

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

**Docket DE 24-073**

**OFFICE OF THE CONSUMER ADVOCATE**

**Show Cause Proceeding**

**MOTION FOR REVISED PROCESS**

NOW COMES Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (“Liberty” or the “Company”) by and through its undersigned attorneys, and respectfully moves the New Hampshire Public Utilities Commission (the “Commission”) to revise the procedural schedule to allow for development of the record prior to any legal briefing. Currently, the only schedule applicable to this proceeding is the briefing schedule issued on August 28, 2024 allowing reply briefs to be filed on November 5, 2024. In support of this Motion, Liberty states as follows:

1. The parties to this proceeding are Liberty, the New Hampshire Department of Energy (“DOE”), and the Office of the Consumer Advocate (“OCA”).
2. As noted above, on August 28, 2024, the Commission issued its Procedural Order Re: Post-Hearing Briefing (the “Procedural Order”) to allow the parties an opportunity to address preliminary legal issues through initial and reply briefs. The parties submitted initial briefs on October 22, 2024. The current deadline for reply briefs is November 5, 2024.

3. In the course of preparing a reply brief, Liberty has determined that the procedural schedule put forward by OCA at the outset of the prehearing conference on August 27, 2024, was, in fact, the appropriate process to address the underlying issues in this proceeding, consistent with how the Commission has proceeded with similar dockets in the past. As we understand now, there are factual predicates that need to be established in order for the Commission to have a basis on which to decide the issues raised in this proceeding. As we prepare our reply brief, it has become clear to us that foundational facts and circumstances necessary for the Commission to resolve the contested issues judiciously and on the basis of evidence are not included in the record. Thus, the Company cannot prepare its reply brief and respond to claims of the parties without record evidence that only the Company can provide, as OCA duly contemplated. The development of the proper factual record will need to occur through a modicum of administrative process, including through the filing of pre-filed testimony, discovery and, potentially, an evidentiary hearing.
4. Absent factual information that only the Company can provide, the Commission will not be in a position to render a lawful decision on the colorable issues raised by OCA in its original complaint. OCA has reasonably called into question the Company's performance commitments relating to the vegetation management program that customers are paying for. Although the Company does not agree with OCA's claims, OCA has raised questions that require a full response including factual evidence. Specially, the OCA has raised questions regarding the Company's performance that cannot be addressed purely through legal arguments and instead require testimony and discovery, as initially proposed. We apologize for any inconvenience that this changed

perspective may cause for the Commission and the parties and request the indulgence of the Commission to allow for a presentation of factual information.

5. An investigation by the Commission will allow any decisions issued in this proceeding to be based on the relevant factual evidence and legal analysis.
6. Based on the foregoing, the Company proposes to modify the procedural schedule to allow for investigation of the Commission's Show Cause order. As indicated below, the Company was unable to reach the OCA<sup>1</sup> and the DOE required additional time to consider the Company's request. However, DOE does not object to a stay of the reply brief deadline to allow the parties to discuss the Company's request to expand the schedule, including details for any such schedule. The Company is proposing the following procedural schedule for the parties' consideration and feedback.

- (a) Stay of the deadline for reply briefs, currently November 5, 2024
- (b) November 22, 2024, Initial Testimony from Liberty due
- (c) December 6, 2024, Discovery on Liberty ends
- (d) December 13, 2024, Deadline for Liberty responses to discovery
- (e) December 20, 2024, Testimony, if any, due from DOE/OCA
- (f) December 27, 2024, Discovery on DOE/OCA, if any<sup>2</sup>
- (g) January 6, 2025, Deadline for DOE/OCA responses, if any
- (h) January 14, 2025, Deadline for Company Rebuttal Testimony, if any

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<sup>1</sup> The Company attempted to reach the OCA via both electronic mail and telephone but had not received a response at the time of filing this motion.

<sup>2</sup> Please note that Liberty does not currently contemplate issuing any discovery on DOE/OCA, particularly over the holidays. However, this is a procedural placeholder, so that the Company has not waived any rights that may become necessary to exercise.

- (i) Evidentiary Hearing -- to be determined by the Commission
- (j) Post-hearing briefing -- to be determined at hearing.

7. The Company has developed this proposed schedule to be consistent with the OCA's proposal at the prehearing conference and the schedule approved by the Commission in Docket DG 11-196 but will work with the parties to incorporate their feedback. See, 2024 Aug. 27 Tr. at 7, citing DG 11-196. In Docket DG 11-196, the responding utility (Unitil) was permitted an opportunity to submit testimony in response to an order to show cause in order to meet its burden of proof. See, DG 11-196, Order No. 25,296, at 3.
8. The Company acknowledges that this proposal represents a reversal of its position at the pre-hearing conference and accepts responsibility for any confusion or inconvenience that this may cause to the parties or the Commission. However, amending the procedural schedule at this juncture will ensure that there are no further delays and that the process can move forward in a linear fashion. Absent an amendment of the schedule, the Commission will be tasked with reaching conclusions based on partial information or information that is scattered across numerous dockets.<sup>3</sup> The Company is therefore respectfully requesting this opportunity to compile the relevant information and present it in this docket for review in an organized and complete manner. The Company will take all reasonable steps to make the remainder of the proceeding as collaborative as possible to reach a resolution on the merits.

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<sup>3</sup> The Company's annual vegetation management program filings are informative regarding its performance but are submitted in individual dockets. As filed, those submissions do not contain the facts necessary to respond to the claims alleged by the parties and therefore do not support Commission action to resolve the issues in the proceeding. The proposed procedural schedule will facilitate and ease the Commission's review by formally bringing all relevant information into this docket, where it can be challenged and contested by the parties.

9. The Company also recognizes that the parties have already filed initial briefs, including the Company's initial brief. The Company suggests that all parties be given an opportunity for post-hearing briefing, following the close of the evidentiary record, and has included that step in the proposed procedural schedule. All parties would have an opportunity to respond fully to the information that the Company anticipates presenting in the schedule outlined above.
10. The Company has reached out to the parties to this proceeding and is authorized to represent that DOE does not object to a stay of the deadline for reply briefs. The Company was unable to reach OCA regarding this request. The Company will continue to work with the parties to address its request and provide an update to the Commission no later than close of business on Friday, November 8, 2024.
11. The Commission's granting of this Motion will not unduly delay the proceeding or adversely affect the rights of any party to this docket. Granting this motion will also provide the Commission with the necessary evidentiary record to support its decision and will assure that the proceeding is able to move forward in an efficient manner. Conversely, the Company's rights are undermined without a reasonable opportunity to provide factual information not already filed in a Commission docket. Because the Company comes to this request as a change in position, the Company appreciates any latitude that the Commission is willing to provide.

WHEREFORE, Liberty respectfully requests that this Commission:

- A. Issue an order that stays the deadline for reply briefs and allows the Company an opportunity to propose a revised procedural schedule for this docket that allows for development

of a factual record, as outlined in Paragraph 3 of this Motion following collaboration with the other parties; and

B. Grant such additional relief as it deems appropriate.

Dated: November 1, 2024

Respectfully submitted,

**LIBERTY UTILITIES (GRANITE STATE  
ELECTRIC) CORP. D/B/A LIBERTY**

By its Attorneys,



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**CERTIFICATE OF SERVICE**

I hereby certify that on November 1, 2024, a copy of this motion has been electronically forwarded to the service list in this docket.

A handwritten signature in blue ink that reads "Jessica Buno Ralston". The signature is written in a cursive style with a large initial "J" and a decorative flourish at the end.

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Jessica Buno Ralston