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November 6, 2024

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

via e-mail to: ClerksOffice@puc.nh.gov

Re: Docket No. DE 24-073
Liberty Utilities (Granite State Electric) Corp.
Investigation of Vegetation Management Practices

Dear Chairman Goldner:

Please treat this letter as the response of the Office of the Consumer Advocate objecting to Liberty's pleading of November 1, 2024, captioned "Motion for Revised Process." The Commission must deny this motion for several equally dispositive reasons, addressed below.

Liberty expressly concedes that its motion represents a reversal of its initial position. As the Commission is aware, it was the OCA that originally advocated for an approach to this docket that mirrored what occurred in a Show Cause proceeding conducted 13 years ago (Docket No. DG 11-196, involving a different utility) — a process which contemplated opportunities for discovery and the submission of written testimony. However, it was *Liberty* that rejected the OCA's proposal and took the position that briefing alone would be sufficient, stating the record did not need to be developed. *See* Transcript of August 27, 2024, prehearing conference (tab 13) at 24, lines 10-23 (Counsel for Liberty: "I don't think there are many facts in dispute. I think there is probably a dispute over what we do with those facts but . . . it's all in the filings, it's all in the prior veg management reports that we filed, the orders that come out of those dockets, settlement agreements") and 28, lines 21 to 23 and 29, lines 1-2 ("as a utility, we would never want to be on the receiving end of a show cause hearing. But, as a lawyer, I think that probably is the best mechanism to address the issues that are raised."). Thereafter, all parties agreed to resolve this show cause proceeding via briefs and the Commission issued an order confirming that agreement. Thus, Liberty knowingly and expressly rejected the opportunity for factual exploration that it now contends is necessary.

Moreover, in reversing its prior position Liberty cites no authority, whether it be statute, rule, or Commission precedent, that authorizes the revised process it now seeks. Instead, Liberty makes vague appeals asking the Commission to *indulge* its request to effectively "reset" the docket — presumably because Liberty now regrets the position it finds itself in. Liberty has also hired outside counsel for

reasons that are not clear just one business day before the reply briefs would otherwise have been due pursuant to the Commission's briefing schedule.¹

As to its substance, Liberty's motion borders on the ridiculous. Liberty alleges that only it has the information required for the Commission to render a lawful decision while simultaneously failing to specify what that information is, why the Commission needs it, and why Liberty has failed to provide that information up to and until this point. This docket has been pending for nearly six months, and Liberty's initial brief covered more than 75 pages including attachments while recounting the history of its vegetation management activities over a nearly 20-year span. And yet, only on the eve of filing a reply brief has Liberty identified some unexplained "foundational facts and circumstances" that it claims are "necessary" for rendering a decision here. Such a claim stretches credulity to the breaking point. Liberty boldly makes this allegation in stark contrast to its initial position that the Commission could render a lawful decision on briefing alone despite having this exclusive information all-the-while.

Meanwhile, residential customers continue to face higher than necessary costs – and are thereby prejudiced by Liberty's procedural gambit – while the utility scrambles to decide what its actual position is in the eleventh hour. Liberty has conceded that the OCA has reasonably called into question the Company's performance commitments. Thus, the OCA has established its affirmative case for the Show Cause proceeding, meaning that Liberty bears the ultimate burden of persuasion that it is in compliance with Order No. 26,376 and Rule 307.10. Order No. 25,296 in Docket No. DG 11-196 (tab 21) at 2; *See Wilton Telephone Company et. al.*, Order No. 23,744 (July 26, 2001) at 22-25. And as stated earlier, Liberty expressly rejected its opportunity to develop the record. Liberty's gambit in filing the motion has already yielded a partial victory for the Company by triggering a stay in the date for reply briefs; this utility should not be allowed to profit further by resetting the proceeding in its entirety. Whether and to what extent Liberty exercised poor judgment, or is experiencing "buyer's remorse," in that decision does not entitle it to the relief it now seeks — Liberty got what it originally sought.

Therefore, the Commission must reject Liberty's attempt to derail the Show Cause proceeding's process that *all* parties, including Liberty, agreed to and as approved by the Commission's order establishing the briefing schedule. Liberty has made its bed, and the Commission should make Liberty lie in it.

Sincerely,



Michael J. Crouse
Staff Attorney

cc: Service List (via e-mail)

¹ The OCA is concerned about the sudden and unexpected appearance of outside counsel this late into the proceeding. The OCA advocates that the Commission should affirm in any order that any costs Liberty incurs for outside counsel in this matter should be disallowed from entering customer rates.