

**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 Pole Asset Transfer**

**MOTION FOR PROTECTIVE ORDER**  
**AND CONFIDENTIAL TREATMENT**

NOW COME Public Service Company of New Hampshire d/b/a Eversource Energy (hereinafter “Eversource”) and Consolidated Communications of Northern New England Company, LLC (hereinafter “Consolidated”, and together with Eversource, the “Joint Petitioners”), by and through their undersigned attorneys, and, pursuant to RSA 91-A:5, IV and N.H. Admin. Rule Puc 203.08(b), respectfully move the New Hampshire Public Utilities Commission (the “Commission”) to issue a protective order which accords confidential treatment to certain information described below, exchanged between the parties to this docket and submitted to this Commission. In support of this Motion, the Joint Petitioners state as follows:

1. On February 10, 2021, Consolidated and Eversource filed a Joint Petition to Approve Pole Asset Transfer (the “Joint Petition”) in the above-captioned docket requesting findings from the Commission related to the transfer of certain “Transferred Poles” (as defined in the Joint

Petition) from Consolidated to Eversource being in the public interest. *See Joint Petition* at 6-7 *citing Grafton County Electric Light & Power Co. v. State*, 77 N.H. 539, 94 A. 193, 195 (1915) (noting the public good standard “is analogous to the ‘public interest’ standard . . . applied and interpreted by the Commission and by the New Hampshire Supreme Court.”) and *Consumers New Hampshire Water Company*, 82 N.H. P.U.C. 814, \*4 (1997) (applying RSA 374:30 standard to transfer from a prospective municipal water company to a prospective subsidiary of another water company).

2. In support of the Joint Petition, the Joint Petitioners submitted prefiled direct testimony of three (3) Eversource witnesses: Mr. Lee G. Lajoie, Mr. Douglas P. Horton, and Ms. Erica L Menard. Due to the confidential nature of certain information within the Joint Petition and the prefiled direct testimony, the Joint Petitioners also filed a Motion for Protective Order and Confidential Treatment. *See Motion for Protective Order and Confidential Treatment*, dated February 10, 2021 (the “Prior Motion”). To date, the Commission has not ruled on the Prior Motion. With the filing of this Motion for Protective Order, the Joint Petitioners no longer seek a ruling on the Prior Motion.<sup>1</sup>

3. In the Prior Motion, the Joint Petitioners sought protective treatment for the Joint Petitioners’ Settlement and Pole Asset Purchase Agreement (the “Agreement”). *See Prior Motion* at 1 and 2. At that time, the Joint Petitioners did not file a redacted, public version of the Agreement with the Commission and, instead sought confidential treatment for the entirety of the Agreement.

4. Following the initial prehearing conference in this docket, held on April 2, 2021, the Joint Petitioners and all other parties to this docket held a technical session related to several

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<sup>1</sup> The Commission may consider the Prior Motion to be withdrawn or otherwise moot in light of (i) developments since the filing of the Prior Motion and (ii) the present Motion for Protective Order.

procedural matters, including the confidentiality of the Agreement. As indicated in the Staff<sup>2</sup> report filed on April 30, 2021, the Joint Petitioners agreed to file a redacted, public version of the Agreement. The Joint Petitioners filed the redacted, public Agreement on May 3, 2021. On May 6, 2021, the Joint Petitioners filed the related Assignment of Pole Attachment Agreements, Licenses and Property Rights (without redaction) and a partially redacted version of the Joint Petitioners' Bill of Sale. The Assignment of Pole Attachment Agreements and the Bill of Sale are Exhibits to the Agreement and were not previously filed.

5. All of the redactions have been marked consistent with the Commission's rules regarding confidential treatment of information. *See* Puc. 201.04(c). All of the information redacted in the Agreement and the prefiled testimony of Eversource's witnesses contains information related to Consolidated's confidential commercial and financial information, as well as the Joint Petitioners' settlement terms of disputed legal claims. The Agreement contains confidential commercial and financial information comprised of privately negotiated contract terms, conditions, and financial terms pertaining to the transfer of utility poles from Consolidated to Eversource. None of the business terms within the Agreement have been made public by the Joint Petitioners. Furthermore, the Agreement also includes confidential information regarding the settlement of legal disputes between the Joint Petitioners.

6. Furthermore, Consolidated has engaged in similar asset sale transactions in other jurisdictions previously and may engage in similar transactions in the future. In prior transactions, the confidential nature of the same type of information was acknowledged and protected from disclosure. Should any of the redacted terms of the Agreement be made available to the public, Consolidated would be placed at a competitive disadvantage vis-à-vis its ability to

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<sup>2</sup> The April 2, 2021 report was filed by Commission Staff who have now transitioned to the Department of Energy as established on July 1, 2021.

negotiate fees, pricing, and contractual terms with other parties in other locations. In the interest of protecting fruitful and meaningful negotiations in this transaction and potential future transactions, Consolidated has a strong privacy interest in protecting the redacted terms of the Agreement, as well as the related redactions within the Bill of Sale and Eversource's prefiled direct testimony.

7. Puc 203.08(a) states that the Commission shall, upon motion, "issue a protective order providing for the confidential treatment of one or more documents upon a finding that the document or documents are entitled to such treatment pursuant to RSA 91-A:5, or other applicable law." RSA 91-A:5, IV exempts certain governmental records from public disclosure, including "[r]ecords pertaining to internal personnel practices; confidential, commercial, or financial information...; and other files whose disclosure would constitute invasion of privacy." In determining whether confidential, commercial or financial information within the meaning of RSA 91-A:5, IV, is exempt from public disclosure, the Commission employs a "three-step balancing test for determining whether certain documents meet this designation." *See Lambert v. Belknap County Convention*, 157 N.H. 375 (2008) and *Public Service Company of New Hampshire*, Order No. 25,313 (December 30, 2011) at 11-12. *See also Vivant Solar, Inc.*, DE 15-303, Order No. 25, 859 (Jan. 15, 2016), p. 22. The Commission first determines whether the information in question involves a privacy interest. *Vivant Solar*, p. 23. If a privacy interest is implicated, the Commission considers whether the public has an interest in disclosure of the information. *Id.* If so, then the Commission balances the public's interest in disclosure against the moving party's privacy interests "to determine whether disclosure is warranted." *Id.*

8. The Joint Petitioners meet the above-stated test. The information they seek to protect includes Consolidated's private, competitively sensitive financial information which

Consolidated does not publicly disclose. Consolidated is engaged in an intensely competitive industry and Consolidated also may engage in similar transactions with other electric utilities both within and outside of New Hampshire. Disclosure of this sensitive financial information would be an invasion of Consolidated's privacy and would be competitively harmful to Consolidated if its competitors were able to obtain access to it, other than in a confidential nature.<sup>3</sup> Disclosure also would harm Consolidated's negotiating position with other parties seeking to acquire an ownership interest in any assets Consolidated sought to sell in the future. Therefore, there is little if any, public interest associated with the public obtaining this competitively sensitive financial information. Even assuming, *arguendo*, a public interest in disclosure exists, that interest is outweighed by Consolidated's interest in maintaining the confidentiality of the information. Accordingly, disclosure is not warranted.

9. The Joint Petitioners also seek protection related to confidential settlement terms of legally disputed claims. The negotiated settlement terms in the Agreement must remain confidential to preserve the Joint Petitioners' future negotiating leverage. A lack of confidentiality in such negotiated terms may discourage future adverse claimants from making concessions in settlement negotiations or agreeing to specific provisions more favorable to the one or both of the Joint Petitioners because public knowledge of such negotiating precedent would increase other parties' bargaining leverage in future settlement negotiations. As with the Consolidated specific information, disclosure of private settlement terms related to a legal dispute also is not warranted.

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<sup>3</sup> The New England Cable and Telecommunications Association, Inc. ("NECTA") based parties to this docket have entered into a Protective Agreement with the Joint Petitioners, dated as of May 11, 2021. Pursuant to that agreement, the Joint Petitioners and the NECTA parties had "... agreed to the procedures established in this [Protective] Agreement for the disclosure of Confidential Information to one another and to the PUC (including but not limited to the Staff) and to the provisions set forth [in the Protective Agreement] for holding such Confidential Information in confidence."

10. The Joint Petitioners hereby request that the Commission issue an order protecting the above-described information from public disclosure and prohibiting copying, duplication, dissemination or disclosure of it in any form. The Joint Petitioners further request that the protective order also extend to any discovery, testimony, argument or briefing in this docket relative to the confidential information. This includes the prefiled testimony of the Department of Energy, Office of the Consumer Advocate and the NECTA parties, as well as all testimony and exhibits presented during the evidentiary hearing in this docket.

11. The Joint Petitioners represent that they have sought the concurrence to this Motion for Protective Order of the Department of Energy, the Consumer Advocate and NECTA. The Joint Petitioners have been authorized to report that: (i) NECTA, in accordance with the terms of the above referenced Protective Agreement, assents to the Motion; (ii) the Department of Energy takes no position on the Motion at this time; and (iii) the Consumer Advocate does not assent to the Motion.

WHEREFORE, the Joint Petitioners respectfully request that this honorable Commission:

A. Issue an appropriate order that exempts from public disclosure and otherwise protects the confidentiality of the information designated confidential that is contained in the redacted copies of Eversource's witnesses Prefiled Direct Testimony, the Agreement, and Bill of Sale; and

B. Grant such additional relief as it deems appropriate.

Dated: January 31, 2021

Respectfully submitted,

**CONSOLIDATED COMMUNICATIONS OF  
NORTHERN NEW ENGLAND COMPANY, LLC  
D/B/A CONSOLIDATED COMMUNICATIONS**

By its Attorneys,

/s/ Patrick C. McHugh  
Patrick C. McHugh  
Consolidated Communications  
770 Elm Street  
Manchester, NH 02101  
(603) 591-5465  
[Patrick.mchugh@consolidated.com](mailto:Patrick.mchugh@consolidated.com)

/s/ Sarah Davis  
Sarah Davis  
Consolidated Communications  
5 Davis Farm Rd.  
Portland, ME 04103  
(207) 535-4188  
[Sarah.davis@consolidated.com](mailto:Sarah.davis@consolidated.com)

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

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

**CERTIFICATE OF SERVICE**

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

January 31, 2022  
Date

/s/ Patrick C. McHugh  
Patrick. C. McHugh