

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 for Leave to File a Reply to Objections and Reply to Objections

NOW COMES the New Hampshire Electric Cooperative, Inc. (“NHEC”), a party to this docket, and (1) moves for leave to file a reply to the objections interposed by Consolidated Communications Holdings, Inc. (“Consolidated”) on April 29, 2024, to NHEC’s previously filed Motion to Compel,¹ and on May 2, 2024, to the previously filed Motion to Compel of the Town of Benton,² and (2) in the event the Commission grants the Motion for Leave to File a Reply, submits the following Reply to those objections. In support of these requests, NHEC states as follows:

I. Motion for Leave to File a Reply

The Commission’s procedural rules, N.H. Code Admin. Rules Ch. Puc 200, contemplate that parties to contested cases may file motions and objections thereto. *See* Rule Puc 203.07. There

¹ *See* Consolidated Communications Holdings, Inc. and Condor Holdings LLC Joint Petition to Approve Transfer of Control, Docket No. DT 23-103, Objection by Consolidated Communications Holdings, Inc. to Motion to Compel Responses to Data Requests by the New Hampshire Electric Cooperative (filed April 29, 2024) (“*Consolidated Objection to NHEC*”).

² *See* Consolidated Communications Holdings, Inc. and Condor Holdings LLC Joint Petition to Approve Transfer of Control, Docket No. DT 23-103, Objection by Consolidated Communications Holdings, Inc. to Motion to Compel Responses to Data Requests by the Town of Benton (filed May 2, 2024) (“*Consolidated Objection to Town of Benton*”).

is no provision in the rules for a party that has submitted a motion to reply thereafter to objections interposed by other parties. However, Rule Puc 201.05 provides that in the absence of statutory preclusion the Commission may waive any provisions in its rules upon a finding that the waiver “serves the public interest” and the waiver will not “disrupt the orderly and efficient resolution of matters before the commission.” Rule Puc 201.05(a). Therefore, because Rule Puc 203.07 does not envision the submission of replies to objections to motions, NHEC respectfully contends that such a reply is appropriate in the present circumstances.

Specifically, it would serve the public interest for the Commission to consider the reply of NHEC because Consolidated has made significant mischaracterizations in its objections, upon which the Commission should not rely. Granting the requested rule waiver will not disrupt the orderly and efficient resolution of matters before the Commission given that the Commission has not yet ruled on NHEC’s underlying Motion to Compel. The proposed reply would simply furnish the Commission with additional information that will be useful as the Commission makes its ruling, presumably on the same timetable it would otherwise have adopted.

Finally, resolving the procedural question favorably to NHEC would advance notions of fundamental fairness that are at the heart of the due process principles that apply to administrative proceedings in New Hampshire. *See Appeal of Mullen*, 169 N.H. 392, 397 (2016) (noting that the “ultimate” due process standard is “fundamental fairness,” which involves “justice, decency and fair play”) (citations omitted).

II. Reply to Consolidated Objection to NHEC’s Motion to Compel

a. State Court Proceeding

In its objection to NHEC’s Motion to Compel, Consolidated states that it believes:

NHEC is exploiting the discovery process in this Docket as a means to (i) influence settlement negotiations between Consolidated and NHEC in unrelated

civil litigation in the New Hampshire Superior Court and (ii) seek information to aid additional civil litigation likely to follow the conclusion of the current proceeding absent a settlement.³

Both claims mischaracterize NHEC's motivations and concerns, and neither claim is sufficient to support an objection to the information NHEC seeks, which will assist the Commission in making its final decision on the Joint Petition at issue in this proceeding.

In its objection, Consolidated concedes that issues related to utility pole ownership parity and other issues related to the maintenance and ownership of utility poles are not presently before the New Hampshire Superior Court: "In the State Court Litigation, the parties *are presently litigating vegetation management issues* arising from the parties' General Agreement Joint Use of Wood Poles, dated July 1, 1977 (the 'Joint Use Agreement' or 'JUA'), and a related Intercompany Operating Procedure attached thereto."⁴ Despite this acknowledgment, Consolidated later contradicts itself and doubles down on its incorrect claim that NHEC's data requests seek "information related to utility pole-based issues in the current State Court Litigation," based on Consolidated's assertion that there are claims "in state court to be tried separately from vegetation management issues."⁵

Whether Consolidated intends to raise these operational issues in state court at some later time is up to Consolidated, but the record clearly establishes that the current state court proceeding relates only to vegetation management issues. Accordingly, Consolidated's objection that NHEC's data requests seek "information concerning an unrelated civil action *pending* in the Hillsborough County Superior Court" is simply incorrect, as Consolidated must, and actually

³ *Consolidated Objection to NHEC* at p. 2.

⁴ *Consolidated Objection to NHEC* at p. 3 (emphasis added).

⁵ *Consolidated Objection to NHEC* at p. 4.

did, acknowledge.⁶ Consolidated's seemingly contradictory statements muddy the waters about Consolidated's data request objection and should be rejected.

Consolidated contends that "NHEC already has any information it may need from [Consolidated] to properly evaluate the Joint Petition" as a result of the state court proceeding discovery process.⁷ This contention is incorrect. Even if it were true, NHEC would be entitled to such information in this separate proceeding, where "parties may obtain discovery regarding *any matter*, not privileged, that is relevant to the subject matter involved in the pending action."⁸

b. Relevance of Data Requests

Consolidated contends that because this proceeding concerns a transaction occurring at the parent company level, and that Consolidated Communications of Northern New England Company, LLC's ("CCNE") "operating procedures will continue in their current form and will not be impacted by the indirect change in control of CCNE," that NHEC's data requests are not relevant.⁹

As Consolidated correctly points out, the issue in this proceeding is whether Consolidated and Condor are technically, managerially, and financially capable of maintaining the obligations of an ILEC. RSA 374:30, II. A Commission investigation of the Licensees'¹⁰ operational performance is justified because operational issues in New Hampshire remain unresolved.

⁶ See Consolidated Communications Holdings, Inc. and Condor Holdings LLC Joint Petition to Approve Transfer of Control, Docket No. DT 23-103, Consolidated Communications Holdings, Inc.'s Objections to Set One Data Requests Propounded by New Hampshire Electric Cooperative, Inc. (filed April 8, 2024) (emphasis added).

⁷ *Consolidated Objection to NHEC* at p. 4.

⁸ *N.H. Ball Bearings, Inc. v. Jackson*, 158 N.H. 421, 429 (2009) (emphasis added).

⁹ *Consolidated Objection to NHEC* at pp. 6-7.

¹⁰ Licensees are the following subsidiaries of Consolidated: Consolidated Communications of Northern New England, LLC ("CCNE") and Consolidated Communications of Maine Company ("CCM").

Whether Consolidated and Condor are technically, managerially, and financially capable of maintaining their obligations as an ILEC will depend on the extent to which its subsidiaries are currently satisfying their contractual obligations in New Hampshire. The Commission should know the current shortcomings of the Licensees in the state before adjudicating the Joint Petition.

The operational issues NHEC is asking the Commission to investigate are the same operational issues NHEC and others raised in the 2007 Verizon and FairPoint transfer of assets proceeding, with the exception of vegetation management.¹¹ In that proceeding, NHEC and several investor-owned utilities raised the same concerns about pole inspection programs, storm restoration/emergency response, replacement of utility poles, double poles, and PUC enforcement that NHEC is raising here.¹² Those issues remain unresolved, which is why NHEC is raising these same issues in this similar Commission proceeding 17 years later.

III. Reply to Consolidated Objection to Town of Benton's Motion to Compel

In its separate objection to the Town of Benton's Motion to Compel, Consolidated attempts to link the Town of Benton's participation in this proceeding to NHEC, by noting that the Town of Benton's counsel is on NHEC's board of directors.¹³ Claiming that the Town of Benton's

¹¹ See Joint Application for Approval of the Transfer of Certain Assets by Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company and Verizon Select Services Inc. and Associated Transactions, Docket No. DT 07-011 (filed Jan. 31, 2007).

¹² See Joint Application for Approval of the Transfer of Certain Assets by Verizon New England Inc., Bell Atlantic Communications, Inc., NYNEX Long Distance Company and Verizon Select Services Inc. and Associated Transactions, Docket No. DT 07-011, Petition for Intervention of New Hampshire Electric Cooperative, Inc. (filed Feb. 23, 2007); Until Energy Systems, Inc. Petition to Intervene (filed Feb. 23, 2007); Petition to Intervene of Granite State Electric Company d/b/a National Grid (filed Feb. 23, 2007); and Public Service Company of New Hampshire's Petition to Intervene (filed Feb. 23, 2007).

¹³ *Consolidated Objection to Town of Benton* at p. 1.

data requests seek competitive-sensitive information, Consolidated accuses NHEC of leveraging this Commission proceeding for anti-competitive reasons.¹⁴

Consolidated's suggestion that the Town of Benton's data requests are tied to those of NHEC is incorrect, as there has been no coordination between NHEC and the Town of Benton regarding intervention, data requests, or any other aspect of this proceeding. NHEC did not know the Town of Benton would submit data requests nor what those requests might be. The Town of Benton's attorney has no authority to speak on behalf of NHEC and NHEC has not granted any such authorization. Stated simply, what one member of NHEC's 11-member board of directors files when representing another intervenor in this proceeding has no bearing on whether Consolidated should respond to NHEC's data requests.

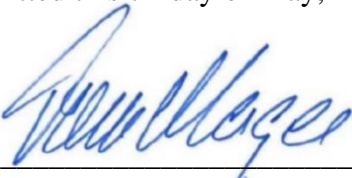
IV. Conclusion

WHEREFORE, NHEC respectfully requests that this honorable Commission:

- a. Grant NHEC leave to file this reply, and
- b. For the reasons stated herein and in NHEC's Motion to Compel, grant NHEC's Motion to Compel and order Consolidated to respond to NHEC's data requests.

¹⁴ *Consolidated Objection to Town of Benton* at pp. 6-7.

Respectfully submitted this 7th day of May, 2024.

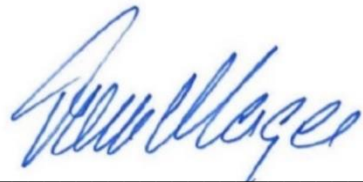
By:  _____

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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