

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty

DE 21-138

Calendar Year 2022 Vegetation Management Program (VMP) Plan

Department of Energy Tech Session Data Requests –Set 1

Date Request Received: 4/14/22
Request No. DOE TS 1-1

Date of Response: 4/19/22
Respondent: Heather Green

REQUEST:

Reference DOE 1-6, Attachment 1-6.2 at 3 and 5, Asplundh contract, and Attachment 1-6.3 Davey Tree contract. Please respond to the following:

- a) Table 3.02 Guaranteed Completion Dates at 3, provides that Asplundh guarantees to perform tree trimming/removal for 234.87 miles of Roadside Distribution and approximately 14 miles and 99.22 acres for Off Road Distribution and Sub Transmission for 2021. For 2022, Asplundh guarantees 202.65 miles of Roadside Distribution trimming/removal and 88.4 acres for Off Road Distribution and Sub Transmission trimming/removal. Please describe and explain the degree of Asplundh's performance and/or non-performance in meeting the Guaranteed Milestones for 2021 and 2022. In the event of non-performance, please describe Liberty's legal recourse and actions taken to date. If the terms of the contract were modified, please provide copies of that documentation.
- b) Table 4.02 at 5 provides the total contract price for the 4-year trim cycle agreed to by Asplundh in the amount of \$9.0 million. This total averages out to approximately \$2.3 million per year or 96% of the maximum annual budget amount (including the cap) for VMP agreed to in the Settlement in DE 19-064. Given that labor issues, among other issues, have impacted Asplundh's ability to perform under its current contract, why is Liberty confident that Asplundh will be able to perform in 2020 [the Company assumes this was meant to be 2022] under the proposed budget of \$3,069,639 (Bates 23, Appendix 1)?
- c) Please describe and explain the degree of Davey's performance and/or non-performance under its contract with Liberty. In the event of non-performance, please describe Liberty's legal recourse and actions taken to date. If the terms of the contract were modified, please provide copies of that documentation.

RESPONSE:

- a) Asplundh completed 81.94 roadside miles, 14.86 miles of sub-transmission miles, and 187.62 acres of vegetation work in 2021, and the Company expects Asplundh to complete 111.93 of the planned 152 miles of trimming in 2022 (see below for further

details). Although these numbers are less than what is in the 2021 contract, as referenced in the question above, the Company does not consider Asplundh to be in breach of the contract for not completing “guaranteed” mileage for the following reason(s).

Confidential Attachment DOE 1-6.2 provides the contract between Liberty Utilities and Asplundh. Section 3.0 of the contract describes the commercial terms for Liquidated Damages and Schedule Guarantee. Subsection 3.04 describes what occurs between Liberty Utilities and Asplundh regarding compliance with Guaranteed Completion Dates. The language in Section 3.04 is below:

“Contractor’s failure to comply with the Guaranteed Completion Dates may result in Company incurring damages in amounts difficult to ascertain with certainty. It is agreed, therefore, that the liquidated damages specified in this Article represent reasonable amounts to compensate Company for failure to perform and are not to be construed as a penalty. Consequently, Company will not be required to prove that it has incurred actual damages. Further, Company shall be able to enforce its rights to liquidated damages under this Article, without consideration as to whether time is a material aspect of this agreement. Upon failure by Contractor to meet any of the schedule or performance guarantees above, Contractor shall be liable and responsible to company for payment of the Liquidated damages corresponding to such failure, as set forth herein.”

The Liquidated Damage Value agreed to by Liberty Utilities and Asplundh as shown in Table 3.02 states the following:

“10% held back until satisfactory completion of work”

This language intends that Liberty Utilities will hold back approximately 10% of the total cost per circuit and miles. This language in combination with Section 3.04, however, does not allow Liberty Utilities to receive compensation for work not completed. Therefore, there is no mechanism embedded within the contract between Liberty Utilities and Asplundh which requires Asplundh to achieve the miles stated.

As stated above, Liberty Utilities’ current contract with Asplundh only allows for Liberty to withhold 10% of the completed work contract price. This holdback is not to be construed as a penalty.

- b) The Company is confident that it will complete its planned mileage as it has put the following things in place:
- Asplundh and Liberty have worked together to secure a plan of incorporating mechanized pruning and flat cutting on the roadside spans, where viable. This will allow for increased production and miles in the allocated time.
 - The Company has secured additional resources for performing removals to allow Asplundh to focus on the mileage.
 - The Company has gone out to bid for the two Salem circuits that have the greatest difficulty in meeting workforce needs. This allows for the Company to have a wider range of workforce accessibility to secure the mileage.

- Asplundh has been successful toward rebuilding its workforce on the system with successful hires. They have secured needed grounds men which allow for the promotion of existing employees to foremen for the Company's system.
 - The Company is building additional relationships with vendors setting up contracts in place for the ability to perform work needed as needed and workforces may be available.
- c) Davey has not performed any cycle maintenance tree pruning or removals to date. They did perform some of the preliminary work to identify and record landowner consent and concern, through their affiliate Chippers, in preparation for crews coming on-site to perform the cycle work and tree removals. Davey was not successful in securing crews to perform work. Liberty continues discussions with Davey when other opportunities arise.

The Company does not intend to pursue any contract remedies against Davey. The Company does not believe there is a basis to claim Davey acted unreasonably in its efforts to obtain crews and the Company did not pay for work that was not completed

To avoid confusion, Chippers, which is an affiliate of the Davey Company that Liberty treats as a separate contractor, continued to perform work on our system as it has in the past for storms, emergencies, difficult tree removals, work planning, and a limited amount of trimming work.