

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Complaint of Charter Communications, Inc.)
Against New York State Electric and Gas)
Corporation and Avangrid, Inc. for)
Failure to Provide Lawful Access to Utility Poles) **Case 15-M-0388**

VERIFIED COMPLAINT OF CHARTER COMMUNICATIONS, INC.

Charter Communications, Inc. (“Charter”), on behalf of itself and its affiliates, respectfully brings this Complaint, pursuant to Section 66(5) of the New York Public Service Law, against New York State Electric and Gas Corporation (“NYSEG”) and its parent Avangrid, Inc. (“Avangrid”) due to NYSEG’s unlawful constructive denial of access to its utility pole facilities. NYSEG’s refusal to provide access to poles on just and reasonable terms violates Public Service Law §§ 66 and 119-a, and the Commission’s regulations and orders implemented thereunder, including its Order in Case 03-M-0432, *Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues*, Order Adopting Policy Statement on Pole Attachments (Aug. 6, 2004) (“Pole Attachment Order”). NYSEG’s unlawful actions have frustrated Charter’s ability to meet the initial milestone in the Commission-imposed buildout condition to expand the availability of broadband in New York, despite Charter’s efforts toward meeting that milestone. Charter’s ability to promptly deploy additional infrastructure to expand broadband availability in the State has been a subject of significant recent interest and attention from both the Commission and the Department of Public Service (“Department”). In the absence of action by the Commission to remedy NYSEG’s unreasonable conduct and failure to comply with its obligations under New York pole attachment rules and this Commission’s orders, Charter will be unable to meet future

milestones in the buildout condition, and more unserved and underserved New Yorkers will be denied timely access to broadband.

PARTIES

1. Charter Communications, Inc. is a Delaware corporation, headquartered in Stamford, Connecticut. Charter is the ultimate parent of several affiliates holding cable franchises in communities throughout the State of New York, and through which Charter provides video, broadband Internet, voice, and business services to New York customers.

2. New York State Electric and Gas Corporation is a subsidiary of Avangrid, Inc. engaged in the generation of electricity and the transmission, distribution, and sale of both natural gas and electricity in the State of New York. As an “electric corporation” under the New York Public Service Law,¹ NYSEG is obligated to provide cable and telephone companies, such as Charter, with access to its utility poles on just and reasonable terms.

3. Avangrid, Inc. is the direct or indirect parent company of NYSEG and Rochester Gas and Electric, another New York State electric corporation. Avangrid is incorporated in the State of New York and headquartered in New Haven, Connecticut.

JURISDICTION

4. The Commission has the power of “general supervision” over electric corporations in New York, which includes the power to, upon complaint, address “unjust [or] unreasonable” rates, charges, acts, or regulations of any electric corporation and to determine and prescribe “just and reasonable” rates, charges, acts and regulations of electric corporations.²

¹ N.Y. Pub. Serv. Law § 2(13).

² *Id.* § 66(1), (5).

STATUTORY AND REGULATORY BACKGROUND

5. Section 119-a of the New York Public Service Law provides that “[t]he commission shall prescribe just and reasonable rates, terms and conditions for attachments to utility poles and the use of utility ducts, trenches and conduits.”³

6. In 2004, in order to resolve issues concerning pole attachments and to “streamline the process by which attachments to utility poles are made in order to promote the deployment of competitive telecommunications networks[,]” the Commission issued an order adopting a Policy Statement on Pole Attachments.⁴ Although the Pole Attachment Order permits individual pole owners and attachers to enter into agreements and operating procedures to govern pole attachments, such “agreement[s] and operating procedures must be consistent with the Policy Statement on Pole Attachments” adopted in the Pole Attachment Order.⁵

7. Under the Commission’s Pole Attachment Order and Policy Statement on Pole Attachments, pole owners such as NYSEG are required to process Charter’s applications for pole attachment permits within five business days of receipt.⁶ After receiving a complete application, pole owners have 45 days from the date of the application’s receipt to complete a preconstruction survey.⁷

³ *Id.* § 119-a.

⁴ Pole Attachment Order, at 1.

⁵ *Id.* at 9.

⁶ Pole Attachment Order, Appendix A, Policy Statement on Pole Attachments, at 2 (“Policy Statement”).

⁷ Pole Attachment Order, at 3; Policy Statement, at 3.

8. Within 14 days of completing the survey, the pole owner must send a make-ready work estimate to the applicant—in this case, Charter.⁸ The applicant has 14 days from receipt of the estimate to accept and pay for the make-ready work, and the pole owner must then perform the make-ready work within 45 days of receiving payment.⁹

9. If a pole owner is unable to meet these deadlines, the Pole Attachment Order expressly authorizes the applicant to “hire an outside contractor to do the survey or perform make-ready work, if the contractor is approved by the Owner [in this case, NYSEG].”¹⁰

10. In addition, the Pole Attachment Order expressly authorizes applicants to use various alternative attachment methods to facilitate the timely completion of their buildout. For example, recognizing that speed is of the essence to an attacher and that temporary attachments can “compensate for delays in make-ready and other impediments to accessing poles[,]”¹¹ the Pole Attachment Order requires that “[t]emporary attachments to poles should be used if they meet all safety requirements and if a utility is unable to meet the make-ready work timeline.”¹² The Order likewise contemplates that “[e]xtension arms may be an appropriate method of attachment for both permanent installations, when make-ready costs are exorbitant, and/or on a temporary basis when make-ready work cannot be performed in a timely manner.”¹³

11. Beyond the specific obligations identified in the Commission’s Pole Attachment Order, electric corporations have a general obligation under Public Service Law Section 66 not to

⁸ Pole Attachment Order, at 3; Policy Statement, at 4.

⁹ Pole Attachment Order, at 3; Policy Statement, at 4.

¹⁰ Pole Attachment Order, at 2-3; Policy Statement, at 3.

¹¹ Policy Statement, at 5.

¹² Pole Attachment Order, at 5.

¹³ Policy Statement, at 6.

utilize “rates, charges or classifications” or “acts or regulations” that are “unjust, unreasonable, unjustly discriminatory, or unduly preferential.”¹⁴ This prohibition extends to and includes electric corporations’ acts and regulations governing access to their poles, and the fees they charge for preconstruction and make-ready work.

FACTUAL BACKGROUND

I. Charter’s Commission-Ordered Buildout.

12. Charter’s pole attachment dispute with NYSEG arises in the broader context of a large buildout project that Charter is undertaking in the State of New York in connection with conditions imposed by the Commission in approving Time Warner Cable Inc.’s (TWC’s) transfer of control to Charter of several cable and telecommunications provider affiliates offering services within the state. Specifically, the Commission’s order requires Charter to extend its network to pass an additional 145,000 unserved or underserved premises within four years of closing its transaction with TWC (*i.e.*, by May 18, 2020), with 25% completed in the first year and an additional 25% completed in each successive year (“Buildout Condition”).¹⁵

¹⁴ N.Y. Pub. Serv. Law § 66(5).

¹⁵ Charter’s Verified Complaint should not be construed in any way as a waiver or a concession by Charter with respect to the Commission’s jurisdiction to regulate Charter, impose conditions on the Merger, or otherwise compel Charter to act (or refrain from acting) with respect to any activities Charter conducts in New York that are beyond the scope of the Commission’s limited jurisdiction, including but not limited to Charter’s activities in New York related to broadband service or infrastructure which are outside of the jurisdiction of the Commission.

Charter’s Verified Complaint should also not be construed in any way as a waiver or a concession by Charter that any provision or condition of the Merger Order, including but not limited to Condition I of Appendix A of the Order, is lawful or valid under the New York Constitution, the Federal Constitution, or any applicable New York or federal statutes, caselaw and regulations.

Charter reserves all of its rights, including its right to challenge any provision or condition of the Merger Order, including but not limited to Condition I of Appendix A of the Order, in a state or federal court of competent jurisdiction on the basis that the provision or condition is invalid

13. In addition to the Buildout Condition imposed by the Commission, Charter is also subject to national broadband buildout commitments in connection with the Federal Communications Commission's ("FCC") approval of the national transaction involving Charter and TWC, of which the transfers of control of TWC's New York affiliates approved by the Commission was a component. Although Charter's national buildout commitments to the FCC are not specific to New York, Charter's completion of its network buildout commitments in New York is an important component of its plans for satisfying its national commitments to the FCC.

14. Charter has worked towards meeting its buildout obligations in New York. It filed with the Commission on July 5, 2016 (and revised on July 26, 2016) a Network Expansion Implementation Plan and 45-Day Report detailing the Company's plans to expand service in compliance with this condition (collectively, the "Network Expansion Plan" or "Plan"). Charter has since submitted a summary of the activities, expenditures, and schedules related to its Network Expansion Plan on August 16, 2016 as part of its 90 Day Report and Implementation Plan, along with subsequent updates on November 18, 2016, February 17, 2017 and May 18, 2017.

II. Delays in Pole Attachment Process.

15. Charter's ability to complete its Network Expansion Plan depends upon its ability to access poles owned by third parties—which, in turn, depends upon those third parties' meeting their contractual and regulatory obligations to grant such access in a timely manner. As Charter's implementation of its Network Expansion Plan has progressed, however, the principal barrier

because the Commission lacked statutory authority or jurisdiction to impose the condition, that enforcement of the provision or condition and any associated penalty violates the Due Process or Commerce Clauses of the New York Constitution or the Federal Constitution, or that the provision or condition is preempted by or otherwise contravenes state or federal law.

Charter has encountered—again and again—is the failure of pole owners to process and respond to Charter’s applications in a timely manner.

16. Charter has prepared and submitted to various pole owners applications for approximately 180,164 poles within the State of New York since May 2016 (when Charter’s transaction with TWC closed and the Buildout Condition became effective) in order to obtain access to poles needed under its Network Expansion Plan, and has paid approximately \$4.1 million in fees to pole owners in connection with those applications. However, New York pole owners have come nowhere close to meeting their obligations under this Commission’s rulings to process those applications in a timely manner, and have granted approval for only approximately 6,472 of those poles, *i.e.*, fewer than 4% of those that Charter has submitted. The Commission’s 2004 Pole Attachment Order requires pole owners to process applications and complete initial surveys within 45 days. Yet pole owners are consistently and systematically disregarding this requirement—statewide, over 76% of Charter’s applications have been pending without approval for more than 45 days; 62% of Charter’s applications have been pending without approval for more than 90 days, and over 61% of Charter’s applications (covering 110,213 poles) have been pending for more than 100 days.

17. Charter has sought in good faith to work with pole owners to mitigate these issues. As Charter explained in its February 14, 2017 letter to the Commission,¹⁶ Charter has been actively engaging with its three largest pole partners, National Grid USA Service Company, Inc. (“National Grid”), Verizon New York, Inc. (“Verizon”) and NYSEG—who collectively represent

¹⁶ CASE 15-M-0388 - *Joint Petition of Charter Communications and Time Warner Cable for Approval of a Transfer of Control of Subsidiaries and Franchises, ProForma Reorganization, and Certain Financing Arrangements*, Letter from Adam Falk, Senior Vice President, State Government Affairs, Charter Communications, Inc. to Karen Geduldig, Director, Office of Telecommunications, Department of Public Service (Feb. 14, 2017) (Filing No. 140).

approximately 85% of all pole attachment applications—in an attempt to find mutually acceptable resolutions that will allow Charter to move forward with its Network Expansion Plan. Charter has engaged in regular calls with NYSEG (as well as with National Grid and Verizon) to discuss the pole attachment process, including answering specific questions or concerns regarding specific Charter pole attachment applications, providing ideas and opportunities to expedite and improve work-flow, identifying potential resolutions to barriers encountered, as well as assisting with general housekeeping and other agenda items.

18. Charter has also sought the assistance of the Department in facilitating resolution of these recurring delays. In a February 14, 2017 letter, Charter outlined a number of pole attachment issues that have been delaying Charter’s ability to complete its Network Expansion Plan, as well as its mitigation strategy to expedite approvals.¹⁷ As part of this letter, Charter also identified specific areas in which the Department’s active engagement would be necessary to facilitate resolution of the pole impediments and mitigate further delays.

19. Charter has also regularly met with Staff over the past year to discuss these issues—including in several meetings held throughout early 2017 and in a joint meeting on March 22, 2017, which included Charter, pole owners (including NYSEG), and Department Staff. The Department shares Charter’s interest in swiftly obtaining pole attachment rights to facilitate the joint goal of expanding broadband availability in unserved and underserved areas of the State, and has committed to effectuate approvals and prompt the pole owners to take necessary actions to accomplish that goal.¹⁸ Charter welcomes those efforts; however, since the March 22, 2017

¹⁷ *Id.*

¹⁸ See CASE 15-M-0388, Letter from Karen Geduldig, Director, Office of Telecommunications, Department of Public Service, to Adam Falk, Senior Vice President, State Government Affairs, Charter Communications, Inc. (Feb. 8, 2017) (Filing No. 139).

meeting, the same delays by pole owners have persisted. NYSEG, for instance, has approved only 11 additional pole permits.

20. In light of the challenges it has faced in obtaining access to utility poles, Charter on May 17, 2017 submitted to the Commission a request for an extension of the four-year line extension build-out provision, as well as an extension of the requirement that one quarter of the commitment be completed one year after the close of the transaction.¹⁹ On June 19, 2017 Charter and the Department reached a settlement agreement for consideration by the Commission. Under the terms of that agreement, Charter stands to forfeit as much as \$13 million if it is unable to meet certain targets set forth in the agreement. Absent approval by the Commission of the proposed extension agreement, Charter could be threatened with other penalties. Immediate action by the Commission is required if Charter is to meet its commitments to the Commission and bring broadband services to unserved and underserved New Yorkers.

III. NYSEG's Failure to Comply with the Pole Attachment Order and the Commission's Rules.

21. As one of Charter's largest pole partners in New York, NYSEG's cooperation is vital to Charter's ability to meet its Commission-ordered buildout targets. NYSEG's persistent failure to meet its legal and regulatory obligations to grant timely access to poles has caused significant harm to Charter and impeded Charter's ability to meet these initial targets.

22. NYSEG is responsible, either in whole or in part, for a significant portion of the poles for which Charter has not been granted approval to access for attachments as set forth in Paragraphs 14-20 above. Since the Buildout Condition took effect in May 2016, Charter has

¹⁹ CASE 15-M-0388, Request of Charter Communications, Inc. for an Extension of Time in Which to Comply with the Merger Order's Buildout Provisions and Reserving the Right to Supplement (May 17, 2017) (Filing No. 143).

submitted 394 pole attachment applications to NYSEG, requesting permits to attach to 25,231 poles. In connection with those applications, Charter has paid \$38,629 to NYSEG in application fees. To date, however, NYSEG has approved only 76 of those applications and has released only 1,248 poles to Charter—a mere 5% of poles for which Charter has submitted applications to NYSEG. NYSEG has not conducted any preconstruction surveys for 70% of Charter’s applications (representing 87% of the poles).

23. NYSEG’s delays permeate the entire pole attachment process. Of the more than 25,000 poles covered by Charter’s applications, NYSEG has performed the initial preconstruction surveys and provided make-ready estimates to Charter for only 3,268 poles, which includes the 79 approved applications. More than 45% of these surveys were not completed until *after* expiration of the 45-day deadline specified in the Commission’s Pole Attachment Order. Charter has remitted \$146,522 to NYSEG for make-ready work encompassing 473 of the poles for which NYSEG has provided make-ready estimates; however, NYSEG has completed that work on only 87 poles. An additional 386 NYSEG poles still await make-ready work.

24. Of the 318 applications that remain pending, NYSEG’s processing has been delayed, often significantly, as shown below:

Days Application Pending	Applications	Poles
0-45	97	7,245
46-90	35	2,612
91-120	25	1,327
121-150	35	2,811
151-180	75	6,605
181 or more	51	3,383
Total	318	23,983

25. Although NYSEG has recently started providing Charter with more regular updates regarding the status of Charter’s permit applications, such information does not provide Charter

with any visibility into NYSEG’s internal processing of Charter’s applications, nor with project completion dates for various stages of the pole attachment process, further frustrating Charter’s efforts to mitigate delays in NYSEG’s processing of such applications.²⁰ Charter has compiled the following summary demonstrating the delays in NYSEG’s performance from internal data—which Charter is regularly updating during the course of its build:

Application Processing and Surveys	
Application Fees Charter Has Remitted to NYSEG	\$38,629
Applications Charter Has Submitted to NYSEG	394
Poles Encompassed by Charter Applications to NYSEG	25,231
Poles for which NYSEG has Performed Preconstruction Survey / Provided Make-Ready Estimate	3,268
Poles for which NYSEG has Not Yet Performed Preconstruction Survey and Provided Make-Ready Estimate	21,963
Make-Ready Work	
Poles for which NYSEG has Performed Preconstruction Survey / Provided Make-Ready Estimate	3,268
Make-Ready Fees Charter Has Remitted to NYSEG	\$146,522
NYSEG Poles for which Charter Has Remitted Payment for Make-Ready Work	473
Poles for which NYSEG Has Completed Make-Ready Work	87
NYSEG Poles Awaiting Make-Ready	386

IV. NYSEG’s Failure to Take Adequate Steps to Mitigate Its Noncompliance.

26. Charter brings this Verified Complaint only after trying without success to obtain NYSEG’s cooperation in mitigating the failures described above.²¹ NYSEG’s unwillingness to

²⁰ Charter recognizes that Staff, in an effort to help address such lack of transparency, is working on a proposal to require the major pole partners to collect and share granular, comprehensive data with one another and with the Department. Timely and complete responses by the parties will be important to the effectiveness of these efforts. Because the challenges and delays Charter faces with pole owners extend well beyond information-sharing issues, however, the Department’s efforts in this area should not delay or preclude its assistance in resolving the other difficulties set forth in this Complaint.

²¹ Charter reserves all rights to seek additional remedies against NYSEG beyond those available in a pole attachment complaint before the Commission, including without limitation its rights to seek any appropriate legal and equitable relief in a court of law.

address these deficiencies has, in turn, frustrated Charter's ability to take necessary measures to do so.

27. NYSEG's delays are a direct result of its failure to commit, deploy, or retain sufficient staff to meet its pole attachment obligations. Rather than remedy this problem by retaining or deploying the necessary staffing to those efforts, NYSEG has exacerbated it by refusing until very recently to use contractors or subcontractors to complete work that it has been unable to do in a timely fashion.

28. Since submitting its first round of applications in Fall of 2016, Charter has repeatedly raised these delays in NYSEG's pole attachment process and pressed NYSEG to hire additional staff to perform survey and make-ready work in coordination with NYSEG's joint pole owners. However, Charter's efforts to work cooperatively with NYSEG to resolve these issues have failed meaningfully to reduce delays in the pole attachment process or the backlog of applications pending approval.

29. Due to this continued lack of progress by NYSEG in addressing its deficiencies, Charter on June 16, 2017, submitted a letter requesting that NYSEG take certain immediate actions, required under the Pole Attachment Order, to address its delays ("Demand Letter").²² Charter also again requested NYSEG's consent to utilize several standard alternative attachment

²² See Letter from Terence Rafferty, Regional Vice President, Northeast Region Field Operations, Charter Communications, to Mark Beaudoin, Director – Customer Services and Systems, NYSEG (June 16, 2017) (attached as Exhibit 1). The original Exhibit B to Exhibit 1 has been omitted from this filing as containing trade secret information. Charter will separately file Exhibit B to Exhibit 1, together with a request for confidential treatment.

methods, including bracketing, to accelerate the make-ready and construction process, as well as further use of temporary attachments.²³

30. In lieu of responding to Charter's requests in the Demand Letter or setting forth proposed solutions to address its delays, NYSEG responded on June 23, 2017 with a letter from its counsel, which sought to deflect its own responsibility for failing to process Charter's applications in a timely manner by seeking, without good cause, to attribute those delays to Charter.²⁴ NYSEG's various excuses, however, are obvious pretexts for its own delays and failure to devote adequate staff and resources to meet its obligations under the Pole Attachment Order.

31. For instance, Charter's and NYSEG's regional personnel have been coordinating with respect to Charter's applications, without incident, for months. However, NYSEG's letter seeks to blame its delays on Charter's supposed failure to "identify an individual point of contact" to discuss its pole attachment applications, which NYSEG claimed it "has been asking" Charter to provide "for several months and across multiple channels."²⁵ Upon information and belief, NYSEG had not, prior to its June 23, 2017 Response Letter, made any such a demand, or expressed any concern that Charter was not responding to its inquiries in a timely manner or that those matters required escalation beyond the respective companies' regional staffs.

²³ The use of temporary attachments and brackets are methods expressly contemplated by the Pole Attachment Order for the purpose of reducing make-ready delays and cost, and do not require separate agreement of the parties to implement. *See* Pole Attachment Order, at 5-6. To its credit, NYSEG—unlike many of Charter's other New York pole partners—has allowed Charter in several instances to use temporary attachments as a stopgap measure to accelerate attachments where NYSEG has been unable to meet its pole attachment obligations. Such authorizations should continue and be expanded where necessary.

²⁴ *See* Letter from Mark Epstein, Senior Counsel, Avangrid, to Terence Rafferty, Regional Vice President, Northeast Region Field Operations, Charter Communications (June 23, 2017) (attached as Exhibit 2) ("NYSEG Response Letter").

²⁵ NYSEG Response Letter, at 1.

32. NYSEG’s Response Letter also attempts to divert focus from its enormous backlog of applications by overstating its performance, claiming that “over 200 of Charter’s requests have been approved.”²⁶ Upon information and belief, NYSEG’s count misleadingly includes Charter applications it has failed to process in a timely manner, and others on which it has permitted temporary attachments as a stopgap measure. Charter appreciates that NYSEG—unlike some other pole owners in New York—has allowed Charter to use temporary attachments in some instances to ameliorate issues arising out of NYSEG’s delays in processing Charter’s applications. But the actual number of applications that NYSEG has approved in final form—meaning that it has released those poles to Charter upon completion of make-ready work or confirmation that no make-ready work was required—is significantly less than 200, numbering only 76 of Charter’s 394 total applications.

33. NYSEG has also sought to blame its delays on supposedly “deficient” Charter applications without specifying how those applications are supposedly “deficient” or how many applications are “deficient” as NYSEG claims.²⁷ This excuse appears to be a reference to Charter’s submission of a relatively small number of applications (less than 5% of Charter’s total applications) in early 2017 that NYSEG deemed incomplete because they did not contain measurements and had to be resubmitted. Prior to Charter’s Network Expansion Plan and its concomitant increase in the volume of pole attachment applications, however, NYSEG had accepted applications without such measurements in the regular course, including from Charter.

34. In any case, the relatively small number of initial Charter applications that lacked measurements has not been a material driver of NYSEG’s delays. First, any initial delays arising

²⁶ *Id.*

²⁷ *Id.*

out of Charter's supplementation (upon NYSEG's request) of so few applications cannot have been the cause of NYSEG's systematic delays across Charter's entire application pool. Second, Charter quickly completed the measurements requested by NYSEG and resubmitted these applications to NYSEG, usually within one week of being informed of their supposed insufficiency. Third, NYSEG began insisting on more detailed applications only after the volume of Charter's applications increased in light of Charter's Buildout Commitment and Network Expansion Plan. Once Charter was made aware of this requirement, it included measurements in all of its subsequent pole attachment applications. Thus, even accounting for any short delay caused by the need for Charter to supplement its initial applications, those applications have now have been pending with NYSEG for over five months, well past the required timeframes for completion of preconstruction surveys and make-ready work.

35. NYSEG has also—bizarrely—asserted that Charter waited until “this late date” to try to accelerate the processing of its pole attachment applications in order to meet its buildout commitments to the Commission.²⁸ NYSEG, however, has been aware of Charter's buildout commitments and Network Expansion Plan for almost a year now and knew or should have known that these plans would lead to a dramatic increase in the volume of pole attachment applications submitted to NYSEG. Furthermore, Charter has been trying for months to get NYSEG to increase its capacity to process applications, but as noted in Paragraph 36 below, it was only very recently that NYSEG agreed to contract with third-party contractors to accelerate its processing of applications and reduce the present backlog.

²⁸ *Id.*

V. NYSEG's Recent Modifications to Its Make Ready Process.

36. NYSEG recently modified its Make Ready Process in an effort to accommodate the surge in attachment requests associated with the Network Expansion Plan, primarily by providing for the use of third-party contractors to facilitate preconstruction and make-ready work.²⁹ While the new "Make Ready Process" is a welcome, if belated, development, NYSEG's agreement to use contractors is not by itself enough. Indeed, National Grid has had a similar make-ready process in place for months, and yet Charter continues to experience substantial delays with National Grid's processing of its pole attachment applications. For Charter to meet the PSC's buildout goals, NYSEG must clearly inform Charter and the Commission *how* it intends to clear the backlog and meet the timeframes required by the 2004 Pole Attachment Order.

37. To this end, NYSEG and/or its contractors must (a) ensure that an adequate number of NYSEG's own workers or contractors are available under NYSEG's new Make Ready Process to process Charter's pole attachment applications; (b) allow for widespread use of temporary attachments (unless unsafe) to enable Charter to ramp up its build; (c) continue to coordinate the initial survey and make-ready estimate and design process with NYSEG's joint pole owners by utilizing "joint ride-outs" or other methods of coordination; and (d) confirm that it, and/or its contractor, will continue to provide Charter with make-ready estimates prior to finalizing its make-ready designs. These commitments are critical if further delays in the pole attachment process are to be avoided.

38. NYSEG's new Make Ready Process also comes with a stiff increase in the permitting fee – the new fee of \$162 per pole is nearly triple what other electric utilities are

²⁹ Email from Robert F. Perkins, Manager, Avangrid Service Company Claims, Avangrid Networks, Inc. – NY Joint Use of Plant, to Terence Rafferty et al. (July 7, 2017) (describing new Make Ready Process and attaching process flow) (attached as Exhibit 3).

charging. NYSEG has provided no explanation for an increase of this magnitude, which seems particularly unjustified given NYSEG's planned use of contractors to both manage and perform make-ready work and requirement that the licensee purchase construction materials.

39. Contemporaneously with the filing of this complaint, Charter will continue to seek greater clarity from NYSEG on the new Make Ready Process and fee. However, Commission involvement and action are essential to resolving this matter in light of NYSEG's consistent failures to meet the timeframes required under the Pole Attachment Order; its refusal until recently to take steps to mitigate those failures; and the significant open questions regarding the new Make Ready Process described above. NYSEG's failures have adversely affected Charter and the 145,000 New Yorkers who stand to benefit from the expanded broadband service contemplated by the Network Expansion Plan. Those failures have prevented Charter from satisfying the milestones in the Buildout Condition and using its network buildout in New York State as a means of partially satisfying its buildout commitments to the FCC.³⁰

40. The inability of Charter to expand its footprint caused by NYSEG's delays also inflicts commercial harm on Charter by depriving it of the opportunity to provide service to new customers. And, as noted above, NYSEG's delays are also subjecting Charter to the continued risk of regulatory sanctions based on circumstances entirely within NYSEG's control.

COUNT I – VIOLATION OF PUBLIC SERVICE LAW § 119-a

41. Charter realleges and incorporates by reference Paragraphs 1 through 40 as though fully set forth herein.

³⁰ CASE 15-M-0388, Charter Communications, Inc. Annual Update (May 18, 2017) (Filing No. 145).

42. As described above, NYSEG has, in numerous instances, failed: (a) to conduct a preconstruction survey of poles within 45 days of receiving a complete application from Charter to attach to NYSEG's utility poles; or (b) to perform make-ready work within 45 days of receiving payment from Charter for such work.

43. Despite being unable to meet these timelines, NYSEG has until recently refused Charter's requests to hire approved outside contractors to complete the work necessary to enable Charter to attach its facilities. Charter has no assurance that NYSEG's recent willingness to engage contractors will enable Charter to meet its obligation under the Network Expansion Plan.

44. NYSEG's failure to meet the above timeframes required for completing preconstruction surveys and estimates and performing make-ready work violates Public Service Law § 119-a, and the Commission's orders implemented thereunder, including its 2004 Pole Attachment Order.

COUNT II – VIOLATION OF PUBLIC SERVICE LAW § 66

45. Charter realleges and incorporates by reference Paragraphs 1 through 44 as though fully set forth herein.

46. As described above, NYSEG has, in numerous instances, failed to meet required deadlines for the processing and approval of Charter's applications to attach to NYSEG's poles.

47. Despite being unable to meet these timelines, NYSEG has until recently refused Charter's requests to hire approved outside contractors to complete the work necessary to enable Charter to attach its facilities. Charter has no assurance that NYSEG's recent willingness to engage contractors will enable Charter to meet its obligation under the Network Expansion Plan.

48. NYSEG's failure to meet the above timeframes required for completing preconstruction surveys and estimates and performing make-ready work, constitute "unjust" and "unreasonable" acts in violation Public Service Law § 66(5).

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth herein, Charter Communications, Inc. respectfully requests that the Commission initiate an expedited dispute resolution proceeding to resolve the outstanding pole attachment issues between Charter and NYSEG.

To the extent the Commission's further intervention fails to produce a resolution, Charter requests that the Commission order NYSEG to take immediate steps to do the following, backed up, if necessary, by the Commission's enforcement and penalty provisions contained in Public Service Law sections 25 and 26:

1. Implement measures as needed to enable Charter to meet its Commission-ordered deadlines with respect to its Network Expansion Plan, including, without limitation;
 - a. Ensuring that an adequate number of NYSEG's own workers or contractors are available under NYSEG's new Make Ready Process to process Charter's pole attachment applications at just and reasonable rates with the timeframes required under the 2004 Pole Attachment Order; and/or
 - b. Allowing Charter to manage any outside contractors retained by NYSEG to perform the necessary survey and make-ready design work to timely process such applications; and/or
 - c. Confirming the use of standard alternative measures, including temporary attachments and bracketing on reasonable terms and conditions to further facilitate the timely completion of the request make-ready work; and

- d. Providing Charter, on a weekly basis, with real-time information regarding the status of all Charter pole attachment applications, including, at minimum³¹:
 - i. the date preconstruction survey work is completed by NYSEG and/or its contractors for each application/pole set;
 - ii. the date the make-ready check is received by NYSEG and/or its contractors for each application/pole set;
 - iii. the date make-ready work is submitted to NYSEG for completion for each application/pole set; and
 - iv. the date make-ready work is completed for each pole/set of poles; and
 - e. Prioritizing applications identified by Charter as necessary to move forward with Charter's projects needed to complete Charter's Buildout Commitments; and
 - f. Performing each of the above in a manner that, in combination, addresses the backlog of Charter's pending pole attachment applications to NYSEG and enables Charter to meet its Commission-ordered buildout obligations; and
2. Refund to Charter any fees paid to NYSEG and/or its contractors in connection with work that Charter performs, or retains its own contractors to perform, due to the inability of NYSEG and/or its contractors inability to do so in a timely manner; and
 3. Grant any such further relief as the Commission deems appropriate.

³¹ Any such remedy can be coordinated with or subsumed within, as appropriate, the data collection and reporting obligations Staff is requiring for pole owners more generally.

Dated: July 10, 2017

Respectfully Submitted,

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EXHIBIT 1



Terence Rafferty
RVP, Northeast Region
Field Operations

June 16, 2017

Via E-mail and U.S. Mail

Mr. Mark Beaudoin
Director - Customer Services and Systems
New York State Gas & Electric
18 Link Drive
P.O. Box 5224
Binghamton, NY 13902-5224

Re: Charter Communications - New York State Buildout Requirements

Dear Mr. Beaudoin:

My name is Terence Rafferty. I am the Regional Vice President of Operations for Charter Communications (“Charter”), responsible for supervision of all field-related activity, including network construction for the Northeast Region, which includes Upstate, New York. As you likely are aware, Charter is in the process of a very large buildout project in New York, as a result of conditions imposed by the New York Public Service Commission (“Commission”) in approving the merger of Charter and Time Warner Cable last May. Specifically, Charter is required to build-out to 145,000 unserved or underserved premises over a four year period, which began with the merger closing in May 2016.

The key to meeting the buildout timeframes required by the Commission is the cooperation of New York’s pole owners, including New York State Gas & Electric (“NYSEG”). To that end, I would like to discuss the issues raised herein at your earliest convenience. Indeed, as one of our largest pole partners in New York, NYSEG is vital to this effort. While Charter appreciates that this project places an unprecedented demand on NYSEG’s resources, NYSEG owns the infrastructure necessary for Charter to meet its targets for this buildout and has a legal obligation to process Charter’s pole attachment permits and conduct make-ready work within the timeframes set forth in the Commission’s 2004 Pole Order, Case 03-M-0432 – Proceeding on Motion of the Commission Concerning Certain Pole Attachment Issues (Issued and Effective Aug. 6, 2004) (hereinafter “2004 Pole Order”).”

Timeframes for Processing Pole Attachment Applications

Since May 2016, Charter has submitted 379 pole attachment applications, containing a total of 23,939 poles, to NYSEG. But because NYSEG is not meeting the application processing and/or make-ready performance timeframes in the 2004 Pole Order, only 67 applications, containing a total of 839 poles, have been released to Charter to date. Indeed, as you can see from **Exhibit A**, attached hereto, of the applications submitted (as of June 13, 2017), NYSEG has failed to conduct preconstruction surveys for 56% of the applications (and 66% of the poles), within the 2004 Pole Order's 45 day timeframe. Of those applications for which surveys have been completed and make ready estimates have been paid by Charter, NYSEG has only completed make-ready on 77 poles. Moreover, 88 poles await make-ready and all of those 88 poles are outside the requisite 45 day window. As a result of NYSEG's failure to meet the 2004 Pole Order timeframes, Charter is missing its buildout targets and the Commission is pressuring both Charter and all pole owners in the State to come up with a process that will help Charter meet its goals.¹

In order to successfully meet the targets required for this project, a range of between 3,573 (at the low end) and 6,548 (at the high end) poles per month over the next six months need to be released to Charter by NYSEG, going forward, as prioritized on **Exhibit B**, attached hereto. While these priorities may change over time based on field or other conditions, we will communicate with you about these projects and provide updated priorities, as necessary.

Charter will provide the resources necessary to support NYSEG, as specifically provided in the 2004 Pole Order, but there are a number of steps NYSEG can immediately take that will enable Charter to assist NYSEG in meeting its legal obligations under the 2004 Pole Order, which will in turn enable Charter to meet its buildout targets. While our two companies have had several meetings/calls about these issues and the need to expedite the process, little progress has been made and time is running short.

Given the challenge this project presents to NYSEG and its inability to complete work on a timely basis to date, Charter requests that NYSEG immediately take the following specific actions:

Use of Outside Contractors

The 2004 Pole Order requires that if either pre-construction surveys or make-ready work is not completed in the timeframes specified therein, then the pole owner must either hire an outside contractor or allow the attacher to hire an approved contractor.²

Charter, therefore, hereby seeks immediate consent to utilize outside/approved contractors for the following functions:

¹ Please be advised that in the very near future Charter will begin submitting permits to Rochester Gas & Electric as part of this large project. Based on guidance from NYSEG representatives, Charter will continue to treat NYSEG and RGE as separate companies with separate processes.

² See 2004 Pole Order, Order Adopting Policy Statement on Pole Attachments, p. 3.

- On poles where preconstruction surveys have not been conducted by either pole owner (either within or outside the 45 day timeframe), allow an approved contractor (of both NYSEG and the telco) *to perform preconstruction surveys in electric and communications space at the same time, rather than sequentially.*³
- On poles where electric make-ready work and telco make-ready work have not been conducted by either pole owner (either within or outside the 45 day timeframe), allow an approved contractor (of both NYSEG and the telco) *to perform NYSEG and telco make-ready work at the same time, rather than sequentially.*
- On poles where the telco has already conducted the pre-construction survey, and NYSEG has failed to perform the pre-construction survey within 45 days of the application, allow Charter *to hire an approved contractor to perform the pre-construction survey.*
- On poles where the telco has already conducted make-ready, and NYSEG has failed to perform the make-ready within 45 days of Charter's estimate payment, allow Charter *to hire an approved contractor to perform any necessary NYSEG make-ready.*

Alternative Attachment Methods

Charter also requests that NYSEG immediately allow standard alternative attachment methods as envisioned by the 2004 Pole Order:

- Temporary attachments – Throughout the 2004 Pole Order, the Commission emphasizes that “speed is of the essence to attachers.” Temporary attachments can “compensate for delays in make-ready and other impediments to accessing poles.”⁴ For this reason, the Commission requires that “[t]emporary attachments to poles should be used if they meet all safety requirements and if a utility is unable to meet the make-ready work timeline.”⁵ Since it is evident that NYSEG cannot generally meet the make-ready work timeline, *NYSEG must permit the use of temporary attachments.*
- Brackets – Extension arm brackets are another expedited attachment technique that the Commission sanctioned in its 2004 Pole Order. The Commission recognized that “[e]xtension arm brackets are commonly used in many areas of the State. Extension arms may be an appropriate method of attachment for both permanent installations, when make-

³ Please note, NYSEG has been conducting three-party (Charter, NYSEG and the telco) ride-outs in Rensselaer County, which have served to expedite the survey and make-ready estimate process. Charter is hopeful that this model can be expanded where Charter's project overlaps with NYSEG's footprint.

⁴ 2004 Pole Order, Appendix A, p. 5.

⁵ 2004 Pole Order, Order Adopting Policy Statement on Pole Attachments, p. 5.

ready costs are exorbitant and/or on a temporary basis when make-ready work cannot be performed in a timely manner.”⁶ *NYSEG must, therefore, permit the use of brackets.*⁷

Need for Real Time Project Information

Given the scope of this project, Charter needs better, real time information about the status of projects that have been submitted to NYSEG at each stage of the process. As a point of reference, National Grid has been providing this information to Charter *via* their permit status website throughout this project. *Specifically, the following is needed on a statewide and municipality-specific basis going-forward:*

- A weekly status update on each permit submitted by Charter;
- The date preconstruction survey work is completed by NYSEG for each application/pole set;
- The date the make-ready check is received by NYSEG for each application/pole set;
- The date make-ready work is submitted to NYSEG for completion for application/pole set;
- The date make-ready work is completed for each pole/set of poles.

Charter’s ability to meet its buildout requirements cannot be achieved without the partnership of New York’s pole owners, including NYSEG, and their commitment to adhere to the 2004 Pole Order. Please contact me at your earliest convenience to set up a date to discuss these issues so that we may arrive at a mutually workable solution that will allow Charter to meet its buildout targets.

Sincerely,



Terence Rafferty
Regional Vice President of Operations, Northeast
Charter Communications

⁶ 2004 Pole Order, Appendix A, p. 6.

Exhibit A - Outstanding Applications/Poles⁸

Charter Exhibit A	
Permits Submitted	379
Poles Submitted	23,939
Approved Permits	67
Approved Poles	839
Unapproved Permits past 45 day SLA	211
Unapproved Poles past 45 day SLA	15,855
% Unapproved Permits past 45 day SLA	56%
% Unapproved Poles past 45 day SLA	66%
Poles With Paid Make Ready	253
Poles With Completed Make Ready	77
Poles Awaiting Make Ready	88
Poles Awaiting Make Ready Past 45 Day SLA	88

⁸ As of June 13, 2017.

EXHIBIT B Omitted

EXHIBIT 2



Mark Epstein
Senior Counsel

June 23, 2017

Terrence Rafferty
Charter Communications
100 Town Centre Dr.
Suite 100
Rochester, NY 14450

Dear Mr. Rafferty,

My name is Mark Epstein. I am Senior Counsel for Avangrid, Inc. and its affiliates New York State Electric & Gas and Rochester Gas and Electric (collectively, "Avangrid"). I am writing in response to your letter of June 16, 2017 to Mark Beaudoin.

As an initial matter, we are pleased that you have stepped forward to coordinate the efforts of Charter Communications ("Charter") on pole attachment issues. Avangrid has been asking Charter to identify an individual point of contact for several months and across multiple channels. To the extent you have undertaken that role, it should facilitate any future communications on this issue.

We also appreciate your acknowledgement that the Broadband For All Program poses a dramatic change in the scope of attachment requests that many NY companies, including Avangrid, will need to address. Avangrid must, of course, process all attachment requests, including those related to the Broadband For All Program, in a non-discriminatory manner, and on a first come, first served basis. We understand that Charter may have undertaken separate commitments pursuant to its merger with Time Warner Cable which Charter is trying to accelerate at this late date. Avangrid remains committed to honoring its obligations to treat all attachers fairly, and we will continue to work with Charter on this issue.

I do feel the need to point out a few concerns we have with some of the matters raised in your letter.

- As an initial matter, your letter cites 379 requests submitted by Charter to NYSEG for attachments to over 23,000 poles, and that only 67 have been approved. We believe that the number of submitted requests is higher, but we do know that over 200 of Charter's requests have been approved.
- More significantly, though, as we have repeatedly communicated to Charter, many of the outstanding requests are deficient either as to form or substance. I am hopeful that, now that we can look to you as a primary point of contact, Charter will be able to correct these defects. Obviously, any calculation as to the time to Make Ready does not start until the requests are complete and accurate.
- We appreciate your request to allow alternate attachment methods but, as you know,

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Radnor PA 19087
phone: (484)654-1885
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An equal opportunity employer

Avangrid remains responsible for the safety of its poles and the impact of any attachment methods on the reliability of service. While we are certainly willing to consider alternate methods on an individual basis, we want to be clear that the blanket approval your letter seems to request could, in our opinion, create an unreasonable risk. Any broader authorization for those methods should probably be brought before the Commission in a proceeding involving all other, similarly situated pole owners.

- We agree that the 2004 Pole Order makes a provision to allow for the use of approved independent contractors in the event that the pole owner is unable to meet the Make Ready time frames set forth in the Order. Avangrid will be rolling out a new Make Ready Process in July to facilitate attachers' needs.

Avangrid remains committed to responding to attachment requests in a non-discriminatory, first-come, first served manner¹. We believe our new Make Ready Process will help all of the attachers who have commitments pursuant to the Broadband For All Program.

We look forward to working with Charter and all of our other attachers to make the Broadband For All Program a success.

Yours Sincerely,

/Mark Epstein

Mark Epstein
Senior Counsel

¹ I note your request to prioritize certain of Charter's earlier requests. Obviously, this is inconsistent with both the approval process and our obligations to other attachers. We will, however, consider your designation to the extent we believe it is appropriate.

EXHIBIT 3

From: Perkins, Robert F [mailto:Robert_Perkins@rge.com]

Sent: Friday, July 07, 2017 2:45 PM

To: Crone III, Joe H <Joe.Crone@charter.com>; Koster, Scott <Scott.Koster@charter.com>; Bellows, Danny A <Danny.Bellows@charter.com>; Burgio, Chad M <Chad.Burgio@charter.com>; Page, Jeffrey A <Jeffrey.Page@charter.com>; Rafferty, Terence R <Terence.Rafferty@charter.com>

Subject: Notice of Changes to the Make Ready Process

Importance: High

Good Afternoon,

New York State Electric and Gas “NYSEG” and Rochester Gas and Electric “RGE” have actively been involved in the New York Broadband for All Program efforts. In evaluating the impacts of the program on NYSEG and RGE Make Ready Processing, it became evident that changes to our Make Ready Processing model must occur to accommodate the significant surge in forecasted volumes and expectations associated with New York’s high speed broadband initiatives.

This concept transitions NYSEG and RGE from an internally resourced processing model to an external vendor based model for Make Ready engineering. The Licensee will hire approved contractors for Make Ready work. This approach will allow for adaptability to expand or retract resources to a scale and size as needed. Labella Associates will manage the program for NYSEG and RGE in the short term. An RFP has been issued to select a firm to manage the program long term.

In this model, material procurement and construction Make Ready will be the responsibility of the Licensee.

Enclosed with this letter please find the following documents outlining the going forward process:

- Make Ready Process Flow
- Make Ready Administrative, Engineering and Inspection Unit Pricing Fees
- Approved Construction Contractors List
- Approved Construction Material Suppliers List
- Policy on Make Ready Cost, Boxing, Extension Arms & Service Drops

Outline of the going forward process includes:

- Successful check of Applications submitted to assure that there are no deficiencies
- Payment of Administrative, Engineering and Inspection fees prior to initiation of a field survey
- Labella to coordinate Make Ready Processing for NYSEG and RGE
- Labella subcontracts Power Delivery Solutions, LLC to conduct field survey and design
- Labella finalizes design output and passes Make Ready work package to Licensee
- Licensee procures materials from Construction Material Suppliers list provided
- Licensee hires Line Contractor to complete Make Ready and provides As Built documentation and drawings to Labella upon completion
- Labella completes final inspection of Make Ready Construction and Installation of the Licensee's facilities and provides feedback to Licensee
- NYSEG and RGE issues license to Licensee

NYSEG and RGE will "Go Live" with this Make Ready Process on July 18, 2017. This process applies to both Wireline and Wireless processing requests, including a portion of those already received by the companies.

Any new or existing applications where the field survey has not commenced will follow this processing approach. Existing applications where the field survey has been completed will follow the historical processing approach.

Please feel free to reach out to our Joint Use of Plant supervisor Laura Read-Siedlecky at LBReadSiedlecky@nyseg.com to coordinate a meeting to review this new process together.

We look forward to discussing this with you in the near future.

Regards,



Robert F. Perkins
Manager
Avangrid Service Company Claims
Avangrid Networks, Inc. – NY Joint Use of Plant
89 East Avenue, Rochester, NY 14649
Telephone 585.724.8556
Cell 585.329.4337
Fax 585.724-8860
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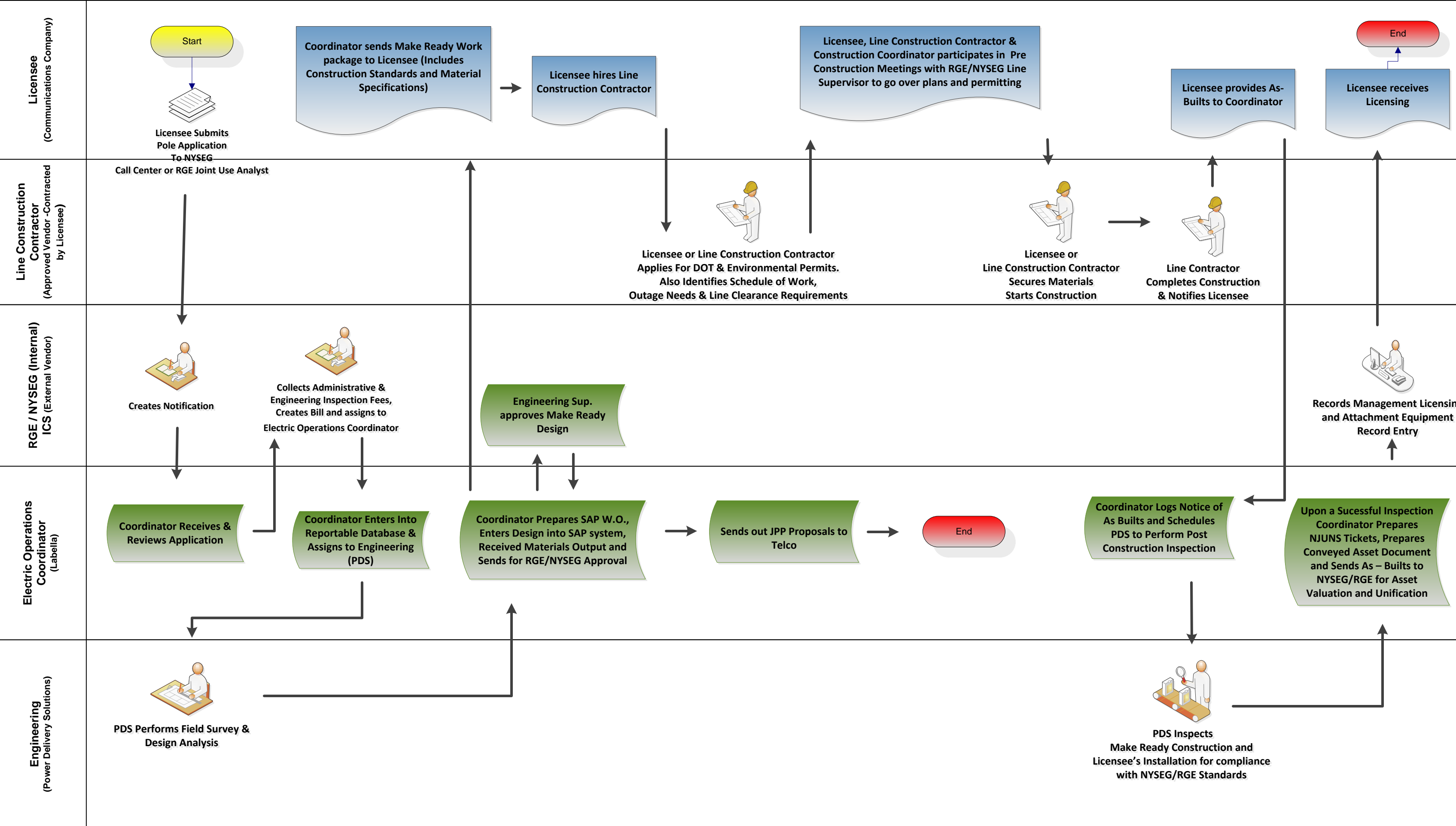
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NYSEG and RGE Make Ready Unit Pricing Fee's

Wireline:

Pole Attachment Administration, Engineering and Inspection Fee	Per Pole Fee
Make – Ready Unit Pricing Fee (per pole on application)	\$162

Wireless:

Pole Attachment Administration, Engineering and Inspection Fee	Per Pole Fee
Make – Ready Unit Pricing Fee (per pole on application)	\$650

Fee's cover the following Make Ready activities: Administration, Field Survey, Design Analysis, Design System Entry, Construction Inspection, Mid-Span Measurement & Structural Analysis



New York Joint Use of Plant Make Ready Payment Options

Option 1:

Electronic Transfer of Funds through the Automated Clearing House (ACH)

- Joint Partner establishes ACH services with their banking institution or through business secured accounting software
- Joint Partner receives Make Ready Invoice(s) from NYSEG/RGE
- Joint Partner will set up and send Electronic Transfers of funds accordingly providing the following banking, ABA routing and account number for the appropriate company:

RGE

JPMorgan

ABA: REDACTED

Account: REDACTED

NYSEG

Citibank

ABA: REDACTED

Account: REDACTED

- For timely payment processing, it is crucial that the Joint Partner includes their **Customer number** and **Invoice number** in the addendum/reference field of the Electronic Transfer of Funds so NYSEG/RGE may tie payment to the appropriate invoice.



Option 2:

Payment in Advance

- Joint Partner forms a Payment in Advance agreement with RGE/NYSEG for Make Ready Processing Costs
- Joint Partner sends funds to NYSEG/RGE based on agreed upon amount
- NYSEG/RGE applies payment to Customer Account Profile
- NYSEG/RGE generates and sends invoices for Make Ready charges pursuant to submittal of Pole Applications by Joint Partner.
- NYSEG/RGE draws of credit balance to pay any Make Ready Invoice generated pursuant to Joint Partners Pole Application submittals
- NYSEG/RGE will provide Joint Partners transactional detail and reminders to replenish credit balance accordingly

Option 3:

Traditional Payment by Check

- Joint Partner receives Make Ready Invoice(s) from NYSEG/RGE
- Joint Partner cuts checks and sends to remittance address listed
- NYSEG/RGE receives and posts check payment against listed invoice(s)

AvanGrid New York

Approved Line Construction Contractors

Vendor Name	Contact Name	Title	Contact Phone	Contact Email
NYSEG and RGE				
Northline Utilities	Dave Walker	T&D Business Unit Manager	518-647-8198 ext. 217	dwalker@northlinellc.com
O'Connell Electric	Dave Emmi	Project Manager Power Group (T&D)	585.295.6805	david.emmi@oconnellelectric.com
Michels Power	Zeb Green	Vice President	920.721.9143	zgreen@michels.us
Ferguson Electric	Angelo Veanes	President	716-852-2010	aveanes@fergusonelectric.com
D&D Power	Ken Loynes	Vice President	(518) 869-2221	kloynes@danddpower.com
EJ Electric	Joe Rubino	General Manager	203-626-9625	jrubino@ej1899.com
Rokstad	Dave Schaller	Vice President Operations US East Coast	315-573-7413	David.Schaller@rokstadpower.com
Three Phase Line Construction	Steve Autenreith	Sr Vice President	(603) 755-9610	sautenreith@3phaseline.com
Eldu	Sergio Ramos	General Manager - US/ SRM Contact	585.729.6761	sramos@elduenergyservices.com
RGE ONLY				
Power & Construction Group	Peter Wierzba	Vice President	585-889-8500	PWierzba@pandcg.com

AvanGrid New York

Approved Material Suppliers

Vendor Name	Contact Name	Title	Contact Phone	Contact Email
NYSEG and RGE (Hardware)				
Irby Utilities	Jamie Diak	Branch Operations Manager	315.652.1233(Direct)	diak@irby.com
NYSEG and RGE (Poles)				
Thomasson (Distribution Poles)	Craig Vowell	National Sales Manager- Energy Products	601.650.3956 (Direct) 800.647.6260 (Toll Free) 601.562.9365 (Cell)	craig@thomassoncompany.com
McFarland Cascade (Transmission Poles)	Jim Ross	Regional Sales Manager	888.377.2133 (Toll Free) 413.887.1349 (Cell)	JRoss@stella-jones.com

Policy Statements on Make-Ready

Costs /Boxing / Arms / Service Drop Poles

1. **Make Ready Costs** – Make-Ready costs are generally allocated to the cost causer. The following statements clarify the position of the companies.
 - a) **Pole Replacement Required - Existing NESC Non-Compliant Pole – Replacement Required to Clear the Non Compliance** - When a pole replacement is driven by new licensee, but there are existing NESC ground clearance or separation compliance issues that require a pole replacement irrespective of the new licensee requirements, then the pole is replaced at the pole owner(s) expense and room is made on the new pole for the new licensee without cost. The pole owner taking lead for the replacement incurs the initial cost of installing the new pole and transferring their equipment to the new pole. If the pole is to be jointly owned, the installing owner bills the other joint owner for their share of the pole installation cost. The existing licensees do not share in the pole installation cost. All companies, including existing licensees, incur their own transfer cost. Generally these situations require one or both pole owners to increase the height of the pole. If the pole replacement is due to increased height needs of one owner and the other joint owner does not require the increased height, then the new pole is not considered to be mutually beneficial and the sole benefactor owner pays the other owner pole life credit for the remaining value of the replaced pole. All companies, including existing licensees, incur their own transfer cost. In all cases, the last party [electric or telephone] off the pole has the responsibility to remove the replaced pole. Again, room is made on the new pole for the new licensee without cost. AVANGRID in New York does not currently attempt to assess if an existing third party is responsible for the existing non-compliance. Such an assessment is difficult and potentially time consuming. Moreover, even if such assessments were made, and it was determined that the existing third party created the non-compliance, obtaining compensation from the offending third party would be challenging. Hence, in order to provide timely make-ready, the pole owner(s) absorb the pole replacement cost.
 - b) **Pole Replacement Required - Existing NESC Non-Compliant Pole – Replacement Required for New Licensee** - When a pole replacement is driven by new licensee, but there are existing NESC ground clearance or separation compliance issues that also need to be addressed, and the non-compliance issues can be corrected without a pole replacement, then the pole replacement would not be required but for the new licensee’s requirements. Therefore the pole is replaced at the new licensee’s expense. Room is made on the new pole for the new licensee. All companies, including existing licensees, incur their own transfer cost. In all cases, the last party [electric or telephone] off the pole has the responsibility to remove the replaced pole.

Policy Statements on Make-Ready

Costs /Boxing / Arms / Service Drop Poles

- c) **Pole Replacement Required - Existing NESC Compliant Pole** - When a pole replacement is driven by a new licensee and there are no existing NESC ground clearance or separation compliance issues, then the pole is replaced at the new licensee's expense and room is made on the new pole for the new licensee. All companies, including existing licensees, incur their own transfer cost. In all cases, the last party [electric or telephone] off the pole has the responsibility to remove the replaced pole.
- d) **Rearrangement Only - Existing NESC Non-Compliant Pole – Less Than NESC Minimum Approach Distance**: When a new licensee makes an attachment request and there are existing NESC ground clearance or separation compliance issues that could reasonably be expected to endanger life or property, then the pole owner(s) is responsible for the cost to rearrange facilities to clear the non-compliance and make room for the new licensee. All parties should work together to perform the most cost effective make-ready rearrangements on a collective basis. The following measurements will be considered Less Than Minimum Approach Distance: 35kv Primary with less than 36 inches to a communication facility; 5kv and 15kv Primary with less than 26 inches to a communication facility; 0 – 750 v Secondary with less than 13 inches to a communication facility.
- e) **Rearrangement Only - Existing NESC Non-Compliant Pole – Greater Than NESC Minimum Approach Distance**: When a new licensee makes an attachment request and there are existing NESC ground clearance or separation compliance issues that are not expected to endanger life or property, then the new licensee is responsible for the cost to rearrange facilities to clear the non-compliance and make room for the new licensee. The following measurements will be considered Greater Than Minimum Approach Distance: 35kv Primary with greater than 36 inches to a communication facility; 5kv and 15kv Primary with greater than 26 inches to a communication facility; 0 – 750 v Secondary with greater than 13 inches to a communication facility. All parties should work together to perform the most cost effective make-ready rearrangements on a collective basis. AVANGRID in New York does not currently attempt to assess if an existing third party is responsible for the existing non-compliance. Such an assessment is difficult and potentially time consuming. Moreover, even if such assessments were made, and it was determined that the existing third party created the non-compliance, obtaining compensation from the offending existing third party would be challenging. Hence, in order to provide timely make-ready, the new licensee absorbs the rearrangement work required to clear the non-compliance and to make room for themselves.
- Rearrangement Only - Existing NESC Compliant Pole**: When a new licensee makes an attachment request and there are no NESC ground clearance or separation compliance issues, rearrangement of existing facilities is performed to make room for the new licensee. The new licensee is responsible for the cost to rearrange facilities. All parties should work together to perform the most cost effective make-ready rearrangements on a collective basis.

Policy Statements on Make-Ready

Costs /Boxing / Arms / Service Drop Poles

- g) **Pole Replacement Required due to Room and Pole Condition:** When a new licensee makes an attachment request and there are no NESC ground clearance or separation compliance issues, but room needs to be made for the new licensee and the pole has been inspected previously and determined that replacement is required immediately due to condition, the pole is replaced at the pole owners' expense and room is made on the new pole for the new licensee without cost. If the pole condition is such that it does not require immediate replacement then the new licensee is responsible for the cost to replace the pole, since the replacement is not required immediately. If not for the immediate requirements of the new licensee, then the pole owners' would bear the pole replacement cost at some future date. But since the new licensee requires immediate replacement, then the new licensee is responsible for the cost.

Policy Statements on Make-Ready

Costs /Boxing / Arms / Service Drop Poles

AvanGrid – NYSEG/RGE Make-Ready Billable vs. Non Billable Quick Reference Who Pays Table							
Pole Replacements				Rearrangements			
NESC Non-Compliant Pole		NESC Compliant Pole		NESC Non-Compliant Pole		NESC Compliant Pole	
Scenario	Who Pays	Scenario	Who Pays	Scenario	Who Pays	Scenario	Who Pays
Room Required Irrespective of New Licensee	Pole Owner(s)	Room Required for New Licensee No Internal Replacement Identified	New Licensee	Less Than <u>Minimum Approach Distance</u> Clear The Non Compliance And Make Room For New Licensee	Pole Owner(s)	Make Room For New Licensee	New Licensee
		Room Required for New Licensee DLI Future Replacement Required (Within 3 yrs)	New Licensee				
<ul style="list-style-type: none"> Replacement not Required to Clear Non-Compliance. But is Required to Make Room for the New Licensee 	New Licensee	Room Required for New Licensee DLI Immediate Replacement Required	Pole Owner(s)	Greater Than <u>Minimum Approach Distance</u> Clear The Non Compliance And Make Room For New Licensee	New Licensee		

Policy Statements on Make-Ready

Costs /Boxing / Arms / Service Drop Poles

- 2) **Boxing of Poles** – Boxing is placing attachments on both sides of the pole. AVANGRID allows conditional boxing of poles in New York. Wholesale boxing is not allowed. Boxing can create access safety issues. The following statements clarify the position of the companies.
- a) **Existing NESC Non-Compliant Pole** - Allowing Boxing on an existing pole that is currently non-compliant with the NESC rules effecting electric and communication separation and clearance requirements is not allowed. The disallowance will be enforced even if the proposed new communication attachment would not, in and of itself, create an additional NESC non-compliance. The addition of a new communication attachment to a pole that does not meet electric and communication separation and clearance requirements increases the risks by exposing communication workers to the non-compliance, thus worsening the effects of the non-compliance and associated risks. Typically the existing non-compliance is inadequate separation between electric and communication facilities.
- b) **Existing NESC Compliant Pole – Delayed Make-Ready** - Temporary Boxing is allowed on a case-by-case basis when (a) make-ready will take longer than the PSC prescribed timeframes and (b) the pole is in compliance with NESC electric and communication separation and clearance requirements and (c) the new attachment will be in compliance with NESC rules effecting electric and communication separation and clearance requirements. Temporary Boxing is only allowed when a clear plan for unboxing the pole is economically feasible; like a pole replacement that facilitates placing all communication lines on the same side of the pole. Temporary Boxing should be recorded and removed within 30 days once the make-ready is performed. A post construction inspection will document compliance with these provisions for future reference. The ILEC joint pole owner may enforce more stringent rules. Temporary Boxing requires a pre-construction survey and a specific agreement where the poles and the plan for unboxing are identified.
- c) **Existing NESC Compliant Pole – Exceptionally Costly Make-Ready** -Permanent Boxing is occasionally allowed, on a case-by-case basis, to reduce the make-ready cost when (a) the cost is exceptionally large and (b) the pole is in compliance with NESC electric and communication separation and clearance requirements and (c) the new attachment will be in compliance with NESC rules effecting electric and communication separation and clearance requirements. The pole owners, existing and new attachers should work collectively to provide economical use of the pole and keep make-ready cost to a minimum for all attachers using standard attachment techniques. The pole owners will determine on a case-by-case basis if the make-ready costs are exceptionally large. AVANGRID will consider make-ready costs in excess of \$9500, on a per pole basis, to meet the exceptionally costly threshold, thus allowing permanent boxing. A pole with make-ready cost less than this threshold may be considered for boxing with the approval of an AVANGRID Engineering Supervisor. Permanent Boxing, to avoid make-ready, on multiple poles in succession is not allowed. Boxing can create access safety issues. Therefore, boxing will only be

Policy Statements on Make-Ready

Costs /Boxing / Arms / Service Drop Poles

considered if the pole can be safely accessed by bucket trucks, so that worker safety is not compromised.

3) Extension Arms- These brackets are angled downward to maintain separation to electric conductors thus allowing an additional attachment at or near the same level as an existing communication attachment. AVANGRID allows conditional use of extension arms in New York. Wholesale use of extension arms is not allowed. When analyzing the electric to communications separation, all measurements are made vertically, not diagonally. The following statements clarify the position of the companies.

- a) **Existing NESC Non-Compliant Pole** -The use of a Temporary Extension Arm on an existing pole that is currently non-compliant with the NESC rules effecting electric and communication separation and clearance requirements is not allowed. The disallowance will be enforced even if the proposed new communication attachment would not, in and of itself, create an additional NESC non-compliance. The addition of a new communication attachment to a pole that does not meet electric and communication separation and clearance requirements increases the risks by exposing communication workers to the non-compliance, thus worsening the effects of the existing non-compliance and associated risks. Typically the existing non-compliance is inadequate separation between electric and communication facilities.

- b) **Existing NESC Compliant Pole – Delayed Make-Ready** - The use of a Temporary Extension Arm is allowed on a case-by-case basis when (a) make-ready will take longer than the PSC prescribed timeframes and (b) the pole is in compliance with NESC electric and communication separation and clearance requirements and (c) the new attachment will be in compliance with NESC rules effecting electric and communication separation and clearance requirements. The Temporary Extension Arm should be recorded and removed within 30 days once the make-ready is performed. A post construction inspection will document compliance with these provisions for future reference. The ILEC joint pole owner may enforce more stringent rules. Temporary Arms requires a pre-construction survey and a specific agreement where the poles and the plan for removing the arms are identified.

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- c) **Existing NESC Compliant Pole – Exceptionally Costly Make-Ready** – Conditional use of a Permanent Extension Arm is allowed, on a case-by-case basis, to reduce the make-ready cost when (a) the cost is exceptionally large and (b) the pole is in compliance with NESC electric and communication separation and clearance requirements and (c) the new attachment will be in compliance with NESC rules effecting electric and communication separation and clearance requirements. The use of Permanent Extension Arms, to avoid make-ready, on multiple poles in succession is not allowed. The pole owners, existing and new attachers should work collectively to provide economical use of the pole and keep make-ready cost to a minimum for all attachers using standard attachment techniques. The pole owners will determine on a case-by-case basis if the make-ready costs are exceptionally large. AVANGRID will consider make-ready costs in excess of \$9500, on a per pole basis, to meet the exceptionally costly threshold, thus allowing permanent extension arms. A pole with make-ready cost less than this threshold may be considered for permanent extension arms with the approval of an AVANGRID Engineering Supervisor. The ILEC joint pole owner may enforce more stringent rules.

AvanGrid – NYSEG/RGE Communications Boxing and / or Extension Arms Quick Reference Table			
Temporary		Permanent	
Existing and New NESC Compliant Pole	Existing NESC Non-Compliant Pole	Existing and New NESC Compliant Pole	Existing NESC Non-Compliant Pole
Allowed on a Case-by-Case Basis and Only if Make-Ready will Take Longer than PSC Timeline	Not Allowed	Allowed Only if Make-Ready is Excessive (>\$9500 per Pole)	Not Allowed
Pre-Construction Survey and Specific Temporary Agreement and Removal Plan Required. Temporary Attachments Must be Made Permanent within 30 Days after Make-Ready is Completed		Allowed Only if Pole is Accessible to a Bucket Truck	

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- 4) Service Drop Wires** – AVANGRID allows abbreviated licensing for service drop poles in accordance with PSC rules in New York. Drop poles are poles placed between the distribution pole line and a customer’s building. The following statements clarify the position of the companies.
- a) **Permanent Service Drop Wires Placed on Main Line Poles** – The standard licensing procedure is required for drop wires attached to main line poles. Facilities placed on main-line distribution poles are considered an attachment requiring a license prior to attaching. The use of service drop wire attached with “J” hooks running down a main distribution line does not fall within the scope of the PSC rules affording abbreviated licensing of drop poles.

 - b) **Temporary Service Drop Wires Placed on Main Line Poles - Delayed Make-Ready** Temporary service drop wires placed on main line poles is allowed when (a) make-ready will take longer than the PSC prescribed timeframes and (b) the pole is in compliance with NESC electric and communication separation and clearance requirements and (c) the new attachment will be in compliance with NESC rules effecting electric and communication separation and clearance requirements. The use of temporary service drop wire attached with “J” hooks running down a main distribution line does not fall within the scope of the PSC rules affording abbreviated licensing of drop poles. Temporary service drop wires should be recorded and removed within 30 days once the make-ready is performed. A post construction inspection will document compliance with these provisions for future reference. Temporary service drop wires require a pre-construction survey and a specific agreement where the poles and the plan for removing the drop wires are identified.

 - c) **Permanent Service Drop Wires Placed on Service Drop Poles** - Only those drop wire facilities that are attached to poles between the main distribution line and a customer’s building are considered actual service drop pole attachments that do not require a license prior to attaching in order to meet the licensee's obligation to their customers. In those instances, licensees are still required to inform the pole owners of such attachments within 10 business days after they are made, in accordance with PSC rules. A license will still be required and will be issued after inspection. If the drop pole attachment does not conform to the standard specifications, correction and and/or additional make-ready will be required.

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AvanGrid – NYSEG/RGE Communications Service Drop Wires Quick Reference Table							
Temporary				Permanent			
Main Line Pole		Service Drop Pole		Main Line Pole		Service Drop Pole	
Existing and New NESC Compliant Pole	Existing NESC Non-Compliant Pole	Existing and New NESC Compliant Pole	Existing NESC Non-Compliant Pole	Existing and New NESC Compliant Pole	Existing NESC Non-Compliant Pole	Existing and New NESC Compliant Pole	Existing NESC Non-Compliant Pole
Allowed When Make-Ready will Take Longer than PSC Timeline	Not Allowed	Typically Not Required	Not Allowed	Standard Licensing Required Prior to Attachment	Not Allowed	Attachment Prior to Licensing is Allowed. Attacher Must Submit Application within 10 Days of Attaching for Licensing	Not Allowed
A Pre-Construction Survey and a Specific Agreement and Removal Plan Required							

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5. **Placement of Communications Facilities** – The following historical protocol will be used for the placement of communication cables from highest to lowest. Utilizing this historical protocol will help insure that communication cables meet NESC required ground clearances as well as providing for an orderly transfer of cables for future pole replacements, thus reducing “double wood” issues.
 - a. **Top**-Competitive Local Exchange Carrier – Typically Fiber Optic (CLEC)
 - b. **Middle** -Cable Television – Typically Coaxial Cable (CATV)
 - c. **Bottom**- Telephone – Typically Copper Cable (ILEC)