

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

**CONSOLIDATED COMMUNICATIONS' MOTION FOR LEAVE TO RESPOND TO
CONSUMER ADVOCATES'S OPPOSITION TO JOINT PETITIONERS' MOTION
FOR PROTECTIVE ORDER AND CONFIDENTIAL TREATMENT AND
CONSOLIDATED COMMUNICATIONS' RESPONSE**

NOW COMES Consolidated Communications of Northern New England Company, LLC (hereinafter "Consolidated"), by and through its undersigned attorneys, and, respectfully (i) moves the New Hampshire Public Utilities Commission (the "Commission") for permission to respond to the New Hampshire Consumer Advocate's Opposition to the Joint Petitioners' Motion for Protective Order and Confidential Treatment¹ and (ii) hereby responds to said Opposition. In support of this Motion and Response, Consolidated states as follows:

1. The Commission's procedural rules, N.H. Code Admin. Rules Ch. Puc 200, contemplate that parties to contested cases may file motions and objections thereto. *See* Puc 203.07. There is no explicit provision (nor an explicit prohibition) in the Commission's

¹ The Consumer Advocate filed the Opposition on February 1, 2022. Consolidated and Public Service Company of New Hampshire ("Eversource", and together with Consolidated the "Joint Petitioners") filed their Motion for Protective Order and Confidential Treatment (the "Motion") on January 31, 2022.

administrative rules for a party that has submitted a motion to reply thereafter to objections interposed by other parties. Puc 201.05 provides that in the absence of a statutory preclusion the Commission may waive any provisions in its rules upon a finding that the waiver “serves the public interest” and the waiver will not “disrupt the orderly and efficient resolution of matters before the commission.” Puc 201.05(a). Therefore, to the extent Puc 203.07 precludes the submission of replies to objections to motions, Consolidated respectfully requests a waiver of the administrative rule as appropriate in the present circumstances.

2. Consolidated re-asserts and incorporates by reference the introductory paragraphs of the Motion. *See* Joint Petitioners’ Motion, para(s) 1 – 6, ps. 1 – 4. Consolidated also submits that the Joint Petitioners’ analysis of the balancing test set forth in *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 has been met as explained in the Motion at para(s) 7 – 9, ps. 4 – 5.

3. Consolidated hereby points out several flaws in the analysis set forth in the Opposition. The Consumer Advocate argues in part that the Joint Petitioners cannot meet their burden under N.H. RSA Chapter 91-A and that the Joint Petitioners have no cognizable privacy interest in protecting their confidential data. According to the Consumer Advocate, Consolidated wants to “... keep the terms of its deal with Eversource (and ultimately with Eversource’s ratepayers) a secret ... [because of Consolidated’s] desire to protect its ability to maximize the return on Consolidated shareholder investment.” Opposition at Sec. III, p. 4. In support of this incorrect assertion, the Consumer Advocate makes accusations regarding Consolidated’s (i) not being a New Hampshire company, (ii) failed duties as an owner of utility poles and (iii) the “... business of pole ownership still [being] a monopolist’s game.” *Id.*

4. These arguments are without merit and completely irrelevant to the legal analysis of whether the Joint Petitioners meet the burden of demonstrating under N.H. RSA 91-A:5 that the limited information for which protection is sought under that statute is of a confidential, private nature and meets the balancing test under *Public Service Company of New Hampshire*, Order No. 25,313 (December 30, 2011) at 11-12 (other citations omitted).² The balancing test set forth in Order No. 25,313 contains no requirement that a business entity seeking confidential treatment be a so-called “New Hampshire company” or some other discriminatory classification based on New Hampshire status. There also is no prong of the balancing test dedicated to so-called monopolistic businesses, not that Consolidated concedes pole ownership actually qualifies as a “business” or a “game” per the Consumer Advocate’s arguments. Lastly, whether or not Consolidated failed some sort of unspecified duty as a pole owner is not an issue being litigated in this Docket. This Docket concerns whether the transfer of Consolidated’s ownership interests in utility poles to the State’s largest electric utility, pursuant the terms and conditions set forth in the Joint Petition, are in the public good and should be approved pursuant to RSA 374:30, as well as the other issues set forth in the Commission’s Order of Notice dated March 18, 2021 (at ps. 2 – 3).

5. The relief sought in the Motion and the information for which confidential treatment is sought is similar to relief granted by this Commission in other Consolidated based and non-Consolidated based dockets. The Joint Petitioners’ Motion contains citations to multiple Commission orders and other legal authority supporting the requested relief and is not repeated

² In summary, the balancing test requires the Commission to weigh whether the information in question involves a privacy interest. If a privacy interest is implicated, the Commission considers whether the public has an interest in disclosure of the information. 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.* (citations omitted.)

herein. In the docket related to Consolidated's acquisition of FairPoint Communications, Inc. ("FairPoint") – DT 16-872 – the Commission granted a similar motion related to a key employee list filed on behalf of Consolidated. In a Secretarial Letter dated July 19, 2017, the Commission determined that the list of employees was "... non-public, commercially-sensitive operational information of a company engaged in a competitive industry subject to limited state regulation." That same conclusion is warranted with respect to the present Motion.

6. In the instant matter, the information Consolidated seeks to keep confidential is of a similar nature as the information it sought the same status for in DT 16-872. Here, the data at issue is Consolidated's non-public, commercially sensitive operational information. It is data that competitors, such as the NECTA parties, should not have other than via a Protective Agreement and a related Protective Order.³ There is no need whatsoever for the NECTA parties to be permitted to use Consolidated's operational data in a manner adverse to Consolidated other than for the limited purposes of allegedly protecting the rights of NECTA's members in the instant matter. In addition, as set forth more fully in the Motion, Consolidated has been negotiating potential similar transactions with other utilities and those negotiations should not be influenced by making the specific details of the present transaction public.⁴ To the extent the public has a right to know of the data subject of the Motion, that right is outweighed by Consolidated's interest in keeping its confidential data actually confidential. Whether, at some point in time after any approval of the transfer of the Consolidated assets to Eversource, the

³ As noted in the Motion, at footnote 3, 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.

⁴ Any transactions for the sale of utility poles to other electric utilities (if any) will come before the Commission for review as required by New Hampshire law.

public has a right to know of the costs being included in the electric rate base is a matter for another day.

7. Lastly, the Opposition reminds the Commission that its orders bind the Consumer Advocate. Opposition at p. 6 citing N.H. RSA 363:28. The Consumer Advocate argues that “[t]he public also has the right to know what the Office of the Consumer Advocate is ‘up to’ – in this instance, defending the interests of residential utility customers ...” *Id.* As with the Consumer Advocate’s earlier referenced arguments, this argument also is not relevant to the analysis. There is no prong in the balancing test related to the Consumer Advocate’s activities.

8. Moreover, the Consumer Advocate has informed the public what he “is up to” and he needs no assistance from this Commission. The Consumer Advocate published an article to explain what he is “up to” – see <http://indepthnh.org/2022/02/09/secret-pole-deal-looms-at-the-puc/>. Within the confines New Hampshire law, he remains free to continue to remind the public of his activities. Publishing confidential data of companies conducting business in New Hampshire is not within that legal rubric when it can harm competitive interests. This is the entire point of N.H. RSA 91-A:5; the New Hampshire Legislature recognized the need for businesses and other entities to keep certain data confidential and out of the public realm.

9. On behalf of the Joint Petitioners, Consolidated hereby reiterates the request that the Commission issue an order protecting the information described in the Motion from public disclosure and prohibiting copying, duplication, dissemination or disclosure of it in any form. Consolidated further requests 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.

WHEREFORE, the Consolidated respectfully requests 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 all as fully set forth in the Motion; and

B. Grant such additional relief as it deems appropriate.

Dated: February 11, 2022

Respectfully submitted,

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

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CERTIFICATE OF SERVICE

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

February 11, 2022
Date

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