REDACTED

STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

JOINT PETITION TO APPROVE POLE ASSET TRANSFER

DOCKET NO. DE 21-020

JOINT BRIEF OF PUBLIC SERIVCE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY AND CONSOLIDATED COMMUNICATIONS OF NORTHERN NEW ENGLAND COMPANY, LLC D/B/A CONSOLIDATED COMMUNICATIONS

I. Introduction

This Docket presents the New Hampshire Public Utilities Commission (the "Commission") with two important public policy questions: (1) given how the electric and telecommunications industries have evolved over the past 20+ years, is it now in the best interests of New Hampshire consumers and businesses to transfer the complete ownership of utility poles to the State's largest electric utility; and (2) if the answer is yes, then what is a fair price to be paid by the electric utility to the State's largest Incumbent Local Exchange Carrier for the transfer of these assets? The remainder of the issues raised in this Docket are minor in comparison.

Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource Energy" or the "Company") and Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications ("Consolidated" or "CCI") (together, the "Joint Petitioners") submit this brief in accordance with the Procedural Order established by the Commission at the May 10, 2022 evidentiary hearing (2022 May 10 Tr. at 99). In this brief, the Joint Petitioners demonstrate that Eversource Energy's acquisition of Consolidated's interest in certain utility poles is lawful, proper and in the public interest because the transfer of Consolidated's interest in the utility poles to Eversource Energy will result in electric grid reliability and operational benefits, with minimal impacts on customer bills, and is otherwise consistent with New Hampshire law.

None of the parties to this proceeding oppose the transfer of Consolidated's assets to Eversource based on the general recognition that there are benefits associated with the ownership of poles by the electric distribution utility (2022 May 10 Tr. at 101, 104, 106; see also Exh. 21, at Bates 000009). Thus, the entirety of the proceeding has been devoted to determining not whether Eversource Energy is the right pole asset owner but whether the net purchase price for the transaction is an appropriate net book value for the assets and what should be the appropriate cost recovery method for the transaction and resulting costs. As detailed below, the proposed net purchase price is representative of the asset value that will be acquired by Eversource and the cost recovery mechanism creates an appropriate balance between the Company's shareholders and its customers. Therefore, the Agreement should be approved together with the cost recovery mechanism proposed in the Company's November 15, 2021 filing, as revised in Exhibit 70.

II. Procedural Background

The Joint Petitioners submitted a joint petition to the Commission on February 10, 2021 (the "Joint Petition") requesting approval of a Settlement and Pole Asset Purchase Agreement executed by the Joint Petitioners on December 30, 2020 (the "Agreement"), through which Eversource is purchasing: (a) Consolidated's 50 percent joint ownership interest in and to the approximately 343,098 utility poles jointly owned with Eversource; and (b) Consolidated's 100 percent ownership interest in and to the approximately 3,844 utility poles that Consolidated solely owns in Eversource's service territory to which Eversource attached its electric facilities (together, the "Transferred Poles") (the "Transaction").[1] Pursuant to the Agreement and an Assignment of Pole Attachment Agreements, Licenses, and Property Rights, Consolidated is also assigning to

[1] Consolidated also solely owns utility poles in Eversource's service territory that do not contain any Eversource attachments. The Parties do not propose transferring any ownership interest in any utility poles in Eversource's service territory that do not contain Eversource's electric facilities (Exh. 19, at Bates 000001). The Parties also do not propose to transfer any ownership interest in Consolidated's "Dual Poles," as that term is defined in the Agreement.

Eversource the following rights as a licensor and its rights, title, and interest in and to the following licenses and property rights with respect to the Transferred Poles: (1) the rights to license attachments, including, but not limited to, the right to collect attachment fees from licensed attachers; (2) certain licenses relating to the Transferred Poles obtained pursuant to RSA 231:170 to erect poles within public highways; and (3) certain easements and/or licenses to construct, operate, and maintain its jointly-owned poles with Eversource on private properties (Exh. 66, at Bates 00003).

The Transferred Poles include the associated pole attachment revenues available from both Consolidated and third-party attachers. For Consolidated's pole attachments, Consolidated will pay Eversource $5.0 million per year in pole attachment fees for the first two years following the closing date of the Agreement (Exh. 67, at Bates 00003). Thereafter, the revenues for Consolidated's pole attachments will be subject to Eversource's pole attachment rates in effect for solely owned poles (id.). Upon acquisition of the Transferred Poles, the pole attachment agreements in place between Consolidated and current attachers will transfer to Eversource (id.). As a result, upon closing, Eversource will receive third-party attachment revenues directly from all other third-party attachers under the terms of the contracts that are currently in place with Consolidated (id.). The Agreement also includes a full and complete settlement of any and all disputes between the Joint Petitioners, including certain vegetation management costs paid by Eversource from 2018 through the date the Agreement was executed on December 30, 2020 (id.).

The Joint Petition also included a request from Eversource to recover the incremental property tax, incremental vegetation management expense, and net revenue requirement associated with the Transferred Poles through the Company's Regulatory Reconciliation Adjustment ("RRA") that was established in Eversource's most recent base rate proceeding, Docket DE 19-057 (Exh. 67, at Bates 000003). The Company's cost recovery proposal would have also created

a new component of the RRA to recover the net revenue requirement of the Transferred Poles (id.). The request for recovery of these costs was included to enable the Transaction and to allow Eversource to accomplish safety and reliability objectives in relation to the transferred pole inventory (id.).

The Office of Consumer Advocate ("OCA"), Department of Energy ("DOE"), and New England Cable and Telecommunications Association, Inc. ("NECTA") are parties to this proceeding.[2] On August 3, 2021, OCA filed a Motion to Dismiss arguing that the Joint Petition should be dismissed because Eversource's cost recovery proposal in the Joint Petition was precluded by the Settlement Agreement approved by the Commission in Docket DE 19-057. On August 13, 2021, NECTA filed a Motion to Compel requesting that Consolidated be directed to provide responses to two data requests that NECTA claimed were issued to elicit information about CCI's net book value for Transferred Poles as of December 31, 2020. NECTA's data requests sought the net book value for the Transferred Poles that would be reflected in ARMIS reports, if Consolidated had continued tracking the information submitted to the Federal Communications Commission in ARMIS reports submitted by Consolidated's predecessor, FairPoint Communications (NECTA Motion at 2-3). Specifically, NECTA requested an update to the 2017 FairPoint Communications ARMIS Report as of December 31, 2020 for the following categories: gross investment in poles, accumulated depreciation-poles, and depreciation rate-poles (id.). CCI had declined to respond to the data requests issued by NECTA because Consolidated had ceased filing ARMIS reports and in order to respond to the data requests would have had to create the data being requested.

[2] OCA filed its notice of participation on February 23, 2021. NECTA's March 29, 2021 petition to intervene was granted at the April 2, 2021 pre-hearing conference. The Department of Energy entered an appearance as the success to Commission Staff on July 6, 2021 pursuant to RSA 12-P:9.

The Commission issued Order No. 26,534 on October 22, 2021 directing the Joint Petitioners to propose a new recovery mechanism by November 15, 2021 and granting NECTA's Motion to Compel. The Commission denied OCA's motion to dismiss in part, reaching the conclusion that it could not reach a finding that there is no cost recovery mechanism, excluding capital costs, that would be acceptable to Eversource Energy. Order No. 26,534, at 9. The Commission directed Eversource to file a proposed cost recovery mechanism that would not be precluded by the DE 19-057 Settlement Agreement. Id. The Commission granted NECTA's Motion to Compel finding that although Consolidated did not possess the requested information, such information appeared relevant to the proceeding and could assist the Commission in its review. Id. at 10.

In response to Order No. 26,534 Eversource Energy filed a revised cost recovery proposal with the Commission on November 15, 2021 (Exh. 9). Exhibit 9 requested cost recovery through a new cost recovery mechanism referred to as the Pole Plant Adjustment Mechanism ("PPAM") and that would allow Eversource to recover the incremental costs resulting from the transfer of assets and maintenance responsibilities as identified in the Agreement, including capital costs. Also in response to Order No. 26,534, Consolidated provided the information requested by NECTA through discovery on December 6, 2021.[3] NECTA and DOE filed testimony on January 31, 2022. The Joint Petitioners filed rebuttal testimony on February 25, 2022.

The Commission held an evidentiary hearing on March 15, 2022. In response to further questions from the Commission at the March 15, 2022 hearing, Eversource Energy filed a further revised cost recovery proposal as Exhibit 70, as well as cash flow analysis relating to the proposed transaction as Exhibit 71. Exhibit 70 sets forth a revised cost recovery proposal pursuant to which

[3] The Commission's November 19, 2021 procedural order established a deadline of December 6, 2021 for Consolidated to submit its response to the data requests.

Eversource Energy proposed to remove all capital costs from its November 15, 2021 cost recovery proposal. Eversource agreed to wait to roll these capital costs into rate base until a future rate case proceeding[4] (Exh. 70, at Bates 000010; see also 2022 May 10 Tr. at 37-38). Exhibit 71 demonstrates:

> the cash flows resulting from this proceeding are negative from the outset, and the net present value to shareholders is negative in light of the fact that we are investing capital up-front and over time that is subject to regulatory lag, to be included in rates in the future, with a return on and of the investment only at that point. However, as described previously, the Company expects the transaction to result in improved service to its customers, more streamlined processes than exist today, and overall benefits to customers over the long term

(Exh. 71, at Bates 000002.)

The Commission held an additional evidentiary hearing on May 10, 2022 to allow cross-examination regarding the Company's updated cost recovery proposal. NECTA's Witness Patricia Kravtin was also subject to cross-examination at the May 10, 2022 hearing.[5] At the conclusion of the May 10, 2022 hearing, the Commission established a post-hearing briefing schedule.[6] This initial brief is submitted by the Joint Petitioners in response to that schedule.

III. Standard of Review

The Proposed Transaction is subject to review under the legal standard set forth in RSA 374:30:

---

[4] The Company's proposal for recovery of capital costs is not to defer these costs to a future rate proceeding but to roll-in all of these capital related costs at the time of the future rate proceeding for recovery on a going forward basis (2022 May 10 Tr. at 44-45). This means that the Company will not recover the capital related costs incurred from the time of closing to the date of a future base rate adjustment (id.).

[5] Ms. Kravtin experienced technical difficulties during the March 15, 2022 hearing during her direct testimony. NECTA filed a written copy of Ms. Kravtin's direct testimony as Exhibit 72 and the parties were provided with an additional opportunity to cross-examine Ms. Kravtin at the May 10, 2022 hearing.

[6] NECTA filed an unopposed motion for post-hearing briefs on March 9, 2022 that was granted by the Commission in its March 14, 2022 procedural order. Due to the need to schedule a second day of hearings, the briefing schedule was adjusted at the conclusion of the May 10, 2022 hearing.

> Any public utility may transfer or lease its franchise, works or system, or any part of such franchise, works, or system, exercised or located in this state, or contract for the operation of its works and system located in this state, when the commission shall find that it will be for the **public good** and shall make an order assenting thereto, but not otherwise, except that commission approval shall not be required for any such transfer, lease, or contract by an excepted local exchange carrier. The commission may, by general order, authorize a public utility to transfer to another public utility a part interest in poles and their appurtenances for the purpose of joint use by such public utilities.

RSA 374:30 (emphasis added).

The question of public good is not answered by looking only to the immediate interests of the public served by the companies involved in a transfer of property, but rather a question of what is reasonable taking all interests into consideration. See Grafton County Electric Light & Power Co. v. State, 77 N.H. 539, 94 A. 193, 195 (1915). The public good standard "is analogous to the 'public interest' standard . . . applied and interpreted by the Commission and by the New Hampshire Supreme Court." Consumers New Hampshire Water Company, 82 N.H. P.U.C. 814, *4 (1997) (applying RSA 374:30 standard to transfer from a prospective municipal water company to a prospective subsidiary of another water company) (citing Waste Control Systems, Inc. v. State, 114 N.H. 21 at 22, 23 (1974)). For acquisition cases, the Commission applies a "no net harm" test, rather than a "net benefits" test. Id. (citing In re Eastern Utility Associates, Inc., 76 N.H. P.U.C. 236, 252-253 (1991)). "The test requires a finding that a transaction is one not forbidden by law and is reasonably permitted under all the circumstances of the case," and, "based upon the totality of the circumstances, there is no net harm to the public as the result of the transaction." Id. (quoting Pennichuck Water Works, Inc., 77 N.H. P.U.C 708, 713 (1992)). Under this standard, the Commission should approve the transaction unless it finds that the transaction will have an adverse impact on the public. See id.; see also Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities, DG 16-770, Order No. 25,965 (2016) (finding asset purchase transaction

"will do no harm" to buyer or seller's ratepayers, "and in fact will offer significant potential benefits to both").

Moreover, in determining whether an asset transfer is in the public good, the Commission also assesses the managerial, technical, and financial expertise of the utility purchasing the assets. See, e.g., Abenaki Water Company, Inc., Docket No. DW 18-108, Order No 26,231, at 7-8 (Mar. 28, 2019); Hampstead Area Water Company, Inc., Docket No. DW 17-145, Order No. 26,153, at 4 (2018) (citing Lakes Region Water Company, Inc., Order No. 26,144 at 5; Lakes Region Water Company, Inc., Order No. 25,964 (November 10, 2016); and Liberty Utilities (Energy North Natural Gas) Corp. d/b/a Liberty Utilities, Order No. 25,987 (2017)). Thus, the Commission should also approve Eversource's purchase of the Transferred Poles because Eversource is managerially, technically, and financially capable of maintaining the obligations relative to the Transferred Poles.

IV. Discussion

A. The Proposed Transaction is in the Public Interest because it will Result in Reliability Benefits for Customers

Approval of the Agreement will transfer ownership of the Transferred Poles to the electric distribution company that is regulated by the Commission, has clear responsibilities following an outage event, and is fully committed to the State of New Hampshire. As evidenced by the closing statements in this proceeding, there is a general consensus that Eversource (as the electric distribution company) is the right entity to take ownership of the Transferred Poles (2022 May 10 Tr. at 101, 104, 106). Eversource agrees that is the appropriate owner of the Transferred Poles and entered into the negotiations with CCI to acquire the Transferred Poles because there will be benefits to customers (2022 Mar. 15 Tr. at 27, 128-129).

These benefits will accrue to customers on both "blue sky days" and following storm events (2022 Mar. 15 Tr. at 27-28). Eversource is an electric distribution company that delivers electricity

to its customers with the objectives of providing a service that is reliable, resilient and safe (id. at 28). Meeting these goals means that Eversource is always looking for ways to improve its systems, eliminate hazards, and increase customer satisfaction (id.). Sole ownership of the Transferred Poles will achieve these goals. Eversource's sole ownership of the Transferred Poles will achieve these goals through the following: (1) Eversource conducts a rigorous, proactive pole inspection program; (2) becoming sole owner of the poles will mitigate delays during restoration events; (3) setting poles for new customers can be expedited; and (4) Consolidated charges Eversource's customers for pole sets even when the customers do not purchase Consolidated's services (id. at 28-30; see also Exhs. 1, at Bates 000008 and Exh. 12, at Bates 000091)

As the provider of an essential service, Eversource replaces poles pursuant to a defined timeline if the poles fail inspection (2022 Mar. 15 Tr. at 28-29). Each year, Eversource inspects approximately ten percent of its pole infrastructure to determine the condition of wood distribution poles with the objective of replacing any poles that pose a risk to the integrity of the electric distribution system (Exh. 1, at Bates 000009; see also Exh. 24, at Bates 000001 and 2022 Mar. 15 Tr. at 134). This inspection program ensures the safety of Eversource's poles by confirming that the inspected poles meet the minimum strength requirements of the National Electric Safety Code ("NESC") (Exh. 1, at Bates 000009).

Subjecting the Transferred Poles to Eversource's proactive replacement program will provide benefits because when poles are not replaced following a failed inspection, the poles can continue to debilitate and weaken making the poles more likely to fail in bad weather (2022 Mar. 15 Tr. at 29; see also Exh. 1, at Bates 000009). Avoiding broken poles during bad weather means that customers save money and outage time because emergency pole replacements are not needed (id.). By becoming the sole owner, Eversource will also be able to avoid delays caused by the need to coordinate with a joint owner (id.). Eliminating this coordination need reduces outage

time and allows Eversource to address unsafe conditions in a more timely manner (id.; see also Exh. 12, at Bates 000066-67). This is particularly true following an emergency or outage event where Eversource is the first responder (Exh. 1, at Bates 000009). As a first responder, Eversource has on-call line workers and 24-hour response capabilities via troubleshooters that allow it quickly replace poles and potentially shorten the duration of outages (id. at Bates 000010).

As discussed below, these differences in storm response are partly attributable to the evolution of the telecommunications industry. Due to the evolution of technology and the prevalence of wireless communications rather than land-based communication, Eversource Energy's experience is that telecommunications companies that are joint pole owners no longer have urgent restoration pressure following a storm event (Exh. 69). Unlike electric customers who rely on and expect fast and efficient restoration of electrical service after a storm, telecommunications do not have the same expectations following a storm event (see id.). By approving the Agreement, Eversource Energy will become the sole ownership of the Transferred Poles and eliminate this tension following a storm event. This will result in real benefits to Eversource's customers, as discussed above.

In addition to these outage event benefits, there will be customer benefits associated with new customer connections (Exh. 1, at Bates 000012; see also 2022 Mar. 15 Tr. at 30-31). Under the current policies, customers in Consolidated's maintenance area who need a line extension to receive electric service are required to pay Consolidated for the costs of setting new poles in situations where the customer does not request Consolidated's service (id.). These costs are in addition to Eversource's line extension costs (id.). If the Transferred Poles become solely owned by Eversource, new customers in Consolidated's current maintenance area will no longer be required to pay this additional cost (id.).

While the above benefits are difficult to quantify and do not lend themselves to a "cost-benefit analysis," these benefits are real and support a finding that the proposed transaction is in the public interest (see, e.g., 2022 Mar. 15 Tr. at 88, 107-108). This is particularly true based on the minimal bill impacts associated with the Transaction. The bill impacts of this Transaction were minimal under the Joint Petition, as filed on February 10, 2021 (see Exh. 5, at Bates 000015[7]). These bill impacts have been further reduced through the revised cost recovery proposal submitted as Exhibit 70. For example, a comparison of Exhibit 8 and Exhibit 70 shows that total incremental revenue requirement in Year 1 following the Transaction decreases under the revised cost recovery proposal from $9.4 million to $3.8 million (see Exhs. 8 and 70, at Bates 000003). Thus, the Commission should find that approving Eversource's acquisition of the Transferred Poles is in the public interest because there will be no net harm to customers based on this minimal bill impact versus the real benefits identified above (2022 May 10 Tr. at 59-60).

B. The Purchase Price is Appropriate

The Commission should take note that the Joint Petitioners started their negotiations during March 2019 (Exh. 13, at Bates 000070.) and, nineteen (19) months later, finally signed the Agreement on December 30, 2020 (Exh. 4, at Bates 000001). It was a complex, difficult negotiation and, from the scope of the topics within the Agreement, the Joint Petitioners resolved extensive differences between them. Both parties compromised over this extended period of time and believed then (and now) that a negotiated settlement is in the bests interests of all parties involved in this Docket, including the Joint Petitioners' respective customers.

[7] Under the original cost recovery proposal, an average residential customer using 600 kilowatt hours per month would experience a $1.02 or 0.88 percent bill monthly bill increase in the first full year following Eversource's ownership of the Transferred Poles (Exh. 5, at Bates 000015). By the third year of Eversource's ownership, the monthly bill increase would be $1.22 per month or a 1.04 percent increase from current rates (id.).

The Agreement sets forth a negotiated purchase price for the Transferred Poles that represents the gross purchase price less a reduction for poles that failed inspection in the course of inspections completed by Consolidated during or prior to the Joints Petitioners' negotiations (Exh. 10, at Bates 000013 citing Exh. 12, at Bates 000087). The gross purchase price was reduced to reflect this credit for poles that failed inspection because Eversource will need to replace these poles at its own cost after taking ownership of the Transferred Poles (Exh. 10, at Bates 000013; see also Exh. 12, at Bates 000087). The gross purchase price of [redacted] was determined through the course of extended negotiations between the Joint Petitioners (Exh. 10, at Bates 000013) and nearly matched Consolidated's net book value at the time negotiations commenced.

Eversource was able to confirm that the gross purchase price is reasonable as it is the joint owner of 343,098 poles with Consolidated (Exh. 10, at Bates 000013). These jointly owned poles represent the majority of the poles that are the subject of this transaction (id.). Eversource therefore confirmed that it agreed to pay a reasonable amount for the transferred poles by comparing the gross purchase price to the Eversource net book value of the same jointly owned poles recorded on Eversource's financial statements (id. at Bates 000013-000014). The gross purchase price was less than half of the net book value for these same poles as of the date that the Joint Petitioners entered into the agreement (id. at Bates 000014; see also Exh. 12, at Bates 000070). This confirmed that the gross purchase price is a fair and reasonable price to pay for the Transferred Poles (id.).

The gross purchase price was adjusted to account for poles that failed during inspection to reflect the fact that Eversource will need to replace these poles post-closing; this adjustment resulted in the net purchase price (Exh. 10, at Bates 0000015). A comparison of this net purchase price to the net book value on Eversource's financial statements for its ownership interest in the

Transferred Poles provided further confirmation that the net purchase price is representative of what the Transferred Poles are worth based on their age and condition (see Exh. 12, at Bates 000070; see also Exh. 10, at Bates 000020-21). More specifically, the net purchase price is aligned with customer use of the Transferred poles (id. at Bates 000021).

The parties in this proceeding have suggested that the purchase price for the Transferred Poles should be based on the net book value of the Transferred Poles recorded on Consolidated's financial statements as of December 31, 2020 (per Ms. Kravtin) or December 310, 2021 (per Mr. Eckberg)[8] (see Exh. 21, at Bates 000006 and Exh. 39, at Bates 000013-14). However, Consolidated is a minimally regulated Excepted Local Exchange Carrier ("ELEC") under New Hampshire Law[9] (Exh. 10, at Bates 000014; see also Exh. 12, at Bates 000069). As a consequence of being a minimally regulated ELEC, Consolidated is not required to adhere to regulatory accounting requirements that are applicable to an electric distribution company for ratemaking purposes (Exh. 10, at Bates 000014; see also Exh. 12, at Bates 000069 and 2022 Mar. 15 Tr. at 84).

A rate regulated utility like Eversource is required to use a depreciation rate that is approved by the Commission based on a depreciation study (2022 May 10 Tr. at 45). Under the depreciation principles applicable to a regulated entity, Eversource records depreciation of pole plant over a 30-year period (Exh. 10, at Bates 000014). This 30-year period is intended to reflect

[8] NECTA has also attempted to challenge the net purchase price by alleging that the pole attachment rates calculated based on the net purchase price will result in excessive rates (Exh. 39, at Bates 000012). This argument is irrelevant to this proceeding because there is no proposal to change attachment rates or how attachment rates are determined in this proceeding (Exh. 10, at Bates 000023; see also Exh. 12, at Bates 000082). Attacher rates are determined through a separate, regulated process and should not be used as the basis for alleging that a net book value associated with the transaction is on its face unreasonable (Exh. 10, at Bates 000021-22). The net book value should be based on the value of the assets being transferred. It is also important to consider that any decrease in pole attachment rates for third-party attachers will result in increased costs for Eversource's electric distribution customers (Exh. 10, at Bates 000022; see also Tr. at 74-75).

[9] It is not disputed that Consolidated is not a regulated entity in the same way that Eversource is (2022 Mar. 15 Tr. at 261).

the useful life of the pole (2022 Mar. 15 Tr. at 53). By contrast, Consolidated has depreciated the plant associated with the Transferred Poles over a highly accelerated five-year period (Exh. 10, at Bates 000014). A five-year period is an extraordinarily shortened amortization period[10] (id.; see also Exh. 12, at Bates 000069). This mismatch in depreciation periods creates a mismatch in valuation of the Transferred Poles because by accelerating the depreciation, Consolidated has "broken" the nexus between the financial book value and the actual value of these assets[11] (Exh. 10, at Bates 000020; see also 2022 Mar. 15 Tr. at 264).

This is why, even though a rate regulated utility is not typically allowed to include amounts above the net book value of that asset in rate base, the net book value recorded on Consolidated's financial records is not appropriate for determining the value of the Transferred Poles (see Exh. 10, at Bates 000014-15). Because Consolidated's depreciation rate does not align with the useful life of the Transferred Poles, the value of the Transferred Poles is much higher than reflected on the financial records of Consolidated (id.; see also 2022 May 10 Tr. at 46). Using the extraordinarily short five-year amortization period for the Transferred Poles does not result in a determination that the Transferred Poles are actually old or in need of replacement (i.e., the five-year amortization period doesn't decrease the value of the Transferred Poles) (see 2022 Mar. 15 Tr. at 263). For this reason, Eversource should be permitted to record the net purchase price as the net book value on its financial records for the Transferred Poles because this net purchase price

[10] Consolidated used this extraordinarily shortened amortization period as a result of a management decision based on GAAP purchase accounting; this allowed Consolidated to minimize any potential accounting losses at the time of the sale that would arise from having a higher GAAP net book value (Exh. 12, at Bates 000069). As a result, the net book value recorded by Consolidated for the Transferred Poles does not reflect an amount paid (or not paid) by customers (id. at Bates 000070). The mismatch between the value of the Transferred Poles and CCI's recorded net book value is particularly stark when you consider that Consolidated has invested tens of millions of dollars in pole infrastructure since 2016 that is part of the Transferred Poles (2022 Mar. 15 Tr. at 53).

[11] It is important to note that the asset value used for tax accounting can differ from the value used for book accounting for both a regulated utility and a non-regulated utility (2022 Mar. 15 Tr. at 55). Therefore, any argument that Consolidated has benefited from the lower value of the assets with respect to tax liability is irrelevant to determining the appropriate net book value that Eversource should be permitted to record and recover from customers.

represents the *actual value* associated with the Transferred Poles[12] (Exh. 10, at Bates 000016; see also 2022 May 10 Tr. at 53).

There have also been suggestions in the proceeding, that the difference between the net book value recorded on CCI's books and the net purchase price should be treated as an "acquisition premium" (see Exh. 39, at Bates 000012). This "theory" has been offered by NECTA as a way to lower the rates of its members but is misguided (id.). The Agreement is a purchase agreement for an asset. As discussed above, for a regulated utility like Eversource Energy, the net book value of an asset recorded on its books is intended to reflect the "value" of such asset (2022 Mar. 15 Tr. at 54). This is different from when a *business* is acquired and a premium could be included in the purchase price to reflect "good will" associated with the transaction (2022 May 10 Tr. at 53). Here, the value of the transaction is intended to reflect the value of the assets in the same way that the cost of purchasing new poles would; there should be no difference in valuation of the Transferred Poles simply because they are being purchased from a non-regulated (or minimally regulated) ELEC (id.).

Further, this Transaction cannot be compared to a business acquisition because any savings that accrue will be reflected in Eversource's rates (2022 May 10 Tr. at 53-54). Eversource would never pay a vendor more for an asset than an asset is worth, and knows that doing so would make it so that it would not be able to recover such costs from customers (2022 May 10 Tr. at 53). This alignment of value and net book value is reflected by regulated utility depreciation rates. Specifically, depreciation rates for regulated utilities are set with the objective of allowing the

[12] Joint Petitioners also note that Section 4.4(c) of the Agreement includes a provision allowing the Joint Petitioners to termination the Agreement absent a regulatory approval that is "free and clear of all contingencies or conditions acceptable to the Parties and Seller's secured creditors, granting all necessary, final and non-appealable asset transfer and cost recovery approvals acceptable to Buyer, related to the sale of the Transferred Poles…" (Exh. 4, at Bates 000004; see also Exh. 14, at Bates 0000018 (stating that Consolidated is unlikely to move forward with the transaction if the net purchase price set forth in the Agreement is not accepted by the Commission)).

regulated utility to recover the costs it has invested in the asset; this is accomplished by setting depreciation rates that align with the expected useful life of the asset (2022 Mar. 15 Tr. at 265).

Finally, as discussed above, the gross purchase price was adjusted to reflect the results of a pole inspection process as part of the due diligence associated with the Agreement (see Exh. 12, at Bates 000087-88). This inspection process ensured that the net purchase price is supported by due diligence of the parties and provided another data point to support a determination that the net purchase price is reasonable. The Joint Petitioners' inspection process was extremely thorough and suggestions to the contrary are unfounded.[13] Consolidated hired Osmose Utility Services, Inc. ("Osmose") to conduct independent inspections of the utility poles (see Exh. 21, at Bates 000096). Osmose is a leading inspection company and has been in business since 1934. Eversource had utilized the same company for its independent pole inspections as well (Exh. 15 at Bates 000010, 1-5).

Upon inspection, if the pole was not suited for continued service due to defects it was either: (i) not tested further and simply reported as a rejected pole; or (ii) sounded and bored to determine whether or not it is a priority pole and was reported as a sound and bore reject. As applicable, poles were sounded from as high as the inspector can reach to the exposed ground line area in order to locate interior pockets of decay. Also if applicable, poles were bored with a 3/8" bit. Bore hole(s) were to be located at ground line and drilled at a 45º angle to a depth of the center line of the pole, and then plugged (Exh. 15, at Bates 000015-16).

[13] The Department of Energy suggested at the March 15 hearing that the inspection process was "minimally sufficient" and that "… perhaps…there could have been additional pole inspections…which might have helped more accurately pinpoint a failure rate." (2022 Mar. 15 Tr. at 277). This is not supported by any authority in the electric or telecommunications industry regarding standards for pole inspections (e.g., the Department of Energy fails to cite to the NESC as a basis for this conclusion). But "[t]o be admissible, . . . expert testimony must cross a threshold of reliability." Moscicki v. Leno, 173 N.H. 121 (2020), citing Stachulski v. Apple New England, LLC, 171 N.H. 158, 163 (2018). At the first stage, this reliability inquiry concerns the methodology and techniques used, not the reliability of the expert's conclusions. Baker Valley Lumber, Inc. v. Ingersoll-Rand Co., 148 N.H. 609, 615–16 (2002). As such, the Commission should disregard such unsupported conclusions.

Of the 346,992 utility poles being transferred from Consolidated to Eversource (Exh. 4 at Bates 000001), approximately 176,000 poles are in the Consolidated maintenance areas with the balance being in the Eversource maintenance areas. Osmose inspected in the Consolidated maintenance areas approximately 55,800 poles jointly owned with Eversource during fiscal year 2019 (Exh. 15 at Bates 000012, 18-20). During fiscal year 2020, Osmose inspected an additional 35,500 of the Consolidated maintained jointly owned poles (id. at 13, 1-3). This equates to 91,300 poles inspected (or 52% of the Consolidated maintenance poles). Of the Consolidated inspected poles, only 2,309 poles failed inspection for a failure rate of 2.53% (id. at 3-4).

In addition, Eversource follows a rigorous inspection process and annually inspects 10% of the poles in its maintenance areas (2022 Mar. 15 Tr. at 28, lines 14-24, and 29, lines 1-9; Exh. 2 at Bates 000009, 1-2). This means every single pole in the Eversource maintenance areas – 49.3% of the poles being transferred – has been inspected over the past 10 years. Poles that fail inspection are replaced; greatly reducing the probability that a pole will fail in service (id. at 9-14). The combined Eversource-Consolidated inspection process led to a total of over 262,000 poles inspected by an independent inspection company, which is 75.6% of the transferred poles.

It must also be remembered that Eversource inspects poles in Consolidated's maintenance areas. Eversource's team visually inspects the poles looking for above ground defects and National Electric Safety Code issues. (Exh. 15 at Bates 000014, 5-12, and 23 (response c.)) Eversource produces inspection reports documenting this process. With over 30,000 poles in the Consolidated maintenance areas visually inspected by Eversource, up to 290,000 of the poles proposed to be transferred to Eversource have undergone some sort of inspection process (nearly 85% of the poles). Thus the Commission should have confidence that the Joint Petitioners undertook extensive due diligence on the assets being transferred.

C. The Company has Proposed a Reasonable and Necessary Cost Recovery Mechanism

As detailed above, Eversource has revised its cost recovery proposal during the course of the proceeding to respond to concerns raised by the parties and the Commission. Eversource is requesting cost recovery for the proposed transaction because the revenue requirement established in its last rate proceeding, Docket No. DE 19-057, was based on a level of existing pole-related obligations that did not contemplate the incremental costs associated with assuming ownership of the Transferred Poles (Exh. 70, at Bates 000011). Moreover, the incremental revenues that will accrue to Eversource after the transaction will not be sufficient to cover these incremental costs (id.). Therefore, the Company is requesting cost recovery of (a) pole replacement operations and maintenance costs for replacement poles, (b) annual inspection costs for the Transferred Poles, and (c) incremental vegetation management expense all offset by (d) pole attachment revenue through the PPAM (id. at Bates 000016). The Company is also requesting the opportunity to include the capital costs associated with the Transferred Poles in its next rate proceeding (id. at Bates 000011).

A cost recovery mechanism in advance of a future rate proceeding is necessary because the Company's base rates assume a contribution for vegetation management from Consolidated that will cease post-closing (Exh. 70, at Bates 000013). Therefore, without additional recovery of vegetation management costs, the Company will be unable to perform the requisite level of vegetation management activity (id.). Future recovery of these costs through the PPAM or a rate proceeding will be subject to a full prudency review (Exh. 70, at Bates 000015; see also 2022 May 10 Tr. at 17-18). Therefore, the Company's request in this proceeding is that approval from the Commission would indicate approval of the net purchase price but that any post-closing capital additions would be subject to a prudency review just like any other capital additions made by the Company (id.; see also 2022 Mar. 15 Tr. at 78).

This revised cost recovery proposal should be approved by the Commission because it represents a significant savings to customers from the initial proposal in order to address the concerns of parties and the Commission during this proceeding while still providing Eversource with some rate support to facilitate the transaction. The removal of the capital related costs from the cost recovery proposal represents a $17 million reduction from the initial estimates provided in this proceeding (Exh. 70, at Bates 000002). This represents real costs absorbed by Eversource shareholders (id.; see also 2022 Mar. 15 Tr. at 76).

D. Settlement of the Outstanding Vegetation Management Costs is Appropriate and Benefits Customers

As detailed above, the Agreement includes settlement of any and all disputes between the Joint Petitioners including outstanding vegetation costs incurred by Eversource between 2018 and execution of the Agreement (Exh. 16, at Bates 000048). Settlement of the outstanding vegetation management costs is just one component of the total settlement reached between the Joint Petitioners. With respect to vegetation management costs specifically, the Joint Petitioners negotiated a reasonable settlement amount that recognizes the different objectives of each entity regarding vegetation management. This settlement of outstanding vegetation management costs has been an area of concern throughout the proceeding. OCA, in particular, has suggested that Eversource should have pursued litigation in lieu of settlement to ensure that Eversource is reimbursed for as much of the outstanding costs as possible (2022 Mar. 15 Tr. at 81). However, the balance of and resolution of all other issues wrapped into the Agreement suggest to the contrary.

The vegetation management settlement is just one component of the negotiations entered between the Joint Petitioners to reach the Agreement that is the subject of this proceeding. It is not realistic to believe that Consolidated would have agreed to resolve all of the other issues

between the Joint Petitioners while moving forward with time consuming and expensive litigation over vegetation maintenance. Similarly, Eversource considered the benefits of resolving all outstanding disputes with Consolidated through the Agreement; a comprehensive resolution mitigates the risks of future litigation and ensures recovery of vegetation management costs (see Exh. 12, at Bates 000001). Litigation provides no such guarantees.[14] Eversource is also cognizant that the notion that the Joint Petitioners should be equally responsible for vegetation management costs is not reflected in current operational realities.

The telecommunications industry has changed since joint ownership agreements ("JOAs") were first put in place by telecommunications and electric utilities to govern joint pole ownership/use (Exh. 69). When JOAs were first drafted and entered into, telecommunications companies (telephone companies) like Consolidated, telephone companies were fully regulated and non-competitive (id.). As a result, electric utilities and telephone companies were equally reliant on the same "hardware" to serve their customers (id.). These circumstances no longer exist because the telecommunications industry is deregulated and fully competitive (see id.; see also 2022 Mar. 15 Tr. at 195).

Telecommunications technology has also advanced significantly from the historical "hardware" model (Exh. 69). These changes mean that telecommunications companies like Consolidated rely on technology that is not dependent on utility poles except as means of attachment and that bearing the cost of maintaining the pole infrastructure is an unsustainable model in a competitive marketplace (Exh. 69). And, even where telecommunications companies are using technology that is dependent on poles, their facilities are far less susceptible to tree

[14] The Massachusetts Department of Public Utilities approved a settlement between Eversource's Massachusetts affiliate (NSTAR Electric Company d/b/a Eversource Energy) and Verizon to resolve a dispute regarding storm-related vegetation management cost sharing as a reasonable alternative to the uncertainty of litigation. NSTAR Electric Company and Western Massachusetts Electric Company each d/b/a Eversource Energy, D.P.U. 17-05 at 600 (2017).

damage further mitigating any benefits associated with a rigorous vegetation management program (2022 Mar. 15 Tr. at 204). This mismatch of need creates a disincentive for telecommunications companies to agree to share equally in the costs of pole maintenance, including vegetation management costs because there is no material benefit (Exh. 69; see also 2022 Mar. 15 Tr. at 189, 192). In contrast, Eversource realizes material benefits for its customers through a proactive vegetation management program. For these reasons, settlement of the outstanding vegetation management costs was efficient, appropriate and in the best interest of the Company's customers.

E. NECTA's Efforts to Reduce Consolidated's Pole Attachment Rates through this Docket should be Rejected

NECTA had advocated in this proceeding for a reduction in Consolidated's pole attachment rates in the event the Commission approves the transfer of the poles to Eversource (Exh. 72, Bates 000002, Exh. 39, Bates 00005 and 000017-018). Yet it is undisputed that NECTA itself has no pole attachments on the Transferred Poles (2022 Mar. 15 Tr. at 220, 14-16). It is further undisputed that NECTA has no pole attachment agreements with Eversource or Consolidated. (id. 14-24 and 221, 1-2). Only NECTA's *member companies* have such attachments and attachment agreements with Eversource and Consolidated (id.).

However, even assuming that NECTA is the right party to make this request, the Commission should not entertain any proposed changes to pole attachment rates as part of this proceeding. Pole attachment rates are beyond the scope of this acquisition proceeding and the Joint Petitioners have not included any requests to modify their current rates. Further, the pole attachment agreements between NECTA's members and Consolidated have governing law provisions and dispute resolution provisions (see, e.g., Comcast of Maine/New Hampshire, Inc., DT 20-111, Exh. 3 at Bates 28 and 29 (respectively)). These governing law provisions and dispute resolution provisions represent the appropriate forums and processes for resolving any disagreements regarding pole attachment rates.

The Commission has longstanding, clear administrative rules regarding the requirements for filing complaints. Puc 202 and 203; see also Comcast of Maine/New Hampshire, supra., DT 20-111. None of these requirements have been followed by the actual entities that are parties to the pole attachment agreements. Any potential change to the Consolidated pole attachments rates should occur by the parties to the contracts following the provisions set forth in their contracts to renegotiate or otherwise terminate their agreements. If that fails, each attaching entity has the right to follow the process outlined in the Commission rules to file a dispute. NECTA is in essence seeking to set aside tens of contracts it is not a party to and avoid the dispute process laid out in the PUC 1300 Rules through this transaction proceeding. NECTA's members have an appropriate avenue for relief and if necessary, could engage in a full Commission proceeding in compliance with the actual agreements and the Commission's administrative rules. The efforts of the attaching entities which happen to be members of NECTA to bypass their contractual requirements and the Commission's longstanding rules should be denied.

V. Conclusion

On balance, the record evidence in this docket demonstrates that the Agreement is in the public interest because, under the no net harm standard, there are real benefits to Eversource's customers and minimal bill impacts. Overall, the record evidence also demonstrates that the net purchase price set forth in the Agreement is appropriate and should be approved as the net book value recordable on Eversource Energy's books. The Joint Petitioners therefore respectfully request the Commission to approve the Joint Petition and allow Eversource to become the sole owner of the Transferred Poles. Finally, Eversource Energy requests that its cost recovery proposal, as revised in Exhibit 70 should be approved to allow cost recovery of the incremental operations and maintenance expense associated with the Transferred Poles until the Company's next rate proceeding.

Respectfully submitted as of June 3, 2022, by

Public Service Company of New Hampshire d/b/a Eversource Energy

By its attorney,

Jessica Buno Ralston
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, Massachusetts 02110
(617) 951-1400
jralston@keeganwerlin.com

and

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

By its Attorneys,

/s/ Patrick C. McHugh
Patrick C. McHugh
Consolidated Communications
770 Elm Street
Manchester, NH 02101
(603) 591-5465
Patrick.mchugh@consolidated.com

/s/ Sarah Davis
Sarah Davis
Consolidated Communications
5 Davis Farm Rd.
Portland, ME 04103
(207) 535-4188
Sarah.davis@consolidated.com

Certificate of Service

I hereby certify that on June 3, 2022, a copy of this brief has been electronically forwarded to the service list in this docket.

_____

Jessica Buno Ralston