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

DOCKET NO. DE 21-020

Joint Petition to Approve Settlement and Pole Asset Purchase Agreement

OBJECTION TO MOTION TO DISMISS PETITION

Pursuant to N.H. Code Admin Rules Puc 203.07, Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource" or the "Company") hereby objects to the Motion to Dismiss Petition filed by the Office of the Consumer Advocate ("OCA") on August 4, 2021 in the instant proceeding (the "Motion"). The Motion argues that the petition filed on February 10, 2021 jointly by Eversource and Consolidated Communications of Northern New England Company LLC d/b/a Consolidated Communication ("Consolidated" or "CCI") (together, the "Joint Petitioners") should be dismissed because Eversource has requested approval to recover the costs associated with and arising out of the proposed transaction ("Transaction") through the annual Regulatory Reconciliation Adjustment ("RRA") mechanism. The OCA alleges that Eversource's proposal to recover the costs associated with the proposed transaction is a "violation" of the settlement agreement (the "Settlement Agreement") reached in Docket No. DE 19-057 (Motion at 3). However, this is not correct.

As detailed below, the Motion is based on an inaccurate interpretation of the referenced Settlement Agreement; relies on unfounded presumptions; and ignores relevant public-safety concerns underlying the proposed transaction. For those reasons, the Motion must be denied. This is also underscored by the fact that the OCA has failed to raise this issue despite the six months of

process that has occurred in this proceeding without the OCA ever raising the issue as a preclusive barrier to the transaction. In fact, during the April 2, 2021 prehearing conference, the OCA stated its position on the proposed transaction this way:

> The OCA is not taking a specific position at this time on the petition before us. We believe there are real advantages, but also disadvantages that would accrue to residential ratepayers with approval of this transaction. We do very much look forward to exploring those issues further with the parties. We do believe that there could be a productive Settlement Agreement that could further meet the needs of ratepayers than is currently envisioned in the petition, and we look forward to working with the parties toward that end. Thank you.

(Apr. 2, 2021 Tr., at 34-35). At this late stage of investigation, it is disingenuous for the OCA to make such bold assertions in the Motion.

I. Background

Eversource and Consolidated submitted a joint petition to the Commission on February 10, 2021, requesting approval of the transfer of certain utility pole assets from Consolidated to Eversource pursuant to a settlement and pole asset purchase agreement between the Joint Petitioners (the "Petition"). The Petition includes a proposal by Eversource to recover certain costs associated with the proposed transaction through its RRA.

The RRA was established by the terms of the Settlement Agreement, which resolved Eversource's request for an increase to base distribution rates. By the express terms of the Settlement Agreement, the RRA is designed to allow for recovery of variable costs in the following categories: (a) regulatory commission annual assessment and costs incurred for consultants hired by the Commission and OCA; (b) vegetation management program variances; (c) property tax expense; (d) lost base distribution revenue associated with net metering; and (e) storm cost amortization final reconciliation and annual reconciliation (Settlement Agreement, § 9).

There are three categories of costs that would be recovered through the RRA, if the Transaction is authorized: property taxes, vegetation management and the net revenue requirement associated with the pole plant. Eversource's proposal is that it would recover incremental property tax and vegetation management costs associated with the pole inventory that would be acquired through the components of the RRA that already recover those costs for Eversource (Petition at 4). For the third component – net revenue requirement associated with the pole plant -- the Company has proposed to add a new, dedicated component to the RRA that would allow the recovery and reconciliation of the net revenue requirement for the poles transferred under the proposed transaction (id.). The Company did not own this pole inventory at the time of the Settlement Agreement and setting of distribution rates. Therefore, it is not feasible for the Company to go forward with the Transaction without a method for recovery through rates. The Company's proposal is a temporary solution until new base rates can be set to allow for recovery of these assets.

Department of Energy Staff, the OCA, and New England Cable and Telecommunications Association, Inc. ("NECTA") have participated in this proceeding including through numerous rounds of discovery and technical sessions. Currently, there are three more technical sessions/settlement discussions scheduled, intervenor testimony, rebuttal testimony, and two days of evidentiary hearings scheduled. At no point during this proceeding has any party suggested that there is a threshold bar that precludes approval of the Petition under circumstances that provide for recovery of the incremental costs associated with the proposed transaction.

Nevertheless, on August 4, 2021, the OCA filed its Motion arguing that the Petition should be dismissed in its entirety unless the Company agrees to absorb the costs associated with and arising out of the proposed transaction (Motion at 5). The OCA's Motion rests on unfounded

assertions that the Company's proposal to recover the costs of the proposed transaction is barred by the Settlement Agreement. The OCA's position appears to be that Eversource cannot request recovery of *any* costs until its next base distribution rate case, regardless of the fact that the Transaction was not contemplated and/or considered at the time the Settlement Agreement was entered and approved. As detailed below, such a result was never contemplated as part of the Settlement Agreement and would not be in the best interests of the public or Eversource's customers.

II. Standard of Review

The OCA has framed its Motion to rest on the spurious assertion that the Company's filing violates the Settlement Agreement in Docket DE 19-057. As the OCA acknowledges, "[w]hen ruling on a Motion to Dismiss the Commission 'assume[s] that the factual assertions in the petition are true and all reasonable inferences therefrom must be construed in favor of the petitioner[s]'" (OCA Motion at 2, citing Order No. 26,225, at 5-6 (March 13, 201)). In this instance, this means that the Commission should grant the OCA's Motion only if, in a light most favorable to Eversource, the Petition fails to demonstrate that the proposed transaction in in the public interest and the Commission is precluded from approving a funding mechanism to allow for annual reconciliation of the incremental costs associated with the proposed transaction.

As detailed below, the Motion fails to meet this standard and should be denied. The Commission should allow this proceeding to move forward and conclude with a determination on the merits of the proposals set forth in the Petition.

III. Cost Recovery for the Transaction is not Precluded by the Settlement Agreement Reached in DE 19-057

The OCA's primary argument arises from the Company's proposal to recover the costs associated with the proposed transaction. First, the Motion takes the peculiar position of stating

that the very act of filing the Petition violates the Settlement Agreement reached in Docket No. DE 19-057, as though the proposed transaction is subject to the Settlement Agreement. However, the OCA fails to support this claim with any reference to plain language in the Settlement Agreement confirming this proposition, nor would any such language have a reason to exist. The costs associated with the proposed transaction were never contemplated as part of the Settlement Agreement. The transfer of the poles from Consolidated to Eversource is being proposed pursuant to a settlement and sale agreement reached months after the Settlement Agreement. The Settlement Agreement was filed on October 9, 2020 in Docket No. DE 19-057. The agreement to enter into the proposed transaction was not made until December 2020, and until that agreement was finalized the proposed transaction could not be raised or considered in Docket No. DE 19-057. Given that the associated costs were never under consideration in Docket No. DE 19-057, nor were any part of the calculus underlying the Settlement Agreement, the Settlement Agreement cannot be reasonably or validly construed as a commitment to refrain from asking for a specific resolution in a future acquisition transaction not contemplated at the time of settlement. The Settlement Agreement *expressly* resolved the issues that were the subject of Docket No. DE 19-057, not additional matters beyond that case.

As a further general point, there is no language within the Settlement Agreement that precludes recovery of categories of costs unknown at the time of settlement, nor that prohibits the Commission from establishing any new cost recovery provisions to achieve outcomes in the future that are in the interests of customers. Whether any new costs are of an amount that is reasonable, or whether a new or existing cost recovery mechanism is the better method for recovering those reasonable costs, are legitimate questions. The Settlement Agreement, however, does not impose limitations that require Eversource to avoid or reject any new costs or that preclude recovery of

any new costs it does incur. By the OCA's logic, even costs that might be mandated by future legislation or Commission action would not be eligible for cost recovery if not specified in the Settlement Agreement up to two or three years prior. Such a result would be absurd, and the OCA's argument should not be used as a basis to bar this petition or negate the opportunity for the Company to demonstrate that the Transaction – and the associated cost recovery – are warranted.

With respect to the more specific arguments, the OCA makes two arguments in support of its theory that the Settlement Agreement precludes the filing (and approval) of the Joint Petition: (1) that the RRA was intended to be limited to only those categories of costs enumerated in the Settlement Agreement; and (2) that the parameters of the step adjustments agreed to in the Settlement Agreement preclude cost recovery on any and all additional capital (Motion at 3). Neither of these claims are valid.

First, it is accurate that the Petition proposes to add a component to the RRA that would allow for recovery of the net revenue requirement of the transferred poles. However, there is nothing in the Settlement Agreement or the Commission's order approving the Settlement Agreement to indicate that the Commission could not consider allowing recovery of an additional category of costs through the RRA. This limitation on cost recovery through the RRA to the categories enumerated in the Settlement Agreement means that the Company could not recover the costs associated with the proposed transaction *without approval by the Commission*. The Company has never contested this proposition and, instead, has requested Commission approval to recover the costs associated with the proposed transaction through the RRA in the Petition.

Consistent with Puc 203.06 and Puc 1603.05, Eversource included a copy of its proposed tariff changes to describe the requested adjustment to the RRA with the Petition. Cost recovery through the RRA was proposed in this proceeding because the RRA was intended to allow for

recovery of variable costs and specifically for variable costs associated with vegetation management and property tax (Settlement Agreement, § 9). Since two of the three categories of costs associated with the proposed transaction will already be recovered through the RRA, Eversource determined that providing for recovery through an established mechanism would be more efficient for the Commission than establishing a new and separate mechanism.

However, the Company's request to recover these costs through the RRA does not preclude the Commission from determining that a different cost recovery mechanism is appropriate. The Commission's authority in setting public utility rates is plenary. *See, e.g., Bacher v. Public Serv. Co. of N.H.*, 119 N.H. 356, 358 (1979); *Appeal of Northern New England Tel. Operations, LLC*, 165 N.H. 267, 277 (2013); *Legislative Util. Consumers' Council v. Pub. Serv. Co.*, 119 N.H. 332, 341 (1979). Accordingly, if the Commission does not view the RRA to be the appropriate mechanism for recovery of the costs generated by the Transaction, then some other means may be established. Eversource's statements in this proceeding related to cost recovery have been intended merely to convey that, without cost recovery, it cannot move forward with the proposed Transaction. These statements do not imply that the RRA is the only method of cost recovery and the proposal to recover costs through the RRA should not be used as a bar to cost recovery and/or the proposed Transaction. As detailed below, the Transaction will provide public safety benefits to the State of New Hampshire and Eversource customers that should not be denied based on a disagreement regarding how the costs can be recovered.

With respect to OCA's second argument in support of its Motion, *i.e.*, that the Settlement Agreement wholly precludes the filing of the Petition, there is also no merit. The Settlement Agreement does contain a provision regarding capital investments. Specifically, Section 10.6 of the Settlement Agreement states that:

> [t]he Company shall not request recovery of any capital costs associate with plant placed in service outside of the above-described step adjustments 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 which shall be filed no earlier than the first quarter of 2023.

This provision is at the end of Section 10 of the Settlement Agreement addressing the step adjustment mechanism proposed by the Company to allow for recovery of the anticipated capital investments that the Company would be making during 2019, 2020, and 2021 (see Docket No. DE 19-057, Testimony of Eric H. Chung and Troy M. Dixon at 91). Eversource proposed step adjustments for these costs because the pace of capital investment necessary to maintain the Company's systems was not being adequately supported by revenues generated by rates (see id. at 92). Thus, the "plant placed in service" is – and can only be – the plant that was under consideration and review in Docket No. DE 19-057.

Specifically, as part of its filing in Docket No. DE 19-057, Eversource requested approval of its 2019 plant additions as the first step-adjustment. The testimony in support of this first step-adjustment made it clear that the step-adjustments would address routine capital investments *specified and reviewed during the proceeding*. For example, Eversource explained that the step adjustment would recover the costs associated with capital additions falling into one of three categories: (1) specific projects; (2) specific carryover projects; and (3) annual blanket and program projects (Docket No. DE 19-057, October 9, 2020 Testimony of Lee G. Lajoie and David L. Plante, at Bates16). The Company explained that specific projects are standalone projects such as new substations, new lines, and circuit conversions (id. at 17). Carryover projects were defined as projects where the majority of costs were placed in service the year before but such project was not considered "in service" until the year included for recovery (id.). Lastly, annual blanket projects were defined as high volume, low dollar projects that cover a variety of activities to

address an issue (id.). For example, an annual blanket project might address voltage outside of regulatory limits by placing regulators or capacitors, replacing conductors, etc. (id.).

The provisions of the Settlement were formed and agreed upon based on this detailed testimony as this was the information in the record and under examination at that time. The capital investments addressed by the step adjustments did not include the capital costs associated with an acquisition, nor could it. Instead, it is clear that the step adjustments were intended to allow for recovery of routine or planned capital investments. *See also* Order No. 26,439, at 15 (stating, *e.g.*, that the Step 2 adjustment would be limited to projects identified in Appendix 5 of the Settlement Agreement with limited exceptions). Accordingly, because the language of Section 10.6 is in reference to the investments specified in Section 10, and because the transaction in issue is wholly separate and apart from those kinds of investments, there is no basis to reject this transaction as contended by the OCA.

IV. The Public Benefits Associated with the Proposed Transaction Far Outweigh the Associated Rate Impacts

After failing to set forth a reasonable basis for denying the Company's request for cost recovery, the OCA's Motion argues that allowing the Company to move forward with the proposed transaction and recover the associated costs from its customers would be a "free pass" with respect to Eversource's franchise obligations because, the OCA argues, any benefits that could be provided by the proposed transaction are already part of the Company's duty under New Hampshire Energy Policy related to least cost integrated resource planning (Motion at 4-5). This particular argument appears to mix resource planning requirements with the reliability and operational improvements that the Company has cited as benefits of the proposed transaction. As a result, this argument should simply be ignored. Further, the OCA is unable to cite to any evidence that would support

a determination that the Company's proposal is not the least-cost option for resolving the reliability issues associated with joint pole ownership.

As set forth in the Petition, the Commission should make a determination that the proposed transaction will result in significant reliability and operational benefits. Taking these benefits into consideration, there is clear support for a determination of public good even if cost recovery is permitted (Petition at 7-9). Initially, Eversource notes that it has the obligation to serve all customers within its territory, whereas some customers may elect to take service from Consolidated and others may not. Placing all transferred poles under Eversource's control means that not only will new customers benefit from avoiding costs from Consolidated as described in the testimony (Lajoie Testimony at Bates 23-24), but all customers will benefit in emergency and non-emergency situations.

As explained in the Petition, Eversource is the first responder to emergency events where poles must be replaced and is therefore uniquely positioned to replace poles in an expeditious manner (Petition at 8). Also, because of the differences in the equipment involved between Eversource and Consolidated, Eversource has a heightened level of responsibility for assuring proper maintenance of the pole assets and for responding to emergency events to assure protection of the public. The proposed transaction will transfer all poles in the State of New Hampshire currently used by Eversource to the Company's sole ownership. This means that Eversource will no longer need to notify Consolidated or facilitate coordination with Consolidated before it can replace a damaged pole. This creates efficiencies for Eversource but more importantly, this eliminates confusion in the field and provides the safety benefits of a more expeditious response. Currently, when a broken pole is found during an emergency event and located in CCI's maintenance area, restoration work can be delayed while these coordination efforts occur. This

delay not only impacts customer outages and the Company's storm response but also means that field conditions remain unsafe for longer periods of time (*e.g.*, aerial equipment is on the ground longer than necessary).

The Petition also explained that these benefits associated with sole pole ownership by Eversource would extend to the Company's safety and reliability work outside of emergency events (Petition at 7-8). Eversource follows a rigorous inspection and replacement process to ensure its poles are safe and reliable. This process will extend to the poles that are the subject of the proposed transaction resulting in the proactive identification and replacement of poles not meeting minimum strength requirements enhancing public safety and reliability while decreasing the emergency work described above. Further, as the sole owner, Eversource will be able to complete this safety and reliability work without the need to coordinate with Consolidated. This is particularly important where the Company and Consolidated operate on different inspection and replacement work cycles. By becoming the sole owner of the poles, Eversource has complete control over this work and will no longer be subject to any other entity's timeline. By allowing Eversource to own all of these poles, the Commission's authority to oversee any safety and/or reliability issues also increases due to its more expansive jurisdiction with respect to electric distribution companies versus telecommunications companies. All of these benefits of the proposed transaction are set forth in the Petition and supporting testimony and preclude the OCA's Motion.

Lastly, the Commission should take careful note of the irony of the OCA's argument that allowing the Company to move forward with the proposed transaction and recover the associated costs from its customers would be a "free pass" with respect to Eversource's franchise obligations because any benefits that could be provided by the proposed transaction are already

part of the Company's duty under New Hampshire Energy Policy related to least cost integrated resource planning (Motion at 4-5). At current, Eversource has no obligation to CCI's customers in relation CCI's ownership interests. This is important because Eversource and CCI have fundamentally different obligations to their respective customers and different standards of care for pole inventory flowing from that obligation. As a result, both the obligation that Eversource has to its customers and standard of care it applies to its pole inventory *exceed* the obligation that CCI has. The OCA's argument appears to be that the obligation Eversource has already extends to CCI's ownership and, therefore, there is no gain to customers as a result of the transaction. However, this is not true. Therefore, the fact that the OCA is citing Eversource's ownership obligation as a benefit to customers that Eversource should be held to, argues directly and strongly in favor of allowing the Transaction to go forward and to be authorized as proposed.

For the above reasons, Eversource respectfully requests that the Commission deny the OCA's Motion and grant such further relief as may be just and equitable.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE D/B/A EVERSOURCE ENERGY,
By its Attorneys,

Matthew J. Fossum
Senior Regulatory Counsel
Eversource Energy Service Company o/b/o
Public Service Company of New Hampshire
d/b/a Eversource Energy
780 N. Commercial Street
Manchester, NH 03101
(603) 634-2961
Matthew.Fossum@eversource.com

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

Dated: August 16, 2021

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

August 16, 2021
Date

Matthew J. Fossum