

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

DE 21-020

EVERSOURCE ENERGY AND CONSOLIDATED COMMUNICATIONS

Joint Petition to Approve Pole Asset Transfer

Initial Brief of Department of Energy

Pursuant to the Commission's direction at hearing for the parties to submit initial briefs by June 3, 2022, and reply briefs by June 17, 2022, the Department of Energy (DOE) submits this initial brief to summarize its position regarding the joint petition (Joint Petition) filed by Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) and Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications (Consolidated) (collectively, the Joint Petitioners). The Joint Petitioners seek Commission approval for the acquisition by Eversource of full ownership of almost all utility poles located in Consolidated's service territory in New Hampshire, including poles currently jointly owned by the two Joint Petitioners and poles solely owned by Consolidated. The Joint Petitioners also seek approval of certain cost recovery mechanisms and rate treatment to be implemented by Eversource in connection with the proposed pole ownership acquisition.

For the reasons stated herein, the DOE does not believe the proposed acquisition would serve the public good and urges the Commission to reject the Joint Petition in order to protect Eversource ratepayers from adverse consequences related to the specific terms of the proposed transaction.

1. Applicable Legal Standard for Approval

The Joint Petitioners' proposed transaction would involve the transfer of partial or full ownership of utility assets from one public utility to another, and thus comes within the purview of RSA 374:30, I. That statutory paragraph provides as follows:

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.

The “public good” standard “is analogous to the ‘public interest’ standard . . . applied and interpreted by the Commission and by the New Hampshire Supreme Court.” *See Consumers New Hampshire Water Company*, 82 NH PUC 814, 817-818 (1997). In acquisition cases, the Commission has applied a “no net harm” test rather than a “net benefits” test in determining whether the relevant standard has been met. *Id.* (citing *In re Eastern Utility Associates, Inc.*, 76 NH PUC 236, 252-253 (1991)). That 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 that “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 NH PUC 708, 713 (1992)).

The DOE does not oppose electric utility acquisition, ownership, and maintenance of utility poles. Indeed, the DOE recognizes there may be significant benefits resulting from any such acquisition, in terms of emergency response, service restoration, and regular maintenance, all of which would serve to enhance system reliability. The DOE notes, however, that the Joint Petitioners have not been able to quantify those benefits. *See* Hearing Transcript March 15, 2022

(Tr. Day 1) at 105-109. It is rather the specific terms of the proposed transaction that make it unreasonable and inconsistent with the public good, in particular with respect to the gross and net purchase prices for the poles to be transferred and the parties' settlement of unpaid vegetation management expenses and other claims between them.

2. Purchase Price and Asset Condition Adjustment

With respect to the purchase price, witnesses have testified that the gross purchase price is too high and that the proposed adjustment for failed poles may be too low. In particular, DOE witness Eckberg and NECTA witness Kravtin both testified that the gross purchase price should be based on the net book value to Consolidated, with reference to the information set forth in Consolidated's updated "ARMIS" report. *See* Exhibit 22 at Bates 6-7 and 19; Exhibit 39 at Bates 12-14; Exhibit 72 at Bates 1-2. The Joint Petitioners conceded at hearing that the proposed pole asset purchase price was a negotiated amount that did not reflect either utility's net book value. *See* Tr. Day 1 at 58. Accordingly, there is a significant lack of clarity as to how net book value should be determined and whether it is even the appropriate benchmark for determining the value of the poles for purposes of the proposed ownership transfer transaction.

As recently recognized by the Commission, the gross and net purchase prices are "key terms in evaluating the value (and thereby the cost) of this transaction to Eversource's ratepayers, as well considering the alternative of maintaining the status quo, in determining whether the transaction meets the public good standard under RSA 374:30." Order No. 26,631 at 8. The net purchase price will have a direct impact on Eversource's customers as it will establish the capital asset value of the poles for future rate recovery purposes, as well as potentially affecting third party attachment fee levels in the future. In that context, the Joint Petitioners have

failed to carry their burden to establish that their negotiated gross purchase price is correct or even reasonable.

The Joint Petitioners also provide for an adjustment to the gross purchase price in a specified amount to account for poles that failed inspection and require replacement. Exhibit 3 at Bates 2 (Settlement and Pole Asset Purchase Agreement Section 2.1). Witness testimony at hearing called into question whether the amount of that adjustment is sufficient. For example, Eversource witnesses conceded that the actual cost of replacing failed poles likely would exceed the adjustment amount included in the purchase agreement. *See* Tr. Day 1 at 109-114.

Under these circumstances, the DOE believes the Joint Petitioners have not carried their burden to demonstrate the reasonableness of either the gross or the net pole asset purchase price. And the purchase price will have a direct impact on Eversource's customers as it will establish the capital asset value of the poles for rate recovery purposes, as well as potentially affecting third party attachment fee levels in the future. Therefore, the proposed transaction cannot be found to "be in the public good," as required for approval under RSA 374:30, I.

3. Vegetation Management Expense Settlement

The Settlement and Pole Asset Purchase Agreement also includes a provision in Section 2.2 whereby Consolidated would be relieved of millions of dollars in vegetation management expenses for which it has been billed or could have been billed by Eversource, in exchange for a specified amount of money that is effectively treated as an offset to the net purchase price payment. Exhibit 3 at Bates 2. That provision is characterized by the Joint Petitioners as a "full and complete settlement and satisfaction" of any and all disputes between them, including those related to vegetation management expense amounts payable under their Joint Ownership/Use Agreement and related Intercompany Operating Procedures. *Id.*

But the nature and validity of any such disputes have not been explained by the Joint Petitioners in any way that would permit the Commission to determine that the settlement amount is just and reasonable. *See* Tr. Day 1 at 91, 99-101. The amount of vegetation management expenses that would have been paid by Consolidated, in the absence of the settlement provision, from 2021 through the transfer of pole asset ownership is estimated to be approximately \$8.3 million for 2021 plus additional accrued but unpaid amounts for 2022 through the date of closing of the transaction, if it occurs. *See* Exhibit 68 (showing total actual expenses for 2019 through 2021); Hearing Transcript May 10, 2022 (Tr. Day 2) at 28-30. And Eversource has made clear it will seek to recover from its ratepayers the full amount of any expenditures it has made for vegetation management from January 2021 through the date of closing, if it occurs, that Consolidated will not pay for as a result of the settlement terms. Tr. Day 2 at 28-30.

In effect, Eversource customers would be asked to pay a substantial amount for expenses that Consolidated was obligated to pay, but did not pay and will not have to pay as a result of the proposed settlement terms. The settlement provision embedded in the proposed transaction therefore would have a significant adverse impact on Eversource's customers. Once again, the Joint Petitioners have not carried their burden to show that the proposed transaction meets the "public good" standard under RSA 374:30, I.

4. Conclusion

For the reasons set forth above, the Joint Petitioners have failed to demonstrate that the proposed pole asset purchase transaction would be in the public good. While it may be a good deal for Consolidated, a largely unregulated public utility, it is not a good deal for the customers of Eversource, a fully regulated public utility. And it is those electric utility customers who will

bear the adverse consequences of gross and net purchase prices that are too high and a vegetation management expense settlement that shifts to Eversource an unreasonable share of costs that should have been paid for by Consolidated, in each case leading to higher future electric rates for Eversource customers.

The Commission therefore should find that the Joint Petitioners' proposed transfer of poles from Consolidated to Eversource is not for the public good, and their Joint Petition for approval of that proposed transaction should be rejected.

Respectfully submitted,

N.H. DEPARTMENT OF ENERGY

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CERTIFICATE OF SERVICE

I hereby certify that I have this day electronically served a copy of this filing upon each party on the official Service List maintained by the Commission for this proceeding.

Dated at Concord, New Hampshire, this 3rd day of June, 2022.

/s/ David K. Wiesner

David K. Wiesner, Esq.