

**THE 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 PARTIAL REHEARING/RECONSIDERATION PURSUANT TO NH
RSA 541:3 OF COMMISSION ORDER NO. 26,609**

NOW COMES Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications (“Consolidated”) and hereby respectfully requests a partial rehearing (or reconsideration) of this Commission’s Order No. 26,609, dated April 13, 2022. In support thereof, Consolidated states as follows:

I. BACKGROUND

1. The Procedural History contained within Commission Order 26,60 (the “Order”) summarizes the status of this Docket and the history of the filings which lead to this Motion for Rehearing/Reconsideration. In short, on February 10, 2021, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) and Consolidated (together, the “Joint Petitioners”), filed a joint petition (the “Petition”) requesting that the Commission approve a transfer of ownership interests in utility pole assets from Consolidated to Eversource pursuant to the terms of a Settlement and Pole Asset Purchase Agreement, dated December 30, 2020 (the “Settlement Agreement”). On January 31, 2022, the Joint Petitioners filed a Motion for Protective Order and Confidential Treatment (the “Motion”) requesting the Commission to issue a protective

order pursuant to RSA 91-A:5, IV and N.H. Admin. Rule Puc 203.08 affording confidential treatment to the redacted information contained within the Joint Petitioners' Settlement Agreement, Petition, pre-filed testimony, pleadings, and other information exchanged between the parties to this Docket and submitted to the Commission. The New Hampshire Consumer Advocate filed an objection to the Motion on February 1, 2022. The Order followed on April 13, 2022.

2. The Commission granted in part and denied in part the Joint Petitioners' Motion. This Motion for Partial Rehearing/Reconsideration pertains to a portion of Section III.B.i of the Order to the extent it requires the public disclosure of information related to the purchase price — and calculation and financing thereof — that Eversource would pay Consolidated to acquire the utility poles. At the outset, however, Consolidated notes its agreement with that portion of Section III.B.i of the Order wherein the Commission held:

...[W]e note that the redacted information contained in the [Settlement] Agreement, Petition, pre-filed testimony, and exhibits generally relates to the purchase price — and calculation and financing thereof — that Eversource would pay Consolidated to acquire the utility poles. The purchase price included in a purchase and sale agreement, and how that figure was calculated, is without question information that is “relate[d] to commerce.” N.H. Housing Fin. Auth., 142 N.H. at 553. Thus, the redacted information is “commercial or financial” information within the meaning of RSA 91-A:5, IV.

Order, p. 8.

3. Consolidated does not agree with the remainder of the analysis requiring the disclosure of said commercial and financial information. Pursuant to NH RSA 541:3, the Commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion. Good reason may be shown by identifying specific matters that were either “overlooked or mistakenly conceived” by the deciding tribunal. *See Dumais v. State*, 118 N.H. 309, 311 (1978). Consolidated recognizes that a successful motion for rehearing does not merely

reassert prior arguments and request a different outcome. *See Connecticut Valley Electric Co.*, Order No. 24,189, 88 NH PUC 355, 356 (2003).¹

4. The Commission ruled that the Joint Petitioners failed to persuade the Commission that the redacted information is “confidential” within the meaning of RSA 91-A:5, IV because they had not demonstrated the disclosure of the information is likely to substantially harm Consolidated’s competitive position. (Order at p. 9). The Commission found it to be unclear how disclosure of the purchase price in the Agreement — but not any of the other terms that have been disclosed — will put Consolidated at such a great competitive disadvantage going forward. (*Id.*) The Commission then applied the *Union Leader’s* three-part balancing test. For prong 1 (privacy interest at stake that would be invaded by the disclosure) the Commission reiterated that “... it has not been demonstrated that disclosure of the redacted information will substantially harm Consolidated’s competitive position.” (*Id.*) For prong 2 (the public’s interest in disclosure) of the *Union Leader* test, the Commission held:

Thus, this transaction relating to a public utility is of a substantial magnitude and whether the Commission approves the Agreement, and on what terms, will have an appreciable impact on electricity rates paid by the public. The purpose of the Right-to-Know Law is to provide the utmost information to the public about “what its ‘government is up to.’” See New Hampshire Right to Life, 169 N.H. at 111. When the Commission is asked to approve a purchase and sale of public utility assets that will result in an increase in how much the public must pay for the benefit of the utility, the public cannot adequately know what the Commission is “up to” and whether it is acting in the public interest without knowing the cause of the increased rates, which will often be illuminated by the purchase price and financing of the agreement.

Order, p. 10. As for prong 3 of the *Union Leader* test, the Commission found that the public’s interest in disclosure outweighs the privacy interests of the Joint Petitioners. *Id.*

¹ Pursuant to Puc 203.08, “[i]f the commission denies a motion for confidential treatment or modifies a previously issued protective order so that information previously held confidential is no longer entitled to such treatment, the information shall not be disclosed until all rights to request rehearing and to appeal have been exhausted or waived.”

II. ARGUMENT

5. To justify nondisclosure, “the party resisting disclosure must prove that disclosure is likely: (1) to impair the [government]’s ability to obtain necessary information in the future; or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.” *Union Leader Corporation v. Town of Salem*, 173 N.H. 345, 355 (2020). For the present Motion for Rehearing/Reconsideration, part (1) of the standard is not at issue. Under part (2), Consolidated submits the disclosure of the purchase price and other redacted information in fact would cause substantial harm to the competitive position of Consolidated.

6. First, Consolidated certainly has a privacy interest at stake that would be invaded by the disclosure of the purchase price. Consolidated has been engaged in discussions with several electric utilities for the potential sale of the Consolidated interest in utility poles. While Consolidated agrees “there are a myriad of considerations that inform bargaining leverage in the negotiation of fees, pricing, and contractual terms when conducting a transaction such as the one at issue” (Order p. 8), the Order misapprehends the overall importance of the negotiated purchase price. If the Commission were to make public the negotiated purchase price for Consolidated’s interests in the utility poles, all negotiations would come to a halt on that item. The public price for Eversource would be the maximum price for all of Consolidated’s interests in the poles throughout Northern New England (“NNE”) regardless of any other factors unique to any specific electric utility in any of the NNE states. The challenge for the other electric utilities would be to negotiate a lower price per pole equivalent than that agreed to by Eversource. But Consolidated’s attempts to negotiate a higher purchase price – potentially justified by other factors unique to the

specific circumstances of another transaction – would be completely negated by the public disclosure of the Eversource pricing.

7. Moreover, according to the Cambridge Dictionary, competition means “a situation in which someone is trying to win something or be more successful than someone else.” (<https://dictionary.cambridge.org/us/dictionary/english/competition>) Similarly, Dictionary.com defines competition as (1) “the act of competing; rivalry for supremacy, a prize, etc.” and (2) “a contest for some prize, honor, or advantage”. (<https://www.dictionary.com/browse/competition>) For Consolidated’s purposes and privacy interests, competition need not necessarily be limited to a battle for customers among (for example) any of the NECTA parties to this Docket or other competitive carriers in New Hampshire. Competition in this sense encompasses the act of trying to finalize a negotiated transaction for an asset acquisition transaction on the best terms possible for Consolidated versus the other party undertaking the same effort on its behalf. The Commission’s Order, if not reconsidered, would hinder significantly Consolidated’s efforts in this regard.

8. Negotiations for asset acquisitions and the termination of pole asset joint use/joint ownership agreements involve multiple puts and takes; there is give and there is take depending upon the importance of one or more specific elements at issue between the parties. Parties to a transaction compete for the best deal terms possible. While the purchase price only may be one element of a deal, it is an element among the most important of all elements in a transaction such as the transaction at issue in this Docket.²

² If the purchase price were not one of the most important elements at issue in a transaction such as the one under consideration in this Docket, then the Joint Petitioners likely could have resolved the Docket by agreeing to the artificially low net book value proposed in the Direct Prefiled Testimony of Stephen R. Ekberg on behalf of the Department of Energy. *See* Ekberg Testimony, January 31, 2022, at p. 6, ln. 4 (Hearing Exhibits 21 (Confidential) and 22 (Redacted)).

9. For prong 2 of the *Union Leader* test, Consolidated submits that the public's interests in knowing what its "government is up to" is presently outweighed by Consolidated's privacy interests in the purchase price information. The Commission has approved of nothing to date. Electric rates have not increased to date as a result of the transactions contemplated in the Settlement Agreement and Petition. In fact, it is not an automatic result that some type of approval will lead to an increase in electric rates. For example, Eversource witness Douglas Horton described that many capital costs would not be part of an initial recovery effort by Eversource. Such costs would be subject to a prudence review:

(Horton) Based on the fact that we are always subject to a prudence review for any additional incremental capital investments that we make, but also we have agreed to forgo capital cost recovery of the transaction until our next rate-setting interval, and, so, to the extent that there's return on and of [sic] that's not recovered, that is at risk.

Hearing Transcript, p. 76, lns. 4-11.

We always are at risk of a prudence review and a cost disallowance, if our Commission determines that we haven't spent costs prudently or the costs aren't in the best interest of our customers... I think there's a difference between a decision to purchase the poles, and then our management of those poles, once they're under our ownership. And that's where the risk comes in.

Id., p. 77, lns. 1-5.

10. Consolidated submits that to the extent the public needs to know what the Commission is "up to", the public need not know Consolidated's confidential and commercially sensitive data until and unless there actually is a transaction that in fact "... will result in an increase in how much the public must pay for the benefit of the utility..." assets being purchased. (*See* Order, p. 10). As noted above, the proposed net book value offered by the Department of Energy differs significantly from the pole asset gross purchase price and the pole asset net purchase price. If the Commission proposes to modify the Settlement Agreement and adopts the Department's valuation, then the transaction undoubtedly will not close and there will be no potential for an

impact on electric rates. Hence no need for the disclosure of anything. If the Commission approves of the Petition and Settlement Agreement, then the transaction undoubtedly will close; in which case any final terms negatively impacting electric rates can be disclosed at an appropriate time.

IV. CONCLUSION

11. For the foregoing reasons, Consolidated respectfully requests that the Commission (I) reconsider that portion of Section III.B.i of the Order to the extent it requires the public disclosure of information related to the purchase price — and calculation and financing thereof — that Eversource would pay Consolidated to acquire the utility poles (II) grant this Motion for Partial Rehearing/Reconsideration; and (III) rule that disclosure of any terms of an approved transaction be held in abeyance pending determination of: (x) the actual (and final) terms of the transaction, assuming the Commission approves of the Petition (as recently modified by Eversource’s updated cost recovery proposal or some other form) and (y) the impact on electric rates related to the final terms of the transaction.

Dated: April 28, 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

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

CERTIFICATE OF SERVICE

I hereby certify that, on the date written below, I caused the attached to be served on the parties to Docket DE 21-020 via the Service List on file with the Commission.

April 28, 2021
Date

/s/ Patrick C. McHugh
Patrick C. McHugh