

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 21-020**

**EVERSOURCE ENERGY AND CONSOLIDATED COMMUNICATIONS**

**Joint Petition to Approve Pole Asset Transfer**

**Order on Joint Petition to Approve Pole Asset Transfer**

**ORDER NO. 26,729**

**November 18, 2022**

In this order, the Commission authorizes Consolidated Communications to transfer utility poles and related assets to Eversource Energy upon finding that Eversource Energy possesses the technical, managerial, and financial capabilities necessary to maintain the utility poles and related assets. The Commission concludes that no further authorization is required for the petitioners to terminate their existing Joint Ownership and Use Agreement and transfer interests in poles and assets to Eversource Energy. In addition to this authorization, and on the condition that the petitioners consummate their proposed transfer pursuant to their settlement and purchase agreement, this order directs that the net book value of the assets being transferred to Eversource be calculated based on the original costs as though the transferor were a rate regulated utility, and authorizes recovery by Eversource for certain expenses related to pole inspections, pole replacement, and vegetation management through its proposed Pole Plant Adjustment Mechanism.

**I. PROCEDURAL HISTORY**

On February 10, 2021, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) and Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications (Consolidated) (together the “Joint Petitioners”) filed a joint petition (Joint Petition) requesting that the

Commission approve Consolidated's transfer of certain utility pole assets to Eversource pursuant to a "settlement and pole asset purchase agreement" (Purchase Agreement). The Joint Petition requested the Commission approve cost and expense recovery by Eversource through its Regulatory Reconciliation Adjustment (RRA) mechanism. The RRA rate increases would recover costs associated with Eversource's purchase of Consolidated's interest in the utility pole assets. In support of the Joint Petition, the Joint Petitioners pre-filed the direct testimonies and attachments of Lee Lajoie, Eversource's Manager of System Resiliency in New Hampshire, Douglas Horton, Eversource's Vice President of Distribution Rates and Regulatory Requirements, and Erica Menard, Eversource's Manager of New Hampshire Revenue Requirements.

On February 23, 2021, the Office of the Consumer Advocate (OCA) filed a letter of participation in this matter. On March 29, New England Cable and Telecommunications Association, Inc. (NECTA) filed a petition to intervene, which was granted by the Commission at a prehearing conference on April 2, 2021.

On April 2, 2021, the Commission held a prehearing conference, and subsequently approved a procedural schedule.

On July 6, 2021, the New Hampshire Department of Energy (DOE) filed a notice of appearance.

On August 4, 2021, the OCA moved to dismiss the Joint Petition. On August 16, Eversource and Consolidated filed separate objections to the OCA's motion to dismiss. On August 19, the OCA filed a request for leave to file a reply to Eversource's and Consolidated's objections, together with its reply. The OCA's motion for leave to file a reply to the objections of Eversource and Consolidated was granted through a procedural order dated September 10, 2021.

On August 13, 2021, NECTA moved to compel Consolidated to respond to certain data requests. Consolidated filed a partially assented-to motion to extend the deadline for filing an objection to NECTA's motion to compel on August 23, 2021, and an objection on August 25, 2021. Consolidated's motion to extend the deadline for filing an objection was granted through a procedural order dated September 10, 2021.

On October 22, 2021, the Commission issued Order No. 26,534 regarding the OCA's motion to dismiss and NECTA's motion to compel. Order No. 26,534 granted in part the OCA's motion to dismiss, concluding that the recovery of capital costs associated with the proposed transaction through the RRA was precluded by sections 9.1 and 10.6 of the settlement agreement on permanent rates that the Commission approved through Order No. 26,433 (December 17, 2020) in Docket No. DE 19-057. The Commission required the Joint Petitioners to propose a new cost recovery mechanism acceptable to Eversource. Order No. 26,534 also granted NECTA's motion to compel as a response to a Commission request for specific answers.

On November 16, 2021, Eversource pre-filed the supplemental testimonies and attachments of Douglas Horton and Erica Menard, proposing a new cost recovery mechanism. Eversource proposed a Pole Plant Adjustment Mechanism (PPAM) to recover the same costs and expenses as had previously been proposed for recovery through the RRA.

On December 7, 2021, Consolidated filed a response to the Commission's request for specific answers.

On January 31, 2022, NECTA pre-filed the direct testimonies and attachments of James White, Senior Director of Regulatory Affairs at Comcast Cable, and of Patricia Kravtin, principal and owner of Patricia D. Kravtin Economic Consulting. On the same

date, the DOE pre-filed the direct testimony and attachments of Stephen Eckburg, Utility Analyst in the Regulatory Support Division of the DOE.

On February 25, 2022, Consolidated pre-filed the rebuttal testimonies and attachments of Michael Schultz, Consolidated's Senior Vice President of Regulatory & Public Policy, and of Sarah Davis, Consolidated's a Senior Director of Government Affairs. On the same date, Eversource pre-filed the rebuttal testimony and attachments of Douglas Horton. On March 1, 2022, Consolidated filed a corrected attachment.

The Commission held duly noticed hearings in this matter on March 15, 2022, and May 10, 2022.

On March 25, 2022, NECTA filed a response to a Commission record request. On March 28, Eversource filed responses to various record requests, including a second revised cost recovery proposal, which excluded capital costs while retaining the other cost recovery inputs of the PPAM.

On June 3, 2022, the DOE, NECTA, Eversource on behalf of the Joint Petitioners, and the OCA each filed initial briefs. (Hereinafter DOE Initial Brief, NECTA Initial Brief, Joint Initial Brief, and OCA Initial Brief, respectively).

On June 17, 2022, the DOE, NECTA, Eversource, Consolidated, and the OCA each filed reply briefs. (Hereinafter DOE Reply Brief, NECTA Reply Brief, Eversource Reply Brief, Consolidated Reply Brief, and OCA Reply Brief, respectively).

The petition, exhibits, hearing transcripts, briefs, and other docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at:

<https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-020.html>.

## **II. SUMMARY OF PROPOSED TRANSFER, PURCHASE AGREEMENT, AND COST RECOVERY**

### **a. Proposed Pole Asset Transfer**

The Joint Petitioners propose to terminate their joint use/ownership agreement<sup>1</sup> by, among other things, transferring Consolidated's interests in certain utility poles and pole assets to Eversource. *See generally* Exh. 3. The Joint Petitioners' existing joint use/ownership agreement is a long-standing agreement regarding the Joint Petitioners' interests in utility poles in their coextensive franchise areas. *Id.* at Bates page 1. Under the existing joint use/ownership agreement, the Joint Petitioners each possess a one-half undivided interest as tenants in common in the pole infrastructure that is subject to the joint use/ownership agreement. Exh. 18 at Bates pages 10–11.

### **b. Proposed Purchase Agreement**

Under the terms of the Purchase Agreement, Consolidated would transfer its one-half undivided interest associated with approximately 343,000 jointly-owned poles and approximately 3,800 solely-owned poles, appurtenant infrastructure, real property rights, and future income from pole attachment agreements with third parties to Eversource in exchange for a buyout payment to Consolidated and the resolution of all existing disputes between the Joint Petitioners. Exh. 3 at Bates page 1. The Joint Petitioners acknowledge disputes between themselves, including over vegetation management costs. *Id.*

The buyout payment is based on three figures: a gross purchase price, a net purchase price, and a net payment price. *Id.* at Bates page 2. The gross purchase price in the Purchase Agreement is approximately \$34,380,000. *Id.* The net purchase price

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<sup>1</sup> The Joint Use/Ownership Agreement is provided in its entirety at Exh. 18, Bates pages 3–13.

is approximately \$25,380,000, reflecting credits from Consolidated for utility poles that failed inspection. The net payment price is a further reduction to the net purchase price to settle legal disputes between the Joint Petitioners, including disputes over vegetation management costs. *Id.* The net payment price is a confidential figure at the time this order is issued. *See* Order No. 26,609 (April 13, 2022); Order No. 26,631 (May 24, 2022) (order on rehearing of Order No. 26,609). Eversource requests that the net purchase price be used as representative rate base for going-forward ratemaking purposes and not subject to future prudence review. Exh. 70 at Bates page 16.

The proposed transaction is contingent on an order from the Commission “free and clear of all contingencies or conditions acceptable to the Parties and Seller’s secured creditors, granting all necessary, final and non-appealable asset transfer and cost recovery approvals acceptable to Buyer, related to the sale of the Transferred Poles.” Exh. 3 at Bates page 4.

**c. Proposals for Cost Recovery from Eversource Customers**

Eversource seeks to implement the PPAM to recover costs and expenses associated with operation and maintenance of the transferred poles, pole inspection, and vegetation management expenses. *See generally* Exh. 70. Eversource expects that PPAM costs would be subject to future prudence reviews by the Commission. *Id.* at Bates page 15.

The PPAM would be offset by any increase in pole attachment revenues Eversource would receive as a result of becoming the sole owner of the utility poles. *Id.* Eversource estimates it would collect approximately \$17.6 million from its ratepayers through the proposed PPAM over the first three years following closing of the Purchase Agreement. *Id.* at Bates page 3.

The cost recovery proposal related to incremental operation and maintenance expenses would recover actual costs associated with replacement poles for the prior calendar year based on the actual number of poles replaced and the actual Eversource cost to transfer the conductor from old to new poles. *Id.* at Bates page 16. This amount is estimated to range between \$1 million and \$2.8 million annually. *Id.* at Bates page 3.

The cost recovery proposal related to pole inspection costs would recover actual inspection costs and other upfront costs (\$250,000 in years 1 and 2 and \$75,000 in year 3) for the prior calendar year based on the number of poles Eversource inspected in the former Consolidated maintenance area and the per-pole rate in effect. *Id.* at Bates page 16. This amount is estimated to range between \$1 million and \$1.7 million in annually. *Id.* at Bates page 3.

The cost recovery proposal to recover vegetation management costs would recover incremental vegetation management expenses for the period after December 31, 2020, calculated as though it were the vegetation management expenses formerly billed to Consolidated. *Id.* at Bates page 16. In 2021, this amounted to approximately \$8.2 million; and is estimated to range between \$7 million and \$7.4 million in the following years. *Id.* at Bates page 3.

### **III. PARTY POSITIONS**

#### **a. Joint Petitioners**

The Joint Petitioners argue that it is lawful, proper and in the public interest for the Commission to approve the proposed pole asset transfer. Joint Initial Brief at 8–10. The Joint Petitioners support this position by stating that such transfer will result in electric grid reliability and operational benefits (including proactive pole inspections, mitigation of delays during restoration events, expedited setting of poles for new

customers, and avoidance of line extension costs for customers in Consolidated's maintenance area where the customer does not take any services from Consolidated. *Id.* The Joint Petitioners argue that such transfer would result in minimal impacts on customer bills, and the pole asset transfer is otherwise consistent with New Hampshire law. *Id.* at 11. According to the Joint Petitioners, the proposed net purchase price is representative of the asset value that will be acquired by Eversource. *Id.* The Joint Petitioners rely on several arguments to support the conclusion that the net purchase price is reasonable, including that: the gross purchase price is less than half of Eversource's net book value for the same jointly owned poles; the purchase price adjustment accounts for Eversource's future need to replace poles that failed inspection; and that the poles, associated infrastructure and real property rights are more akin to an asset than a business acquisition. *Id.* at 11-15.

Additionally, the Joint Petitioners assert that the proposed cost recovery mechanism as proposed in Eversource's November 15, 2021, filing and further revised following the first hearing date in Exhibit 70, is reasonable, necessary, and creates an appropriate balance between Eversource's shareholders and its customers. *Id.* at 18-19.

With respect to the reasonableness of the purchase price, the Joint Petitioners argue that it is appropriate to use the net purchase price as the representative rate base for ratemaking purposes because the net book value recorded on Consolidated's financial records represents a depreciated value for accounting purposes, not the actual value of the pole property (*see* Exh. 10, at Bates 14-15). The Joint Petitioners argue that because Consolidated's depreciation rate does not align with the useful life of the poles, the value of the poles is much higher than currently reflected in the financial records of Consolidated. Therefore, the Joint Petitioners argue that no nexus

exists for the Commission to link the financial book value and the actual value of these assets for ratemaking purposes. Joint Initial Brief at 14.

**b. New England Cable and Telecommunications Association, Inc.**

NECTA stated that it does not oppose the proposed transfer of pole assets from Consolidated to Eversource if the Commission adopts two proposed sets of conditions related to billing, operations, finances, and rates to ensure that NECTA members do not suffer harm under the public good standard. NECTA Initial Brief at 2, NECTA Reply Brief at 1. According to NECTA, the Commission may not approve the transfer under a public good standard unless it finds that NECTA Members will not be harmed. *Id.*

NECTA argues that its members would be harmed because the Joint Petitioners are unable to quantify operational benefits and the purchase price exceeds Consolidated's regulatory book value of the assets.<sup>2</sup> NECTA Reply Brief at 4–8. NECTA argued that the proposed pole attachment rates Eversource would charge NECTA members are too high while the proposed pole attachment rates Eversource would charge to Consolidated in the first two years after the transfer would be discriminatorily low. *Id.* at 5–14.

**c. Office of the Consumer Advocate**

The OCA opposed the proposed acquisition, stating that the Commission should deny the Joint Petition outright. OCA Initial Brief at 1. At the outset, the OCA noted that Consolidated is not required to seek Commission approval to transfer any of its assets to Eversource pursuant to RSA 374:30; therefore, it does not follow that the

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<sup>2</sup> NECTA calculated a just and reasonable net book value for the poles and pole assets of \$15,927,407. Exh. 39 at Bates page 14.

Joint Petition is subject to approval under the public good standard of RSA 374:30. OCA Initial Brief at 1–2. OCA Reply Brief at 1–2.

The OCA went on to argue that, assuming a public good standard were to apply, the proposed transaction, including Eversource’s rate recovery requests, does not meet that standard. OCA Initial Brief at 4. According to the OCA, the Joint Petitioners should be required to demonstrate net benefits to Eversource ratepayers to obtain Commission approval of the transaction and rate recovery requests. OCA Reply Brief at 3–4. In support of its position, the OCA argued that the proposed transaction does not meet the public good standard because the purchase price is excessive, the resolution of disputed vegetation management costs shifts recovery from Consolidated to Eversource ratepayers, and that any reliability or system benefits are not quantifiable or sufficient to justify the proposed transaction. OCA Initial Brief at 4–14.

The OCA went on to argue that Eversource could alternatively acquire the pole assets through eminent domain. OCA Initial Brief at 15.

**d. Department of Energy**

The DOE opposed the proposed acquisition and urged the Commission to reject the Joint Petition outright. The DOE argued that the proposed transaction would not serve the public good because Eversource ratepayers would suffer adverse consequences resulting from specific terms in the proposed transaction. DOE Initial Brief at 1, DOE Reply Brief at 1. According to the DOE, the gross and net purchase prices for the poles to be transferred, as well as the Joint Petitioners’ settlement of Consolidated’s unpaid vegetation management obligations under the Agreement, make the proposed transaction unreasonable and inconsistent with the public good. DOE Initial Brief at 2. The DOE acknowledged the OCA’s argument that RSA 374:30, I, is technically inapplicable; however, it maintained that the Commission should evaluate

the Joint Petition under the public good standard because the Joint Petitioners invoked that standard and request approval of a rate recovery mechanism by Eversource. DOE Reply Brief at 1–2. According to the DOE, the standard requires the transfer result in no net harm to customers as well as otherwise meeting the just and reasonable standard. *Id.*

With respect to the purchase price and asset condition adjustment, the DOE argued that the Joint Petitioners failed to carry their burden to establish that either the negotiated net or gross purchase prices are reasonable. DOE Initial Brief at 3–4, DOE Reply Brief at 3–5. In support of this position, the DOE argued that record evidence shows that the gross purchase price should be based on the net book value to Consolidated. *Id.* The DOE also challenged the sufficiency of the asset condition adjustment. *Id.* According to the DOE, the net purchase price will have a direct impact on Eversource’s customers because it will establish the capital asset value for future rate recovery purposes and may affect third-party attachment fee levels in the future. *Id.*

With respect to the Joint Petitioners’ arguments related to Consolidated’s accelerated depreciation, the DOE argued that the gross purchase price does not correspond to either company’s net book value based on a depreciation schedule that would be appropriate for a regulated utility and is not based on any other valuation method that is reasonable and appropriate for regulated utility assets. DOE Reply Brief at 4. The DOE construed the gross purchase price as a deal that both companies could live with but argued that such agreement does not form an adequate basis to support a finding that the negotiated gross purchase price represents a fair net book value of the pole assets added to Eversource’s future rate base. The DOE proposed a net book value of \$13,382,128 for the transferred poles. Exh. 22 at Bates page 6.

With respect to the vegetation management expense settlement, the DOE argued that insufficient information has been presented to determine that the settlement of these disputed sums is just and reasonable; therefore, the Joint Petitioners have not met their burden to show that the proposed transaction meets the public good. DOE Initial Brief at 5. According to the DOE, Eversource customers would pay an unreasonable share of costs for expenses that Consolidated was obligated to pay but did not pay and will not have to pay as a result of the proposed settlement terms. *Id.* at 5–6.

#### **IV. COMMISSION ANALYSIS**

##### **a. Authorization to Transfer Poles and Pole Assets**

We authorize Consolidated to transfer the identified utility poles and pole assets to Eversource because we find that Eversource is technically, managerially, and financially capable of maintaining utility poles and pole assets for the purpose of providing safe and adequate utility services.

Consistent with the March 18, 2021, Order of Notice, the Commission considered whether the transfer should be approved pursuant to RSA 374:30 and whether the transfer will result in will result in safe and adequate service pursuant to RSA 374:1.

RSA 374:30, I, generally requires the Commission apply a public good standard when evaluating petitions to transfer public utility franchises, works, or systems. Within RSA 374:30, I, two exceptions to this requirement are found: 1) if the transferor is an excepted local exchange carrier (ELEC), no Commission approval is required; and 2) if the asset being transferred is a partial interest in utility poles and their appurtenances for the purpose of joint use, the Commission may waive review by issuing a general order applicable to all wire using utilities. A general order

authorizing the lease or transfer of part interests in poles and appurtenances was issued by the Commission in Docket No. I-E7509 and requires ten days' advance notification to the Commission of changes to lease or transfer agreements. *See Wire Using Utilities*, Order No. 4479, 25 N.H.P.S.C. 206 (July 26, 1943); and Order No. 7676, 43 NH PUC 118 (June 26, 1961).

Pursuant to RSA 374:30, II, however, an Incumbent Local Exchange Carrier (ILEC) operating as an ELEC may transfer or lease franchise, works, or systems if the Commission finds that the transferee is technically, managerially, and financially capable of maintaining the obligations of an ILEC.

RSA 374:30, II, is the appropriate standard to apply because Consolidated is the type of transferor to which RSA 374:30, II specifically applies: an ILEC operating as an ELEC. *See* Exh. 11 at Bates page 14; Exh. 15 at Bates Page 20. Although RSA 374:30, I can be read to impose a more lenient standard of review—or no review at all—that conflicting standard does not apply because “[t]o the extent two statutes conflict, the more specific statute controls over the general statute.” *EnergyNorth Natural Gas v. City of Concord*, 164 N.H. 14, 16 (2012). Under RSA 374:30, II, a transferor may transfer part of its works or system if the Commission finds the transferee to be technically, managerially, and financially capable of maintaining the obligations of an ILEC set forth in RSA 362:8 and RSA 374:22-p.

The proposed transfer does not include any modification to Consolidated's franchise, or the transfer any of Consolidated's works or systems apart from utility poles and associated assets. We do not understand the proposed transfer to change Consolidated's obligations under RSA 362:8 and RSA 374:22-p. Therefore, the evaluation of the transferee's technical, managerial, and financial capabilities is limited to its technical, managerial, and financial capabilities to maintain the utility

poles and pole assets in a manner that ensures reasonably safe and adequate utility services. *See* RSA 374:1.

Each utility pole or pole asset within this proposed transaction is used and useful for the distribution of electric energy within Eversource's franchise. *See* Exh. 4 at Bates pages 1-2 (describing assets as owned by Consolidated and in Eversource's service territory, excluding poles that contain no electric facilities). The record contains ample evidence to demonstrate that Eversource is capable of maintaining utility poles, including performing all maintenance requirements within its designated maintenance areas, replacing poles within Consolidated's maintenance areas under certain circumstances, and performing vegetation management throughout the Joint Petitioners' coextensive franchises. *See, e.g.,* Exh 13 at Bates pages 33-34; Transcript of March 15, 2022, Hearing at 130-131, 135, and 149. The parties that oppose, or seek conditional approval of, the Joint Petition acknowledged that operational efficiencies may be realized by the pole transfer. *See, e.g.,* DOE Reply Brief at 2; Transcript of May 10, 2022, Hearing at 104; NECTA Reply Brief at 1-2.

We therefore find that Eversource is technically, managerially, and financially capable of maintaining the utility poles and pole assets to provide safe and adequate utility services to its ratepayers and pole attachers, including Consolidated. Consolidated is therefore authorized to transfer its interests in utility poles and pole assets to Eversource if the Joint Petitioners elect to consummate the Purchase Agreement.

**b. Eversource's Costs Recovery Proposals**

We find that the gross and net purchase prices from the Purchase Agreement are not appropriate to use to impute a net book value for Eversource's future ratemaking purposes. We direct Eversource to calculate and impute a net book as

though Consolidated were a rate regulated utility using the methodology and formula used by the NECTA if it consummates the Purchase Agreement. We further authorize Eversource to recover certain expenses related to pole inspections, pole replacement, and vegetation management through its proposed Pole Plant Adjustment Mechanism.

The burden is on Eversource to prove the necessity of any increase to its rates. RSA 378:8. The standards applicable to these requests are the public interest and just and reasonable rates standards, as well as all other applicable requirements of utility-initiated rate increases. *See* RSA 374:2, RSA 378:5 and :7. As stated in Order No. 26,534, the settlement agreement on permanent rates that the Commission approved through Order No. 26,433 (December 17, 2020) in Docket No. DE 19-057 also bears on Eversource's opportunities to request rate recovery and rate recovery mechanisms.

**i. Net Book Value for Future Ratemaking**

In light of the significant disagreements over the net book value of the utility poles and pole assets being transferred, we have carefully scrutinized the record and believe that the value of the assets being transferred to Eversource must be based on the original costs as though the transferor were a rate regulated utility. We do not agree that Consolidated's departure from the regulatory accounting principles of depreciation because it operates as an ELEC justifies a departure from the regulatory accounting principle that the actual costs of the entity that first put an asset into utility service.

A utility's rate base is determined by the cost of prudent, used, and useful utility plant, equipment, and capital improvements. RSA 387:27 *et. seq.* All utility poles and pole assets that would be transferred to Eversource are utility plant. Here, we observe that there are multiple reference points for Consolidated's cost basis, including Consolidated's December 7, 2021, responses to the Commission's requests

for specific answers and other discovery responses wherein Consolidated provided other net book value figures as of July 2017, March 2019, and December 2021. Exh. 14 at Bates Pages 23–29.

We also note that the circumstances leading to the proposed transaction lack the usual safeguards of a market-based transaction: the asset is an existing utility asset jointly owned by utilities with coextensive franchise areas; the Joint Petitioners have an affiliation based on their long-standing joint ownership and use arrangement; the purchase and sale agreement is premised in part on the existence of “various operational, financial and other disputes,” *see* Exh. 4 at Bates page 1; and the Joint Petitioners sought confidential treatment of pricing details of this transaction, one term of which remains under the protection of a protective order. Contrary to Eversource’s assertion at hearing, the proposed transaction is not analogous to purchasing a pole (or any other widget) off a lot. Transcript of May 10, 2022, Hearing at 53. When the company purchases a widget off a lot, competition and procurement practices provide some assurance of the reasonableness of the purchase price.

Nor do we agree with the argument that because the proposed book value is less than that of the other half of the pole assets on Eversource’s books, this is indicative of reasonableness. *See* Joint Initial Brief at 12 (citing Exh. 10 at Bates page 13–14 and Exh. 12 at Bates page 70). This cannot be the case when the record implies that that Eversource holds itself to a higher standard of pole inspections, pole replacement policies, and restoration of services following storms and emergencies than Consolidated. *See, e.g.*, Joint Initial Brief at 9–11; Exh. 14 at Bates Pages 23–29.

As such, we do not agree that the Joint Petitioners have met their burden to show that the net purchase price is appropriate to impute a net book value for Eversource’s future ratemaking purposes.

Given this determination, a reasonable regulatory net book value for the transferred assets, if Eversource elects to consummate the Purchase Agreement, must be calculated and imputed based on Consolidated's costs. We find that the record is sufficient to determine of such a value. Both the DOE and NECTA used data provided by Consolidated and essentially the same methodology to calculate a net book value that they assert would be reasonable for this purpose, however, only NECTA provided its underlying calculations. Exh. 39 at Bates page 14, Transcript of March 15, 2022, Hearing at 269–270. We find that the NECTA utilized an appropriate formula, proportion of total Consolidated poles to be transferred, and depreciation rate schedule to calculate a just and reasonable net book value. Therefore, if the Joint Petitioners execute the Purchase Agreement, Eversource shall utilize NECTA's formula to calculate and impute a net book value for the utility poles and pole assets based on the effective asset transfer date of February 10, 2021. This date is selected because it is the filing date of the Joint Petition and therefore serves as the first opportunity Eversource ratepayers could have had notice of the Joint Petitioners' intentions and of potential rate impacts.

#### **ii. Pole Plant Adjustment Mechanism**

We find that it is in the public interest for Eversource to recover incrementally higher vegetation management, pole replacement, and inspection costs incurred on and after February 10, 2022 through the PPAM if Eversource consummates the Purchase Agreement. The public interest is served because we find that Eversource is an appropriate entity to solely own utility pole assets with electric facilities within its coextensive franchise area with Consolidated and sole ownership of these assets may result in operational efficiencies. We also give weight to the fact that the expenses that are proposed to be included in the PPAM are actual expenses Eversource has incurred

or will incur in its normal pole maintenance operations, will be subject to prudence reviews by the Commission, and will be netted against any and all incrementally higher pole attachment revenues.

Unless otherwise stated, the Commission accepts the PPAM as proposed by Eversource, and allows the PPAM to operate until the resolution of Eversource's next full rate case.

### **1. Incremental Vegetation Management Expense**

We find that any costs that were billed or should have been billed to Consolidated prior to the filing of the Joint Petition on February 10, 2021, the first opportunity for Eversource's ratepayers to have notice of this proposed transaction and potential increases to Eversource's rate base and cost structure, may not be shifted to Eversource's ratepayers. Beginning on February 10, 2021, if Eversource closes this transaction, we find it to be in the public interest for the requested vegetation management program costs to be included in the PPAM until base rates are updated. Eversource would otherwise be disincentivized from maintaining its full vegetation management program. This is substantially the same intent as the Joint Petitioners negotiated with the net payment settlement term that covers such costs through the end of December 2020. *Id.* at 90.

### **2. Pole Capital Replacement Costs**

For the reasons stated above, we find it to be in the public interest to authorize Eversource to recover actual inspection costs and identified upfront costs incurred beginning February 10, 2021, through the PPAM, if Eversource elects to consummate the proposed transaction.

### **3. Operation and Maintenance Expenses**

For the reasons stated above, we find it to be in the public interest to authorize Eversource to recover actual costs incurred beginning February 10, 2021, associated with replacement poles for the prior calendar year based on the actual number of poles replaced and the actual Eversource cost to transfer the conductor from the old to the new poles through the PPAM, if Eversource elects to consummate the proposed transaction.

#### **iii. Pole Attachment Issues**

##### **1. Rates**

Although essential to regulated utility service and undeniably utility plant, utility poles are a bundle of physical assets, licenses, and property rights that serve many purposes, including multiple utility services, other wired and wireless communications and information services, as well as street lighting and fire protection. Many of these other uses of utility poles are revenue producing to the utility pole owner, and maximum rates for many pole attachments must be just and reasonable. RSA 374:34-a. These pole attachment rates are subject to Commission jurisdiction pursuant to RSA 374:34-a and N.H. Code Admin. R. Puc Ch. 1300.<sup>3</sup> Puc 1304.06 sets out the rate review standards, which include consideration of factors including impacts and potential impacts on competitive alternatives, the pole owner and its customers, and deployment of broadband services.

NECTA objects to the pole attachment rates Eversource proposes to charge both its members and Consolidated, arguing that Consolidated's existing pole attachment rates are too high, and the negotiated rates Eversource would charge Consolidated for

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<sup>3</sup> This rule set is currently being divided between the Commission and the DOE in parallel rulemaking proceedings.

the first two years after the transaction are too low. NECTA Initial Brief at 13. NECTA made clear on the record that it has begun the process of challenging Consolidated's rates in another proceeding. See Notice of Rate Dispute, tab 101, August 23, 2022.

However, Consolidated's existing pole attachment rates will not change as a result of this proceeding, a pole attachment rate dispute was not noticed in the Commission's Order of Notice, and NECTA's members are seeking alterative relief from the Commission for excessive pole attachment rates in another docket, DT 22-047.

Therefore, the question of whether Consolidated's existing maximum pole attachment rates are unjust or unreasonable is not properly addressed in this proceeding.

With respect to the flat fee for attachments Eversource proposes to charge to Consolidated for a transitional period of time under the terms of the proposed transaction, it is not apparent that Consolidated's actual number of pole attachments on the utility poles identified for transfer is known by either of the Joint Petitioners at this time. Such a figure would be necessary to enable accurate billing based on a maximum rate, if one were to be set by the Commission. If the proposed transaction is consummated, Eversource shall accurately determine Consolidated's actual number of attachments by performing an attachments survey within two years of closing the transaction, the point at which Eversource would begin charging Consolidated based on updated pole attachment rates. Transcript of March 15, 2022, Hearing at 121-122.

## **2. NECTA's Requests for Conditional Approval**

Finally, NECTA requests service, billing, and application processing conditions based on the argument that the public good standard requires no net harm to attachers. The public good standard has not been applied by the Commission in authorizing this transfer. We note that the Purchase Agreement, if it is consummated, requires Consolidated to "transfer, assign and set over" to Eversource its interests in

attachment fees. Exh. 4 at Bates page 2. We interpret this provision to mean that Eversource shall bill in Consolidated's place if and until such a time as it establishes an updated and unified pole attachment rate, which seemingly grants NECTA some of the relief its witnesses requested. We also note that no conditional order is necessary to require adherence to applicable rules (such as the proposed condition that pole attachment licensing, survey, and make ready work timelines be adhered to).

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

**ORDERED**, the Commission finds that Eversource Energy possesses the technical, managerial, and financial capabilities necessary to maintain the utility poles and associated assets identified for transfer in the Joint Petition, therefore Consolidated may transfer these assets to Eversource; and it is;

**FURTHER ORDERED**, that, if the Joint Petitioner's pole asset transfer occurs pursuant to the Purchase Agreement and this order, Eversource shall calculate and impute a net book value for the transferred pole assets as though Consolidated were a rate-regulated utility using the methodology and formula applied by NECTA and an effective date of February 10, 2021, as discussed herein; and it is

**FURTHER ORDERED**, that, if the Joint Petitioners consummate the pole asset transfer pursuant to the Purchase Agreement and this order, Eversource is authorized to recover identified costs related to pole inspections, pole replacement, and vegetation management incurred beginning on February 10, 2021, through its proposed Pole Plant Adjustment Mechanism as discussed herein; and it is

**FURTHER ORDERED**, that, if the Joint Petitioners consummate the pole asset transfer pursuant to the Purchase Agreement and this order, the Joint Petitioners shall inform the Commission of the transaction within 24 hours of closing; and it is

**FURTHER ORDERED**, that, if the Joint Petitioners consummate the pole asset transfer pursuant to the Pole Purchase Agreement, Eversource shall file tariff pages as required by N.H. Code Admin. Rules Part Puc 1603, conforming to this order within 15 days of the execution of the transfer of rights and assets.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 2022.



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Daniel C. Goldner  
Chairman



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Carleton B. Simpson  
Commissioner

# Service List - Docket Related

Docket#: 21-020

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