

**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 NEW ENGLAND CABLE AND TELECOMMUNICATIONS**  
**ASSOCIATION MOTION TO STRIKE**

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 to Strike filed by intervenor New England Cable and Telecommunications Association, Inc. (“NECTA”) on January 3, 2023 (the “Motion”).

The Motion argues that the Public Utilities Commission should strike Attachment A filed together with the Joint Petitioners’ Objection to NECTA’s Motion for Rehearing and/or Clarification of No. 26,729 issued on November 18, 2022 (the “Order”); and deny the Joint Petitioners’ request for confirmation that the appropriate proportion of total Consolidated poles to be transferred is 75%.<sup>1</sup> In support of its Motion, NECTA characterizes Attachment A as presenting “new” information following closing of the record in this proceeding. This is simply incorrect and should be disregarded by the Commission. The Joint Petitioners request confirmation of the net

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<sup>1</sup> In the alternative, NECTA requests that if the Commission wishes to consider the information contained in Attachment A that NECTA and other parties to this proceeding be provided with an opportunity to conduct discovery on Attachment A (Motion at 6). As set forth in this objection, the information presented in Attachment A is not new information and therefore no additional process is necessary.

book value calculation using a 75% proportion of poles; this proportion of poles was presented during the proceeding and is supported by record evidence (Joint Petitioners' Objection at 9-10).

## **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 Transaction was approved by the Commission subject to the directives set forth in the Order, including a directive to calculate the net book value using NECTA's formula based on effective date of February 10, 2021. Order at 17.

NECTA filed a Motion for Rehearing and/or Clarification on December 16, 2022 ("NECTA Motion for Rehearing"). The Joint Petitioners objected to the Motion for Rehearing on December 23, 2022 (the "Objection"). Included in the Joint Petitioners' Objection was a request for the Commission to confirm that the net book value for the transferred poles (should the Transaction move forward) be calculated using the methodology and formula applied by NECTA using the 75% proportion of poles as an input to such formula and methodology (Objection at 9-10). As set forth below, the Joint Petitioners included this request for confirmation precisely because the proportion of poles used by NECTA in its calculation was based on a typographical error and therefore not supported by the record in this proceeding.

## II. Standard of Review

RSA 541-A:31, VIII requires that in an adjudicative proceeding, finding of fact must be based exclusively on the evidence and on matters officially noticed in accordance with RSA 541-A:33, V.

## III. Argument

### A. The Joint Petitioners' Request to Confirm the Net Book Value Calculation is not a Late-Filed Motion for Rehearing

NECTA's Motion attempts to argue that the Joint Petitioners' request to confirm the net book value is a "late-filed motion for rehearing" (Motion at 4). This is simply incorrect. A motion for rehearing requests the Commission to *reconsider* a finding in its order. Specifically, motions for rehearing are permitted "in respect to any matter determined in the action or proceeding, or covered or included in the order" RSA 541:3. Here, the Joint Petitioners' request to confirm the net book value was made because the Order specified a calculation methodology but did not specify an exact net book value. Order at 21. The Joint Petitioners were not requesting that the Commission reconsider the net book value but instead were simply requesting confirmation of *what the net book value is based on under the Order as it stands*.

The Joint Petitioners' sought clarification through their objection to the Motion for Rehearing to eliminate any future confusion amongst the parties.<sup>2</sup> To avoid this confusion, the Joint Petitioners' presented their calculation of the net book value using NECTA's formula and the proportion of poles transferred, as corrected during the proceeding (Joint Petitioners' Objection at 9-10). It is clear that the Joint Petitioners were not requesting a rehearing of the Order because the Joint Petitioners did not seek to change any findings set forth in the Order (Joint Petitioners'

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<sup>2</sup> Without clarification in response to the Joint Petitioners' Objection, confirmation of the net book value might not occur until a future base distribution rate proceeding or pole attachment rate update.

Objection, Section III(D)). Therefore, the Joint Petitioners' request would not be appropriate for a motion for rehearing but is entirely appropriate as a request for confirmation of the net book value. This is particularly appropriate here based on the correction to the record that was made during the course of the proceeding with respect to the proportion of poles. See Pennichuck East Utility Inc., Docket No. DW 20-019, Order No. 26,562 (granting a motion for clarification filed to correct a technical error). Further, and as discussed below, Attachment A does not introduce any new substantive evidence.

B. Attachment A is Duplicative of the Evidence Previously Presented in the Record

NECTA's second argument is that the information presented in Attachment A included with the Joint Petitioners' Objection should be stricken because the record has closed (Motion at 3-4). Attachment A was provided to confirm that the revised proportion of poles was simply a typographical error and that the originally provided proportion of poles (the 68%) is unsupported by Consolidated's records and therefore should never have been used as a basis for any calculation. However, Attachment A is unnecessary for the Commission to review because the sworn testimony provided in this proceeding already confirmed that the correct proportion of poles is 75% (Exhibit 15, Bates 000017). Thus, the Commission can still confirm that the 75% proportion of poles applies to the net book value calculation because there is sufficient evidence in the record. See, e.g., Legislative Utility Consumers' Council v. Public Service Company of New Hampshire, 119 N.H. 332, at 351 (1979) (finding that although the Commission erred in taking notice of evidence received outside the record, such error was harmless because the Commission had sufficient evidence to warrant its decision).

In its rebuttal testimony, Consolidated clearly explained the issue and clarified the record evidence (Exhibit 15, Bates 000017; see also Exhibit 13, at Bates 000073). The Joint Petitioners'

Attachment A merely supported this evidence and was not an attempt to reopen the evidentiary record.

NECTA also overstates its evidence when it claims it is the only party supporting the proportion of Consolidated's poles in New Hampshire to be transferred to Eversource. Consolidated's rebuttal testimony was clear on the issue, stating the following:

Ms. Kratvin further reduced her pole valuation by relying on the Joint Petitioners' initial response to DOE DR 1-031, intentionally dismissing the corrected response in DOE DR 1-031-RV01. For context, this data request sought information regarding (among other things) the net book value of the Transferred Poles at the time Consolidated acquired FairPoint. See MS/SD – 02 (DOE 1-031(b)). In our answer, we explained Consolidated did not have such granular data. However, we produced Consolidated's total New Hampshire pole investment (i.e., the net book value). Since the Transferred Poles constitute 75% of Consolidated's total number of poles, we meant to multiply the total New Hampshire value by 75%. The original response to the data request inadvertently used a 68% multiplier instead of the 75%. This was nothing more than a typographical error. We explained this during the parties' first technical session held in this Docket on May 13, 2021. Consolidated therefore revised the answer prior to that technical session and provided the correct multiplier. See MS/SD – 02 (DOE 1-031-RV01(b)).

... When explaining her disregard for the higher percentage, Ms. Kratvin stated: “ Petitioners have not provided any substantive explanation for the revised percentage relative to the number of poles...” and she went on to cite a separate response to a different data request taking that response out of context. Yet it was clearly explained to Ms. Kratvin and the parties to this docket during the first technical session that the 68% in the initial version of the response to DOE 1-031 simply was a typographical error.

(Exhibit No. 15, Bates 000016-17).

Based on the foregoing, it is clear that the information presented in Attachment A was duplicative of the existing record. Thus, even if NECTA's Motion is granted the Commission is

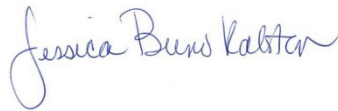
not precluded from clarifying that the corrected proportion of poles should be used for purposes of calculating the net book value.

#### **IV. Conclusion**

For the above reasons, the Joint Petitioners respectfully request that the Commission deny NECTA's Motion to Strike, and grant such further relief as may be just and equitable.

Respectfully submitted,

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

A handwritten signature in blue ink that reads "Jessica Buno Ralston". The signature is cursive and fluid.

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By its Attorneys,

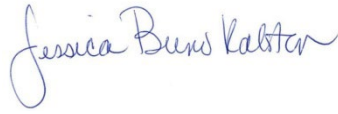
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Dated: January 13, 2023

### **CERTIFICATE OF SERVICE**

I hereby certify that, on January 13, 2023, 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.

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Jessica Buno Ralston