

**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

**OBJECTION TO CONSUMER ADVOCATE’S MOTION FOR REHEARING OF
ORDER NO. 26,609 AND RESPONSE TO CONSUMER ADVOCATE’S OPPOSITION
TO CONSOLIDATED COMMUNICATIONS’ MOTION FOR PARTIAL
REHEARING/RECONSIDERATION**

NOW COMES Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications (“Consolidated”) and hereby respectfully (i) objects to the Motion for Rehearing of Order No. 26,609 (the “Order”) filed by the New Hampshire Consumer Advocate on May 4, 2022 (the “OCA Motion”), and (ii) responds to the Consumer Advocate’s untimely opposition to the Consolidated Motion for Partial Rehearing/Reconsideration of the same Order. In support thereof, Consolidated states as follows:

1. The Consumer Advocate seeks reconsideration of the Order to the extent the Commission granted confidential status to the terms of the settlement agreement entered into by Consolidated and Public Service Company of New Hampshire (“Eversource”, and together with Consolidated, the “Joint Petitioners”)¹ by which they settled their dispute over vegetation

¹ The New Hampshire Department of Energy (“DOE”) filed a letter of support for this portion of the OCA Motion on May 6, 2022. The DOE stated in part that “... Eversource may seek to recover from its ratepayers vegetation management expenses it has incurred that were billed or billable to Consolidated and would have been payable by Consolidated in the absence of the settlement. *See* Transcript of Hearing on March 15, 2022 at 96-98. Therefore, there exists a direct link “between rates payable by customers and the extent to which Eversource compromises away its right to seek recovery of the same costs from Consolidated.” (DOE citing OCA Motion at 4).” The DOE never explains how such a direct link exists between that which

management expenses. In summary, the Consumer Advocate concluded the Commission's analysis in this portion of the Order is "utterly incorrect" (OCA Motion, p. 3) because: (i) the link between rates payable by customers and the extent to which Eversource compromises away its right to seek recovery of the same costs from Consolidated could not be more direct (OCA Motion, p.4) and (ii) the New Hampshire Supreme Court's decision in *Provenza v. Town of Canaan*, issued on April 22, 2022, allegedly compels a different conclusion (OCA Motion, p. 4-6). Consolidated disagrees with the Consumer Advocate's analysis.

2. Similar to the DOE's May 6 letter, the Consumer Advocate makes conclusions based on presumptions to establish linkage that does not exist. The Consumer Advocate argued:

Presumably, the Company will seek a similar reconciliation mechanism when it files its next rate case, likely in 2023. In other words, *the link* between rates payable by customers and the extent to which Eversource compromises away its right to seek recovery of the same costs from Consolidated *could not be more direct*.

OCA Motion, p. 4 (emphasis added).

3. As Consolidated argued in its April 28 Motion for Rehearing/Reconsideration, to date nothing has occurred that impacts New Hampshire electric rates. The Consumer Advocate, the DOE and New England Cable and Telecommunications Association, Inc. ("NECTA"), all oppose in some form some or all portions of the Joint Petitioners' proposed transactions regarding the utility pole sale and vegetation management settlement. NECTA and the DOE have proposed extensive conditions on any such transaction, many of which are so onerous that the transactions contemplated by the Joint Petitioners' Settlement Agreement will not close. Eversource recently

is hypothetical today compared to what Eversource may or may not do in the future. Even the Consumer Advocate acknowledges that an Eversource rate case may be filed at some point in the future, although he predicts such a case "likely" will be filed in 2023. (*See id.*)

filed testimony and a revised cost recovery proposal (*see generally* Exhibits 68-70 filed March 28, 2022) that differ from the prior filed PPAM (Pole Plant Adjustment Mechanism)². To date, the Commission has not ruled on the proposed transactions and the evidentiary hearing continues on May 10. To say that a link between electric rates and confidential filings containing competing proposals “could not be more direct” in fact could not be more wrong. If there is in fact a transaction impacting electric rates that closes at some point in the future, then (and only then) should the public’s right to know vest such that disclosure of the actual terms of the transaction may be disclosed so the public knows what the Commission is “up to”. Until then, Consolidated’s privacy interests should outweigh public disclosure of the Joint Petitioners’ proposed transaction details especially in light of Consolidated’s privacy interests related to other potential pole transactions.

4. The Consumer Advocate further argues that the Commission should not use the long held three-part balancing test when deciding issues related to RSA 91-A:5 (IV) as the Legislature never intended this test be a barometer for administrative agencies to use when making such decisions. *See* OCA Motion, ps. 4-5 *citing Chrysler Corp. v. Brown*, 441 U.S. 281, 293 (1979). However, according to *Provenza*, “[t]his balancing test applies to all categories of records enumerated in RSA 91-A:5..” *Provenza*, p. 9 (citations omitted).

5. *Provenza* does not compel a different conclusion than that reached by the Commission in its Order related to the confidential terms of the Joint Petitioners’ Settlement Agreement. In *Provenza*, a police officer filed suit to preclude disclosure of a town investigation into the officer’s conduct during a traffic stop. After that encounter, the driver subsequently filed

² *See generally* Supplemental Direct Testimony of Douglas P. Horton and Erica L. Menard, filed November 15, 2021.

a formal complaint against the officer in which the driver alleged that the officer had used excessive force. The town commissioned a third party entity to investigate the encounter. A local newspaper, the Valley News, sought disclosure of the third party report via a Right-to-Know Law request. *See Provenza* at p. 2.

6. In weighing various interests favoring nondisclosure against the public interest in disclosure, the Court dismissed the officer's alleged privacy interests. The Court held:

We conclude that Provenza's privacy interest here is not weighty. As the trial court explained, the Report does not reveal intimate details of Provenza's life, *see N.H. Civil Liberties Union v. City of Manchester*, 149 N.H. 437, 441 (2003), but rather information relating to his conduct as a government employee while performing his official duties and interacting with a member of the public... *Kroeplin v. Wis. Dep't of Natural Resources*, 725 N.W.2d 286, 301 (Wis. App. 2006) (stating that when an individual "becomes a law enforcement officer, that individual should expect that his or her conduct will be subject to greater scrutiny. That is the nature of the job.")

Provenza at p. 9.³

7. The Court found the public interest in disclosure to be significant as the actual town initiated investigation had concluded and the public had a right to know if the investigation is comprehensive and accurate. *Id.* at p. 10. The Court therefore affirmed the trial court's decision regarding the release of the town's investigation into the incident.

8. The facts of *Provenza* are strikingly different from the facts of the present Docket and the Joint Petitioners' Settlement Agreement. Neither of the Joint Petitioners is affiliated with a governmental agency. Instead, the Joint Petitioners are private parties which have decided to settle a private disagreement. The privacy interests in the details of the Joint Petitioners' settlement is weighty and the Joint Petitioners have acted as private business entities, not in some fashion as government agents. Simply because RSA 91-A:5 (IV) contains an exemption for information such

³ The town which employed the officer and which commissioned the independent investigation had no interest in nondisclosure as it never filed a brief (or anything) with the Supreme Court. *See id.*

as that at issue in the present motion practice does not, as the Consumer Advocate argues, turn this legislative provision into a “privacy statute”. The language of RSA 91-A:5 (IV) is clear:

The following governmental records are exempted from the provisions of this chapter:
IV. Records pertaining to ... confidential, commercial, or financial information...

Thus, the Commission should deny the Consumer Advocate’s request for a reconsideration of that portion of the Order related to the confidentiality of the Joint Petitioners’ settlement.

9. With respect to the Consumer Advocate’s untimely opposition⁴ to Consolidated’s Motion for Rehearing/Reconsideration, he clearly misunderstands the facts. Perhaps that is why the Consumer Advocate dismisses the Consolidated Motion as “devoid of merit” (*see* OCA Motion at p. 7) and labels the information in Consolidated’s Motion as “misleading and self-refuting” (*see* OCA Motion at p. 8)

10. That Consolidated sold the bulk of its poles in Vermont as Consolidated’s witness Michael Shultz testified during the March 15, 2022, hearing does not end the inquiry. That Consolidated does not need to pay vegetation management expenses in Maine and that the Consolidated vegetation management expense in Vermont has been significantly reduced does not end the inquiry. The Consumer Advocate choose to end his analysis with such facts in order to make arguments which mischaracterize negotiations for the sale of Consolidated’s pole ownership interests.

11. The facts, however, are that Consolidated jointly owns poles with and/or has solely owned poles to which the following electric utilities (in addition to Eversource) are attached:

⁴ Objections to Consolidated’s Motion for Rehearing/Reconsideration were due on May 3, 2022, pursuant to Puc. 203.07(f) as Consolidated filed the Motion on April 28, 2022.

Maine

Versant Power
 Central ME Power
 Eastern ME Elect.
 Fox Islands Electric
 Houlton Water Co.
 Kennebunk Light & Pwr.
 Madison Electric Works
 Van Buren Lt. and Pwr.

Vermont

Barton Village Electric Dep't.
 Vermont Electric Coop.
 Hardwick Electric Dep't.
 Hyde Park Light Dep't.
 Jacksonville Electric
 Johnson Water & Light
 Lyndonville Light
 Morrisville Water & Light
 Stowe Electric Dep't.
 Swanton Electric Dep't.
 Washington Electric Dep't.

New Hampshire

GSE/Liberty Utilities
 Unitil Electric Services
 NH Electric Coop.
 Wolfeboro Electric Dep't.
 Littleton Water & Light
 Woodsville Water & Light
 Ashland Electric Dep't.

To date multiple electric utilities (in addition to Eversource) in each of New Hampshire, Maine and Vermont have approached Consolidated or been actively engaged in negotiations with Consolidated for the sale of Consolidated's solely owned poles and Consolidated's joint ownership interests in poles. The electric utilities' interest in acquiring Consolidated's pole assets goes beyond vegetation management issues/concerns – it goes directly to what utility has a more tangible business need for owning and maintaining the poles.⁵ Consolidated should be afforded confidentiality related to the details of its proposed transaction with Eversource so that Consolidated is not prejudiced in negotiations with other utilities. Note that Part I, Article 2-b of the New Hampshire Constitution went into effect on December 5, 2018. As Article 2-b states: “An individual's right to live free from governmental intrusion in private or personal information

⁵ See *ex. Petition of NSTAR Electric Company and Western Massachusetts Electric Company, each doing business as Eversource Energy, Pursuant to G.L. c. 164, § 94 and 220 CMR 5.00 et seq., for Approval of General Increases in Base Distribution Rates for Electric Service and a Performance Based Ratemaking Mechanism*, Massachusetts Department of Public Utilities, Order 17-05, Nov. 30, 2017, p. 602 (As a final matter, the Department notes that Unitil addressed a similar issue [regarding vegetation management] and has come to a resolution with Verizon that involved the transfer of ownership of jointly owned poles from Verizon to the distribution company. See *Fitchburg Gas and Electric Light Company*, D.P.U. 17-ARR-04, Exhibit DPU-1-1 (2017). Further, the Companies indicated that they are aware of a similar agreement with National Grid and anticipate that Verizon will seek similar treatment from Eversource. The Department directs the Companies to explore the benefits to ratepayers and feasibility of a transfer of jointly owned poles from Verizon to Eversource and report on such efforts in its next base rate case proceeding.)

is natural, essential, and inherent.” *See State Employees Assoc. of N.H. v. N.H. Div. of Personnel*, 158 N.H. 338, 345 (2009) (noting that all of the words of a statute must be given effect).

12. Consolidated reiterates 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). If the Commission approves of the Joint Petitioners’ Petition and Settlement Agreement, then any final terms negatively impacting electric rates can be disclosed at an appropriate time.

IV. CONCLUSION

13. 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 the Consolidated Motion for Partial Rehearing/Reconsideration; (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; and (IV) deny the Consumer Advocates’ Motion for Rehearing of Order No. 26,609.

Dated: May 9, 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.

May 9, 2021
Date

/s/ Patrick C. McHugh
Patrick C. McHugh