

1    **STATE OF NEW HAMPSHIRE**  
2    **PUBLIC UTILITIES COMMISSION**

3                    **July 9, 2024** - 9:00 a.m.  
4                    21 South Fruit Street  
5                    Suite 10  
6                    Concord, NH

7                    RE: **DE 24-066**  
8                                    **LIBERTY UTILITIES (GRANITE STATE**  
9                                    **ELECTRIC) CORP. d/b/a LIBERTY UTILITIES:**  
10                                  Petition to Amend Tariff.  
11                                  *(Prehearing conference)*

12                    **PRESENT:**        Ben Martin-McDonough, Esq./PUC Sr. Adv.  
13    *(Presiding as Presiding Officer)*

14    Marissa Schuetz, Esq./PUC Legal Advisor

15    Doreen Borden, Clerk

16                    **APPEARANCES:**   **Reptg. Liberty Utilities (Granite State**  
17    **Electric) Corp. d/b/a Liberty Utilities:**  
18    Michael J. Sheehan, Esq.

19    **Reptg. the Town of Salem:**

20    Michael P. Courtney, Esq. (Upton &...)  
21    Madeline K. Osbon, Esq. (Upton Hatfield)

22    **Reptg. Residential Ratepayers:**

23    Donald M. Kreis, Esq., Consumer Adv.  
24    Office of Consumer Advocate

**Reptg. New Hampshire Dept. of Energy:**

    Matthew C. Young, Esq.  
    Elizabeth Nixon, Director/Electric Group  
    *(Regulatory Support Division)*

    Court Reporter:        Steven E. Patnaude, LCR No. 52

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**P R O C E E D I N G**

1  
2 PRES. OFCR. MARTIN-McDONOUGH: Okay.

3 Good morning. Can you all hear me? All right.

4 So, we are here this morning in Docket  
5 Number DE 24-066. My name is Ben Martin-  
6 McDonough, and I am a Senior Advisor with the  
7 Public Utilities Commission. Pursuant to RSA  
8 363:17, the Commissioners have appointed me as an  
9 examiner this morning, to hear the parties and  
10 file a report and recommendation for the  
11 Commission to review.

12 After this conference, my intention is  
13 to file a draft prehearing order that will  
14 address all issues discussed at this conference,  
15 and a recommendation that the Commission adopt  
16 it.

17 The Commission convened this docket  
18 under RSA 541-A, to consider Liberty's Petition  
19 to amend its tariff to allow it to recover costs  
20 from a municipality associated with the  
21 requirements to construct, modify, or relocate  
22 utility facilities that Liberty would not  
23 otherwise have incurred.

24 In addition to Liberty, the New

1 Hampshire Department of Energy and the Office of  
2 the Consumer Advocate have filed appearances, and  
3 the Town of Salem has moved to intervene.  
4 There's currently a hearing scheduled on the  
5 Petition on August 15th, 2024.

6 My goal for today is to hear the  
7 parties' initial positions on Liberty's Petition,  
8 and what process the parties believe is  
9 appropriate for the Commission to review the  
10 Petition. Specifically, I would like to know  
11 whether the parties believe a hearing before the  
12 Commission is necessary, and whether any  
13 additional process, such as discovery, is  
14 necessary.

15 So, let's start by taking appearances,  
16 beginning with Liberty.

17 MR. SHEEHAN: Thank you. Good morning.  
18 Mike Sheehan, for Liberty Utilities (Granite  
19 State Electric) Corp. And present with me is  
20 Tyler Culbertson, from the Regulatory Department,  
21 and Dilip Kommineni and Ryan Tsantoulis are from  
22 our Engineering Department.

23 PRES. OFCR. MARTIN-McDONOUGH: Okay.  
24 Thank you. And DOE?

1 MR. YOUNG: Good morning. Matthew  
2 Young, on behalf of the Department of Energy.  
3 And with me today is Elizabeth Nixon, who is the  
4 Director of the Electric Group.

5 PRES. OFCR. MARTIN-McDONOUGH: Okay.  
6 Thank you. The OCA?

7 MR. KREIS: Good morning,  
8 Mr. Martin-McDonough. I am Donald Kreis, the  
9 Consumer Advocate. And pursuant to RSA 363,  
10 Section 28, my job is to represent the interests  
11 of residential utility customers, including the  
12 residential utility customers of this utility.

13 PRES. OFCR. MARTIN-McDONOUGH: Thank  
14 you. And Town of Salem?

15 MR. COURTNEY: Good morning. My name  
16 is Michael Courtney. I'm here with Attorney  
17 Madeline Osbon; Public Works Director, Roy  
18 Sorenson, from the Town of Salem; and Town  
19 Engineer Extraordinaire, James Danis.

20 If you have any questions? The Motion  
21 to Intervene still hasn't been granted. So, I  
22 just wanted to put that on the record.

23 Thank you.

24 PRES. OFCR. MARTIN-McDONOUGH: Okay.

1 Thank you. And I don't have the authority to  
2 grant the motion. But my intention is to address  
3 that in the prehearing order, and have the  
4 Commissioners take it up afterwards. But thank  
5 you.

6 And there were no objections filed to  
7 the Motion to Intervene, just on the record.

8 So, great. Based on Liberty's  
9 Petition, I understand its position to be that  
10 the Commission should allow the changes to go  
11 into effect without a hearing. So, I would like  
12 to hear the other parties' thoughts first in  
13 their opening statements, and then let Liberty go  
14 back to respond to them.

15 So, does the DOE want to start with  
16 whether it supports the Petition, and what  
17 process it believes is necessary here?

18 MR. YOUNG: Thank you.

19 The DOE is generally supportive of the  
20 Company's tariff. However, given some of the, I  
21 guess, concerns of some of the other parties, it  
22 would probably be most appropriate to have a  
23 period of discovery, and, I guess, normal process  
24 after that, perhaps a hearing. And the parties

1           may be able to come together beforehand.

2                    But, I think, at this time, just based  
3           on some of the concerns of the other parties, it's  
4           probably most appropriate to have that discovery  
5           period.

6                    PRES. OFCR. MARTIN-McDONOUGH:   And have  
7           you discussed this with Liberty at all?

8                    MR. YOUNG:   No.

9                    PRES. OFCR. MARTIN-McDONOUGH:   Okay.  
10          Thank you.   The OCA?

11                   MR. KREIS:   Thank you.

12                    The Office of the Consumer Advocate  
13           supports the Company's Petition, and believes  
14           that no hearing is necessary.

15                    As far as we are able to tell, this  
16           Petition from this utility raises a simple and  
17           straightforward question of utility law, which is  
18           "Should all of the ratepayers of a utility pay  
19           for costs that are caused by a municipality  
20           imposing for whatever reason, good or ill, its  
21           own municipally-driven requirements on the  
22           utility?"

23                    And, in our opinion, the answer to that  
24           question is clearly "No."   It can be easily



1           determined as a matter of New Hampshire law.

2                   I don't -- I don't think any discovery  
3           is necessary. I think it would behoove the  
4           Commission to ascertain what facts are in  
5           dispute; as far as I'm aware, there are none.

6                   And, so, therefore, this docket,  
7           because regulation is expensive, and, at the end  
8           of the day, the people who pay for regulation of  
9           utilities are the customers of utilities, this  
10          docket should be dispatched in as expeditious a  
11          fashion as possible.

12                   PRES. OFCR. MARTIN-McDONOUGH: Thank  
13          you. And the Town of Salem?

14                   MR. COURTNEY: There's two issues here.  
15          There's a legal issue, of whether Liberty can  
16          take a license and a permit from the town, and  
17          require the town to pay for Liberty moving its  
18          equipment underground. New Hampshire law is  
19          pretty straightforward under 231, that that  
20          license and permit is not a guarantee, and that  
21          the town has the ability to require, when there's  
22          a public good, that Liberty move its equipment.  
23          And, in this case, we have a Supreme Court  
24          opinion from the 1950s that is clear on that.

1           So, there is a legal issue that maybe  
2 we can dispose of through a motion to dismiss or  
3 a pleading.

4           There is also the factual issue, if the  
5 Commission decides that the law is -- the law  
6 does not require that the Town pay for Liberty's  
7 moving the equipment underground, there's still a  
8 requirement of whether the Town is correct in the  
9 public good, that finding, because the Town has  
10 found that the public good requires Liberty to  
11 move its equipment underground. And Liberty has  
12 the ability to appeal that decision, and that  
13 appeal is not to this Commission, it's to the  
14 superior court under state law.

15           So, maybe it makes sense that we have a  
16 brief period in which the Town submits its  
17 objection, lays out this law, and the Commission  
18 can determine whether we need a hearing. And, if  
19 we have a hearing, the Town would want a site  
20 visit, so we can show the Commission this is not  
21 in the public good to have the overhead utilities  
22 in the Town of Salem's right-of-way, which is a  
23 permit and a license, it's not a guarantee.

24           PRES. OFCR. MARTIN-McDONOUGH: And does

1 the Town believe that this is a straightforward  
2 legal question? Are there any factual issues  
3 that would benefit from discovery?

4 MR. COURTNEY: We believe this is a  
5 straightforward legal question. If that legal  
6 question, for some reason, is found that the  
7 Commission has jurisdiction over that, then we  
8 have the factual question as to whether the  
9 public good requires that the utilities go  
10 underground.

11 PRES. OFCR. MARTIN-McDONOUGH: So, you  
12 intend to file an objection that the Commission  
13 has no jurisdiction to approve this language?

14 MR. COURTNEY: We do. And we were  
15 waiting for this prehearing conference to do so.  
16 We're happy to do so, you know, shortly, within  
17 the next week or two.

18 PRES. OFCR. MARTIN-McDONOUGH: Okay.  
19 Thank you. And do you know if any other towns  
20 have any, and this would apply to all of  
21 Liberty's service areas, so do you know why the  
22 Town of Salem is the only --

23 MR. COURTNEY: Sure. Well, it's  
24 because the Town of Salem was named in the

1           Petition, and this is specific to the Town of  
2           Salem. I can certainly get on the horn with  
3           other towns and see if they want to intervene.

4                        But this is a pretty straightforward  
5           legal question about this Commission's  
6           jurisdiction, and Liberty's ability to make the  
7           Town pay for utilities that are not in the public  
8           good.

9                        PRES. OFCR. MARTIN-McDONOUGH: Thank  
10          you. And Liberty?

11                      MR. SHEEHAN: Thank you.

12                      I do agree, first, that it is primarily  
13          a legal issue, what I call the collision between  
14          the statute, RSA 231, and the basic utility  
15          concepts that Mr. Kreis referred to. I mean, the  
16          Commission will make that decision, whether the  
17          Town has a statutory right to require us to go  
18          underground. And, if so, -- let me back up.  
19          This is not a Salem-specific docket. Now,  
20          certainly, the Salem facts are the lens through  
21          which we view the legal issue. But the tariff  
22          change would apply to all of our customers, of  
23          course. And, so, a ruling here would apply to  
24          Salem and all the other towns. But I do

1           acknowledge that the Salem facts are what brought  
2           it to light, and it sort of illustrates the  
3           issue, for lack of a better word.

4                        I agree there are no factual issues in  
5           dispute. I don't think there's any need for  
6           discovery.

7                        So, perhaps Mr. Courtney is correct,  
8           that the way to proceed is by pleadings. He  
9           suggested a motion to dismiss or simply a  
10          memorandum on why the Salem has one  
11          interpretation, and the other parties could  
12          respond to that.

13                       For the record, we do not object to  
14          Salem's intervention. We didn't file one, but we  
15          don't.

16                       And, just to respond on the merits, I'm  
17          not sure when the "public good" conversation  
18          would come up. But we are governed by formal  
19          codes of putting up electric systems. And the  
20          code that governs us, the wires that are up now  
21          comply with that code. And the -- we have agreed  
22          to move the wires further away from the road from  
23          where they are today, and that new location also  
24          complies with code.

1           So, if we do get to a "public good"  
2           conversation, Liberty's position would simply be  
3           we comply with the codes that we have to follow,  
4           and that presumably take public good into  
5           consideration.

6           We understand Salem's point of view,  
7           that they're simply too close to a building, and  
8           that would be the factual decision, should we get  
9           there. But, again, that's a Salem-specific  
10          question that is sort of secondary to the primary  
11          question of "Should all customers pay for this  
12          work or a municipality pay for the extra cost?"

13          PRES. OFCR. MARTIN-McDONOUGH: So, if I  
14          understand your point, you're saying it could be  
15          a legal dispute outside the Commission's  
16          jurisdiction as to whether making the change  
17          would be in the public good, but even if it was  
18          determined to be so, then Salem should pay for  
19          that, because all ratepayers would otherwise  
20          incur that cost?

21          MR. SHEEHAN: I see the legal question  
22          of, putting the statute aside for the moment, Mr.  
23          Kreis is correct. All customers should not pay  
24          for costs that a town wants beyond what is

1 otherwise normal and required of a utility to  
2 provide service.

3 But we have the statute, and does the  
4 statute change that basic utility concept or not?  
5 I tend to think "no", but that's a question I  
6 think the Commission decides. So, if they decide  
7 a statute does give Salem the authority to  
8 require us to go underground, that the -- I think  
9 it's an easy answer that, of course -- well, I  
10 don't know. Then, "who pays?", is the question  
11 that comes up.

12 And, the statute -- if there's  
13 statutory authority to require us to do it,  
14 arguably, all customers pay, just like, you know,  
15 we are statutorily obligated to, you know, do  
16 certain -- meet certain standards across our  
17 service territory, and everyone pays for upgrades  
18 and the like.

19 So, I'm not sure when the  
20 Salem-specific question comes in, but I'm  
21 wandering here. But, to go back to the core  
22 issue, I do think the Commission can decide,  
23 certainly, in the first instance, whether the  
24 statute authorizes Salem to require us to go

1           underground. And, then, the second question is  
2           "If so, who pays?"

3                       PRES. OFCR. MARTIN-McDONOUGH: Okay.

4                       MR. SHEEHAN: And it is a, you know,  
5           the statute 231 about -- which governs licenses,  
6           my reading of the statute, it certainly did not  
7           contemplate this issue, so we're trying to apply  
8           facts to statutes that don't fit perfectly, and  
9           that's -- and the Commission can certainly decide  
10          that in the context of approving a tariff change.  
11          And, if a party doesn't like it, they can appeal,  
12          and then it would become a Supreme Court issue.

13                      PRES. OFCR. MARTIN-McDONOUGH: So, your  
14          position is that the Town has the authority to  
15          order Liberty to bury lines in a public good,  
16          then Liberty has to pay for it and pass it on to  
17          all of its ratepayers?

18                      MR. SHEEHAN: If Salem has the  
19          authority to require us to incur costs we would  
20          not otherwise incur. That's the big question, do  
21          they?

22                      PRES. OFCR. MARTIN-McDONOUGH: But why  
23          would, if Liberty doesn't have that authority --  
24          I'm sorry, if the Town of Salem doesn't have that



1 authority, why would Liberty ever pay to make a  
2 change it didn't want to change?

3 MR. SHEEHAN: We wouldn't, which is why  
4 we propose this tariff language, is, again, as  
5 you know from the Order of Notice, this came up a  
6 couple years ago, where we did -- now, let me  
7 back up. The order we got from Salem wasn't  
8 simply a request. It was a directive from the  
9 governing authority "You shall put it  
10 underground." And that time, we did. And the  
11 Commission raised the question "Why should all  
12 customers pay for this thing?" A fair question.  
13 So, now, we're teeing that up for the Commission.

14 The Town does have authority under that  
15 statute to tell us what to do with lines in their  
16 right-of-way. And the question is "Who pays?"  
17 We are there at sufferance. You know, the Town  
18 owns the land, and if they tell us to move,  
19 normally, we have to move. And, in this case,  
20 we're moving in a way that is more expensive than  
21 we otherwise would. We'll do it, because they  
22 told us to. But, again, who pays?

23 PRES. OFCR. MARTIN-McDONOUGH: So, you  
24 think the difference is, if they're acting under,

1 I'm sorry, the statute that the Town of Salem has  
2 cited, and they have the authority to require  
3 Liberty to make changes and pay for it and pass  
4 it on to ratepayers? If they act under general  
5 planning authority, they don't?

6 MR. SHEEHAN: So, again, there's two  
7 questions. Do they have the authority to tell us  
8 to move our lines? The answer to that is "yes".  
9 And, in this case, the lines are in Position A,  
10 they have asked us to move them. We will move  
11 them to Position B, because they have asked us,  
12 and they have the authority to tell us to move  
13 them further away from the road. But Position B  
14 that we've agreed to do is still overhead. And  
15 we would incur those costs, those would be  
16 socialized among all customers. And this happens  
17 routinely with public works projects. You're  
18 building a new road, we have to move our gas  
19 lines, we have to move our electric lines, those  
20 are all socialized costs.

21 The difference here is, "Don't move  
22 them to Position B, move them underground", which  
23 is more expensive. And the question -- so, they  
24 do have the right to tell us to move, the

1 question is, when the solution to their issue has  
2 two options, Option 1 overhead, Option 2  
3 underground, as a utility, we are required to  
4 pick the least cost. But the Town is telling us  
5 to do the higher cost. Again, the question  
6 becomes "Who pays?"

7 And, so, our tariff, what's technically  
8 in front of the Commission, is the tariff  
9 language that says "The town pays the extra  
10 cost." And, so, the Commission is being asked to  
11 either approve that tariff language, and then the  
12 Town would have to pay the extra costs,  
13 obviously, they would have the right to appeal  
14 that decision, or all customers pay for that.  
15 And, if that's the case, we'll move it  
16 underground and socialize the cost.

17 So, again, the first question I think  
18 is, again, it's a "who pays?" is really the --  
19 it's not to "Does the Town have a right to make  
20 us move?" They do. The question is, "Who pays  
21 when we're doing a more expensive option than we  
22 otherwise would do, but who pays the difference?"

23 PRES. OFCR. MARTIN-McDONOUGH: Okay.

24 Thank you.

1 MR. SHEEHAN: And I've kind of talked  
2 in circles, I apologize for doing that.

3 PRES. OFCR. MARTIN-McDONOUGH: I think  
4 I understand, though. You always -- the town  
5 always has the authority to tell a utility what  
6 to do with its lines, I mean, within, obviously,  
7 limitations. But just the question is, "if it  
8 does so, who has to pay for that?"

9 MR. SHEEHAN: Right. If you read RSA  
10 231, again, it's a statute that was written in a  
11 different time, and it's been tweaked many times.  
12 So, as often the case, it's not entirely  
13 internally consistent. But it generally allows  
14 for utilities to be in town or state-owned  
15 right-of-ways, subject to their license. And we  
16 don't own the property, they own the property.  
17 And, if they tell us to move, we have to move,  
18 again, within reason, and the question is "What  
19 does that mean?"

20 PRES. OFCR. MARTIN-McDONOUGH: I have a  
21 few questions, just generally, that I think would  
22 guide the Commission's consideration of this.  
23 And I would direct them at Liberty.

24 MR. SHEEHAN: Sure.

1 PRES. OFCR. MARTIN-McDONOUGH: But I  
2 would provide the other parties to respond, if  
3 they would like to.

4 And my first question is, is this  
5 something that's in other utilities' tariffs,  
6 both in New Hampshire and around the country?

7 I just feel like this can't be limited  
8 to a dispute between Liberty and the Town of  
9 Salem.

10 MR. SHEEHAN: I have not researched  
11 other states. I don't believe it's in the other  
12 electric tariffs. I could confirm that.

13 A total anecdotal story, if you will,  
14 is the City of Concord rebuilt its Main Street a  
15 few years ago and underground its lines. And my  
16 understanding is, the City paid the delta in that  
17 case voluntarily. So, again, that's probably not  
18 worth a whole lot. It's just a reference point  
19 that, and I'm not aware, I've got our engineering  
20 folks, that we've ever done this before, other  
21 than the case that came up a couple years ago in  
22 Salem that we have, you know, done extra work  
23 that the Town paid for.

24 Now, it's very common to, you know,

1 line extension tariffs, we will pay to hook up a  
2 new customer at X dollars for X distance. And,  
3 if there's any more, the customer pays the  
4 difference. That's sort of a standard concept  
5 of -- and this is sort of an extension of that,  
6 that we are obligated to do X, if the customer  
7 wants us to do more, they have to pay.

8 PRES. OFCR. MARTIN-McDONOUGH: And why,  
9 like, in what circumstances would this come up  
10 in, I guess? Like, I mean, I understand, for  
11 example, in the old Salem case, where there was a  
12 developer, I don't know the full facts of that  
13 case, but, like, why -- wouldn't ordinarily  
14 Liberty have charged that cost to the developer?  
15 Why did they get charged -- like, why did Liberty  
16 assume the cost of burying those lines as part of  
17 a private development?

18 MR. SHEEHAN: "I don't know", is the  
19 answer. I did read that case awhile ago, I  
20 haven't recently.

21 You know, again, what governs us is  
22 least cost, meaning the required standards, and  
23 in our tariff. And here there's a gap. The  
24 least cost says "keep it overhead". There's

1 really no specific language on doing something  
2 extra, if you will, at the request of a customer.

3 And the other distinction here is this  
4 is not a customer. This is the utility -- this  
5 is the Town acting as the owner of the land. So,  
6 this isn't a single customer, at least not --  
7 we're not serving a movie theater here, and that  
8 movie theater is asking to underground what would  
9 otherwise be overhead. This is the Town of  
10 Salem, as the property owner of the  
11 rights-of-way. And, so, it's -- we can't charge  
12 one customer for this, which is something of a  
13 different concept. Obviously, the Town  
14 separately is a customer, they own buildings that  
15 we serve. But, in this case, they're wearing the  
16 hat as the landowner.

17 PRES. OFCR. MARTIN-McDONOUGH: Well,  
18 what would you do, like, if I just owned a field,  
19 and Liberty was running a distributing line  
20 through my field and need to work on it, and I  
21 was, like, "You need to bury it." What would you  
22 do in that circumstance?

23 MR. SHEEHAN: If that line went to your  
24 house or to a --

1 PRES. OFCR. MARTIN-McDONOUGH: It just  
2 passed through my house, my end.

3 MR. SHEEHAN: I'm sorry. It would  
4 depend on whatever rights we had over your land.  
5 If we had a -- presumably, we'd have an easement  
6 to run wires across your land. And, if that  
7 easement allowed us to have overhead, we would  
8 say "No. If you want to do it underground, you  
9 have to pay for it."

10 PRES. OFCR. MARTIN-McDONOUGH: So, the  
11 difference here is that the Town has statutory  
12 authority to grant licenses that are separate  
13 from what a private landowner would have?

14 MR. SHEEHAN: Well, a landowner, if you  
15 own a field, and there's a wire running across  
16 it, most often, when the wire went up for the  
17 very first time in 1932, that landowner granted  
18 an easement for the electric company to run a  
19 wire, and that easement will say exactly what we  
20 can and can't do, how wide it is, *et cetera*.  
21 And, so, that's what gave us the right to be  
22 there.

23 And an easement is a permanent right.  
24 So, when you come later and say "Please



1           underground it", we have the right to say "No.  
2           Our lines are consistent with the easement you  
3           granted us 50 years ago."

4                       The Town, as landowner, it's different,  
5           because we don't have a permanent right in that  
6           right-of-way. We are there at the Town's  
7           sufferance, as the license statute describes.  
8           So, it is different than a landowner and an  
9           easement. This is sort of like a less -- it's  
10          not as firm rights that we have. And, so, we do  
11          have to respond to landowner Town request to do  
12          something. Like, for here, they want us to move  
13          it six feet, we have to, because that's -- the  
14          Town has the right to ask us to do that. So, it  
15          is different than a customer or a landowner,  
16          where we have permanent real estate rights; here,  
17          we have a license.

18                      PRES. OFCR. MARTIN-McDONOUGH: And just  
19          to be clear, this isn't -- this isn't aimed at a  
20          town's zoning authority, it's only aimed at its  
21          right to tell you what to do, because they own an  
22          easement -- or, you own an easement over this  
23          land?

24                      MR. SHEEHAN: Again, with the town, we

1 don't have an easement.

2 PRES. OFCR. MARTIN-McDONOUGH: Correct,  
3 it's a license.

4 MR. SHEEHAN: Yes. It's this unique  
5 animal of a license that is at issue.

6 And, for your benefit, there's a manual  
7 put out by the New Hampshire Municipal  
8 Association, it has a very good discussion on  
9 this whole thing.

10 Ryan, what's that called?

11 MR. TSANTOULIS: "*A Hard Road to*  
12 *Travel*".

13 MR. SHEEHAN: "*A Hard Road to Travel*",  
14 put out by the New Hampshire Municipal  
15 Association. That has a great, you know, 10-page  
16 summary background. And I've read it a couple of  
17 times. You can sort of get grounded on some --

18 PRES. OFCR. MARTIN-McDONOUGH: But it  
19 wouldn't affect the town's general zoning  
20 authority?

21 *[Atty. Sheehan indicating in the*  
22 *negative.]*

23 PRES. OFCR. MARTIN-McDONOUGH: Okay.

24 MR. SHEEHAN: No. I think zoning is

1 different.

2 PRES. OFCR. MARTIN-McDONOUGH: Okay.

3 Thank you.

4 So, I just asked a few questions.

5 Would anyone like to respond to anything I asked?

6 Town of Salem.

7 MR. COURTNEY: Thank you.

8 I think it would be helpful, when I  
9 file the objection, that I include the  
10 communications between the Town of Salem and  
11 Liberty, as to why the public good requires that  
12 they remove their overhead lines. And, in those,  
13 you'll see the back-and-forth and the interplay  
14 of RSA 231, 159 through 182. And the Town only  
15 has the authority to ask that the equipment be  
16 removed when the public good requires.

17 And the Town presented documentation to  
18 Liberty for many years about why their equipment  
19 cannot remain overhead. And you'll see pictures  
20 of where the poles are now, where the poles are  
21 proposed to be moved to. One pole, and, Roy,  
22 please correct me if I'm wrong here, is right  
23 outside a new Workforce Housing Development.

24 MR. SORENSON: Multiple poles.

1 MR. COURTNEY: Multiple poles. Thank  
2 you. I'm glad Roy is here today.

3 And, so, the Commission will see the  
4 reason why the Town -- the Town is not just  
5 unreasonably, on a whim, asking for the poles to  
6 be removed, but there's a public safety  
7 requirement, a public good, in which the Town is  
8 authorized under 231. And, if the -- if the  
9 utility doesn't like the Town's decision on the  
10 petition and the license, the statute allows the  
11 utility to go to superior court within a certain  
12 amount of days. They haven't done that. They  
13 haven't -- this Commission does not have  
14 jurisdiction to hear that.

15 With respect to your questions, I'll  
16 try to hit them. We can't put the statute 231  
17 aside here. This is -- this is the heart of the  
18 issue. We are unaware of what other states do  
19 with respect to this issue. If the Commission  
20 wants us to do a deep-dive, Mad -- Attorney Osbon  
21 would love to do that, I jokingly say that, but  
22 we can get that for the Commission. But it's  
23 not -- this is state-specific, this is the  
24 statute, you can't put the statute aside for

1           that.

2                         And you asked "What circumstance would  
3           this come up in?" And, again, this is the public  
4           good. This is an area of town that is one of the  
5           most dangerous intersections, and has to be -- is  
6           being redeveloped. The Town has spent millions  
7           of dollars of its own money on this issue.  
8           Obviously, the developer came in and spent its  
9           own money. So, the Town is not just going around  
10          asking Liberty to make the area, you know,  
11          prettier. No, there's a public good for that.

12                        Your third question, I can't read my  
13          handwriting, but it says something like "If I  
14          could" -- oh, "If I had a field?" Well, I think  
15          that's still 231. It's the license requirement.  
16          The Town has the ability under public good for  
17          that. And the Supreme Court has said, in 1957,  
18          I'll read you the quote, it will, obviously, be  
19          in my objection.

20                        PRES. OFCR. MARTIN-McDONOUGH: Well, I  
21          don't want to interrupt, but I don't think that  
22          Liberty, and I'm interested in the OCA and DOE's  
23          opinion on this, too, but I don't think they're  
24          disputing that the Town can order them to take

1 action. I think they would agree with that.

2 I think what they're just saying is, if  
3 the Town does order them to do so, then, I mean,  
4 they're trying to introduce language that would  
5 require the Town to pay for it.

6 But I don't think that they're  
7 disputing, under 231, the Town has the right to  
8 do it.

9 MR. COURTNEY: Sure. And, as the New  
10 Hampshire Supreme Court has advised us in 1957,  
11 "Utilities are required to relocate their  
12 facilities at their own expense whenever public  
13 health, safety or convenience require change to  
14 be made."

15 PRES. OFCR. MARTIN-McDONOUGH: And what  
16 case is that?

17 MR. COURTNEY: *Opinion of Justices*, 101  
18 New Hampshire 527. That will be in the  
19 objection. That will be in my objection.

20 PRES. OFCR. MARTIN-McDONOUGH: Thank  
21 you.

22 MR. COURTNEY: You're welcome. Any  
23 other questions for the Town?

24 PRES. OFCR. MARTIN-McDONOUGH: Not at

1           this time. Thank you.

2                       Does the OCA agree that the issue here  
3           is really, I mean, the Town has the authority to  
4           order them, and the sole issue is whether it has  
5           to pay for it?

6                       MR. KREIS: I have no expertise in  
7           municipal law. I'm not prepared to concede that  
8           the Town has the authority to order this utility  
9           to do anything.

10                      PRES. OFCR. MARTIN-McDONOUGH: Okay.

11                      MR. KREIS: The pure question that has  
12           been teed up by this docket is exactly as  
13           Mr. Sheehan has presented it to you. It is, when  
14           faced with two ways of complying with whatever  
15           the municipality's requirements are, this is  
16           utility is going to pursue the least-cost option,  
17           the Town wants it to pursue something other than  
18           the least-cost option, and the question is "Who  
19           pays the difference?"

20                      And I think that the public utility law  
21           of this state answers that question by saying  
22           "It's the municipality that has to pay."

23                      Now, if I could open up the universe  
24           and raise every possible issue that might be

1           implicated by this, and this is something I might  
2           do in a rate case, if we ever get to have a real  
3           rate case again with this utility, there's a  
4           question about whether or not undergrounding  
5           truly is the least-cost option. I mean, that  
6           really depends on what the life cycle costs of  
7           that kind of construction really are. It's true  
8           that overground or overhead is cheaper than  
9           underground, as far as construction costs go.  
10          But I don't know what the answer to that question  
11          becomes when you look at the overall life cycle  
12          cost of those two options. But that's a rate  
13          case issue. It's not presented here.

14                        I think, for purposes of this case, one  
15          has to assume that the Company is factually  
16          correct, that leaving the lines overhead is  
17          cheaper than undergrounding them. So, who pays  
18          the difference? Answer: Town, matter of law.  
19          So, all of the correspondence between the utility  
20          and the Town, all of the dust that it appears the  
21          Town of Salem would like to kick up here, is  
22          unnecessary.

23                        And, again, I would remind you that  
24          regulation is expensive. And, so, tying up the



1 resources of the Department of Energy, the  
2 Commission, the OCA, and this utility, to suit  
3 the interests of one municipality and its own  
4 subjective determinations about what it thinks  
5 ought to occur within its borders, that's not  
6 reasonable.

7 And I don't care and I have no opinion  
8 about how the Town of Salem manages its affairs  
9 under the law that applies to municipalities. I  
10 don't want to spend any time worrying or thinking  
11 or litigating about that here.

12 PRES. OFCR. MARTIN-McDONOUGH: If New  
13 Hampshire law requires the Town of Salem to pay  
14 the difference, as you said, as a matter of law,  
15 why does Liberty need to amend its tariff? Why  
16 don't they just sue the Town?

17 MR. KREIS: Because it's not a matter  
18 of -- I suppose that the -- the utility could sue  
19 the Town, I suppose. But this is a utility, it  
20 has the right to file tariffs. New Hampshire's  
21 utility law makes that clear. So, it pursues  
22 that avenue. Tariffs, once approved by the  
23 Commission, have the force and effect of law.  
24 That probably is the most expeditious and,

1           frankly, advantageous means for the utility to  
2           achieve its goals. And, in this instance, that  
3           objective is ratepayer-favorable. So, I support  
4           it.

5                       PRES. OFCR. MARTIN-McDONOUGH: Okay.  
6           So, you don't think it's necessary. You just  
7           think that it would be more a reflection of the  
8           actual law?

9                       MR. KREIS: Yes. I think New Hampshire  
10          public utility law allows this utility to do what  
11          it has done, which is file a tariff for approval  
12          by the Commission.

13                      And, by the way, a tariff goes into  
14          effect automatically in 30 days, unless it's  
15          suspended by the Commission. So, I'm not sure  
16          whether the Commission has even done that. So,  
17          query whether that tariff isn't already in  
18          effect?

19                      PRES. OFCR. MARTIN-McDONOUGH: Okay.  
20          Does the DOE have a position on this?

21                      MR. YOUNG: So, I guess the first thing  
22          I'll state is I am also not an expert on  
23          municipal law, as the OCA had stated.

24                      Regarding the tariff changes, I guess

1           it's important just to note for the record, and  
2           maybe you've heard from the parties today, that  
3           Liberty filed the tariff today, I believe, at a  
4           Commission directive. So, that's, I guess, maybe  
5           just a level-setting why we're here today.

6                         And I think I would also clarify my  
7           preliminary remarks regarding next steps in the  
8           case. It does seem that there are some questions  
9           still at hand. I had mentioned "discovery". It  
10          seems that, you know, pleadings or other filings  
11          would be more appropriate, and the DOE is  
12          supportive of that route, if the Commission  
13          decides to go that way.

14                        At this point, we don't have a position  
15          on the questions raised today, the many questions  
16          raised today. I think it will just take a little  
17          looking into to settle on a position there.

18                        PRES. OFCR. MARTIN-McDONOUGH: Okay.  
19          So, what I'm getting from all the parties here is  
20          that this straightforward legal question about, I  
21          mean, no one disputes the Town has the authority  
22          to tell Liberty what to do within its license, it  
23          just is whether Liberty has to pay for it, and  
24          that's the sole dispute between the Town and

1 Liberty here.

2 And that the most -- and there might be  
3 other disputes as to whether it is in the public  
4 good, but the preliminary question, as to whether  
5 this would even be a legal -- this would be a  
6 legal change order to make is whether the Town's  
7 assertion or Liberty's assertion is true here,  
8 and that that can be resolved through briefing,  
9 because there are no factual disputes as to this  
10 legal question. Is that accurate?

11 MR. SHEEHAN: I believe so. I would  
12 characterize, and I know you were just  
13 summarizing, but what the Town can order Liberty  
14 to do is certainly governed by the statute, the  
15 license statute. And it's not a blanket  
16 authority. And that's the whole question here,  
17 is how much authority is embodied in that  
18 statute? Can they tell us to do the more  
19 expensive option? And, if so -- and it always  
20 comes down to "who pays?"

21 Frankly, Liberty is agnostic. We just  
22 want to know the answer.

23 PRES. OFCR. MARTIN-McDONOUGH: Uh-huh.

24 MR. SHEEHAN: If we have to charge all

1 customers, fine. If Salem has to pay, fine. We  
2 just need the answer. Which is what the  
3 Commission asked us to do a couple years ago, is  
4 file something so we can get an answer. So,  
5 that's really our goal here is to get an answer  
6 from the Commission, "What's the way we should go  
7 on this, charge the Town or charge all  
8 customers?"

9 PRES. OFCR. MARTIN-McDONOUGH: Okay.

10 MR. SHEEHAN: And just as an aside,  
11 I've been reminded, at least two states have  
12 similar concepts. ComEdison, in Chicago, we have  
13 a person on staff who came from there, and he  
14 mentioned that they have a tariff. We can  
15 provide this in our filing. My understanding,  
16 Massachusetts has a system where projects such as  
17 this are actually a surcharge on the bills of the  
18 town that asked for it. So, in this case, it  
19 would be a surcharge on all Salem customer bills  
20 to pay for such a project. And I'll find some  
21 support for that, too.

22 So, it's not totally apples-to-apples,  
23 but the concept is there, where all customers  
24 don't necessarily pay for "these kinds of

1 projects", and I put that in quotes.

2 PRES. OFCR. MARTIN-McDONOUGH: And it  
3 does seem like there might be other questions, I  
4 mean, whether like it would be done through a  
5 surcharge to Salem customers, or whether like it  
6 would be a direct bill to the Town. Or, I mean,  
7 what would we do if there was a dispute between  
8 the Town and Liberty as to what the least-cost  
9 option was?

10 Seems like there might be additional  
11 issues that would be raised after-the-fact, but  
12 they're secondary to whether the Town's objection  
13 and motion to dismiss in the first place.

14 MR. SHEEHAN: Agreed.

15 PRES. OFCR. MARTIN-McDONOUGH: I mean,  
16 do you -- what would be the best way to resolve  
17 this? Do you think it would be, and I'll check  
18 with Liberty and let other parties respond, would  
19 it make sense to confer after this and make a  
20 briefing schedule? Or, would Liberty prefer to  
21 wait until the Town files a motion to dismiss?

22 MR. SHEEHAN: I don't think the label  
23 of the filing is that important, whether you call  
24 it a "Motion to Dismiss our filing", or simply

1 a -- certainly, our practice would be a legal  
2 memorandum, supporting why the Commission should  
3 or should not approve our proposed tariff. I  
4 think the net results are the same, is you'll get  
5 legal authority from a couple folks to answer the  
6 question on (a) confirming the Town can tell us  
7 to move, and (b) who pays for it if it's not the  
8 least cost?

9 PRES. OFCR. MARTIN-McDONOUGH: When  
10 would Liberty be able to file? I'm imagining it  
11 would be like an initial filing, and then like  
12 five days for reply briefs or something. But  
13 when would be like a reasonable schedule for  
14 Liberty?

15 MR. SHEEHAN: Frankly, I'd ask the Town  
16 to file first. We've put our position out there  
17 in the Petition, and there's some support for it.  
18 So, my preference would be for the Town to file  
19 its brief, and give us a couple weeks to respond.

20 So, I would, frankly, ask that you ask  
21 that question of the Town first of when they  
22 file.

23 PRES. OFCR. MARTIN-McDONOUGH: Okay.  
24 And do you think a hearing would be -- I mean,

1           should we just cancel the hearing or would you --  
2           do you think a hearing would be helpful, or do  
3           you think we should just keep it on the calendar?

4                   MR. SHEEHAN: I'd rather cancel the  
5           hearing, it's probably wise to keep it on, in  
6           case the Commissioners have questions on what we  
7           turn in, that kind of thing. But, hopefully, our  
8           briefs will be so clear it's not needed.

9                   PRES. OFCR. MARTIN-McDONOUGH: All  
10          right. Thank you.

11                   And the Town, do you have a sense of  
12          when you would be able to file a motion to  
13          dismiss or an initial briefing?

14                   MR. COURTNEY: Sure. Yes. And however  
15          you want us to term it, you know, a "memo",  
16          "objection to the amended Petition", or a "motion  
17          to dismiss", I think the result is the same, our  
18          position is on the paper the same.

19                   We can do that within the next two  
20          weeks, if that's -- if that works for the  
21          Commission? And I know it's the summertime, so,  
22          you know, five days to respond is probably a  
23          little too soon for Liberty, DOE, and OCA. So,  
24          the Town's happy to work with, you know, two



1 weeks out, or whatever works for everyone.

2 PRES. OFCR. MARTIN-McDONOUGH: Okay.

3 So, you would be able to file something on the --  
4 like, by the 23rd?

5 MR. COURTNEY: Yes.

6 PRES. OFCR. MARTIN-McDONOUGH: To the  
7 OCA, I wasn't sure if you were interested in  
8 filing anything in this docket. But, if -- does  
9 a schedule of -- and would you want to file  
10 something initially, or not file anything at all,  
11 or would you want to wait for the Town, and then  
12 file a reply brief, similar to Liberty?

13 MR. KREIS: I think our position is  
14 similar to Liberty's. I would like the  
15 opportunity to rebut or contest whatever  
16 arguments the Town intends to make.

17 Again, as far as I'm concerned, this  
18 tariff is already in effect. Because it was  
19 filed, 30 days went by, nothing happened. It  
20 already enjoys the force and effect of law.

21 And I guess I would caution everybody,  
22 again, regulation is expensive. So, I know the  
23 Commission likes to have hearings, likes to get  
24 all the parties in here and kick issues around

1 and spend time. But that costs money, and it is  
2 unnecessary here. So, this docket should be  
3 resolved on the papers. And we shouldn't get  
4 distracted by authorizations in other states to  
5 tax costs like this to ratepayers, either  
6 municipal ratepayers or all ratepayers.

7 The bill here should go to the Town.  
8 And, if the Town wants to answer to its voters  
9 about how it imposed costs that the voters then  
10 have to bear, that is a matter between the Town  
11 of Salem and its public. Utility customers  
12 should not have to pay for these things.

13 PRES. OFCR. MARTIN-McDONOUGH: But, if  
14 the Town filed something on July 23rd, would you  
15 be able to respond to it by August 6th? Is that  
16 like a reasonable timeframe?

17 MR. KREIS: Yes.

18 PRES. OFCR. MARTIN-McDONOUGH: And  
19 would that work for the DOE as well?

20 MR. YOUNG: I was just looking at my  
21 calendar here. Yes, I believe that would work,  
22 too.

23 PRES. OFCR. MARTIN-McDONOUGH: Okay.  
24 And would that work for Liberty?

1 MR. SHEEHAN: Yes.

2 PRES. OFCR. MARTIN-McDONOUGH: Okay.

3 And, from what I'm getting, that's pretty much  
4 the only process we need at this point is the  
5 initial motion to dismiss or initial  
6 jurisdictional briefing, and then -- which would  
7 be due July 23rd, and then response briefs by  
8 August 6th. And we can keep the hearing on the  
9 record, but it may not be necessary, because it  
10 seems like this might be resolvable on the  
11 papers.

12 MR. SHEEHAN: That sounds reasonable to  
13 us. I note the hearing is the week after ours  
14 would be filed. So, the Commission would have  
15 some time to look at them and say "We don't need  
16 a hearing", and issue -- order to issue, or  
17 "Please come in and let's talk about it."

18 PRES. OFCR. MARTIN-McDONOUGH: That  
19 certainly does work well.

20 Okay. Well, it seems like we know what  
21 the issue is, and we have a process to go  
22 forward. So, unless there's any other issues  
23 that anyone would like to raise here?

24 *[No verbal response.]*

1 PRES. OFCR. MARTIN-McDONOUGH: Okay.  
2 Thank you. And, like I said, I'll file a -- oh,  
3 I'm sorry. Did you want to say something?

4 MR. COURTNEY: No, I was going to say  
5 "thank you".

6 PRES. OFCR. MARTIN-McDONOUGH: Oh.  
7 Thank you. So, I will file a draft prehearing  
8 order in the docket with the recommendation that  
9 the Commission approve it.

10 And, then, I -- does anyone know if  
11 there's a statutory timeline for -- I didn't see  
12 it in 363:17, like a statutory timeline to object  
13 to recommendations by a hearings examiner? Or, I  
14 mean, I would imagine giving like two or three  
15 days to object to it, and then otherwise allowing  
16 the Commission to approve it. Does that make  
17 sense to people? I wasn't sure if there was a  
18 statutory deadline for that.

19 MR. SHEEHAN: I'm not sure of a  
20 deadline. In the context of this case, a couple  
21 days is fine. Because, frankly, I don't expect  
22 too much in the report to be -- what's the  
23 word? -- something that we would dispute.

24 PRES. OFCR. MARTIN-McDONOUGH: Okay.

1 All right. Awesome. Well, thank you, everyone.  
2 Unless there's anything else, I think we are good  
3 to adjourn for today. Thank you.

4 ***(Whereupon the prehearing conference***  
5 ***was adjourned at 9:43 a.m.)***

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