

THE STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities

Docket No. DE 17-078

Complaint of One Court Street Associates

**Response to Complaint of One Court Street Associates**

Liberty Utilities (Granite State Electric) Corp., d/b/a Liberty Utilities (“Liberty”), through counsel, respectfully submits the following response to the complaint of One Court Street Associates (“OSCA”).

**Introduction.**

The following electrical arrangement exists at several locations in downtown Lebanon, all arising from the Lebanon Housing Authority’s (“LHA”) redevelopment of the area after a fire in 1964 destroyed several city blocks, and all arising from a the LHA’s desire to place more of the electrical system underground. In these locations, high voltage electric lines from the overhead system are buried underground from certain utility poles across some distance to pad-mounted transformers, then a number of low voltage electric lines run from the transformers into the respective buildings. Two of these locations are the subject of OSCA’s complaint (one of which is also the subject of Mr. Balagur’s complaint in Docket No. DE 16-835).

Liberty acknowledges that it owns the utility poles and the transformers. The dispositive question is whether Liberty owns the high voltage underground lines from the poles to the transformers, the foundations on which the transformers sit, and the low voltage lines that run from the transformers into the buildings. OSCA alleges in its complaint that Liberty owns these lines and

foundations and is thus responsible for their repair and maintenance, and alleges Liberty has failed to adequately discharge these duties, Complaint at 5.

Liberty disagrees. The plain language of the tariff in effect when this equipment was installed clearly states that the lines and foundations are customer-owned. Thus, Liberty does not and never has carried the obligation to maintain and repair that equipment. The Commission should deny OSCA's complaint.

### The High Voltage Lines

There is no dispute that the wires and transformer foundations at issue were installed in or shortly after 1969 as part of LHA's redevelopment of the area. *See* OSCA complaint at 3-4. The tariff then in effect is Tariff No. 6, attached as Exhibit 1, at Bates 9.<sup>1</sup> There are three sections in Tariff No. 6 that are relevant here.

First, Section 18 plainly states that underground lines on customer property are customer-owned:

A Customer's premises may be connected to the Company's aerial distribution wires through an underground connection upon payment by the Customer of the total cost thereof including the necessary riser, and that part of such connection located on the Customer's premises shall be and remain the property of the Customer. All underground service connected to the Company's underground cables beyond two feet inside the property line shall be paid for by the Customer and shall be and remain the property of the Customer.

Bates 24. This language answers the primary question in this matter in Liberty's favor. The customer, not Liberty, owns the underground lines from the poles to the transformers that were installed under this tariff.

OSCA's complaint betrays a misunderstanding of who was the "customer" in 1969 for purposes of applying Tariff No. 6. OSCA writes:

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<sup>1</sup> The Bates numbering for the attachment to this document is distinguished from other existing numbering as "Liberty 0xx."

The transformer pedestal in question, as well as other equipment that is the subject of this complaint, is not on *this* customer's premises and arguably isn't on any other customer's premises in the sense of premises as defined in LU's tariff as "land and building of the Customer located on the Customer's side of the service point" or part of "a unified, undivided parcel of property under the Customer or Applicant's control through ownership or lease which is not separated by a public road, right of way, or property belonging to any other entity.

Complaint at 7 (emphasis added, footnotes omitted). OSCA's misunderstanding likely arises from the fact that the various parcels are now owned by different entities and their relative responsibilities for the customer owned electrical system is unclear. When Liberty installed the equipment in about 1969, however, LHA owned all the land. LHA was the "customer." See OSCA-59 for the deed from LHA to OSCA; see Exhibit 2, at Bates 60, for deeds conveying the remaining properties from LHA to other parties, including to the City of Lebanon, Bates 61 and 63.

Thus, for example, when the electrical facilities that are at issue in both this case and Mr. Balagur's case were installed, the "customer" was LHA because LHA owned the land where the line was buried, where the pad mounted transformer was installed, where the low voltage lines left the transformer, and where any buildings into which the low voltage lines travelled were located. LHA was the only customer when the high voltage lines were buried in 1969. Thus, applying the clear language of Tariff No. 6 quoted above, the underground lines "shall be and remain the property of the Customer."

It is irrelevant to this case that that LHA later conveyed some of its land to the City of Lebanon to become a parking lot, and conveyed other parcels and the adjacent buildings to other parties. OSCA's uncertainty over who is responsible for the underground lines and other customer-owned facilities is a function of LHA's subsequent development of the site and failure to delineate these responsibilities and is also irrelevant to this docket.

Second, Tariff No. 6 was amended to allow the Company to own underground lines, but only for certain new residential developments.

Upon request from a developer proposing to construct a qualifying residential development consisting of dwelling facilities and facilities accessory thereto, and subject to the provisions hereinafter set forth, the Company will provide an underground distribution system in public or private ways, or rights-of-way to be installed throughout the entire development. A qualifying residential development is one proposed to be built on a land area defined in a real estate development plan, approved by the municipality in which it is proposed to be located . . . . Said land area shall be situated where no electric distribution system exists and where no electric distribution system other than that provided pursuant to the provisions of this policy will be required, and approved by the Company pursuant to all the relevant provisions and conditions of this policy.

Bates 39.

If the developer proposed a “qualifying development” and satisfied a number of other specific requirements, then the “underground systems installed in accordance with the provisions above shall be owned and maintained by the Company.” Bates 55-56. OCSA incorrectly cited and relied on this provision to argue that the LHA’s re-development of downtown resulted in Company-owned underground lines. Complaint at 10. This tariff provision expressly applied only to residential developments where there was no pre-existing electrical service.<sup>2</sup>

Finally, Tariff No. 6 was amended as of April 27, 1971 (perhaps earlier because these are “First Revised Pages”), to add Section IV of the Line Extensions policy that allowed for Liberty to install underground equipment in non-residential areas when the Company determined that “it is economically reasonable and practical to do so,” and when a “municipal policy” required underground utilities. When municipal policy required underground utilities, Tariff No. 6 allowed the Company to impose a municipal-specific surcharge to recover the added costs. Bates 57-59.

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<sup>2</sup> Since the attached copy of Tariff No. 6 contains the many superseded pages mingled among the last effective pages, it can be confusing to follow. To assist the reader, the latest version of the Line Extension policy of Tariff No. 6 appears at Bates 39-40, 47, 53, 55-56.

This last section of Tariff No. 6, however, distinguished between placing underground those distribution lines that typically ran overhead along city streets and placing underground lines that entered a customer's property and made clear that the underground lines on customer's property remained customer-owned: "As stated in the Company's Terms and Conditions, underground construction beyond a point two feet inside the property line will be at the customer's expense and will be owned and maintained by the customer." Bates 59.

There is no reasonable reading of Tariff No. 6 that supports OSCA's argument that Liberty owns the underground lines that run from its poles to its transformers at those locations in Lebanon cited in OSCA's complaint. The historical records OSCA attached to its complaint are consistent with this tariff language and with the conclusion that the underground lines are not Liberty-owned.

#### Transformer Foundations and Low Voltage Lines.

OSCA also argues that Liberty is responsible for the foundations of several transformers located in this area of Lebanon, noting that some are in poor repair. Complaint at 5-7. However, Section 4 of Tariff No. 6 plainly states that the transformer foundations are customer-owned:

The Customer shall furnish free of cost upon its premises the necessary space and provide suitable foundations, supports, housing, wiring and pipe and fittings for any transformers, rotary converters, switching arrangements, meters and other apparatus required in connection with the supply of electricity whether such equipment is furnished by the Customer or the Company. Such foundations, supports, housing, wiring and pipe and fittings, shall be in conformity with the Company's specifications and subject to its approval.

Bates 16. OSCA's claim that Liberty is responsible for the transformer foundations, which likely arises from the same confusion over who the customer was in 1969, should be denied. As applied in 1969, the above provision would read, "[LHA] shall furnish free of cost upon its premises the necessary space and provide suitable foundations ... for any transformers."

As for the low voltage lines that exit the Company-owned transformers and travel to the various buildings, the historical documents make clear that these were customer-purchased, customer-installed, and customer-owned. The Company's April 15, 1965, proposal states, "All secondary conduit and cable on customer's property are assumed at customer's expense." OCSA-5; *see* OCSA-17 (same). The 2016 affidavit of OCSA's electrician acknowledges that he replaced certain electrical components between the transformers and the buildings at his client's cost, for example, "As a condition of allowing the upgrade of service conductors connected to their secondary service, GSE required that Lebanon College include as part of their work, done at their expense, the replacement of the then rusted and deteriorated terminal box/slice cabinet next to and on the same concrete pad as their transformer." OCSA-39. OCSA tacitly agrees: "The secondary service conduits and conductors from point of interconnection in the distribution panels back to the individual properties were apparently installed and paid for by the LHA and/or existing customers/property owners." Complaint at 4.

This is all consistent with Tariff No. 6: "All underground service connected to the Company's underground cables beyond two feet inside the property line shall be paid for by the Customer and shall be and remain the property of the Customer." Bates 24.

### Conclusion.

An important footnote is how this issue was addressed in the Company's recently concluded rate case, Docket No. DE 16-383. The order that approved the Settlement Agreement resolving the case noted the Company's longstanding policy: "Liberty also requested that it be allowed to continue its current policy whereby any residential underground services are owned and maintained by its customers." Order No. 26,005 at 6 (Apr. 12, 2017). The Settlement Agreement contains the Company's change of mind:

The Company agrees that it shall be the owner of all new single-phase underground services to residential customers as of the implementation date of a new policy as referenced below. Such ownership of underground services will require the Company to hire additional personnel to perform trench inspections and for line work necessary to install and maintain new underground services. Additionally, changes will be required to the Company's line extension policy in its tariff, and its Requirements for Electric Service Connections booklet to describe the policy and to specify that customers requesting underground services shall be responsible for the excess cost of the underground service as compared to overhead service. The Company shall work with Staff and OCA to accomplish the changes to its policies and shall file revised tariff pages to implement the new policy by September 30, 2017. Additional costs actually incurred associated with personnel that were hired to implement the new policy will be included in the step increase that shall take effect on May 1, 2018, which costs will be subject to review.

Settlement Agreement at 9. Underground commercial services are not even mentioned. This underscores that the overriding policy of Liberty and its predecessors has always been not to own underground services, residential or commercial. This part of the Settlement Agreement is a substantial change for Liberty.

The obvious frustration of OCSA and its principal Mr. Below (who signed the above Settlement Agreement in his capacity as a Lebanon City Councilor) over the ownership and maintenance of the underground lines on private property in downtown Lebanon is understandable, but it is the result of LHA's redevelopment. As discussed above, the Company's tariff clearly and unequivocally stated that the electrical lines and other facilities on customer property was not Company owned.

WHEREFORE, Liberty Utilities (Granite State Electric) Corp., d/b/a Liberty Utilities, respectfully asks the Commission to:

- a. Find, as a matter of law, that Liberty does not own the lines and related electrical facilities at issue in this complaint; and
- b. Grant any further relief deemed just and proper.

Respectfully submitted,

LIBERTY UTILITIES (GRANITE STATE  
ELECTRIC) CORP. D/B/A LIBERTY UTILITIES

By its Attorney,



Date: June 13, 2017

By: \_\_\_\_\_

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Certificate of Service

I hereby certify that on June 13, 2017, a copy of this response has been electronically forwarded to the service list in this docket.



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Michael J. Sheehan