

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
DE 21-020
PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY and
CONSOLIDATED COMMUNICATIONS OF NORTHERN NEW ENGLAND
COMPANY, LLC d/b/a CONSOLIDATED COMMUNICATIONS

Motion to Strike Attachment A to Joint Petitioners' Objection
and Objection to Joint Petitioners' Request for Approval
of Net Book Value Calculation

NOW COMES Intervenor New England Connectivity and Telecommunications Association, Inc. ("NECTA")¹, by and through its attorneys, and respectfully moves to strike from the record of this proceeding Attachment A to the Objection to Motion for Rehearing and/or Clarification of Order No. 26, 729 ("the Objection") filed by the Joint Petitioners² in the above-captioned docket. In addition, NECTA objects to the Joint Petitioners' request that the Commission approve the Joint Petitioners' calculation of the net book value that they allege is based, in part, on information contained in said Attachment A. In support of this Motion and Objection, NECTA states as follows:

1. NECTA filed its Motion for Rehearing and/or Clarification of Order No. 26, 729 ("the Rehearing Motion") on December 16, 2022.

¹ As of October 19, 2022, NECTA has rebranded and changed its name from the New England Cable and Telecommunications Association to the New England Connectivity and Telecommunications Association.

²The Joint Petitioners are 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")).

2. On December 23, 2022, the Joint Petitioners filed a pleading captioned “Objection to Motion for Rehearing and/or Clarification of Order No. 26, 729” (“the Objection”).

3. In addition to setting forth the Joint Petitioners’ arguments in opposition to the Rehearing Motion, the Objection contained an attachment (“Attachment A”) with information regarding pole numbers, and also contained requests that the Commission: confirm that the appropriate proportion of Consolidated’s poles to be transferred is 75%, and approve the Joint Petitioners’ calculation of the net book value of the pole assets (which includes the 75% figure noted above) that are the subject of this proceeding. However, the Joint Petitioners’ request for approval of their net book value calculation is a motion that does not belong in the Objection, and neither Attachment A nor the Joint Petitioner’s net book value calculation are part of the record of this proceeding. In view of the foregoing, Attachment A and the Joint Petitioners’ net book value calculation should be stricken, and the Commission should also deny the Joint Petitioners’ request for approval of their net book value calculation.

4. RSA 541-A: 31, VIII requires that in an adjudicative proceeding such as the instant docket, findings of fact must be based exclusively on the evidence and on matters officially noticed in accordance with RSA 541-A:33, V.

5. The record in the above-captioned docket closed on June 17, 2022 with the filing of post-hearing reply briefs by the parties. *See* Order No. 26, 729 (Nov. 18, 2022)(“the Order”) at 4. The Petitioners cannot introduce new evidence into the record at this juncture without first filing a motion to reopen the record pursuant to Rule Puc 203.06. *See* N.H. Code Admin. R. Puc 203.30 (b)(2). In the absence of such a motion, the Commission cannot properly consider the

information contained in Attachment A or confirm the Joint Petitioners' calculation of the pole assets' net book value.

6. The only record evidence of the appropriate net book value for the transferred poles that was supported with underlying calculations was provided by NECTA. *Order* at p. 17. The Commission found that “[b]oth 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 provided its underlying calculations. Exh. 39 at Bates page 14, Transcript of March 15, 2022, Hearing at 269-270.” *Id.* The Commission further found that “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.” (Emphasis added.) *Id.*

7. The prefiled testimony of NECTA's witness, Patricia Kravtin, states that she identified the proportion of total Consolidated poles to be transferred as 69%. Exhibit 39, Bates p. 13, line 15. She further stated that “[w]hile Petitioners identified a higher (75%) than proportionate percentage of Consolidated pole assets in a revised discovery response...Petitioners have not provided any substantive explanation for the revised percentage...other than citing the generic ‘factors related to the age of poles/date of poles being placed in service.’” Exhibit 39, Bates p. 13, lines 15-19. The Objection and Attachment A suffer from the same infirmity, *i.e.*, a failure to provide any substantive explanation for the revised percentage.

8. Without supporting data, the Commission cannot simply accept Consolidated's bald assertion regarding the percentage of its total poles it seeks to transfer to Eversource, especially given that the pole numbers presented in Attachment A are different than those

presented in the Joint Petition. *See* paragraph 12, below. In view of the foregoing, the Commission must strike Attachment A from the record, and must also deny the Joint Petitioners' back door request for confirmation that 75% represents the percentage of Consolidated's poles to be transferred to Eversource, and confirmation of the Joint Petitioners' net book value figure.

9. Because the request for confirmation of the Joint Petitioners' asserted percentage of Consolidated's poles being transferred would require that the Commission change its Order, the request is essentially a late-filed motion for rehearing. RSA 541:3 requires that such motions be filed within 30 days of the Order. Because that deadline is prescribed by statute, and has passed, the Commission cannot waive it. Accordingly, the Commission should not condone this procedural misstep by entertaining the Joint Petitioners' confirmation request.

10. Even if the Commission were to entertain the Joint Petitioners' confirmation request, it should be denied given Ms. Kravtin's testimony that there is no substantive explanation for the revised percentage figure. Although Attachment A provides a numerical calculation of the 75% figure, the derivation and calculation of the pole numbers reflected in that attachment have not been fully explained or properly vetted. In the absence of credible substantive support for the information in Attachment A and the figures derived therefrom, the Commission may not consider that information or grant the requested confirmation.

11. The Commission cannot admit the late-filed exhibit and evidence into the record without first considering the probative value of the exhibit, and whether the opportunity to submit a document impeaching or rebutting the late filed exhibit without further hearing shall adequately protect the parties' right of cross examination pursuant to RSA 541-A:33, IV. N.H. Code Admin. R. Puc 203.30(c).

12. Providing NECTA with an opportunity to submit a document impeaching or rebutting Attachment A and the Joint Petitioners' newly- calculated net book value will not adequately protect NECTA's right of cross examination. Simply put, NECTA does not know enough about how the information presented in Attachment A was calculated or developed, or what it is intended to represent, to be able to produce and submit a document impeaching or rebutting that late-filed exhibit. It is particularly noteworthy/troublesome that the number of transferred poles in Attachment A that appear to be characterized as solely owned by Consolidated (23,183), and jointly owned by Consolidated and Eversource (341, 906), are different than what was presented in the Joint Petition, Exhibit 67, paragraph 2, and what the Commission reflected in the Order at page 5 (i.e. approximately 3,800 solely-owned poles, and approximately 343,000 jointly-owned poles)³. In addition, because it appears that the net book value figure presented in the Objection may have been calculated using the information in Attachment A, it is improper for the Commission to consider or confirm that number.

13. Because the information contained in Attachment A is unsupported by record evidence or any substantive explanation as to its derivation, NECTA cannot provide responsive documents. In these circumstances, if the Commission were to consider Attachment A or the Joint Petitioners' net book value calculation, it must first allow NECTA (and the other parties) to conduct discovery on that information.

WHEREFORE, NECTA respectfully requests that the Commission:

³ There is no explanation in Attachment A for the Connecticut Valley and PSNH/Eversource entries in the column "100% Telco". Indeed, in Order No. 24,176 (2003), the Commission approved PSNH's acquisition of the assets of Connecticut Valley Electric Company ("CVEC"). Therefore, it is unclear how Consolidated could have a 100% ownership interest in a former CVEC pole. Attachment A also treats 100% Telco and Joint Owned poles the same, which results in an incorrect calculation. Assuming Consolidated has a 50% ownership in jointly owned poles, the mathematical result would be different, *i.e.*, 72.9%.

1. Strike Attachment A to the Joint Petitioners' Objection to Motion for Rehearing and/or Clarification of Order No. 26, 729;
2. Deny the Joint Petitioners' request for confirmation that the appropriate proportion of total Consolidated poles to be transferred is 75%;
3. In the alternative, in the event that the Commission wishes to consider the information contained in said Attachment A, provide NECTA and the other parties to this proceeding an opportunity to conduct discovery on that information before the Commission considers it; and
4. Grant such further relief as it deems appropriate.

NECTA

By its Attorneys,
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Dated: January 3, 2023

Certificate of Service

I hereby certify that on the date set forth above a copy of the foregoing Motion was sent electronically to the Service List.



Susan S. Geiger