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DEPARTMENT OF ENERGY
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August 13, 2024

Daniel C. Goldner, Chairman
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, NH 03301

Re: DE 24-073; Petition of Office of the Consumer Advocate to Initiate Investigation;
Position of the Department of Energy

Dear Chairman Goldner:

Pursuant to the Public Utilities Commission Commencement of Adjudicative Proceeding and Notice of Prehearing Conference, issued in this docket on June 18, 2024, the Department of Energy (Department or DOE) hereby provides its position on the Petition of the Office of the Consumer Advocate (OCA).

The Department is generally supportive of the Petition. OCA accurately sets forth the state of vegetation management planning and practice by Liberty Utilities (Granite State Electric) Corp., d/b/a Liberty (Liberty or the Company). In Liberty's last completed rate case (DE 19-064) in a settlement signed by Liberty on May 22, 2020 and approved by Commission Order No. 26,376 dated June 30, 2020, Liberty agreed to undertake cycle tree trimming and vegetation management on a four-year cycle, while collecting from ratepayers for that work, not more than \$2,420,000 per year (a base amount of \$2.2M plus 10% excess if needed to meet the trimming requirements of the settlement agreement).

In the annual vegetation management planning and reconciliation dockets since DE 19-064, Liberty has provided information that clearly demonstrates that Liberty has not met the 4-year cycle trim requirement it agreed to. A four-year trim cycle would equate to trimming over 200 circuit miles per year. DE 22-014, Tr. 4/19/22 at 20-22. In 2021, Liberty trimmed 85 miles at a cost of \$1.9M (DE 22-014, Exh. 1 at 21-22); in 2022, 162 miles for \$3.2M (DE 23-031, Exh. 1 at 21-22); and in 2023, 146 miles for \$2.1M (DE 24-044, Exh. 1 at 21-22). In 2021 and 2023, when Liberty spent less than the \$2.2M settlement amount, Liberty was approved to carry the underspending forward to the next years' budget. DE 22-014, Order No. 26,620 at 4; DE 24-044, Order No. 26,998 at 5. In 2022, when Liberty spent more than the \$2.2M, plus 10%, plus the approved carry-forward amount, Liberty did not recover the excess costs from ratepayers. DE 23-031, Order No. 26,805 at 1-2. Thus, from a rate perspective to date, Liberty's customers have been afforded the protections provided by the cost recovery cap in the DE 19-064 settlement.

However, as early as 2022, the Department noted that Liberty’s underperformance had led to a substantial backlog of work, and the Department requested the opportunity to address the issues surrounding the backlog in future rate proceedings. DE 22-014, Tr. 4/19/22 at 129-130. The DOE views resolution of the backlogged work (primarily who pays for addressing the backlog) as a rate issue and the key issue in the OCA’s petition in this case. This issue could have been addressed in DE 23-039 (Liberty’s pending rate case) but that case has been stalled for reasons unrelated to vegetation management. In DE 23-039, Liberty proposes to move to a five-year trimming cycle (while also addressing the backlogged work) at an annual cost of between \$4.0M and \$4.6M over the three-years of its proposed multi-year rate plan. DE 23-039, Tab 11, Testimony of Green and Sparkman at II-537-II-538. The Department likewise recommended that Liberty move to a five-year trim cycle, but at a much lower annual cost (\$2.5-\$3.0M) and with a focus on significantly reducing Liberty’s backlog in hazard tree removals for the first year. DE 23-039, Tab 91, Testimony of Dudley, Willoughby, and DeVirgilio at 64. This issue has not been resolved in DE 23-039, as discussed.

The Department was struck by Liberty’s statement in DE 24-044 (Review of Liberty’s 2023 Vegetation Management Program, Reconciliation and Rate Adjustment) that if the Commission were to enforce the terms of the rate case settlement agreement from DE 19-064 that such enforcement would amount to a “taking” – presumably referring to an unconstitutional taking of property without due process and just compensation in violation of the Fifth and Fourteenth Amendments of the US Constitution. DE 24-044, Tr. 4/25/24 at 110-111. The Department rejects that position and does understand how Liberty could or would have been deprived of due process or just compensation in a case where it agreed to and signed the very settlement terms (including specifying compensation to be recovered) it now contests.

Given that the DE 23-039 rate case is currently stayed, the Department supports the PUC investigating and deciding in this docket an appropriate rate remedy for Liberty’s vegetation management underperformance since the DE 19-064 rate case settlement. The focus of the inquiry should be on how to address the backlogged work and who funds such efforts (ratepayers or shareholders).

The DOE does not believe it should conduct the investigation into Liberty’s underperformance under the Department’s investigatory authority because this is essentially a rate issue (*i.e.*, if/how Liberty should be allowed to charge customers for backlogged vegetation management work) which falls within the Commission’s authority under RSA 378:7. Similarly, because this is a ratemaking issue, a complaint investigation under RSA 365:1-4 is not appropriate. Such investigations generally follow customer complaints against a utility, which is not the case here.

Accordingly, it is the Department’s position that the investigation sought by the OCA appropriately falls under the jurisdiction of the Commission to conduct, with the Department actively participating as a party.

Consistent with current practice, this letter is filed electronically.

/s/ *Paul B. Dexter*

Paul B. Dexter, DOE Legal Director

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