



SELECTMEN'S MEETING MINUTES

August 14, 2018

ATTENDANCE: Selectman Rich Zacher, Selectman Rick Surette (absent), Selectman Brian Robischeau, Marilou MacLean, Laurie Champy, Ed Comeau, Ed Nason, Rose Zacher, Bob & Karen Servacek, Mark Stengel

This was a special Public Hearing to review amending Pole License language.

Selectman Robischeau called the meeting to order at 6:00pm. The Hearing was held to determine if it would be in the best interests of the public good to amend all of the existing pole licenses issued by the Town so that they are consistent with the property taxation statutes (RSA 72:23). Selectman Robischeau opened up the floor for comments. There were multiple questions fielded from the public. As requested by Eversource, Selectman Robischeau read into the record their letter dated July 24, 2018. See attached. Selectman Zacher read the letter from NH Electric Coop in which they requested the use of their form.

The Hearing was adjourned at 6:10pm.

After discussion of the above the following motion was made:

MOTION: Selectman Robischeau made a motion to declare that all outstanding pole licenses issued by or under the authority of the Selectmen of Brookfield or its predecessors in office acting under the provisions of RSA 231:161 (b), or its predecessor statutes, are hereby changed to incorporate in each such pole license in effect as of August 15, 2018 and effective as of such date, the following changes by inserting therein the following language: In accordance with the requirement of RSA 72:23, I(b), this license is granted to the licensee(s) subject to the condition that the licensee(s) and any other entity using or occupying property of the municipality pursuant to this license shall be responsible for the payment of, and shall pay, all properly assessed real and personal property taxes no later than the due date. Failure of the licensee(s) to pay duly assessed personal and real property taxes when due shall be cause to terminate this license. In accordance with the requirements of RSA 72:23, I (b), the licensee(s) hereunder and any other entity using or occupying the property of the municipality pursuant to this license shall be responsible for the payment of, and shall pay, both current and potential real and personal property taxes when due. Furthermore, in accordance with the requirements of RSA 72:23, I (b), the licensee(s) and any other entity using and/or occupying property of the municipality pursuant to this license shall be obligated to pay real and personal property taxes on structures or improvements added by the licensee(s) or any other entity using or occupying the property of the licensor pursuant to this license. Selectman Zacher seconded, all in favor, motion carries.

Respectfully submitted,

A handwritten signature in blue ink that reads "Laurie M. Champy". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Laurie M. Champy
Administrative Assistant



780 N. Commercial Street
P.O. Box 330
Manchester, NH 03105—330

Christopher J. Allwarden
Senior Counsel, Legal Department
603-634-2459

Christopher.Allwarden@eversource.com

July 24, 2018

Board of Selectmen
Town of Brookfield
267 Wentworth Road
Brookfield, NH 03872

Re: Public Hearing Notice – Hearing to Amend Pole and Conduit Licenses

Hearing Date: August 14, 2018

Dear Board of Selectmen:

The undersigned is legal counsel to Public Service Company of New Hampshire, d/b/a Eversource Energy (“Eversource”). Eversource has received your notice of a public hearing at which the Town of Brookfield will take up the matter of a petition by the Board of Selectmen for the universal amendment of existing pole and conduit licenses in the Town, to require the payment of properly assessed property taxes, and to require licensees to provide information pertaining to entities attached to their poles or conduits.

This is to advise that, to the extent the proposed amendments seek to make language changes to the pole licenses of Eversource consistent with RSA 72:23, and the rulings of the New Hampshire Supreme Court in N.E. Tel. & Tel. Co. v. City of Rochester, 144 N.H. 118 (1999) and Verizon New England v. City of Rochester, 151 N.H. 263 (2004), Eversource does not intend to raise a legal objection to the amendments. However, this should not be construed as a waiver of Eversource’s rights to protest, seek an abatement of, or otherwise legally challenge as excessive or disproportionate the assessment by the Town of Brookfield of any incremental property tax upon Eversource’s use or occupancy of the public right of ways in Brookfield, and Eversource fully reserves all such rights.

Eversource does, however, object to the proposed amendments to include the requirement that the licensee submit to the Town of Brookfield, in writing, the names and contact information for any additional providers authorized now or in the future to place equipment on any Eversource poles or conduits.

These conditions are not revisions required under RSA 72:23, or the New Hampshire Supreme Court cases interpreting that statute, in order to legally assess and tax either the facilities or equipment of the named licensee, or the use and occupancy of the public right of way by the named licensee. Furthermore, such other attachers, to the extent they may exist, are required to license or permit their facilities located within the public rights of way with the Town of Brookfield pursuant to RSA 231:159, et seq., just as Eversource is. Consequently, the identity of attachers utilizing the public rights of way, whether by attachment to existing utility poles, conduit or otherwise, should be obtainable from Brookfield's own public highway licensing records. Eversource is not aware of any statute or other provision of law in New Hampshire which authorizes the Town of Brookfield to compel Eversource to provide this information as a condition of a pole or conduit license.

We also bring to your attention that, in accordance with the requirements of RSA 374:34-a, public utilities such as Eversource must provide non-discriminatory access to their distribution poles and conduit to certain third parties seeking to use them for attachment of their own lines, cables and appurtenances. Under existing regulations of the New Hampshire Public Utilities Commission (Puc 1303.08), such third parties are required to clearly label their attachments with owner identification. This affords another means by which the Town may obtain its own information pertaining to attachers utilizing the public rights of way.

Under the above circumstances, Eversource maintains it is neither legally necessary, nor fair or reasonable, to require a licensee to provide or report to the Town information about others using the licensee's poles or conduits licensed in the public right of way. Such a license amendment is not required in the public good.

As Eversource is unable to send a representative to your hearing, Eversource respectfully requests that this letter be included in and made a part of the record of the minutes of the hearing of this matter on August 14, 2018. Thank you.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Chris Allwarden', with a long horizontal flourish extending to the right.

Christopher J. Allwarden
Senior Counsel, Legal Department

cc: Jeana Delisle, Eversource