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# Subcommittee on Double Pole Removal

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Report to the Chairs of the  
Joint Committee on  
Telecommunications,  
Utilities and Energy

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April 2012

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**MASSACHUSETTS GENERAL LAWS, CHAPTER 164, SECTION 34B**

A distribution company or a telephone company engaging in the removal of an existing pole and the installation of a new pole in place thereof shall complete the transfer of wires, all repairs, and the removal of the existing pole from the site within 90 days from the date of installation of the new pole; provided, however, that for any approved commercial or industrial construction project, the completion of which is expected to take longer than one year, said company shall be required to remove such pole within six months from the date of installation of the new pole. The owner of such pole shall notify all other users of the starting date of such removal and installation work at least 48 hours prior to the commencement of such work, and said owner shall require all other users to remove their wiring and other attachments from the poles in a timely manner.

## EXECUTIVE SUMMARY

This legislative session, there are 14 separate pieces of legislation relating to the issue of double poles under review in the Joint Committee on Telecommunications, Utilities and Energy. The term “double pole” refers to the situation when two utility poles are erected side by side as the electric, telephone, cable and other wires from one pole are transferred to the other. Double poles are generally created when repairs or upgrades requiring a new pole are made to utility or communications equipment, or during road construction projects when utility poles must be relocated. The various bills in the Committee seek to decrease or eliminate the prevalence of double poles across the Commonwealth through various means, including fines against utility companies for the failure to remove poles in a timely fashion.<sup>1</sup>

There are now an estimated 30,000 double poles in Massachusetts.<sup>2</sup> State and local officials have attempted to work with pole owners for the last fifteen years to reduce the number of double poles. In 1997, the Legislature enacted, as part of the Electric Industry Restructuring Act, Chapter 164, Section 34B, which required double poles to be removed within 90 days. However, the statute does not include a specific enforcement mechanism, and had little effect on reducing the number of double poles. In response to the increasing numbers of double poles in the Commonwealth, the Department of Telecommunications and Energy (DTE), now divided into the Department of Telecommunications and Cable (DTC) and the Department of Public Utilities (DPU), began an investigation into the lack of progress in double pole remediation in 2002.

DTE found that a lack of communication between pole attachees and pole owners made remediation difficult to complete. As a result, the DTE accepted the pole owners’ offer to institute an online database system known as Pole Lifecycle Management (PLM), managed by InQuest Technologies, Inc., to coordinate pole related workflow activities between pole owners and pole attachees. Unfortunately, in the years following the implementation of the PLM system, the total number of double poles has failed to decline. While pole owners have removed many older poles, numerous road projects and infrastructure upgrades have resulted in even more double poles in Massachusetts.

In the December, the Chairs of the Joint Committee on Telecommunications, Utilities and Energy created a special subcommittee to examine the reasons for the lack of progress in this matter and to develop recommendations for a plan to improve the remediation and removal of double poles. To accomplish its task, the subcommittee met with stakeholders from across the state. This report examines the history of double poles in the Commonwealth, assesses previous attempts to reduce the amount of double poles, offers recommendations designed to address the twenty year backlog of double poles, and to foster the creation of effective approaches for double pole removal into the future.

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<sup>1</sup> House Bills 876, 884, 886, 1755, 1764, 1769, 2609, 2619, 3057, 3059, and 3380; Senate Bills 1654, 1649

<sup>2</sup> There are 27,830 according to Verizon’s Semi-Annual Double Pole Report, 10/31/11, D.P.U. Docket 03-87. Many double poles remain unidentified by pole owners.

## SUMMARY OF RECOMMENDATIONS

### **I. Create a Double Pole Remediation Advisory Council (DPRAC)**

An advisory council, co-chaired by both the Department of Public Utilities (DPU) and the Department of Telecommunications and Cable (DTC), should be convened to determine how the Commonwealth can best address the proliferation of double poles. The Council should consist of stakeholders, including municipalities, pole owners, pole attachees, and other relevant representatives. The Council should issue a report, with its recommendations, by December 31, 2012 outlining industry best practices, regulatory improvements and necessary legislative changes to accelerate the removal of double poles.

### **II. Require All Pole Owners and Attachees to Participate in the Pole Lifecycle Management Database**

Currently, many pole owners and attachees do not participate in the PLM Database. In order for a pole management system to function effectively, all parties must participate.

### **III. Inventory all Double Poles and Update the PLM Database**

Many existing double poles are not itemized in the utility-administered database. Inaccuracies in the database also develop when attachees or pole owners fail to provide notice when they move their attachments, set a new pole, or remove a double pole. One administrative failure may lead to a double pole that remains in place for many years. The effect of occasional update failures over many years has led to numerous inaccuracies in the database. Insuring the accuracy of the PLM database must occur before the Legislature or regulatory agencies can expect progress.

Ensuring database accuracy and comprehensiveness in the future may require a new, modern pole lifecycle management system, and more oversight.

### **IV. Require DPU and DTC to Promulgate Regulations Relative to Reducing the Amount of Double Poles in the Commonwealth**

Thus far, the Departments have failed to adequately address double pole remediation. Promulgating regulations with input from the Double Pole Remediation Advisory Council will prioritize double pole remediation and may provide for necessary enforcement mechanisms.

### **V. Require Annual Reporting to the Legislature**

DPU and DTC should issue annual reports describing double pole removal status, and current efforts being undertaken by its regulated companies to address backlogged double poles. Reports should continue until December 31, 2014, or until removal of all backlogged double poles has been completed.

## INTRODUCTION

Utility poles may require replacement because of electric upgrades which the current pole cannot accommodate, construction projects or municipal road work that requires a new pole, or if a pole is no longer structurally sound. Double poles exist when a new pole is installed next to an existing pole in order to allow for the transfer of attached equipment (i.e. wires, streetlights, etc) from the existing pole. Each attachment must be transferred by the attachment's owner, the attachee, in an order contractually approved by the pole owner, before the pole can finally be removed. There are approximately 30,000 double poles in the Commonwealth and many have been in place for years.<sup>3</sup> Before an effective long term solution for the removal of the backlog of double poles can be implemented, there must be a revised approach on the part of utilities, telecommunications companies, municipalities, and regulators. Presently, there is no protocol for double pole removal. Pole owners and attachees do not have to meet deadlines or avert future backlogs. For double pole remediation recommendations to function effectively, pole owners must partner with municipalities to develop and execute double pole removal protocols.

### **History**

In 1997, as part of the Electric Industry Restructuring Act, the Legislature enacted a provision requiring an electric distribution company or telephone company to remove any double pole within 90 days of the installation of a new pole.<sup>4</sup> The statute, however, contained no enforcement mechanism.

Despite this requirement, double poles continued to proliferate throughout Massachusetts after 1997. The pole owners argued that they were unable to remove the poles in a timely manner due to a lack of participation and communication with pole attachees. Cable companies, municipal departments, and alternative telecommunications companies all may attach equipment on utility poles. This equipment must to be moved to the new pole before the original can be replaced. In the late 1990s and early 2000s, there was no communication system in place among all of these entities dedicated to equipment removal. An increasing number of double pole complaints from cities and towns prompted the Department of Telecommunications and Energy (DTE), now DTC and DPU, to open an investigation in 2002. As a result of this investigation, the pole owners agreed to use the Pole Lifecycle Management system (PLM), managed by InQuest Technologies, Inc. The PLM is an internet-based database which notifies each user electronically when it is time to transfer its equipment.<sup>5</sup> Pole owners and all attachees, including municipal attachees, have access to the PLM database, if they choose to use it. The system was placed into service on February 23, 2003.

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<sup>3</sup> There are 27,830 according to Verizon's Semi-Annual Double Pole Report, 10/31/11, D.P.U. Docket 03-87. Many double poles remain unidentified by pole owners.

<sup>4</sup> Section 196 of Chapter 164 of the Acts of 1997; M.G.L. Chapter 164 Section 34B

<sup>5</sup> D.T.E.03-87 Report, 11/28/03

Responding to complaints from municipal officials, the Legislature passed a law in 2003 requiring DTE to issue a report containing recommendations and proposed legislation for the enforcement of the 90-day double pole removal requirement, including penalties and waivers.<sup>6</sup> The law also required DTE to analyze whether local enforcement by ordinance or by-law was preferable to statewide enforcement of M.G.L. c. 164 Section 34B.

After taking comments from the pole owners, attachees, municipalities, and other interested parties, the DTE issued its report to the Legislature on November 28, 2003. The report provided the following conclusions<sup>7</sup>:

1. DTE recommended statewide enforcement of the 90-day double pole limit. (DTE must ensure uniform and efficient utility services to the public, compliance with different municipal requirements would increase utility costs and “Balkanize” responsibility that is now integrated, etc.).
2. Regarding penalties and waivers, DTE recommended against proposed legislation at the time of the report (2003). The report states that the DTE may recommend proposed legislation “after the PLM has had an opportunity to yield results that can identify the root cause of the double pole problem.” The report reflected the view that until this unidentified time, penalties could not be properly targeted.
3. DTE recommended an amendment to M.G.L. c. 164 Section 34B apportioning some responsibility to the user/users in order to provide all parties with the incentive to promptly transfer their facilities.
4. Before adhering to a strict removal schedule, pole owners must address backlog poles:
  - a. As of October 2003, there were approximately 1,228,684 utility poles in the state. Pole owners report that, as of this date, there were approximately 25,686 double poles, of which 23,731 were jointly owned by Verizon and other pole owners. Verizon is solely responsible for setting and removing forty percent of all poles in Massachusetts, and thirty-three percent of the 25,686 were in Verizon’s “sole-set areas.”
5. In the report, DTE required pole owners to file a plan for eliminating the backlog of double poles as of January 2004 and to provide semi-annual reports on the status of double poles.

The utility filings on plans to eliminate double poles, as proposed by DTE’s 2003 report, were first filed in January 2004. These reports contained information about how the pole owners planned to prioritize the elimination of double poles. NSTAR, for example, prioritized the backlog first, followed by removing pole sets in communities with the

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<sup>6</sup> Section 110 Chapter 46 of the Acts of 2003

<sup>7</sup> D.T.E. 03-87 Report, 11/28/03

highest volume of double poles. The first of the semi-annual reports was filed by Verizon in September of 2004.<sup>8</sup>

In the summer of 2005, the DTE issued a memo and hosted a technical conference for the pole owners to discuss and formalize a standardized format for the semi-annual reports.<sup>9</sup> As a result of this technical conference, the utilities agreed to all file separate summaries and Verizon would file the official semi-annual double pole report on behalf of all companies. The report would include a master list of all double poles by location and pole owner.<sup>10</sup> The first of these joint reports was issued on December 1, 2005.<sup>11</sup>

There has been no additional information available regarding further recommendations made or any analysis of the effectiveness of the PLM database, in the eight years since the original DTE report to the Legislature.

In 2007, DTE split into the Department of Public Utilities (DPU) and the Department of Telecommunications and Cable (DTC). DPU was granted regulatory jurisdiction over energy companies and DTC was granted regulatory jurisdiction over telecommunications and cable companies. The Legislature did not address the issue of jurisdiction with respect to double poles. As a result, the two agencies collectively issued a memo in October 2008 in which they agreed to share jurisdiction. Copies of complaints sent to one agency are copied to the other agency. Disputes between pole owners and attachees are settled based on the “primary purpose of attachment.” Attachments for communications purposes are resolved by DTC (with DPU having the right to intervene). Attachments for electricity distribution or electric/gas meter reading equipment are adjudicated by DPU (with DTC having the right to intervene). Semi-annual double pole reports are sent to each agency.<sup>12</sup>

DPU and DTC continue to receive semi-annual reports on double poles. Verizon submits a detailed report on behalf of every pole owner. This report lists the status of each individual double pole in the Commonwealth including the date of installation and the date of removal (if removed within the past six months). In addition, every single pole owner submits a summary report describing the company’s progress addressing double poles.<sup>13</sup>

## **Methodology**

The Subcommittee on Double Poles was formed in December of 2011 under the direction of the Chairs of the Joint Committee on Telecommunications, Utilities and Energy. The House Vice-Chair of the Joint Committee Chaired the Subcommittee, which was made up of four other members of the Joint Committee. The Subcommittee held ‘stakeholder meetings’ to bring together interested parties on all sides of the issue from across the geographic

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<sup>8</sup> D.P.U. Docket 03-87

<sup>9</sup> D.T.E. Memo Re: Double Utility Poles Report, D.T.E. 03-87 – Notice of Technical Conference, 7/11/05

<sup>10</sup> D.T.E. Memo Re: Double Utility Poles Report, D.T.E. 03-87 – Amended Joint Motion Approved, 9/1/05

<sup>11</sup> D.P.U. Docket 03-87

<sup>12</sup> DPU and DTC Memorandum Re: Memorandum of Agreement regarding jurisdiction over pole attachment and double pole disputes, 7/18/08

<sup>13</sup> D.P.U. Docket 03-87

boundaries of the Commonwealth. These stakeholders included legislators, municipalities, pole workers, utility companies and the Department of Public Utilities.

The Subcommittee held three stakeholder meetings in January and one in February of 2012. The meetings included questions from all subcommittee members and suggestions for double pole reduction from each interested party. These suggestions ranged from levying fines, creating incentives, devoting more workers to double pole removal and increasing the enforcement capabilities of the relevant state agencies.

During meetings with stakeholders, the subcommittee focused on the following areas in order to ensure an effective approach to double pole remediation:

- 1. Removing double poles from the initial backlog of 2002:** There are still many poles from the original backlog that have not been removed, despite the Legislature's attempt to address this issue in 2002.<sup>14</sup> When considering a remediation process, these poles should be the first considered for removal.
- 2. Removal of double poles created between 2002 and now:** There are currently over 27,343 double poles<sup>15</sup>, all of which must be addressed by pole owners and attachees. However, the total number of double poles must be estimated, because many are not identified in the PLM database. These poles should be considered for removal after those from the initial backlog.
- 3. Setting-up double pole remediation protocols:** Protocols and standards must exist regarding the future replacement and removal of poles to prevent even greater numbers of double poles moving forward.

## Current Landscape

Since utilities in Massachusetts began using a common communication system for double pole tracking, they have successfully removed 32,185 double poles. During that time, electric upgrades, road projects, and other types of service expansions, have led to the creation of an additional 27,000 double poles.<sup>16</sup>

The PLM database information is often inaccurate or incomplete. The system depends on manual updates when a company moves their equipment. Although incidents of a pole owner or attachee failing to update the database after moving equipment on a pole may happen infrequently, years of database operation without an extensive inventory of double poles has resulted in significant delays in double pole removal, some of which linger for years. Large discrepancies between double pole data in reports filed with the DPU and DTC and data from inventories taken by individuals in certain municipalities are evidence of inaccuracies in the system.<sup>17</sup> Failure of certain attachees to participate in the database also

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<sup>14</sup> 546 can be identified in the PLM system according to Verizon's Semi-Annual Double Pole Report, 10/31/11, D.P.U. Docket 03-87.

<sup>15</sup> Verizon's Semi-Annual Double Pole Report, 10/31/11, D.P.U. Docket 03-87. Many double poles remain unidentified by pole owners

<sup>16</sup> Joint Comments of Verizon, National Grid, and NSTAR, 2/21/12

<sup>17</sup> Lexington Electric Utility Committee bi-annual survey of double poles.

slows the remediation process and can cause additional confusion. In addition, sometimes equipment is attached to poles without notification to the pole owner, which produces significant delays when a pole owner is attempting to replace a pole. There is currently no single, identified state agency with the authority or resources to seriously address all aspects of this issue.

Municipalities want double poles removed as soon as possible and many municipal officials have expressed a desire to create an enforcement mechanism for pole owners that they view as unresponsive. Faced with the persistent double pole problem, and without direction from the state or other organizations, municipalities have developed distinct individual approaches for double pole remediation. Some communities assign specific liaisons to contact utility companies directly to pressure pole owners to complete specific pole replacements. Others require double pole remediation as a prerequisite for municipal approval of other utility requests.

Utilities agree that there is an abundance of double poles in Massachusetts, but argue that this is a sign of progress. Increased road expansion projects as a result of the American Recovery and Reinvestment Act, increased development and more distributed generation requiring electricity upgrades, and the proliferation of competitive telecommunications companies with equipment attached to poles have improved quality of life for consumers, but these factors stimulate the growth of new double poles. Utilities agree that PLM needs to be updated or entirely reconfigured, but the update alone may not decrease the aggregate number of double poles. Pole owners prioritize work that resolves customer complaints or provides new customers, creating new revenue or protecting existing revenue. Otherwise, double pole removal is a necessary operating cost which generates no revenue, and therefore is a task of significantly less importance to owners.

Facing a need to complete pole replacement work quickly, the Massachusetts Department of Transportation developed a program where pole owners are granted double pole remediation revenue if the work is completed according to a designated schedule. When promised a source of revenue, pole owners have been significantly more likely to ensure complete pole replacement according to a reasonable schedule.

The Department of Public Utilities argues that backlogged double poles present no public safety threat, but DPU understands municipal official and citizen frustration. DPU and the Legislature have, so far, been unsuccessful at resolving the issue.

DPU stresses concern over unintended consequences of fines. Also, regulatory agencies lack authority to provide a financial enforcement mechanism for telecommunications company pole owners and attachees.

## FINDINGS AND RECOMMENDATIONS

The Subcommittee recommendations were predicated on the following key findings and observations:

1. The Pole Life Management (PLM) database contains data that is incomplete and inaccurate and does not provide the information needed to effectively and efficiently locate and remove all existing double poles: A state-wide inventory is required before any system-wide plan can be effectively executed and decisions will have to be made regarding where and how to best keep and maintain the resulting data.
2. The Legislature should not seek to create specific statutory enforcement remedies, at this time, without the thorough involvement of all parties. This is a complex issue that is best addressed by experts at DPU and DTC with input from all relevant parties: those who are pole owners, users, and municipalities.
3. Shared jurisdiction of double pole remediation policy has proven to be demonstrably ineffective and inefficient. Any policy mandating double pole replacement will fail if companies are incentivized to ignore the policy and there is no enforcement mechanism. The Legislature will look to the Double Pole Remediation Advisory Council (DPRAC) for its recommendations, but ultimately, the responsibility to provide a coherent regulatory scheme for this issue remains with the Legislature or with executive agencies with broad regulatory authority.

### Recommendations

#### **Create a Double Pole Remediation Advisory Council (DPRAC)**

The Double Pole Remediation Advisory Council (DPRAC) will assume responsibility for the further examination of the double pole issue. A Council is necessary because stakeholders with expert knowledge are best able to propose a strategy for the removal of double poles, and no state regulatory agency has sole jurisdiction over pole ownership and attachments. The members of the DPRAC will be as listed:

- 2 municipal representatives as appointed by the Massachusetts Municipal Association
- 1 representative from the Massachusetts Department of Public Utilities
- 1 representative from the Massachusetts Department of Telecommunications
- 1 representative for the Attorney General
- 1 representative from Verizon Communications
- 1 representative from the electric distribution companies
- 1 municipal light and power representative as appointed by Municipal Electric Association of Massachusetts
- 1 representative from the Cable Television Association (Comcast, RCN, etc.)

- 1 representative from the telephone pole workers union
- 1 representative from the utility workers union

The DPRAC will have until December 31, 2012 to issue a report with recommendations and strategies in the following areas.

#### *Double Pole Remediation Schedule*

The DPRAC report should prepare a strategy outlining the removal of new and backlog double poles. Backlog poles should be analyzed by date of installation. Double poles that were set prior to January 31, 2004, the backlog date for the DTE's past investigation into double poles, should be prioritized for immediate removal. Double poles that have been set between January 31, 2004 and the present should have a target elimination deadline of December 31, 2014, or two years from the date the Council issues its final report.

The council should determine if the ninety day statutory deadline for pole replacement is unreasonable. It may take multiple weeks for each attachee to transfer its equipment from one pole to another, even under ideal circumstances. While companies are expected to remove double poles within the ninety-day timeframe, a double pole may be considered longstanding if it becomes one year old. The Council should prepare a strategy to prevent the occurrences of longstanding double poles in the future. In doing so, the Council should consider reasonable schedules for each attachee to transfer its equipment on a pole.

The report should include a plan for immediate removal of double poles that have been in place prior to January 31, 2004,

#### *PLM Database*

The council should review the PLM database and suggest measures to ensure its comprehensiveness, accuracy, and accessibility by all pole users and municipalities. This system must include a complete list of all double poles in Massachusetts, along with their owners and users, and be capable of issuing notifications for each user when they are required to remove their equipment from a double pole. The Council must identify the proper information system to use for all pole owners, attachees, and other municipal officials. The system must allow for coordination among pole owners and attachees for moving equipment, but it must also be an effective resource for municipal officials. Municipal officials must be able to access the system to respond to double poles complaints from residents and public safety officials. Regulatory agencies must have access to the database to ensure that pole owners respond to double pole complaints from municipal officials.

An accurate, extensive and complete inventory must be taken on every double pole in the Commonwealth to ensure the accuracy of the new database to be completed by a date certain. The Council should recommend the best method of conducting such an inventory.

The Double Pole Remediation Advisory Council should also propose recommendations to identify companies and municipalities that have attached equipment to poles without giving notice to the pole owner and to ensure that the identified attachees obtain the necessary licenses to be attached to poles.

#### *Regular Communication between Municipalities and Pole Owners*

The Council's analysis should include strategies from improved communication between municipal officials and pole owners to address double pole remediation.

#### *Penalties and Enforcement*

At its discretion, the DPRAC may recommend a fine system or other enforcement mechanism to DPU and DTC in its report. The council should consider fining pole owners if they fail to respond to formal municipal demands to remove longstanding double poles, or poles that must be removed to meet a construction schedule, but may recommend any enforcement mechanism it considers appropriate and necessary. The council may consider fining attachees in addition to pole owners, if they fail to move equipment in a reasonable period of time; however, it is unclear whether federal law allows states to fine companies with equipment attached to poles.

#### **Pole Lifecycle Management Database Access**

The Subcommittee strongly recommends that all municipalities, pole owners and attachees have access to and be required to take part in the database. All pole owners and municipal officials should know what organizations have equipment attached to a pole and which company is responsible for moving equipment at any given time. A lack of communication and cooperation has been a significant problem, so maximizing communication and cooperation is paramount for a successful double pole removal policy.

#### **Enforcement Mechanisms**

It is important for the DPRAC to create realistic and appropriate penalty mechanisms, and DPU and DTC must have enforcement authority. In the last fifteen years, lack of enforcement has resulted in lethargic response by pole owners and attachees in replacing poles and moving equipment. There must be consequences for pole owners and attachees to act efficiently.

Pole owners must face strict, yet reasonable deadlines; however, pole owners should not be held responsible for adhering to these deadlines during extraordinary events. The public safety threat associated with most double poles is minimal; therefore, pole owners should have some flexibility to divert resources for life threatening and other dangerous situations.

## **Reports to the Legislature and Municipalities**

The DPU and DTC must also issue joint reports every year on the status of double poles in the Commonwealth to the Legislature and the report should be available to the public. DPU and DTC receive semi-annual double pole reports from the pole owners which detail the status of double pole remediation. Pole owners should also provide each municipality with a report listing all double poles in their municipality.

## CONCLUSION

Double poles have been a concern in the Commonwealth of Massachusetts for over fifteen years. Under current law, pole owners have a responsibility to remove double poles within ninety days, but this schedule is not enforced and companies have no incentive to remove poles in a reasonable timeframe. Our current system is dysfunctional and has not reduced the number of double poles nor created a workable system for the future. It is the responsibility of all the involved stakeholders to resolve this problem.

The Subcommittee recommendations acknowledge that the Legislature may not be as well suited for the creation of specific solutions to this problem, certainly not to the extent that professional staff in the state's utility companies, municipalities and regulators may be. It does, however, recognize that the Legislature may well need to act and address this issue to ensure its resolution in a reasonable period of time. The Subcommittee recommendations aim to accomplish three main purposes:

1. Overhauling the current PLM database and taking an inventory of double poles. All pole owners and attachees involved in the removal of double poles must be held accountable for updating and correcting all information in the database;
2. Establishing deadlines and reporting requirements for double pole removal. The Subcommittee recognizes the importance of giving every stakeholder a voice at the table and believes that the Double Pole Remediation Advisory Council should have an opportunity to address these issues with all relevant parties as a predicate to further legislative or regulatory action;
3. Deferring to the DPRAC for recommendations on establishment of a financial disincentive structure (i.e., penalties, fines) for policy enforcement.

The Subcommittee accepts that it is the responsibility of pole owners to remove double poles in a timely fashion, but understands that difficulties with the existing database, attachees and municipalities has made achievement of this goal difficult. A new approach that focuses on better coordination and improved communication will lead to a resolution of the double poles issue, as both owners and attachees find efficient and cost effective ways to coordinate pole remediation and removal.