STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

JOINT PETITION TO APPROVE POLE ASSET TRANSFER

DOCKET NO. DE 21-020

REPLY BRIEF OF CONSOLIDATED COMMUNICATIONS OF NORTHERN NEW ENGLAND COMPANY, LLC D/B/A CONSOLIDATED COMMUNICATIONS

I. Introduction

Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications ("Consolidated") submits this reply brief[1] in response to the initial briefs filed by the Department of Energy ("DOE"), the Office of Consumer Advocate ("OCA"), and New England Cable and Telecommunications Association, Inc. ("NECTA") opposing the approval of a sale of Consolidated's solely and jointly-owned poles to Public Service Company of New Hampshire d/b/a Eversource Energy ("Eversource") and the approval of certain rate adjustments applicable to Eversource customers.

The initial briefs of the DOE and OCA basically claim that Eversource, the State's largest electric utility, has been duped by Consolidated in an attempt to persuade the Commission to disregard a fair and carefully negotiated settlement and asset sale transaction between two sophisticated commercial parties. According to the OCA and DOE, Consolidated struck too good a deal for these poles and convinced Eversource to agree to an excessive purchase price (OCA

[1] This reply brief is filed pursuant to the procedural schedule established by the New Hampshire Public Utilities Commission (the "Commission") at the May 10, 2022 evidentiary hearing in this proceeding (2022 May 10 Tr. at 99).

Initial Brief, §III p.5).[2] Furthermore, the OCA claims that Consolidated's customers already have "paid in full" for the poles; therefore, the OCA argues the purchase price is a windfall: "Customers should not have to pay for the same asset multiple times…" (*Id*. p.7 citing updated testimony filed as Exh. 72 from NECTA's witness Patricia Kravtin.) To add to such claims, the OCA and DOE contend that the Joint Petitioners have not explained the nature and validity of their vegetation maintenance disputes and, therefore, the resolution of those disputes through arms' length negotiation does not merit the Commission's "imprimatur" (DOE Initial Brief, §3, p. 5; OCA Initial Brief, §IV, p10.) The recommended approach appears to be protracted and unnecessary litigation between the Joint Petitioners, similar to the path sought by New Hampshire Electric Cooperative, the outcome of which is uncertain and nowhere in sight[3], and/or eminent domain proceedings (OCA Initial Brief, §IV, p. 12, and §VI, ps. 15-16) because "it is impossible for Eversource to reach an agreement with Consolidated providing for a reasonable purchase price…" (*Id.*, p. 15.)

The reality is the Joint Petitioners have negotiated fair and reasonable terms for the purchase and sale of the poles and have reached an equitable settlement of their disputes. Eversource is not in the business of making "bad deals" and it has carefully evaluated and understands the benefit of the bargain under the Settlement and Pole Asset Purchase Agreement (the "Settlement Agreement"). Eversource is a very successful and sophisticated commercial utility with ***$3.175 billion*** in investments in property plant and equipment ("PPE"), total PPE of

[2] NECTA requests the imposition of so many onerous and transaction revision-based conditions that it can only be construed that its members also seek rejection of the transaction, although for different reasons tied to multi-billion dollar corporations seeking a reduction in pole attachment expenses. Consolidated does not reply to the majority of NECTA's arguments in this Reply Brief and incorporates by reference the arguments advanced in the Joint Petitioner's Initial Brief as well as the Reply Brief filed by Eversource.
[3] The NHEC litigation began in fiscal year 2020 and a jury trial is scheduled for April 2023. Thereafter, an appeal by the non-prevailing party to the New Hampshire Supreme Court is more than likely.

$33.377 billion and ***$9.863 billion*** in operating revenues as of December 31, 2021. (Eversource Energy FY 2021 Annual Report, Appendix A, p. A-2.) Such success does not result from "fantasy" (*see* OCA Initial Brief, §V, p. 14), but instead from "…providing safe, reliable delivery of electricity, natural gas, and water to 4.4 million customers across New England…[all while] reliability remained in the top decile of [Eversource's] utility industry peers." (Eversource Energy FY 2021 Annual Report, Appendix A, p. A-3.)[4]

When the Commission cuts through the colorful prose (*see ex*. OCA Initial Brief, §III p.7)[5], it is left with a rather simple question to answer: Does approval of the Joint Petition, as modified by Eversource in Exhibits 70-71, result in "no net harm" to ratepayers? On this record, the answer certainly is "yes". The DOE candidly admits that "there may be significant benefits resulting from" the transaction, including "emergency response, service restoration, and regular maintenance, all of which would serve to enhance system reliability." (DOE Initial Brief, §1, p. 2.) Similarly, the OCA "does not disagree" that "it is optimal for the state's electric distribution companies to assume full ownership of the utility poles within their service territories." (OCA Initial Brief, §V, p. 13.)

Central to the above referenced question are concepts that include electric service reliability, emergency response and service restoration. There is no dispute that placing pole ownership solely in the hands of the electric utility will advance the public interest. Resolving the

[4] Eversource's FY 2021 Annual Report also is on file with the United States Securities and Exchange Commission and may be found at: https://www.sec.gov/Archives/edgar/data/72741/000007274122000015/0000072741-22-000015-index.htm

[5] For example, the OCA's brief refers to Consolidated as one of New Hampshire's "two biggest utilities." (OCA Initial Brief, §I, p.1.) As the OCA is well aware, Consolidated lacks nearly all of the traditional hallmarks of a public utility, including the franchise right to provide monopoly service in a defined territory free from competition. In fact, as noted in the Joint Petitioners' Initial Brief, it is the dramatic changes in the telecommunications industry that have resulted in the public interest being best served by the pole infrastructure being owned by the electric distribution company.

vegetation management dispute between Eversource and Consolidated as part of that transaction on terms that are commercially reasonable and negotiated at arm's length is similarly consistent with the public interest. Accordingly, the Commission should approve the Joint Petition as modified by Eversource per Exhibits 70-71.

II. The Settlement Agreement

The method by which the Joint Petitioners reached the final terms of the Settlement Agreement came through extensive negotiations, comprehensive due diligence and difficult compromises. The Joint Petitioners' operational disputes and disputes regarding the scope of Eversource's vegetation management practices culminated in Consolidated terminating the parties' Joint Operating/Use Agreement (the "JOA") in May 2018, with said termination not becoming effective until May 2019 (due to a one-year notice provision in the JOA (Exh. 13 at Bates 000010 (Article 18)). And while the OCA obviously prefers a litigated approach to the Joint Petitioners' disputes, it seems clear that the JOA has terminated (*see* Exh. 26, at Bates 07 ("… Defendant's [Consolidated's] obligations under the [NHEC JUA] terminated…") and Bates 012 ("…the time of termination of [the NHEC JUA] is May 24, 2019.")) and, therefore, Consolidated believes it no longer owes vegetation management expense to Eversource.

The Joint Petitioners commenced negotiations to resolve their disputes in March 2019 (Exh. 13, at Bates 000070.). ***Nineteen (19) months later***, the parties signed the Settlement Agreement (Exh. 4, at Bates 000001). The Settlement Agreement has been summarized by the Commission as follows:

> at a high level the parties negotiated a "gross purchase price" that is offset by a negotiated figure to derive a "net purchase price." The net purchase price is then further offset by another negotiated figure to resolve any and all outstanding disputes between the parties

> to arrive at a final "net payment figure." Eversource proposed to impute the "net purchase price" as the net book value of the asset for future ratemaking purposes. The difference between the "net purchase price" and the "net payment price" is a negotiated figure that represents, among other things, the resolution of unresolved claims Eversource maintains against Consolidated relating to vegetation management expenses.

Order No. 26,631, ps. 7-8. Examining each of these elements individually supports the conclusion that the proposed transactions are for the public good and, on balance, comport with the no net harm test.[6]

A. Gross Purchase Price

The record evidence establishes that the gross purchase price for the Transferred Poles overall is just and reasonable. Comparing the gross purchase price of [redacted] to Consolidated's book value at the time of the negotiations and settlement demonstrates that this price is fair. "Consolidated's GAAP net book value of the Transferred Poles as of March 2019 when the Joint Petitioners initially started negotiating this transaction was … [redacted]" (Exh. 12, at Bates 000070), with a total cost/investment in the poles of [redacted]. (Id.)

That does not end the analysis. Consolidated invested another [redacted] into its New Hampshire pole plant during fiscal year 2019. (Exh. 14, at Bates 000030.) Of that total 2019 investment, approximately 75% or [redacted]

[6] The question of public good is not answered by looking only to the immediate interests of the public served by the companies involved in a transfer of property, but rather a question of what is reasonable taking all interests into consideration. *See Grafton County Electric Light & Power Co. v. State*, 77 N.H. 539, 94 A. 193, 195 (1915). For acquisition cases, the Commission applies a "no net harm" test, rather than a "net benefits" test. *Id*. (citing *In re Eastern Utility Associates, Inc.*, 76 N.H. P.U.C. 236, 252-253 (1991)). "The test requires a finding that a transaction is one not forbidden by law and is reasonably permitted under all the circumstances of the case," and, "based upon the totality of the circumstances, there is no net harm to the public as the result of the transaction." *Id*.

[redacted] is attributable to the Transferred Poles (*see* Exh. 12, at Bates 000073 for the 75%) for a total value of [redacted] during fiscal year 2019. During fiscal year 2020, Consolidated invested yet another [redacted] in its New Hampshire pole plant with 75% being attributable to the Transferred Poles. (Exh. 14, at Bates 000030.) In comparison to Eversource's book value for the same poles, "… the ***gross purchase price was less than half*** of the [Eversource] net book value for these same poles as of the date that [Eversource] entered into the agreement with Consolidated." (Exh. 10, at Bates 000014, 2-3 (emphasis added).) Thus, the gross purchase price for the poles is more than fair to Eversource.

B. Failed Pole Credit

Pursuant to the Settlement Agreement, Eversource receives a credit for poles that failed a comprehensive pole inspection program. Here again, the record supports the conclusion that the amount credited against the gross purchase price of the poles is fair considering the scope of the Joint Petitioners' due diligence regarding the condition of the poles. The Initial Brief of the Joint Petitioners provides a detailed discussion regarding the pole inspection process. (Joint Petitioners' Initial Brief, at ps. 16-18.) In summary, an independent pole inspection company (Osmose) examined and tested over 262,000 poles, which is 75.6% of the Transferred Poles. In addition, Eversource conducted further inspections on poles within Consolidated's maintenance areas. The result is up to 290,000 (nearly 85%) of the poles proposed to be transferred to Eversource as part of the sale have undergone some type of inspection process. (*Id*.)

With that detailed data, the Commission and Eversource's ratepayers can take comfort in the fact that Eversource is purchasing pole plant that has been well maintained over the years. The

pole inspection reported a failure rate of 2.53% (2,309 failed poles), less than Eversource modeled in its cost recovery proposal (Exh. 15 at Bates 000013, 3-4 and 14-15, respectively). The Joint Petitioners' negotiated pole credit fully takes into account the number of failed poles and, therefore, appropriately accounts for the physical condition of the pole plant. The net purchase price is calculated by taking the gross purchase price, less the failed pole credit, leading to [redacted].

C. The Net Purchase Price

An extensive number of data requests, testimony and evidentiary exhibits in this Docket have been devoted to the Joint Petitioners' net purchase price for the Transferred Poles. The crux of the issues boil down to whether the Commission should base its approval of a net purchase price on (1) an accelerated depreciation rate used by Consolidated for GAAP purposes or (2) a reasonable depreciation analysis considering the lack of regulation in the telecommunications industry and the actual facts of this Docket. NECTA, DOE and the OCA[7] urge the Commission to use the Consolidated's five-year accelerated depreciation because it yields a lower net book value. This valuation method ignores the undisputed fact that Eversource's 50% ownership interests in the same poles are recorded on the financial records of Eversource (and the electric rate base) at an amount greatly in excess of the net purchase price. Eversource's net book value for its pole plant, the majority being jointly-owned with Consolidated, is $67,424,764 (Exh. 12, at Bates 000070) compared to the net purchase price of [redacted]

[7] Notably, the OCA recently published an opinion article providing its spin on the depreciation issues involved in this proceeding. https://indepthnh.org/2022/05/27/what-your-utility-has-in-common-with-my-dads-67-pontiac/ (last viewed June 15, 2022).

[redacted] (Exh. 3, at Bates 000002 (Section 2.1 Purchase Price)). That comparison alone should end the analysis with respect to whether the net purchase price is fair.

Yet both NECTA's witness Patricia Kravtin and the DOE's witness Stephen Eckberg used Consolidated's accelerated depreciation rates for purposes of calculating their proposed net book values. (2022 Mar. 15 Tr. at 177, lines 17-24, and at 178, lines 1-4.) It is undisputed that Consolidated used an extremely accelerated depreciation rate of 20% per year (*id*., at 177, line 23) – purely for accounting purposes – "… to reduce the book value to minimize the accounting impact on a future asset held for sale." (*Id*., at 178, lines 7-9; Exh. 12, at Bates 000069 (stating that Consolidated has used an accelerated depreciation rate to minimize accounting losses at the time of the sale)). There can be no dispute that utility poles have a life expectancy far greater than 5 years. Consolidated's predecessor companies long ago lost a monopoly franchise in a defined New Hampshire service area. Consolidated's rates are not regulated by the Commission, and Consolidated has no need (or obligation) to apply any rules of accounting other than GAAP.[8] Thus, the fact that it has depreciated its pole plant over a five year period for accounting purposes, has absolutely no bearing on the value of those poles for a sale transaction. Rather, the best evidence of the value of those poles in the regulatory context, is the value that the Commission has approved for inclusion in the rate base of Eversource's identical one-half interest in those same poles. Any other conclusion would defy common sense (as well as this Commission's prior approvals of Eversource's rate base used to calculate the rates currently paid by its customers). (*See ex.* 22 May 10 Tr. at 34, 17-23.)

[8] Given that Consolidated's rates are not regulated by the Commission, the OCA's argument that customers are "paying twice" for the poles simply is incorrect. It is the fierce competition in the New Hampshire telecommunications market which drives the cost of Consolidated's services, not regulatory accounting considerations.

The unreasonableness of NECTA and DOE's proposed net book values is demonstrated by comparing those values to Eversource's net book value. DOE's net book value of Consolidated's interests in the Transferred Poles is less than [redacted] of Eversource's net book value of the same poles. NECTAs' proposed net book value is only [redacted] of Eversource's net book value. The DOE and NECTA witnesses never address how a low valuation for sale purposes can be fair to a party owning an asset when the same asset is in the electric rate base (and Eversource's accounting records) with a net book value of over $60.0 million.

It is clear that Consolidated's depreciation rate does not align with the useful life of the Transferred Poles, and that the value of the poles is much higher than reflected on the financial records of Consolidated (Exh. 10, at Bates 000014-15.; and 2022 May 10 Tr. at 46). Using the extraordinarily short 5 year amortization period for the Transferred Poles does not result in a determination that the Transferred Poles are near end of life or in need of replacement (i.e., the 5 year amortization period does not decrease the value of the Transferred Poles) (2022 Mar. 15 Tr. at 263). For these reasons, the Commission should (i) approve the net purchase price as consistent with the public good and (ii) authorize Eversource to record the net purchase price as the net book value on its financial records for the Transferred Poles, as this net purchase price represents the actual value associated with these assets. (Exh. 10, at Bates 000016; see also 2022 May 10 Tr. at 53.)

D. Net Payment Price

After the calculation of the net purchase price, at closing Eversource is to deduct the amount of the Joint Petitioners' vegetative maintenance expenses (i.e., tree trim) settlement to

arrive at the net payment price. As with the net book value issue, the DOE and the OCA devoted a significant amount of time arguing against the reasonableness of the terms of the Settlement Agreement and never discuss Consolidated's position that, with the termination of the Joint Ownership Agreement, it owes no vegetation management expenses after the date of termination. They instead would condemn the Joint Petitioners to endless litigation of disputed amounts, despite there being ***no dispute*** that Consolidated terminated the Joint Ownership Agreement. (*See* Exh. 26, at Bates 07, versus *NSTAR Electric Company and Western Massachusetts Electric Company each d/b/a Eversource Energy*, D.P.U. 17-05 at 600 (2017) wherein the Massachusetts Department of Public Utilities approved a settlement between Eversource's Massachusetts affiliate (NSTAR Electric Company d/b/a Eversource Energy) and Verizon to resolve a dispute regarding storm-related vegetation management cost sharing as a reasonable alternative to the uncertainty of litigation.)

In arguing for the uncertainties or vagaries of litigation, the DOE and OCA fail to address a critical question – what if Consolidated prevails in litigation and none of the tree trim/vegetation maintenance expenses at issue in this Docket are recovered by Eversource? Undoubtedly, Eversource expects recovery of those costs. (*See ex*., Settlement Agreement on Permanent Distribution Rates, Docket DE 19-057, as approved by Order No. 26,433, at Section 6, Vegetation Management Program.) The obvious answer – at least to Consolidated – is that Eversource would look to put the full amount into the rate base. However, if Consolidated prevails in litigation several years from now, then the ratepayers lose the benefit of a multi-million dollar settlement the ratepayers could have had today. Simply stated, there is a significant dispute between Eversource and Consolidated as to Consolidated's responsibility for vegetation management expenses post-Joint Ownership Agreement termination and the Settlement Agreement is a

negotiated resolution of that dispute. Like any settlement, it guarantees a specified financial credit from Consolidated to Eversource while avoiding the litigation risk for Consolidated, Eversource and Eversource's ratepayers. Compelling Eversource to litigate the vegetation management expenses listed in Exhibit 68 will not result in Eversource owning the Transferred Poles, and litigation is an unnecessary and significant gamble considering the critical factors of time and certainty.

Eversource and Consolidated contemplated a six month approval process. Had the present Docket not taken well over a year, the vegetation management expenses listed in Exhibit 68 would have been considerably less and more in the range of the Joint Petitioners' Settlement Agreement of December 2020. (*see* Exh. 68, at Bates 000001 noting "… the Settlement Agreement between CCI and Eversource resolves the amounts [of vegetation management expenses] through 2020.)

The fact that a dispute over vegetation management has arisen between an electric utility and a previously regulated communications company for excessive vegetation management expenses is not a novel or shockingly new idea. Settling those disputes is not a novel idea.[9] Clearly, other telecommunications based pole owners have encountered disputes similar to the Consolidated/Eversource disputes. As noted within Exhibit 69, Eversource's affiliates have dealt with and settled such disputes with Southern New England Telephone, Frontier Communications and Verizon.[10] None of the parties to the present Docket should be surprised that Consolidated

[9] With the approval of the pole sale in Vermont, Consolidated no longer pays vegetation management expenses attributable to Consolidated's interests in poles purchased by Green Mountain Power. (*See* VT Public Utility Commission Case 19-034-SC filed May 10, 2019, and VTPUC Order entered June 7, 2019), with the parties to that transaction closing the sale of the poles on June 30, 2019.

[10] These Eversource based disputes arose in Connecticut and Massachusetts. As noted during the hearing, Consolidated does not incur vegetation management expenses in any other state in its 22 state footprint other than Vermont and New Hampshire. (2022 Mar. 15 Tr. at 186, 3-12.)

and Eversource encountered similar disagreements. However, there is one key difference between Eversource's other vegetation management disputes and its disputes with Consolidated; here the Joint Petitioners settled their differences ***and*** agreed to a pole asset sale, which the DOE and OCA acknowledge is the preferred outcome.[11] Commission approval will bring resolution to the present disputes and further will ensure that such disputes cannot arise in the future.

The vegetation management settlement is just one component of the negotiations between the Joint Petitioners to reach the Settlement Agreement that is the subject of this proceeding. It is not realistic to believe that Consolidated would have agreed to resolve all of the other issues between the Joint Petitioners while moving forward with time consuming and expensive litigation over vegetation maintenance. Similarly, Eversource considered the benefits of resolving all outstanding disputes with Consolidated through the Settlement Agreement; a comprehensive resolution mitigates the risks of future litigation and ensures recovery of vegetation management costs (*see* Exh. 12, at Bates 000001) and results in a voluntary transfer of Consolidated's ownership interests in the Transferred Poles to Eversource (*see generally*, Exh. 3). Litigation provides no such guarantees; in fact the only things litigation guarantees are the Joint Petitioners incurring attorneys' fees, expert witness fees and uncertainty.

E. No Net Harm Test

When weighing all of these factors against the "no net harm" standard, Consolidated submits that "based upon the totality of the circumstances, there is no net harm to the public as the

[11] "Indeed, the DOE recognizes there may be significant benefits resulting from any such acquisition, in terms of emergency response, service restoration and regular maintenance, all of which would serve to enhance system reliability." (DOE Initial Brief, §1, p. 2.) "Eversource is correct that, ultimately, it should emerge as the sole owner of the utility poles in its service territory." (OCA Initial Brief, §V, p. 16.)

result of the transaction." (*Eastern Utility Associates*, *infra*, at 252-53.) Under Eversource's original cost recovery proposal, an average residential customer using 600 kilowatt hours per month would experience a $1.02 (or 0.88%) monthly bill increase in the first full year following Eversource's ownership of the Transferred Poles (Exh. 5, at Bates 000015). By the third year of Eversource's ownership under the original proposal, the monthly bill increase would be $1.22 per month (or a 1.04%) increase from current rates (*id*.). However, that proposal improved with Eversource's cost recovery proposal updated following the March 15, 2022, hearing (*see* Exhs. 70-71).

Exhibit 70, Eversource's refined cost recovery proposal, "… has been updated to reflect the removal of capital related components of recovery, as well as to update for the latest pole attachment rate calculations and … the timing and expense associated with vegetation management." (2022 May 10 Tr. at 10, 6-19.) It is undisputed that the combined effect of the above referenced adjustments causes the estimated revenue requirement through year 3 to be reduced from $28.9 million to $17.6 million; a reduction of ***$11.3 million, or over 39%***, from the Company's initial filing. (Exh. 70, at Bates 000001, emphasis added in part.) Comparing Exhibit 8 to Exhibit 70 shows that total incremental revenue requirement in Year 1 following the Transaction decreases under the revised cost recovery proposal from $9.4 million to $3.8 million (*see* Exhs. 8 and 70, at Bates 000003). Eversource's updated cost recovery proposal includes a $17 million reduction in capital costs versus the initial estimates in this Docket, which would represent real costs absorbed by the Eversource's shareholders in the absence of cost recovery. (Exh. 70, at Bates 00001-002.) All of such capital costs would be subject to a full prudence review by the Commission prior to any inclusion in electric rates. (22 May 10 Tr. at 17, 19-24, and 18, 1-5.)

Clearly, Eversource is "in the pole ownership business" (*id*. at 52, 22-23). This transaction is not a "profit driver" (*id*., 52, 17). Eversource agreed to the transactions contemplated by the Settlement Agreement as it is best for Eversource as the electric distribution system operator to decide how to manage pole asset investments (*see id*., 54, 12-21). Any cost savings attributable to Eversource's efficiencies as the owner of the poles will be reflected in electric rates, similar to the costs associated with the poles (22 May 10 Tr. 54-55). As such there is an extensive amount of record evidence supporting the Joint Petitioners' request for approval of the Settlement Agreement, its transactions contemplated therein and Eversource's updated cost recovery proposal. On balance, the transactions contemplated by the Settlement Agreement and Eversource's refined cost recovery proposal therefore present no net harm to the electric ratepayers and the cable companies. The Commission therefore should approve the transactions contemplated within the Settlement Agreement and Eversource's cost recovery proposal, as amended.

III. Eminent Domain Proceedings are not the Solution

According to the OCA, without providing any substantial legal authority, the Commission should "suggest" that Eversource institute eminent domain proceedings to take Consolidated's interest in the Transferred Poles. (OCA Initial Brief, §VI, at 16.) Apparently, it is obvious that NH RSA 371 allows one public utility to seize the physical assets of another public utility when it meets an alleged "requisite public benefit". (*Id*., at 15 citing *Petition of Bianco*, 143 N.H. 83, 86 (1998).)

Bianco did not involve the taking of physical assets by one utility from another utility. The case merely involved taking of an easement over land and not the taking of a specific asset. (*Bianco*, 143 N.H. at 84.) While eminent domain proceedings related to easements makes sense

in light of the statutory scheme at issue, such proceedings do not make sense with respect to the taking of physical assets or the facts of this Docket. NH RSA 371:1 states in relevant part:

> Petition. – Whenever it is necessary, in order to meet the reasonable requirements of service to the public, that any public utility should construct a line, branch line, extension, pipeline, conduit, line of poles, towers, or wires across the land of another, or should acquire land, land for an electric substation, or flowage, drainage, or other rights for the necessary construction, extension, or improvement of any water power or other works owned or operated by such public utility, and it cannot agree with the owners of such land or rights as to the necessity or the price to be paid therefor, such public utility may petition the public utilities commission for such rights and easements or for permission to take such lands or rights as may be needed for said purposes.

The highlighted language of RSA 371:1, added by Consolidated, reflects the statutory scope of the Commission's eminent domain authority. It relates to a public utility's need to (i) construct specifically delineated assets across the land of another, or (ii) the need to acquire land or other rights for the necessary construction, extension, or improvement of any water power or other works ***and*** (iii) and the public utility cannot agree with the ***owners of such land or rights*** as to the necessity or the price to be paid therefor ***then*** (iv) such public utility may petition the public utilities commission for such rights and easements or for permission to take such lands or rights. There simply is no language in this enabling statute allowing Eversource to take Consolidated's physical assets – here jointly owned and solely owned utility poles – through eminent domain proceedings.

Not one element of RSA 371:1 is met by the facts of this Docket. Eversource is not proposing to construct anything. Eversource does not need land or other land based rights for some system improvement. The statute further references the two parties failing to agree "as to the … price to be paid therefor". That element also is missing as Eversource and Consolidated agreed to "the price to be paid therefor", although in the scheme of the statute the reference to "the price to be paid therefor" really is a reference to the value of land or the right to use the land of

another. Regardless, this alone means the eminent domain statute cannot be invoked. Simply stated, the idea of eminent domain proceedings should be rejected.

IV. Conclusion

Taken as a whole, the record evidence in this Docket demonstrates that the Settlement Agreement is in the public interest. Consistent with the no net harm standard, there are real benefits to Eversource's customers and bill impacts will be minimal. The record evidence also demonstrates that the net purchase price for Consolidated's ownership interest in the Transferred Poles set forth in the Settlement Agreement is reasonable and should be approved as the net book value recordable on Eversource's books given the low value of the net purchase price for the Transferred Poles compared against Eversource's book value for the same poles. Consolidated therefore respectfully requests that the Commission to approve the Joint Petition, along with Eversource's updated cost recovery proposal.

Dated: June 17, 2022

Respectfully submitted,

CONSOLIDATED COMMUNCIATIONS OF NORTHERN NEW ENGLAND COMPANY, LLC D/B/A CONSOLIDATED COMMUNICATIONS

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CERTIFICATE OF SERVICE

I hereby certify that, on the date herein written below, I caused this Reply Brief to be served on the parties to Docket DE 21-020 via the Service List on file with the Commission.

June 17, 2022
Date

/s/ Patrick C. McHugh
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APPENDIX A

FY 2021 ANNUAL REPORT

EVERSOURCE ENERGY