

**1. Municipal Exemption.**

- a. **Definitions.** The following definitions are applicable to Section 5(A)(1) of this Chapter:
  - i. **Make Ready Work.** "Make-ready work" means the rearrangement or transfer of existing facilities, replacement of a pole, complete removal of any pole replaced or any other changes required to make space available for an additional attachment to a shared-use pole.
  - ii. **Municipality.** "Municipality" means a town, city, plantation, county, regional council of governments, quasi-municipal corporation or district as defined in 30-A M.R.S. § 2351, regional municipal utility district established according to 30-A M.R.S. § 2203(9) or a corporation wholly or partially owned by an entity specified in this Subsection.
  - iii. **Unserved or Underserved Area.** "Unserved or underserved area" has the same meaning as in 35-A M.R.S § 9202(5).

- b. **Exemption.** Notwithstanding any provision of law to the contrary, for the purpose of safeguarding access to infrastructure essential to public health, safety and welfare, an owner of a joint-use utility pole and each attaching entity to that pole is responsible for that owner's or entity's own expenses for make-ready work to accommodate a municipality's attaching its facilities to that joint-use utility pole:
  - i. For a governmental purpose consistent with the police power of the municipality; or
  - ii. For the purpose of providing broadband service to an unserved or underserved area.

**B. Tree Trimming; Brush Control.** Joint-use entities occupying the same joint-use utility poles as the pole owner must be charged forty percent of expenses borne by the pole owner for tree trimming and brush control, multiplied by the ratio of joint-use entity attachments to joint-use utility poles occupied by pole owners in the same municipality or municipalities served by the joint-use entity. Pole owners that are telephone utilities must not charge electric utilities, and electric utilities must not charge pole owners that are telephone utilities or other joint-use entities, for tree trimming or brush control unless the attaching entity demonstrates a benefit to another attaching entity from either the tree trimming or brush control that it has performed and establishes a reasonable quantification of that benefit.

**C. Excess Height**

1. **Solely Assigned; Excess Height.** When an existing or a proposed attaching entity requires additional space which is not available on that joint-use utility pole, and the joint-use utility pole must be replaced by a taller joint-use utility pole, the existing or proposed attaching entity causing the need for replacement must pay for (i) the difference between the cost for the taller joint-use utility pole and supporting equipment such as guys and anchors and the cost for a new 35-foot joint-use utility pole and supporting equipment in the same location, plus (ii) a reasonable estimate of the net book value of the joint-use utility pole and supporting equipment, if any, which has been replaced.
2. **Mutual Assignment.** When a joint-use utility pole taller than 35 feet is required to provide minimum clearances, or when more space for attachments than is available on a 35-foot joint-use utility pole is required by two or more attaching entities, the cost (i) of the additional height of the excess height joint-use utility pole and supporting equipment and (ii) the reasonable estimate of the net book value of replaced joint-use utility pole and supporting equipment, if any, must be shared equally among the users requiring the replacement.

**7. JOINT RESPONSIBILITY AGREEMENTS**

Attaching entities may enter agreements which establish joint responsibility for joint-use utility poles in their common service territories and which may eliminate or reduce the need for the payment of direct compensation. Joint responsibility may include the joint ownership of joint-use utility poles, sole ownership of joint-use utility poles in an agreed proportion, compensation or

any combination thereof, provided that the net effect of the agreement assigns responsibility for joint-use utility pole costs in amounts generally consistent with this Chapter. In determining whether an existing agreement is generally consistent with this Chapter, the parties may take into account the burden of litigating a rate or charges before the Commission and the overall net effect of any reasonably likely change on their respective ratepayers or customers.

## 8. REVENUE-NEUTRAL RATE ADJUSTMENTS

### A. Flow Through of Changes in Revenues From Joint-Use Entities.

Increases in joint-use utility pole attachment revenues received by utility pole owner from a joint-use entity resulting from an order of the Commission under 35-A M.R.S. § 711 or from an agreement between utility pole owner and a joint-use entity must be flowed through to customers of the pole owner by a revenue-neutral change in the pole owner's rates as provided in this Section. Following initial implementation of a new rate as described above, increases in revenues which are attributable solely to increased costs of the pole owner, rather than to changes in the inclusion or exclusion of costs contained in a joint-use utility pole attachment rate or to changes in the allocation of costs, must not be subject to the flow-through provisions of this Section.

### B. Immediate Flow-Through.

The rate change required by this Section may be implemented by the pole owner at the time of the increase in revenues. If an electric utility chooses this option, the electric utility must make the change in its rates for residential classes.

### C. Delayed Flow-Through; Suspense Account.

1. **Timing.** A pole owner may choose to delay the rate change required by this Section until the conclusion of its next general rate case, if applicable. If the next general rate case is not commenced (or notice provided under Chapter 120, § 6 of the Commission's Rules) within four years of the change in revenues, the pole owner's rate must be changed not later than 5 years following the effective date of the rate change.
2. **Rate Design.** If the change in joint-use utility pole rates is made at the conclusion of a general rate case, the change must apply to the rates for services or to customer classes as ordered in that case. If the change is made outside of a general rate case, the change must apply to rates for residential customers of the electric utility.
3. **Suspense Account.** A pole owner which delays implementation of a rate change pursuant to this Section must defer all increased revenues in a suspense account and the rate change to its customers must take into account the deferred amounts.

## 9. RESOLUTION OF DISPUTES

The Commission will adjudicate any disputes regarding joint-use utility poles, including disputes pursuant to 35-A M.R.S. § 711, in accordance with the Expedited Complaint Resolution Process

of Disputes Regarding Utility Pole Attachments established in *Maine Public Utilities Commission, Investigation into Practices and Acts Regarding Access to Utility Poles*, Docket No. 2010-00371, Order (July 12, 2011). A summary of the dispute procedure is attached to this Chapter as Attachment A. On or before January 31 of each calendar year, or any time the contact information changes, owners of joint-use utility poles must submit to the Commission contact information for use by current or prospective attaching entities. Contact information must include name, title, address, business phone number, and business email address.

#### **10. NEGOTIATED AGREEMENTS**

Notwithstanding anything to the contrary in this Chapter, pole owners and attaching entities may enter into negotiated agreements for attachment to joint-use utility poles that contain rates, terms, or conditions that differ from those described in this Chapter. However, the Commission will apply the provisions of this Chapter in any dispute regarding rates, terms, or conditions for attachment to joint-use utility poles.

#### **11. WAIVER**

To the extent permitted by law, and for good cause shown, the Commission, the Director of Electric and Gas Utility Industries, the Director of Telephone and Water Utility Industries, the Director of Consumer Assistance and Safety, or the Presiding Officer assigned to a proceeding involving the provisions of this Chapter, may permit a temporary or permanent deviation, waiver or exemption from any provision of this Chapter. A finding that compliance would be unduly burdensome or that the deviation or waiver will not impair the policies of this Chapter may constitute a finding of good cause.

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**ATTACHMENT A**  
**EXPEDITED POLE ATTACHMENT COMPLAINT PROCESS**

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**1. Activities Prior to Filing a Complaint**

- a. Complainant must call the contact for the party with whom there is a dispute and give notice that they are planning to file a complaint with the Commission Rapid Response Team the next business day

**2. Filing Complaints**

- a. Complainant files Complaint electronically to the RRPT (rapidresponse.PUC@maine.gov) and the responding party contact. The filing must contain the appropriate caption for the Complaint (name of company and date of filing), and the actual Complaint must be a document attached to the email.
- b. A Complaint must contain sufficient information to indicate:
  - i. the facts underlying the Complaint;
  - ii. the harm which is resulting or could result to the Complainant due to the situation;
  - iii. a description of the steps which the parties have taken to resolve the situation prior to the filing of the Complaint; and
  - iv. whether or not Complainant is requesting a preliminary finding. The Complainant must also indicate the times both parties will be available for a conference call within 2 business days after the Complaint is filed.

**3. Response to Complaint**

- a. Respondent acknowledges the by email. The acknowledgement and any response must be emailed to the RRPT and the Complainant. The Respondent *may*:
  - i. respond to the factual issues in the Complaint;
  - ii. argue the Complaint should be dismissed or is otherwise not ripe for review;or
- b. The RRPT will schedule a time for the Preliminary Conference Call within 2 business days of the date when the Complaint is filed.

**4. Preliminary Conference Call and Intermediate Dispute Resolution Process.**

- a. Preliminary Conference Call: The following may occur:
  - i. Respondent may provide oral response to Complaint;
  - ii. Deadline established for written response, if appropriate;
  - iii. RRPT may request additional information from each party and set a schedule for its production;
  - iv. RRPT may schedule follow-up telephone conference among the parties;
  - v. RRPT may issue a Preliminary Finding or dismiss the complaint; either party may appeal to the Commission an adverse Preliminary Finding or dismissal;
  - vi. The issue may be resolved to the satisfaction of both parties.



**ATTACHMENT A**  
**EXPEDITED POLE ATTACHMENT COMPLAINT PROCESS**

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- b. Follow-up conference calls will be held at a time determined by RRPT and the following may occur:
  - i. Parties will update RRPT on progress since last call;
  - ii. Parties will discuss information provided in response to any RRPT requests;
  - iii. RRPT may issue a Preliminary Finding or dismiss the Complaint; either party may appeal to the Commission an adverse Preliminary Finding or dismissal;
  - iv. The issue may be resolved to the satisfaction of both parties; or
  - v. RRPT may request written comments and/or schedule a Notice of Decision Call.

**5. Notice of Decision and Final Order**

- a. If required by RRPT, a final conference call is held and the following may occur:
  - i. RRPT hears closing argument from parties and issues oral decision.
  - ii. RRPT hears closing argument from parties and schedules time for written decision.
- b. Within 7 business days of the filing of the Complaint, the RRPT will issue a final written decision (Final Order). Unless stayed by RRPT, the Final Order remains in effect pending appeal.
- c. Within 5 business days after written decision is issued, a party may:
  - i. Appeal the Final Order to full Commission.
  - ii. Request a stay of the Final Order by the Commission pending appeal.

BASIS STATEMENT: The factual and policy basis for this Chapter is set forth in the MPUC's Order Amending Rule and Statement of Factual and Policy Basis, Docket No. 2023-00058, issued on September 12, 2023. Copies of the Order have been filed with this Chapter at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 18 State House Station, Augusta, Maine 04333-0018.

STATUTORY AUTHORITY: 35-A M.R.S. §§ 111, 301, 711, 2524, 7903 and 8302., P.L. 2017, ch. 199.

EFFECTIVE DATE: This rule was approved as to the form and legality by the Attorney General on 9/20/2023. It was filed with the Secretary of State on 9/14/2023 and became effective on 9/25/2023.