

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

Public Service Company of New Hampshire and  
Consolidated Communications of Northern New England Company, LLC

Joint Petition to Approve Pole Asset Transfer

Docket No. DE 21-020

**Reply Brief of the Office of the Consumer Advocate**

Pursuant to the briefing schedule adopted by the Commission at hearing on May 10, 2022, the Office of the Consumer Advocate (“OCA”), in its capacity as the RSA 363:28 representative of residential utility customers, submits the following reply brief in response to the initial brief of the Petitioners (“Consolidated-Eversource-Brief”) filed on June 3, 2022.

In light of the initial briefs submitted on June 3 by the OCA, the Department of Energy (“Department”), and the New England Cable and Telecommunications Association (“NECTA”), little need be said in response to the Consolidated-Eversource Brief. The arguments and references to facts of record contained in the initial brief of the OCA are incorporated herein by reference. However, the effort by the Petitioners to sow confusion about the applicable legal standard requires clarification in response.

The OCA accepts the representation of the Petitioners that the appropriate legal benchmark is the “public good” standard contained in RSA 374:30, I covering

the transfer by a “public utility” of, *inter alia*, “any part of . . . [its] franchise, works, or system.” However, as noted in the OCA’s initial brief, because Petitioner Consolidated Communications of Northern New England Company, LLC (“Consolidated”) is an “excepted local exchange carrier” within the meaning of paragraph II of RSA 374:30, Commission approval of this transaction is not actually required. Therefore, this proceeding is properly regarded as an effort by Petitioner Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) to insulate itself, for rate recovery purposes, from possible prudence disallowances in the future associated with the transfer to Eversource of Consolidated’s interest in the utility poles within the Eversource service territory in New Hampshire.

Given that context, it is regrettable that the Petitioners have attempted to confuse the Commission with misleading references to prior RSA 374:30 determinations. Page 7 of the Consolidated-Eversource Brief refers to certain dockets in which the Commission (rather than the New Hampshire Supreme Court) has applied a “no net harm” standard in determining whether the outright acquisition of one New Hampshire public utility by another meets the “public good” requirement of RSA 374:30. The New Hampshire Supreme Court has never endorsed “no net harm” (as distinct from an affirmative showing of net benefits) as the legal standard in such cases . This is important because, although the Commission must apply New Hampshire law as determined by its final arbiter, the state’s highest court, the Commission is not bound by its own precedents. Moreover, *Eastern Utilities Associates*, 76 NH PUC (1991), cited by the Petitioners

in support of the proposition that, in acquisition cases, “the Commission applies a ‘no net harm’ test rather than a ‘net benefits’ test, actually does not stand for such a proposition because the Commission’s embrace of the “no net harm” test is *dicta*. See *Eastern Utilities Associates*, 76 NH PUC at 253 (rejecting what was a proposed hostile takeover bid of an electric utility based on *either* standard because ratepayers “will sustain a ‘net loss’ from the takeover”).

We belabor the point here because, regardless of how the Commission would treat the proposed sale of a utility, in the circumstances of this case it *is* appropriate for the Commission expect the petitioners to demonstrate net benefits to ratepayers in order to bless the proposed sale of pole assets with assurances that Eversource can recover the resulting costs in rates. The Petitioners have not made such a showing, for the reasons stated in the OCA brief as well as those of the Department and NECTA.

With respect to ratepayer benefits, the Petitioners invoke euphemisms – “difficult to quantify” and not conducive to “cost-benefit analysis,” Consolidated Eversource Brief at 11, when the reality is that they have failed to meet their burden of proof. They ask, in effect, for the Commission to credit speculation about reliability and responsiveness to customer requests while authorizing the recovery of a lavish purchase price. They scoff at NECTA’s analysis – which suggests Eversource has agreed to pay an acquisition premium to Consolidated – because, they stress, the instant situation is “different from when a business is acquired,” *id.* at 15, even as they suggest within the same brief that the Commission should rely

on prior orders of the agency covering precisely such an acquisition transaction. Desperate times require desperate arguments.

Neither the Consolidated-Eversource Brief, nor any testimony provided by their witnesses at hearing, even begin to explain the basis for the gross purchase price of the assets or the basis for the adjustment to that price to account for their settlement of their vegetation management dispute. They merely offer bromides about what a “complex, difficult negotiation” it was, *id.*, at 11, and the desirability of avoiding “the risks of future litigation,” *id.* at 20. If this were a settlement between two unregulated firms, a neutral decisionmaker (i.e., a judge pondering the dismissal with prejudice of a civil lawsuit) could and would just shrug and tell the parties that the tribunal is happy if the parties are happy. Here, both parties are happy at ratepayer expense, Eversource essentially having abdicated its implicit responsibility to negotiate on behalf of its customers. The excuse Eversource proffers – that Consolidated would never have agreed to anything that would be more reasonable from the perspective of Eversource’s captive ratepayers – cannot form the basis of an RSA 374:30 “public good” determination.

For the foregoing reasons, and for the reasons stated in the initial brief of the Office of the Consumer Advocate, the Commission should reject the petition that is the subject of this proceeding.

WHEREFORE, the OCA respectfully request that this honorable Commission:

- A. Deny the joint petition of Public Service Company of New Hampshire and Consolidated Communications of Northern New England

Company, LLC for approval of the transfer of certain utility pole assets, and

B. Grant such further relief as shall be necessary and proper in the circumstances.

Sincerely,



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Donald M. Kreis  
Consumer Advocate  
Office of the Consumer Advocate  
21 South Fruit Street, Suite 18  
Concord, NH 03301  
(603) 271-1174  
[donald.m.kreis@oca.nh.gov](mailto:donald.m.kreis@oca.nh.gov)

June 17, 2022

#### Certificate of Service

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included on the Commission's service list for this docket.



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Donald M. Kreis