STATE OF NEW HAMPSHIRE

BEFORE THE

PUBLIC UTILITIES COMMISSION

Public Service Company of New Hampshire d/b/a Eversource Energy and Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications

Joint Petition to Approve Pole Asset Transfer

Docket No. DE 21-020

Motion to Dismiss Petition

NOW COMES the Office of the Consumer Advocate ("OCA"), a party to this docket, and moves pursuant to N.H. Code Admin. Rules Puc 203.07 that the Public Utilities Commission ("PUC" or "Commission") dismiss the petition that is the subject of this proceeding. In support of this Motion the OCA states as follows:

In this proceeding, petitioners 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") seek two things from the Commission: (1) approval of a contract providing for the transfer of certain utility pole assets from Consolidated to Eversource, and (2) approval of a proposal for recovery from ratepayers of the costs associated with, and arising out of, the transaction. *See* Joint Petition (tab 1) at bates 10. For the reasons that follow, the Commission cannot authorize the requested cost recovery. Eversource has made clear that Commission approval of

the cost recovery mechanism is itself a key condition of the proposed transaction. *See* Testimony of of Douglas P. Horton and Erica L. Menard (tab 1) at bates page 51, lines 8-18. Therefore, it is appropriate in these circumstances for the Commission to dismiss the entire proceeding.

When ruling on a motion to dismiss, the Commission "assume[s] that the factual allegations in the petition are true and all reasonable inferences therefrom most be construed in favor of the petitioner[s]." Order No. 26,225 (March 13, 2019) in Docket No. DG 17-152 at 5-6 (citations omitted); see also *Krainewood Shores Ass'n, Inc. v. Town of Moultonborough*, 2021 WL 787081 at *2 (2021) (similar in context of civil proceedings, also noting that when the motion raises "certain defenses," then "the trial court must look beyond the plaintiffs' unsubstantiated allegations and determine, based on the facts, whether the plaintiffs have sufficiently demonstrated their right to claim relief") (citation omitted). These principles, applied to the situation presented by the petition, counsel in favor of dismissal because the relief requested by Eversource would violate certain terms of the settlement agreement into which it entered, and which the Commission approved, in the recent Eversource rate case, Docket No. DE 19-057.

Section 9.1 of the Commission-approved settlement agreement (tab 58 in DE 19-057, at bates 15-18) states that Eversource "shall be authorized to implement an annual Regulatory Reconciliation Adjustment ("RRA") mechanism, which is intended to allow the company to request recovery or refund" of a "limited set of costs" as enumerated in that section. Those costs are: (1) annual assessments

related to consultants hired by the PUC and OCA, (2) "[v]egetation management program variances" enumerated in section 6 of the agreement, (3) actual property tax expenses as compared to the amount in base rates, (4) lost base distribution revenues attributable to net metering, and (5) "[s]torm cost amortization final reconciliation and annual reconciliation updated for actual cost of long-term debt." Obviously, costs associated with the proposed acquisition of pole plant from Consolidated do not fall into any of these categories which, given the plain language of section 9.1, comprise an exclusive list.

Indeed, the very act of filing the petition in this proceeding places Eversource in violation of the settlement agreement it signed in DE 19-057. Section 10.6 of that agreement (bates page 23) states that Eversource "shall not request recovery of *any* capital costs associated with plant placed in service outside of the . . . step adjustments[1] until the Company's next distribution rate case filing, which shall be based on a test year ending no sooner than December 31, 2022." And, yet, Mr. Horton and Ms. Menard could not have been more clear in their prefiled testimony: Eversource will not move forward with this transaction, and its attendant increases to the Company's rate base, unless the Commission authorizes inclusion of the resulting costs in the RRA mechanism. Horton and Menard Testimony, page 11 (tab 1, bates page 51) at lines 6-18.

[1] The settlement (section 10 at bates pages 20-22) provides for three step adjustments to allow for the inclusion in rates of certain specifically enumerated plant that was, or is, placed in service during 2019, 2020, and 2021, respectively.

This is no trifling matter, at least not from a ratepayer perspective. As Mr. Horton and Ms. Menard state, *id.*, the Commission must "provide[s] for reasonable cost recovery for the immediate future to enable the transaction and allow for the Company to accomplish safety and reliability objectives in relation to the pole inventory." The two witnesses testify that the total revenue requirement to be added to rates is approximately $9.4 million in 2021, $8.2 million in 2022, and $11.3 million in 2023. *Id.* at 8-9 (bates page 48-49). This amounts to an expected rate increase for a typical residential customer in excess of 1 percent by the third year of Eversource's ownership of the formerly joint poles. *Id.* at 13 (bates page 53), line 21.

The Commission should not allow itself to be led astray by what is, in essence, an attempt to deploy clever rhetoric that implicitly seeks a free pass with respect to this utility's franchise obligations. Would the transaction "result in significant reliability and operational benefits," tab 1; bates page 20 at line 18, while making the utility's "reliability and resilience work significantly more efficient" by avoiding any need to coordinate with Consolidated, *id.*, bates page 20 at lines 6-8, and save at least some customers money in the process by allowing them to avoid line extension charges from Consolidated, *id.*, bates page 24 at lines 1-8? Then Eversource is obliged to pursue these things *in any event*, in quest of meeting the energy needs of its customers "at the lowest reasonable cost while providing for the reliability and diversity of energy sources." RSA 378:37 (the "New Hampshire Energy Policy" to which Eversource is subject pursuant to the least-cost-integrated

resource planning statute, RSA 378:37-40).[2] The applicable regulatory paradigm calls for Eversource to make such investments, along with appropriate adaptations and improvements to operations, within existing rates unless and until those charges are updated in a subsequent rate case.

Those well-established principles of New Hampshire utility law aside, Eversource is unabashedly seeking to deprive its residential customers of the benefit of the bargain struck on their behalf by OCA in DE 19-057.[3] *See Avery v. Commissioner, N.H. Dep't of Corrections*, 173 N.H. 726, 738 (2020) ("Settlement agreements are contractual in nature and, therefore, are generally governed by principles of contract law") (citations omitted). In its order approving that bargain, the Commission explicitly found that "the Settlement Agreement balances the interests of the customers' desire not to pay rates that are higher than reasonably necessary and the investors' right to earn a reasonable return on their investment." Order No. 26,443 (December 16, 2020) at 21. Eversource seeks to disturb that balance here; the Commission should not allow the utility to do so.

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[2] In this regard, the Commission should take note of the fact that there is no mention whatsovever of buying out Consolidated's interest in shared pole plant, or any other strategy for assuming more complete ownership of the distribution poles throughout the Company's service territory, in Eversource's Least Cost Integrated Resource Plan filed with the Commission in Docket No. DE 20-161 at tab 1.

[3] It bears noting that while the OCA and the other parties to DE 19-057 were negotiating their rate case settlement agreement with Eversource, Eversource was almost certainly busy negotiating with Consolidated. The document entitled "Assignment of Pole Attachment Agreements, Licenses, and Property Rights," which appears at tab 16 in DE 21-020, references a pole asset purchase agreement dated in November, 2020 – the month after the settlement in DE 19-057 was concluded (having been signed on October 9, 2020). While, of course, the rules preclude the OCA (or any other participant in the DE 19-057 negotiations) from commenting on the content of such negotiations, the dates referenced in these documents support an inference that Eversource was negotiating with Consolidated while it was in the midst of agreeing to an RRA that made no provision for adjusting the revenue requirement (or step increases) for pole assets to be purchased from Consolidated.

WHEREFORE, the OCA respectfully request that this honorable Commission:

A. Dismiss the Petition filed in this docket, without prejudice to the Joint Petitioners' right to file a new petition that is consistent with Order No. 26,443 and the Eversource commitments approved therein, and

B. Grant any other such relief as it deems appropriate.

Sincerely,

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Certificate of Service

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

Donald M. Kreis