

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

**CONDOR’S OBJECTION TO NEW HAMPSHIRE ELECTRIC COOPERATIVE’S
MOTION TO COMPEL**

NOW COMES Condor Holdings LLC (“Condor”), by and through its undersigned attorneys, and pursuant to N.H. Code Admin. R. Puc 203.07(e), in support of Consolidated Communications Holdings, Inc.’s (“Consolidated”) objection to the Motion of the New Hampshire Electric Cooperative (“NHEC”) to Compel Responses to Data Requests (“Motion”) and the Supplement to the Motion (“Supplement”), filed on April 17, 2024 and April 22, 2024, respectively. Condor also respectfully objects to the Motion and Supplement, and asks that the Commission deny NHEC’s Motion. In support of this objection, Condor states as follows:

I. Background.

The scope of the Commission’s review in the current proceeding concerns whether Consolidated and Condor (together, the “Joint Petitioners”) “possess the technical, managerial and financial capabilities to ensure that Licensees¹ continue to maintain all of the obligations of

¹ Licensees are the following subsidiaries of Consolidated: Consolidated Communications of Northern New England, LLC (“CCNE”) and Consolidated Communications of Maine Company (“CCM”).

incumbent local exchange carriers (“ILECs”) that are Excepted Local Exchange Carriers (“ELECs”) as set forth in RSA 362:8 and RSA 374:22-p.” *Joint Petition for Findings in Furtherance of an Indirect Transfer of Control of CCHI’s Operating Subsidiaries as part of Parent Transaction*, DT 23-103 (Dec. 27, 2023), pp. 1-2.

NHEC has moved to compel Consolidated’s production of a significant volume of highly particularized information related exclusively to Consolidated’s pole management practices, contending that this information is needed to ensure that Consolidated and, by extension, its subsidiary, CCNE, is capable of maintaining its obligations as an ILEC pole owner. NHEC, however, fails to meet its burden of proof, which requires (i) that this particularized information is relevant and material to resolution of the current proceeding, and (ii) that NHEC made a good faith effort to settle this dispute with Consolidated prior to filing the Motion.

Pursuant to RSA 374:30, II, this proceeding concerns whether the Joint Petitioners are capable of maintaining specific statutory obligations and whether, upon such finding by the Commission, they may be authorized to proceed with the indirect transfer of ownership and control set forth in the Joint Petition. Resolution of this proceeding does not require Consolidated to produce extensive information about the operations of its subsidiary Licensees, let alone such nuanced details relating to one limited aspect of the subsidiary’s numerous day-to-day management obligations. Neither would production of such requested information materially benefit the understanding of the Parties or Commission in this proceeding. As such, Condor supports Consolidated’s opposition to the Motion and also contends that NHEC’s Motion should be denied.

II. Commission standards governing discovery and motions to compel.

The Commission applies a discovery standard analogous to that used in civil litigation, requiring that “a party seeking to compel discovery show that the information being sought is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence.” *Public Service Company of New Hampshire*, DE 10-261, Order No. 25,298 (Dec. 7, 2011) at p. 6. Although New Hampshire law generally favors a liberal discovery process, discovery requests that seek “irrelevant or immaterial information is not something [the Commission] should require a party to provide.” *City of Nashua*, DW 04-048, Order No 24, 681 (Oct. 23, 2006) at p. 2; Puc 203.23(d) (“The commission shall exclude irrelevant, immaterial or unduly repetitious evidence”).

In addition, consistent with Puc. 203.09(i)(4), the Commission requires the movant to make a “good faith effort to resolve the dispute informally” and certify as to the same within the motion to compel. *Investigation of Scrubber Costs and Cost Recovery*, DE 11-250, Order No. 25, 646 (Apr. 8, 2014) at 35; Puc 203.09(i)(4).

In considering motions to compel, the Commission balances various factors, including “the effort needed to gather [the requested information], the availability of the information from other sources, and other relevant criteria.” *Investigation of Scrubber Costs and Cost Recovery*, Order No. 25, 646 at p. 4, citing *Public Service Company of New Hampshire*, DE 13-108, Order 25, 595 (Nov. 15, 2013) at p. 3.

III. NHEC failed to prove the relevance and materiality of requested information to the present proceeding.

NHEC indicates that it is involved in an unrelated breach of contract proceeding with Licensee CCNE, a subsidiary of Consolidated, in New Hampshire Superior Court regarding pole

matters. *See Motion* at pp. 2-3. NHEC fails to articulate, however, how this separate contract dispute with CCNE has any bearing on the prospective capabilities of the Joint Petitioners to maintain their statutory obligations generally relating to the provision of basic retail services under RSA 362:8 and wholesale services under RSA 374:22-p.

Notwithstanding the actual terms and limited requests in the Joint Petition, NHEC also stated its “hope” that “this transfer of control proceeding can be used to identify Consolidated’s shortcomings as an ILEC pole owner.”² *Supplement* at p. 3. The scope of the present proceeding, however, concerns only whether the Joint Petitioners will be capable of maintaining these statutory obligations following consummation of the proposed merger, of which pole management is just one small component. The scope of discovery should be similarly restrained. RSA 374:30, II. It is within the scope of the trial courts and, by extension, the Commission to “keep discovery within reasonable limits and avoid ‘open-ended fishing expeditions’” to ensure timely adjudication. *New Hampshire Ball Bearings, Inc. v. Jackson*, 158 N.H. 421, 429-430 (N.H. 2009), *citing Robbins v. Kalwall Corp.*, 120 N.H. 451, 453 (N.H. 1980).

A detailed evaluation into the particulars and finer points of Consolidated’s pole management practices, especially as predicated on NHEC’s interest in obtaining information for its unrelated contract dispute in Superior Court, is immaterial in evaluating the Joint Petitioners’ overarching capabilities and exceeds the scope of these proceedings. *See Public Service Company of New Hampshire*, DE 13-108, Order No. 25, 595 (Nov. 15, 2013) at p. 7 (denying a motion to compel production of detailed, day-by-day information, where such information would not enhance the parties’ or the Commission’s understanding any more than can be discerned through

² Condor opposes NHEC’s vague and unsupported request in the Motion (at p.5) and the Supplement (at p.5) for the Commission to impose conditions when it issues findings regarding the indirect transfer of control of the Licensees, to address unrelated contract and other disputes NHEC may be engaged in outside of this docket.

other discovery), *Investigation into Whether Certain Calls are Local*, DT 00-223, Order No. 23, 658 (Mar. 22, 2001) at p. 5 (denying a motion to compel where the requested information related too narrowly to CLEC-specific information, where the proceeding was evaluating broad policy consideration regarding the regulatory treatment of certain types of calls).

Even if the Commission finds that such requests for pole management information are *relevant* to this proceeding, the information requested ultimately will be *immaterial* for finding that transferees, Consolidated and Condor, are technically, managerially, and financially capable of causing Licensees to maintain obligations of an incumbent local exchange carrier, as requested by the Joint Petitioners. Additionally, the burden on Consolidated of producing the highly detailed information responsive to the numerous requests significantly outweighs any benefit that production of such information would have on NHEC's or the Commission's ability to evaluate Consolidated's capabilities post-merger. *See Public Service Company of New Hampshire*, Order No. 25, 595 at p. 6-7 (denying motion to compel the production of data that would require significant time to manually collect and compile, where such information did not meaningfully contribute to the parties or the Commission's understanding of plant operations and alternative information is available on plant operations).

IV. NHEC has not demonstrated a good faith effort to resolve this discovery dispute informally.

In its Motion, NHEC contends that it made a good faith effort to resolve the dispute informally during the Technical Session convened on April 15, 2024. *See* Motion at 1 and 4.A party filing a motion to compel responses to data requests is required by Puc 203.09(i)(4) to “[c]ertify that the movant has made a good-faith effort to resolve the dispute informally.”

The Technical Session was convened to give parties an opportunity to exchange information in Docket No. 23-103, consistent with informal process permitted in the Commission’s Guide, and for which there is no transcript. *See Informal Guide to Commission Proceedings, New Hampshire Public Utilities Commission*, <https://www.puc.nh.gov/regulatory/practiceguide.htm>; *see also* Puc 203.09(j) (“The commission shall authorize other forms of discovery, including technical sessions. . . when such discovery is necessary to enable the parties to acquire evidence admissible in a proceeding.”).

NHEC’s contention that it satisfied the requirement in Puc 203.09(i) to make a good faith effort to resolve the dispute with Consolidated during the Technical Session is not credible, as NHEC failed to make any proposals or suggestions regarding the scope of its Data Requests during the Technical Session, nor did it otherwise engage Consolidated in any discussions as to how the parties may be able to resolve the dispute informally. NHEC’s generalized statements in the nature of testimony regarding pole management – and its request at the Technical Session to a state agency party as to whether they have authority to impose conditions on the proposed transfer and whether the procedural schedule may be extended to accommodate NHEC’s unreasonable requests – cannot be understood as a good-faith effort to resolve the discovery dispute informally required by the Commission Rules. No other good-faith effort is cited by NHEC in the Motion.

During the Technical Session, NHEC made no attempt to justify the relevance or materiality of the disputed requests, nor to cooperate with Consolidated in revising the disputed requests to better align with the scope of the current proceeding or limit the anticipated burden of producing responses.

NHEC's mere participation in a Technical Session, absent an attempt to meaningfully engage with the Joint Petitioners to resolve the Parties' discovery disputes, is not sufficient to constitute a good faith effort when moving to compel responses under Puc 203.09(i).

WHEREFORE, Condor respectfully requests that this honorable Commission:

- A. Deny NHEC's Motion to Compel in its entirety; and
- B. Grant such additional relief as it deems appropriate.

Respectfully submitted,

Condor Holdings LLC

Dated: April 29, 2024

By its attorneys,



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Certificate of Service

I hereby certify that on this 29th day of April, 2024, a copy of the foregoing Objection was served electronically to persons on the Service List in this docket.

A handwritten signature in black ink, appearing to read "Nancy S. Malmquist", written over a horizontal line.

Nancy S. Malmquist

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