

THE STATE OF NEW HAMPSHIRE
BEFORE THE
NEW HAMPSHIRE
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-NNE

Joint Petition to Approve Pole Asset Transfer

Motion to Compel Consolidated to Respond to Data Requests

NOW COMES New England Cable and Telecommunications Association, Inc. (“NECTA”), an intervenor in the above-captioned docket, and respectfully moves the New Hampshire Public Utilities Commission (“the Commission”), pursuant to Admin. Rule Puc 203.09(i), to compel Consolidated Communications of Northern New England Company, LLC d/b/a Consolidated Communications-NNE (“Consolidated”) to respond to certain data requests submitted by NECTA to Consolidated, to which Consolidated has not objected. In support of this Motion, NECTA states as follows:

1. The March 18, 2021 Order of Notice in this docket indicates that among the issues to be addressed in this docket are: “whether the estimated costs associated with Eversource’s purchase of Consolidated’s interest in the Transferred poles and related rights and interests were appropriately calculated, and the recovery of those costs will result in just and reasonable rates, as required under RSA 374:2 and RSA 378:5 and :7...”. *Order of Notice*, DE 21-020 (Mar. 18, 2021), pp. 2-3.

2. In support of its intervention in this docket, NECTA asserted that its Members' rights, duties, privileges, immunities and other substantial interests will be directly affected by the instant proceeding, and that the terms and conditions of the transfer of Consolidated's pole assets to Eversource could directly impact the rates paid by NECTA Members for pole attachments. *Petition of New England Cable and Telecommunications Association, Inc. for Intervention* (Mar. 29, 2021), p. 2, ¶ 5.

3. At the prehearing conference held April 2, 2021 in this docket, the Commission orally granted NECTA's petition to intervene as a full party. *See* Tr. DE 21-020, April 2, 2021, p. 30.

4. NECTA's preliminary statement of position at the April 2, 2010 prehearing conference indicated that "the 'no net harm test' that the Commission must apply in an asset acquisition case like this one requires that NECTA's members not be adversely impacted by the proposed sale of Consolidated's poles to Eversource...Eversource should not be allowed to pay more than Consolidated's net book value for the transferred poles. If Eversource is allowed to pay above net book value for these poles, the increased amount will be reflected in its rate base, and all other things being equal, will cause retail electricity and pole attachment rates to rise." Tr. DE 21-020, April 2, 2021, pp. 30-31.

5. NECTA propounded two data requests to the Joint Petitioners, i.e., NECTA 2-019 and NECTA 3-020, that seek to elicit information about Consolidated's net book value of the Transferred Poles as of December 31, 2020 had Consolidated continued tracking the information submitted to the Federal Communications Commission in the ARMIS reports filed by Consolidated's predecessor, FairPoint Communications. More specifically, data request NECTA 2-019 seeks updates as of December 31, 2020 to the 2017 FairPoint Communications (NH) ARMIS Report for the following categories of data: Gross Investment in Poles,

Accumulated Depreciation-Poles, and Depreciation Rate-Poles. The response to NECTA 2-019 was “Consolidated does not have said data as it ceased filing ARMIS reports.” Data Request NECTA 3-020 stated that the response to NECTA 2-019 does not provide the information requested by NECTA. It goes on to say “Please provide the same information in the ARMIS report prepared by FairPoint Communications for New Hampshire for 2017 (see response to STAFF 1-031-RV01) updated to December 31, 2020 for Consolidated (not the ARMIS report itself).” The response to NECTA 3-020 was “Consolidated Communications does not have the requested information.”

6. At the Technical Session held July 30, 2021, NECTA again inquired about these data requests. Consolidated’s attorney indicated it was “theoretically possible” to provide the information, but also stated that Consolidated did not have the information.

7. Via electronic mail to Consolidated’s attorneys on August 5, 2021, the undersigned asked whether Consolidated is willing to provide the requested information, and if so, the date by which it will be provided. Consolidated’s attorney, Sarah Davis, responded to the above-referenced inquiry as follows: “Consolidated does not have the requested information. As explained previously, we do not keep our books on anything other than a GAAP basis so we do not have the information to provide.”

8. Other than indicating that the requested information was not available, Consolidated did not object to the above-referenced data requests. It therefore has waived its right to object. *See* N.H. Admin. R. 203.09(h).

9. While it may be true that Consolidated does not presently “have” the requested information, it does have the information needed to calculate the requested information. NECTA is seeking restated GAAP figures to reflect the difference between those figures and regulatory

accounting figures that Consolidated's predecessor used in its 2017 ARMIS report for Gross Investment in Poles, Accumulated Depreciation-Poles, Depreciation Rate-Poles, and Net current and Non-current Deferred Operating Income Taxes-Poles. Upon information and belief, this calculation would involve restating depreciation and taxes to reflect the different treatment under GAAP and regulatory accounting.

10. The requested information would assist the Commission and the parties in determining whether the purchase price Eversource is paying for the Transferred Poles is reasonable. Moreover, if the purchase price exceeds Consolidated's net book value of the Transferred Poles (based on the value of pole plant that would be carried on its books using regulatory accounting principles), and if Eversource is permitted to include an unreasonably high purchase price in its pole attachment rate calculations, NECTA's Members will be financially harmed. Accordingly, the data that NECTA is seeking is relevant and material to one of the core issues in this case – whether the costs of the transaction will result in just and reasonable rates.

11. As the Commission has noted, “New Hampshire law favors liberal discovery” and discovery in a Commission proceeding extends to information that “is relevant to the proceeding or reasonably calculated to lead to the discovery of admissible evidence.” *Public Service Company of New Hampshire, Investigation of Merrimack Station Scrubber Project and Cost Recovery*, DE 11-250, Order No. 25, 398 (Aug. 7, 2012) p. 2 (citations omitted). The Commission will typically allow “wide-ranging discovery” and will deny discovery requests only when it “can perceive of no circumstance in which the requested data would be relevant.” *Re Lower Bartlett Water Precinct*, 85 NH PUC 371, 372 (2000). A party in a legal proceeding in New Hampshire is entitled to “be fully informed and have access to all evidence favorable to his side of the issue. This is true whether the issue is one which has been raised by him or by his

opponent, and whether the evidence is in the possession of his opponent or someone else.”

Scotsas v. Citizens Insurance Co., 109 N.H. 386, 388 (1969).

12. Under the foregoing discovery standard, NECTA’s data requests should be answered by Consolidated. Answers to these questions will enable the Commission and the parties to quantify the disparity between Consolidated’s net book value of the pole assets it seeks to transfer to Eversource, and the purchase price that Eversource is paying for these assets and which Eversource seeks to recover from its customers in retail rates and pole attachment rates. This information is clearly relevant to the fundamental issue of whether the financial terms and conditions of this transaction will result in “no net harm”. Accordingly, sound public policy dictates that the Commission and the parties should have the responses to the data requests seeking information relating to the net book value of the pole assets that are being transferred.

13. As indicated in paragraph 7 above, the undersigned counsel has made a good faith effort to resolve this discovery issue informally with Consolidated as required by Puc 203.09(i)(4).


14. The undersigned has contacted Attorneys for the Department of Energy and the Office of Consumer Advocate for their positions on the within motion. The Office of Consumer Advocate concurs; the Department of Energy did not respond as of the time this motion was finalized for filing.

WHEREFORE, NECTA respectfully requests that this honorable Commission:

- A. Compel Consolidated to respond to the data requests described above; and
- B. Grant such further relief as it deems appropriate.

Respectfully submitted,

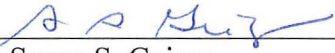
New England Cable and
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By its Attorneys
ORR & RENO, P.A.

By: 
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August 13, 2021

Certificate of Service

I hereby certify that on this 13th day of August, 2021 a copy of the foregoing motion was sent by electronic mail to the Service List in this docket.


Susan S. Geiger

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