

**THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 15-417

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY

Order Imposing Civil Penalty and Providing Opportunity to be Heard

ORDER NO. 25,818

September 25, 2015

On September 18, 2015, the Safety Division (Safety Division) of the New Hampshire Public Utilities Commission (Commission) filed a report with the Commission (Report) related to the April 19, 2014, death of Nathan L. DeMond in Keene. Mr. DeMond was an employee of Keene State College who was electrocuted while investigating a report of a low hanging electrical wire. The wire, owned by Public Service Company of New Hampshire, now doing business as Eversource Energy (PSNH), had detached from the cross arm of Pole 24 and sagged close to the ground as it travelled between Pole 23 and Pole 25. Mr. DeMond was discovered in contact with the wire where it passed closest to the ground. The Report included maps, photographs, PSNH maintenance records, and excerpts from the New Hampshire Fire Marshal's report.

The Report found that PSNH conducted a maintenance inspection of Pole 24 on January 15, 2014. The record of that inspection states that Pole 24 had a "broken cross arm." Photographs accompanying the maintenance record depict one wire still attached to the cross arm but hanging lower than another wire on the same cross arm, supporting the written report of a "broken cross arm." The Safety Division's examination of the cross arm after Mr. DeMond's death revealed that it was "decayed" and "rotted." The Report did not describe any actions by

PSNH between the January discovery of the broken cross arm and accident in April, approximately 94 days later.

The Report concluded that a “contributing factor” to Mr. DeMond’s death “was a single low hanging bare electrical conductor that sagged to a level where the public could come into contact with it [which] was hanging low because the wooden cross arm assembly that was designed to hold the wire at a safe height had decayed, rotted, and broken.” The Report found “compliance issues” in that PSNH failed to act in “accordance with good utility practice,” which includes compliance with the National Electrical Safety Code (NESC). The NESC requires equipment to “be constructed, installed, and maintained so as to safeguard personnel as far as practical,” to “be inspected and maintained at such intervals as experience has shown to be necessary,” and that any “[e]quipment or wiring found to be defective shall be put in good order or permanently disconnected.” Report at 6. The Report concluded that PSNH did not meet these requirements:

PSNH did not repair the broken cross arm on pole 24 in a prompt manner. Timely repair would have avoided the collapse of the insulator and the ensuing sagging of the Phase 1 wire. The cross arm was in imminent danger of complete failure to support the energized primary wire because it was noticeably broken as reported during the inspection on January 15, 2014. It fits the PSNH criteria for replacement because “it was partially decayed across the grain,” and/or was a support structure “having a hollow heart with appearances of sound wood.”

Report at 6. The Report and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, will be posted to the Commission’s website at www.puc.nh.gov/Regulatory/docketbk-2015.html.

We adopt the Safety Division's factual findings as stated in the Report, and we agree with the conclusion that PSNH's failure to fix the broken cross arm was a factor that contributed to Mr. DeMond's death. We also find that PSNH's failure to fix the broken cross arm violated its obligation to act in accordance with good utility practice. PSNH's failure to repair the cross arm on Pole 24 after the January 15, 2014, inspection constitutes a violation of its obligation to "furnish ... facilities [that are] reasonably safe." RSA 374:1.

Based on these findings, we turn to our authority to impose a civil penalty. The Legislature has granted the Commission broad supervisory authority over "all public utilities and the plants owned, operated or controlled by the same so far as necessary to carry into effect the provisions of this title." RSA 374:3. That authority includes specific statutory power to assess civil penalties. When utilities "violate any provisions of this title" the Commission may assess civil penalties in an amount "not to exceed \$250,000." RSA 365:41. Although the statute does not list factors we must consider in determining an appropriate civil penalty, the New Hampshire Supreme Court requires penalties to be "reasonable." *Appeal of Verizon New England*, 153 N.H. 50 (2005).

We hereby impose on PSNH the maximum allowable civil penalty of \$250,000 for PSNH's failure to repair the broken cross arm on Pole 24. We base this penalty on PSNH's actual knowledge of, and its failure to fix, the broken cross arm, which created a significant public safety hazard.

We also direct and authorize the Safety Division to commence an additional investigation in this docket pursuant to RSA 365:5, RSA 374:37, and RSA 374:38, to review all issues raised by or related to the April 19, 2014, accident or similar hazardous conditions that it deems appropriate including, but not limited to, the following: (1) additional investigation of facts of

the April 19, 2014, accident; (2) the remedial steps taken by PSNH as a result of the April 19 accident; (3) PSNH's knowledge of the condition of cross arms and other equipment attached to the top of poles in its system; (4) PSNH's policies and procedures related to power line inspection and maintenance, education of the public as to downed power lines, the repair of poles, cross arms, and related equipment and the process for prioritizing such repairs, and the schedule and procedure for inspecting and maintaining poles, cross arms and related equipment; (5) any information in PSNH's possession, indicating poles, cross arms, or related equipment that requires repair or replacement; (6) the known current state of PSNH's inventory of poles, cross arms, and related equipment; (7) the methods PSNH uses to manage risks associated with operating and maintaining its plant. The Safety Division shall file its report of this investigation with the Commission in this docket, at which time the Commission will determine whether any further action or process is necessary.

PSNH has the right to a hearing to show cause why the civil penalty should not be imposed. PSNH will carry the burden of proving the civil penalty should not be imposed. Unless PSNH agrees to pay the civil penalty by October 12, 2015, the hearing will be held as described below.

Based upon the foregoing, it is hereby

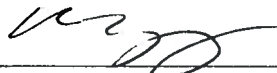
ORDERED, that a Hearing pursuant to N.H. Code Admin. Rules Puc 203.15 be held before the Commission located at 21 S. Fruit St., Suite 10, Concord, New Hampshire on October 30, 2015 at 1:00 p.m., at which PSNH will have the opportunity to show cause why the civil penalty should not be imposed as described above, and each other party will have an opportunity to respond; and it is

FURTHER ORDERED, that pursuant to N.H. Code Admin. Rules Puc 203.12, PSNH shall notify all persons desiring to be heard at this hearing by publishing a copy of this Order no later than October 5, 2015, in a newspaper with general circulation in those portions of the state in which operations are conducted, publication to be documented by affidavit filed with the Commission on or before October 27, 2015; and it is


FURTHER ORDERED, that consistent with N.H. Code Admin. Rules Puc 203.17 and Puc 203.02, any party seeking to intervene in the proceeding shall submit to the Commission seven copies of a Petition to Intervene with copies sent to PSNH and the Office of the Consumer Advocate on or before October 27, 2015, such Petition stating the facts demonstrating how its rights, duties, privileges, immunities or other substantial interest may be affected by the proceeding, as required by N.H. Code Admin. Rule Puc 203.17 and RSA 541-A:32,I(b); and it is

FURTHER ORDERED, that any party objecting to a Petition to Intervene make said Objection on or before October 30, 2015.

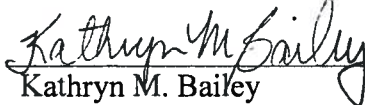
By order of the Public Utilities Commission of New Hampshire this twenty-fifth of September, 2015.



Martin P. Honigberg
Chairman



Robert R. Scott
Commissioner



Kathryn M. Bailey
Commissioner

Attested by:



Debra A. Howland
Executive Director

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the Americans with Disabilities Act Coordinator, NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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Docket #: 15-417-1 Printed: September 25, 2015

FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.
- c) Serve a written copy on each person on the service list not able to receive electronic mail.