STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

JOINT PETITION TO APPROVE POLE ASSET TRANSFER

DOCKET NO. DE 21-020

REPLY BRIEF OF PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY

Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource" or the "Company") submits this reply brief pursuant to the procedural schedule established by the New Hampshire Public Utilities Commission (the "Commission") at the May 10, 2022 evidentiary hearing in this proceeding (2022 May 10 Tr. at 99). In this reply brief, Eversource responds to the initial briefs filed by the Department of Energy ("DOE"), the Office of Consumer Advocate ("OCA"), and the New England Cable and Telecommunications Association, Inc. ("NECTA"). Each of these parties opposes approval of the transaction that is the subject of this proceeding *despite a general consensus that Eversource is the appropriate entity for ownership of the pole assets*. As detailed below, the Commission should approve the petition filed in this proceeding requesting approval for Eversource to acquire and recover the costs associated with acquisition of Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications' ("Consolidated" or "CCI") interest in certain pole assets; in reaching this conclusion, the Commission should accept the extensive evidence presented in this proceeding that supports a finding that the proposed transaction will provide benefits to the Company's customers with minimal bill impacts.

The terms of the agreement between Eversource and CCI (together, the "Joint Petitioners") are set forth in the Settlement and Pole Asset Purchase Agreement executed 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"). This proceeding has focused almost exclusively on two terms included in the Agreement: (a) the net purchase price; and (b) the vegetation management settlement between the Joint Petitioners. The record in this proceeding supports a determination that both terms are reasonable and part of an Agreement that provides benefits to Eversource customers.

I. Discussion

The Company responds to each of the arguments raised by the intervenors in detail below. It is important for the Commission to review these arguments within the framework of the applicable standard of review that authorizes the Commission to approve the Transaction based on a determination that Eversource's acquisition of the Transferred Poles is in the public interest. RSA 374:30. As set forth in the Joint Petitioners' Initial Brief, the question of public good is not answered by looking only at 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 (Joint Petitioners' In. Br. at 7, citing Grafton County Electric Light & Power Co. v. State, 77 N.H. 539, 94 A. 193, 195 (1915)). For acquisition cases, the Commission applies a "no net harm" test, rather than a "net benefits" test (id. citing Consumers New Hampshire Water Company, 82 N.H. P.U.C. 814, *4 (1997)).

The arguments presented by the parties that are responded to below are attempts to distract the Commission from the relevant issues in this proceeding and the applicable standard of review. Section IV(A) of the Joint Petitioners' Initial Brief detailed the reliability benefits expected to accrue to Eversource customers from this Transaction through (1) Eversource's rigorous, proactive

pole inspection program; (2) mitigation of delays during restoration events; (3) the ability to expedite setting poles for new customers; and (4) elimination of pole set charges to customers not requesting Consolidated's services (see, e.g., Joint Petitioners' In. Brief at 8-9 citing 2022 Mar. 15 Tr. at 28-30 and Exhs. 1, at Bates 000008 and Exh. 12, at Bates 000091). When compared to the minimal bill impacts associated with the Transaction, it is clear that these benefits support a finding that the Transaction is in the public interest and results in no net harm (see Exh. 5, at Bates 000015[1]).

A. Response to the Department of Energy

Despite agreeing at hearings that "[t]here may be significant benefits to [electric utility] ownership, in terms of operation, maintenance, and perhaps enhanced reliability" (2022 May 10 Tr. at 106), the Department of Energy concludes in its initial brief that the proposed transaction should not be approved based on two incorrect conclusions: (1) the purchase price is not "correct or even reasonable;" and (2) Eversource customers will be asked "to pay a substantial amount of expenses that Consolidated was obligated to pay" (DOE In. Br. at 4, 5). Neither of these arguments is persuasive when the extensive record in this proceeding is taken under consideration.

As an initial matter, the purchase price for the proposed transaction has been the central issue of this proceeding and the Joint Petitioners have produced unambiguous evidence that supports a determination that the net purchase price is "correct" and more than reasonable (Joint Petitioners In. Br. at 12, citing Exh. 10, at Bates 000013-14 and Exh. 12, at Bates 000070).

[1] 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.). 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).

Specifically, the net purchase price is based on a gross purchase price that is less than half of the net book value for the same jointly owned poles as recorded on Eversource's financial statements at the time the Agreement was executed (id., citing Exh. 10, at Bates 000013 and Exh. 12, at Bates 000070). The gross purchase price was further reduced to account for poles that failed during inspection to reflect that fact that Eversource will have to incur costs to replace those poles post-closing (id. citing Exh. 10, at Bates 000015).

Nevertheless, DOE argues that "[t]he 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" (DOE In. Br. at 3, citing 2022 Mar. 15 Tr. at 58). This statement is misleading. It is true that the purchase price is a negotiated amount (2022 Mar. 15 Tr. at 58; Exh. 10, at Bates 000013). The majority of the transferred poles are jointly owned by Eversource and Consolidated; it is therefore reasonable and appropriate to rely on the net book value recorded on the Company's books for these assets as an indicator of reasonableness. In fact, the net purchase price is less than half of the net book value of transferred poles as recorded on the financial records of Eversource (Exh. 10, at Bates 000014). DOE's Initial Brief ignores this evidence and *no party* to this proceeding has been able to point to any reason for why the net book value for fifty percent of the Transferred Poles should be substantially different simply because the Company is acquiring the poles from Consolidated.

Instead, it appears that the parties to this proceeding are trying to impose their own business judgment into the Agreement by pointing to Consolidated's accounting practices as evidence that Eversource should have negotiated a different purchase price (see, e.g., NECTA In. Br. at 13; OCA In. Br. at 8). In support of these arguments, the parties to this proceeding have relied on data that CCI was compelled to create (but does not itself rely on) and that reflects an accelerated depreciation rate used to minimize accounting losses (see OCA In. Br. at 5-6; see also Joint

Petitioners In. Br. at 14, fn. 10, citing Exh. 12, at Bates 000069 (stating that Consolidated has used an accelerated depreciation rate to minimize accounting losses at the time of the sale)). The focus on this data that reflects an aggressive depreciation rate for the Transferred Poles has led the parties, including DOE, to conclude that the net purchase price is not reasonable.

This conclusion has been reached because the parties are not asking the correct question. The correct question regarding the purchase price is whether the purchase price is reasonable in light of the *value* that the Transferred Poles will provide to Eversource customers because it is Eversource customers who will pay for these assets. If the Transaction is approved, Eversource will record a value for the Transferred Poles on its books equal to the amount that Eversource pays for the assets. As the joint owner of the majority of the Transferred Poles, Eversource is well situated to determine this value and there is nothing in the record to suggest that the value assigned to the Transferred Poles through the extensive negotiation that took place leading up to the Transaction. For these reasons, the Commission should find that the purchase price is reasonable.

DOE's second argument is that the vegetation management settlement reached between Eversource and Consolidated will inappropriately shift costs that should have been paid by Consolidated to Eversource ratepayers (DOE In. Br. at 4-5). This argument again ignores the evidence in the record. The Joint Petitioners engaged in the negotiations that led to the Agreement to resolve ongoing disputes including disputes regarding vegetation management costs (Joint Petitioners' In. Br. at 19 citing Exh. 16, at Bates 000048). These disputes regarding responsibility for vegetation management costs result, in part, from the emerging differences between the electric distribution and telecommunication industries. Notably, the DOE's Initial Brief questions the prudence of the vegetation management settlement without referencing the Company's thorough explanation set forth in Exhibit 69.

In Exhibit 69, Eversource explained that the telecommunications industry has changed since joint ownership agreements ("JOAs") between electric utilities and telecommunications companies were put in place (Exh. 69). The Company has explained that when JOAs were first drafted and entered into, telecommunications companies (telephone companies), were fully regulated and non-competitive (id.). Accordingly, at that time, electric utilities and telephone companies were equally reliant on the same "hardware" to serve their customers (id.). This is no longer true. The telecommunications industry is now deregulated and fully competitive (id.). The Telecommunications technology has also advanced significantly from the historical "hardware" model and, as a result, bearing the cost of maintaining the pole infrastructure is an unsustainable model in a competitive marketplace for telecommunications companies (id.). Because CCI and other communications providers rely on technology that is not dependent on utility poles, except as a means of attachment, telecommunications providers strenuously assert that they receive no material benefit from the proactive vegetation management activities undertaken by Eversource to protect service to electric customers (id.).

This change in circumstances is critical to understanding the context for the settlement discussions between the Joint Petitioners and resulting agreement regarding vegetation management costs. The parties to this proceeding have suggested that the only appropriate recourse for the Company was to follow the dispute resolution provisions in the operating agreement between the Joint Petitioners including formal litigation, if necessary (see OCA In. Br. at 12[2]). This suggestion is inappropriate for several reasons that have been presented in the record.

[2] OCA, in particular, has been vocal regarding its position that Eversource should have instituted a formal litigation proceeding in response to disputes with CCI regarding vegetation management costs (see, e.g., 2022 Mar. 15 Tr. at 81; see also OCA In. Br. at 12). OCA has pointed to the New Hampshire Electric Cooperative ("NHEC") as an example of an entity that has pursued litigation arguing that when an entity such as NHEC has no shareholders to enrich, these disputes end differently (id.). And, in support of this contention OCA has pointed to Exhibit 26 which is an order issued in the NHEC lawsuit against CCI. OCA's reliance on Exhibit 26 is overstated; Exhibit 26 is an order denying summary judgment to Consolidated but is not a final resolution of that lawsuit (Exh. 26). If anything, this Exhibit is proof that the settlement could avoid litigation of each JOA term in favor of a global resolution (see id.

First, litigation presents its own risks to the Company and its ratepayers without any guarantee that Eversource will recover an amount greater than the settlement (see Exh. 12, at Bates 000001). Second, these criticisms ignore the Company's business decision to reach an agreement with CCI that would provide the Company and its customers with more control and certainty going forward (see id.). The alternative to approving the proposed transaction would be for the Joint Petitioners to continue on a similar path including the potential for ongoing vegetation management disputes. No party to this proceeding has presented any evidence that would support a determination by the Commission that such an option is in the best interest of customers or would result in lower costs to customers.

B. Response to the Office of Consumer Advocate

The OCA's initial brief makes similar arguments to those presented in the initial brief of DOE regarding the purchase price and vegetation management settlement that are responded to above. In addition to simply arguing that the purchase price is excessive, OCA also argues that because Consolidated has fully depreciated the Transferred Poles the Commission must reach the conclusion that the Transferred Poles were already paid for by customers (OCA In. Br. at 6-7). This argument is flawed for two reasons. One, the depreciation rate applied by Consolidated is not tied to the useful life of the Transferred Poles, nor is it the result of a PUC approved depreciation study, as is the case for rate regulated utilities, and therefore is not reflective of the value paid by customers (see Exh. 10, at Bates 0000020). Second, even assuming that this conclusion was accurate it would apply only to CCI customers and not Eversource customers. Eversource customers have not paid for the Transferred Poles through Eversource rates, since,

at 5 (e.g., the parties required a Court determination for the contract termination date as an initial matter before a larger resolution could be reached)). Further, NHEC is not a party to this proceeding and therefore, NHEC's reasons for pursuing litigation in lieu of settlement is mere speculation by the parties.

prior to execution of the transaction, there would not be any value associated with CCI's assets on Eversource's books. The Company and its customers should pay an amount for the poles that reflects the value of the poles which are in service today and will continue to be in service to customers after the closing of the transaction. This is appropriate under regulatory depreciation principles and also because customers will receive the benefit of these poles over the course of their useful life (see, e.g., 2022 Mar. 15 Tr. at 265).

OCA's final argument is to recommend that the Commission support institution of an eminent domain proceeding by Eversource as a means to determine the fair market value for the Transferred Poles (OCA In. Br. at 16). While OCA alleges that an eminent domain proceeding is the "obvious answer" to the Joint Petitioners' request, this conclusion is actually at odds with the OCA's position in its initial brief (OCA In. Br. at 15). In order to agree that an eminent domain proceeding is warranted the Commission would need to reach the conclusion that the proposed transaction is "**necessary**, in order to meet the reasonable requirements of service to the public…" RSA 371:1 (emphasis added).

It is peculiar that the OCA would argue that the solution to this proceeding is to institute a proceeding that requires a finding of necessity when OCA will not even concede that there are benefits associated with the proposed transaction (OCA In. Br. at 13). OCA argues that Eversource is supporting the transaction based on "trust me" reliability benefits that are not supported by the record (OCA In. Br. at 13). OCA's allegations that these benefits are not supported is apparently due to the Company's admitted difficulty in quantifying these benefits (id.). However, contrary to this assertion, the benefits associated with this Transaction are real, even if difficult to quantify. And, it seems reasonable to conclude that if OCA believes that these benefits are such that it has become "necessary" for Eversource to take CCI's interest in the Transferred Poles as is required to support an eminent domain proceeding, then it follows that the operational, maintenance and

reliability benefits advanced by Eversource meet the no net harm threshold. It would not be reasonable to conclude otherwise.

C. Response to the New England Cable and Telecommunications Association, Inc.

NECTA's initial brief argues that the proposed transaction must not be approved unless certain conditions are imposed by the Commission to avoid alleged harm to NECTA's members. NECTA summarizes a subset of recommendations on pages 10-11 of its initial brief that were previously set forth in Exhibit 28 and that Eversource specifically responded to in its rebuttal testimony (Exh. 10). The Company has agreed to many of these recommendations as set forth in its rebuttal testimony; certain requests by NECTA (e.g., recommendation 2) have been agreed to by the Company in principle but are subject to proposed modification in order to ensure that the Company can accommodate NECTA's objective (Exh. 10, at Bates 0008-000012). Eversource's agreement to satisfy these recommendations consistent with its rebuttal testimony remains unchanged should the Transaction be approved.

The second category of recommendations set forth by NECTA focuses on third-party pole attachment rates following closing of the Transaction. First, NECTA alleges that the Company seeks recovery of an acquisition premium associated with the Transaction that should not be included in the calculation of pole attachment rates (NECTA In. Br. at 12). As explained in the Joint Petitioners' Initial Brief there is no acquisition premium associated with the Transaction (Joint Petitioners' In. Br. at 15). The Agreement is a purchase agreement for an asset; the net book value of an asset that will be recorded on the Company's books is intended to reflect the value of the asset (id. citing 2022 Mar. 15 Tr. at 54). As discussed above in response to the initial brief of DOE, the net purchase price reflects a reasonable valuation for the poles for these purposes.

The Company has also explained that this Transaction cannot be compared to a transaction where one utility acquires another utility (e.g., Aquarion Water Company's recent acquisition of

Abenaki Water Company that NECTA cites to as an example of a transaction where the acquiring entity did not seek recovery of an acquisition premium) (Joint Petitioners' In. Br. at 15-16; see also Exh. 10, at Bates 000020-21). When an entire *business* is acquired (as was the case with the acquisition of Abenaki Water Company), good will associated with the transaction may be reflected in the total purchase price through an acquisition premium (Joint Petitioners' In. Br. at 15, citing 2022 May 10 Tr. at 53). No such good will accompanies the acquisition of a single asset, or set of assets, as is the case in this Transaction. Eversource is not acquiring any part of Consolidated's business or associated "good will." Eversource is agreeing to pay CCI an appropriate value for an asset based on the age and condition of the asset (Exh. 10, at Bates 000020). As a result, NECTA's attempts to compare this transaction to a utility acquisition transaction are not compelling and should be rejected by the Commission.[3]

NECTA's initial brief concludes by attempting to use this proceeding as substitute for a pole attachment rate dispute proceeding. NECTA attempts to expand the scope of this proceeding by alleging that the pole attachment rates currently charged by Eversource and CCI should be reduced and recommending that adjustments to these rates should be a condition of the Transaction's approval (NECTA In. Br. at 16-23). This is an inappropriate expansion of the scope of this proceeding that should not be entertained by the Commission. The issues of the value of the assets being acquired under consideration in this proceeding and attacher rates must be separated.

Neither Eversource nor Consolidated has requested a change in their third-party pole attachment rates in this proceeding. Instead, Eversource has committed to maintaining the current billing framework applicable to the Transferred Poles until such time that the transaction is

[3] NECTA also ignores Aquarion Water Company's agreement to forgo recovery of any acquisition premium as part of a global settlement agreement reached regarding its acquisition of Abenaki Water Company.

reflected in Eversource's FERC Form 1, which would be used to calculate Eversource's pole attachment rate (see Exh. 10, at Bates 000023). This allows for certainty to third-party pole attachers following closing of the Transaction and will provide an opportunity for a separate hearing where the Commission can investigate pole attachment rates (id.). Attacher rates are determined through a separate, regulated process.

A separate proceeding to determine whether any adjustment to the pole attachment rates is appropriate is necessary because any decrease in the pole attachment rates charged to NECTA members would result in a cost shift to Eversource's other customers (Exh. 11, at Bates 000022). Because adjustments to the pole attachment rates are beyond the scope of this proceeding there is insufficient evidence before the Commission to conclude that an increase in the rates of Eversource's distribution customers is warranted and reasonable. As a result, the Commission should reject NECTA's efforts to expand the scope of this proceeding to reduce its own pole attachment rates. As explained by NECTA in its own Initial Brief, there is a process outlined in the agreements between Consolidated and NECTA's members, and there are also applicable Commission rules that allow for a challenge to these rates (NECTA In. Br. at 16 citing Exhs. 51 and 63, Puc 1304.03 and 1304.5). NECTA has not followed the very procedures to which it cites and therefore no changes to Eversource's or Consolidated's existing pole attachment rates are appropriate in this proceeding.[4]

Finally, NECTA takes issue with the negotiated pole attachment rates that will be charged to Consolidated by Eversource during the first two years following closing of the Transaction alleging that because these pole attachment rates differ from the rates charged to other third-party

[4] NECTA notes that it has initiated the process and will file a petition with the Commission for resolution of the dispute if it cannot resolve same with CCI (NECTA In. Br. at 29-21, citing Exh. 64). There is no reason to bring this separate process into the instant proceeding.

attachers, they must be discriminatory (NECTA In. Br. at 17). It is true that the rates will differ but it is not true that the rates are discriminatory; the rates that will be charged to CCI reflect that Consolidated is differently situated from other third-party attachers. CCI is the current joint owner of the Transferred Poles and as a joint owner, Consolidated has incurred costs related to the Transferred Poles that are not incurred by third-party attachers (Exh. 12, at Bates 000081). For this reason, it is not unreasonable or discriminatory to apply a different attachment rate for an interim period following the closing the Transaction. There were also practical reasons for entering into a flat fee arrangement as part of the Agreement. Specifically, the Joint Petitioners determined a flat pole attachment fee for the two years following the closing the Transaction based on an inability to charge a per attachment rate pending completion of an attachment survey (see Exh. 12, at Bates 000080; see also Exh. 10, at Bates 000024 and 2022 Mar. 15 Tr. at 122). By negotiating a flat fee based on an estimated number of attachments, the Joint Petitioners were able fully resolve all issues between them to facilitate the Agreement (id.). This approach was reasonable and appropriate, particularly as part of a larger settlement negotiated between the Joint Petitioners.

II. Conclusion

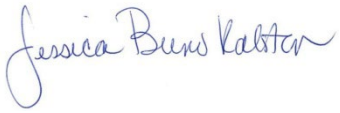
On balance, the record evidence in this docket demonstrates that the Agreement is in the public interest because, under the no net harm standard, there are real benefits to Eversource's customers and minimal bill impacts. Overall, the record evidence also demonstrates that the net purchase price set forth in the Agreement is appropriate and should be approved as the net book value recordable on Eversource Energy's books. Eversource therefore reiterates its request for 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 17, 2022, by

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

By its attorney,



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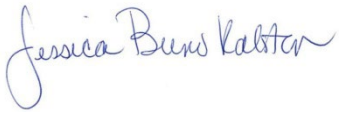
Certificate of Service

I hereby certify that on June 17, 2022, a copy of this brief has been electronically forwarded to the service list in this docket.



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