

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 Settlement and Pole Asset Purchase Agreement

OBJECTION TO MOTION FOR REHEARING AND/OR CLARIFICATION OF
ORDER NO. 26,729

Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource”) and Consolidated Communications of Northern New England Company LLC d/b/a Consolidated Communications (“Consolidated”) (Eversource and Consolidated may hereinafter be referred to as the “Joint Petitioners”) submit this response to the Motion for Rehearing and/or Clarification of Order No. 26,729 filed by intervenor New England Cable and Telecommunications Association, Inc. (“NECTA”) on December 16, 2022 (the “Motion”).

The Motion argues that the Public Utilities Commission’s Order No. 26,729 issued on November 18, 2022 (the “Order”) (1) applied an incorrect standard of review; (2) did not decide whether the rates Eversource proposes to charge for attachments to the transferred poles are just and reasonable; (3) failed to specify that the regulatory net book value recommendations by NECTA should apply to Eversource’s pole attachment rate calculations; (4) did not decide the issue of whether the pole attachment rates charges by Eversource to Consolidated discriminated against other attachers; and (5) failed to adopt NECTA’s recommendations for service, billing, and application process requirements designed to avoid harm to NECTA members (Motion at 1). As demonstrated below, NECTA’s Motion is unfounded and should be rejected for several reasons including that: (1) even if the Commission had applied the standard of review set forth in RSA

374:30, I (instead of RSA 374:30, II), the proposed transaction should be approved; and (2) the Commission appropriately determined that any dispute regarding pole attachment rates are beyond the scope of this proceeding.

I. Background

The Joint Petitioners submitted a joint petition to the Commission on February 10, 2021 (the “Joint Petition”) requesting approval of a Settlement and Pole Asset Purchase Agreement executed by the Joint Petitioners on December 30, 2020 (the “Agreement”), through which Eversource is purchasing: (a) Consolidated’s 50 percent joint ownership interest in and to the approximately 343,098 utility poles jointly owned with Eversource; and (b) Consolidated’s 100 percent ownership interest in and to the approximately 3,844 utility poles that Consolidated solely owns in Eversource’s service territory to which Eversource attached its electric facilities (the “Transaction”).

The Order approves the Transaction based on the Commission’s determination that Eversource possesses the technical, managerial, and financial capabilities necessary to maintain the utility poles and associated assets that are the subject of the Transaction. Order at 21. Should the Transaction move forward, the Order also directs Eversource to calculate the net book value for the transferred pole assets as though Consolidated was a rate regulated utility using the methodology and formula applied by NECTA and an effective date of February 10, 2021.¹ Id.

NECTA requests that the Commission consider the Transaction under the standard of review set forth in RSA 374:30, I and argues that this standard cannot be met without a Commission order directing Eversource to comply with NECTA’s recommendations (Motion at

¹ The Order also authorizes Eversource to recover identified costs related to pole inspections, pole replacement, and vegetation management incurred beginning on February 10, 2021. Order at 21. This cost recovery provision is not at issue in the Motion.

7). NECTA's recommendations are: (1) that the Consolidated pole attachment rates be reduced to levels that NECTA finds just and reasonable; (2) that Eversource use a reasonable regulatory net book value when calculating unified pole attachment rates that reflect inclusion of the transferred poles; (3) that Eversource be directed to charge Consolidated a pole attachment rate that is not less than the pole attachment rate charged to NECTA members; and (4) that Eversource be directed to meet the conditions regarding billing, service, and application processing set forth by NECTA in Exhibit 28² (Motion at 6).

II. Standard of Review

RSA 541:3 allows for rehearing of a Commission order:

Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

The standard governing the Commission's review of a motion for rehearing pursuant to RSA 541:3 is well established. "The Commission may grant rehearing or reconsideration for 'good reason' if the moving party shows that an order is unlawful or unreasonable." *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 26,087 at 3-4 (Dec. 18, 2017) (citations omitted). "A successful motion must establish 'good reason' by showing that there are matters that the Commission 'overlooked or mistakenly conceived in the original decision,' or by presenting new evidence that was 'unavailable prior to the issuance of the underlying decision.'"

² Eversource has already included commitments related to billing, service, and application process during this proceeding and thus no additional action is necessary; these commitments remain unchanged should the Transaction move forward consistent with the directives set forth in the Order (Eversource R. Br. at 9 citing Exh. 10, at Bates 000008-000012).

Id. “A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome.” Id.

III. Argument

A. The Transaction Satisfies RSA 374:30, I

NECTA’s first argument is that the Commission applied an incorrect standard of review based on a misinterpretation of RSA 374:30 (Motion at 2). Specifically, NECTA argues that RSA 374:30, II cannot be applied to the instant proceeding because Eversource is “not the type of *transferee* to which that statute specifically applies” (Motion at 3).

RSA 374:30, II states:

An incumbent local exchange carrier [(“ILEC”)] that is an excepted local exchange carrier [(“ELEC”)] may transfer or lease its franchise, works, or system, or any part of such franchise, works or system, exercised or located in this state, or contractor for the operation of its works and system located in this state, when the commission finds the utility to which the transfer is to be made is technically, managerially, and financially capable of maintaining the obligations of an incumbent local exchange carrier set forth in RSA 362:8 and RSA 374:22-p.

NECTA’s argument that RSA 374:30, II cannot apply to the transaction relies on the reference to RSA 362:8 and RSA 374:22-p; NECTA argues that because Eversource is an electric distribution company, it is not the type of the utility capable of maintaining an ILEC’s obligations under these statutory provisions (id.). NECTA is correct that Eversource is not an ILEC and therefore RSA 362:8 and RSA 374:22-p do not apply to Eversource; however, the Order specifically found that the proposed transfer will not change Consolidated’s obligations under RSA 362:8 and RSA 374:22-p because the proposed transfer is only a transfer of poles and associated assets. Order at 13.

Consolidated is not transferring or otherwise modifying its franchise, works or systems such that Eversource would need to comply with RSA 362:8 and RSA 374:22-p. Based on this fact, the Commission reasonably concluded its evaluation of Eversource's technical, managerial, and financial capabilities would be limited to the maintenance of the poles and pole assets in a manner that ensures reasonably safe and adequate utility services. Order at 14 citing RSA 374:1. It is undisputed that Eversource possesses the technical, managerial, and financial capabilities to maintain the poles and pole assets in a manner that ensure reasonably safe and adequate utility service.

However, even if the Commission determines that RSA 374:30, I is the correct standard of review, rehearing is unnecessary because RSA 374:30, I requires only that the Transaction satisfy the "no net harm" test. Consumers New Hampshire Water Company, 82 N.H. P.U.C. 814, *4 (1997) (citing In re Eastern Utility Associates, Inc., 76 N.H. P.U.C. 236, 252-253 (1991)). "The test requires a finding that a transaction is one not forbidden by law and is reasonably permitted under all the circumstances of the case," and, "based upon the totality of the circumstances, there is no net harm to the public as the result of the transaction." Id. (quoting Pennichuck Water Works, Inc., 77 N.H. P.U.C 708, 713 (1992)). The Commission's Order has already performed an analysis sufficient to reach this conclusion. Order at 13-14.

NECTA has failed to demonstrate that the Transaction would not satisfy the "no net harm" test. NECTA argues that the transaction could only be approved under RSA 374:30, I if the Commission adopts NECTA's recommendations regarding attachment rates (Motion at 6). This argument is unfounded and is inconsistent with the "no net harm" test. NECTA is instead

attempting to apply a net *benefits* test with respect to pole attachment rates while ignoring all other expected benefits associated with the Transaction.³ For example, NECTA claims:

the Commission must order that: the Consolidated pole attachment rates (that Eversource proposes to charge for the transferred poles until such time as Eversource unifies its pole attachment rates to reflect inclusion of the transferred poles) be reduced to levels that are just and reasonable

Motion at 6 (emphasis added). Clearly, NECTA is seeking a financial benefit for its members as a condition of the Commission's approval of the Petition.

On the other hand, Eversource's proposal to charge Consolidated's pole attachment rates would maintain the status quo. Eversource's proposal would not result in change to the pole attachment rates and therefore cannot result in any harm. The Commission confirmed that no pole attachment rates would be modified as a result of the Transaction. Order at 20. NECTA cites to no other alleged "harm" that would result from the Transaction and as a result no rehearing is necessary because even if RSA 374:30, I were applied as the standard of review, the Commission should approve the Transaction. In short, the Transaction meets the "no net harm" standard.

Further, the Joint Petitioners detailed in their initial brief how the Transaction satisfies the public interest standard set forth in RSA 374:30, I through demonstration of reliability benefits for Eversource's customers (Joint Petitioners In. Br. at 8-11). NECTA ignores this evidence and instead focuses solely on the pole attachment rates charged to its members; this is inconsistent with the public interest standard set forth in RSA 374:30, I that requires consideration of the totality of circumstances. Based on the foregoing, NECTA has failed to demonstrate that rehearing under the standard of review set forth in RSA 374:30, I would cause the Commission to reach a different conclusion. NECTA's Motion for Rehearing should be denied.

³ It is also important to note that NECTA has considered only benefits to its own members. Any reduction in rates to NECTA's members will result in higher rates for all other customers of Eversource, all else remaining equal.

B. Pole Attachment Rates are not at Issue in this Proceeding

NECTA next attempts to argue that the Commission's application of RSA 374:30, II resulted in an error because the Commission failed to adopt NECTA's recommendations to prevent economic and operational harm (Motion at 6). The Commission should not be persuaded by this argument. NECTA has tried unsuccessfully throughout the course of this proceeding to expand the scope of review to include consideration of its dispute regarding Consolidated pole attachment rates and NECTA's Motion is simply an attempt to relitigate these issues because it was not satisfied with the Commission's Order.

The appropriate forum and process for disputing pole attachment rates are set forth in the pole attachment agreements between NECTA's members and Consolidated (Joint Petitioners In. Br. at 21). The Order confirmed that is the appropriate process for resolving any pole attachment rate dispute also noting that NECTA's members are seeking relief from the Commission on the issue of pole attachment rates in docket DT 22-047. Order at 20. There is nothing in NECTA's Motion to support a finding that NECTA's assertions regarding Consolidated's pole attachment rates cannot be addressed through docket DT 22-047. Therefore, no rehearing is warranted.

Finally, with respect to the pole attachment rates that will be charged to Consolidated, NECTA also fails to demonstrate that the Order overlooked evidence or was mistaken in reaching the conclusion that an accurate number of pole attachments is necessary to enable accurate billing and that records for determining this accurate number of pole attachments does not exist. Order at 20. In fact, the Order specifically cites to the Joint Petitioners' testimony in this proceeding explaining that an accurate number of pole attachments is not known and that a survey is necessary to confirm the number of attachments. Id. citing March 15, 2022 Tr. at 121-122. After consideration of this evidence, the Commission did not give "short shrift" to NECTA's

discriminatory rate argument but instead directed Eversource to complete the necessary survey and begin charging Consolidated based on the number of pole attachments within two years (Motion at 12 citing Order at 20). The Commission's conclusion was reasonable and based on evidence in the record. Further, NECTA has failed to present any evidence to rebut the Joint Petitioners' determination that a flat fee arrangement was appropriate as part of the larger agreement between the Joint Petitioners. Different rates are not necessarily discriminatory rates. As the current joint owner of the poles, Consolidated is differently situated than other third-party attachers and it was not unreasonable or discriminatory to apply a different rate for a brief, interim period following the Transaction based on this fact (Eversource R. Br. at 12; Exh. 15, at Bates 000020, lines 13-22 – Bates 00021, lines 1-5). NECTA's Motion fails to show that the Commission's conclusion overlooked any evidence or arguments presented by NECTA. Rather, NECTA has itself ignored the record on this issue and therefore, rehearing should be denied.

C. NECTA's Recommended Operational Conditions

NECTA also argues that the Commission erred by not adopting its recommended conditions related to service, billing and application processing post-transfer (Motion at 12-13). NECTA cites as support for these conditions "... Comcast's negative experience in Vermont when Consolidated transferred pole assets to Green Mountain Power" (Motion at 13). The Commission should not find such arguments to be persuasive.

Comcast failed to provide this Commission with any evidence that it filed a post-closing complaint with the Vermont Public Utility Commission related to issues that arose following the closing of the Consolidated-Green Mountain Power pole sale closing. Comcast certainly understands how to file complaints with any commission or utility regulator when it encounters significant difficulties with a regulated utility. It provided no evidence that had the Vermont

Commission adopted its conditions in that pole purchase proceeding an operational outcome in Vermont would have been different than that which occurred. Regardless of Comcast's alleged experience with the Vermont transaction, as Mr. White testified "...it is water under the bridge..." (2022 March 15 Tr. at 213, 16-17) and it has no relevance to the present proceeding.

The Commission correctly held that "... no conditional order is necessary to require adherence to applicable rules (such as the proposed condition that pole attachment licensing, survey, and make ready work timelines be adhered to)." Order at 21. Conditions directing a utility to follow the law are not necessary. The Joint Petitioners pledged to work cooperatively with NECTA's members post-closing and they reiterate that commitment here. Specific conditions directing how and when parties interact with one another are not necessary. Eversource is now bound to the Commission's rules related to various operational procedures, pole attachments being one of many. As the sole pole owner in that portion of its electric service territory which overlaps with Consolidated's service territory, Eversource will continue to be bound to the same requirements post-closing resulting in no net harm to ratepayers and no net harm to NECTA's members.

D. NECTA's Net Book Calculation

In addition to requesting rehearing on the issues discussed above, NECTA seeks clarification that the net book value required by the Order will apply when Eversource unifies its pole attachment rates to reflect inclusion of the transferred poles (Motion at 13). Eversource does not disagree with this interpretation of the Order, however, the Joint Petitioners do request confirmation from the Commission that the appropriate proportion of total Consolidated poles to be transferred is 75% consistent with Exh. 13 (Exh. 13, Bates 000073) which is based upon Consolidated's pole inventory records (*see* Attachment A). The Commission's Order did not

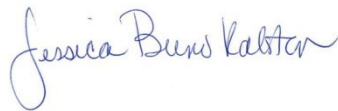
calculate the net book value that will result from closing of the Transaction. The Joint Petitioners have calculated the net book value as \$17,222,663 based on the formula applied by NECTA during the proceeding using the corrected proportion of total Consolidated poles to the number of poles transferred to Eversource, or 75%.⁴ Should the Transaction move forward, this is the net book value that Eversource would include in rate base and, as a result, would also use for purposes of calculating its pole attachment rates.

IV. Conclusion

For the above reasons, the Joint Petitioners respectfully requests that the Commission deny NECTA's Motion and approve the Joint Petitioners' calculation of the net book value, and grant such further relief as may be just and equitable.

Respectfully submitted,

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and

⁴ This net book valuation is calculated using the NECTA methodology consistent with the Order and is based on 40 days of depreciation and additions, and the 75% ratio.

**CONSOLIDATED COMMUNICATIONS OF
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LLC D/B/A CONSOLIDATED COMMUNICATIONS**

By its Attorneys,

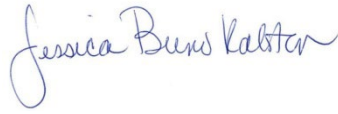
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Dated: December 23, 2022

CERTIFICATE OF SERVICE

I hereby certify that, on December 23, 2022, a copy of this response has been electronically forwarded to the service list in this docket.

A handwritten signature in blue ink that reads "Jessica Buno Ralston". The signature is written in a cursive, flowing style.

Jessica Buno Ralston