

STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

Docket No. DE 24-087

PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE d/b/a EVERSOURCE ENERGY

Petition for Exemption from Town of Bethlehem Zoning Ordinance, Art. II, Part D, under RSA
674:30, III

**NEW HAMPSHIRE DEPARTMENT OF ENERGY OBJECTION TO EVERSOURCE’S
MOTION FOR CLARIFICATION OF SCOPE OF PROCEEDING AND ALTERNATE
SCOPE OF PROCEEDING**

NOW COMES New Hampshire Department of Energy (“Department” or “DOE”), pursuant to Puc 203.07, and objects to Public Service Company of New Hampshire d/b/a Eversource Energy (“Eversource” or “Company”)’s Motion for Clarification of Scope of Proceeding (“Motion for Clarification”) and instead puts forth what it believes is the scope of the proceeding. The DOE argues that the Public Utilities Commission (“PUC” or “Commission”) is required to analyze whether replacing one hundred operational and functioning transmission structures in Bethlehem (“Bethlehem” or “Town”) from an existing range of 42.39-61.00 feet above ground to a proposed range of 52.00-97.00 feet above ground with optical ground wire, potentially at a high cost, is reasonably necessary for the convenience or welfare of the public.¹ See RSA 674:30, III. Given the breadth of RSA 674:30, the PUC can consider and investigate current condition of the structures proposed for replacement, lifespan of the current and proposed

¹ On its website Eversource describes each structure, the existing height and proposed height. [x178-structure-height-changes-bethlehem.pdf \(eversource.com\)](#) Similarly this website explains the proposed changes for the U-199 line. [U199 Structure Heights_Bethlehem.xlsm \(eversource.com\)](#). This specific information on the proposed changes to the height of the structures is not currently filed as part of Eversource’s testimony. The DOE would argue that Eversource’s current petition is deficient as it does not adequately describe the current condition of each structure slated for replacement in Bethlehem. See generally Puc 203.05 requiring all petitions to contain an “*explicit statement of the facts*” upon which the commission should rely in granting authorization or relief.” Puc 203.05(a)(6).

structures, materials and telecommunications proposed for the rebuild, environmental impacts, cost of the proposed replacements, height, and other alternative solutions.

I. BACKGROUND

Early in 2024, the DOE became aware of Eversource’s X-178 rebuild, and on February 28, 2024, of that month, Eversource provided a presentation on the rebuild at the Planning Advisory Committee (“PAC”) Meeting, which the DOE attended.² The X-178 line runs between the Beebe River substation in Campton, NH and the Whitefield substation in Whitefield, NH and is 49 miles in length. Attachment A (Eversource PAC Presentation dated February 28, 2024), p. 3. At this presentation, Eversource explained its proposal to rebuild the X-178 line and replace 583 existing structures with 580 structures and replace existing shield wire with 98 miles of optical ground wire (“OPGW”).³ *Id.*, p. 16. The Company explained that this rebuild is necessary to ensure reliability of the line, ensure “long-term cost savings, and limits repeated disruptions to [the] environment and local communities.” *Id.* The Company also explained that the average age of the poles is forty-five years old and that in 2022 the Company inspected the line and, pursuant to the Electric Power Research Institute EPRI guidelines, graded the poles according to an A through D classification:

- “A: Nominal Defect,
- B: Minimal Defect,
- C: Moderate Defect, and
- D: Severe Defect.”

² The PAC “is an open stakeholder forum that provides input and feedback to ISO New England on the regional system planning process” [Planning Advisory Committee \(iso-ne.com\)](https://www.iso-ne.com/planning-advisory-committee)

³ The length of the line is 49 miles, but according to the Company it will need to “[r]eplace existing shield wire with two 49 mile runs of OPGW (98 miles total).” Attachment A, p. 16.

Attachment A p. 3 and 5. According to these inspections, 41 structures were identified as a priority C.⁴ Attachment A p. 5.

On March 14, 2024, the New England States Committee on Electricity (“NESCOE” issued a letter to Eversource in which it expressed concerns about the rebuild of the X-178 project and specifically “the lack of compelling evidence to justify a project of this scale . . .” Attachment B (Letter from NESCOE to Eversource dated March 14, 2024), p. 1. In the letter, NESCOE stated that only 7% of the structures included in the total rebuild are actually deteriorated and that the real driver for the rebuild is “Eversource’s desire to replace its leased communications circuits with an internally owned fiber communications system.” NESCOE requested that Eversource provide alternates, which would address only those priority structures “necessary to maintain the line in reliable, serviceable condition.” Eversource did not formally respond to this letter, but on June 20, 2024, provided another presentation regarding X-178 to the PAC. Eversource has not provided a detailed, specific alternative that only replaces those structures, which are rated a C or D without OPGW.

On May 22, 2024, Bethlehem held a public hearing on Eversource’s application for a waiver of the 40-foot height limitation under its Zoning Ordinances. At the meeting Eversource outlined the project and explained that the X-178 line runs in three segments⁵ and that 182 total structures in Segment 3 will be replaced. Attachment to Testimony Bates p. 00017. Specific to Bethlehem, Eversource explained that Segment 3 runs for 7.36 miles in the Town and that 95 (out of the total 182 structures in the Segment) will be replaced with one existing structure to be

⁴ Eversource may have updated information regarding the current condition and classification of the current structures. However, to the DOE’s knowledge, this updated information has not been provided publicly. This highlights why it is so important that the PUC not grant Eversource’s Motion to Clarify the Scope. With a broader scope, the DOE can ask Eversource in Data Requests what the current condition of each pole slated for replacement in Bethlehem is. Currently this information is unknown.

⁵ Segment 1 includes 162 structures to be replaced, Segment 2 includes 131 structures, and Segment 3 includes 185 structures. [Beebe River to Whitefield \(X178\) Line Rebuild Project | Eversource](#).

removed. Attachment to Testimony Bates p. 00017 and p. 000025. The Company also explained that it will be rebuilding the U-199 line which runs from Sugar Hill to Littleton and is 9 miles in total length. The total number of structures that the Company is seeking to replace is 104 with only 5 of those being in Bethlehem.

The Company explained that this rebuild was needed to “[r]eplace the older, degraded wooden pole structures with new weathering steel structures” and to “[i]ninstall new transmission wire (conductor) and communication wire (OPGW).” Attachment to Testimony, Bates p. 000024. It is unclear what the current condition of the structures in Bethlehem is. Nor does the DOE know the specific age of the structures the Company is seeking a waiver for. In its presentation materials, the Company explained that conductors and OPGW are needed because “[e]xisting communication between substations relies on older technology which results in slower communication.” *Id.* At the hearing, Eversource also stated that the lifespan for the “new structures will be 50 years, similar to the existing structures.” Attachment to Testimony at Bates p. 000018. The Company also explained that the increases in height to the current structures is due to several factors such as industry best practices, safety clearance requirements, changes in topography, standardized pole sizes, etc... Attachment to Testimony at Bates p. 000028. At the conclusion of the meeting, the members voted 5-1 to deny Eversource’s motion to waive the 40-foot height restriction for the 100 transmission towers.

At the June 20, 2024, Planning Advisory Committee Meeting, Eversource provided more details on the X-178 line rebuild and presented three proposals:

- Alternative 1: “Replace only immediate replacement structures and uplift structures”;
- Alternative 2: “Replace structures included in Alternative 1, plus additional opportunity structures”;

- Alternative 3: “Complete line rebuild, including replacement of all additional structures that are overloaded with addition of OPGW”.

It is the DOE’s understanding that Alternative 2 does not include OPGW and Alternative 3 is Eversource’s preferred approach and what is currently being proposed. In the PAC presentation, Eversource estimated the cost of Alternative 2 as \$91.7 million whereas the cost for Alternative 3 is \$360.8 million. Attachment C (Eversource PAC Presentation dated June 20, 2024) p. 13 and 15. Eversource explained Alternative 2 is disfavored because the structures that will remain will eventually need to be replaced and that Alternative 2 will eventually cost more as the Company will need to rebuild aging structures over time and re-enter the region several times, which may cause “additional environment and community impacts.” Attachment C, p. 13.

On June 21, 2024, Eversource filed a Petition with the PUC for an exemption from the Town’s zoning height pursuant to RSA 674:30, III. In its Petition Eversource stated that the structures need to be rebuilt due to “age, woodpecker damage, insect damage, and pole rot.” Petition at Bates p. 000002. Eversource analyzed from its perspective why its request should be granted, but only focused on the differences in height between the existing and proposed structures. On September 30, 2024, Eversource, on behalf of the parties, filed an Update Regarding the Procedural Schedule and Scope of Issues. In this filing, Eversource explained that it would file a Motion for Clarification of Scope of Proceedings on or before October 4, 2024, and that the other Parties have until October 22, 2024, to respond to this Motion. On October 4, 2024, Eversource filed its Motion for Clarification in which it argued that the PUC’s inquiry “must be limited to determining whether exceeding the Town[‘s] 40-foot height limitation ‘is reasonably necessary for the convenience or welfare of the public.’” This Objection of the DOE follows.

II. Given the breadth of RSA 674:30, III and *Appeal of Milford Water Works*, 126 NH 127 (1985), the PUC’s Inquiry Should Not Be Limited to Height, but Should Include Current Condition of the Structures Proposed for Replacement, Lifespan of the Current and Proposed Structures, Materials and Telecommunications Proposed for the Rebuild, Environmental Impacts, the Cost of the Proposed Replacements, Height, And Alternative Solutions.

The statute provides: “The public utilities commission following a public hearing, may grant such an exemption if it decides that the . . . *proposed situation of the structure* in question is *reasonably necessary for the convenience or welfare of the public* . . .” RSA 674:30, III (emphasis added). The statute references the “proposed situation of the structure.” The plain language does not limit the inquiry to the height of the structure, its location, or other aesthetics. The PUC is required to consider the “proposed situation” with no limitation, and therefore should consider a variety of factors including, but not limited to: the current condition of the structures proposed for replacement, lifespan of the current and proposed structures, materials and telecommunications proposed for the rebuild, environmental impacts, the cost of the proposed replacements, height, and alternatives.

In *Appeal of Milford Water Works*, 126 N.H. 127 (1985), the Court reviewed a PUC decision, which approved a petition for exemption from the Town of Amherst’s zoning ordinance but required Milford Water Works (owned and operated by the Town of Milford) (the utility) to “maintain and monitor twice weekly nine test wells” and establish an emergency water supply. *Id.* at 130. The Court then referenced seven factors used to analyze the statute in determining whether the PUC exceeded its authority. In citing a New Jersey Court, which applied a statute similar to RSA 31:62⁶, the Court stated

⁶ State statute RSA 31:62 was the precursor to RSA 674:30, III. RSA 31:62 (1955) contains the following key language similar to RSA 674:30, III: “Structures used or to be used by a public utility may be exempted from the operation of any regulation made under this subdivision, if upon petition of such utility the public utilities commission shall after a public hearing decide that the present or proposed situation of the structure in question is

In passing upon the application the board [of Public Utility Commissioners] has ample authority as well as the duty to study [1] the suitability of the locus chosen for the utility structure, [2] the physical character of the uses in the neighborhood, [3] the proximity of the site to residential development, [4] the effect on abutting owners, [5] *its relative advantages and disadvantages from the standpoint of public convenience and welfare*, [6] whether other and equally serviceable sites are reasonably available by purchase or condemnation which would have less impact on the local zoning scheme, and last, but by no means least, [7] whether any resulting injury to abutting or neighboring owners can be minimized by reasonable requirements”

Id. (emphasis added). The seven New Jersey factors do not limit or replace the statute but are used to ensure that local interests are considered. These factors were used to uphold the PUC’s decision that it could attach conditions in granting an exemption from Amherst’s zoning ordinance. *Id.* at 131. Nowhere does the Court state that the New Jersey factors are intended to be a substitute for the statute. Nor were these factors used to limit the PUC’s review but were used to sustain the PUC’s authority that it could attach reasonable conditions to a waiver request and ensure that local considerations were not ignored in a dispute that was essentially between two towns. Even if the PUC disagrees, it must apply the fifth standard cited in *Milford*, which in so many words re states the pivotal language of RSA 674:30, III and consider “the relative advantages and disadvantages from the standpoint of public convenience and welfare.” *Id.* at 131. Therefore, the PUC is not limited to the seven *Milford* factors but should apply the statute.

Eversource accurately quoted *Hampstead Area Water Company*, 86 N.H. P.U.C. 899, 902 (2001) when the Commission stated that it is not required to make findings of fact on each of the seven (7) *Milford* factors. However, this is not what the New Hampshire Supreme Court said. Rather the Court’s *Milford* decision, in citing *Monmouth Consolidated Water Co.*, 220 A.2d 189, 192 (1966) stated: “The board *should weigh all of these factors* and while no controlling weight

reasonably necessary for the convenience or welfare of the public.” Attachment D (RSA 31:62 (1955) (emphasis added). This legislation was repealed in 1983 and moved to RSA 674:30.

should be given to purely local considerations, they should not be ignored.” *Id.* at 132 (emphasis added). In applying *Milford*, the PUC must require Eversource to consider: the current condition of the structures, whether they need to be replaced now or into the future, the lifespan of the replacement, whether the proposed structures must have OPGW, environmental impacts, cost, and alternatives as these factors address whether Eversource’s request is reasonably necessary for the public convenience and welfare. The PUC must also assess these factors as these factors describe “the present or proposed situation.” RSA 674:30, III.

Eversource’s testimony explains why the proposed rebuild meets each of the seven factors. However, in response to element number five, the Company does not provide meaningful analysis. The Company states: “The public necessity for a resilient and functional electric transmission system substantially outweighs any potential impact occasioned by the required increased structure heights.” Testimony at Bates p. 000015. The testimony is conclusory and cursory. The Company needs to explain why the proposed rebuild in Bethlehem is necessary for public convenience and welfare. Focusing on the need for a functional system, the Company does not explain whether the current poles in the Town are rated A, B, C, or D. The Company also does not explain whether there are reliability issues with the current line. In assessing public welfare and convenience, the PUC should also consider whether a rebuild is necessary given the high costs of the project. (Any improvement to the system could arguably be considered in the interests of public welfare and convenience if costs are minimal.) The Company should also explain why the proposed rebuild must contain OPGW⁷ and provide specific and detailed alternatives.

Eversource’s Petition and Motion to Clarify only focuses on the height differential between the existing and proposed structures because that is what the Town’s Ordinance prohibits-a

⁷ OPGW does enhance reliability as it is used to provide telemetry and controls to Eversource’s energy management system.

structure more than forty feet tall. Therefore, according to Eversource, the scope should be limited to why a change in height is in the interest of public convenience and welfare. Eversource is applying restrictions to the statute that do not exist. The statute only provides that the Commission may grant a waiver if “the proposed situation of the structure in question is reasonably necessary for the convenience or welfare of the public.” The statute places no limitation on ‘public convenience or welfare.’ Rather the statute calls for the Commission to broadly consider the “situation of the structure” and not just the structure itself. The statute does not qualify that the Commission can only consider the specific element of the proposed structure, which violates the local ordinance, code, or regulation. But that is what Eversource is arguing, *i.e.*, that the Commission can only review public convenience or welfare in terms as applied to the specific aspect of the structure that violates the ordinance. Instead, the statute broadly allows the Commission to consider the “situation of the structure” to determine whether a waiver is appropriate.

III. In Ruling on Eversource’s Motion Regarding Scope, the PUC Should Consider that the Company Needs a Waiver for Each Structure and Therefore Analyze the Current Condition of the Structures Proposed for Replacement, Lifespan of the Current and Proposed Structures, Materials and Telecommunications Proposed for the Rebuild, Environmental Impacts, the Cost of the Proposed Replacements, Height, And Alternative Solutions for Each of the 100 Structures.

Eversource does not provide specific information about each specific pole in Bethlehem. It provides only general information about the overall project. However, the Company seems to neglect that RSA 674:30 refers to “the present or proposed situation of *the structure in question*” the word ‘structure’ being used in the singular. RSA 674:30, III (emphasis added). In this case the Company is seeking one waiver for one hundred structures. Although Eversource can clearly

request that the Commission grant a waiver for each pole (which it did not), Eversource must provide information specific to each structure for which it seeks a waiver.

IV. Conclusion.

The DOE respectfully requests the Commission not grant Eversource's Motion for Clarification and instead define a broader scope, which allows the parties to ask questions regarding the current condition of the structures proposed for replacement, lifespan of the current and proposed structures, materials and telecommunications proposed for the rebuild, environmental impacts, the cost of the proposed replacements, height, and alternative solutions for 100 Structures in Bethlehem. By granting Eversource's Motion for Clarification, the PUC severely curtails its breadth of review and limits discovery. The DOE has no position on Eversource's petition, but firmly believes that there are questions that need to be asked to determine whether the Town's local laws should be over-ruled. The Commission is not limited to only reviewing the height of the project because the statute allows the Commission to consider the "situation" of the hundred structures proposed for replacement. The situation does not just encompass the height; the DOE has important questions regarding the lifespan of the current and proposed structures, materials and telecommunications proposed for the rebuild, environmental impacts, the cost of the proposed replacements, and alternative solutions. Eversource has not addressed these issues in alternate forums. In order to receive a waiver, the PUC must consider the current situation and all that it entails in deciding whether each proposed structure "is reasonably necessary for the convenience or welfare of the public." RSA 674:30, III.

Dated: October 22, 2024

Respectfully submitted,

New Hampshire Department of Energy

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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 in the Commission's service list for this docket on this date, October 22, 2024.

/s/ Molly M. Lynch

Molly M. Lynch, Esq.