MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

DOCKET NO. PUC-24-310

CONSOLIDATED COMMUNICATIONS OF NORTHERN NEW ENGLAND COMPANY, LLC D/B/A CONSOLIDATED COMMUNICATIONS-NNE

v.

PUBLIC UTILITIES COMMISSION

REPLY BRIEF OF APPELLANT

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I. THE MUNICIPAL EXEMPTION CONSTITUTES AN UNCONSTITUTIONAL TAKING OF CONSOLIDATED'S PRIVATE PROPERTY WITHOUT JUST COMPENSATION IN VIOLATION OF THE TAKINGS CLAUSES OF THE UNITED STATES AND MAINE CONSTITUTIONS.

Neither the Town[1] nor the Attorney General ("AG") dispute that Consolidated owns, wholly or jointly, the poles to which the Town intends to attach to build its competing broadband network (the "Project"). Nor do they contest that under Maine law, including 35-A M.R.S. §§ 711 and 2524(2), and the Commission's Chapter 880 Rules,[2] Consolidated is required to permit the Town to attach its facilities to Consolidated's private property. Perhaps most importantly, they do not dispute that such attachments are a physical occupation of Consolidated's property and that make-ready costs must be incurred to effectuate the physical occupation of Consolidated's poles.[3]

A. The Government's Exercise Of Police Powers Does Not Authorize The Permanent Physical Occupation Of Consolidated's Property For Public Use Without Just Compensation.

1) The Legislature implicitly acknowledged the difference between a municipality's exercise of police powers and providing broadband service to underserved and unserved areas.

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[1] Defined terms in the Brief of Appellant have the same meaning in this Reply Brief.

[2] 65-407 C.M.R. ch. 880, Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure ("Chapter 880" or "Ch. 880").

[3] Consolidated's Reply Brief focuses principally on the Takings and Equal Protection claims. Consolidated relies upon its principal brief for the remaining claims, and supports the Brief of Appellees Spectrum Gulf Coast, LLC and Comcast of Maine/New Hampshire, Inc. as to how Section 2524 is facially vague and an excessive delegation of legislative authority. (Spectrum/Comcast Br. at 23-27).

While the Town and AG argue that Section 2524(2) is a proper exercise of the State's police power, the Commission's Decision did not rely upon Section 2524(2)(A) to justify exempting Somerville from paying make-ready costs. (Somerville Br. at 19-23; AG Br. at 25-28). Instead, the Decision was based on Section 2524(2)(B), (App. 22-23), which governs the exemption for broadband buildout in "underserved" and "unserved" areas.

Unlike subdivision (2)(B) of the statute, subdivision (2)(A) expressly speaks to the government's exercise of police powers to exempt make-ready costs. Section 2425(2) provides:

> **2. Access to poles; make-ready requirements**. Notwithstanding any provision of law to the contrary, for the purpose of safeguarding access to infrastructure essential to public health, safety and welfare, an owner of a shared-use pole and each entity attaching to that pole is responsible for that owner's or entity's own expense for make ready-work to accommodate a municipality's attaching its facilities to that shared use pole:
>
> A. *For a governmental purpose consistent with the police power of the municipality*;
>
> B. For the purpose of providing broadband service to an unserved or underserved area.

(Italic emphasis added). The distinction between subdivisions (2)(A) and (2)(B) reflects the Legislature's recognition that competitive broadband build-out in underserved and unserved areas is not within the government's "police powers." Otherwise, there would have been no need to enact Section 2524(2)(B) because it

would be subsumed within Section 2524(2)(A). *See, e.g., Dickau v. Vt. Mutual Ins. Co.*, 2014 ME 158, ¶ 22, 107 A.3d 621 (2014) (noting that the Court rejects interpretations of a statute that render language "mere surplusage").

2) The State's history of permitting the exercise of police powers to force utilities to relocate facilities in rights of way without compensation does not apply here.

Regardless, the Town's and AG's argument that the Municipal Exemption is a proper exercise of the State's police power is erroneous. The Town and AG argue that because utility pole owners place their property in rights of way pursuant to a license granted by the State or local municipality, such licenses are "subject to further exercises of the State's police power[s]" outlined in Chapters 23 and 25 of Title 35-A. (Somerville Br. at 18-23; AG Br. at 20-21.) Thus, they argue, Section 2524 is a valid exercise of the State's police power because it is a "condition" or "restriction" on the utilities' license (Somerville Br. at 18-19; AG Br. at 21.)

The Town and AG misconstrue the State's proper exercise of its police power. While the State can place restrictions on the use of private property placed in the right of way, it cannot exercise its police power to *physically occupy* private property without just compensation because such physical occupation is a taking, *regardless of the public interests that it may serve*. *Loretto v. Teleprompter Manhattan CATV Corp.,* 458 U.S. 419, 426 (1982); *see also Cedar Point Nursery v. Hassid*, 594 U.S. 139, 151 (2021) (regulation granting union organizers a right of access to the

premises of an agricultural employer was an unconstitutional taking because it permitted the government to appropriate the property for public use without just compensation, despite that the regulation set limits on the access). As the Supreme Court articulated in *Cedar Point*, the "government likewise effects a physical taking when it occupies property… . These sorts of physical appropriations constitute the clearest sort of taking … and we assess them using a simple *per se* rule: *The government must pay for what it takes*." *Id*. at 147 (internal quotation marks and citations omitted; emphasis added). In short, under the *per se* rule, the public interest the statute may serve is irrelevant;[4] if there is a physical occupation or appropriation, the government must provide just compensation.[5]

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[4] Thus, the AG's and Town's emphasis on the "public necessity" of broadband and the Revenue Producing Municipalities Act are misplaced. (AG Br. at 11; Town Br. at 20, 23.) The construction of public highways, public schools and public libraries, for example, may constitute public necessities, but government must provide just compensation to occupy private property for those important purposes.

[5] Contrary to the Town's argument, the Public Purpose Doctrine does not prohibit the payment of just compensation here. That Doctrine vests the Legislature with "full power to make and establish all reasonable laws and regulations for the defense and benefit of the people of this State, *not repugnant to this Constitution, nor to that of the United States*." Me. Const. art. IV, pt. 3rd, § 1 (emphasis added.) The Town's reliance upon the Doctrine to avoid paying just compensation for the physical occupation of privately-owned utility poles is certainly repugnant to the Takings Clause. Moreover, the Town's assertion that make-ready costs are preventable because the utility could have reserved space for a municipality's attachments, thereby avoiding the need to move existing attachments on the poles (Somerville Br. at 34-35), ignores the history of pole access rights involved in these proceedings. The infrastructure – including utility poles – necessary to provide electric distribution and wires-based telephone service was initially constructed by electric and telephone utilities when they *both* held monopolies in their respective industries; third parties had no legal right to demand access to the privately owned poles. The Pole Attachment Act and the Telecom Act fundamentally changed pole access rights by requiring the pole owners to permit third parties access to the poles to attach their facilities. There is no evidence in the record that, when the poles were initially constructed in the Town, the electric and telephone utilities could have reasonably envisioned that the Town would later have a legal right to attach a fiber-optic network to poles and that space should be reserved on the poles for that purpose. Finally, the Public Purpose Doctrine prohibits a public expenditure that is primarily for the benefit of private property owners. *See Opinion of the Justices,* 560 A.2d 552, 555 (Me. 1989) (holding that "[t]he maintenance at taxpayer expense of privately owned roads as defined in L.D. 383 would be an unconstitutional appropriation of public funds for the benefit of the

The cases the Town and AG rely upon to support its argument are fundamentally distinguishable.[6] In the cases they cite, the government was not seeking to physically occupy private property pursuant to authority granted by law, which is precisely what the Town intends to do here. *See, e.g., Central Maine Power v. Waterville Urban Renewal Authority*, 281 A.2d 233 (Me. 1971) (municipality requires utility to move facilities in connection with urban renewal project); *New Orleans Gaslight Company v. Drainage Commission of New Orleans*, 197 U.S. 453 (1905) (gas company was required to relocate its underground facilities at its own expense to accommodate the state's construction of a drainage system).

Unlike the facts presented here, those cases did not implicate *any* physical occupation whatsoever of private property for public use.[7] *Loretto* and *Cedar Point*

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private property owners" in violation of Article IV, Part Third, Section 1 of the Maine Constitution). Here, the costs associated with the make-ready work are for the benefit of the Town's Project, and do not convey a benefit to the pole owner or its private property.

[6] The Town's reliance on *Maine Public Utilities Commission, Amendment to Chapter 880 - Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure*, Docket No. 2017-00247, Order Amending Rule and Factual Policy Basis (Jan. 12, 2018) is misplaced. (Somerville Br. at 10.) First, the Commission did not decide the Takings issue presented here, but merely reiterated the arguments of the commenters in that rulemaking docket related to make-ready costs. No commenter challenged the Municipal Exemption in that rulemaking proceeding and, therefore, neither the Commission nor any Maine court has ever decided the issue. Second, whatever argument any participant in that rulemaking proceeding asserted has no bearing on the Takings challenge Consolidated presents in this proceeding.

[7] The "centuries-old case," *Boston & Maine Railroad Company v. County Commissioners of York County*, 79 Me. 386, 10 A. 113 (Me. 1887), cited by the Town and AG likewise does not support its argument. (Somerville Br. at 20, n. 9; AG at 23.) First, that case does not appear to involve a takings issue so much as it analyzes whether the government could amend the railroad company's charter to require it to maintain roads around the railroad company's property. Second, and more importantly, application of the Takings Clause has substantially evolved since the 1800's, long before electrification and utility poles became ubiquitous. *See Cedar Point*, 594 U.S. at 152-154 (expounding on the varied and diverse ways governmental action results in a taking without just compensation).

make clear that the physical occupation of property for public use constitutes a *per se* taking.

Because this case involves a *per se* taking, the Town's and AG's attempts to save the statute as a proper exercise of police powers are unavailing. *See* 12 E. McQuillan, *The Law of Municipal Corporations*, 34:100 (3d. ed. July 2024) (stating that "today franchise rights to erect and maintain electric or utility poles and wires in streets, alleys or other public spaces are subject to reasonable municipal regulations as to matters of physical operations, *subject to constitutional requirements and limits*") (emphasis added).

B. Section 2524(2), By Its Plain Terms, Requires Pole Owners To Permit Municipalities To Physically Occupy Space On Privately Owned Poles, And, Thus, The Statute Does Not Merely Allocate Costs.

The Town and AG attempt to circumvent the *per se* rule of the Takings Clause by characterizing Section 2524 as merely a "cost-allocation" statute. (Somerville Br. at 23-24; AG Br. 29.) In doing so, they ignore its plain language.

Section 2524(2) provides, in pertinent part, that "an owner of a shared-use pole and each entity attaching to that pole is responsible for that owner's or entity's own expense for make ready-work *to accommodate a municipality's attaching its facilities to that shared use pole*[.]" (Emphasis added). This plain language *entitles* a municipality to physically occupy Consolidated's private property for public use. First, the title of the statute expressly states that Section 2524(2) authorizes "[a]ccess

to poles." *See State v. Fleming*, 2020 ME 120, ¶ 40, 239 A.3d 648, 661 (rejecting the State's interpretation of a statute because its "interpretation far exceeds the purpose and intent of the statute as expressed in the title . . . "). Second, the statute expressly requires Consolidated and other pole owners to "accommodate a municipality's attaching its facilities to [the] shared use pole." As explained above, the physical "access" and "accommodat[ing] a municipality's attaching [of] its facilities" results in a *per se* taking. Thus, the municipality's right of access under Section 2524 constitutes a taking that requires just compensation. For the reasons stated in the Brief of Appellant, just compensation includes make-ready costs so the Town can physically occupy the Company's property.[8]

C. Even Assuming That Section 2524 Does Not Authorize The Physical Occupation Of Poles By Municipalities, The Statute Still Results In An Unconstitutional Taking Because It Must Be Interpreted In The Context Of The Regulatory Scheme Governing Joint Use Poles, Which Indisputably Requires The Company To Permit The Town's Physical Occupation Of Its Property.

In characterizing Section 2524(2) as merely a cost allocation statute, the Town and AG fail to acknowledge that Consolidated challenges not only Section 2524(2), but also the implementing regulations in Section 6(A)(1)(b) of the Commission's Chapter 880 Rules. More importantly, they fail to recognize that Consolidated

[8] It is noteworthy that neither the Town nor the AG cite any other jurisdiction that requires a pole owner to pay for a governmental entity's make-ready work necessary to attach to privately owned utility poles. To Consolidated's knowledge, no other state has enacted such a law, despite the nationwide push to make broadband access more widely available.

challenges the Municipal Exemption in light of the federal and state regulatory schemes governing pole attachments, which indisputably require Consolidated to allow the Town access to Consolidated's private property. Ch. 880, § 2(A)(1) ("A pole owner *must* provide a requesting party with nondiscriminatory access to any joint-use utility pole owned or controlled by it for the attachment of conductors, circuitry, antennas, or other facilities.") (emphasis added).

Make-ready costs are only necessary when a third party invokes the provisions of federal and state law that require nondiscriminatory access to poles. Absent that legal obligation, Section 2524(2)'s "cost allocation" requirement that Consolidated absorb municipal make-ready costs would be meaningless: pole owners would simply deny municipalities access to the poles if they refuse to pay for the make-ready costs they cause. That is not an option for Consolidated and other pole owners under the Municipal Exemption. Even if the requirement to allow pole access is codified in a different section of the Public Utility Code than Section 2524(2), that does not insulate Section 2524(2) from a constitutional challenge. Courts routinely consider unchallenged provisions of law for context when determining whether a challenged provision is constitutionally infirm. *See, e.g., Whitehill v. Elkins*, 389 U.S. 54, 56-57 (1967) (striking down loyalty oath administered to teachers on First Amendment grounds: "Our conclusion is that, since the authority to prescribe oaths is provided by § 11 of the Act and since it is in turn tied to §§ 1 and 13 [defining the

term "subversive"], we must consider the oath with reference to §§ 1 and 13, not in isolation."); *Wisherd v. Paul Koch Volkswagen, Inc.*, 559 P.2d 1305, 1307 (Or. Ct. App. 1977) (stating that a statute challenged as unconstitutional "cannot be viewed in isolation; it must be considered as part of the entire workmen's compensation system").

Therefore, this Court must consider Consolidated's challenge to the constitutionality of the Municipal Exemption in the context of the regulatory scheme governing pole attachments.[9] The regulatory framework indisputably *requires* Consolidated to allow the Town to attach to the Company's poles and, but for the Municipal Exemption, the Town would be obligated to pay Consolidated for make-ready work identically to non-municipal entities whose attachments require make-ready work. Ch. 880, § 6(A) ("An additional attaching entity . . . must be charged reasonable expenses incurred in surveying existing joint-use utility poles or in performing make-ready work."). Section 2524 is not merely an "imposition of an obligation to pay money." (AG Br. at 30). Rather, it is part of the *per se* taking.

[9]Indeed, a more expansive challenge to the regulatory scheme would be broader than necessary to cure the constitutional infirmity. *See* 1 M.R.S. § 71(8) (severability; "If any provision of the statutes or of a session law is invalid, or if the application of either to any person or circumstance is invalid, such invalidity does not affect other provisions or applications which can be given effect without the invalid provision or application.").

D. The Town's and AG's Attempts to Distinguish *Gulf Power*[10] Are Unavailing.

Neither the Town nor the AG lend any credence to the application of *Gulf Power* to the Municipal Exemption. (Somerville Br. at 24-25; AG Br. at 32-33). They argue that *Gulf Power* is not controlling in Maine because it is a decision of the Eleventh Circuit Court of Appeals. They do not, however, contend that *Gulf Power* conflicts in any way with the Supreme Court's decisions in *Loretto*, *Cedar Point*, or Maine law. Moreover, *Gulf Power* is compelling because it relied upon *Loretto's* standard, which provides that a taking occurs when there is a permanent physical occupation of property authorized by government "*without regard to the public interests that it serves*." *Gulf Power*, 197 F.3d at 1328 (quoting *Loretto*, 458 U.S. at 426) (emphasis added)). *Loretto*'s standard *is* controlling in Maine, and *Gulf Power* relies upon *Loretto*. Consistent with those decisions, a taking occurs when a pole owner is compelled by law to allow third parties to attach.[11]

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[10] *Gulf Power Co. v. United States*, 187 F.3d 1324 (11th Cir. 1999).

[11] The AG notes that the statute was ultimately upheld in *Gulf Power* (AG Br. at 32, n. 7). However, it was only deemed constitutional because the utilities were entitled to just compensation for the takings. 187 F.3d at 1338. Federal law includes as compensation rent *and* make-ready costs, which fulfill the "just compensation" requirement. Here, Consolidated expects to receive $1,115.15 in annual rental fees for the Town's permanent physical occupation of the poles, but the Municipal Exemption will deprive Consolidated of its ability to recoup any of the $97,624.60 in make-ready costs. The AG claims that Consolidated can recover such costs by passing them on to consumers through other services it provides (AG Br. at 33-34). The AG's argument ignores the government's obligation when it takes private property. The Takings Clause requires the *government* to bear the cost of the taking, not the property owner. *Cedar Point*, 594 U.S. at 147.

The Town's and AG's attempt to distinguish *Loretto* is unavailing. Specifically, they claim that *Loretto* involved the actual physical occupation of private property, rather than property located within a public right of way. (Somerville Br. at 24 and AG Br. at 33). Their distinction ignores *FCC v. Florida Power Corp*., 480 U.S. 245 (1987), in which Florida Power, relying on *Loretto*, challenged the Pole Attachment Act as an unconstitutional taking. The Supreme Court distinguished *Loretto* solely on the grounds that the Pole Attachment Act did not *require* utilities to permit the occupation of its private property. Because utilities could refuse to enter into attachment agreements, *Loretto* did not apply. *Fla. Power Corp*., 480 U.S. at 251. The Court did *not* distinguish *Loretto* based on the government's exercise of police powers, the location of the property, or any other reason argued by the Town and the AG. A statute's forcible occupation by the government of private property for public use is the linchpin of the Takings analysis. *See Cedar Point*.

The Town and AG further claim that, to the extent *Gulf Power* is instructive, it is distinguishable because, unlike the Municipal Exemption, the statute at issue there, Section 224 of the Telecom Act, authorizes the physical taking of personal property. (Somerville Br. at 25; AG at 32.) For the reasons stated in detail above, this argument is without merit. The Municipal Exemption does authorize the taking of private property, and even assuming, *arguendo*, that it does not, Section 2524 and

the regulatory scheme governing pole attachments of which it is a part require Consolidated to allow the Town's physical occupation of the Company's private property.

The Town and the AG also attempt to distinguish *Gulf Power* by arguing that Section 224 of the Telecom Act "extended beyond property located in the public way." (Somerville Br. at 25; AG Br. at 32.) Even assuming that is true, it does not render the Eleventh Circuit's decision inapplicable here. The Court in no way distinguished between private property located within or beyond the public right of way. Rather, the Court properly applied the standard in *Loretto* and determined that requiring utilities to permit third parties to attach to the utilities' poles, even in the public way to serve a public interest, was a taking under the Fifth Amendment. Accordingly, the attempts of the Town and the AG to distinguish *Gulf Power* and *Loretto* should be rejected.

II. THE MUNICIPAL EXEMPTION VIOLATES THE EQUAL PROTECTION CLAUSE BECAUSE IT TREATS TELECOMMUNICATIONS CARRIERS DIFFERENTLY FROM OTHER PUBLIC UTILITIES THAT OWN POLES.

The AG argues that Maine supports separate analyses for takings and equal protection, rather than "bootstrapping" those Constitutional provisions (AG Br. at 35-36). Consolidated's challenges do not "bootstrap." The Company challenges the Municipal Exemption on both constitutional grounds, understanding they have separate analyses. For Equal Protection purposes, the taking that occurs pursuant to

the Municipal Exemption simply determines the standard of review applicable to that claim. If this Court determines that the Takings Clause protects a fundamental right, it will apply strict scrutiny review; if the Court determines that the Takings Clause does not protect a fundamental right, a rational basis review will apply to the Equal Protection challenge. This Court's decisions cited by the AG do not prohibit challenging a statute under both Clauses.[12] (AG Br. at 35-36.)

The Town similarly misunderstands Consolidated's Equal Protection claim. The Town contends that the comparison of Consolidated to CMP for Equal Protection purposes is inappropriate because the two pole owners are not similarly situated and that Consolidated's argument shows the *inverse* of what the Equal Protection standard requires. (Somerville Br. at 15.) This argument misses the mark.

Consolidated's Brief frames its Equal Protection claim precisely as the Town contends is required: Consolidated compares itself to T&D utilities that own poles and specifically describes how they are similarly situated.[13] (Consolidated Br. at 27.)

[12] The AG complains that Consolidated cites no authority for its proposition that the Takings Clause is a fundamental right for purposes of an Equal Protection Clause challenge. However, the Supreme Court has established that "the right to exclude" others is a "fundamental element of the property right." *Cedar Point*, 594 U.S. at 157 (internal quotation marks and citation omitted). In fact, "[t]he Founders [of the Constitution] recognized that the protection of private property is indispensable to the promotion of individual freedom." *Id.* at 147. Thus, it is a right so fundamental that it is expressly protected in the United States Constitution. U.S. Const. amend. V. This legal backdrop suffices to support the notion that the Takings Clause is a "fundamental right."

[13] Consolidated agrees that even when an Equal Protection claim warrants strict scrutiny – such as when a fundamental right is involved – the "similarly situated" standard applies. As described above, Consolidated established how the Municipal Exemption results in disparate treatment of similarly situated utilities.

This standard requires that the comparators be similarly situated "in all relevant respects." *E.g., Bruns v. Mayhew*, 750 F.3d 61, 65 (1st Cir. 2014). The test is "whether a prudent person, looking objectively . . . would think them roughly equivalent." *Id.* at 65-66 (internal quotation marks and citation omitted) (overruled on other grounds by *Ecuadores Puertorriqueños en Acción v. Hernández*, 367 F.3d 61 (1st Cir. 2004)).

After establishing the ways in which Consolidated and the T&D utilities are similarly situated in all relevant respects, Consolidated analyzes how it is treated differently from other pole owning utilities due to Consolidated's inability to recover the municipality's make-ready costs from ratepayers through cost of service regulation. As CMP confirmed, it recovers a municipality's make-ready costs by socializing them among its ratepayers through the ratemaking process. (App. at 77.) Consolidated, however, lacks the ability to do so. (Davis Test'y at 17:6 – 20:4.) As a result, Consolidated's shareholders must absorb nearly $100,000 in make-ready costs caused by the Town, while the similarly situated pole owning T&D utilities recoup those expenditures from their ratepayers. Accordingly, with respect to pole ownership and third-party access, Consolidated is treated identically to all other pole owning utilities under Title 35-A and Chapter 880, except that Consolidated has no

ability to recover municipal make-ready costs pursuant to Commission-regulated cost of service rates.[14]

If the State wants to give municipalities a "pass" on make-ready costs they cause pole owners to incur, the solution is *not* to enact a Municipal Exemption that has disparate financial impacts on pole owners. Rather, the State could find other means to achieve its objective (*e.g.*, grant funds similar to those made available by the federal government to the Town for make-ready costs) that do not have disparate impacts on pole owners within the regulatory scheme governing pole attachments and related compensation.

The AG further maintains that "Consolidated does not explain why costs incurred to accommodate a sidewalk are, as it admits, non-compensable, but costs incurred to accommodate the Project should be compensable as a taking." (AG Br. at 39). The straightforward explanation is that the former costs the AG references are not incurred to permit the Town to physically occupy Consolidated's property. Conversely, the make-ready costs contemplated in Section 2524 are incurred *for the sole purpose of accommodating* the Town's right to access – and physically occupy

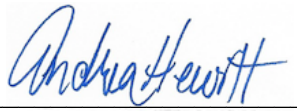
[14] The AG's reliance upon *Central Maine Power Co. v. Public Utilities Commission,* 1999 ME 119, 734 A.2d 1120 for the proposition that this Court has already rejected the claim that CMP is similarly situated to Consolidated is misplaced. (AG Br. at 37-38). In that case, the Court rejected an Equal Protection claim asserted against a Commission regulation applicable only to T&D speech concerning deregulation of the generation component of the electric industry on the basis that the entities were not similarly situated. *Id.* at ¶ 24, 734 A.2d at 1311. Here, by contrast, Consolidated and T&D utilities are subject to the same pole access statutes and regulations, except that T&D utilities can recover municipal make-ready costs pursuant to rates regulated by the Commission under Title 35-A.

– Consolidated's private property. Thus, the AG is incorrect that the "lack of an express, statutorily-mandated cost recovery mechanism tied to section 2524 is of no constitutional moment." (AG Br. at 39). With no cost recovery mechanism, there is no just compensation for the *per se* taking.

CONCLUSION

For all of the reasons stated herein, Consolidated respectfully requests that the Court: (a) declare the Municipal Exemption to be unconstitutional and unenforceable; (b) vacate the Commission's Order; and (c) grant such other and further relief as the Court deems just and equitable in the circumstances.

Respectfully submitted this 23rd day of January, 2025.



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I hereby certify that the foregoing Reply Brief has been served on the following parties electronically, pursuant to M.R. App. P. 1(D)(e), this 23rd day of January, 2025:

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