

**STATE OF NEW HAMPSHIRE**

**Before the**

**PUBLIC UTILITIES COMMISSION**

**Docket No. DT 23-103**

**CONSOLIDATED COMMUNICATIONS HOLDINGS, INC. AND**

**CONDOR HOLDINGS LLC**

**JOINT PETITION TO APPROVE TRANSFER OF CONTROL**

**Motion of the New Hampshire Electric Cooperative  
to Compel Responses to Data Requests**

NOW COMES the New Hampshire Electric Cooperative, Inc. (“NHEC”), a party to this docket, and moves pursuant to N.H. Code Admin. Rule Puc 203.09(i) for an order compelling Consolidated Communications Holdings, Inc. (“Consolidated”) to respond to all of the data requests interposed by NHEC and objected to by Consolidated on April 8, 2024.<sup>1</sup> A copy of Consolidated’s objections to NHEC’s data requests is appended hereto for reference. In support of its motion, NHEC states as follows:

**I. Introduction**

On December 27, 2023, Consolidated and Condor filed a joint petition (“Joint Petition”) requesting that the Commission approve Consolidated’s transfer of an indirect ownership interest

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<sup>1</sup> NHEC believed that it had 15 business days from the date it received Consolidated’s objections to file a motion to compel. It was clarified to NHEC yesterday afternoon that Rule Puc 203.09(i)(2) requires that motions to compel discovery must be made “within 15 business days of receiving the applicable response or objection, or *the deadline for providing the response, whichever is sooner*” (emphasis added), and that the deadline for providing the response was Consolidated’s response to data requests scheduled for Wednesday, April 10. NHEC requests that the Commission waive the filing deadline for motions to compel here because its error was inadvertent and should not prejudice any party to this proceeding. Rule Puc 203.09(i)(4) requires a party to certify that it has “made a good faith effort to resolve the dispute informally” in its motion to compel. NHEC contends that it satisfied this requirement during the Technical Session, as explained herein.

in Consolidated Communications of Northern New England Company, LLC (“CCNE”) and Consolidated Communications of Maine Company (“CCM”) (CCNE and CCM collectively referred to herein as the “Licensees”) to Condor pursuant to RSA 374:30, II.

Pursuant to RSA 374:30, II, excepted local exchange carriers such as the Licensees may transfer their franchises, works or systems if the entity 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.” RSA 374:30, II. The Joint Petition claims that Consolidated and Condor possess such capabilities. Joint Petition at 2.

NHEC and one of the Licensees, CCNE, each own proportionate numbers of utility poles, anchors and guys that both entities rely upon to provide their respective services. These “joint use” poles are located within the service territories served in common by both NHEC and CCNE. Each owner is responsible for ensuring that the joint use poles that it owns are suitable for joint use by both entities. The responsibilities of the two joint use pole owners are governed by a contract entitled “General Agreement Joint Use of Wood Poles,” dated July 1, 1977, as amended on August 7, 2003, and March 31, 2008, and Inter-company Operating Procedures, as amended from time to time.

A responsible joint pole owner must devote adequate labor and financial resources to inspect and maintain its joint use poles, to install new joint use poles in a timely manner, to replace joint use poles in a timely manner, to transfer its facilities from replaced poles to newly installed poles, to avoid double pole issues by removing replaced poles, to fulfill its obligations to maintain its rights-of-way, and to respond adequately to emergencies. The question whether CCNE is fulfilling one of these obligations, to commit sufficient resources to maintain its right-

of-way through vegetation management, is subject to a breach of contract proceeding pending in New Hampshire Superior Court.

Given the dependence of NHEC on joint use poles owned by CCNE, there is a need to ensure that the entity to which CCNE is being transferred is technically, managerially, and financially capable of maintaining CCNE's obligations as an ILEC joint pole owner in New Hampshire. NHEC's primary interest is that the proposed transfer of control transaction, if approved, will make certain that the entity controlling CCNE will provide the resources and commitment to ensure:

- a. CCNE will provide reasonable, safe and adequate utility service;
- b. CCNE will address its obligations as a responsible ILEC joint pole owner; and
- c. all of NHEC's members will receive adequate, just and reasonable service regardless of whether the joint use poles used to provide that service are owned by NHEC or CCNE.

To that end, NHEC submitted data requests to Consolidated requesting information pertaining to the following subjects: (1) Pole Inspection Program; (2) Storm Restoration/Emergency Response; (3) Replacement of Utility Poles; (4) Double Poles; and (5) PUC Enforcement.

## **II. Consolidated's Objections and Failure to Provide Any Response**

In addition to several general objections and objections related to the purported vagueness or overbreadth of NHEC's data requests, Consolidated made the following specific objection to each of NHEC's data requests:

Consolidated objects to this Request on the grounds that it seeks information not reasonably calculated to lead to the discovery of admissible evidence. Consolidated objects to this Data Request because it does not seek information relevant to or

admissible in this proceeding before the Public Utilities Commission but instead seeks information concerning an unrelated civil action pending in the Hillsborough County Superior Court captioned New Hampshire Electric Cooperative, Inc. v. Consolidated Communications of Northern New England, LLC, Docket No. 216-2020-CV-00555.

Apparently relying on this objection, Consolidated provided no response at all to any of NHEC's data requests.

### **III. Good Faith Effort to Resolve the Dispute**

During the Technical Session held on April 15, 2024, the undersigned counsel for NHEC addressed the objections from Consolidated to NHEC's data requests. Counsel for NHEC explained that the state court proceeding referenced by Consolidated's objection seeks to resolve vegetation management issues only and does not address any of the subjects of NHEC's data requests; namely, Consolidated's pole inspections program, storm restoration/emergency response, replacement of utility poles, double poles, and PUC enforcement.

In addition, counsel for NHEC explained NHEC's concern that Consolidated has not been living up to its obligations as a joint owner of pole infrastructure in the state, to the detriment of NHEC members. Counsel for NHEC expressed NHEC's concern that Consolidated does not currently appear to have the technical, managerial, or financial capability of maintaining its obligation as an ILEC pole owner, and reiterated NHEC's hope that this transfer of control proceeding could help remedy this issue.

Counsel for Consolidated flatly disagreed with NHEC's explanation that the state court proceeding covered only vegetation management issues and not the issues raised in NHEC's data requests in this transfer of control proceeding, standing on this objection as a basis to avoid any response to NHEC's data requests.

#### IV. Inapplicability of State Court Proceeding

It appears to NHEC that Consolidated is using the unrelated state court proceeding as an excuse not to respond to NHEC's discovery requests and to avoid having information about such issues brought to the Commission's attention.

It is clear that the pending state court proceeding referenced in Consolidated's objections is adjudicating vegetation management issues, not the other operational issues covered by NHEC's data requests (pole inspections, storm restoration/emergency response, replacement of utility poles, double poles, and PUC enforcement). A copy of NHEC's complaint submitted in *New Hampshire Electric Cooperative, Inc. v. Consolidated Communications of Northern New England, LLC*, Docket No. 216-2020-CV-00555, is attached hereto for reference. In it, NHEC makes clear this state court dispute pertains to vegetation management:

A dispute has arisen between the parties concerning the Agreement. [Consolidated] purported to terminate the Agreement effective May 24, 2019 by letter of May 24, 2018. The parties agreed to extend the effective date of the purported termination, if any, to February 22, 2020 and in the interim to "maintain the status quo." Prior to the purported termination and continuing to this day, [Consolidated] has repudiated its payment obligations under the Agreement, and refused to pay invoices for *vegetation management* in full, as required by the Agreement.<sup>2</sup>

In the "Current Controversy" section of the NHEC State Court Complaint, the complaint specifies that NHEC is looking to recover for unpaid invoices for pole attachment rentals and vegetation management expenses.<sup>3</sup>

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<sup>2</sup> *New Hampshire Electric Cooperative, Inc. v. Consolidated Communications of Northern New England, LLC*, Docket No. 216-2020-CV-00555, Complaint for Declaratory, Injunctive, and Other Relief at p. 2 (Aug. 4, 2020) (emphasis added) ("NHEC State Court Complaint").

<sup>3</sup> *Id.* at paragraphs 52-57. The court has already ruled that Consolidated's termination of the joint use agreement was effective only for the future granting of joint use, and that the agreement continued in effect for all poles that were existing at the time of termination:

Based on the foregoing, the Court finds that Article XX is an enforceable contract with a definite term. Under the terms of that provision, Defendant [Consolidated] shall continue to remain responsible for all of its obligations as set forth under the JUA with respect to "all poles jointly

In fact, Consolidated itself moved to limit the issues in the state court proceeding to vegetation management. Consolidated raised certain pole setting issues in its counterclaims but asked the court to remove those counterclaims so that the case could focus solely on vegetation management.

As explained by the Court when it granted Consolidated's motion:

Defendant moves to non-suit its counterclaims III–V without prejudice. (Doc. 91 at 1.) At the hearing, Defendant explained that the issues in counterclaims III–V relate to pole setting issues, and in an effort to streamline the case, as Plaintiff asked Defendant to do, seeks to voluntarily non-suit the claims so the current litigation can focus squarely on the vegetation management issue.<sup>4</sup>

It is therefore clear that the pending state court proceeding does not cover the same topics as the data requests submitted by NHEC in this transfer of control proceeding, and that Consolidated's use of that court case as a pretext not to respond is incorrect. For this reason alone, NHEC's motion to compel should be granted.<sup>5</sup>

## **V. Conclusion**

NHEC is hopeful that this transfer of control proceeding can be used to identify Consolidated's shortcomings as an ILEC pole owner, so that conditions can be attached to this

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used by the parties at the time of such termination." Consistent with the first section of this order, the time of termination is May 24, 2019.

New Hampshire Electric Cooperative, Inc. v. Consolidated Communications of Northern New England, LLC, Docket No. 216-2020-CV-00555, Order at p. 12 (May 4, 2021).

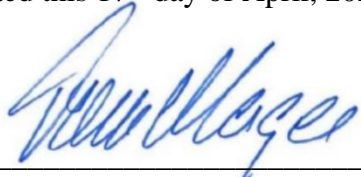
<sup>4</sup> New Hampshire Electric Cooperative, Inc. v. Consolidated Communications of Northern New England, LLC, Docket No. 216-2020-CV-00555, Order at p. 5 (Sep. 14, 2023).

<sup>5</sup> NHEC has also demonstrated the information it seeks from Consolidated is relevant to the Commission's determination whether Consolidated is technically, managerially, and financially capable of maintaining the obligations of an incumbent local exchange carrier. "In a discovery dispute, the Commission applies by analogy the standard applicable to civil litigation, which requires a party seeking to compel discovery to show that the information being sought is relevant to the proceeding or is reasonably calculated to lead to the discovery of admissible evidence." *Hampstead Area Water Company*, Order No. 26,584 (Feb. 17, 2022) at 13 (citation omitted). "The Commission also weighs the effort needed to gather the requested information, the availability of the information from other sources, and other relevant criteria." *Id.* (citation omitted). "In ruling on a motion to compel, the Commission enjoys broad discretion in the management of discovery." *Id.* (citations and internal quotation marks omitted).

transfer that will ensure that Consolidated, under its new ownership, “is technically, managerially, and financially capable of maintaining the obligations of an incumbent local exchange carrier” to properly maintain and operate its distribution pole plant. NHEC and its members, not to mention Consolidated’s own customers, depend upon these capabilities.

Should Consolidated continue to avoid disclosure of its pole owner shortcomings in this proceeding, the PUC should consider opening its own proceeding to investigate them.

Respectfully submitted this 17<sup>th</sup> day of April, 2024.


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Certificate of Service

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included on the Commission’s service list for this docket.

  
Thomas B. Magee