BEFORE THE STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Liberty Utilities Corp. (Granite State Electric)	)	
Corp. d/b/a Liberty Distribution Service	)	Docket No. DE 23-039
Rate Case	)	

DIRECT TESTIMONY OF
JOHN DEFEVER, CPA

ON BEHALF OF

THE OFFICE OF CONSUMER ADVOCATE

DECEMBER 13, 2023

TABLE OF CONTENTS

INTRODUCTION

Q. WHAT IS YOUR NAME, OCCUPATION AND BUSINESS ADDRESS?

A. My name is John Defever. I am a Certified Public Accountant, licensed in the State of Michigan. I am a senior regulatory consultant in the firm of Larkin & Associates, PLLC, with offices at 15728 Farmington Road, Livonia, Michigan.

Q. PLEASE DESCRIBE THE FIRM LARKIN & ASSOCIATES, PLLC.

A. Larkin & Associates, PLLC is a Certified Public Accounting and Regulatory Consulting Firm. The firm performs independent regulatory consulting primarily for public service/utility commission staffs and consumer interest groups (public counsels, public advocates, consumer counsels, attorneys general, etc.). Larkin & Associates, PLLC, has extensive experience in the utility regulatory field as expert witnesses in over 600 regulatory proceedings including numerous water and sewer, electric, gas, and telephone utilities.

Q. HAVE YOU PREPARED AN EXHIBIT DESCRIBING YOUR QUALIFICATIONS AND EXPERIENCE?

A. Yes. I have attached Appendix I, which summarizes my experience and qualifications.

Q. HAVE YOU PREVIOUSLY SUBMITTED TESTIMONY BEFORE THE NEW HAMPSHIRE PUBLIC SERVICE COMMISSION?

A. Yes. I submitted testimony in Docket No. DE 19-057, In the Matter of Public Service Company of New Hampshire, d/b/a Eversource Energy, Distribution Service Rate Case on behalf of the Office of Consumer Advocate (“OCA”).

Q. ON WHOSE BEHALF ARE YOU APPEARING?

A. Larkin & Associates, PLLC was retained by the OCA to conduct a review of Liberty Utilities Corp. (Granite State Electric) d/b/a Liberty (“Liberty”) or (“Company”) proposed revenue requirement in its Distribution Service Rate Case. Accordingly, I am appearing on behalf of the OCA.

ORGANIZATION

Q. HOW WILL YOUR TESTIMONY BE ORGANIZED?

A. The testimony is organized as follows: Introduction, Overall Financial Summary, Rate Base, and Operating Income.

OVERALL FINANCIAL SUMMARY

Q. HAVE YOU PREPARED ANY EXHIBITS IN SUPPORT OF YOUR TESTIMONY?

A. Yes. I have prepared Exhibit JD-1, consisting of Schedules A, B, C, and D with supporting Schedules B-1 through B-5 and C-1 through C-17.

Q. WHAT STARTING POINT DID YOU UTILIZE FOR CALCULATING YOUR ADJUSTMENTS TO RATE BASE AND NET OPERATING INCOME?

A. My recommended adjustments to rate base and net operating income are based on the Company's original filing.

Q. DID YOU REFLECT THE COMPANY'S UPDATED AMOUNTS FILED ON NOVEMBER 27, 2023.

A. No. Based on the timing of the submittal it was not feasible to sufficiently review the new information.

Q. DID YOU REVIEW THE AUDIT REPORT ISSUED BY THE DEPARTMENT OF ENERGY?

A. No.

Q. HAVE YOU INCORPORATED THE RECOMMENDATIONS OF OTHER OCA WITNESSES IN YOUR SUMMARY SCHEDULES?

A. Yes, I have incorporated the capital structure and rate of return recommendations of OCA witness Aaron Rothschild and the depreciation rates recommended by Marc Vatter.

Q. PLEASE DISCUSS SCHEDULE A OF EXHIBIT JD-1, WHICH IS ENTITLED "OVERALL FINANCIAL SUMMARY."

A. Schedule A presents the overall financial summary for the Rate Year ending June 30, 2024,[1] giving effect to all the adjustments I recommend in my testimony, the depreciation rates sponsored by Marc Vatter and the rate of return sponsored by Mr. Rothschild.

The rate base and operating income amounts for Rate Year 1 ending June 30, 2024 are taken from Schedules B and C, respectively. The overall rate of return of 7.15%, for Rate Year 1 as presented in the pre-filed testimony of OCA Witness Mr. Rothschild, is provided on Schedule D for convenience. The income deficiency shown on line 6 is obtained by subtracting the achieved operating income on line 2 (adjusted operating income) from the required operating income on line 5.

Q. PLEASE DISCUSS SCHEDULE B, WHICH SUMMARIZES RATE BASE, AS ADJUSTED.

A. Adjusted rate base amounts are taken from Liberty's Schedule RR-4 for the Rate Year ending June 30, 2024. All of the adjustments I recommend to the projected pro forma rate base amount are summarized on Schedule B.

[1] The OCA is recommending that the Company's proposed MYR be denied as sponsored by OCA Witness Courtney Lane. As such my revenue requirement recommendations are for rate year one.

Q. PLEASE DISCUSS SCHEDULE C, WHICH SUMMARIZES NET OPERATING INCOME, AS ADJUSTED.

A. The starting point on Schedule C is the Company's adjusted net operating income for Rate Year 1, as found on Liberty's Schedule RR-1. My recommended adjustments to Liberty's expenses for Rate Year 1 that are presented in this testimony are provided on Schedule C. Schedules C-1 through C-17 provide further support and calculations for the adjustments I recommend.

Q. BASED ON THE OCA'S REVIEW OF LIBERTY'S FILING, WHAT CHANGE IN REVENUE REQUIREMENT IS THE OCA RECOMMENDING AT THIS TIME?

A. Based on the adjustments that have been quantified to date, coupled with the OCA's recommended overall rate of return of 7.15%, the result is a projected revenue increase of $4,005,060 for Rate Year 1 (twelve months ending June 30, 2024). (DeCourcey/Therrien page 12, II-112)

RATE BASE

Plant in Service

Q. WHAT AMOUNT OF PLANT IN SERVICE HAS THE COMPANY INCLUDED IN THE RATE YEARS?

A. The Company has included $369.350 million, $396.690 million and $423.082 million of gross plant in service in Rate Years 1 (2023/2024), 2 (2024/2025) and 3 (2025/2026).[2]

Q. HOW DOES THIS COMPARE TO HISTORICAL PLANT IN SERVICE BALANCES?

A. As can be seen, the rate years' forecasted plant in service is significantly higher compared to the historical balances:[3]

($000) Thousands
13-Month Average

2017	2018	2019	2020	2021	2022	RY 1	RY 2	RY 3
$ 219,809	$ 236,222	$ 251,404	$ 263,859	$ 280,380	$ 313,626	$ 369,350	$ 396,690	$ 423,082

Q. DID YOU REVIEW THE COMPANY'S BUDGET-TO-ACTUAL CAPITAL EXPENDITURES?

A. Yes, which I have illustrated below: (OCA 3-8)

	2018	2019	2020	2021	2022
BUDGET	$ 18,854,964	$ 20,034,736	$ 26,259,322	$ 32,443,853	$ 50,230,604
ACTUAL	$ 20,314,100	$ 19,335,521	$ 23,225,307	$ 32,169,537	$ 41,415,385
VARIANCE	$ 1,459,136	$ (699,215)	$ (3,034,015)	$ (274,316)	$ (8,815,219)
% VARIANCE	7.74%	-3.49%	-11.55%	-0.85%	-17.55%
					-5.14%

[2] Attachment KMJ/DSD-1 Schedule RR-4.

[3] OCA 3-93.

As shown, in the last four of the last five calendar years, the Company has spent below its budget, on average 5.14%. As such, it cannot be assumed that the Company will spend the amounts it has forecasted in the rate years.

Q. DO YOU HAVE ANY OTHER CONCERNS WITH THE RATE YEAR REQUESTED AMOUNTS?

A. Yes. OCA 3-94 requested supporting documentation for the following seven projects forecasted for the rate years:

- Reliability Projects (Bellows Falls, etc.) Account No. 364, $3,790,000 (RY 1) and $6,210,000 (RY 2)
- Rockingham West Circuit Account 362, $9,900,000 (RY 1)
- Bare Conductor Replacement Project Account 365, $2,500,000 (RY 2) and $2,575,000 (RY 3)
- IE NN URD Cable Replacement Account 366, $1,660,000 (RY 2) and $1,648,000 (RY 3)
- Install Lebanon1L2 Feeder Tie Plainfield, Account 364, $1,575,000 (RY 3)
- SCADA and Distribution Automation Account 391.1 $1,050,000 (RY 3)
- AMI $9,500,000 Account 397 $9,500,000 (RY 3)

The Company provided documents for the first two projects (Reliability and Rockingham) but did not for the remainder. For those that it did not provide support, the Company's response simply stated, "This is a future planned project. Project authorization documentation is not available at this time and will be approved closer to the start of the project."[4]

[4] OCA 3-94.

Q. WHY IS IT A CONCERN THAT THE COMPANY DID NOT PROVIDE DOCUMENTATION FOR THESE PROJECTS?

A. The Company has included significant increases to plant in service in the rate years which it is requesting to receive a return on and of. The OCA only requested support for a few projects and the Company failed to provide any support for some of those amounts.

Q. DO YOU HAVE ANY OTHER CONCERNS?

A. Yes. The Company stated it applies a contingency factor to capital projects. However, it did not identify any specific amounts or percentages. The Company's response to OCA 3-16 stated:

> Yes, the Company does include a contingency amount for each project identified in the capital plan. The amount of contingency will vary for each project based on the known scope of the project. A project that is considered conceptual will have a larger contingency than a project that has a more defined scope and detailed engineering has been completed. The Company's Capital Approval Policy provides a guideline of suggested contingency percentages for projects based on the defined scope of the project. The Company's Capital Approval Policy is provided in Attachment 23-039 OCA 3-16.
>
> The Company is not able to determine the contingency amount included in the forecasted capital expenditures for future years as these projects are conceptual in nature and the estimated costs of these future projects are based on actual costs of similar projects. When project documentation (i.e., business cases) are developed and submitted for approval for these future projects, the <u>project team will determine a contingency amount to include in the estimated cost</u> based on the maturity of the defined project scope. (emphasis added)

The OCA followed up this data response in OCA 5-11 by requesting capital expenditure forms for projects over $5 million completed in 2020-2022 including the contingency amounts and calculations. However, the project documents provided did not identify specific contingency amounts. Furthermore, the response to OCA 5-11 referred to the response to OCA 5-10, which stated:

> For specific projects, the Company will include a contingency based on the known scope of the project as stated in the Company's response to OCA 3-16. <u>The contingency amount will not be identified as a separate line but will be included in the overall project cost identified in the budget and associated project documentation.</u> (Emphasis added)

Q. WHY IS THE INCLUSION OF CONTINGENCIES A CONCERN?

A. By definition, contingencies refer to costs that may or may not occur. As such, contingencies do not meet the known and measurable standard. It is the Company's burden to support costs for which it seeks recovery. With respect to contingencies, the costs can't be supported because it is not known whether they will occur.

Additionally, contingencies may decrease the incentive to control costs. In effect, the budget plus the contingency can become the new target budget even if the contingency does not occur.

Further, contingencies improperly shift the burden of risk from the Company to the ratepayers. If the costs exceed the forecast, the

Company has the necessary funds. However, if the contingency costs do not occur, the Company still receives the inflated amount at the expense of ratepayers.

Q. ARE YOU AWARE OF ANY OTHER JURISDICTIONS THAT DISALLOWS THE RECOVERY OF CONTINGENCIES IN FORECASTING CAPITAL EXPENDITURES?

A. Yes. I am aware that the California Public Utilities Commission has disallowed the use of contingencies. The CPUC stated in D.19-05-020:

> Consistent with ratemaking policy, disallowing these contingencies should motivate SCE to remain within its forecast budgets for these projects.[5]

Q. WHAT DO YOU RECOMMEND?

A. The Company has repeatedly spent less that it has budgeted. It did not provide support for a number of projects, and there is a concern with built-in contingencies. Therefore, I recommend reducing the rate year plant additions by 5.14%, the average budget-to-actual variance from 2018-2022. This results in a reduction of $1.460 million to Rate Year 1, as shown on Exhibit JD-1, Schedule B-2.

Q. DOES YOUR RECOMMENDED REDUCTION TO PLANT HAVE ANY CORRESPONDING ADJUSTMENTS?

[5] Page 152, May-16-2019.

A. Yes, my adjustment has corresponding adjustments to accumulated depreciation, accumulated deferred income taxes, depreciation expense, property tax expense, and income taxes which are shown on Schedules B-4, B-5, C-13, and C-15.

Prepayments

Q. HAS THE COMPANY INCLUDED PREPAYMENTS IN RATE BASE AND IN ITS CASH WORKING CAPITAL CALCULATION?

A. Yes. The Company has reflected $1,056,797 for prepaid property taxes in rate base in each of the rate years (Schedule RR-4, OCA TS 1-5) and has reflected a cash working capital component of $1,028,895 for property taxes in its lead lag study. (Attachment TJS-1, page 1, line 10)

Q. HAS THE COMMISSION PREVIOUSLY DISALLOWED PREPAYMENTS IN RATE BASE IF THEY WERE ALSO INCLUDED IN THE LEAD LAG STUDY?

A. Yes, the Commission's Decision in DG 17-048, in the Company's affiliate Liberty Gas's rate case stated:

> Ruling. The Commission finds that the detailed lead/lag study captures all the working capital requirements related to property taxes and other prepaid expenses. To also include prepayments in rate base would be allowing for a double recovery of the working capital related to those items. Consequently, prepayments may not be included in rate base. (page 19)

Q. DID THE COMPANY'S AFFILIATE LIBERTY GAS INCLUDE PREPAYMENTS IN RATE BASE IN ITS RECENTLY FILED RATE CASE, DE- 23-067?

A. No. Schedule RR-EN-5 does not include prepayments in rate base.

Q. WHAT DO YOU RECOMMEND?

A. I recommend that the property tax prepayments of $1,056,797 be excluded from rate base in the rate year, consistent with prior Commission treatment. This adjustment is shown on Exhibit JD-1, Schedule B-3.

Rate Base Flow Through Adjustments

Working Capital

Q. PLEASE DISCUSS YOUR FLOW THROUGH ADJUSTMENT TO WORKING CAPITAL.

A. The adjustment is a flow through from the OCA's adjustments to O&M expenses. My adjustment decreases working capital by $101,408, in Rate Year 1, as shown on Exhibit JD-1, Schedule B-1, page 3.

Accumulated Depreciation

Q. PLEASE DISCUSS YOUR ADJUSTMENT TO ACCUMULATED DEPRECIATION.

A. The adjustment is a flowthrough from the OCA's adjustments to plant in service. OCA's adjustment decreases accumulated depreciation by $1,620,778 in Rate Year 1, as shown on Exhibit JD-1, Schedule B-4.

Accumulated Deferred Income Taxes

Q. PLEASE DISCUSS YOUR ADJUSTMENT TO ACCUMULATED DEFERRED INCOME TAXES.

A. The adjustment is a flowthrough from the OCA's adjustments to plant in service. OCA's adjustment decreases accumulated deferred income taxes by $87,429 in Rate Year 1 as shown on Exhibit JD-1, Schedule B-5.

OPERATING INCOME

Payroll

Q. WHAT AMOUNTS HAS THE COMPANY INCLUDED IN THE RATE YEARS FOR PAYROLL?

A. The Company has included $6,056,446, $6,543,808 and $6,782,347 in Rate Years 1, 2, and 3, respectively.[6]

Q. HOW WERE THESE AMOUNTS DERIVED?

A. The Company first adjusted the historical Test Year payroll amounts that were charged to expense for known and measurable changes, then Rate

[6] RR-3.5.

Year labor expense was calculated by applying a payroll escalation factor that reflects a 3.5% per year increase for non-union employees.[7] The Company's response to DOE 4-13 states:

> The Test Year normalized annual wage expense was developed by taking the year-end payroll amounts for the full employee complement (including vacancies in active recruitment) as of December 31, 2022, and recasting the Test Year as if those payroll amounts were in effect throughout the entire year. That normalized amount was then compared to the actual Test Year payroll expense to develop the labor pro forma adjustment.

Q. SHOULD THE COMMISSION ACCEPT THE COMPANY'S REQUEST?

A. No. As shown below, in each of the last five years, the Company's actual number of employees was below its budgeted amount.[8]

Budget to Actual Employees															
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Aep	Oct	Nov	Dec	Avg	Budget	Vacancies
2018	181	180	179	188	183	186	183	185	188	190	192	198	186.1	198	(11.9)
2019	179	177	177	172	175	175	178	178	184	190	183	185	179.4	218	(38.6)
2020	174	175	176	174	179	178	182	184	189	188	182	180	180.1	232	(51.9)
2021	185	186	183	186	187	191	182	184	190	184	184	180	185.2	229	(43.8)
2022	207	204	207	206	206	208	211	210	212	212	213	205	208.4	217	(8.6)
2023	208	200	200	208	204	205	205						204.3	243	(38.7)

The Company has averaged over 31 vacant positions over the last five years

Q. HOW MANY EMPLOYEES HAS THE COMPANY BUDGETED IN THE RATE YEARS?

---

7 Jardin/Dane testimony, page 21 (II-289).
8 DOE 4-16(a), OCA-382.

A. The Company stated that the rate year level of budgeted employees is not yet known. The 2024 budgeted number of employees is not yet approved but will be provided once it is approved.[9]

Q. DID THE COMPANY INCLUDE VACANT POSITIONS IN THE RATE YEARS?

A. Yes, the rate years reflect all open positions, including four new hires for which the Company is requesting recovery.[10] The rate year amounts related to open positions are $1,081,859, $1,118,512 and $1,155,676.[11]

Q. WHAT DO YOU RECOMMEND?

A. I recommend removing the payroll associated with the open positions, a reduction of $1,081,859 to Rate Year 1.[12] This adjustment is shown on Exhibit JD-1, Schedule C-1.

<u>Incentive Compensation</u>

Q. WHAT AMOUNT IS THE COMPANY REQUESTING FOR INCENTIVE COMPENSATION IN THE RATE YEARS?

---

[9] OCA TS 1-7.
[10] DOE 4-13.
[11] OCA TS 1-6.
[12] OCA TS 1-6.

A. The Company has included $824,216, $890,540, and $923,003 for incentive compensation in Rate Years 1, 2, and 3, respectively. (OCA 3-50.)

Q. WHAT PERCENTAGE OF THE INCENTIVE COMPENSATION PLAN IS WEIGHTED TOWARDS FINANCIAL GOALS?

A. OCA 5-18 requested the amount of incentive compensation related to financial goals but the Company did not provide the amount. The response stated:

> Incentive plan payouts are based on Balanced Scorecards, which may include financial measures. The formula for incentive payouts considers the overall scorecard achievement and does not isolate financials goals. The Company is unable to report on the percentage or dollar amounts that are related specifically to financial goals.

Q. DID YOU REVIEW THE SCORECARDS?

A. Yes. The Company provided the 2022 Corporate Scorecard in response to OCA 3-54). The scorecard contains the following categories and points:

	Points	Actual
Growth with strong balance sheet	80	4.3
Meet adjusted net earnings per share (EPS) target		
Meet EPS growth target		
Funds from operations/debt ratio		
Sustainability	40	16
Environmental - 400 MW of new Board-approved renewable projects in 2022		
Social-Exceed 32.5% women in leadership roles		
Governance-Build a robust compliance network and Cybersecurity risk management program		
Operational Excellence	80	62.8
Provide customers with reliable service		
SAIFI rate (frequency of electrical outages)		
Gas leak response time		
Unplanned water disruption		
Renewables: (OPI) Operational Performance Index		
Conduct operations safely and consistently with ESG principles		
OSHA Recordable Incident Rates		
Meet our Customers' Expectations		
Drive improve customer satisfaction as measured by J.D. Power		
Customer First program delays		
Total	200	83.1

As can be seen, the "growth with strong balance sheet" category contains financial related goals and comprises 80 points of 200 possible, or 40%. As such, although the Company cannot provide the amount related to financial goals, it is clear that they are included in the total.

Q. WHAT IS THE ISSUE WITH INCENTIVE COMPENSATION BASED ON FINANCIAL GOALS?

A. Incentive compensation based on financial goals is designed to align the interest of the employees with the shareholders. As the goals are focused on shareholder benefit, the costs should not be fully recovered from ratepayers.

Q, DO YOU HAVE ANY OTHER CONCERNS WITH THE COMPANY'S INCENTIVE COMPENSATION?

A. Yes. In my opinion, the plan does not provide sufficient motivation.

Q. HOW DOES THE INCENTIVE COMPENSATION PLAN PROVIDE INSUFFICIENT MOTIVATION?

A. The Company's response to (OCA 3-53, shows that practically every employee is rewarded. This is demonstrated by the chart below which includes the number of employees eligible for a reward and the number of employees that did not receive one for the years 2018-2022.

Incentive Compensation					
Year	2018	2019	2020	2021	2022
Employees Eligible	158	133	137	146	142
No payment received	1	0	0	0	0

(OCA 3-53)

As shown, 99.9% of eligible employees received incentive compensation. To be effective, an incentive plan must create an impetus for greater effort. When employees know that an award is practically guaranteed, the motivating factor is diminished. If the plan does not motivate greater effort, ratepayers receive little, if any, benefit from the plan.

Q. WHAT IS YOUR RECOMMENDED ADJUSTMENT?

A. I recommend a reduction of 50% of incentive compensation costs. Because ratepayers receive little benefit from the plan and the Company cannot provide the amount related to financial goals, the argument could be made to disallow the entire amount. This results in a reduction of $412,108 to Rate Year 1 which is shown on Exhibit JD-1, Schedule C-2.

Supplemental Executive Retirement Plan

Q. WHAT AMOUNT IS THE COMPANY REQUESTING FOR SUPPLEMENTAL EXECUTIVE RETIREMENT PLAN ("SERP") EXPENSE?

A. The Company has included $31,597, $34,149, and $35,384 for this expense in rate years 1, 2, and 3, respectively. (OCA 3-105 Attachment.)

Q. IS THE INCLUDED SERP FOR LIBERTY EMPLOYEES?

A. No. According to OCA 3-106, the Company does not have a SERP plan. The amounts included for SERP are allocations of SERP benefits for executives from Liberty's parent company. As such, the Company is requesting that New Hampshire ratepayers pay SERP expense not for its own employees but for executives of Algonquin Power & Utilities Corporation ("APUC") (OCA 3-107).

Q. PLEASE DESCRIBE SERP.

A. SERP is generally an additional retirement benefit for a select few highly compensated executives that exceeds IRS limits for qualified pension plans. Liberty describes the benefits of the plan as follows:

> During each fiscal year, a notional amount (a "top-up benefit") is calculated and credited to each participant's account equal to A less B, where:
>
> > A=12% of the participant's earnings for a fiscal year, not more than 18% of the participant's earnings; and
> >
> > B = the employer contributions made to the participant's account under the Registered Pension Plan in the respective fiscal year
>
> These top-up benefits are credited to the participant's account quarterly.
>
> (OCA 3-108)

Q. HOW MANY EMPLOYEES WERE ELIGIBLE FOR SERP IN THE TEST YEAR?

A. According to the response to OCA-3-106, in the 2022 test year no Liberty employees were eligible, but 11 active C-Suite Executives were eligible for this benefit.

Q. SHOULD THIS EXPENSE BE RECOVERED FROM RATEPAYERS?

A. No. Ratepayers should not be responsible for this overly generous benefit.

Q. WHAT IS YOUR RECOMMENDED ADJUSTMENT?

A. OCA's recommended adjustment is the disallowance of all SERP costs, a reduction of $31,597 for Rate Year 1. This adjustment is shown on Exhibit JD-1, Schedule C-3.

Q. IS THIS ADJUSTMENT CONSISTENT WITH DECISIONS IN NEW HAMPSHIRE?

A. Yes. See, for example, Order No. 24,377, issued in a water company rate case, Docket DW 04-056, at page 4. In that case, the Staff of the Commission removed SERP costs from the utility's revenue requirement and the Commission agreed with this determination.

Q. IS THIS ADJUSTMENT CONSISTENT WITH DECISIONS IN OTHER JURSIDICTIONS?

A. Yes, in Connecticut, in Docket No. 13-02-20, the Authority disallowed SERP expense (Final Decision dated September 24, 2013, pp. 66-67). I am also aware that is has been disallowed in numerous other proceedings around the country.[13]

---

[13] *See, e.g.*, *Pacificorp, d/b/a Rocky Mountain Power*, Idaho Public Utilities Commission Case No. PAC-E-10-07, at 20-21 (2011); *Pacificorp*, Oregon Public Utility Commission Case No. UE 116, at 44 (2001); *Puget Sound Energy*, Inc., Washington Utilities and Transportation Commission Docket Nos. UE-090704 and UG-090705, at 29-32 (2010); *Potomac Electric Power Company*, District of Columbia Public Service Commission Formal Case No. 939, at 122-128 (1995); *UNS Electric, Inc.,* Arizona Corporation Commission Docket No. E-04204A-09-0206, at 30-31 (2010); *Potomac Electric Power Company*, Maryland Public Service Commission Case No. 9311, at 59-61 (2013).

Severance

Q. HAS THE COMPANY INCLUDED SEVERANCE EXPENSE IN RATE YEARS 1, 2, and 3?

A. Yes, according to OCA 3-110, the Company has included $146,356, $158,133, and $163,897 for this expense in Rate Years 1, 2, and 3.

Q. SHOULD THIS EXPENSE BE RECOVERED FROM RATEPAYERS?

A. No. Ratepayers should only be responsible for costs for employees providing utility service. If the Company wants to provide this generous benefit, it should be at the expense of shareholders, not ratepayers. In addition, the Company stated in OCA 5-30 that it does not have any plans to eliminate any positions in the rate years.

Q. DO YOU HAVE ANY OTHER CONCERNS WITH THE COMPANY'S SEVERANCE REQUEST?

A. Yes. Even if the Commission were to decide to allow severance expense, the Company's request is too high. The Company stated it has included a representative level of severance expense in the revenue requirement based on its historical experience, including the test year.[14] However, the following chart shows the severance expense for the prior 5 years.

[14] OCA 5-30.

Severance Expense								
2018	2019	2020	2021	2022	RY1	RY2	RY3	Average 2018-2022
$0	$0	$15,776	$36,425	$118,807	$146,356	$158,133	$163,897	$34,202

(OCA 3-110, DOE 4-38)

As shown, the Company's Rate Year 1 request of $146,356 is more than 4 times the average of this cost over the prior 5 years. As such, the Company's request is not representative of historical costs. Further, as shown, the Company did not even have severance expense in 2 of the last 5 years but this fact is not reflected in its request.

Q. WHAT IS YOUR RECOMMENDED ADJUSTMENT?

A. I recommend the removal of this expense, a reduction of $146,356 in Rate Year 1. This adjustment is shown on Exhibit JD-1, Schedule C-4.

Board of Directors

Q. WHAT AMOUNTS HAS THE COMPANY INCLUDED IN THE RATE YEARS FOR BOARD OF DIRECTORS EXPENSE?

A. The Company has included $58,223 in Rate Years 1, 2, and 3, respectively. (DOE 4-54(c) supplemental.)

Q. SHOULD RATEPAYERS BE FULLY RESPONSIBLE FOR THESE COSTS?

A. No. The Board of Directors serve the interests of the Company's shareholders. Since the shareholders are the primary beneficiaries of these costs, they should bear more of the cost.

Q. WHAT DO YOU RECOMMEND?

A. I recommend that the costs be shared 75/25 by shareholders and ratepayers. This results in a reduction of $43,667 to Rate Year 1 as shown on Exhibit JD-1, Schedule C-5.

Q. IS THIS ADJUSTMENT CONSISTENT WITH DECISIONS IN OTHER JURSIDICTIONS?

A. Yes, I am aware that BOD expense has been limited in Connecticut. For example, the Decision in Docket No. 13-01-19, *Application of The United Illuminating Company to Increase Rates and Charges* stated the following on page 72:

> The main objective of the BOD is to protect the interest of the Company's investors or shareowners. Ratepayers may tangentially garner benefits from the activities of the BOD; however, they are not the focus of the BOD decisions. Consistent with the determinations regarding public company costs discussed above, the Authority allows only 25% of BOD costs in rates.

<u>Directors and Officers Liability Insurance</u>

Q. PLEASE DISCUSS YOUR ADJUSTMENT TO DIRECTORS AND OFFICERS LIABILITY INSURANCE ("D&O").

A. The Company requests $26,909, $27,506, and $28,089 in Rate Years 1, 2, and 3, respectively, for D&O which has been allocated from the parent Company. (OCA 3-34) The function of D&O is to protect the Company and its officers from lawsuits that arise as a result of their own decisions and actions. My adjustment shares the costs for this insurance between the Company's shareholders and ratepayers.

Q. WHY SHOULD THESE COSTS BE SHARED?

A. Because the Company and its directors are the primary beneficiaries of this insurance, ratepayers should not be solely responsible for the costs.

Q. WHAT IS YOUR RECOMMENDED ADJUSTMENT?

A. The adjustment is a 75/25 sharing of this cost between shareholders and ratepayers, respectively. This is a reduction of $20,182 in Rate Year 1, as shown on Exhibit JD-1, Schedule C-6.

Q. IS THIS ADJUSTMENT CONSISTENT WITH PRIOR DECISIONS IN OTHER JURISDICTIONS?

A. Yes. 75% of D&O has been disallowed in the following rate cases: Docket No. 16-06-04, *Application of The United Illuminating Company to Increase Its Rates and Charges, pp. 35-36*; Docket No. 13-01-19, *Application of The United Illuminating Company to Increase Rates and Charges, page 71*; and Docket No. 13-06-08, *Application of Connecticut Natural Gas*

Corporation to Increase its Rates and Charges, page 27. In addition, 50% of D&O has been disallowed in CA.[15]

Vegetation Management

Q. DO YOU HAVE ANY CONCERNS WITH THE COMPANY'S REQUEST REGARDING VEGETATION MANAGEMENT?

A. Yes. I have a number of concerns which I discuss below.

Q. PLEASE DISCUSS THE INTEGRATED VEGETATION MANAGEMENT PROGRAM.

A. A subcategory of Vegetation Management Expense is the Integrated Vegetation Management (IVM) Program. It contains the following four components which are included in the table below:[16]

Integrated Vegetation Management	**RY 1**
IVM/ Herbicide in ROW	$ 64,606
Polinator Education/Habitat	$ 5,126
Monarch Butterfly Conservation	$ 20,500
Sub-Transmission Right of Way Clearing	
Total	**$ 90,232**

[15] Decision 19-09-051 dated September 26, 2019 p.531-532.
[16] RR-3.12. It should be noted the Company revised the total IVR amount in the rate years in OCA-5-33.

This is a program that previously existed but was discontinued after Granite State became a Liberty Affiliate. The Company stated:

> Granite State discontinued herbicide and mowing applications, which are an important component of IVM, in 2012 after the Company became a Liberty affiliate. Herbicides and mowing of the right-of-way floors were discontinued due to reduced internal staffing to manage the IVM program and the need to focus on providing routine pruning. <u>The Company will return to investing in a full IVM program upon approval of the current rate case</u> <u>pending herbicide applicator resource availability and suitable work site conditions</u>. (Emphasis added)[17]

Q. WHAT IS YOUR CONCERN WITH THIS STATEMENT?

A. The response states that the Company will only resume the IVM program if the Commission approves it and "pending herbicide applicator resource availability and suitable work site conditions." Based on the latter part of this statement, it does not appear certain that the program will ever be resumed and if so, when. As ratepayers should not be responsible for costs that may not occur, I recommend disallowance of the costs related to the integrated vegetation management plan, a reduction of $90,232, in Rate Year 1.

Q. DO YOU HAVE ANY OTHER CONCERNS?

A. Yes. Another concern relates to an issue with telecommunications company Consolidated Communications ("Consolidated"). The Company stated that part of the increase in vegetation management expense is because Liberty no longer receives contributions from Consolidated

[17] OCA 3-129.

through a joint pole ownership agreement.[18] The Company stated in its 2021 Vegetation Management Plan that the loss of payments from Consolidated represented about 20-22% of the program budget. (OCA 3-137.1 page 5-6) Below are the last five years of contributions from Consolidated:[19]

2015	$ 288,000
2016	$ 350,000
2017	$ 442,992
2018	$ 478,142
2019	$ 495,381

Q. WHY IS THE COMPANY NO LONGER RECEIVING CONTRIBUTIONS FROM CONSOLIDATED?

A. The Company's response to OCA 3-127 stated that:

> Liberty no longer receives contributions from Consolidated Communications Inc. (CCI) because in 2019 CCI notified the Company that CCI would no longer participate in the shared vegetation maintenance costs effective January 2020, as it was contractually allowed to do under the terms of the Joint Ownership Agreement.

As the poles are jointly owned with another company, Liberty ratepayers should not be fully responsible for the related vegetation management costs. The Company entered a contract allowing Consolidated to stop contributing to vegetation management and passing the increase onto ratepayers when Consolidated opted out is not acceptable.

[18] April 28, 2023 Direct Testimony of Heather Green and J.M. Sparkman, p. 20.

[19] OCA TS 1-1, Green/Sparkman Testimony, p.14.

Q. WHAT DO YOU RECOMMEND?

I recommend reducing the Rate Year 1 by $495,381, the amount of Consolidated's last annual contribution. This can be considered conservative as the contributions increased each year from 2015-2019.

Q. WHAT IS THE TOTAL OF YOUR RECOMMENDED ADJUSTMENTS TO VEGETATION MANAGEMENT EXPENSE?

A. I recommend reducing Rate Year 1 by $585,613 ($90,232 + $495,381) as shown on Exhibit JD-1, Schedule C-7:

<u>Legal Expense</u>

Q. WHAT AMOUNT OF LEGAL EXPENSE HAS THE COMPANY INCLUDED IN THE RATE YEARS?

A. The Company has included $75,967, $77,652 and $79,296, in Rate Years 1, 2, and 3, respectively, which were forecasted using the general escalator. (OCA 3-68).

Q. DO YOU AGREE WITH THE COMPANY'S METHODOLOGY FOR FORECASTING THE RATE YEAR AMOUNTS?

A. No, the requested rate year amounts reflect steady increases while the historical amounts have fluctuated (OCA 3-68):

Vendor	2018	2019	2020	2021	2022
ALFANO LAW OFFICE, PLLC	1,297.50				
DEVINE, MILLIMET & BRANCH, PA	1,038.24				
GALLAGHER, CALLAHAN & GARTRELL, P.C.	1,500.00				
GLENN E DAWSON, WILSON, DAWSON & BRETT	13,153.58				
KEEGAN WERLIN LLP			12,871.00	13,605.00	2,028.00
NIXON PEABODY, LLC		995.00	1,990.00	3,235.00	1,990.00
ORR & RENO, P.A.	864.00	357.00	217.25		1,621.00
PASTORI KRANS PLLC	25,124.00	39,762.13	662.75	68,001.73	58,552.32
RAMSDELL LAW FIRM	36.00		72.50		
MANNING GROSS + MASSENBURG LLP					8,861.50
Total	43,013.32	41,114.13	15,813.50	84,841.73	73,052.82

Q. DID THE COMPANY ACKNOWLEDGE THAT THIS EXPENSE FLUCTUATES?

A. Yes, the Company explained that "the variability in legal fees" arises from outside litigation." (OCA 5-21)

Q. DID THE COMPANY EXPLAIN THE REASON FOR THE INCREASED SPENDING IN 2021 AND 2022?

A. Yes, the Company's response to OCA 5-21 stated that:

> The Pastori Krans fees in 2021 and 2022 (80% of both the 2021 and 2022 totals) are related to Liberty's breach of contract lawsuit against Clearway, the tree trimming company that breached its contract with Liberty in early 2021, which is ongoing.

Q. DOES THE COMPANY EXPECT THE CLEARWAY LAWSUIT TO CONTINUE DURING THE RATE YEARS?

A. No, the response to OCA TS 1-13 states that the Clearway lawsuit trial is scheduled for May 2024 and the Company expects the case to be resolved by the end of 2024. As such, there is no need to reflect a higher expense related to that case in the rate years.

Q. WHAT DO YOU RECOMMEND?

A. As this cost fluctuates, I recommend the use of a five-year average for the Rate Year. This results in a reduction of $24,400 in Rate Year 1 as shown on Exhibit JD-1, Schedule C-8.

<u>Customer Education /Outreach Expense</u>

Q. IS THE COMPANY REQUESTING RECOVERY OF COSTS FOR A NEW CUSTOMER PROGRAM?

A. Yes, the Company is requesting recovery of $105,000 customer education/outreach expense in each of the rate years for a time of use program. (RR-3.11)

Q. WHAT IS THE TIME OF USE PROGRAM?

A. Company Witness Tillman describes the initiative as introducing:

> …full requirements time-of-use ("TOU") rate options available to residential and small commercial customers. The introduction of these rate options are the next steps in the Company's ongoing strategy to modernize its rate structures.

Q, DID THE COMPANY PROVIDE SUPPORT FOR THESE CUSTOMER OUTREACH EXPENSES?

A. No. OCA 3-24 requested documentation supporting the proforma costs. The Company's response did not provide any documentation and stated:

> Refer to the Direct Testimony of Ms. Jardin and Mr. Dane, Attachment KMJ/DMD-1, Schedule RR-3.11, line 11, Bates II-347. For information on the TOU rates Customer Education/Outreach program expenses, please see the Direct Testimony of Gregory W. Tillman, pages 13–14.

However, Mr. Tillman's testimony provided only a list of costs without any supporting documentation for those costs.

Q. WHAT DO YOU RECOMMEND?

A. I recommend disallowing this entire expense from the rate year since it was not supported. This is a reduction of $105,000 as shown on Exhibit JD-1, Schedule C-9.

<u>Customer First Expense</u>

Q. IS THE COMPANY REQUESTING RECOVERY OF COSTS FOR ANOTHER NEW CUSTOMER PROGRAM?

A. Yes, the Company is also requesting recovery of $832,809, $796,776 and $728,576 in Rate Years 1, 2, and 3 for the Customer First Program. (RR-3.13)

Q. PLEASE DESCRIBE THE CUSTOMER FIRST PROGRAM.

A. The Company states that this project "serves to install a comprehensive enterprise-wide solution to replace and improve legacy computer systems." (Lauren Preston April 28, 2023, testimony page 3.) Below is an illustration of the costs: (Schedule RR 3.13)

Description	G/L Account	FERC Account	Test Year 2022	Pro Forma Adjustment	Test Year Pro Forma	Interim Period (Annualized) 2022/2023	Rate Year 2023/2024	Rate Year 2024/2025	Rate Year 2025/2026
Total Customer First Expense	**OCOA/505000(ADJ)**	**930**	**122,187**	**737,832**	**860,020**	**860,020**	**832,809**	**796,776**	**728,576**

Annual Post-Implementation Costs (Opex)	2022	2023	2024	2025	2026
Foundations	$ -	$ 684,015	$ 646,017	$ 641,482	$ 520,919
Ecustomer	$ 11,738	$ 12,032	$ 12,322	$ 12,322	$ 12,322
Employee Central	$ 22,686	$ 22,103	$ 20,751	$ 20,969	$ 21,191
Procure-to-Pay	$ 15,019	$ 13,257	$ 9,691	$ 9,691	$ 9,691
Network Design	$ 72,744	$ 128,612	$ 116,817	$ 103,489	$ 105,076
Total	$ 122,187	$ 860,020	$ 805,598	$ 787,953	$ 669,200

Q, DID THE COMPANY PROVIDE DOCUMENTATION SUPPORTING THIS SIGNIFICANT EXPENSE?

A. No. OCA 3-23 requested documentation supporting the proforma costs. The Company's response referred to DOE 4-52.xlsx, which was essentially Schedule RR-3.13 with some short descriptions added to the categories of the costs, and a breakdown of costs between labors and software/applications and is reproduced below:

Annual Post-Implementation Costs (Opex)	2022	2023	2024	2025	2026	
Foundations	$ -	$ 684,015	$ 646,017	$ 641,482	$ 520,919	*Includes core SAP applications, Hosting, AMS support, Powerplan Asset Accounting, Click Salesforce among other O&M items*
Ecustomer	$ 11,738	$ 12,032	$ 12,322	$ 12,322	$ 12,322	*includes MYAccount SEW costs to run eCustomer application.*
Employee Central	$ 22,686	$ 22,103	$ 20,751	$ 20,969	$ 21,191	*Includes Saas solutions such as SAP SuccessFactors and AMS support*
Procure-to-Pay	$ 15,019	$ 13,257	$ 9,691	$ 9,691	$ 9,691	*Includes SAP Ariba Saas and platform solutions*
Network Design	$ 72,744	$ 128,612	$ 116,817	$ 103,489	$ 105,076	*Includes key vendor support from Cyient, ESRI along with Cloud hosting and support.*
Total	$ 122,187	$ 860,020	$ 805,598	$ 787,953	$ 669,200	

Annual Post-Implementation Costs (Opex)	2022	2023	2024	2025	2026
Internal Labor	$ 26,667	$ 38,072	$ 37,089	$ 32,923	$ 33,400
External Labor	$ 32,579	$ 322,927	$ 316,020	$ 314,092	$ 186,975
Software/Applications	$ 62,941	$ 499,021	$ 452,489	$ 440,938	$ 448,824
Total	$ 122,187	$ 860,020	$ 805,598	$ 787,953	$ 669,200

No documents supporting the amounts shown above were provided. The Company has the burden to support costs for which it seeks recovery and it has not done so for this cost.

Q. WHAT DO YOU RECOMMEND?

A. I recommend disallowing this expense from the rate years since it was not supported by the Company. This results in a reduction of $832,809 in Rate Year 1 which is shown on Exhibit JD-1, Schedule C-10.

Injuries and Damages

Q. WHAT AMOUNT OF INJURIES AND DAMAGES EXPENSE HAS THE COMPANY INCLUDED IN THE RATE YEARS?

A. The Company has included in $1.033 million, $1.161 million and $1.305 million in rate years 1, 2, and 3 which were forecasted using the general escalator (RR-2.10, line 127). The adjusted test year amount was $926,099. OCA 3-61.

Q, WHAT IS INJURIES AND DAMAGES EXPENSE?

A. The uniform system of accounts describes injuries and damages as follows:

> This account shall include the cost of insurance or reserve accruals to protect the utility against injuries and damages claims of employees or others, losses of such character not covered by insurance, and expenses incurred in settlement of injuries and damages claims. For Major utilities, it shall also include the cost of

labor and related supplies and expenses incurred in injuries and damages activities.

Q. DO YOU AGREE WITH THE COMPANY'S METHODOLOGY FOR FORECASTING THE RATE YEAR AMOUNTS?

A. No. The Company's assumed increases in each of the rate years are inappropriate. Below is an illustration of the historical costs. (OCA 3-61)

Injuries and Damages Expense				
2018	2019	2020	2021	2022
$ 750,029	$ 554,459	$ 589,428	$ 800,456	$ 927,599

While the expense did increase during 2020-2022, 2019 and 2020 were both lower than 2018. In general, this expense fluctuates.

Q. WHAT DO YOU RECOMMEND?

A. I recommend that the Company's amount be held to the adjusted test year level of $926,099 without escalation. This is the highest amount incurred during 2018-2022. Because costs have fluctuated, an average could also be recommended but because the costs have trended up from 2019-2022, the use of the 2022 amount is recommended. This results in a reduction of $107,004 to Rate Year 1 as shown on Exhibit JD-1, Schedule C-11.

Pole Attachment Fees

Q. WHAT AMOUNT OF POLE ATTACHMENT FEES HAS THE COMPANY REFLECTED IN THE RATE YEARS?

A. The Company has reflected the unadjusted test year amount of $295,760 in each of the rate years. (OCA 3-96)

Q. HOW ARE POLE ATTACHMENT FEES REFLECTED IN THE REVENUE REQUIREMENT?

A. They are a component of “Other Operating Revenues.” (OCA 3-76)

Q. WHY DIDN’T THE COMPANY REFLECT ANY PROFORMA ADJUSTMENT TO POLE ATTACHMENT FEES?

A. The Company’s response to OCA 5-25 stated:

> As shown in the Company’s response to OCA 5-24, the Company’s pole attachment fees have remained unchanged since 2021, which was the basis for the Company not proposing to adjust pole attachment revenue in the rate years.

Q. WAS THIS ISSUE RAISED IN THE LAST RATE CASE?

A. Yes. OCA witness Bion Ostrander’s testimony expressed a concern with the pole fee attachment fee issue. His testimony stated:

> Based on my experience and understanding of the FCC formula for pole rental fees calculation, the cost standard is fully allocated costs. I believe it is reasonable to update pole rental fees to help ensure, at the very least, that the Company’s pole rental rates are closer to cost. If pole rental fees are below cost, then arguably the amount of fees collected by the Company from pole attachers are

> not adequate to cover its costs, and any related cost deficiency will be subsidized and born by ratepayers, who will then effectively subsidize both the Company and pole attachers. It is neither reasonable nor sustainable that ratepayers should subsidize any party for below-cost pole rental fees, particularly when the Company has the necessary legal basis and cost-causation foundation to seek and support a reasonable increase in these pole rental rates from attachers.[20]

Although the case was the result of a settlement, the Commission's order stated:

> Pole Attachment Fees
> The Settling Parties agree that the Company will update its fees once per year in accordance with the PUC 1300 rules.[21]

Q. WHAT ARE THE PUC 1300 RULES?

A. PUC 1300 is the New Hampshire Code of Administrative Rules regarding Utility Pole Attachments.

Q. WHY HASN'T THE COMPANY REVISED POLE ATTACHMENT RATES IN ACCORDANCE WITH THE SETTLEMENT AGREEMENT?

A. In OCA TS 1-8, the Company states that the rates were not revised "due to a transition of employees responsible for the pole attachment rates and the requirement to update the pole attachment rates was missed."

Q. WHAT DO YOU RECOMMEND?

[20] OCA Testimony, DE 19-064, pp. 78-79.
[21] Stipulation and Settlement Agreement Regarding Permanent Rates, DE 19-064, p. 15.

A. We recommend that the Commission direct the Company to update the pole rates annually as they were previously required to do.

O&M Flow Through Adjustments

Payroll Tax Expense

Q. PLEASE DISCUSS YOUR ADJUSTMENT TO PAYROLL TAX.

A. The adjustment is a flowthrough from the OCA's adjustment to payroll and incentive compensation. OCA's adjustment reduces payroll tax by $135,178 in Rate Year 1, which is shown on Exhibit JD-1, Schedule C-14.

Benefits Expense

Q. PLEASE DISCUSS YOUR ADJUSTMENT TO BENEFITS EXPENSE.

A. The adjustment is a flow through from the OCA's adjustment to payroll. OCA's adjustment reduces benefits expense by $765,977 in Rate Year 1, which is shown on Exhibit JD-1, Schedule C-12.

Depreciation Expense

Q. PLEASE DISCUSS THE ADJUSTMENT TO DEPRECIATION EXPENSE.

A. I incorporated the depreciation rates recommended by OCA witness Marc Vatter which results in a rate year decrease of $3,241,555 to depreciation expense. I also calculated the corresponding adjustment to OCA's recommended reduction to plant in service, which is a reduction of $36,038. OCA's total adjustments reduce depreciation expense by

$3,277,593 in Rate Year 1, which is shown on Exhibit JD-1, Schedule C-13.

Property Tax Expense

Q. PLEASE DISCUSS YOUR ADJUSTMENT TO PROPERTY TAX EXPENSE.

A. This adjustment is a flowthrough from the OCA's adjustment to plant in service. OCA's adjustment reduces property tax expense by $25,155, in Rate Year 1, which is shown on Exhibit JD-1, Schedule C-15.

Interest Synchronization

Q. PLEASE DISCUSS YOUR ADJUSTMENT TO INTEREST SYNCHRONIZATION.

A. The adjustment is a flowthrough from the OCA's adjustment to rate base. OCA's adjustment increases interest expense, which increases income tax expense by $273,606 in Rate Year 1, as shown on Exhibit JD-1, Schedule C-16.

Income Tax Expense

Q. PLEASE DISCUSS YOUR ADJUSTMENT TO INCOME TAX EXPENSE.

A. The adjustment is a flowthrough from the OCA's adjustment to O&M expenses. OCA's adjustment increases federal and state income taxes by $2,044,818 in Rate Year 1, as shown on Exhibit JD-1, Schedule C-17.

Q. DOES THIS COMPLETE YOUR TESTIMONY?

A. Yes, at this time. I reserve the right to supplement my testimony following the receipt of additional information from the Company. Further, my silence on an issue should not be interpreted as agreement with the Company's position.