

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 22-014

LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP. d/b/a LIBERTY

**Vegetation Management Program
Calendar Year 2021 Reconciliation and Rate Adjustment Filing**

Order Approving Reconciliation

O R D E R N O. 26,620

April 28, 2022

In this order, the Commission approves, in principle, the reconciliation of costs and revenues associated with Liberty's 2021 vegetation management plan (VMP), effective May 1, 2022, with one change required of the Company's initial calculation. The net result of the reconciliation is estimated to be approximately a \$0.00001 cent per kilowatt hour (kWh) VMP adjustment factor, which represents an increase of approximately \$0.40 in the monthly bill of an average residential customer using 650 kWh per month.

The Commission also grants, in part, Liberty's request to roll the unspent portion of its calendar year 2021 approved budget into its 2022 budget for vegetation management. However, we note that the correct calculation under the governing settlement approved in Docket DE 19-064 results in a carry-over amount of \$329,187, as discussed below.

The Commission's approval herein of the adjustment factor and budget carry-over neither approves nor forecloses further scrutiny of the Company's operation of its vegetation management program and associated spending. Issues that may warrant further scrutiny in Liberty's next rate case or other proceeding before the Commission include its management of contracts related to vegetation management, as well as contributions that may be warranted from joint pole owners.

I. PROCEDURAL HISTORY

On March 15, 2022, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (Liberty, or the Company) filed its Calendar Year 2021 reconciliation and rate adjustment filing in this docket. With its filing, the Company submitted supporting testimony and related schedules detailing the reconciliation of VMP costs and revenues.

An adjudicative proceeding was commenced by an order issued on March 23, 2022 and a hearing on the merits of the Company's filing was held on April 19, 2022. No petitions to intervene were filed. The Office of the Consumer Advocate did not file a letter of participation.

The Company's filing, including testimony and schedules, and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at

www.puc.nh.gov/Regulatory/Docketbk/2022/22-014.html

II. POSITIONS OF THE PARTIES ON THE RECONCILIATION

A. Liberty

Liberty's filing proposed new rates for the recovery of costs associated with its VMP, resulting in a \$0.00001 (or 0.001 cent) per kWh increase above the current rate factor for costs related to vegetation management. Liberty also plans to return to a five-year trimming cycle, due in part according to the Company, to economic conditions affecting the vegetation management industry. Liberty further requested recovery of the full 2021 budgeted amount of expenses, including the contingency over-spend amount of 10 percent of the approved budget of \$2,200,000, for a total of \$2,420,000.

In its petition filings and testimony, Liberty noted that it had accomplished trimming of only 84 miles out of the planned 235 miles along the Company's electric lines in 2021. According to the Company, the key factor leading to lower trimming

mileage than anticipated was the contractual default of the contractor hired to perform the work, ClearWay Industries, LLC (ClearWay), due primarily to workforce challenges. Liberty also noted that Consolidated Communications, Inc. (Consolidated), a joint owner of Liberty's utility poles, did not reimburse Liberty for tree trimming along jointly owned utility pole corridors.

B. Department of Energy

The New Hampshire Department of Energy (DOE) noted that the settlement reached in Docket DE 19-064 was clear with respect to Liberty's four-year vegetation management program trim cycle and annual budget of \$2.2 million with a 10 percent overspend allowance. DOE observed that Liberty's calculation of spending appeared to be accurate, but that the Company was not able to meet its goal of trimming 235 miles along its electric system in calendar year 2021. As a result, DOE stated its desire for an opportunity to revisit the budget and expense numbers in a future rate case. Given the contractual default by ClearWay for tree trimming and Liberty's inability to achieve its vegetation management goals, the DOE stated that it would not object to the recovery of the net \$1.87 million spent on vegetation management in 2021 but reserved for a future prudence review the issue of whether the dollar amount allotted in the 2021 budget for vegetation management was reasonable, and whether the \$1.87 million was prudently spent.

DOE further noted that the Company's budgeted amount of \$2.42 million for 2021 was intended to cover a certain amount of work and has tended to increase in each rate case. The increase from \$1.8 million to \$2.42 million, however, was a substantial increase and the largest incremental increase to date. DOE supported approval of the Company's request to carry over \$549,000 of the unspent budget allocation into next year's vegetation management budget but did not wish to foreclose on the opportunity to

revisit the option to reimburse the unspent monies to customers, as approved in the settlement reached in Docket DE 19-064. DOE also noted that it considered there to be a cap on the vegetation management budget of \$2.2 million with a 10% overage allowance available should actual work completed warrant the increase, while Liberty presents the overrun contingency as part of the approved budget. Finally, DOE noted its concern regarding the fact that Consolidated is no longer contributing to maintenance costs of the poles it jointly owns with Liberty.

III. COMMISSION ANALYSIS

We find that Liberty's VMP activities in 2021 are generally consistent with the program goals and parameters authorized initially by the Commission in Docket DE 19-064 through approval of the settlement reached among parties in that proceeding. As noted above, we grant, in part, Liberty's request to carry over the unspent portion of its calendar year 2021 approved budget to its 2022 budget for vegetation management. However, we note that the correct calculation under the settlement approved in Docket DE 19-064 results in a carry-over amount of \$329,187. This includes the difference between the VMP base budget of \$2,200,000 approved in Docket DE 19-064 - which remains in place until changed in a future base rate case - and the actual VMP expenses of \$1.87 million incurred in 2021. As provided in the DE 19-064 settlement agreement,

*“Under the VMP, the Company shall maintain a four-year cycle for tree trimming and vegetation management and shall continue with the filings and reporting requirements currently in place. **The base rate increase agreed to in this Agreement includes an increase in the VMP spending to \$2,200,000 for 2020, which shall continue until changed in a future base rate case. The Company shall not recover any VMP expenses that exceed 10% of that amount, or in excess of \$2,420,000, through the annual reconciliation filing, or otherwise.** The VMP spending shall be reconciled each year, with any under spending carried into the next program year or returned to customers, as determined by the Commission.”*

See Docket DE 19-064 Settlement Agreement at 11 (emphasis added). In contrast,

Liberty proposes to calculate the carry-over amount based on the approved budget *plus*

the allowed not-to-exceed over-spend contingency amount of 10 percent of the approved budget, for a baseline budget of \$2,420,000. We disagree and rule accordingly. As the Company did not complete work totaling \$2.2 million, the 10% contingency is not relevant for consideration.

The Commission notes that the 10% over-spend contingency was intended to provide the Company with some flexibility for monies actually spent over the annual \$2.2 million budget starting in 2021 and remaining unchanged until the Company's next base rate case. Should the Company incur VMP expenses over the \$2.2 million budget, any costs up to \$2.42 million may be recovered in annual VMP reconciliation proceedings, through the VMP adjustment factor mechanism. Should the Company spend more than \$2.42 million in any VMP calendar year, those costs are not eligible to be recovered through the VMP reconciliation, as was the case for the calendar year 2020 VMP program.

For May 1, 2022 to April 30, 2023, Liberty must account for all VMP expenses to apply first to the approved carry-over amount of \$329,187. Once those monies have been spent, the Company shall allocate all additional VMP expenses against the approved \$2.2 million 2022 budget. If costs then exceed the 2022 budget, meaning VMP costs in excess of \$2,529,187 during calendar year 2022, the Company is permitted to incur up to an additional \$220,000 in eligible VMP reconciliation expenses as per the 10% of the \$2.2 million budget excess contingency in the DE 19-064 settlement. All expenses shall be subject to prudence review by the Commission in subsequent VMP proceedings and related proceedings, including but not limited to base rate cases, in the future.

We further share the concern expressed by DOE at hearing regarding the need for Consolidated, as a joint-pole owner, to bear a fair share of costs and maintenance associated with joint pole ownership. With the deregulation of telecommunications

providers, it is now incumbent upon electric utilities, including Liberty, to ensure that maintenance costs of jointly owned poles are shared equitably and are not unfairly borne by electric customers. The Commission noted the same concern in Docket DE 20-036 regarding vegetation management activities conducted in 2019. Based on the record in Docket DE 20-036, the last payment by Consolidated to Liberty for vegetation management expenses related to jointly owned poles was \$495,381 in 2019, which the Commission found to be in line with prior years. Liberty's subsequent petition filed in Docket DE 21-049 referenced the fact that Consolidated did not contribute to Liberty's vegetation management expenses but did not mention any efforts to seek a new agreement with, or reimbursement from, Consolidated. The Commission notes that the Company confirmed at the hearing that if Consolidated had continued to contribute to the vegetation expenses consistent with its past practice, the ratepayers would have likely benefited from a reimbursement from Consolidated well in excess of \$500,000 in this instant docket.

Our determination in this proceeding of the consistency of Liberty's vegetation management activities in 2021 with established program goals and parameters does not preclude appropriate agreement or adjustments in future rate proceedings to reduce the share of vegetation management costs that Liberty seeks to assign to its electric customers. As the Commission did in Docket DE 20-036, we direct Liberty to take steps to protect its interests and those of customers by seeking an equitable share of maintenance expenses for jointly owned poles through an inter-company agreement with Consolidated, including, as appropriate, renegotiation of prior agreements to reflect current circumstances. We emphasize that Liberty's status as the sole regulated owner of the joint poles does not justify the shifting of all associated costs to Liberty's customers.

Liberty testified that it is reporting its reliability metrics monthly and noted areas in which reliability has been an issue. To the extent that such issues are related to the considerable reduction in vegetation management completed by Liberty in 2021, the Commission recommends that Liberty review its established priorities and procedures and consider potential adjustments to the VMP and operation of its vegetation management activities going forward.

Finally, we note the unexpected default of ClearWay, the contractor Liberty had retained for vegetation management in 2021. According to Liberty's testimony, no recompense was received from ClearWay for the default, and it was unclear on the record what contractual remedies were available to Liberty through its engagement of ClearWay, although Liberty stated that it is pursuing litigation. The default appears to have been a significant contributing factor to the low achievement of Liberty's vegetation management goals in 2021.

In sum, based on the evidence presented in this proceeding, we approve a VMP adjustment factor to be included in distribution rates of \$0.00001 (or 0.001 cents) per kWh to take effect on May 1, 2022. We find that rate adjustment to be just and reasonable, as required by RSA 374:2 and RSA 378:7. However, we intend to revisit the issues noted above regarding the management of contractors and the sharing of associated vegetation management costs between joint pole owners in Liberty's 2022 VMP reconciliation filing. A review of each issue may be warranted in Liberty's next general rate proceeding, as well.

Based upon the foregoing, it is hereby

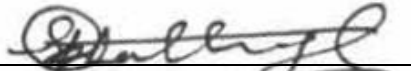
ORDERED, that Liberty is authorized to recover an adjustment factor of \$0.00001 per kWh for costs associated with vegetation management expenses incurred in 2021 as described in Exhibit 1, effective with rates on and after May 1, 2022; and it is

FURTHER ORDERED, that Liberty is authorized to carry over the amount of \$329,187 for use in its 2022 vegetation management program; and it is

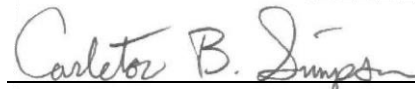
FURTHER ORDERED, that Liberty shall file tariff pages conforming to this order pursuant to N.H. Admin. R., PART Puc 1603 within 15 days of the date of this order; and it is

FURTHER ORDERED, that the New Hampshire Department of Energy file a recommendation regarding Liberty's compliance tariff within 15 days of Liberty's tariff filing.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of April 2022.



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 22-014

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