

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 24-087

**PUBLIC SERVICE COMPANY OF NEW HAMPSHIRE
d/b/a EVERSOURCE ENERGY**

**Petition for Exemption from Town of Bethlehem Zoning Ordinance, Art. II,
Part D, under RSA 674:30, III**

Order Granting Eversource's Petition

ORDER NO. 28,179

September 9, 2025

Pursuant to RSA 674:30, III, Public Service Company of New Hampshire d/b/a Eversource Energy (Eversource) filed a petition for a waiver from a height restriction within the Zoning Ordinance of the Town of Bethlehem (Zoning Ordinance) as part of an improvement project for its U-199 transmission line (U-199 Line) that will require an increase in the height of five transmission poles in Bethlehem.¹ The Commission held a hearing on the petition on August 12, 2025. At the hearing, the New Hampshire Department of Energy (DOE) and the Town of Bethlehem (Bethlehem) appeared and supported Eversource's request.² In light of the evidence in the record and applicable legal standard, the Commission **GRANTS** Eversource's petition.

I. HEARING EVIDENCE

At the hearing, Eversource presented Bradley Newell, the manager of transmission, project management, and construction for Eversource in New

¹ Eversource's original petition also sought a similar waiver for the larger X-178 transmission line. However, Eversource amended its petition on March 31, 2025 to remove the request as it applied to the X-178 line.

² The Office of the Consumer Advocate (OCA) also filed an appearance in this docket. Due to scheduling conflicts, the OCA did not appear at the hearing. However, the OCA did file a letter indicating it supported Eversource's petition.

Hampshire as a witness. Mr. Newell adopted the pre-filed testimony of Samuel Harris, a senior project manager for transmission line projects at an Eversource affiliate, and Mr. Newell's own responses to information requests from the DOE. In addition, Eversource presented as exhibits Mr. Harris's pre-filed testimony, a slideshow overview of the U-199 line, and the administrative and permitting record before the Bethlehem Planning Board and other regulatory agencies. For its part, the DOE presented the testimony of its consultant, Joseph DeVirgilio and, as an exhibit, the verified responses to information requests from Mr. Newell.

A. Description of the U-199 Line and the Planned Proposal

According to Mr. Harris's pre-filed testimony, the five poles are part of the U-199 Line. The U-199 Line is a nine-mile, 115 kV transmission line that was constructed in 1971. Approximately 0.39 miles of the line run through Bethlehem. This line portion includes five wooden H-Frame poles that occupy a 150-foot-wide right-of-way. All five of these poles currently exceed forty feet in height, and the average height of the poles in the U-199 Line is 45.9 feet.

According to Mr. Harris, Eversource conducts routine annual inspections of its transmission infrastructure. Based on these inspections, and an engineering analysis, Eversource determined that many of the wooden structures that make up the U-199 Line were in need of replacement due to age, woodpecker damage, insect damage, and pole rot. According to the responses from Mr. Newell, while none of the five poles in Bethlehem were found to need immediate replacement, Eversource has determined that each of the five poles had sufficient pole rot to require replacement in 2026.

Mr. Harris's pre-filed testimony also stated that, due to the conditions of the U-199 Line, Eversource planned to replace all the existing wooden H-Frame structures in the U-199 Line with steel H-Frame structures. These steel frame structures will be on

average twenty-feet higher than the existing wooden poles, and the average height of the proposed structures in the U-199 Line will be 65.9 feet. Eversource intends to make these replacements as part of a larger project to enhance the grid that will also include replacing the existing conductors and replacing the shield wire with Optical Ground Wire (OGW). The U199 Line will remain at 115 kV.

Mr. Harris's pre-filed testimony, and Mr. Newell's adopted testimony at the hearing, represented that the project will benefit both the company and the public at large. Specifically, Mr. Newell averred that, as part of the update to the U-199 Line, Eversource will utilize two fiber optic cable paths that are consistent with industry standards. The dual OGW will provide redundancy to the system because it will allow for the maintenance of communication on the system even if one of the cable paths fails. In addition, Eversource intends to increase the size of the conductors on the U-199 Line from 795 ACSR to 1272 ACSS.³ The larger conductors will increase the U-199 Line's capacity rating.

Both Mr. Newell and Mr. Harris noted that the existing wooden transmission poles do not meet current National Electric Safety Code (NESC) standards. Moreover, Eversource would be unable to make the planned improvements to the U-199 Line, particularly the increase in the size of the conductors, if it did not replace the existing poles with taller, steel poles. According to Mr. Newell, the current poles would not be able to bear the weight of the larger conductors or provide the vertical clearance required for larger conductor sizes consistent with NESC standards. Mr. Harris's pre-filed testimony represented that the proposed steel poles will allow Eversource to make the improvements to the U-199 Line and satisfy the NESC standards. It also

³ ACSR and ACSS are types of overhead power line conductors. ACSR stands for "Aluminum Conductor Steel Reinforced." ACSS stands for "Aluminum Conductor Steel Supported."

represented that greater heights are necessary to counteract uplift conditions and accommodate needs for vegetation maintenance and facility maintenance and repair access. Mr. Newell testified that Eversource attempted to maintain the lowest possible height while still complying with industry standards. According to Mr. Harris's pre-filed testimony, the U-199 Line ran largely through rural areas in New Hampshire, including the portion that runs through Bethlehem.

Mr. Harris's pre-filed testimony stated that, although not all the poles at issue required immediate replacement, Eversource intended to make improvements to the U-199 Line all at once. The primary motivation for this decision being that a systemic upgrade would allow Eversource to more efficiently deploy its resources and labor, particularly given that the U-199 runs through a relatively remote and topographically challenging area. Similarly, Mr. Harris's pre-filed testimony noted that replacing all the lines at once would reduce the number of times Eversource will be onsite, which will reduce the environmental impact and disruptions to property owners and other individuals who live near the U-199 Line. Moreover, it would decrease scheduled outages for maintenance work in the future. The DOE's consultant, Mr. Virgilio testified that, to realize the full benefits of the improvements, the conductors across the line need to increase in size, and that it would therefore be rational to make all needed upgrades at the same time.

Mr. Newell noted that Eversource explored other options to its proposal, but there were no economically feasible alternatives. Particularly, Mr. Newell represented that maintaining the status quo would prevent Eversource from realizing the benefits of the improvements to the line, would mean that the U-199 Line remained out of compliance with NESC standards, and would still require the replacement of numerous wooden transmission poles due to their damaged state. In addition, Mr.

Newell maintained that burying the lines would increase the cost of the project by many orders of magnitude and make the project economically infeasible.

Finally, Mr. represented stated that while it was possible to maintain the current height of the poles and increase the size of the conductors, the company would need to install four new midspan structures to meet NESC ground clearances to the conductors and remove uplift on the static wire and conductors. Mr. Newell noted that this proposal was not as preferable as the taller poles because it would result in reduced lightning protection due to the proximity of the static wire to the conductor, would add costs to the project, and would increase the environmental impact.

Mr. Harris's pre-filed testimony, Mr. Newell's adopted testimony, and the DOE's consultant, Mr. DeVirgilio, all represented that Eversource's proposed upgrades to the U-199 Line were appropriate and reasonable, and that the benefits outweighed any costs.

B. Approval Process and Zoning Ordinance

The Commission does not regulate or approve interstate transmission projects; they are, instead, regulated under federal law. *See* Order No. 28,108 (March 3, 2025). That said, transmission projects are subject to state and local environmental and land use laws, such as the Bethlehem Zoning Ordinance. For this reason, to construct the proposed transmission poles, which will be greater than 60 feet in height, Eversource needed an exemption from a height restriction in the Zoning Ordinance. As is relevant to this order, Article II, Part D of the Bethlehem Zoning Ordinance provides that:

No building or structure shall be greater than forty (40) feet in height from the average finished grade, unless a Special Exception is granted by the Zoning Board of Adjustment. However, under no circumstances shall any structure or building exceed sixty (60) feet in height. Appurtenances, such as antennae, will not exceed an additional ten (10) feet over the highest point of the building or structure. Personal wireless service facilities and amateur radio antennae are exempt from this provision.

See Order No. 28,101, at 2. Mr. Harris testified that the height restriction has been in place since 1985, which was after the wooden transmission poles in the U-199 were constructed.

Pursuant to RSA 674:30, I, which allows utilities to petition a local planning board for an exemption from a provision in a zoning ordinance if their projects meet certain criteria, Eversource applied to the Bethlehem Planning Board for an exemption from the height restriction. After a public hearing on May 22, 2024, during which Eversource presented its proposal, the Bethlehem Planning Board voted against granting a waiver under the statute.

II. ISSUES AND ANALYSIS

The sole question before the Commission is whether it should grant Eversource an exemption from the Zoning Ordinance pursuant to RSA 674:30, III. All parties to this docket support the Commission granting this waiver under the statute. In addition, Bethlehem requests that the Commission condition this waiver on the requirement that Eversource ensure that its project is consistent with the details it has provided the Commission in this filing, which no party has objected to. As explained below, the Commission finds that a waiver is appropriate.

Under RSA 674:30, III, “A public utility . . . may petition the public utilities commission to be exempted from the operation of any local ordinance, code, or regulation enacted under this title.”⁴ The statute states that “[t]he public utilities commission, following a public hearing, may grant such an exemption if it decides that

⁴ A utility may only seek a waiver from a municipal zoning ordinance under RSA 674:30, III, if: (1) it meets certain qualifying criteria under RSA 674:30, I, sought a waiver from the planning board pursuant to that statute, and was denied a waiver; or (2) it did not meet the qualifying criteria under RSA 674:30, I. Here, Eversource sought a waiver from the Bethlehem Planning Board, which was denied. Therefore, the Commission has jurisdiction pursuant to RSA 674:30, III, because either (1) the proposal meets the qualifying criteria and the Bethlehem Planning Board denied it; or (2) it did not meet the criteria in the first place. In any other case, the Commission has jurisdiction under the statute.

the present or proposed situation of the structure in question is reasonably necessary for the convenience or welfare of the public” RSA 674:30, III. As the moving party, the utility bears the burden of proving it is entitled to a waiver by a preponderance of the evidence. N.H. Code of Administrative Rules, Puc 204.16.

The New Hampshire Supreme Court has never directly addressed whether the Commission, in reviewing petitions under this statute, should consider specific factors in determining whether this standard has been satisfied. However, in *Appeal of Milford Water Works*, 126 N.H. 127 (1985), which concerned the Commission’s authority to place conditions on any waivers it grants under a predecessor statute, the New Hampshire Supreme Court approvingly cited *In re Monmouth Consolidated Water Co.*, 241 A.2d 15 (N.J. 1968), in which the New Jersey Supreme Court laid out several factors for its state utility regulator to consider when reviewing petitions under an analogous New Jersey statute. Specifically, the New Jersey Supreme Court stated that the state regulatory authority should review:

- (1) the suitability of the locus chosen for the utility structure;
- (2) the physical character of the uses in the neighborhood;
- (3) the proximity of the site to residential development;
- (4) the effect on abutting owners;
- (5) its relative advantages and disadvantages from the standpoint of public convenience and welfare;
- (6) whether other and equally serviceable sites are reasonably available by purchase or condemnation which would have less impact on the local zoning scheme; and last, but by no means least,
- (7) whether any resulting injury to abutting or neighboring owners can be minimized [through reasonable alterations to the project].

Appeal of Milford Water Works, 126 N.H. at 131–32 (numbering added for clarity) (quoting *In re Monmouth Consolidated Water Co.*, 241 A.2d at 20). Notably, in laying

out what factors to consider, the New Jersey Supreme Court stated that the regulatory agency “should weigh all of these factors and while no controlling weight should be given to purely local considerations, they should not be ignored.” *Id.* (quoting *Monmouth*, 241 A.2d at 20).

In light of this statutory standard, the Commission finds that Eversource has shown that it is entitled to waiver under RSA 674:30, III. As an initial matter, the evidence in the record shows that the improvement project at issue is in the public interest. Specifically, the Commission finds that the U199 Line supports the transmission of electricity through New Hampshire, and that the proposed upgrades to the line will enhance the system by creating redundancy and increasing the capacity rating. Moreover, the upgrades will bring the U-199 Line into compliance with NESC standards for transmission lines. Further, the Commission credits the testimony that many of the poles within the U199 Line, including all five of the poles in Bethlehem, either need to be replaced immediately, or will need to be replaced in the near future, due to their damaged conditions, and it would be more efficient, and less disruptive to service, the environment, and property owners, to replace all of the poles at the same time.

By contrast, the evidence in the record suggests that this project will have minimal, if any, negative impact on the public in Bethlehem. While the average increase in the height of the poles in the U-199 line is quite substantial, the evidence supports that the five poles are located in a rural location and there is no evidence suggesting that the taller poles will negatively impact any individuals. For these reasons, the Commission finds that the location of the U-199 Line in Bethlehem mitigates any negative impacts with increasing the heights of the poles.

With respect to whether there are any other suitable locations that would not require a waiver from the Zoning Ordinance, the Commission finds that there are none given the nature of the project at hand. Specifically, this is an upgrade to an existing transmission line that has existed since 1971, and therefore—absent significant expense and effort—the location of the project is fixed. Accordingly, the Commission finds that this factor weights in favor of granting a waiver.

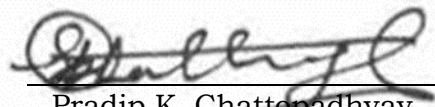
Finally, the record shows that there are no reasonable alternatives for Eversource to pursue that would lessen the impact of the project or bring it more into compliance with the Zoning Ordinance. The evidence in the record shows that Eversource considered several different potential options, including reducing the height of the poles, and that all of the alternatives would either cost more or create more negative externalities than Eversource's actual proposal.

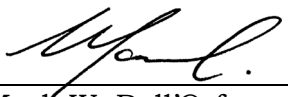
In light of the evidence in the record, the Commission finds that the five proposed transmission poles that exceed the height restriction are "reasonably necessary for the convenience or welfare of the public" and therefore grants Eversource a waiver from Article II, Part D of the Zoning Ordinance to allow Eversource to install these transmission poles as proposed. Consistent with Bethlehem's request, this waiver is conditioned on Eversource's proposal remaining consistent with the details in its filings.

Based upon the foregoing, it is hereby

ORDERED, that Eversource's petition for an exemption from Article II, Part D of the Bethlehem Zoning Ordinance is **GRANTED**, subject to the condition that Eversource's proposal remains consistent with the details in its filings.

By order of the Public Utilities Commission of New Hampshire this ninth day of
September, 2025.



Pradip K. Chattopadhyay
Commissioner

Mark W. Dell'Orfano
Commissioner

Service List - Docket Related

Docket#: 24-087

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