

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
D/B/A EVERSOURCE ENERGY**

Docket No. DE 24-XXX

**PETITION FOR EXEMPTION FROM TOWN OF BETHLEHEM
ZONING ORDINANCE, ART. II, PART D, UNDER RSA 674:30, III**

Pursuant to RSA 674:30, III, Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or “the Company”) hereby petitions the New Hampshire Public Utilities Commission (“Commission”) for exemption from the operation of the Bethlehem, New Hampshire Zoning Ordinance, Art. II, Part D, enacted under RSA Chapter 674 (“Ordinance”). More specifically, Eversource is requesting that the Ordinance’s forty (40) foot height limitation applied to all buildings and structures within the Town of Bethlehem be waived in regard to Eversource’s need to perform an asset condition maintenance project on its 115kV X178 and U199 Lines (“Lines”) occupying existing Rights-of-Way within the Town of Bethlehem. In support of its petition, Eversource states as follows:

1. The Ordinance at Art. II, Part D, states: “No building or structure shall be greater than forty (40) feet in height from the average finished grade.” This height limitation is not limited to only certain zoning districts and would apply to the entirety of the X178 and U199 Lines’ Rights-of-Way. The height limitation has been included in the Ordinance since 1985.

2. The portion of the X178 Line within the Town of Bethlehem was constructed in the early 1950s and reconstructed in 1969, comprising 95 wood H Frame structures, occupying a 265-foot-wide electric transmission Right-of-Way through substantially all of the Line’s footprint within the town of Bethlehem. The portion of the U199 Line within the Town of

Bethlehem was constructed in 1971, comprising 5 wood H Frame structures occupying an existing 150-foot-wide electric transmission Right-of-Way.

3. All of the existing wood structures within the X178 and U199 Lines' Rights-of-Way in the Town of Bethlehem exceed the Ordinance's 40-foot height restriction.

4. Eversource conducts a rigorous annual inspection program to monitor the status of its transmission infrastructure, and recent physical inspections and engineering analysis of the X178 and U199 Lines revealed that many of the existing wooden structures are in need of replacement due to their age, woodpecker damage, insect damage, and pole rot. Other factors which supported performing a full rebuild instead of selective structure replacement include the interest in minimizing scheduled outages for maintenance work, specific resource limitations and achieving efficient deployment of resources in locations along much of the Lines' Rights-of-way where access is challenging owing to mountainous topography and certain remote locations. Selective structure replacement of only the most degraded structures would ultimately require repeated entry into the Rights-of-Way for additional selective replacements, as the remaining structures' inspection ratings decline, which is more disruptive to the environment, abutters and host communities compared to a full rebuild. Eversource plans to replace the 100 existing wooden H-frame structures on the X178 and U199 Lines with 99 weathering steel equivalent H-frame structures. In conjunction with the structure replacements, Eversource plans to replace the existing conductors with new conductors, but the line rating will remain 115kV, and will replace shield wire with Optical Ground Wire ("OPGW").

5. Owing to updates to the National Electrical Safety Code ("NESC") standards adopted since the U199 and X178 Lines were originally constructed, all of the replacement structures must increase in height to varying degrees over the existing wooden structures to

satisfy current clearance criteria, counteract uplift conditions, and accommodate industry and Eversource best practices for transmission line design in order to satisfy vegetation maintenance and facility maintenance needs and access.

6. The replacement structure heights will all exceed the Ordinance's 40-foot height limitation.

7. RSA 674:30, I authorizes a planning board, in pertinent part, to "waive any requirement contained in an ordinance, code, or regulation for any unoccupied structure which is less than 200 square feet in area, which is necessary for the furnishing of utility service for the public health, safety, or general welfare, and for which the utility's siting options are limited by virtue of said structure being a physically integrated component of the utility's transmission or distribution apparatus."

8. On May 22, 2024, at a duly noticed public hearing before the Bethlehem Planning Board, Eversource presented an application for a waiver of the Ordinance's 40-foot height limitation for the X178 and U199 projects within the Town of Bethlehem. Minutes of that public hearing are included with the supporting pre-filed testimony as Attachment SDH-1.

9. At the May 22nd public hearing, Eversource explained in detail the need and justification for the structure height increases, including case studies of the factors accounting for structure height increases in two locations that were experiencing among the greatest height increases, as well as an overview of the voluntary public outreach undertaken by Eversource in the year preceding the public hearing. Questions from the Planning Board and members of the public were answered by Eversource's team of Engineering, Project Management, Project Services, Outreach, and Legal Department representatives.

10. Eversource specifically addressed the RSA 670:30, I waiver criteria, establishing that: the structures are an essential part of the transmission system which ultimately serves Bethlehem residents, as well as electric customers statewide and regionally, and, as such, are necessary for the public health, safety, and general welfare; their continued service of public health, safety, and general welfare requires periodic replacement which these 50+ year old structures have been identified in need of; each structure is an unoccupied structure whose footings occupy considerably less than the 200 square feet in area limit required by the waiver statute (footings measure 4 feet by 4 feet and replacement structures have either 2 footings in the case of H-Frames or 3 footings in the case of dead-end structures); and the X178 and U199 Lines are physically integrated and constrained components of Eversource's transmission system that are restricted to the Rights-of-Way which have existed in their current form since 1969 and 1971, respectively, and for which Eversource's siting options are limited.

11. Upon closing the public hearing, the Planning Board chair made a motion to deny the waiver applied for by Eversource. There was no discussion of the waiver criteria among the Planning Board and the motion to deny the waiver was approved with 5 in favor and 1 opposed.

12. The Bethlehem Planning Board's failure to support its denial of Eversource's waiver application without any substantive consideration of the waiver criteria required under RSA 674:30 is unlawful and unreasonable and contrary to sound public policy. Under RSA 674:30, III, the Commission is authorized to grant exemptions from municipal land use denials for public utility property where it is found that "the present or proposed situation of the structure in question is reasonably necessary for the convenience or welfare of the public . . ." The Commission has not addressed the RSA 674:30, III exemption statute for some time, but prior Commission orders relied on the New Hampshire Supreme Court case of *Appeal of Milford*

Water Works, 126 N.H. 127 (1985), in which the Court recognized that “the exemption provision is to ensure that a variety of conflicting local interests will not impede services provided by public utilities to consumers, particularly in other municipalities, to the detriment of the best interests of the public as a whole.” *Id.* at 131.

13. The Bethlehem Planning Board’s unlawful and unreasonable denial should be corrected through an exemption granted by the Commission, which it has found to be warranted in service of the best interests of the public as a whole in numerous contexts. *See, e.g. Re Hampstead Area Water Company, Inc.*, 86 N.H. P.U.C. 548, 2001 WL 15683; *Re Hampstead Area Water Company, Inc.*, 86 N.H. P.U.C. 899, 2001 WL 1835376; *Pennichuck Water Works, Inc.*, 86 N.H. P.U.C. 20, 2001 WL 427415; *Re Bridgewater Steam Power Company*, 70 N.H. P.U.C. 1013, 1985 WL 1204057; and *Re Bridgewater Steam Power Company*, 71 N.H. P.U.C. 20, 1986 WL 1299857.

14. In the *Milford Water* case, the Court recognized the Commission’s authority to waive provisions of local zoning, holding that “the applicable standard is that the present or proposed situation of the structure is ‘reasonably necessary for the convenience or welfare of the public’”, which the Court described as “a less stringent standard” than the standard articulated in RSA 674:30, I applicable to Planning Board consideration of a utility’s waiver request. The Court also referenced seven factors as relevant to the Commission’s determination whether an exemption is justified. The Company’s pre-filed testimony supporting this petition addresses each of those factors with reference to the factual context of the X178 and U199 projects.

15. Based on the foregoing, the Commission is fully warranted in finding that the Projects’ exceedance of the 40-foot height limitation under the Ordinance is “reasonably necessary for the convenience or welfare of the public” as grounds to grant the exemption, taking

into account the suitability of the projects' location and local interests, which factors the Commission's prior orders recognize to be potentially relevant to the legal standard under RSA 674:30, III, as interpreted by the *Milford Water* decision.

WHEREFORE, Eversource respectfully requests that the Commission:

1. Exempt the X178 and U199 projects from the Ordinance's 40-foot height limitation; and
2. Grant such other and further relief as may be just and equitable.

Dated at Manchester, New Hampshire this 21st day of June, 2024.

Respectfully submitted,

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY
By Its Attorneys,

/s/ David K. Wiesner

David K. Wiesner, Senior Counsel
Erik R. Newman, Senior Counsel
Public Service Company of New Hampshire
d/b/a Eversource Energy
780 North Commercial Street
Manchester, NH 03101
603-634-2961
David.Wiesner@eversource.com
erik.newman@eversource.com

CERTIFICATE OF SERVICE

I hereby certify that, on this 21st day of June, 2024, I caused the attached to be served pursuant to N.H. Code Admin. Rule Puc 203.11.

/s/ David K. Wiesner
David K. Wiesner