

STATE OF NEW HAMPSHIRE

HILLSBOROUGH, SS  
NORTHERN DIVISION

SUPERIOR COURT

Docket No. 216-2020-CV-00555

New Hampshire Electric Cooperative, Inc.,

Plaintiff

v.

Consolidated Communications of Northern New England Company, LLC,

Defendant

**COMPLAINT FOR DECLARATORY, INJUNCTIVE, AND OTHER RELIEF**

NOW COMES the Plaintiff, New Hampshire Electric Cooperative, Inc. (“NHEC”), by and through its undersigned counsel, Pastori | Krans, PLLC, and files this complaint against the Defendant, Consolidated Communications of Northern New England Company, LLC (“CCI”), seeking a declaratory judgment, pursuant to RSA 491:22, that: (1) CCI’s purported termination of the parties’ General Agreement Joint Use of Wood Poles, dated July 1, 1977, as amended (“Agreement”), which is attached to this Complaint as Exhibit A, is effective as of February 22, 2020; and (2) CCI’s purported termination of the parties’ Agreement is not effective as to the poles jointly used by the parties at the time of termination and only applies going forward to poles put in use following the termination date. Alternatively, in the event that the Court rejects NHEC’s position and concludes that the Agreement is deemed terminated as to joint use poles in existence as of the termination date, NHEC seeks a declaration that the parties’ continued presence on joint use poles owned by the other party is a holdover tenancy under the same terms and conditions as in the Agreement. NHEC also asserts claims for breach of contract, breach of

the implied covenant of good faith and fair dealing, and unjust enrichment against CCI, and seeks damages, including attorneys' fees.

### **NATURE OF DISPUTE**

A dispute has arisen between the parties concerning the Agreement. CCI purported to terminate the Agreement effective May 24, 2019 by letter of May 24, 2018. The parties agreed to extend the effective date of the purported termination, if any, to February 22, 2020 and in the interim to "maintain the status quo." Prior to the purported termination and continuing to this day, CCI has repudiated its payment obligations under the Agreement, and refused to pay invoices for vegetation management in full, as required by the Agreement.

### **PARTIES**

1. NHEC is a not-for-profit, member-owned and -governed utility cooperative that provides retail electricity services over 5,500 miles of energized line to over 84,000 members in 118 communities across nine New Hampshire counties.

2. NHEC is duly organized under the laws of the State of New Hampshire with its headquarters located at 579 Tenney Mountain Highway, Plymouth, New Hampshire.

3. CCI is a corporation organized under the laws of the State of Delaware with several offices in the State of New Hampshire, including its New Hampshire headquarters located at 770 Elm Street, Manchester, New Hampshire.

4. According to its May 2020 investor fact sheet, CCI and its parent company provide communication solutions to consumer, commercial, and carrier channels across a 23-state, 37,750 fiber route mile service area with approximately 1.7 million connections.

5. Upon information and belief, CCI is the successor-in-interest to FairPoint Communications, Inc. (“FairPoint”), which is the successor-in-interest to Verizon – New England, Inc. d/b/a Verizon - New Hampshire (“Verizon”), which is the successor-in-interest to New England Telephone and Telegraph Company (“NETTC”) under the Agreement (collectively referred to as “CCI”).

### **JURISDICTION AND VENUE**

6. Pursuant to Superior Court Rule 207(III), the instant case meets the requirements of acceptance into the Business and Commercial Dispute Docket (“BCDD”) because NHEC and CCI are both business entities. The claims are of a business nature, arising from a dispute over the interpretation of the parties’ duties and obligations under the Agreement, and the amount in controversy exceeds \$50,000.00.

7. CCI assents to jurisdiction of the BCDD.

### **FACTUAL ALLEGATIONS**

#### **A. Background of Agreement**

8. NHEC owns utility poles, wires and other equipment located in public and private rights-of-way throughout its New Hampshire service territory for use in the transmission and distribution of electricity to its members.

9. CCI also owns utility poles, wires and other equipment located in public and private rights-of-way throughout its New Hampshire service territory for use in the distribution of telecommunications services.

10. Significant portions of the service territories of NHEC and CCI overlap. Within those overlapping areas, the logical and available routes for the parties' respective utility lines are largely identical.

11. There are strong economic incentives and compelling public policy considerations that have historically encouraged the minimization of redundant utility rights-of-way and poles for wire-based utilities. Where practical, the sharing of common rights-of-way, utility poles and utility trenching have been considered mutually beneficial.

12. As the telephone and electric utility industries expanded, this sharing was generally accomplished through various forms of joint ownership and joint use agreements concerning poles, as the parties have done here.

13. On July 1, 1977, NHEC and NETTC, CCI's predecessor-in-interest, entered into the Agreement at issue in this case. The Agreement provides that the parties desire "to cooperate in the joint use of their respective poles" erected or to be erected in New Hampshire and Vermont, which are brought under the Agreement in accordance with an agreed-upon procedure outlined in the Agreement. See Exhibit A, Preamble.

14. Among other rights and obligations, the Agreement provides for the parties' cooperation in obtaining shared rights-of-way and allocates the parties' respective obligations concerning the maintenance of shared rights-of-way. See generally Exhibit A.

15. The Agreement also defines the parties' respective rights and obligations concerning pole specifications and for the installation, maintenance, repair, replacement, and removal of poles. See, e.g., Exhibit A, Article VII.

16. The Agreement also governs the installation, maintenance, repair, and replacement of certain equipment attached to, and otherwise physically occupying, the poles of the other party. See Exhibit A, Articles V, VIII, IX, X, XI, and XII.

17. The Agreement benefits the parties and the communities served by obviating the need for duplicate pole networks – one for telecommunications and one for electricity.

18. The Agreement was amended by an Amendment to Joint Use Agreement, dated August 7, 2003, between NHEC and CCI’s predecessor-in-interest, Verizon (“First Amendment”). See First Amendment, which is attached as Exhibit B.

19. The Agreement was amended by a Second Amendment General Agreement Joint Use of Wood Poles between NHEC and CCI’s predecessor-in-interest, FairPoint, which became effective on March 31, 2008 (“Second Amendment”). See Second Amendment, which is attached as Exhibit C.

20. As of 2019, the parties share the use of approximately 79,200 utility poles under the Agreement.

21. NHEC owns approximately 62,400 of the shared poles.

22. CCI owns approximately 10,900 of the shared poles.

23. NHEC and CCI jointly own approximately 5,900 of the shared poles.

24. The parties have always treated the jointly owned poles as covered by the Agreement and the Intercompany Operating Procedures (“IOPs”) to the extent that their provisions relate to jointly owned poles.

25. CCI ratified the terms of the Agreement in dispute when executing the amendments.

26. CCI is bound by the terms of the Agreement as amended.

## **B. Terms of the Agreement**

27. Pursuant to the Agreement, each party allows the other to use its utility poles for the purpose of attaching facilities to distribute its respective services to members and customers in the overlapping service territories. See Exhibit A, Article IV & Article V.

28. Article VII of the Agreement provides for the maintenance of poles and their attachments requiring, among other things, that the owner of the poles maintain them in a safe and serviceable condition and in accordance with the specifications in the Agreement, and replace, reinforce, or repair poles as they become defective. See Exhibit A, Article VII.

29. Article VII, Section (d) of the Agreement provides, “Except as otherwise provided in Section E of this Article, each party shall, at all times[,] maintain all of its attachments, and perform all necessary tree trimming or cutting incidental thereto, in accordance with the specifications mentioned in Article III and shall keep them in safe condition and in thorough repair. Nothing in the foregoing shall preclude the parties hereto from making any mutually agreeable arrangement for jointly contracting for or otherwise providing for maintenance trimming.” See Exhibit A, Article, VII(d).

30. Article XI, Section (a) of the Agreement governs rentals, providing that the parties shall cooperate in an annual tabulation and update of the joint pole inventory in order to determine how much each party owes the other in pole attachment fees under the Agreement. See Exhibit A, Article XI(a).

31. In the First Amendment, the parties set the rental rate at \$27.11 per annum to be paid by NHEC to CCI for each CCI pole and \$22.21 per annum to be paid by CCI to NHEC for each NHEC pole, with this amount to automatically increase annually “in accordance with the percentage increase in the Consumer Price Index,” provided the rates do not decrease beyond the

2003 levels. Appendix B to the Agreement was amended to contain language consistent with the foregoing. See Exhibit B, ¶ 2.

32. Article XII, Sections (a) and (b) permit the parties to jointly review rental rates on an annual basis and make adjustments to rental rates in accordance with Appendix B See Exhibit A, Article XII(a) & (b).

33. Article XIII, concerning Defaults, provides in its entirety:

- a. If either party shall default in any of its obligations under this Agreement and such default continues thirty (30) days after due notice thereof in writing by the other party the party not in default may suspend the rights of the party in default in so far as concerns the granting of future use and if such default shall continue for a period of 30 days after such suspension, the party not in default may forthwith terminate this Agreement as far as concerns the future granting of joint use.
- b. If either party shall make default in the performance of any work it is obligated to do under this Agreement at its sole expense, the other party may elect to do such work, and the party in default shall reimburse the other party for the cost thereof. Failure on the part of the defaulting party to make such payment within 60 days upon presentation of bills therefor shall, at the election of the other party, constitute a default under Section (a) of this Article.

Exhibit A, Article XIII.

34. Article XX provides a mechanism for termination of the Agreement that addresses the obligations related to poles erected before and after termination. It provides:

Subject to the provisions of Article XIII, Defaults, herein, this Agreement shall be continued in force so far as concerns further granting of joint use by either party until terminated by one year's notice in writing by either party to the other party, provided, however, that notwithstanding such termination, this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

Exhibit A, Article XX.

35. The provision is clear that termination does not apply to the poles already in joint use as of the date a party terminates the agreement. This type of termination provision is common in joint use agreements between electric utilities and incumbent local exchange carrier pole owners. See Exhibit A, Article XX.

36. The provision preserves and protects the substantial investments and benefits associated with each party's efforts in building a shared pole distribution system over several decades.

37. The ongoing nature of the Agreement ensures predictability of the intertwined networks and protects against one party terminating the Agreement and forcing the other a party to remove its existing facilities from the other's poles.

38. The Agreement's exemption of joint use poles in existence as of the effective termination date from the effect of a party's unilateral termination provides a clear framework from which the parties must continue operating unless and until the parties either enter into a new joint use agreement or mutually agree to terminate the Agreement in its entirety.

39. The Agreement requires that mutually agreed upon written supplemental operating routines or working practices be outlined in IOPs, which are appended to the Agreement as Appendix D. The Agreement further provides that IOPs shall be subject to review at the request of either party made in writing to the other party. In the event of any contradiction between the Agreement and IOPs, the Agreement's terms govern. See Exhibit A, Article XXI; see generally Appendix D, which is attached as Exhibit D.

40. In accordance with Articles VII(d) and XXI, the parties agreed to a vegetation management IOP (IOP Number 8 (Vegetation Management)), which has been in effect in its current form since March 31, 2008 and provides that NHEC and CCI "shall share the costs of all



Construction Clearing, Maintenance Re-Clearing and Storm Damage Cleanup for all poles and all rights-of-way” where both parties are attached or intend to attach, “regardless of pole ownership or maintenance area.” Costs are shared on a 60% NHEC/40% CCI basis for both Construction Clearing and Maintenance Re-Clearing and on a 50%/50% basis for Storm Damage Cleanup. See Exhibit D, IOP No. 8, Article IV.

41. The parties agreed that “proper vegetation management is necessary in order to adhere to the National Electrical Safety Code, provide adequate clearances for the safety of employees and the traveling public, to protect the physical plant of both organizations, and to ensure the continuity and reliability of service.” See Exhibit D, IOP No. 8, Introduction.

### **C. CCI’s Purported Termination of the Agreement and Current Controversy**

42. On May 24, 2018, CCI sent a letter to NHEC (the “Termination Notice”) in which it initially requested, “pursuant to Article XX” of the Agreement, that the parties renegotiate the terms of the Agreement and several of the related IOPs. Specifically, IOP Numbers 3 (Maintenance of Poles and Attachments), 5 (Determination of Annual Rentals), 8 (Vegetation Management), 9 and 9A (Pole Removals), 11 (Construction and Joint Use of New Poles and Anchors), and 20 (Existing Joint use Rental Poles and Rental Methodology). The Termination Notice concluded “[W]hile we have every confidence that [NHEC] and [CCI] can come to a new, mutually satisfactory [Joint Use Agreement] and the related IOPs, please consider this correspondence as a notice of termination of the [Agreement] pursuant to Article XX. As this article requires one year prior written notice, we anticipate business as usual with [NHEC] going forward pending the outcome of the discussions.” A copy of the Termination Notice is attached as Exhibit E.

43. NHEC responded to the Termination Notice on December 17, 2018, reminding CCI that, pursuant to that same provision, any termination of the Agreement applies only to the further granting of joint use by either party and the Agreement remains in “full force with respect to all poles jointly used by the parties, as of the Termination Date.” A copy of NHEC’s letter dated December 17, 2018 is attached as Exhibit F.

44. In its December 17, 2018 letter, NHEC invited CCI to make a proposal for an agreement concerning the further granting of joint use for new poles set on or after the Termination Date.

45. In its communications subsequent to its purported termination, CCI has taken the position that its purported termination was effective as to the entire agreement and repudiated its obligation to honor the Agreement as it applies to joint use poles in place as of the Termination Date.

46. On May 24, 2019, the parties entered into a Termination Date Suspension Agreement in order to suspend the effective date of the purported termination of the Agreement to “maintain the status quo,” and preserve all potential legal claims and defenses while they attempted to reach a negotiated resolution of the disputes. This first Termination Date Suspension Agreement suspended the purported termination of the Agreement until August 22, 2019, giving the parties 90 days within which to continue discussions. A copy of the Termination Date Suspension Agreement of May 24, 2019 is attached as Exhibit G.

47. In the Termination Date Suspension Agreement, the parties agreed that they are each free to maintain and pursue any matter arising out of or related to the rights or obligations (if any) of either party under the Agreement and/or any of the IOPs as the parties agree that the issues are ripe for adjudication.

48. The parties also agreed that neither party intends or desires that any termination of the Agreement, or parts thereof, require the eviction or removal of the other party's attached equipment.

49. In addition, the parties agreed that their respective equipment shall remain attached under either the Agreement, or in the event that a Court determines that the Agreement is terminated as to existing attachments, under mutual holdover tenancies at will following the expiration of the suspension period and neither party shall assert claims of trespass or unauthorized attachment.

50. The parties executed the First Extension to the Termination Date Suspension Agreement on August 9, 2019, extending the suspension of the termination date to October 22, 2019. A copy of the First Extension to the Termination Date Suspension Agreement is attached as Exhibit H.

51. The parties executed the Second Extension to the Termination Date Suspension Agreement effective October 22, 2019, again extending the suspension of the termination date, this time until February 22, 2020. A copy of the Second Extension to the Termination Date Suspension Agreement is attached as Exhibit I.

52. On December 10, 2019, NHEC advised CCI of seven past due invoices, totaling \$1,670,223.15, and inquired about the status of payment on these invoices. Of the seven invoices, two are for pole attachment fees, four are for vegetation management reimbursement from July through October 2019, and one is for a capital contribution for a system improvement.

53. On December 19, 2019, CCI responded to NHEC, in relevant part, that the two invoices for pole attachment fees would be paid in full, and disputed the capital contribution invoice and refused to pay it. As to the four vegetation management invoices, CCI stated that

these “will be paid at a 50% level, subject to review during the NHEC/[CCI] negotiations,” adding that “[a]s you know, [CCI] disputes the invoices as the [Agreement] has been terminated.”

54. NHEC sent a notice of default to CCI on January 7, 2020; a copy of which is attached as Exhibit J.

55. NHEC has made several additional demands for payment, culminating with its final demand on July 10, 2020; a copy of which is attached as Exhibit K.

56. The parties have attempted but have not yet been able to resolve their disputes concerning the scope of CCI’s purported termination of the Agreement, any post-termination obligations pursuant to the Agreement, and payment owed under the Agreement.

57. Meanwhile CCI has paid only fifty percent (50%) on vegetation management invoices issued for the period from July through October 2019 and has not paid any of the vegetation management invoices from November 2019 to date. It currently owes NHEC \$2,144,371.50 as of July 20, 2020 on those past invoices. NHEC continues to provide vegetation management and continues to incur the expenses associated with those services in accordance with the Agreement.

58. Presently, there are approximately 79,200 poles subject to the Agreement in the State of New Hampshire.

59. All conditions precedent to bringing this suit have been satisfied or waived.

**COUNT I**  
**DECLARATORY JUDGMENT**  
**(EFFECTIVE TERMINATION DATE OF AGREEMENT)**

60. NHEC repeats and incorporates herein the allegations set forth in the preceding paragraphs.

61. Following CCI's Termination Notice, NHEC stated in its December 17, 2018 reply letter that, to the extent that the Agreement can permissibly be terminated by one party, the effective date of CCI's purported termination is May 24, 2019.

62. In the Termination Date Suspension Agreement, executed on May 24, 2019, both parties acknowledged and agreed that "the effective date of any termination of the [Agreement] or parts thereof that may have been triggered by [CCI]'s letter dated May 24, 2018 and that might otherwise occur on May 24, 2019 (the "Termination Date"), is suspended for a period of ninety (90) days from May 24, 2019 until August 22, 2019 (the "Suspension")."

63. The parties mutually agreed to extend the Suspension twice, most recently on October 22, 2019 for a period of approximately 123 days.

64. Pursuant to the Second Extension of the Termination Date Suspension Agreement, the parties agreed to extend the Suspension to February 22, 2020.

65. Consistent with CCI's prior assurances of "business as usual" prior to the effective date of CCI's termination of the Agreement, the suspension of the termination date was designed to preserve the status quo for the parties while they allowed more time to attempt to enter into a new arrangement in light of the joint interests in the intertwined distribution network and the important public interests involved.

66. Contrary to its obligations under the parties' agreements, on December 19, 2019, CCI repudiated its payment obligations claiming that the Agreement was terminated as of May 24, 2019.

67. There is presently a real and justiciable controversy between the parties as to the effective date of CCI's termination in light of the Termination Date Suspension Agreement and its two extension agreements (collectively, the "Suspension Agreement").

68. A declaration of the parties' respective rights, if any, under the Suspension Agreement and the Agreement as to the effective date of termination will resolve the controversy between the parties.

69. NHEC seeks a declaratory judgment pursuant to RSA 491:22 that the Suspension Agreement had the effect of extending the effective date of CCI's termination, if any, and extending the prospective effective date of such termination to February 22, 2020.

70. NHEC also seeks a declaration that under any interpretation of the Agreement's termination provisions, CCI owes NHEC 40% of all of the tree trimming expenses through February 22, 2020 among other things.

**COUNT II**  
**DECLARATORY JUDGMENT**  
**(SCOPE OF TERMINATION UNDER THE AGREEMENT)**

71. NHEC repeats and incorporates herein the allegations set forth in the preceding paragraphs.

72. Article XX of the Agreement provides in relevant part, "[N]otwithstanding such termination, this Agreement shall remain in full force and effect with respect to all poles jointly used by the parties at the time of such termination."

73. A dispute has arisen about whether the termination of the Agreement applies to existing poles jointly used at the time of termination and future poles, or only to future poles.

74. It is NHEC's position that, by its plain language, the Agreement intentionally creates continuing rights and obligations so long as there are pre-termination, existing joint poles in use, which continue on after a party exercises its rights under Article XX to terminate the Agreement.

75. As a result, the Agreement remains in full force and effect with respect to all poles jointly used by the parties at the time of such termination.

76. In its December 19, 2019 correspondence, CCI has taken the position that the termination was effective as to the Agreement in its entirety, including existing poles.

77. There is presently a real and justiciable controversy between the parties as to their respective rights, if any, under the terms of the Agreement in light of the notice of termination.

78. A declaration of the parties' respective rights and obligations under the Agreement post-termination will resolve the controversy between the parties.

79. NHEC seeks a declaratory judgment pursuant to RSA 491:22 that pursuant to Article XX, CCI's termination was not effective as to the rights and obligations under the Agreement as to poles jointly used by the parties at the time of termination and only applies going forward to new poles or existing poles that were not jointly used as of the Termination Date.

80. As such, CCI owes NHEC 40% of the tree trimming expenses associated with the joint poles in existence as of February 22, 2020 until such poles are replaced or a new agreement is reached among other things.

**COUNT III**  
**DECLARATORY JUDGMENT**  
**(MUTUAL HOLDOVER TENANCIES)**

81. NHEC repeats and incorporates herein the allegations set forth in the preceding paragraphs.

82. In the Suspension Agreement, both parties acknowledge and agree that “[n]either party intends or desires that any termination of the [Agreement], or parts thereof, require the eviction or removal of the other party’s attached equipment.”

83. The parties further agreed that their equipment shall remain attached “under either the [Agreement], or in the event that a court determines that the [Agreement] is terminated as to existing attachments, under mutual holdover tenancies at will following the expiration of the suspension period.”

84. Alternatively, in the event that the Court rejects NHEC’s position on the effect of Article XX and instead determines that the termination is effective as to the existing 79,200 joint use poles, there is presently a real and justiciable controversy between the parties as to the either party’s rights and obligations with regard to the joint poles.

85. A declaration of the status and nature of the parties’ respective tenancies in the event that the termination of the Agreement is effective as to the existing joint use poles will resolve the controversy between the parties.

86. NHEC seeks a declaratory judgment pursuant to RSA 491:22 that, if the Agreement is held to be terminated as to joint use poles in existence as of the termination effective date, the parties are mutual holdover tenants at will, proceeding with the same terms in the Agreement, on the joint use poles on which they are attached.



87. As such, CCI owes NHEC 40% of the tree trimming expenses associated with the joint poles in existence as of February 22, 2020 until such poles are replaced or a new agreement is reached among other things.

**COUNT IV**  
**BREACH OF CONTRACT**  
**(JOINT USE AGREEMENT AS AMENDED)**

88. NHEC repeats and incorporates herein the allegations set forth in the preceding paragraphs.

89. The Agreement, inclusive of its Amendments, Appendices, and IOPs, is a valid contract that represents the parties' entire agreement.

90. The parties have spent over 40 years mutually performing under and acknowledging the validity of the Agreement.

91. Section 15 of the Second Amendment, executed in 2007 and effective in 2008, specifically sets out that "The Agreement, the First Amendment and this Second Amendment represent the entire agreement of the Parties with respect to the subject matter hereof."

92. Section 14 of the Second Amendment provides, in relevant part, that "the terms, conditions, covenants, agreements, warranties and representations contained in the Agreement shall remain unchanged and, except as so amended, shall continue in full force and effect."

93. Under the Agreement, specifically pursuant to IOP No. 8, CCI is required to reimburse NHEC for certain vegetation management costs at a rate of 40% of each total invoice.

94. CCI has materially breached the Agreement by the conduct described herein, including among other things, by refusing to pay the contractually prescribed rate for past due vegetation management invoices upon demand by NHEC, and by unilaterally determining that it

should only be responsible for 20% of all vegetation management expenses (rather than the 40% it is contractually obligated to pay).

95. NHEC has fully performed its obligations under the Agreement.

96. CCI has paid no 2020 invoices in any amount.

97. CCI's current outstanding balance for vegetation management invoices is \$2,144,371.50 as of July 20, 2020.

98. NHEC continues to provide vegetation management for the areas served by all joint use poles, including those owned entirely or partially by CCI.

99. CCI's material breach has caused significant damage to NHEC, which is a rural utility cooperative whose primary source of revenue is from its members.

**COUNT V**  
**BREACH OF CONTRACT**  
**(SUSPENSION AGREEMENT)**

100. NHEC repeats and incorporates herein the allegations set forth in the preceding paragraphs.

101. CCI entered into the Termination Date Suspension Agreement and various extensions thereto, suspending the effective date of the termination until February 22, 2020.

102. The purpose of the Suspension Agreement is to "maintain the status quo" of the Agreement pending further discussion between the parties related to either amending the Agreement or entering into a new joint use agreement entirely.

103. By unilaterally repudiating the Suspension Agreement and declaring that the underlying Agreement has been terminated and that it should only pay its vegetation

management invoices at 50% of the contractually prescribed rate, CCI has breached the Suspension Agreement.

104. For its part, NHEC has fully performed under the Suspension Agreement.

105. CCI's breach of the Suspension Agreement has caused significant damage to NHEC.

**COUNT VI**  
**BREACH OF IMPLIED COVENANT**  
**OF GOOD FAITH AND FAIR DEALING**

106. NHEC repeats and incorporates herein the allegations set forth in the preceding paragraphs.

107. The parties' various agreements each contain an implied covenant of good faith and fair dealing.

108. CCI's conduct described above constitutes a breach of the implied covenant of good faith and fair dealing.

109. CCI's untenable claim that it terminated the Agreement with respect to all poles despite the clear language in Article XX is a breach of the implied covenant of good faith and fair dealing.

110. CCI's untenable repudiation of its payment obligations during the termination suspension period despite the parties' agreement to maintain the status quo, breached the implied covenant of good faith and fair dealing.

111. CCI's conduct has caused NHEC significant and ongoing damage.

**COUNT VII**  
**UNJUST ENRICHMENT/QUANTUM MERUIT**

112. NHEC repeats and incorporates herein the allegations set forth in the preceding paragraphs.

113. NHEC has paid contractors for vegetation management services on or near joint use poles, including those owned solely by CCI and those owned 50% by CCI from July 2019 to date.

114. CCI has not reimbursed NHEC for its full portion of those expenses.

115. To date, CCI has paid only fifty percent (50%) on vegetation management invoices issued for the period from July through October 2019 and has not paid any of the vegetation management invoices from November 2019 to date. It currently owes NHEC \$2,144,371.50 as of July 20, 2020 on those past invoices.

116. CCI's obligations under Article VII (d) of the Agreement for performance of vegetation management duties are fulfilled through IOP 8, which requires CCI's payment to NHEC for defined percentages of NHEC's costs for vegetation management duties that NHEC carries out via qualified regional contractors.

117. Both parties have acknowledged that the vegetation management practices prescribed by IOP No. 8 are vital to continued compliance with the National Electrical Safety Code, as well as providing "adequate clearances for the safety of employees and the traveling public, [protecting] the physical plant of both organizations, and [ensuring] the continuity and reliability of service."

118. CCI received the benefit of prompt and proper vegetation management for 2019 and 2020 pursuant to the Agreement and has refused NHEC's lawful demands for complete payment.

119. CCI has been unjustly enriched by obtaining a benefit for which it owes 40% of the total bill for services and proffering payment at a unilaterally reduced rate.

120. Under the circumstances, it would be inequitable or unconscionable for CCI to continue to reap the benefit of services rendered and paid for by NHEC in accordance with the Agreement without fully compensating NHEC as required by the Agreement.

### **RELIEF SOUGHT**

WHEREFORE, Plaintiff, NHEC, respectfully requests that this Honorable Court:

- A. Issue the declaratory judgments as sought herein;
- B. Issue an injunction requiring specific performance of the Agreement;
- C. Issue an injunction requiring specific performance of the Suspension Agreement;
- D. Award the Plaintiff its damages;
- E. Award Plaintiff its costs and attorneys' fees; and
- F. Award such other relief that the Court deems just and equitable.

### **DEMAND FOR JURY TRIAL**

The Plaintiff, NHEC hereby demands a trial by jury on all counts so triable.

Respectfully submitted,

PLAINTIFF,

NEW HAMPSHIRE ELECTRIC  
COOPERATIVE, INC.

By its attorneys,

PASTORI | KRANS, PLLC

Dated: July 31, 2020

By: /s/ Terri L. Pastori

Terri L. Pastori (#12136)

Ashley D. Taylor (#268994)

PASTORI | KRANS, PLLC

70 Commercial Street, Suite 203

Concord, NH 03301

(603) 369-4769

[tpastori@pastorikrans.com](mailto:tpastori@pastorikrans.com)

[ataylor@pastorikrans.com](mailto:ataylor@pastorikrans.com)