

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

**Docket DE 24-073**

**OFFICE OF THE CONSUMER ADVOCATE**

**Show Cause Proceeding**

**Opposition to the Office of the Consumer Advocate's Motion for Reconsideration**

Pursuant to N.H. Code Admin. Rules Puc 203.07 and Puc 202.03, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (“Liberty” or the “Company”) hereby opposes the Office of the Consumer Advocate’s (“OCA”) Motion for Reconsideration of the New Hampshire Public Utilities’ Procedural Order issued on November 18, 2024 (the “Procedural Order”). The OCA’s Motion for Reconsideration filed on December 18, 2024 (the “Motion”) requests that the Commission: (1) grant reconsideration of the Procedural Order “so as not to violate RSA 541:A:33, IV”; (2) resolve the issues in this docket via legal briefs alone; and (3) deny the admittance of the Company’s December 13, 2024 testimony filed in this docket (Motion at 12). As set forth below, the Commission was well within its discretion to accept additional documentary evidence. However, Liberty would not oppose an opportunity for the parties to cross-examine its witnesses in response to the testimony submitted on December 13, 2024. Should the Commission determine that its Procedural Order was inconsistent with the requirements of RSA 541-A:33, allowing for cross-examination is the appropriate remedy because it addresses The OCA’s due process concern without depriving the Commission of relevant evidence to inform its decision in this matter.

In support of its opposition to the OCA’s Motion, Liberty states the following:

## **I. Background**

This proceeding was initiated in response to the May 10, 2024 petition filed by the OCA asserting that Liberty has failed to comply with the vegetation management requirements included in the Settlement Agreement approved in Docket DE 19-064, specifically with respect to the vegetation management provisions (the “Settlement Agreement”) (OCA Petition at 1). The OCA argued that an investigation was necessary because vegetation management is “a critical component of reliability and cost-effectiveness” (OCA Petition at 2). In support of this argument the OCA stated that it is “concerned residential customers are paying higher than necessary rates due to necessary vegetation management taking place during storm restoration events rather than through more controlled and cost-effective vegetation management programs” (*id.* at 8). The OCA also expressed concern with “the extent vegetation contributes to Liberty’s outages and how that might have been further mitigated with a four-year trim cycle” (*id.*).

In response to the OCA’s Petition, the Commission held a Prehearing Conference on August 27, 2024. At the Prehearing Conference, the parties (including Liberty) agreed that a threshold matter is whether Liberty is in contempt of the terms of the Settlement Agreement, and if so, what the appropriate remedy for such finding of contempt is. See 2024 Aug. 27 Tr. at 24-28; see also the Commission’s August 28, 2024 Procedural Order (the “August Procedural Order”). To address these preliminary legal issues, the Commission set a briefing schedule that allowed for initial briefs on October 22, 2024 and reply briefs on November 5, 2024. August Procedural Order at 2. The OCA, DOE, and Liberty each filed an initial brief on October 22, 2024.

On November 1, 2024, the Company filed a Motion for Revised Process requesting to modify the procedural schedule and allow Liberty to provide additional evidence necessary to

support its position. In support of its motion, Liberty argued that “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” (Motion to Revise Process at 2). The OCA objected to the Company’s motion and the DOE filed a response on November 12, 2024 (the “DOE Response”) asserting that the Company should be required to make an “offer of proof” about the facts it wished to include in its testimony (DOE Response at 3). The DOE’s response further acknowledged that the annual vegetation management dockets were not focused on remedies for non-compliance with the Settlement Agreement and stated that DOE would be supportive of testimony pertaining to potential remedies (id. at 4).

On November 18, 2024, before the Company could respond to DOE’s recommendation to submit an “offer of proof,” the Commission issued its Procedural Order denying Liberty’s Motion but allowing for the filing of testimony needed to support initial and/or reply briefs. Procedural Order at 2. The Procedural Order did not contain any limitations or directives with respect to testimony. Instead, the Procedural Order stated that “parties shall comply with the following: [s]ubmission of testimony needed to support either its initial brief or anticipated reply brief shall be filed by December 13, 2024...” Procedural Order at 2. The Company filed testimony on December 13, 2024 (the “Liberty Testimony”) that will be relied upon to support its arguments in its reply brief; the Company’s testimony also supports arguments made in its initial brief.<sup>1</sup>

The Liberty Testimony addressed the following topics to support the Company’s briefs in this proceeding: (1) the Company’s Vegetation Management Program (in general); (2) implementation of the Company’s Vegetation Management Program beginning in 2020; (3) the economic circumstances impacting the Company’s Vegetation Management Program beginning

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<sup>1</sup> The Department of Energy filed a letter on December 13, 2024, advising that it would rely on its initial brief as filed including the citations therein to prior proceedings. The OCA did not make any filing on December 13, 2024.

in 2020; (4) a proposed path forward for the Company's Vegetation Management Program; and (5) a response to the proposed remedies of DOE and the OCA set forth in their initial briefs.

The OCA filed the Motion on December 18, 2024.

## **II. Standard of Review**

RSA 541:3 allows for rehearing of a Commission order:

Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

The standard governing the Commission's review of a motion for rehearing pursuant to RSA 541:3 is well established. "The Commission may grant rehearing or reconsideration for 'good reason' if the moving party shows that an order is unlawful or unreasonable." *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 26,087 at 3-4 (Dec. 18, 2017) (citations omitted). "A successful motion must establish 'good reason' by showing that there are matters that the Commission 'overlooked or mistakenly conceived in the original decision,' or by presenting new evidence that was 'unavailable prior to the issuance of the underlying decision.'" *Id.* "A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome." *Id.*

## **III. Argument**

### **A. The OCA's Motion Fails to Satisfy the Standard of Review**

As set forth above, the applicable standard of review for a motion for rehearing (or reconsideration) is that the underlying order was unlawful or unreasonable. The OCA argues that the Procedural Order is inconsistent with the Administrative Procedure Act because it does not

afford an opportunity for cross-examination of the Company's witnesses with respect to the December Testimony (OCA Motion at 2, 6). It is true that RSA 541-A:33, IV states that "[a] party *may* conduct cross-examinations required for a full and true disclosure of the facts." (emphasis added). It is also true that the Procedural Order did not schedule a hearing for such cross-examination; however, this does not equate to a violation of the Administrative Procedure Act. RSA 541-A:33, II specifically states that "[a]ny oral or documentary evidence may be received." Similarly, RSA 365:15 states that the Commission "may also require any public utility to make specific answers to questions upon which the [C]ommission may need information." It is therefore clear that the Commission is well within its discretion as the adjudicatory body to accept written testimony to inform its decision in this proceeding. See Order No. 27,018, at 5 citing to *Appeal of Jamar*, 145 N.H. 152, 155 (2000) (stating that "administrative entities generally have the implied or incidental powers reasonably necessary to carry out the powers expressly granted to them."). Here, it is clear that the Commission has the express authority pursuant to RSA 374:7 to conduct this investigation and therefore is permitted to collect evidence to inform its investigation.

In addition to failing to demonstrate that the Procedural Order violates the APA because it does not include a hearing to allow for cross-examination, the OCA has failed to identify information that was not available to the Commission or that the Commission overlooked in issuing the Procedural Order. It was specifically contemplated that the Commission would rely on written testimony and other documentation submitted in the Company's prior vegetation management proceedings without an opportunity conduct cross-examination in this proceeding (see, 2024 Aug. 27 Tr. at 24, stating that facts relevant to the proceeding are in the prior vegetation management reports). The OCA did not object to this format even though it would not be afforded

an opportunity for cross examination under that framework.<sup>2</sup> Accordingly, all parties and the Commission had already contemplated that the decision on the threshold legal issues could be made based on documentary evidence (including testimony) without an additional hearing. However, if the OCA has determined that cross-examination is necessary it could simply have filed a motion requesting such an opportunity. The Company's Motion for Revised Process anticipated a desire for cross-examination and included this step in its proposed procedural schedule. Thus, Liberty would not have objected to such a request.

B. The Commission Should Accept the Liberty Testimony because it is Relevant and Necessary to the Resolution of this Proceeding.

The OCA's second argument is that the Liberty Testimony should be excluded as irrelevant or immaterial arguing that it "can hardly be considered necessary" (Motion at 7, 8 citing RSA 541-A:33, II). This argument is not only without merit but fails to support a request for rehearing. The OCA is welcome to dispute the contents of the Company's testimony in its reply brief, or to request cross examination. In any event, the important point is that even a determination that Liberty's testimony is duplicative of filings in previous dockets would not render the Procedural Order unlawful or unreasonable, so as to violate the Administrative Procedure Act.<sup>3</sup> The OCA appears to be using its Motion to not only request rehearing but as an additional opportunity to argue the merits of its position.

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<sup>2</sup> Notably, the OCA did not participate in all of the vegetation management proceedings for the relevant timeframe. See Dockets DE 21-049 and DE 22-014.

<sup>3</sup> The Company's Motion for Revised Process also made clear that Liberty intended not only to present new information but also to compile the existing information (Motion for Revised Process at 4, stating that the information was "scattered across dockets"). Liberty was transparent in its Motion for Revised Process and the OCA has therefore not presented any information in its Motion that the Commission was not aware of prior to issuance of the Procedural Order.

Liberty does not dispute that certain factual information presented in its December 13, 2024 testimony was previously presented in the annual vegetation management dockets. This occurred because Liberty generally apprised the Commission and other parties of the status of the vegetation management program as the circumstances transpired over the years 2021 through 2024. It would not be possible for Liberty to delve into more detail of these circumstances without reiterating certain information that was already provided (Motion at 2, asserting that Liberty’s testimony is “nothing more than a rehash of information already available). However, the Liberty Testimony substantially expands upon previously provided information to address the specific issues raised in this proceeding. For example, the Company informed the Commission and parties regarding its challenges with its VMP contractor during 2021, including how it retained replacement VMP contractors (DE 22-014, Exh. 1, at Bates 010). However, Liberty did not provide detailed information on the changes it has experienced with its competitive solicitation process, including receipt of far fewer bids for its VMP work and/or an increase in partial bids (i.e., receipt of bids for only a portion of its annual VMP work). These workforce trends were not fully fleshed out in prior dockets and are directly relevant to the issues before the Commission. Accordingly, the Liberty Testimony provides substantial more detail than any previous filings submitted regarding the Company’s vegetation management performance during the timeframe in question, building upon information generally provided in previous filings (see, e.g., Liberty Testimony at 22).

Further, even if it were true that the Liberty Testimony simply restated the facts presented across the underlying dockets into one comprehensive document, this would not mean that the December Testimony is irrelevant or immaterial. This would, at most, mean that the testimony is duplicative evidence. Pursuant to RSA 541-A:33, II, the Commission may exclude evidence that is “unduly repetitious.” However, RSA 541-A:33, II would not **require** the Commission to

exclude Liberty's Testimony and RSA 541-A:33, II would not even apply here because no testimony or other documentary evidence has been submitted. It is perfectly reasonable for the Company to file testimony that combines its prior filings into one comprehensive document and to expand on that information in the context of this investigatory proceeding.

With respect to substance, the OCA attempts to make the following arguments in support of its contention that the Liberty Testimony is not relevant to this proceeding: (1) Liberty has included arguments regarding an "independent and unrelated reliability metric" that "has no relevance to the question of whether Liberty has complied with the legally binding terms of the Settlement Agreement...;" and (2) "in response to the OCA's concerns [regarding storm costs]"..."Liberty is conflating discretionary trimming with mandatory routine circuit trimming" (Motion at 8-9, 10).

With respect to the first example of "irrelevance," it is noteworthy that the OCA's Petition requesting to commence this proceeding stated that vegetation management is "a critical component of reliability and cost-effectiveness" (Petition at 2). Later in its Petition, the OCA argued that vegetation management could be contributing to outages that could have been mitigated (Petition at 8). Mitigating outages through vegetation management has the effect of increasing reliability. It is therefore clear that reliability is relevant to this proceeding and that the OCA is well aware of the relationship between reliability and vegetation management. The OCA's argument that this information is not relevant is not only incorrect, but it is not even supported by its own filings.

The OCA's second example of "irrelevance" regarding storm costs appears to be a disagreement with the testimony of Liberty's witnesses (Motion at 11, arguing that storm costs will generally be higher based on Liberty's vegetation management performance). However,



disagreement does not equate to irrelevance and the OCA does not get to exclude inconvenient evidence. The Commission should hear from all parties and reach its own conclusion. As the OCA points out, “Liberty bears the burden of proof” (Motion at 11). Liberty should be afforded the opportunity to submit that proof to the Commission.

Lastly, as the DOE correctly pointed out in its response to the Company’s motion for revised process, the objective of the annual vegetation management dockets is far different from the objective of this docket (DOE Response at 3). The narrow focus of the vegetation management dockets does not include reporting on reliability results,<sup>4</sup> interaction with storm response, and certainly does not address remedies in response to any alleged failure to comply with the terms of the VMP. Liberty’s annual vegetation management program filings are routine filings where the Company reports on its actual vegetation management program spending for the prior calendar year and its actual vegetation management program work. These routine filings are not intended to evaluate the Company’s overall vegetation management program, and the filings do not evaluate the impacts of the vegetation management program on storm response costs or the Company’s reliability (i.e., the annual filings do not evaluate the effectiveness of the VMP work).

The narrow focus of the annual filings is to provide the Company’s actual VMP results and associated spending to reconcile the Company’s actual vegetation management costs in the prior year. Pursuant to the terms of the Settlement Agreement approved in DE 19-064, the Company collects \$2.2 million in vegetation management costs through base rates. Any underspending can be carried into the next program year or returned to customers, as determined by the Commission. The Company may also request recovery of an additional ten percent (\$220,000) if its vegetation

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<sup>4</sup> The Settlement Agreement included termination of the Company’s Reliability Enhancement Program (“REP”) which had included reliability reporting requirements as part of a combined REP/VMP filing. With the termination of that program, reliability results were no longer included in the VMP docket.

management costs exceeded \$2.2 million in the prior year. The Company's annual filings present this cost reconciliation through a standard filing format that is reviewed on a relatively expedited timeline. Specifically, the Company submits its filing on March 15 for a rate adjustment effective May 1.

It is clear from the initial briefs filed in this investigation that those standard annual filings are insufficient to reach a decision on the questions posed in the August Procedural Order, particularly based on the recommended remedies presented in the initial briefs of DOE and the OCA. The Liberty Testimony provides information responsive to these issues that will support its reply brief and that will inform the Commission's decision-making process. Based on the foregoing, the Commission has discretion to allow this material evidence into the record and has not violated the Administrative Procedures Act. To the extent that the Commission determines that cross-examination is appropriate, Liberty is prepared to present its witnesses for questioning.

C. The OCA's Motion Continues to Raise Issues of Fact

As detailed above, the OCA has failed to meet the standard of review applicable to a motion for rehearing and has failed to demonstrate that Liberty's testimony is immaterial to this proceeding. What the OCA's Motion has done successfully, however, is demonstrate that there are issues of fact that the Commission must consider in reaching a determination regarding whether Liberty has failed to comply with the Settlement Agreement and if so, an appropriate remedy. Contrary to the OCA's assertions, this matter cannot be decided on legal briefs alone (Motion at 11). This is particularly true in light of the recommended remedies set forth in initial briefs that were unknown at the time the August Procedural Schedule was issued.

For example, the OCA argues that it cannot be disputed that Liberty's storm costs will generally be higher than necessary for the reasons set forth in its initial brief (Motion at 11). The

OCA offers no support for this contention but nevertheless goes on to state that “to what extent discretionary trimming has a mitigating impact on specific storms or costs is irrelevant” (*id.*). Despite arguing that the impact of Liberty’s vegetation management performance on storm costs is irrelevant, the OCA’s Initial Brief recommended significant monetary penalties based on an assertion that customers are paying higher costs than necessary, including for storm work (OCA In. Br. At 15). In order for the OCA’s argument to succeed the Commission must conclude that storm costs have been higher as a result of the Company’s vegetation management performance. The OCA has offered no proof in support of this and is now attempting to exclude the testimony filed by Liberty that addresses this issue.

These types of arguments make clear that the OCA is not concerned with following the Administrative Procedure Act and ensuring that the Commission has all the relevant information; the OCA is simply trying to preclude evidence that is not favorable to its own position. Liberty was forthcoming in its Motion for Revised Process regarding its request to change the procedural format of this proceeding including that such a request was a “reverse course.” When it became apparent that the Commission would not have the “full story” on which to base its decision to the legal questions posed, Liberty came forward and asked for additional process.

#### **IV. Conclusion**

The OCA’s Motion fails to satisfy the applicable standard of review and the Motion should be denied. Liberty’s testimony is not only relevant to the questions before the Commission but demonstrates that the questions posed by the Commission are questions of law and material facts. Accordingly, the Commission was well within its authority to issue the Procedural Order allowing for the filing of testimony. However, as stated above, Liberty does not object and is prepared to make its witnesses available for cross-examination. The OCA should not be permitted to deprive

the Company of its right to defend itself against the OCA's assertion that it has violated the terms of the Settlement Agreement and should not be permitted to deprive the Commission of receipt of all relevant information to inform its decision.

WHEREFORE, Liberty respectfully requests that this Commission:

- A. Deny the OCA's Motion;
- B. Accept the Company's December 13, 2024 testimony;
- C. Schedule a hearing to allow for cross-examination of the Company's witnesses if such cross-examination is determined necessary; and
- D. Grant such further relief as it deems appropriate.

Respectfully submitted,

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

By its Attorneys,



Date: December 26, 2024

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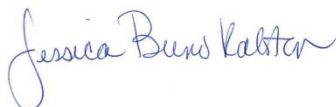
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Certificate of Service

I hereby certify that on December 26, 2024, a copy of this response to the Office of the Consumer Advocate's Motion for Reconsideration has been forwarded to the service list for docket DE 24-073.

A handwritten signature in blue ink that reads "Jessica Buno Ralston". The signature is written in a cursive style.

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Jessica Buno Ralston