

**THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

DE 24-_____

OFFICE OF THE CONSUMER ADVOCATE

PETITION TO INTIATE INVESTIGATION

NOW COMES the Office of the Consumer Advocate and pursuant to RSA 374:7 petitions the Commission to initiate an investigation regarding the noncompliance of Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (“Liberty”) with legally binding requirements with respect to vegetation management. The requirements are those of N.H. Code Admin. Rules Puc 307.10 (entitled “Tree Pruning Standards”) and the settlement agreement (“Settlement Agreement”) in the Company’s most recent rate case (DE 19-064, tab 59) as approved by the Commission in Order No. 26,376. Since the Commission’s approval of the Settlement Agreement four years ago, Liberty has had sufficient time and opportunity to review and conform its Vegetation Management Program (“VMP”) to assure that the program fits into and supports its service obligations as an electric distribution utility. Instead, Liberty has allowed an increasing inventory of deferred vegetation management work to build up – failing to meet, by Liberty’s own admission, its obligations under either Rule Puc 307.10 or the Settlement Agreement – an agreement Liberty entered into freely with both the Office of the

Consumer Advocate and the Staff of the Commission.¹ As approved by the Commission, the settlement has the force and effect of law.

An investigation in a new docket is warranted because in Liberty’s currently pending rate case, Docket No. DE 23-039, the Department of Energy (“Department”) has a pending Motion to Dismiss (tab 90) based on the unreliability of Liberty’s underlying books and records. The Motion to Dismiss places the future status of that rate case into doubt and raises the question of whether Liberty’s lackluster and noncompliant record of vegetation management – a critical component of reliability and cost-effectiveness – will even be addressed should the Department succeed. The likelihood of the Department’s success in dismissing the rate case is seemingly increasing in light of Commission Order No. 27,000, which expresses the Commission’s disappointment in Liberty’s judgment and orders the Department to retain independent auditors to review Liberty’s books and records. Order No. 27,000 (April 30, 2024) in Docket No. DE 23-039 (tab 134) at 6-8. In the event the rate case is not dismissed, the rate case is likely to be delayed due to the Department performing an audit pursuant to Order No. 27,000 which will further delay any review of Liberty’s vegetation management beyond the current season and likely defer potential corrective action even further.

Additionally, the Commission cannot accept statements made by Liberty’s counsel at the DE 24-044 April 25, 2024 hearing that the Commission is powerless

¹ By virtue of the creation of the Department of Energy on July 1, 2021, what was in 2020 the Staff of the Commission became the Regulatory Support Division of the Department.

to enforce the Settlement Agreement and indicating that Liberty's shareholders have no liability for the failures of management and the increasing cost burdens those failures are placing on Liberty's residential customers. Such statements directly contravene the supervisory powers of the Commission pursuant to RSA 374, which include the power enumerated in section 7 to investigate and issue orders based on those findings. Further, Liberty's statements undermine the settlement negotiation process by sending a clear signal that, in this case, the parties cannot be assured they will receive the benefit of the bargain agreed to because Liberty cannot be held accountable to its Commission-approved commitments. *See* Order No. 25,987 (2017) in DG 15-362 (Liberty Utilities (Energy North Natural Gas) Co., Petition for Franchise Expansion) at 10 ("We encourage parties to settle issues through negotiation and compromise because it is an opportunity for creative problem solving, allows the parties to reach a result in line with their expectations, and is often a better alternative to litigation") (citations omitted). Order No. 26,376 found the Settlement Agreement to be just, reasonable, and in the public interest, and therefore, Liberty's noncompliance begs an investigation to be conducted to determine to what extent shall Liberty be held accountable.

Therefore, given the unfortunate circumstances described above, the OCA states the following in support of its petition:

I. The Commission's Investigative Authority

Pursuant to RSA 374:7, the Commission has the statutory authority to investigate public utilities and order improvements to its service or methods.

Specifically, RSA 374:7 explicitly authorizes the Commission to “investigate . . . the methods employed by public utilities in manufacturing or transmitting, or supplying gas or electricity for light, heat or power . . . and, after notice and hearing thereon, the commission shall have power to order all reasonable and just improvements and extensions in service or methods.” Clearly, the Commission may use this authority to investigate Liberty’s VMP and order reasonable and just improvements. And since Order No. 26,376 states that the Settlement Agreement is just and reasonable and serves the public interest, the Commission may order Liberty to comply with the express terms of the Settlement Agreement.

II. Liberty’s shareholders are responsible for Liberty’s noncompliance.

By its own testimony, Liberty identified the miles of vegetation management required to be on a four-year (214), five-year (194), and “5+” year (165) trim cycle. Liberty’s Testimony Attachments in DE 24-044 (tab 1) at Bates page 30. Via that same testimony, Liberty admits it was only able to complete 146 miles during the implementation period of its 2023 Vegetation Management Plan. Liberty’s Testimony in DE 24-044 (tab 1) at Bates page 13. Relevant to Liberty’s VMP, the Settlement Agreement requires:

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.

Settlement Agreement in Docket No. DE 19-064 (tab 59), at 11 (emphasis added).

Therefore, by its own admission, Liberty is not meeting the legally binding requirement of a four-year trim cycle pursuant to the Settlement Agreement because it has completed 146 miles instead of 214 miles of vegetation management work. Further, Liberty is also not meeting the requirements of Puc 307.10, which requires utilities to be on no more than a five-year cycle, because Liberty only completed 146 of 194 miles of vegetation management work. N.H. Code Admin. Rules Puc 307.10(a).

Liberty also states it has been unable to meet the Settlement Agreement and Puc 307.10 requirements in light of certain circumstances, such as Consolidated Communications no longer paying Liberty its portion of the VMP program that left Liberty with deficient funding. Liberty's Testimony Attachments (tab 1) at Bates 27-28. However, Liberty fails to mention that Commission Order No. 26,620, which addressed this issue by providing 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. Order No. 26,620 (April 28, 2022) in Docket No. DE 22-014 (tab 12) at 7. Meaning, Liberty needed to figure out its revenue shortfall through another means than simply passing through costs to its customers.

Liberty also overlooks its testimony from DE 21-138 (the Company's 2022 VMP docket) in which Liberty committed to spend \$3,069,639, of which \$2,420,000 would come from rates and the additional \$649,639 would come from earnings, while the

issue of increased costs and funding would be taken up in the Company's next rate case. Liberty's Testimony (November 15, 2021) in Docket No. DE 21-138 (tab 1) at Bates page 19. Further, there would be no subsequent rate request from Liberty to make up for that \$649,000. Transcript in Docket No. DE 21-138 (tab 17) at 35-36. Liberty's witnesses even testified that the \$649,000 coming from earnings was the right thing to do:

[Chairman Goldner] My question is about intent. Is it the Company's intent to spend that amount [\$3,069,639] for vegetation management? Is it the Company's intent to spend that amount of money regardless of the outcome of any other you know, pending cases?

[Liberty witness Christopher Steele] ... The Company has intended to spend \$3 million on tree trimming. We believe **it's the right thing to do for our customers**. We believe **it's the right thing to do for vegetation management**. And we believe that the **safety of our system and the safety of our customers and the safety of our line workers is imperative to do this work**.

[Chairman Goldner] Thank you. So just to make sure I understand, if in Docket 22-014 100k or 200k or zero is allowed, the Company would still take – would still take whatever the delta is. If it's zero, **it'll be 649k from earnings**.

[Christopher Steele] That is correct.

Id. at 65-66 (emphasis added). This was confirmed further by the Commission via Order No. 26,624 stating that Liberty confirmed any expenditures over the Commission approved amount (\$2,420,000) would be borne by its shareholders. Order No. 26,624 (May 10, 2022) in Docket No. DE 21-138 (tab 15) at 4.

Therefore, Liberty, via its own witnesses under oath, have represented that Liberty's shareholders bearing the delta in cost between the \$2,420,000 Settlement Agreement cap and the actual cost was the right thing to do not just for its customers, but also for Liberty and the safety of its line workers.

However, as addressed above and by Liberty's own admission, Liberty is reneging on its legally binding commitments because it is neither meeting its obligations under Puc 307.10 or the Settlement Agreement. And despite the Settlement Agreement requiring a four-year trim cycle and preventing Liberty from recovering *any* expense in excess of \$2,420,000 via reconciliation or *otherwise*, Liberty is seeking a \$4 million VMP budget in its pending rate case, which includes the increasing cost of its deferred vegetation work it should have already done but cannot otherwise recover presently from customers pursuant to the Settlement Agreement. Liberty's Testimony of Heather Green in Docket No. DE 23-039 (tab 6) at Bates II-368 – 372 (explaining that since 2020, Liberty has deferred 243 miles of vegetation management work, and that is increasing vegetation management costs).²

Liberty freely entered into that Settlement Agreement and made legally binding commitments therein. No such change has happened except Liberty apparently now believes in hindsight that it negotiated a poor deal. Therefore, Liberty cannot be allowed to escape its Commission-approved commitments, defer its legally binding obligations under the Settlement Agreement or Puc 307.10, and expect to pass the increasing cost of work it should have already performed pursuant to the Settlement Agreement.

² Liberty indicated in its DE 23-039 pending rate case testimony that it has a total of 243 deferred miles, but in its DE 24-044 VMP testimony attachments it states 214 miles. In either instance, the OCA estimates Liberty's vegetation backlog to be slightly in excess of a year's worth of line clearing. Technical Statement of Charles J. Underhill in DE 24-044 (tab 13) at 2.

III. Liberty’s noncompliance has resulted in increasing cost burdens on residential customers.

Liberty is falling further behind each cycle on keeping pace with appropriate levels of vegetation management as evidenced by Liberty’s own filing in DE 24-044, “Table 3 — Summary of VMP 2023 Costs.” Liberty’s Testimony Attachments in Docket No. DE 24-044 (tab 1) at Bates page 30. This table demonstrates that Liberty is presently on a “5+” year cycle contrary to the Settlement Agreement and has accumulated 214 deferred miles of vegetation work. *Id.* According to Liberty’s calculations, it would need \$6,023,957, or \$3,603,957 *in excess* of the \$2,420,000 overage cap, to fulfill its service commitments under the Settlement Agreement and Puc 307.10. *Id.* However, \$6,023,957 assumes that Liberty’s calculation is both correct, and accurately captures the cost of Liberty’s noncompliance.

An example of what is not reflected in Liberty’s calculation is that the OCA is concerned residential customers are paying higher than necessary rates due to necessary vegetation management taking place during storm restoration events rather than through more controlled and cost-effective vegetation management programs. The cost of responding to weather-related service interruptions in terms of resources deployed is significantly greater compared to those of planned vegetation management. The OCA is also concerned about the extent vegetation contributes to Liberty’s outages and how that might have been further mitigated with a four-year trim cycle instead of a “5+” year trim cycle. Absent Commission-intervention, residential customers are not receiving the benefit of the Settlement Agreement, including the \$2,420,000 cap that protects residential customers from

inappropriate and excessive costs, as indicated above. Thus, the OCA thinks it unlikely that Liberty's \$6,023,957 accurately accounts for the cost of Liberty's noncompliance.

Further, Liberty's most recent VMP testimony from DE 24-044 did not provide a Vegetation Management Plan for 2024, as has been the practice in previous filings. Instead, Liberty's counsel represented at the April 25, 2024 hearing in Docket No. DE 24-044 that Liberty had filed for a revised budget to support its Vegetation Management Plan in its currently pending rate case, DE 23-039. However, that proceeding is presently stayed until May 15, 2024 with a pending Motion to Dismiss by the Department. This creates uncertainty with respect to how Liberty intends to proceed with vegetation management in 2024 and makes it impossible for the Department, the OCA, and the Commission to assess the prudence, reasonableness, and the appropriateness of Liberty's 2024 vegetation management activities. Additionally, any delays in the rate case, such as the Department performing its audit pursuant to Order No. 27,000, will further delay any review of vegetation management beyond the current season and likely defer potential corrective action even further.

Therefore, an investigation would serve the public interest by producing findings that demonstrate the effect of Liberty's noncompliance, guide the parties and the Commission on how to assess the reasonableness of Liberty's future vegetation management activities, and help mitigate residential customers' exposure to higher than necessary rates.

IV. Conclusion

For the reasons stated above, the Commission should initiate an investigation pursuant to RSA 374:7 into Liberty's noncompliance with both N.H. Code Admin. Rules Puc 307.10 and the DE 19-064 Settlement Agreement. Residential customers are facing increasing cost burdens resulting from Liberty's admitted noncompliance and the OCA looks forward to participating in any such investigation that addresses these higher than necessary costs.

WHEREFORE, the OCA respectfully requests that this honorable Commission:

- A. Initiate an investigation pursuant to RSA 374:7 regarding Liberty's noncompliance with both N.H. Admin. Code Puc 307.10 and the DE 19-064 Settlement Agreement,
- B. Issue an order based on the findings of said investigation that brings Liberty back into compliance,
- C. Issue an order clarifying that Liberty's shareholders are accountable for the costs resulting from Liberty's noncompliance, and
- D. Grant such further relief as shall be necessary and proper in the circumstances.

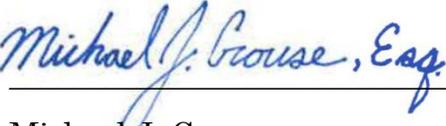
Dated: May 10, 2024



Michael J. Crouse
Staff Attorney
Office of the Consumer Advocate
21 South Fruit Street, Suite 18
Concord, NH 03301
(603) 271-1173
Michael.J.Crouse@oca.nh.gov

CERTIFICATE OF SERVICE

I hereby certify that a copy of this petition was provided via electronic mail to counsel for Liberty and counsel for the New Hampshire Department of Energy.



Michael J. Crouse