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***City of Dover, New Hampshire***  
**OFFICE OF CITY ATTORNEY**

July 31, 2020

**Via Electronic Submission**

Ms. Debra A. Howland  
Executive Director  
New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, NH 03301

**Re: Docket DT 20-104: Town of Durham Department of Public Works  
City of Dover's Letter to Intervene**

Dear Ms. Howland

We write on behalf of the City of Dover ("Dover") with respect to the above-referenced docket. The purpose of this letter is to supplement the original complaint filed and outline facts specific to Dover with respect to the double pole issue described in the initial letter from the Town of Durham and other communities, including Dover.

By way of background, on or about July 1, 2020, the Commission received that letter and opened this docket, to which Dover is a party. The issue raised in the docketed complaint is not unique to the Town of Durham. There are numerous so-called "double poles" throughout Dover that impede Dover's rights of way. By "double poles," we are referring to poles that are no longer needed and in the process of being abandoned and removed.

Eversource has provided Dover with a spreadsheet showing, as of the date of that spreadsheet (June 16, 2020), there are 270 double-poles present in the City of Dover. *See* Ex. 1. Looking at the attached spreadsheet, a small number of these are believed to be scheduled by Eversource for removal (*i.e.*, the ones marked "Ready to be Pulled" in the attached spreadsheet). However, the large majority of them still await the relocation of equipment by Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications – NNE ("Consolidated"), as noted in the "Still on Pole" and "Next to go" columns of the attached spreadsheet.

Whatever system Consolidated uses or may use to address these double poles, the fact remains that there is considerable, and unacceptable, delay in removing these double poles. The estimated average time for removal in Dover exceeds one year. In one egregious example, it took 532 calendar days for an abandoned pole to be removed.



These unnecessary double poles are unsightly and mar the Cityscape. But more fundamentally, the double poles impede public use of the affected way (including sidewalks), impede the City's ability to plow and maintain the way (including sidewalks), and in some situations directly jeopardize public safety. Below is an excerpt of a video taken by the City of Dover showing a double pole (with telephone company attachments) swaying in the wind (near the corner of Durham Road and Back River Road):



Consolidated is the primary party responsible for most double pole removal delays in Dover. This delay contravenes several requirements of law, as outlined below.

- An abandoned pole that takes hundreds of days to be removed violates the letter and/or spirit of RSA 231:171, which enables the renewal or replacement of a pole. Stated another way, allowing two poles to co-exist beside each other for an unreasonable amount of time is not “renewal” or “replacement,” but instead represents the placement of an unnecessary and unlicensed pole, *but see* RSA 231:161, RSA 231:160, RSA 231:173. Unlicensed poles willfully placed “or maintained” in a highway “shall be removed upon demand by the authority having jurisdiction to issue licenses.” RSA 231:173.
- Consolidated’s failure to remove or timely remove abandoned poles “interfere[s] with the safe, free and convenient use for public travel of the highway” in violation of RSA 231:168.



- Local requirements of law are also being violated, or caused to be violated, by Consolidated's failure to remove or cooperate in the removal of the abandoned, double poles. Dover Code 125-28 requires as follows:

Whenever any wires, conduits, or poles, installed pursuant to a license issued pursuant to § 125-22, now in use or hereafter constructed shall pass out of use or become useless or "dead wires," so-called, the owners thereof shall within 60 days take down and remove the same, together with all the other fixtures belonging to said wires, conduits, or poles . . . .

- Finally, the City may order the removal of all unsafe poles and wires pursuant to Dover Code 125-30.

Consolidated is expected to take the position that other pole attachers are responsible for the delay. First, that is not reflected in the attached spreadsheet. Second, Consolidated's approach effectively tries to shift the obligation for coordinating the removals onto the City, but the City should not be required to expend its staff time and resources to constantly pursue utilities to follow-up on double poles. Third, the City of Dover does not have access to the software systems used by the utilities. Fourth, Consolidated is the pole owner or is a joint pole owner, and it is the pole owner of a double pole who should coordinate the removal process with attachers. *See generally N.H. Code of Admin. Rules PUC 1303.01, 1303.04, 1303.05, 1303.07.* Dover's Code makes clear it is the pole "owner" who has the obligation to remove the double pole (Dover Code 125-30).

While Dover believes it would be within its rights to consider revoking any licenses and/or remove the abandoned double-poles or otherwise addressing unsafe conditions in accordance with the law, Dover raises the issue before the Commission out of courtesy to Consolidated, and because Dover believes the Commission may wish to have the opportunity to address this matter in the first instance given that it impacts multiple communities. This may present a compelling case for new regulations issued to address the core concerns and clarify the obligations of the utilities.

In conclusion, Dover requests the following from the Commission:

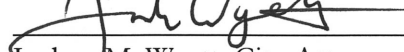
- Receive and docket this filing in the above-captioned matter;
- Schedule a conference and technical session;
- Order Consolidated to immediately address and remove its equipment from all double poles in the City of Dover;
- Grant such other relief as the Commission deems proper, equitable, and just.

Respectfully submitted,

CITY OF DOVER

By:   
John Storer, Director of Community Services

Dated: July 31, 2020

By:   
Joshua M. Wyatt, City Attorney  
288 Central Avenue  
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Tel: (603) 516-6520

Dated: July 31, 2020

Attachment

cc:

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