

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 24-073

OFFICE OF THE CONSUMER ADVOCATE

Show Cause Proceeding

**DEPARTMENT OF ENERGY’S RESPONSE TO LIBERTY UTILITIES’ MOTION FOR
REVISED PROCESS**

Pursuant to the Procedural Order of the Public Utilities Commission (Commission) dated November 4, 2024, the Department of Energy files its response to the Motion for Revised Process filed by Liberty Utilities (Granite State Electric) Corp d/b/a Liberty (Liberty).

I. INTRODUCTION

1. By Procedural Order dated June 18, 2024, the Commission opened this adjudicatory proceeding to consider the issues raised by the Office of the Consumer Advocate (OCA) in its May 10, 2024, petition to open an investigation pursuant to RSA 374:7 regarding alleged noncompliance by Liberty with both N.H. Admin. Code Puc 307.10 and the DE 19-064 Settlement Agreement resolving concerns about Liberty’s compliance with its Vegetation Management obligations.

2. At the prehearing conference on August 27, 2024, the parties agreed that the preliminary legal issue to be resolved is whether Liberty is in contempt of the terms of the DE 19-064 settlement agreement and Order No. 26, 376 (June 30, 2020), by allegedly failing to fulfill its commitments for vegetation management. The parties also agreed to a process allowing the Commission to dispose of the issue based on legal briefs.

3. In a procedural order dated August 28, 2024, the Commission accepted the parties agreed upon process and asked for the briefs to also address the appropriate remedy if Liberty is found in contempt.

4. The Department, the OCA and Liberty filed Initial Briefs on October 22, 2024.

5. On November 1, 2024, Liberty filed a Motion for Revised Process (Motion).

6. In support of the relief requested by the Motion, Liberty states that while preparing to file its reply brief, due from all parties on November 5, 2024, Liberty concluded that it needed additional process to allow for investigation and the development of facts. The Company states, “the OCA has raised questions regarding the Company’s performance ... that cannot be addressed purely through legal arguments and instead require testimony and discovery” (Motion, paragraph 4). In its Motion, Liberty concedes that the process it now seeks in this matter is one that was proposed initially by the OCA but that the Company declined at the pre-hearing conference.

7. In its Motion, Liberty proposes a new procedural schedule to include testimony and discovery which would conclude in evidentiary hearings mid-January 2025.

II. REQUEST FOR OFFER OF PROOF

8. It is difficult for the Department to understand why Liberty requires the opportunity and time to develop a factual record in this proceeding. Liberty offers no basis for the request other than the need to establish “factual predicates,” and that “foundational facts,” and additional “record evidence” are needed for the Commission to resolve the issues and render a “lawful decision.” (Motion, paragraphs 3 and 4.)

9. Liberty also argues that the briefing process currently established by Commission Order will force the Commission to resolve the underlying issues using “partial information,” or “information that is scattered across numerous dockets,” (Motion, paragraph 8), but the Company does not explain why investigation and the development of facts are required to “compile the relevant information and present it in this docket for review in an organized and complete manner.” (Motion, paragraph 8). In fact, Liberty’s Initial Brief and the voluminous attachments thereto contain information from several relevant prior Vegetation Management dockets where Liberty’s implementation and performance under its Vegetation Management Program was subject to annual review by the Department and the Commission.

10. Without more information from Liberty detailing what specific information and witnesses it proposes to present (particularly given the process afforded to Liberty in the prior vegetation management dockets, its initial posture that legal briefs would suffice, and the filing of its request after the Department and the OCA have made their cases in Initial Briefs) the Department is not inclined to support the relief Liberty now requests except to the limited extent described below.

11. In making its case in its Initial Brief, the Department relied upon Liberty's pre-brief assessment that the facts needed to resolve the contempt question are in "all the filings ... the prior veg. management reports that [Liberty] filed, the orders that come out of those dockets, Settlement Agreements." *See* Transcript of August 27, 2024 (tab 13) at 24, lines 10 -16. The Department invested time preparing its Initial Brief based on the existing facts. As Liberty conceded there were no more facts to establish because they all exist in the history of the Settlement Agreements and the connected vegetation management dockets that have been filed. To the extent that the Commission allows Liberty's development and consideration of new facts on the contempt issue, the Department will be required to invest additional time and resources in processing that new information to participate in a hearing and file a post-hearing brief.

12. The Department respectfully requests that, before granting Liberty's Motion, the Commission require Liberty to make an offer of proof about the facts it wishes to elicit, the witnesses it intends to call, and the general content of the testimony it proposes to submit. If Liberty makes such Offer of Proof, the party should be given an opportunity to respond again to this Motion, before any further procedural orders are issued.

III. TESTIMONY RELATED TO REMEDIES MAY BE WARRANTED

13. The Department, however, recognizes that prior vegetation management dockets were not focused on remedies for non-compliance. Accordingly, the Department would generally be supportive of additional testimony by Liberty concerning remedies for Liberty's contempt of the vegetation management terms agreed to by settlement in DE 19-064. Again, such additional testimony should follow an Offer of Proof indicating what the testimony will say, who will provide

it, and a clear indication that the testimony would not be a rehash of facts from prior dockets about Liberty's performance.

IV. LIBERTY'S PROPOSED REVISED PROCESS

14. The Department requests the opportunity to comment on Liberty's proposed, modified procedural schedule following Liberty's offer of proof.

V. CONCLUSION

The Department respectfully requests the Commission proceed in the following manner:

- A. Issue an order requiring Liberty to provide an offer of proof describing the facts it needs to develop to resolve the contempt issue, who will testify and on what subject matter, and finally why such new information was not available through citation to prior dockets; and
- B. Grant such other relief as it deems necessary and appropriate.

Dated: November 12, 2024

Respectfully Submitted,

New Hampshire Department of Energy,

By its Attorneys,

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