

**STATE OF CONNECTICUT**

**DEPARTMENT OF PUBLIC UTILITY CONTROL**

RE: DPUC INVESTIGATION INTO : Docket No. 11-03-07  
THE APPOINTMENT OF A THIRD :  
PARTY STATEWIDE UTILITY :  
TELEPHONE POLE ::  
ADMINISTRATOR FOR THE :  
STATE OF CONNECTICUT : May 30, 2013

**THE OFFICE OF CONSUMER COUNSEL**  
**WRITTEN COMMENTS ON RECOMMENDATIONS OF THE POLE**  
**ATTACHMENT WORKING GROUP**

**I. Introduction**

At a Technical Meeting in this Docket held on May 16, 2013, PURA requested oral comments from the members of the Single Pole Administrator-Working Group regarding the *Recommendations Of The Pole Attachment Working Group* and its Appendix A “List of Working Group Issues Designated for Possible Review by PURA”, filed by the group with PURA on February 28, 2013 in this Docket and in Docket No. 11-09-09, *PURA Investigation of Public Service Company Response to 2011 Storms*. (the records of each these dockets must be administratively adopted into the other by PURA) PURA further requested Written Comments and a copy of each parties’ Opening Statement, if applicable, to be filed on May 30, 2013.

The OCC fully supports the CL&P Proposal and thus believes that in order to best streamline the management of the PROW, a *single* pole administrator would be the

best process to follow. Note that UI's very similar proposal stressed the idea that it should be authorized to purchase AT&T's ownership rights in the poles in UI territory in order for UI to become the single pole owner, assuming complete obligations for all activities on its poles. The OCC would in fact favor UI's proposal, but for the strenuous objections of the state's two incumbent local exchange carriers, AT&T and Verizon (collectively, the LECs), to selling their ownership rights in the poles at this time. The OCC urges UI to participate in the single pole administrator (SPA) process to be ordered by PURA in this Docket and await further developments in the future regarding ownership and management of the utility poles.

With the notable exception of the two LECs which both have joint ownership rights with the Electric Distribution Companies (EDCs) in most of the poles in their respective service territories, the Working Group parties favor the establishment of a single pole administrator (SPA) to act as an agent with a grant of PURA authority to manage pole administration issues to eliminate many of the conflicts inherent in the current management system and create greater efficiency, transparency and accountability in the pole attachment process.

The SPA will serve to centralize communications and provide efficient communication and work coordination, while promoting cooperation and partnering to manage pole transfers, joint trench construction, pole attachments, and project notification. The SPA process, as proposed by the EDCs, will also ensure nondiscriminatory access to the poles with fair and reasonable application procedures

and prices, and will encourage competition and expanded access to services for all residents, businesses, and municipalities.

The SPA-managed statewide database will streamline the management of the PROW by providing a single source for input and output of information concerning the status and priority of restoration processes, during routine make ready operations or in the event of an emergency, supported by electronic access by all attachers to vital data about the status and management of work in the public rights of way. The database software platform will provide a statewide central repository for pole-related data, thus providing the SPA with a critical tool for managing the activities of all attachers in the state's public rights of way, while providing the SPA and PURA with the necessary transparency of information to hold all parties accountable to the regulatory timeframes established by the Authority.

Each EDC will need PURA to provide them with the authority through an order in this Docket to effectively administer the pole system in its service territory. For example, PURA should provide the EDCs with the authority to compel attachers to timely perform their work and allow the EDCs or their agents to perform that work, if necessary, and to be promptly reimbursed by attachers for the resulting expense.

One set of standardized pole agreements, perhaps remaining divided into commercial and municipal templates, will need to be streamlined and made more efficient to accelerate and make equitable the process of approvals for attachments by

the various interested parties. The municipalities and private attachers, for their part, must accept standardized documents without amendments for efficiencies to be realized.

The present PURA-directed working group should continue to be utilized with PURA's direct involvement to provide an ongoing forum for raising and debating issues.

Finally, to the extent that implementation of this proposal causes the EDCs to incur additional costs that cannot be reimbursed through pole attachment rental rates and make-ready expenses charged to pole attachers, the EDCs will need to be made whole for any remaining expenses through the C.G.A. 16-19 rate setting process to reset fees periodically.

## **II. Single Pole Administrator Should Be Immediately Implemented With PURA Grants of Authority**

The basic question presented in this Docket, negotiated among the Working Group members, and to be ordered by PURA is the implementation of the CL&P Single Pole Administrator Proposal,<sup>1</sup> mirrored by a similar proposal from the United

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<sup>1</sup> Docket No. 11-09-09, *PURA Investigation Of Public Service Companies' Responses To 2011 Storms*, Testimony Of Kenneth B. Bowes On Behalf Of The Connecticut Light And Power Company, dated April 25, 2012 (CL&P Single Pole Administrator Proposal). United Illuminating offered a similar proposal, also being a key issue for the decisions of the Working Group, Docket No. 11-09-09, *PURA Investigation Of Public Service Companies' Responses To 2011 Storms*, Testimony Of Joseph D. Thomas, On Behalf Of The United Illuminating Company, dated April 27, 2012.

Illuminating Company (collectively, the “EDC SPA Proposals”).

PURA has recognized that this question of dedicated management of access to and maintenance of the utility infrastructure located in the state’s public rights of way (“PROW”) is the fundament issue. As PURA declared in its Two Storms Docket

Decision:

The Authority investigated the appointment of a third-party pole administrator in this proceeding to determine if the current pole administration structure had a negative effect on the overall service restoration process. Specifically, the Authority investigated utility pole restoration issues and whether they could be improved with the appointment of a third-party statewide utility pole [SIC- administrator]. Response to Motion No. 21.

There were many recommendations from various participants [SIC] to change or modify the structure of the current pole administration. The Authority finds that no evidence presented supports the notion that the current pole administration structure delayed the restoration of services during the 2011 Storms. The evidence indicates that the issue with utility pole administration is not restoration, but a claim that there is an unacceptable delay in allowing third parties to attach their facilities to utility poles and that the current pole attachment process has become inefficient.<sup>2</sup>

While there have been claims by some parties in the PURA dockets addressing the management of the PROW, particularly voiced by the LECs (local exchange carriers, AT&T and Verizon), and the cable operators (individually and through NECTA) generally complaining that there are no problems rising to the level requiring modification of the governance of the public rights of way, it is clear that the great majority of participants, and PURA, disagree.

To the contrary of the LEC claims, the OCC has argued for many years and continues to maintain that municipalities and competitive telecommunications providers suffer from unnecessary delays and hurdles to entry for infrastructure attachments in the public rights of way. The municipalities, individually and collectively through their associations, have also submitted record evidence arguing that they have suffered greatly from the general lack of centralized and dedicated management of the activities in the PROW. They were obviously very vocal in their collective outrage in PURA dockets, before the General Assembly, and in the media over the lengthy, confusing, and unorganized response by all the electric and telecommunications utilities to the storms that have invaded the state over the last two years.

PURA itself has indicated multiple times in various dockets that there are problems presented by the management of the public rights of way, specifically with make ready procedures, attachments of wires, transformers, and countless items of utility infrastructure, and other equipment maintenance procedures (bonding, guying, temporary attachments). PURA's declaration cited above in the Two Storms Docket and the order for the Working Group to provide PURA with a "a consensus pole administration structure to facilitate utility pole attachments" is loud and clear. The OCC would thus submit that the issue of whether the PROW needs an extensive management makeover is completely resolved.

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<sup>2</sup> Two Storms Docket, Decision, August 1, 2012, at 85.

One exception the OCC has to the EDC SPA Proposals is a concern about UI's suggestion that it should become the single pole *owner* in its territory. The idea is that UI would purchase the joint property rights held by AT&T in the utility poles in the UI territory. This idea was mentioned by CL&P some years ago in testimony before PURA in its last rate case.<sup>3</sup> While the financial magnitude of this proposed purpose has to OCC's knowledge never been identified, such details would need to be reviewed by PURA in a formal proceeding since UI is a rate-of-return regulated public utility, and presumably the company would seek reimbursement for some or all such costs through its rates. The OCC is not at all opposed to the concept of the EDCs having complete ownership of the utility poles and conduit, but the details would certainly need to be exposed and reviewed by PURA, and the OCC would welcome such a proceeding.

The issue is presently moot since AT&T has publicly and steadfastly claimed no interest in such a transaction and Verizon has apparently not been approached on the question. Since OCC is clearly on the record with its full support of the EDC SPA Proposals, we would encourage UI to pursue its pole ownership purchase plans in any way it wishes, but the OCC urges UI to provide assurances to PURA that if such a purchase fails to promptly occur, the company will support a statewide proposal for a Single Pole Administrator, including its own role as the SPA in its territory. UI's proposal largely adopts the provisions of the CL&P proposal, and includes more

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<sup>3</sup> Docket No. 09-12-05, Application of Connecticut Light & Power Company to Amend its Rate Schedules, Decision, June 30, 2010 ("CL&P Pole Attachment Rate Decision").

extensive management and tree trimming ideas. The OCC supports those ideas and would hope some would find their way into the final statewide order by PURA in this Docket.

Besides the ownership issue, both LECs claim their “rights” as pole owners require them to remain in charge of many processes that more reasonably would better lie with a single pole administrator in the effort streamline and make pole management more efficient. The idea of the SPA being authorized to complete field surveys of both the electrical gain and the communications gain was raised, and the LECs protested on various grounds that they want to continue to perform such work themselves, including billing for that work and due to issues relating to their organized labor force.

For instance, a number of attachers observed that having a single truck roll for attachments, make ready operations, or restoration processes, would result in financial and practical efficiencies far in excess of the present situation where each attacher does their own work. Various entities, including the cable operators, Fibertech, and the municipalities all agreed that the SPA should oversee work done in the communications and municipal gains on their equipment by a pre-approved third party contractor when the attacher has been unable to meet the deadlines ordered by PURA.

The benefits of the SPA having the obligation and authority for the installations on all the poles in Connecticut include eliminating the current unnecessary duplication of time and inefficiency involved in getting the contractor for each utility company out to the pole promptly whenever its portion of make ready work is ready to be done. As

discussed earlier, while this concept is reasonable in terms of achieving the maximum benefit from the SPA concept, it may present problems due to the LEC claims related to their “rights” as pole owners, issues that could unacceptably delay implementation of the concept.

Thus, PURA will need to decide the scope of the SPA function and these LEC questions detail the problems presented by the LEC requirement for duplicative work processes in managing the poles.

For instance, the issue of field surveys in the process of the SPA function would logically be the authority of the SPA to shift communications facilities belonging to a telephone company, cable company, municipality or telecommunications provider as and when needed in the Communications Gain. For its part, CL&P has stated that it does not expect to perform all the work in the Communications Gain, but that it reasonably requires the authority to perform such survey and shifting work in the event PURA’s deadlines are not met or when physical conditions require or merit such effort by the SPA. CL&P noted that it reasonably would only use qualified electrical or telecommunications contractors approved in advance by its joint owners, the telephone companies, and that the cost causer would be charged an agreed-upon rate for such work by the SPA.

Many parties have noted that this process would reduce competitive hurdles to access to the poles for all telecommunication attachers and reduce or eliminate the access control that can be exercised by the LECs over their competitors. Unfortunately,

both LECs prefer the status quo be maintained in the communications gain, though ironically neither LEC has retained the control they did some years ago when they actually managed the entire communications gain on behalf of the EDCs. The LECs have intentionally withdrawn from their earlier role as managers of the communications gains on behalf of the EDCs and themselves, yet they continue to insist on providing redundant reviews and requiring fee collections related to management they do not wish to perform.

The LECs claim that it is inconsistent that they are not granted the authority to shift improper or late work in the electric gain, even they patently lack the expertise to operate in the far more dangerous electric gain. The electric companies, in contrast, are perfectly capable of shifting equipment or performing basic make ready work throughout the pole space, and are proposing to hire qualified contractors for such work, in any event. But, since the LECs have not filed a proposal to take responsibility for managing Single Pole Administrator work, as the EDCs have done, the LECs therefore *do not require* authority to perform such work since they do not wish to accept responsibility for work performed in the electric gain or indeed anywhere except in the telephone gain. AT&T claimed that labor concerns and rules prevent it from allowing third parties to work on its facilities not under its supervision, but record evidence reveals that the company routinely hires non-union craftspeople to work on its equipment in the PROW.

The LECs actually have little to complain about and PURA should not hesitate to enact the EDC proposals. As joint pole owners with the EDCs, and being equally subject to the jurisdiction of PURA over the management and finances of the PROW with all attachers, the LECs will continue to enjoy the benefits of pole ownership: most particularly, largely unrestricted access to the telephone gain without the requirements of notice to PURA and other statutory obligations imposed on competitive attachers. They will also enjoy benefits, to whatever extent is ultimately ordered by PURA, from the reimbursement regulations to be obtained from the rental fee incomes generated by the poles.

The OCC would suggest that PURA order that the LECs may generally continue to perform the work on their own infrastructure, but that the SPA will have full authority and control over all work from the top to the bottom of each utility pole in this state, regardless of the nature or pole ownership of the attacher. The LECs will of course remain subject to the SPA's authority granted by PURA to perform or cause to be performed work anywhere on any pole where the work is unsafe or tardy, or in the event of restoration efforts, as should apply to all attachments on any pole in the state.

The OCC cannot see any merit to continuing to allow the LECs any control over the communications gain, aside from the telephone gain in which they now operate. The purpose of the SPA management authority is to streamline and make more productive the work performed across the state in the PROW. The LECs' proposal

simply perpetuates one of the worst offenses of the current dysfunctional system: two pole administrators and two systems for each pole, with duplicate expenses.

The OCC urges PURA to fully accept the CL&P Proposal with regard to complete management of the poles without regard to joint ownership considerations. One can easily imagine a future legislative or regulatory change to provide the LECs with the accessibility rights they enjoy today, but without the joint ownership they believe they require to obtain those rights. At that time, the EDCs will be able to fully perform the SPA activities they have agreed to accept through their proposals in this Docket.

### **III. Centralized Pole Administration Software**

The SPA-WG extensively discussed the concept of introducing a statewide, simple to use, web-based electronic notification system that is used to submit applications for permits to attach, relocate or remove pole attachment equipment, or for any type of communication between pole owners and pole attachers. Such a web-based, electronic notification system has the capability to immediately address many of the most pressing issues afflicting responsive management of the PROW, including communications between the entities with equipment attached to the poles, as well as those affected by that management, the residents, businesses, and communities of this state.

This type of web-based system will efficiently change the responsiveness of communications and management of joint use assets in the PROW, while making management of each pole's operational and maintenance activities. This technology will allow all attachers (including the owners, of course) with transparency as to the status of a pole, as well as providing real time notification of attaching and shifting duties. This workflow system will promote compliance and help with enforcement of PURA's orders as to scheduling of activities in the PROW, and reduce work omissions or duplication.

There was widespread agreement among the Working Group members that all of the Pole Owners should adopt the use of the NOTIFY system or a comparable platform to create a statewide database and software system for pole administration activities. The OCC not only agrees with the other Working Group members that universal use of such a system is essential to streamlining and making far more productive the management of the PROW, but OCC and others believe that this is vital whether or not a statewide SPA is appointed.

That said, however, the OCC does not believe that merely implementing this statewide database in the absence of a responsible and capable party, such as the EDCs, to administer and take responsibility for the management of the day-to-day activities on the state's utility poles, is sufficient. This database concept, providing instant notice to all parties of the priority of attachments, creating transparency to pole management, will be an essential part of the process, but it requires the addition of a central responsible

party with the capacity to perform engineering and management activities, along with the authority to correct poor or tardy performance, or order remediation with an expectation of reimbursement from the causing party.

In short, PURA should join the Utah Public Service Commission in ordered the statewide use of this technology by all pole owners and attachers operating in the state's PROW.<sup>4</sup>

#### **IV. Cost Reimbursement of Pole Administration Costs**

As with all public utility questions, costs and reimbursements are central to actions taken by the providers. PURA has the statutory mandate to examine and rule on all such issues, and possesses the staff and administrative processes needed to legally conduct examinations into such issues and make rulings.<sup>5</sup>

The OCC would note that in spite of claims to the contrary by certain pole owners regarding the jurisdiction of PURA to issue orders regarding the conduct by public utility companies owning and operating in the state's PROW, the sweep of state law jurisdiction over the conduct of the PROW in Connecticut imposed on PURA is

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<sup>4</sup> Public Service Commission Of Utah, *In the Matter of the Joint Application of Rocky Mountain Power and Qwest Corporation, d/b/a CenturyLink, for Approval of an Electronic Notification System for Pole Attachments*, Docket No. 11-035-199, *Order Vacating Scheduling Order And Approving Electronic Notification System For Pole Attachments*, April 27, 2012.

<sup>5</sup> The OCC has a statutory-mandated advocacy role and is a statutorily-designated party in all rate-setting procedures and dockets before PURA, and similarly has the capability to provide expert testimony and evidence on such questions.

broad and express. It has been amply demonstrated in the record of the two PURA Dockets referenced in these Comments that PURA possesses jurisdiction to rule on all questions presented regarding its management of the PROW or a delegation of that authority to a SPA. This is true without regard to the method of rate regulation pertinent to any owner or attachers, including alternative regulation plans or rates dictated by federal laws or regulations.

As to pole cost reimbursements specifically, the Authority also has authority over pole attachments derived from 47 U.S.C. § 224(c), which provides that the FCC has jurisdiction over the rates, terms and conditions of pole attachments except where an individual State certifies that it regulates the such matters. The Connecticut PURA has made the requisite certification. Like the FCC, in order to fulfill its statutory duties, this Authority is charged with ensuring that rates, terms and conditions of attachment are just and reasonable.

The OCC would presume that PURA will need to comprehensively reform the pole attachment and conduit occupancy processes that telephone and electric utility pole owners must follow to accommodate the new and existing attachments of the cable operators, municipalities, and competitive local exchange carriers. PURA has existing statutory and regulatory requirements involving processes for hearings, if necessary, and briefing by interested entities such as the utilities, municipalities, facilities-based providers, public advocates, and the public consumers themselves.

It is entirely probable that there will be expenses incurred that will not be entirely recovered from rental rates and other fees accrued through the licensing and attachment processes. CL&P has detailed many of the potential sources for such expenses, and others may well crop up as the project proceeds into implementation. As mentioned earlier, PURA has complete jurisdiction over evaluating utility-related expenses and reimbursement procedures, particularly as they relate to activities in the PROW over which it has been granted complete statutory jurisdiction.

PURA has recognized through multiple dockets and decisions that in order for attachers to be competitively viable and to impose greater order to the management of the PROW, attachers need accelerated pole access to complete upgrades and new builds for deployment of important new services, including broadband, digital television and VoIP services. As a result of PURA's actions over the last few years, its orders now greatly expedite the attachment process, minimize delays and disputes, and create structural performance incentives for all parties conducive to achieving the goal of vibrant competition.

When this Docket proceeds into the costing phase, this topic can be fully addressed by all the parties and PURA will have the opportunity to fashion a just and reasonable solution based on the record evidence that will be presented. The OCC is sure that, with the cooperation of the parties with the extensive experience and jurisdiction of PURA, a just and reasonable process for recovering costs will be enacted in the next few months as the SPA management structure is implemented. The OCC

will be involved in the cost reimbursement process in order to help expedite the development of a plan that PURA can order.

## **V. Standard Pole Agreements**

There has been noticeable cooperation and positive movement over the last few years, involving all parties and PURA, toward achieving standard documentation for controlling the activities and financing of utility, competitive, and municipal attachments of equipment in the PROW. PURA should certainly continue to be the central mover and final arbiter of these efforts since they will immediately provide efficiencies and greater productivity at minimum expense and effort.

## **VI. Role of PURA Mediation Team**

The OCC agrees with all Working Group participants that PURA should have a continuing role in the SPA process, presumably forever, based at least on its statutory mandate to manage all activities in the public rights of way. The SPA-WG is a natural vehicle for PURA to keep involved with minimal effort on its part, just as the SPA-WG has been very beneficial to the parties and PURA in the present process of moving from concept to implementation of the SPA project.

PURA might consider ordering annual reporting from the SPA, with comments from the other owners and attachers, with technical meetings called for on an as-needed basis going into the future. The SPA-WG could be required to meet periodically or

upon request by any member in the event a new issue emerges that requires attention from the group. Of course, in this way, PURA's member on the SPA-WG would be in a position to mediate any questions, or could quickly escalate the question up into the Authority itself for more formal resolution.

Respectfully submitted,

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By: \_\_\_\_\_  
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I hereby certify that a copy of the foregoing has been mailed, electronically filed, and/or hand-delivered to all known parties and intervenors of record this May 30, 2013.

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William L. Vallée Jr.  
Commissioner of the Superior Court