STATE OF NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION
INTER-DEPARTMENT MEMORANDUM

Date: April 17, 2015

TO: Commissioners

FROM: Michael Sheehan, Hearing Examiner

RE: DE 15-087; Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities

Calendar Year 2014 Reliability Enhancement and Vegetation Management Plan Results and Reconciliation

HEARING EXAMINER'S REPORT

At your request I presided over the April 14, 2015, hearing in this matter. Liberty seeks, first, to recover $2,201,899 in capital costs incurred during calendar years 2013 and 2014 for its reliability enhancement program (REP), to be collected through a proposed increase in its revenue requirement of $377,950. Second, Liberty seeks to recover $35,166 over the course of one year, representing the 2014 operating and maintenance (O&M) expenses incurred in excess of the base O&M budget. Liberty noted that this O&M figure includes a request to recover from ratepayers $245,751 that Liberty expected but did not receive from FairPoint Communications as a contribution toward the vegetation management program (VMP). Liberty also filed its annual report on the two programs.

Appearances: Sarah B. Knowlton, Esq. for Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities
Susan W. Chamberlin, Esq., Consumer Advocate
Suzanne G. Amidon, Esq. for Staff of the Public Utilities Commission

Witnesses: Liberty presented the following panel of witnesses: Heather M. Tebbetts, Jeffrey Carney, and Kurt F. Demmer (who adopted the written testimony of Christian Brouillard). No other witnesses testified.

Exhibits: The following exhibits were admitted into evidence, all without objection.

Exhibit 1	Joint Testimony of Christian Brouillard and Jeffrey Carney
Exhibit 2	Reliability Enhancement Plan (REP) and Vegetation Management Plan (VMP) Report for Calendar Year 2014
Exhibit 3	Testimony of Heather M. Tebbetts, with attachments
Exhibit 4	Technical Statement of Heather M. Tebbetts, with attachments

Background.

On March 13, 2015, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (Liberty) filed proposed changes to its tariffs to recover capital costs and O&M expenses for its reliability enhancement program (REP) and vegetation management program (VMP). Liberty filed testimony and schedules in support of the proposed tariffs. Exhibits 1 and 3. Liberty filed its "Reliability Enhancement Plan (REP) and Vegetation Management Plan (VMP) Report for Calendar Year 2014" (Report). Exhibit 2. Liberty supplemented and corrected its filing with a Technical Statement of Heather M. Tebbetts filed April 10, 2015, which contains updated schedules. Exhibit 4.

This filing arises out of the settlement agreement approved in Liberty's most recent rate case, Docket No. DE 13-063. The order approving that settlement summarized the legal basis for this filing:

> The Settlement permits the Company to continue its REP/VMP programs at current program funding. Beginning November 15, 2014, Liberty is to submit an REP/VMP plan for the following calendar year for review and comment by Staff. Each plan is to have a base O&M budget of $1,360,000 and an REP capital investment target of $1 million annually. For any year, if actual O&M spending is less than the base amount, the difference will be refunded to customers or credited for future O&M expenditures. If actual O&M spending is greater than the base amount, the difference shall be recovered through a uniform adjustment factor on a per kilowatt-hour basis over a twelve-month period, subject to

> Commission approval. REP capital investments are to be recovered through permanent increases to base distribution rates, subject to Commission approval.

Order No. 25,638 at 12 (Mar. 17, 2014); *see also* Order No. 25,669 (May 23, 2014) (addressing the programs prior to the rate settlement and describing the intended effects of the settlement). Appendix 8 to the settlement agreement, which Liberty attached to the Report, contains the operative language. Exhibit 2 at 22. To summarize, the rate order allows Liberty to recover \$1,360,000 each year for O&M costs related to both programs. The rate order also encourages Liberty to spend \$1 million each year in capital costs for the REP. This purpose of this yearly proceeding is to reconcile the actual O&M costs to the base budget, and to address whether Liberty may receive a permanent rate increase to recover the prior year's REP capital costs.

Reliability Enhancement Plan.

Liberty sought approval to increase its revenue requirement by \$377,950 to recover \$2,201,899 in capital costs spent in furtherance of the REP in 2013 and 2014. Exhibit 4 at 2. Liberty explained that it spent \$1,230,601 in 2013 that was not placed into rates during last year's proceeding for several reasons not relevant here,[1] so Liberty is not yet recovering the 2013 REP capital costs. Liberty testified that it also spent \$971,298 in 2014. The combined REP capital costs for 2013 and 2014 that Liberty proposes to add to rate base through this docket is \$2,201,899. Exhibit 3 at 2.

Liberty testified that the budgets and the scope of the underlying work were reviewed with Staff prior to the respective years and that Staff was supportive of the proposed budgets and proposed work. Exhibit 1 at 6. For 2014 the work primarily involved installation of two single phase recloser schemes, 18 trip savers, and re-conductoring of 2 miles of bare mainline primary

[1] Liberty cited a timing issue related to its accounting, which it described at the hearing as not properly using FERC Account 106, and also testified about delays in pole placements that caused some 2013 projects to spill into 2014. Exhibit 2 at 7; Hearing testimony of Mr. Demmers.

conductor with spacer cable. *Id.* at 6; Exhibit 2 at 15-16. Liberty's witnesses testified that the REP expenditures were reasonable because they are specifically referenced in the settlement agreement in Docket No. DE 13-063 as necessary to continue reliability improvements. Exhibit 1 at 11.

Staff and the OCA stated at the hearing that they had reviewed Liberty's filing and did not object to the scope of work performed, the associated costs, and the various calculations related to the REP, and thus they did not object to Liberty's request to increase its revenue requirement by the appropriate amount. The revised increase to the revenue requirement that Liberty requests is $377,950. Exhibit 4 at 2 and 4 (line 58).

The effect on rates of adding this amount to Liberty's revenue requirement is an increase of 1.08 percent to Liberty's distribution rate, Exhibit 4 at 1 and 13, which translates to a bill increase of $1.21 per month, or 0.8 percent, from $158.01 to $159.22, Exhibit 3 at 9.

Vegetation Management Plan.

Liberty also requested approval to recover $35,166 of O&M costs, which is the amount Liberty spent in 2014 above the base amount of $1,360,000 that is already included in Liberty's rates. Liberty again presented evidence that it discussed the 2014 budget and underlying work with staff and that Staff supported the budget. Exhibit 1 at 8. The amount spent in 2014 was slightly under budget but exceeded the base amount by $35,166. *Id.*; Exhibit 3 at 3. The work performed included planned cycle trimming and interim, spot, and trouble-tree trimming. Exhibit 1 at 6; Exhibit 2 at 17-18. Liberty's witnesses testified that the VMP expenditures were reasonable because they are specifically referenced in the settlement agreement in Docket No. DE 13-063 as necessary to continue reliability improvements. Exhibit 1 at 11.

Except for the issue relating to FairPoint discussed below, Staff and the OCA stated at hearing that they do not object to the scope of the work performed, the associated costs, and the various calculations related to the VMP. Absent the FairPoint issue, Staff and the OCA would have supported Liberty's request for $35,166.

The effect of adding the proposed O&M expenses of $35,166 through the "REP/VMP Adjustment Factor" is an increase of $0.00006 per kilowatt hour (kWh). Exhibit 4 at 14.

FairPoint Communications Issue.

According to Liberty, FairPoint is contractually obligated to contribute to Liberty's vegetation management costs because FairPoint uses Liberty's poles. Exhibit 2 at 4; Exhibit 3 at 7. FairPoint has failed to pay Liberty $198,691 for 2013 and $245,751 for 2014. Exhibit 3 at 7. Counsel for Liberty briefly explained at the hearing that FairPoint's refusal to pay arises from a separate dispute over Liberty's alleged liability to FairPoint for pole-related costs. According to counsel, FairPoint is withholding payment for the vegetation costs because Liberty allegedly owes FairPoint money for the pole dispute. Liberty provided testimony that there are provisions in the Liberty-FairPoint contract that govern dispute resolution and that the next formal step is for the parties to mediate, which may occur in near future. Exhibit 3 at 7.

Liberty's treatment of the FairPoint non-payment asks customers to pay the $245,751 that Liberty expected but did not receive from FairPoint, subject to a refund or credit if FairPoint pays in the future. Liberty's proposed REP/VMP Adjustment Factor of a $0.00006 per kWh charge assumes FairPoint did not pay the $245,751 and would collect those funds from customers through that charge. If FairPoint paid the money owed for 2014, then the REP/VMP Adjustment Factor would decrease from a $0.00006 per kWh charge to a $0.00017 per kWh credit. Exhibit 3 at 8. Multiplied by the average residential customer's monthly consumption of

655 kilowatts, Exhibit 4 at 1, the difference is between a charge of 4 cents per month and a credit of 11 cents per month.

The filing also reflects that Liberty addressed the issue differently for 2013. As noted above, FairPoint failed to pay for vegetation management in 2013 in the amount of $198,691, but Liberty did not seek to recover that amount from customers. In 2013 Liberty credited customers for the expected, but not yet received, FairPoint payment, but in 2014 Liberty gave customers no credit for what FairPoint was supposed to pay. *See* Exhibit 4 at 3, line 11.[2] When asked during hearing why Liberty is treating the issue differently in 2014 than it did for 2013, Liberty did not have a satisfactory answer.

This is the only point of dispute in this docket. Liberty's request for $35,166 assumes no recovery for FairPoint's 2014 contribution. Staff and the OCA argue Liberty should assume recovery from FairPoint while the collection process unfolds. The parties agree, however, that at the end of the day any amount Liberty recovers will ultimately be credited to customers and any amount Liberty is unable to recover will be collected from customers, as is required by the settlement agreement. *See* Order No. 25,638 at 12 ("For any year, if actual O&M spending is less than the base amount, the difference will be refunded to customers or credited for future O&M expenditures").

Program Performance.

Liberty measures the success of the VMP and REP programs, in part, by metrics that track "system average interruption frequency index" (SAIFI) and "system average interruption duration index" (SAIDI). Liberty acknowledged that it missed its self-imposed SAIFI and

[2] Line 11, titled "Less Reimbursements from FairPoint Communications," notes "$311,701" for 2013 and "$0" for 2014. Liberty stated in this filing that FairPoint owes $198,691 for 2013. The record does not explain the discrepancy between the $311,701 in Exhibit 4 and the $198,691 in testimony. Perhaps FairPoint made a partial payment in 2013.

SAIDI targets for 2014, but explained that the 2014 figures were influenced by several "one-off" events. Exhibit 1 at 10-11; Exhibit 2 at 12-13. The trend over the past 10 years is downward, according to Liberty, Exhibit 2 at 21, and Liberty testified at hearing that its performance during the first quarter of 2015 and its prediction for the rest of 2015 are favorable. *See* Hearing testimony of Mr. Demmer.

Finally, Liberty's filing noted that several other rate changes are set to go into effect on May 1, 2015 (distribution rates, transmission rates, stranded cost recovery charge, and energy service rate). Liberty illustrated all the rate changes, approved in other dockets and proposed in this case. Exhibit 4 at 39.

Positions of the Parties.

Liberty.

The only disputed issue is Liberty's treatment of FairPoint's failure to contribute $245,751 toward the VMP in 2014. Liberty argues that utilities often include in their rates the legal obligations of others. Liberty gave two examples. First, customers have a legal obligation to pay their bills. When customers do not pay, utilities include a "bad debt" line item in their rates to be paid by all other customers. If the utility collects any of that bad debt, customers then receive a credit. Liberty's second example was that utility poles are sometimes damaged in car accidents. The utility incurs a cost to repair the poles and passes that cost to ratepayers. If the responsible driver ultimately pays for the damage, the customers receive a credit. Liberty argues FairPoint's failure to pay is analogous. Liberty incurred FairPoint's share of the costs for vegetation management (damage to the utility pole) and argues it is appropriate to pass all of those costs to customers now. If FairPoint pays in the future (responsible driver paying for damaged pole), Liberty will credit that amount to customers, likely in the following REP/VMP proceeding.

Liberty also noted that there is no change in the benefit that the VMP confers upon customers, whether FairPoint pays or not, a point Staff and the OCA did not dispute.

Liberty otherwise argued that it prudently incurred the $35,166 in O&M costs above the base budget, for which it is entitled to recovery under the terms of the settlement agreement, and that its capital costs related to the REP were reasonably incurred consistent with the settlement agreement, for which it should recovery through a revenue requirement increase of $377,950. Liberty requests approval to collect both increases beginning May 1, 2015.

OCA.

As stated above, the only objection the OCA raised to Liberty's filing relates to the FairPoint issue. The OCA did not object to the REP capital costs, to the other VMP expenses, and to the manner in which Liberty proposed to recover those costs and expenses through rates.

As to the FairPoint costs, the OCA argued that the Commission does not have authority to collect FairPoint's obligations from electric ratepayers and that electric customers have no duty to pay the money that Liberty is contractually entitled to receive from FairPoint. The OCA asked the Commission to remove the 2014 FairPoint debt of $245,751 from Liberty's O&M calculation. As stated above, this would change the REP/VMP Adjustment Factor from a $0.00006 per kWh charge to a $0.00017 per kWh credit.

Staff.

Staff joined the OCA's argument regarding the FairPoint costs. Otherwise, Staff stated that the Report correctly reflects the costs and scope of both programs. Staff supported the priorities of the VMP and REP and agreed that Liberty's work under these programs was appropriate. Staff also agreed with the revised calculations contained in Liberty's filing.

Analysis.

The "just and reasonable" standard governs Liberty's requests for a rate increase in this docket. RSA 378:7.

Resolution of the FairPoint issue turns on whether, in the short term, the risk of FairPoint's non-payment should rest with customers or with Liberty. In the long term, FairPoint's ultimate payment or nonpayment will be reconciled to customers. This is not a cost that the company or shareholders will bear. Customers will ultimately pay if FairPoint does not, or customers will receive a credit if FairPoint pays.

Liberty should bear the short term risk of FairPoint's nonpayment for two reasons. First, it is Liberty's dispute with FairPoint that gave rise to this issue and nothing over which customers have control. It appears FairPoint does not challenge that the vegetation work was done nor its obligation to pay for that work. Rather, the separate dispute over poles is causing FairPoint to withhold payment. Liberty has control over the FairPoint costs at issue in this docket through its handling of the unrelated dispute. Second, Liberty's proposed treatment of the issue for 2014 is different than how it addressed FairPoint's nonpayment for 2013. Liberty likely has the right to charge customers for FairPoint's nonpayment, but the way Liberty treated the issue in 2013 is more reasonable.

Aside from the FairPoint issue, there is no dispute over the nature of REP and VMP projects undertaken, the costs incurred to complete those projects, and how Liberty calculated those costs. There is also no dispute over how Liberty proposes to collect the REP capital costs through permanent rates. A review of Liberty's filing confirms the reasonableness of Liberty's requests and of the OCA's and Staff's positions on these issues. Liberty's activities with regard to the programs during 2013 (as to the REP) and 2014 (as to both programs) were consistent with the goals and parameters of the programs and the money was prudently spent. As to the REP costs, the proposed $377,950 increase in revenue requirement for the 2013 and 2014 REP costs was appropriately calculated, just and reasonable, and in the public interest. Liberty should begin recovery of those capital costs as of May 1, 2015.

Recommendations.

I recommend the following:

(1) that the Commission approve Liberty's request to add $377,950 to its revenue requirement to recover $2,201,899 in 2013 and 2014 capital costs related to the REP as requested;

(2) that the Commission deny Liberty's request to recover $35,166 in O&M expenses;

(3) that the Commission order Liberty to decrease its annual distribution rates by $210,585 (the difference between the $35,166 that Liberty requested and the $245,751 that Liberty did not collect from FairPoint) in order not to charge customers for the money Liberty expected but has not received from FairPoint for 2014;

(4) that the Commission allow Liberty to renew its request for the FairPoint money owed for 2014 vegetation management (and owed for 2013) in next year's RMP/VMP filing, if necessary, after Liberty exhausts reasonable collection efforts; and

(5) that any rate changes from this docket should go into effect as of May 1, 2015.

By: /s/ Michael Sheehan
Michael J. Sheehan, Hearing Examiner

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

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FILING INSTRUCTIONS:

a) **Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**

DEBRA A HOWLAND
EXECUTIVE DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
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b) **Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**

c) **Serve a written copy on each person on the service list not able to receive electronic mail.**