

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

**Docket DE 21-020**

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**

**DEPARTMENT OF ENERGY MOTION FOR STAY OF PROCEEDINGS PENDING  
THE OUTCOME OF MOTIONS TO DISMISS AND COMPEL**

Pursuant to New Hampshire Code of Administrative Rules Puc 203.07, the Department of Energy Regulatory Support Division (Division) hereby moves the New Hampshire Public Utilities Commission (“Commission”) to stay the remainder of the procedural schedule in DE 21-020, Public Service Company of New Hampshire d/b/a Eversource Energy and Consolidated Communication of Northern New England Company d/b/a Consolidated Communications (“CCI”)(collectively, “Joint Petitioners”)'s request to approve pole asset transfer, pending the outcome of the Office of the Consumer Advocate (“OCA”)'s Motion to Dismiss and the New England Cable and Telecommunications Association (“NECTA”)'s motion to compel.

In support of this Motion, the Division states as follows:

1. On February 10, 2021, the Joint Petitioners filed a request for the Commission to approve transfer of certain pole assets and recovery of costs associated with the transfer through the Company’s Regulatory Reconciliation Adjustment (“RRA”) mechanism. According to the Petitioners, the agreement to transfer the pole assets will not move forward unless the Commission approves a cost recovery mechanism that ensures Eversource’s investment is recovered on a timely basis, outside of base rates. Petition at Bates 50-51.

2. The Commission issued a secretarial letter on April 19, 2021, which established a schedule in this proceeding. That schedule was subsequently amended by a July 29, 2021 Commission determination. As amended, the procedural schedule provides the opportunity for parties to serve Joint Petitioners three rounds of written discovery requests, with the potential for two subsequent rounds of technical session data requests. The schedule also provides for the filing of intervenor testimony on September 8, 2021, and hearings during the first week of November.

3. On August 3, 2021, the OCA filed a motion to dismiss the petition. The OCA motion cited provisions in Eversource's 2019 distribution rate case settlement agreement describing the limited set of costs that may be eligible for recovery through the RRA, and prohibiting Eversource from requesting recovery of capital costs, outside of the agreed upon step adjustments, prior to Eversource's next distribution rate case.<sup>1</sup>

4. Eversource and CCI filed objections to the OCA motion to dismiss on August 16, 2021. In support of their objections, both Eversource and CCI cited the statements of the OCA's former Staff Attorney during the pre-hearing conference, and her participation in the proceeding prior to the Consumer Advocate's motion to dismiss, as bearing on whether the OCA can properly raise the issue at this point in the proceeding. Eversource asserted that "At no point during this

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<sup>1</sup> RSA 378:7 provides that "The commission shall be under no obligation to investigate any rate matter which it has investigated within a period of 2 years." This two year 'stay out' period protects ratepayers by encouraging utilities to find efficiencies and limit new capital investments during the period between rate cases. While the Commission faces no statutory obligation to investigate rate increases during the two year period, in practice, step adjustments are commonly agreed upon settlement terms which provide for limited rate increases during the two year period identified in RSA 378:7. Step adjustments are often approved in combination with a 'stay out' period of a year or more during which a utility agrees not to seek a rate increase; when the Commission approves such an arrangement, it allows the combination of steps and 'stay out' to stand in place of RSA 378:7. Eversource's most recent distribution rate case was based on a 2018 test year, allowing recovery of plant placed into service during 2018. The Commission-approved settlement provided for three step adjustments for plant placed into service during 2019, 2020, and 2021, and allows Eversource to base its next test year on plant placed into service no sooner than 2022, effectively providing for no mandatory 'stay out' period after the step adjustments. Eversource's request to recover new plant and expenses in the RRA, rather than have shareholders carry those costs until the next rate case, would further diminish the ratepayer protection afforded by RSA 378:7.

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.”<sup>2</sup> Eversource Objection at 3. Eversource also argues that the OCA’s arguments would preclude recovery of legislatively mandated costs if not specified in the Settlement Agreement up to two or three years prior.<sup>3</sup> Eversource Objection at 5-6.

5. In reviewing the OCA motion and objections of the joint petition, the Division views the arguments of the OCA as having a high likelihood of impacting either the timeline of the proposed pole asset transfer, or impacting the mechanism through which it is requested for recovery, or of complete dismissal of the petition.

6. On August 13, 2021, NECTA filed a motion to compel CCI to respond to data requests relating to the net book value of the pole assets at issue in this proceeding. NECTA asserted that information relating to the net book value of the pole assets is relevant to the fundamental issue of whether the financial terms and conditions of this transaction will result in "no net harm.”

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<sup>2</sup> At the April 2, 2021 pre-hearing conference, Commission Staff stated “it is unclear to Staff whether the Company’s proposal to recover costs through the recently approved regulatory reconciliation adjustment, the RRA mechanism, is appropriate in light of the limitations placed on that adjustment in the DE 19-057 Settlement Agreement and related Commission order. In that context, it may also be worth observing that this petition was filed on February 10, 2021, less than six months after Eversource, Commission Staff and the Office of the Consumer Advocate and several other parties agreed to very specific limitations to the Company’s recovery of rate base additions between now and the end of its next rate case. To quote directly from Section 10.6 of the 19-057 Settlement, ‘The Company shall not request recovery of any capital costs associated 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.’” Transcript at 36-37.

<sup>3</sup> Eversource does not differentiate between distribution rates, the RRA, or some other rate mechanism through which mandated costs might be recovered while still honoring the settled upon scope of the RRA and distribution rate step increases. For example, legislatively mandated costs associated with 2018 N.H. Laws Chapter 340 are recovered from Eversource ratepayers within the stranded cost recovery charge.

7. The Division views the information requested by NECTA as highly relevant to the requested pole asset transfer and believes it may have a material impact on testimony filed in the proceeding.

8. Under the approved procedural schedule, testimony is due in this proceeding 19 days from today. As a result of delays by the Joint Petitioners in providing responses to Set three,<sup>4</sup> the parties had already discussed a request to further amend the procedural schedule. A stay of this proceeding pending the outcome of the OCA's motion to dismiss and NECTA's motion to compel would allow the parties and Joint Petitioners to avoid requesting another procedural schedule revision for the Commission to review while it also considers the pending motions, would preserve resources that would otherwise be devoted to the drafting of testimony in the event that the OCA motion is successful, and would preserve the opportunity to discuss issues relating to net book value within the parties' testimony in the event that the NECTA motion is successful.

9. If the Commission grants NECTA's motion, the Division requests that the remainder of the procedural schedule provide an opportunity for a follow-up round of discovery at least 15 days after the information requested by NECTA is provided, and a testimony deadline no sooner than 30 days subsequent to receipt of responses to the described follow-up round of discovery.

10. If the NECTA motion is not approved by the Commission, the Department of Energy Regulatory Support Division requests that a testimony deadline no sooner than 30 days subsequent to The Commission's order.

**WHEREFORE,** the Division respectfully requests that this honorable Commission:

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<sup>4</sup> The approved procedural schedule provided for service of set three requests on June 29, 2021, and Joint Petitioner replies to those requests by July 14, 2021. Several replies to set three were not provided until August 5, 2021, limiting the ability of the Department of Energy and other parties to issue follow-ups on those responses without further amendment of the procedural schedule, including a delay of the testimony filing date.

- a. Grant the Department of Energy Regulatory Support Division's request to stay the proceeding pending the outcome of the OCA's motion to dismiss and NECTA's motion to compel; and
- b. Grant any other relief as may be just and equitable.

Respectfully Submitted

August 20, 2021

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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.

  
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Brian D. Buckley