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September 23, 2016

Ms. Debra Howland,

Executive Director

NH Public Utilities Commission

21 South Fruit Street, Suite 10

Concord, N.H. 03301-2429

RE: Complaint Against Liberty Utilities pursuant to PUC 104

Dear Ms. Howland,

I am writing to make a formal complaint against Liberty Utilities with regard to the operation of their underground electric distribution system in downtown Lebanon, NH pursuant to PUC 204 and RSA 365:1.

My primary complaint is that Liberty Utilities is failing to “furnish such service and facilities as shall be reasonably safe and adequate and in all other respects just and reasonable” contrary to RSA 374:1 and its failure to inspect and maintain parts of its distribution system is contrary to PUC 306.01(1) that requires Liberty to “operate and maintain its plant, structures and equipment . . . [i]n accordance with good utility practice.” As a result of these failures to act, and violations of the National Electric Safety Code detailed below, Liberty Utilities has also acted contrary to RSA 374:2 that requires that “[a]ll charges made or demanded” by it “for any service rendered by it or to be rendered in connection therewith, shall be just and reasonable and not more than is allowed by law or by order of the” commission.

On Saturday, July 7, 2012 one leg of the high voltage (15k V) three phase line running from Liberty's distribution system to a transformer located on land owned by the City of Lebanon serving four separate buildings housing some forty plus customers failed. This involved the underground service to a transformer located on public property behind the Citizen's Bank building and Whipple Block on the south side of the Lebanon Mall, aka Hanover Street. Liberty failed to repair or make arrangements to repair the line instead it required the various customers to sort out who was responsible and who would repair this line. Ultimately, the owners of the effected buildings elected to repair the lines as they would be out of business without electrical service.

The backup generator, which provided power for elevators, offices, doctors' offices and restaurants, etc. was rented specifically for this issue. Liberty did not compensate us for the power delivered through their system, nor did it abate our electric bills for the power produced power but delivered through their meters. In fact, Liberty charged us for power produced by the generator and delivered through their meters.

Liberty has an obligation to provide safe and reliable electric service to all customers within its service territory. It failed to do so on July 7, 2012 when it refused to repair a fault in their distribution system, and repeatedly failed to respond to our complaints for reimbursement, to the point of refusing to even provide documentation as to where and which lines failed or meet with us to review the location of the failure and the demark point separating their lines from their customers lines.

Liberty cited Policy 3, which only applies to 1) a single customer, 2) low voltage power lines, and 3) lines located on or passing through a customers property. Liberty did not disclose Policy 4, which addresses these issues directly and requires a customer to turn over the conduit to the company upon completion of the project, until Litigation was commenced. The point of failure effected 1) multiple buildings and customers, 2) was a high voltage distribution line and 3) was not on property owned by the customers effected.

Liberty's Specification for Electrical Installations, pages 19 and 20 clearly show that the Terminal Box or Transformer Secondary are well within the Utility side of the "Service Point".

NHPUC No. 19 - Electricity, Policy 3 states:

I, 1 (General) "When a commercial or industrial Customer (singular) . . . requests service to a single lot . . . "

II, ic, iii "The Customer, shall be responsible for . . . all conduit on private property"

NHPUC No. 19 - Electricity, Policy 4 states:

When a developer proposes to construct a commercial or industrial development . . .

II, 1C, "When underground service is requested, the Company shall be responsible for (v) providing, installing, owning and maintaining all transformers, primary cable, related primary equipment, . . . "

The Customer . . . shall be responsible for (v) turning over the ownership of the conduit system, to the Company upon inspection and acceptance of the conduit system by the Company.

Other Liberty Documents show that the customer is not responsible for underground lines servicing their premises that are not within the building or past two feet inside the property line. Liberty's arguments that multiple parties should be responsible for a high voltage distribution line located off their premises is contrary to their monopoly on electric distribution within the City of Lebanon and would invite chaos in the management of power lines if implemented.

On April 15, 1965, Granite State Electric provided estimated costs of “our placing our lines underground rather than overhead.” On March 9, 1969, Lebanon Housing Authority paid these costs. Note GSE was placing its line, not the customer lines, underground.

The National Electric Safety Code C2-2012 is incorporated by reference in PUC 306.01(b)(1) as establishing standards by which to define “good utility practice.” That code requires that in-service “[e]lectrical equipment shall be inspected and maintained at such intervals as experience has shown to be necessary. This complaint alleges Liberty Utility is operating in violation of these various requirements or laws and a general problem with Liberty not accepting responsibility for maintaining portions of the electrical distribution system or plant that it owns, operates or controls and that are under the general supervision of the public utilities commission pursuant to RSA 374:3.

**BACKGROUND:** The general problem arises from a series of historic events that created a unique situation that was apparently without precedent. In June of 1964 Lebanon experienced a fire that burned down a significant part of the City’s downtown central business district. The City Council created the Lebanon Housing Authority (LHA) in the immediate aftermath of the fire to take advantage of federal urban renewal funds to rebuild the downtown public infrastructure and redevelop the area. The LHA recommended a redevelopment plan that the Lebanon City Council adopted in December of 1964. That plan called for all of the overhead electric and telephone utilities to be placed underground in the redevelopment area. The 1964 estimated cost (by the urban planning consultant that apparently didn’t talk with GSE about it until after the plan was approved) was \$131,800 with the City’s share estimated to be \$25,000. No source for the balance of funds was indicated in the plan. Granite State Electric apparently wasn’t too keen on the idea and resisted the City and LHA’s notion that GSE could be required to underground its system, much less assume the cost therefor. GSE did propose terms under which it would underground its system which included requiring the City to pay for the difference between the proposed underground distribution system and a rebuilt overhead system. Apparently this was the first time that a municipality in NH had tried to require an electric utility to underground part of its distribution system. In April 1967 the LHA obtained a legal opinion that the City could require utility lines to be undergrounded pursuant to its licensing authority for use of public ways at the expense of the utility. The opinion noted that there was a bill pending in the legislature that would require the town to pay half the costs. Apparently that never became law. At a meeting on November 8, 1967 the City Council voted unanimously to institute legal proceedings in Grafton County Superior Court “to require the underground installation of [GSE’s] electrical transmission facilities in the Urban Renewal Area and the apportionment of costs of said relocation.” It doesn’t appear that such a lawsuit was ever actually filed though.

The whole redevelopment process continued to drag out and eventually the LHA and City learned that no federal (or state) funds would be available to help pay for the cost of undergrounding electric utilities, so the LHA and GSE began to work together to narrow the scope of undergrounding and reduce the costs. With the threat of litigation looming and construction of much of the improvement finally ready to proceed in the winter of 1969, the parties finally reached a compromise and all approved a “modified overhead/underground electrical system in the urban renewal area” with an appropriation of \$28,000 from the City to

cover the estimated difference between undergrounding and a fully restored overhead system, with credit for salvage of any existing overhead service that was removed. GSE proceeded to underground its electric distribution system and underground secondary service conduits and conductors were installed the LHA or existing customers/property owners to connect to GSE's secondary laterals. As work was completed GSE invoiced the LHA for reimbursement of costs. Apparently LHA disputed some of the invoices and some balance was left uncollected when GSE gave up on trying to bill and collect from LHA in 1971.

As time has passed some of the equipment installed as part of GSE's undergrounded distribution system has deteriorated resulting in the violation complained of herein. Liberty (GSE) failed to maintain and replace an underground conduit housing its primary service conductors from its overhead distribution system, under a public highway, to a transformer located on public property and serving multiple separate customers in different private buildings. This resulted in an extended loss of service, damages to customers, and the company refusing to take responsibility or pay for investigating, repairing or replacing the primary service conduit that they installed in 1969 or 1970.

Litigation is pending in the Lebanon District Division, docket No. 452-2015-CV-00030. Many of the attached documents are provided from that proceeding, which has been stayed pending your response to this complaint.

Note should also be made that the bases of several transformers located on the City of Lebanon property, including the transformer involved in this situation, appear to have rusted but not repaired. Liberty also failed to include this segment of their distribution system in their list of Lebanon assets, thereby avoiding municipal real estate tax on this segment.

Yours truly,



Richard Balagur, Manager

20 West Park, LLC

Owner, Citizens Bank Building,

20 West Park Street, Lebanon, NH 03766



Richard Balagur, Manager

Godfrey Road Holdings, LLC – successor to MTS Development Corp.

Owner, Whipple – Pulsifer block aka Salt hill

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