

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**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**

**Order on Motion for Clarification of Scope of Proceeding**

**ORDER NO. 28,108**

**March 3, 2025**

In this order, the Commission clarifies the scope of the proceeding in the above-captioned docket.

**I. BACKGROUND AND PROCEDURAL HISTORY**

On June 21, 2024, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) filed a petition pursuant to RSA 674:30, III, in which it requested an exemption from Article II, “General Provisions,” Part D of the Town of Bethlehem (Bethlehem) zoning ordinance (Zoning Ordinance). The Zoning Ordinance provides that:

No building or structure shall be greater than forty (40) feet in height from the average finished grade, unless a Special Exception is granted by the Zoning Board of Adjustment. However, under no circumstances shall any structure or building exceed sixty (60) feet in height. Appurtenances, such as antennae, will not exceed an additional ten (10) feet over the highest point of the building or structure. Personal wireless service facilities and amateur radio antennae are exempt from this provision.

<https://bethlehemnh.org/wp-content/uploads/2024/03/Zoning-Ordinance-2024.pdf>

(last visited March 3, 2025). Eversource requested the exemption so that it can replace existing electrical pole structures for two 115 kilovolt (kV) transmission lines within Bethlehem, Line X178 and Line U199, with structures that exceed the height

limitation. Its plans to upgrade these two transmission lines extend beyond Bethlehem into other municipalities. See Eversource's Motion for Clarification at 1.

Eversource previously filed a request with the Bethlehem Planning Board for a variance from the Zoning Ordinance, so that it could replace 100 wooden H-frame structures, some of which are damaged, and all of which currently exceed the 40-foot height limit, with structures that are even higher. 95 of the structures are on Line X178, and 5 are on Line U199. The Planning Board denied Eversource's variance request on May 22, 2024. *Id.* at 3. Eversource subsequently requested an exemption from the Zoning Ordinance pursuant to RSA 674:30, III, which authorizes the Commission to grant an exemption if it determines that "the present or proposed situation of the structure in question is reasonably necessary for the convenience or welfare of the public."

The Office of the Consumer Advocate (OCA) filed a letter of participation in this docket, and Bethlehem filed a petition to intervene, which was granted. See PO dated November 18, 2024. After the September 11, 2024 prehearing conference, Eversource filed an update on behalf of all docket participants notifying the Commission that there was a fundamental disagreement regarding the proper scope of the Commission's review. It stated the parties agreed that Eversource would file a motion for clarification of the scope, with responses to the motion due by October 22, 2024.

On October 4, 2024, Eversource filed a "Motion for Clarification of Scope of Proceeding" (Eversource Motion). The New Hampshire Department of Energy (DOE), the OCA, and Bethlehem filed responses to this motion. Eversource filed a sur-reply on October 25, 2024 (Sur-Reply), and the DOE filed a reply to the sur-reply on October 31, 2024 (Reply).

The Commission issued a procedural order on December 5, 2024 requesting Eversource to “cite the authority or authorities that permit Eversource to proceed with its X178 and U199 transmission line upgrade projects and provide a copy of any specific authorization(s) granted.” Eversource filed a timely response on December 16, 2024, in which it stated that the Independent System Operator of New England (ISO-NE) had issued an approval on Line U199’s Proposed Plan Application, but that other applications for both lines were still awaiting final ISO-NE approval.

## **II. POSITIONS OF THE PARTIES<sup>1</sup>**

### **A. Eversource**

Eversource argued in its motion for clarification that the scope of this proceeding should be limited to whether Eversource is entitled to an exemption from the Zoning Ordinance for its transmission upgrade projects within Bethlehem. Motion at 1. Eversource asserted that the proceeding should not include an investigation of the necessity, cost, or prudence of its transmission line rebuild projects. *Id.* at 5-7. It maintained that the Commission lacks jurisdiction to review and regulate asset condition transmission projects, which are subject to ISO-NE and Federal Energy Regulatory Commission (FERC) review. *Id.* at 7-11.

Using a dictionary definition of “situation,” in its Sur-Reply, Eversource construed the phrase “proposed situation of the structure” in RSA 674:30, III as “the way in which something is placed in relation to its surroundings.” Sur-Reply at 2. It noted that *Appeal of Milford Water Works*, 126 N.H. 127 (1985) and prior Commission zoning exemption decisions did not deal with the rebuild of an existing structure in an existing right-of-way (ROW), so that a narrow focus on the height difference between

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<sup>1</sup> A number of comments have been filed in this docket, but because these comments do not concern the parties’ legal arguments regarding the scope of the proceeding, they will not be addressed in this order.

the existing pole structures and proposed new structures, which require the exemption, was the proper scope of the proceeding. *Id.* It argued that the issues of cost and prudence, which are considered in ratemaking proceedings, are irrelevant because the Commission lacks jurisdiction over interstate transmission rates. *Id.* at 3-5.

Notably, Eversource stated that no new ROW easements were required for its proposed projects, contrary to Bethlehem's assertion in its response to Eversource's motion. *Id.* at 6.

### **B. OCA**

In its reply dated October 21, 2024 (OCA Reply), the OCA contended that the relevant analysis under RSA 674:30, III is to determine what the public welfare requires and whether or how the proposed utility project would serve that need. OCA Reply at 3-4, 6. The OCA averred that *Milford* (decided under RSA 31:62, RSA 674:30's predecessor statute) does not limit the Commission to considering the factors mentioned in that decision. *Id.* at 4-6. In addition, the OCA argued that the Commission has authority to investigate Eversource's asset condition projects in New Hampshire, citing in support of its argument *Pastoriza*, Order No. 26,925 (January 5, 2024) and Order No. 26,946 (February 12, 2024), both issued in Docket No. DE 23-056. *Id.* at 6-9.

### **C. Bethlehem**

Bethlehem joined in the OCA Reply and noted in its October 22, 2024 response (Bethlehem Response) that the Zoning Ordinance also provides that "under no circumstances shall any structure or building exceed sixty (60) feet in height." Bethlehem Response at 1-3. It stated that Eversource is seeking an exemption from the zoning ordinance to add new towers that exceed the 60-foot height limit and expand the necessary ROWs. *Id.* at 2. Bethlehem agreed with the OCA that it is

necessary for the Commission to consider a broader scope in this proceeding when determining whether the standard in RSA 674:30, III has been met. *Id.* at 3.

#### **D. DOE**

On October 23, 2024, the DOE filed a “corrected” objection to Eversource’s motion for clarification (DOE Objection), which included attachments related to consideration of the Line X178 project by the Planning Advisory Committee, which provides input to ISO-NE on regional system planning,<sup>2</sup> and the New England States Committee on Electricity. The DOE asserted that the proper scope of this proceeding is “whether replacing one hundred operational and functioning transmission structures in Bethlehem 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 (OPGW), potentially at a high cost, is reasonably necessary for the convenience or welfare of the public.” See DOE Objection at 1.

The DOE contended that, under RSA 674:30, III and *Milford*, the Commission is not limited to what factors it must consider, but should examine the “proposed situation” of the structures, including, but not limited to: the current condition of the structures to be replaced;<sup>3</sup> the lifespans of the current and proposed structures, proposed materials and telecommunications facilities, environmental impacts, cost, and alternatives, and whether the rebuild must contain OPGW. *Id.* at 6-9. It argued that a determination of whether an exemption should be granted must be made per

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<sup>2</sup> <https://www.iso-ne.com/committees/planning/planning-advisory#:~:text=The%20Planning%20Advisory%20Committee%20%28PAC%29%20is%20an%20open,economic%20studies%20to%20be%20performed%20by%20the%20ISO> (last visited March 3, 2025).

<sup>3</sup> The DOE asserted in a footnote that Eversource’s petition was deficient because it did not “adequately describe the current condition of each structure slated for replacement in Bethlehem.” *Id.* at 1, n.1 (citing former N.H. Admin. R., Puc 203.05(a)). As the DOE did not request any relief with regard to this alleged deficiency, it will not be addressed in this order.

pole to be replaced, because RSA 674:30, III refers to “the structure” singular. *Id.* at 9-10.

The DOE reiterated in a reply to Eversource’s Sur-Reply (DOE Reply) its argument that the plain language of RSA 674:30, III, namely, the “proposed situation” of the 100 structures that Eversource proposes to replace requires the Commission to consider the height, larger structures, different materials and telecommunications facilities, environmental impacts, cost, and alternatives. DOE Reply at 2-3. Citing Order No. 26,925, the DOE contended that the Commission has authority to review expenditures on transmission asset condition projects. *Id.* at 1-2.

### **III. COMMISSION ANALYSIS**

The parties have raised several arguments regarding the extent of the Commission’s authority to review Eversource’s proposed upgrade of the two transmission lines in Bethlehem, which we address in turn.

#### **A. Commission Authority to Review and Regulate Interstate Asset Condition Transmission Projects**

The parties disagree about the extent of the Commission’s authority to review and regulate interstate asset condition transmission projects. Eversource maintains that the Commission’s review in this docket is limited to considering the factors listed in *Milford* to determine whether exceeding the height restriction in the Zoning Ordinance is “reasonably necessary for the convenience or welfare of the public.” Eversource Motion at 6-7. It contends that the Commission has no authority to also review the need for, and costs of, asset condition transmission upgrade projects, such as Eversource’s plans to upgrade the X178 and U199 Lines, because these matters are subject to exclusive federal jurisdiction. *Id.* at 7-11; *see* Sur-Reply at 3-4. The other parties argue that the Commission has authority to review asset condition transmission projects in New Hampshire, including their prudence and costs, *see* OCA

Reply at 6-9; DOE Reply at 1-2, in addition to other factors, see DOE Objection at 1-2, 6-11; DOE Reply at 2-3.

Under the Federal Power Act, 16 U.S.C. §§ 791a, *et seq.*, the federal government, through the FERC, regulates wholesale sales of electricity and the transmission of electric energy in interstate commerce, including interstate and regional planning. *Transource Pa., LLC v. Defrank*, 705 F. Supp. 3d 266, 271-72 (M.D. Pa. 2023). The FERC delegates some of this authority to Regional Transmission Organizations (RTOs). *Id.* at 271. RTOs, such as ISO-NE,<sup>4</sup> are responsible “for planning, and for directing or arranging, necessary transmission expansions, additions, and upgrades that will enable [them] to provide efficient, reliable and non-discriminatory transmission service and coordinate such efforts with appropriate state authorities.” 18 C.F.R. § 35.34(k)(7).

The FERC’s regulation of interstate transmission, however, extends only “to those matters which are not subject to regulation by the States.” *Transource Pa., LLC*, 705 F. Supp. 3d at 272 (citing 16 U.S.C. § 824(a)). States maintain authority over siting, construction, and permitting matters. *Id.* at 273. Further, transmission needs are shaped by fundamental state decisions regarding tax rates, zoning and land use laws, and other exercises of state power. *Bldg. for the Future Through Elec. Reg’l Transmission Plan. & Cost Allocation*, 187 F.E.R.C. ¶ 61,068, at ¶ 15 (2024), 2024 FERC LEXIS 609, at \*1541 (Phillips, Chairman, and Clements, Commissioner, concurring); see also *ISO New England, Inc.*, 158 F.E.R.C. ¶ 61,138, at \*61,893 (2017) (stating “[ ] all state action that increases or decreases electricity supply has an impact on the wholesale markets. A prompt siting decision or a favorable zoning exemption

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<sup>4</sup> ISO-NE is the RTO serving the six New England states of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. <https://www.ferc.gov/industries-data/electric/electric-power-markets/iso-ne> (last visited March 3, 2025).

may provide more economic benefit than a subsidy . . . .” (Bay, Commissioner, concurring)).

New Hampshire law does not apply to transmission rates, which the FERC approves, so the Commission does not review the prudence of investments in transmission infrastructure. *Pastoriza*, Order No. 26,946 at 7 (February 24, 2024). The Commission nonetheless has authority to conduct a fact-finding inquiry into asset condition projects to the extent that they affect New Hampshire ratepayers. *Id.* at 2. Although the Commission may not have authority to assess the regional need for an interstate asset condition transmission project or the prudence of the investments in such a project, the Commission is not precluded from reviewing other aspects of asset condition transmission projects in New Hampshire. The Commission has authority under RSA 674:30, III to consider a number of factors in determining whether a public utility’s transmission upgrade project within a given municipality is entitled to an exemption from that municipality’s applicable zoning ordinance(s).

### **B. Commission Authority Under RSA 674:30, III**

Having determined that the Commission has authority to review asset condition transmission projects, the next issue to be decided is the extent of the Commission’s review under RSA 674:30, III. The Commission will first review the language of the statute and then discuss what factors are relevant to its zoning exemption analysis.

The parties disagree on the scope of the Commission’s review under RSA 674:30, III, which provides, in pertinent part, that

A public utility . . . may petition the public utilities commission to be exempted from the operation of any local ordinance, code, or regulation enacted under this title. The public utilities commission, following a public hearing, may grant such an exemption if it decides that **the present or proposed situation of the structure in question is reasonably necessary for the convenience or welfare of the public . .**

. .



(Emphasis added). In particular, they dispute the meanings of “proposed situation” and “structure,” and disagree on what factors the Commission should consider under RSA 674:30, III.

In *Appeal of Milford Water Works*, 126 N.H. 127 (1985), Milford Water Works (MWW) appealed a Commission decision granting MWW an exemption from the Town of Amherst zoning ordinance (so that it could construct pipelines, wells, well houses, and pumping equipment to replace water supply in Milford lost due to contamination) with conditions requiring MWW to, among other things, provide emergency water to neighboring residents in case their water supplies failed as a result of MWW’s project. *Id.* at 128-30. On appeal, MMW argued that the Commission had no authority under either RSA 31:62 (the predecessor statute to RSA 674:30, III) or its general supervisory powers to attach conditions to its exemption order. *Id.* at 130. Like RSA 674:30, III, RSA 31:62 permitted the Commission to grant a public utility a zoning ordinance exemption if it decided “that the present or proposed situation of the structure in question is reasonably necessary for the convenience or welfare of the public.” *Id.* at 131.

In its decision, the New Hampshire Supreme Court relied upon a New Jersey Supreme Court decision, *In re Monmouth Consolidated Water Co.*, 220 A.2d 189 (N.J. 1966), interpreting a similar zoning exemption statute. In *Monmouth*, the New Jersey Supreme Court stated that the purpose of the exemption provision was “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.” *Milford*, 126 N.H. at 131 (quoting *Monmouth*, 220 A.2d at 192). The New Hampshire Supreme Court cited another New Jersey decision, *In re Petition of Public Service Electric and Gas Co.*, 241 A.2d 15 (N.J. Super. Ct. 1968),

in which the New Jersey court noted that the legislative purpose behind the New Jersey exemption statute was to make it clear that local zoning ordinances were subordinate to the broader public interest being served by the utility, but still ensure that local interests would be taken into account. *Milford*, 126 N.H. at 131-32 (citation omitted).

In *Milford*, the New Hampshire Supreme Court affirmed the Commission's decision, holding that the Commission was authorized to attach reasonable conditions to an order granting an exemption under RSA 31:62, "in consideration of the interests of local residents." *Id.* at 132. It stated that "the [Commission] is empowered under RSA 31:62 to consider the health and safety of local residents when a utility petitions the [Commission] under that statute." *Id.* at 133.

The Court quoted a section of the *Monmouth* decision listing several different factors to be considered in determining whether to grant a zoning exemption:

the suitability of the locus chosen for the utility structure, the physical character of the uses in the neighborhood, the proximity of the site to residential development, *the effect on abutting owners*, its relative advantages and disadvantages from the standpoint of public convenience and welfare, 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, whether any resulting injury to abutting or neighboring owners can be minimized by reasonable requirements relating to the physical appearance of the structure, adequate lot size, front and rear set back lines as well as appropriate side lines regulating the positioning of the structure on the lot, and by proper screening of the facility by trees, evergreens, or other suitable means.

*Id.* at 131-32 (citation omitted) (emphasis contained in original). Yet the New Hampshire Supreme Court did not adopt these factors as a test the Commission was required to consider in applying RSA 31:62 (now RSA 674:30, III). *See Hampstead Area Water Co., Inc.*, Order No. 23,871 at 8 (December 14, 2001) (stating *Milford* does not require Commission to make findings of fact regarding these factors).

Although the New Hampshire Supreme Court has not interpreted “proposed situation” and “structure,” as used in RSA 674:30, III or RSA 31:62, the Commission has issued a number of decisions applying RSA 674:30, III and its predecessor statute, which may provide some guidance. *See State v. Jordan*, 176 N.H. 34, 38 (2023) (stating administrative agency’s interpretation of a statute it is charged with implementing “is entitled to substantial deference”). Decisions from New Jersey and Pennsylvania, states with zoning exemption statutes containing language similar to RSA 674:30, III may provide additional guidance. *See Censabella v. Hillsborough Cnty. Atty.*, 171 N.H. 424, 426 (2018) (stating court may look to decisions from other jurisdictions construing similar statutes for guidance).

1. “Proposed Situation”

Eversource argued that “proposed situation” refers to “the way in which something is placed in relation to its surroundings,” such as location. The DOE, on the other hand, maintains that the “proposed situation” of the structures to be replaced requires the Commission to consider, among other things, the height, larger structures, and different materials and telecommunications facilities.

In construing a similar zoning exemption statute,<sup>5</sup> which authorized the New Jersey Board of Public Utility Commissioners (NJ BPU) to declare a zoning ordinance inapplicable to a utility if it determined “the situation of the building or structure in question is reasonably necessary for the service, convenience or welfare of the public,” the New Jersey Supreme Court ruled that “situation” refers to “the particular site or location . . . , which must be found ‘reasonably necessary. . . .’” *In re Pub. Serv. Elec. &*

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<sup>5</sup> Former N.J. Stat. Ann. § 40:55-50, which has since been amended. N.J. Stat. Ann. § 40:55D-19 now requires the NJ BPU to determine whether “the present or proposed use by the public utility or electric power generator of the land described in the petition is necessary for the service, convenience or welfare of the public . . . .”

*Gas Co.*, 173 A.2d 233, 241, 243 (N.J. 1961). The Pennsylvania Public Utilities Commission (PA PUC), when construing Pennsylvania’s zoning exemption statute, 53 P.S. section 10619, which also permits the PA PUC to grant a zoning exemption if it decides that “the present or proposed situation of the building in question is reasonably necessary for the convenience or welfare of the public,” determined that “proposed situation” refers to a location. *In re Application of Trans-Allegheny Interstate Line Co.*, 2008 Pa. PUC LEXIS 62, \*367 (August 15, 2008). It stated that “[t]he only plausible interpretation of [this statute] is that the Commission must first know *where* a proposed building is to be *situated* on a tract of land before determining that said building is reasonably necessary for the convenience or welfare of the public, and therefore, exempt from the local zoning regulation.” *Id.* at \*367 (emphasis contained in original).

Such an interpretation of “proposed situation” is consistent with “the suitability of the locus chosen for the utility structure” factor listed in *Milford* (citing *Monmouth*, 220 A.2d 189). The Commission has considered the location of the proposed facility, rather than the materials and equipment comprising the facility, in its prior zoning exemption decisions. *See, e.g., Hampstead Area Water Co., Inc.*, Order No. 23,871 at 9 (December 14, 2001); *Pennichuck Water Works, Inc.*, Order No. 23,619 at 12 (January 10, 2001). Accordingly, the “proposed situation” in RSA 674:30, III would appear to refer to the location of the new facility proposed by the utility.

The “proposed situation” requires the Commission to consider the location of the proposed facility. The Commission is authorized to consider other factors in its zoning exemption analysis based on the remaining language of RSA 674:30, III.

## 2. “Structure”

The DOE maintained that the RSA 674:30, III’s reference to “structure” singular means that the Commission must make a separate exemption determination as to each of the 100 new structures proposed by Eversource. The word “structure” used in RSA 674:30, III is not defined in RSA chapter 674. *See* RSA 674:24 (“Definitions”).

Unless “inconsistent with the manifest intent of the legislature or repugnant to the context of the same statute,” *see* RSA 21:1, words used in New Hampshire statutes in the singular “may extend and be applied to several persons or things.” *See* RSA 21:3 (“Number; Gender”). As the Court noted in *Milford*, the purpose of the similar New Jersey zoning exemption statute was to ensure that local zoning regulations were subordinate to the broader public interest served by the public utility. *Id.* at 131. Interpreting “structure” as referring to more than one structure would not contravene the purpose of RSA 674:30, III.

Furthermore, interpreting “structure” as including “structures” is consistent with the Commission’s decisions regarding zoning ordinance exemptions, which concerned the construction of multiple facilities. *See Hampstead Area Water Co., Inc.*, Order No. 23,871 (December 14, 2001) (construction of three new wells, associated pump house, waterlines, and mains); *Pennichuck Water Works, Inc.*, Order No. 23,619 (January 10, 2001) (expansion of pump station, construction of water tank, and installation of emergency generator); *Hampton Water Works, Inc.*, Order No. 23,114 (January 26, 1999) (construction of three wells). In its prior zoning exemption decisions, the Commission considered the proposed projects within the municipality in question as a whole, and did not determine whether an exemption from the relevant zoning ordinance was required as to each facility to be constructed or the various elements of the proposed projects. There appears to be no support for the DOE’s

interpretation of “structure” as singular only, so that the Commission is not required to determine whether to grant an exemption for each proposed new structure separately.

### 3. Relevant Factors

In addition to the location of the proposed facility or facilities, which the Commission is not required to review individually, the Commission may consider other factors in determining whether to grant an exemption under RSA 674:30, III. The factors that the Commission has considered in its prior zoning exemption decisions are: (1) the need for the project within the municipality in question;<sup>6</sup> (2) alternatives to the project as to both the proposed site and structure, including the cost of alternatives;<sup>7</sup> (3) the impact of the project on abutters and the neighborhood, such as noise, the impact on property values, and environmental concerns;<sup>8</sup> and (4) the advantages of completing the project versus the disadvantages.<sup>9</sup> The Commission noted that it may “rely upon the expertise of other State officials and agencies relative to State environmental concerns.” *Bridgewater Steam Power Co.*, Order No. 18,037 (January 6, 1986) (71 NH PUC 20). When considering the interest of the public, the

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<sup>6</sup> *New England Tel. and Telegraph Co.*, Order No. 18,790 (August 17, 1987) (72 NH PUC 351) (stating threshold issue is whether there is need for additional construction).

<sup>7</sup> *Hampstead Area Water Co., Inc.*, Order No. 23,871 (December 14, 2001) (cost of alternative sites); *New England Tel. and Telegraph Co.*, Order No. 18,790 (August 17, 1987) (72 NH PUC 351) (cost of alternative structure).

<sup>8</sup> *Pennichuck Water Works, Inc.*, Order No. 23,619 (January 10, 2001) (noise impact); *New England Tel. and Telegraph Co.*, Order No. 18,790 (August 17, 1987) (72 NH PUC 351) (impact on neighboring property values); *Hampton Water Works Co.*, Order No. 15,843, (August 26, 1982) (67 NH PUC 597) (loss of property value and preservation of legitimate local planning purposes).

<sup>9</sup> *Southern NH Water Co., Inc.*, Order No. 19,720, Docket No. DE 88-163 (February 16, 1990) (advantages of building water tank exceeding zoning ordinance height restriction outweighed any disadvantages); *Bridgewater Steam Power Co.*, Order No. 18,037 (January 6, 1986) (71 NH PUC 20) (advantage to public of having electrical energy and capacity to meet future needs outweighed any disadvantage from siting plan at proposed location).

Commission has considered all of the public utilities' customers, including future customers.<sup>10</sup>

Though the Commission has not previously ruled on a zoning exemption request relative to the rebuild of an existing structure in the same location, like Eversource's projects in this proceeding, decisions from other jurisdictions with similar zoning exemption statutes may be instructive. In the following public utility commission decisions, the Massachusetts Department of Public Utilities (MA DPU) and the NJ BPU ruled on requests for zoning exemptions for projects that included the rebuild of existing transmission lines and replacement of pole structures.

Pursuant to Mass. Ann. G.L. c. 40A, section 3, New England Power Company sought exemptions from the zoning ordinances of two municipalities in *Petition of New England Power Company*, 2015 Mass. PUC LEXIS 209 (August 7, 2015), in order to proceed with its project to construct two new transmission lines and to replace existing tap lines with two new tap lines, each with their own set of new transmission structures. *Id.* at \*1-2. The replacement tap lines would use the existing transmission ROWs for two miles before being installed in a new ROW, and a total of 58 new structures, primarily of a steel-monopole construction and most 80-110 feet tall, would be installed. *Id.* at \*2, 47. Mass. Ann. G.L. c. 40A, section 3 provides that the MA DPU may exempt land or proposed structures from a zoning ordinance or bylaw "if, upon petition of the corporation, the [DPU] shall . . ., determine the exemptions required and find that the present or proposed use of the land or structure is reasonably necessary for the convenience or welfare of the public."

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<sup>10</sup> See *Hampton Water Works, Inc.*, Order No. 23,114 (January 26, 1999); *Hampton Water Works Co.*, Order No. 15,843, 67 NH PUC 597 (August 26, 1982).

The factors that the MA DPU considered in determining whether the proposed use was reasonably necessary for the public convenience or welfare included: (1) the need for or public benefit of use; (2) the alternatives explored, such as non-transmission alternatives and reusing existing structures, including the cost of alternatives; and (3) the impacts of the proposed use, such as land use impacts, environmental impacts, visual impacts, noise impacts, traffic impacts, and health and safety impacts. *Id.* at \*8-50. The MA DPU found that “the benefits of the Project exceed adverse local impacts and, thus, that the proposed use is reasonably necessary for the public convenience or welfare.” *Id.* at 50.

In *In the Matter of the Petition for Jersey Central Power & Light Co.*, 2018 N.J. PUC LEXIS 291 (November 7, 2018), Jersey Central Power & Light Company (JCP&L) proposed constructing a new 230 kV transmission line along an approximately 10-mile route primarily within an existing ROW between Aberdeen and Red Bank, New Jersey to enhance the reliability of its transmission and distribution system in Monmouth County, New Jersey. *Id.* at 3. The project would include removing existing wooden pole structures and replacing them with steel monopoles or installing steel monopoles. *Id.* JCP&L applied to the NJ BPU for an exemption from all applicable zoning ordinances. *Id.* at 1-2.

In determining whether a proposed use was “reasonably necessary,” the NJ BPU stated that it was required to consider “[a]lternative sites or methods and their comparative advantages and disadvantages to all interests involved, including cost.” *Id.* at \*198. It also considered actual and projected demand in the project area in determining the need for the project. *Id.* at \*200. The administrative law judge considered other factors, including public health impacts, real estate impacts,



environmental impacts (such as required environmental permits), and vegetation management and aesthetic impacts. *Id.* at \*159-61.

Public Service Electric and Gas Company (PSE&G) began replacing existing poles with taller 65-foot utility poles carrying higher voltage current and constructing a 59 kV transmission circuit within a public ROW in *In the Matter of the Complaint of the Village of Ridgewood*, 2013 N.J. PUC LEXIS 324 (November 22, 2013). *Id.* at \*2. Ridgewood filed a complaint with the NJ BPU when PSE&G failed to obtain a permit before starting the project, as required by its zoning ordinance. *Id.* at \*3. Ridgewood referred to several of its other zoning ordinances for the NJ BPU's consideration in determining whether to modify the project, including one containing a 45-foot height restriction on all public utility buildings and structures. *Id.* at \*47-48. In addition to considering the necessity of the project, the NJ BPU heard testimony regarding local aesthetic and health and safety concerns. *Id.* at \*14-23, 46-48.

### **C. Conclusion**

Eversource has the burden in this proceeding of proving that its projects to replace 100 poles in Bethlehem with structures of greater height, in violation of the Zoning Ordinance, are “reasonably” necessary. Eversource must demonstrate that any advantages to replacing the existing poles with higher structures, such as improvements in service to the public, including its present and future customers in Bethlehem and other municipalities, are not outweighed by local concerns related to the proposed new structures.

The Commission is not required to determine whether an exemption is required for each new structure individually, but may consider Eversource's projects, within the boundaries of Bethlehem, as a whole. The scope of this proceeding will not include the necessity of the entire transmission upgrade project, i.e., upgrades that will occur

outside of Bethlehem, or the prudence of Eversource's expenditures on its transmission line upgrades.

Based on *Milford*, prior Commission decisions, and decisions from other jurisdictions with similar zoning exemption statutes, the scope of this proceeding should include the following issues:

- (1) Whether it is reasonably necessary for Eversource to replace the 100 existing poles with higher structures within Bethlehem;
- (2) What are the alternatives to Eversource replacing the existing poles with higher structures, including the cost of any alternatives;
- (3) Are there local concerns related to the proposed higher structures (such as: health and safety, aesthetics, noise, impacts on property values, and environmental impacts); and
- (4) What are the advantages and disadvantages of Eversource replacing the existing poles with higher structures.


**Based upon the foregoing, it is hereby**


**ORDERED**, Eversource's Motion for Clarification is GRANTED in part, in accordance with the foregoing order; and it is

**FURTHER ORDERED**, that discovery shall be limited to the foregoing issues; and it is

**FURTHER ORDERED**, that the parties are requested to collaborate on a proposed procedural schedule to be filed by March 31, 2025.

By order of the Public Utilities Commission of New Hampshire this third day of March, 2025.

  
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Daniel C. Goldner  
Chairman

  
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Pradip K. Chattopadhyay  
Commissioner

  
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# Service List - Docket Related

Docket#: 24-087

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