

Public Service Company of New Hampshire d/b/a Eversource Energy
Docket No. DE 21-020

Date Request Received: March 15, 2022
Data Request No. RR-002 (Supp.)

Date of Response: April 1, 2022
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Request from: Department of Energy

Witness: Horton, Douglas P

Request:

Marked as Exhibit 69: Does Eversource have any other similar disputes over vegetation management expenses, either in New Hampshire or in other jurisdictions? If so, describe how Eversource addressed or is addressing such disputes.

Supplemental Response:

With additional time, the Company has been able to retrieve additional detail regarding arrangements in Connecticut and Massachusetts.

In Connecticut, Eversource's electric affiliate ("CL&P") reached a settlement with the telecommunications provider, Frontier, addressing unpaid vegetation management expense
BEGIN CONFIDENTIAL, [REDACTED]

[REDACTED] END CONFIDENTIAL.

After reaching settlement, the Company continues to have ongoing disputes and accounts receivable attributable to Frontier. Late in 2020, Frontier filed with the Connecticut Public Utilities Regulatory Authority ("PURA") for approval of a plan of reorganization. On February 3, 2021, PURA issued a final decision in Docket No. 20-04-31 approving Frontier's plan of reorganization. As part of this decision, PURA ordered Frontier to negotiate with Eversource and UI to sell its utility poles, stating at Page 24, Order No. 7:

7. Frontier and SNET shall continue to negotiate in good faith with the EDCs regarding mutually agreed upon terms for the transfer of ownership interest in jointly owned utility poles to the EDCs and submit semi-annually reports to the Authority regarding the status of such negotiations by June 30 and December 31 of each year. If two consecutive status reports are submitted that reveal no significant progress, the Authority will consider assigning a mediation team from its Office of Education, Outreach, and Enforcement.

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Regarding the status of the Connecticut pole transfer negotiations, to-date Frontier has provided Eversource and UI with requested financial data relating to its ownership interest in the poles and a proposed term sheet. The parties are conducting due diligence and will continue negotiations.

In Massachusetts, Eversource's electric affiliate ("NSTAR Electric") established a revised, joint operating agreement ("JOA") with Verizon, which is applicable exclusively to storm-related vegetation management. This revised JOA was referenced in the Company's original response to this record request. The revised JOA does not require cost sharing for routine vegetation management work in recognition of the fact that Verizon's facilities do not require trimming in non-storm conditions. For storm-related vegetation management costs, NSTAR Electric invoices Verizon for 7% of such costs. This percentage was derived using historical data tracked by Eversource showing that specific downed or damaged facilities owned by Verizon received a benefit from NSTAR Electric's storm-related trimming over a range of 0% to 15%, in historical storms, with 7% representing the average of the observed data. Verizon's 7% liability is incurred only in relation to the three worst levels of storm events, as defined by the Massachusetts Emergency Response Plan thresholds.

Eversource's experience in both CT and MA is that telecommunications providers will no longer pay for vegetation management expense.

The telecommunications industry has changed since JOAs were first put in place by telecommunications and electric utilities to govern joint pole ownership/use. When JOAs were first drafted and entered into, telecommunications companies (telephone companies), were fully regulated and non-competitive. As a result, electric utilities and telephone companies were equally reliant on the same "hardware" to serve their customers. Now, the telecommunications industry is deregulated and fully competitive. In addition, telecommunications technology has advanced significantly from the historical "hardware" model. As a result, bearing the cost of maintaining the pole infrastructure is an unsustainable model in a competitive marketplace for telecommunications companies, such as Verizon (Massachusetts), Frontier (Connecticut) and CCI (New Hampshire). Because CCI and other communications providers rely on technology that is not dependent on utility poles, except as a means of attachment, telecommunications providers strenuously assert that there is no material benefit realized by CCI from the proactive vegetation management activities undertaken by Eversource to protect service to electric customers.

Due to the evolution of technology and the prevalence of wireless communications rather than land-based communication, the Company's experience is that telecommunications companies that are joint pole owners no longer have urgent restoration pressure following a storm event.

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Customers rely on and expect fast and efficient restoration of electrical service but the Company's experience is that the same is not true for telecommunications.

Under these changed circumstances, it is not feasible to mount a successful legal or settlement challenge insisting on a 50/50 sharing of vegetation-management cost either for storms or non-storms, nor is it reasonable to have this expectation. Telecommunications companies assert that they no longer have a "need" for routine vegetation management, except potentially in relation to storm damage affecting specific components. The settled resolutions in Connecticut and Massachusetts recognized the drastic change that has occurred in the telecommunications industry and tie the cost "responsibility" of the telecommunication provider to the actual benefit received by that provider's system, which, the telecommunication providers assert has decreased over time in light of the above-described technology changes in the telecommunications industry. This is the challenge that Eversource has had in collecting from CCI for routine vegetation work.

For these reasons, after significant review and acceptance of the settled result, the Massachusetts Department of Public Utilities authorized recovery of vegetation-management costs from electric customers that would have been recovered from Verizon under the historical JOAs. The MA DPU found that the costs were incurred predominantly for the benefit of electric customers, not telecommunications customers (\$6.6 million of the \$8.1 million in dispute was determined to be recoverable from electric customers). NSTAR Electric Company d/b/a Eversource Energy, D.P.U. 17-05, at 598-601 (2017).

Response:

Yes. In 2014, Eversource's Connecticut affiliate, The Connecticut Light and Power Company d/b/a Eversource Energy ("CL&P"), initiated litigation in Connecticut State Court against a joint pole owner seeking to recover unpaid vegetation management expense. See CL&P v. Southern New England Telephone Co., Conn. Superior Court Docket No. HHD-CV14-6054472-S. That litigation was resolved pursuant to a settlement agreement dated June 30, 2015. In 2019, CL&P initiated an arbitration proceeding under the rules of the International Institute for Conflict Prevention and Resolution ("CPR") against a joint pole owner seeking to recover unpaid vegetation management expense. The arbitration was designated as CPR Docket No. G-20-07-O, The Connecticut Light and Power Company d-b-a Eversource Energy v. Frontier Communications Corp. The arbitration was resolved pursuant to a settlement agreement dated January 23, 2020.

The Company's Massachusetts affiliate has resolved its vegetation management cost disputes with Verizon through settlement negotiations that resulted in a revised joint operating agreement. The agreed-to revisions to the joint operating agreement reflects a revised understanding of Verizon's obligations to contribute to vegetation management costs only where there is a mutual benefit from the vegetation management. The Massachusetts Department of Public Utilities, in docket D.P.U.

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17-05, determined that this resolution of the vegetation management cost dispute was reasonable in lieu of a formal legal process. The Department noted that “[a]s joint owners of an essential distribution asset, there is significant benefit from a cooperative resolution... .” Notably, the Department found that the agreement reached between the Company’s Massachusetts affiliate and Verizon not only resolved outstanding costs but reduced future uncertainty related to storm costs. Finally, the Department allowed the Company’s Massachusetts affiliate to recover the difference between the amount incurred for vegetation management and the amount reimbursed by Verizon from ratepayers.