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

**Docket No. DE 24-073**

**Office of the Consumer Advocate**
**Petition to Initiate Investigation**

**TESTIMONY**

**OF**

**JEFFREY FABER AND HEATHER GREEN**

December 13, 2024

Liberty™

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## I. INTRODUCTION

**Q. Please state your full name and business address.**

A. My name is Jeffrey Faber. My business address is 15 Buttrick Road, Londonderry, New Hampshire. I am employed by Liberty Utilities Service Corp. ("LUSC") as the Interim President, Electric Operations for Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty ("Liberty" or the "Company"). LUSC provides services to Liberty.

**Q. Please describe your educational and professional background.**

A. I graduated from the University of New Hampshire, Durham, in 1988 with a Bachelor of Science degree in Electrical Engineering. In 1995, I received my license as a Professional Engineer in the State of New Hampshire. I joined Liberty in September 2023. Prior to my employment with Liberty, I was employed by National Grid for 35 years where I spent 17 years in engineering, 7 years in process improvement, 5 years in contract management, and 6 years in operations.

**Q. Please describe your duties at Liberty.**

A. As the Interim President, I am responsible for the safe and reliable operation, design and maintenance of the electrical system for the Company.

**Q. Have you previously testified in regulatory proceedings before the New Hampshire Public Utilities Commission (the "Commission")?**

A. Yes, I previously provided testimony to the Commission in Docket No. DE 24-044, the Company's 2023 Vegetation Management Program Reconciliation and Rate Adjustment.

**Q. Ms. Green, please state your name and business address.**

A. My name is Heather Green. My business address is 407 Miracle Mile, Lebanon, New Hampshire. I am employed by LUSC as the Manager of Vegetation Management.

**Q. Please describe your educational and professional background.**

A. I graduated from Purdue University in 1994 with a Bachelor of Science degree in Forestry with an Urban Option. I joined LUSC in April 2018. Prior to joining LUSC, I worked for the State of New Hampshire's Division of Forests and Lands as a Community Forest Specialist. I also have extensive experience working as a municipal forester and contract arborist. As the Village Forester for Oak Lawn, Illinois, I led the management of the young urban forestry program including planting, pruning, and removing trees while also educating the public, staff, and elected officials.

**Q. Please describe your duties at Liberty.**

A. I support the Company's electric operations by planning, budgeting, auditing work in progress and completed work and managing the inspection and vegetation management programs, vendor performance and storm, construction, and regulatory support on the Company's distribution and sub-transmission assets.

**Q. Have you previously testified in regulatory proceedings before this Commission?**

A. Yes. I previously testified before the Commission in support of the Company's vegetation management program in Docket Nos. DE 19-051, DE 20-036, DE 21-049, DE 21-138, DE 22-024, and DE 23-031. I also submitted written testimony in support of the Company's rate cases in Docket Nos. DE 19-064 and DE 23-039, with respect to the Company's vegetation management practices.

## II. PURPOSE OF TESTIMONY AND EXECUTIVE SUMMARY

**Q. What is the purpose of your testimony?**

A. The purpose of our testimony is to respond to the petition filed by the Office of the Consumer Advocate ("OCA") alleging that the Company may be out of compliance with the vegetation management program requirements agreed to in the settlement agreement approved by the Commission in DE 19-064 (the "Settlement Agreement").[1] With respect to vegetation management, the Settlement Agreement required the Company to maintain a four-year trim cycle and submit annual reports, while establishing Liberty's annual cost recovery through base rates at the amount of $2,200,000, with the opportunity to request recovery of an incremental amount up to an additional ten percent. To respond to OCA's allegations, our testimony describes the Company's vegetation management program ("VMP"); reviews the Company's performance in that program from 2020 to date; and discusses the substantial challenges that Liberty faced in 2020 and 2021, due primarily to economic circumstances surrounding the COVID-19 pandemic.

**Q. What is the OCA's claim with respect to the Company's performance with the VMP?**

A. The OCA's petition filed on May 10, 2024 requested that the Commission initiate this proceeding to conduct an investigation regarding alleged noncompliance by Liberty with

[1] The Settlement Agreement was approved by Order No. 26,376 (June 30, 2020) to resolve the Company's most recent base distribution rate proceeding.

the VMP agreed to under the terms of the Settlement Agreement. The OCA's petition alleges that Liberty has failed to comply with the Settlement Agreement provision wherein the Company committed to maintain a four-year trim cycle, and by allegedly allowing an inventory of "deferred" vegetation management work to accrue. (OCA Petition at 1).

**Q. What is your understanding of the status of the investigation requested by the OCA?**

A. Although we are not attorneys, it is our understanding that the Commission issued a procedural order on August 28, 2024 that allowed parties to this proceeding (the Company, OCA, and the Department of Energy ("DOE")) to file briefs addressing two questions: (1) is the Company in contempt of the Settlement Agreement; and (2) if so, what is the appropriate remedy? It is also our understanding that the Commission issued a subsequent procedural order on November 18, 2024, allowing the parties to submit testimony in support of their briefs addressing the questions posed by the Commission.

**Q. Is your testimony designed to address the questions posed in the Commission's August 28, 2024 procedural order?**

A. Yes. Our testimony provides the factual background of the Company's actions in conducting the VMP pursuant to the Settlement Agreement. Specifically, our testimony explains: (1) how Liberty deployed and managed the VMP during the term of the Settlement Agreement; (2) the challenges that the Company faced in implementing the VMP since the Settlement Agreement became effective, particularly in relation to resource availability and cost; and (3) the Company's plan for addressing the concerns raised by OCA and for moving forward with the VMP. We understand that there are also legal issues related to the Commission's questions that will be addressed in the Company's reply brief.

**Q. Has the Company complied with the terms of the Settlement Agreement in relation to the VMP?**

A. Yes. The Company has complied with the terms of the Settlement Agreement to the best of its ability in light of the circumstances described here, and in keeping with its obligations to customers. As we explain in greater detail below, the Company's VMP is fully dependent on the use of outside tree crews to plan and conduct the cycle trimming work. During 2021 and 2022, significant challenges arose within the VMP due primarily to the economic upheaval caused by the COVID-19 pandemic, which caused problems with contract crews. Industry labor shortages and sharply rising costs affected the availability and cost of external tree crews beyond anything the Company could have foreseen at the outset of the Settlement Agreement, preventing the Company from completing the full annual trimming plan in 2021 and forward. In the following years, the Company took all reasonable steps to recover from the COVID-19 setbacks and the Company has made progress in that regard. However, the challenges required the Company to make adjustments to its work plan to respond to resource availability and cost considerations. At all times, Liberty took reasonable and thoughtful steps to manage the VMP, while balancing costs and results. Below, we provide additional detail on these extenuating circumstances.

It is important to note that Liberty has submitted all of the annual reports required by the Settlement Agreement and included transparent reporting on the challenges that the Company was encountering. Liberty's cost recovery has not exceeded the annual cap set forth in the Settlement Agreement and the Company used all available funds from rates to conduct the program as efficiently as possible. Compliance with the reporting and cost recovery provisions of the Settlement Agreement are not disputed by OCA or DOE. As we demonstrate below, no customer harm has resulted from the fact that the full annual plan could not be completed under the circumstances that occurred, with the Company's reliability performance remaining in good shape.

**Q. How is this testimony organized?**

A. Section I of this testimony is the Introduction. Section II discusses the purpose of the testimony and provides an executive summary. In Section III, this testimony describes the Company's VMP and discusses how Liberty deployed and managed the VMP during the term of the Settlement Agreement. In Section IV, the Company discusses its experience from 2021-2024, including unusual circumstances and challenges that the Company faced in implementing the VMP since the Settlement Agreement became effective, particularly in relation to resource availability and cost. Lastly, in Section V, this testimony discusses the Company's plan for addressing the concerns raised by OCA and for moving forward with the VMP. Section VI is the conclusion.

## III. LIBERTY'S VEGETATION-MANAGEMENT PROGRAM

**Q. What is the overall scope of Liberty's VMP.**

A. With respect to the Company's VMP, an important contextual consideration is that the State of New Hampshire has one of the highest tree densities in the country (approximately 84%), which is second only to Maine. In this context, there is no question that the Company's VMP plays a critical role in maintaining clearances in Liberty's utility right of ways ("ROWs") and overhead conductor corridors, while controlling the growth of vegetation to reduce the risk of service disruptions for customers. Vegetation management programs are recognized across the electric utility industry as an effective tool in mitigating system disruption both in blue sky and grey sky operations. Vegetation management programs are also recognized as contributing to resiliency during severe weather conditions. There is a strong public interest in maintaining a cost-effective vegetation management strategy.

To that end, Liberty's distribution VMP is focused on conducting industry-standard vegetation management activities in a cost-effective manner to minimize service disruptions in the Company's service territory through the systematic pruning and removal of vegetation that poses a threat to the overhead electrical system. Since 2007, Liberty and its predecessors have generally followed the Vegetation Management and Reliability Enhancement Programs approved in Order No. 24,777 (July 12, 2007).[2] One notable change was when the Company agreed to move to a four-year trim cycle starting in 2017 pursuant to the settlement agreement approved in Docket No. DE 16-383. The step-up to a four-year trim cycle was originally instituted by the Company as a strategy for improving system reliability for the benefit of customers. The Company substantially maintained the four-year trim cycle for the settlement term, 2017 through 2020. In Docket No. DE 19-04, the Company entered into a subsequent settlement agreement (the "2020 Settlement

[2] Funding for the Company's VMP was adjusted in the Company's subsequent base distribution rate proceedings but the framework for the program remained intact. See Order No. 25,638 (March 17, 2014).

Agreement"), which is the subject of this proceeding. In that agreement, Liberty agreed to maintain the four-year trim cycle on the settlement budget of $2,200,000, provided through base rates, with the opportunity for the Company to request an additional ten percent, as necessary to meet the cost of the program.

In terms of the general implementation of the VMP, Liberty's customers are dispersed across different portions of the state including rural areas (in the Northern part of the state) and more densely populated, suburban areas (e.g., Salem). There are four distinct areas that comprise Liberty's service territory, with the Salem area accounting for 50 percent of the Company's customer base.[3] To service customers across these four areas, Liberty maintains and operates approximately 925 miles of overhead lines that need to remain clear from interference, including supply lines.[4] For a four-year maintenance trim cycle, this equates to a cycle trim of approximately 225 miles per year, or 175 miles per year for a five-year trim cycle.

In combination with the planned maintenance trim cycle, Liberty must consider the impacts of climate change, invasive species and other geographical and meteorological factors affecting the health and condition of New Hampshire's forest. These factors have heightened the need for a vibrant VMP to protect the overhead system. Climate change

[3] The Company runs its operations (including the VMP) from two service platforms -- one in Salem, and one in Lebanon (serving all areas of the service territory except Salem). By staging resources at these two service platforms, the Company is able to respond to outages on a timely basis, regardless of where an outage occurs. Through these two locations, the Company is able to achieve a response to an outage event within 90 minutes, which would not otherwise be possible. Liberty also manages the VMP from these two locations.

[4] Supply lines are still overhead lines that require vegetation management; however, these lines are maintained by different crews because the field work requirements for these higher voltage lines are different.

and invasive species have the strong potential to undermine the health and integrity of New Hampshire tree stock, as demonstrated in recent years due to the increasing severity and frequency of storm events and the impacts of the Spongy Moth and Emerald Ash Borer across New Hampshire (both insects are invasive to New England). At the same time, changes in both average and extreme weather conditions are affecting the New Hampshire forest and will continue to do so. Continuing changes include more frequent and intense heat waves and downpours, fires, and more frequent and longer dry spells, as well as intense rain during the growing season, which increases risk of soil erosion, soil saturation, flooding and nutrient runoff. At the same time, higher average temperatures and longer heat waves lead to lower average soil moisture and potential drought. All of these conditions have a cumulative impact on the health and integrity of the trees lining Liberty's overhead system.

**Q. What are the primary components of the Company's VMP?**

A. The VMP meets safety and reliability goals through both planned and unplanned vegetation-management work. The planned work includes preventive cycle pruning and mowing (also referred to as "flat cutting" and "brush cutting") along approximately 870 roadside miles and 55 off-road supply miles. Tasks related to this planned work include a review of field conditions, writeup of prescriptive work orders, obtaining any necessary permissions and permits from landowners and local governments and agencies, performing tree crew work, performing traffic control work, auditing and documenting these activities, and associated administrative work supporting these activities. Planned work also includes tree removals for grow-in and fall-in risk.

Unplanned work is work that is performed off-cycle. This work may be identified by Liberty, its customers, or contractors. If the identified work is determined to warrant immediate attention, it is addressed prior to the next cycle to ensure safety and reliability. Tasks related to unplanned work include customer calls, make-safe (make-ready) assistance, spot tree trimming, interim trim, and trouble work. Funding for vegetation management work resulting from new construction and major storms is not included in the VMP.

**Q. How does the Company plan for a trim cycle, whether four or five years?**

A. Whether a four or five-year cycle is instituted, the annual pro rata trim mileage is a starting point. With respect to trim miles, the Company plans to trim as close to one-fourth or one fifth of the overall circuit miles as it can, on an annual basis, but the number is not precise for a few reasons. First, the Company's practice is to trim the entire circuit (versus splitting a circuit up) and circuits are not the same length. These differences in circuit length create a natural variance year-to-year as the Company plans its cycle trimming. Second, the Company's cycle trimming may be deferred due to emergent conditions (for example, due to field conditions of faster growth than anticipated, slower growth than anticipated, engineering needs, reliability concerns and other factors).

**Q. What is the process for identifying circuits that are prioritized for trimming?**

A. At the outset of each year, the Company generates a list of circuits that should be trimmed in the upcoming year. Generally, circuits are slated for trimming based on reliability performance, operational logistics, customer impact, time since last worked, and other criteria. The Company then provides that list of circuits to an external arborist that plans the work with consideration of a number of factors, including safety considerations, terrain, field condition and work efficiency. Once these work plans are developed, the plans are provided to the Company's external contractor crews that actually perform the trim work. The external contractor crews are familiar with the footprint of the system and they will map out the work, identify a specific work plan and associated schedule and makes plans to contact property owners and other necessary parties to obtain the required permissions. Recently, the Company has modified this process so that the external arborist is not involved with the preparation of the work plan. The Company's external contract crews will be responsible for preparing the work plan.

**Q. What pruning standard does the Company adhere to?**

A. The Commission's rule Puc 307.10 sets forth the tree pruning standards that applied to the Company's VMP, during the time period relevant to this proceeding.[5] The Commission's rule provided exceptions for certain situations including where: (1) a landowner has refused or restricted permission to prune; (2) there was a municipal restriction on pruning; and

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[5] The Commission's 2024 update of the Puc 300 rules did not include the trimming standards. However, the Department of Energy adopted the same trimming standards with its En 300 rulemaking, which became effective in October 2024.

(3) the pruning standards would be detrimental to the health of the tree. As discussed above, the Company's service territory is comprised of rural, suburban, and urban areas. In the rural areas, Liberty seeks to obtain the clearance of all capable tree seedlings and of lower branches of established trees to minimize future work. In urban and suburban areas, work is subject to more landowner preference (i.e., landowners are more likely to object to the Company's preferred scope of work in these areas). As a result, while the Company seeks the same clearance along its circuits, a smaller corridor may result in the more populated areas.

**Q. Are there instances where the Company must remove a tree in lieu of pruning?**

A. Yes. In some instances, pruning the trees can result in tree instability, a decline in tree health, the premature death of the tree, shifted risk, or undesirable aesthetics. In other cases, the tree may simply be in the wrong place in relation to the conductor, with no viable way to professionally prune and redirect growth and defer the future risk and future work. When those situations occur, it is the Company's practice to remove the trees in lieu of pruning, consistent with the recommendations of ANSI A-300 Part 1.

**Q. Are there any challenges associated with tree removal?**

A. Yes. When the circumstances described above occur it is best practice to remove the trees in lieu of pruning. However, tree removal is more expensive in the near term than pruning and thus has an impact on the Company's VMP budget.[6] Tree removals have also become more frequent as a result of the Commission's corridor clearance requirements that were

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[6] Pruning may be more expensive over the long term, if a single tree must be repeatedly pruned over the years.

enacted in 2014. Prior to the implementation of Puc 307.10, most of the Company's tree removal work was related to fall-in risks. The expansion of the side corridor required by Puc 307.10 (from six to eight feet) increased the quantity of trees that need to be removed.

**Q. Does the Company plan for the cost of tree removals as part of its VMP budget?**

A. Yes. The Company budgets for tree removals as part of its VMP. Incorporating a level of tree removals into the VMP budget enables the Company to mitigate budget impacts associated with this work. As discussed above, tree removals can be necessary to avoid future reliability risks caused by declines in tree health. By removing trees that cannot be successfully pruned, the Company may lower future costs because the Company does not incur both the costs to prune and the costs to remove those trees in future years.

**Q. How does the Company identify trees for its planned removal work?**

A. Tree removals are necessary when pruning would violate the standards of ANSI A-300. Additionally, tree risk and removal assessment are reviewed under the ISA Tree Risk Assessment Best Practices ("BMP"). For example, under this BMP tree removals are also necessary when the tree is determined to have a defect that poses a risk of imminent failure or when removal is more economical than pruning. These planned, routine tree removals reduce future tree density and lower future VMP costs. Liberty removes trees for clearance and grow-in risk to create the clearance requirements of Puc 307.10. The Company also removes trees classified as high risk to "fall in" the corridor. This high risk may be based on a higher probability of failure or higher consequence of failure. Lastly, the Company's

VMP accounts for tree removals arising due to customer requests and customer safety, as well as the removal of risk trees along primary lines and other trouble spots.

**Q. How does the Company staff the VMP?**

A. As noted above, the Company relies on the availability of third-party contractor crews to perform the VMP work. The coordinated efforts of one internal staff member and contracted arborist staff monitor the condition of the Company's ROWs and apply various vegetation-control practices to reduce, manage or eliminate incompatible growth.

External contractors perform work in the field for both planned and unplanned work, as well as supplemental administrative support and field review. The use of external contractors has the added benefit of assuring that the Company has readily available resources on location when storm events occur. Use of external contractors for vegetation management work is standard practice across the Northeast because it is more cost-effective and establishes necessary relationships for emergency work (i.e., storms). These contractors are already onsite, trained on the Company's system and immediately available when storm conditions arise providing the most cost-effective option for storm restoration work.

**Q. How does the Company source its external vegetation-management crews?**

A. Beginning in 2017, Liberty instituted a practice of using competitively bid, multi-year contracts, which is a process that is effective in managing cost as much as possible within the context of prevailing market conditions. The use of competitively solicited, multi-year contracts is the optimal approach to obtain best possible pricing and to protect against cost fluctuations because pricing arrangements are negotiated and locked in by contract. Multi-year contracts also provide the Company with greater budgeting certainty and assist with contract employee retention. Over the past 7 to 8 years, the Company has utilized four-year contracts, covering the period 2017-2020 and 2021-2024. Moving forward, the Company has a two-year contract in place for 2025-2026, with an option to extend. The Company recently completed the solicitation for VMP work, with a new contract going into place as of January 1, 2025. Of the five bids received, only two vendors submitted a bid to perform 100% of the work. All of the other proposals were for a subpart of the Company's requirements.

**Q. Has the Company made any proposals to modify its VMP since the 2020 Settlement Agreement was approved?**

A. Yes. The 2020 Settlement Agreement authorized Liberty to file its next petition to adjust base distribution rates based on a 2022 test year. The Company submitted a petition to the Commission on May 5, 2023, in Docket No. DE 23-039, based on a 2022 test year. Liberty's petition in that proceeding included a proposal to transition back to the standard five-year trim cycle, consistent with Commission rule (Puc 307.10), as it was in effect at that time. The Company also made proposals to better align base-rate recovery with the actual costs of the VMP in order to support the five-year cycle for the VMP. The Company's expectation was that, through that proceeding, discussions would occur on the status of the VMP and as to the best strategy for recovering from the challenges experienced in 2021, 2022 and 2023, arising from the changed marketplace conditions. A settlement agreement is now pending before the Commission in that proceeding.[7] Although the proposed settlement agreement does not fully address Liberty's VMP proposals, it does include changes to VMP funding beginning in 2025, as well as VMP commitments for 2025 and 2026.

**Q. Why did the Company propose to transition back to the standard five-year trim cycle in its 2023 rate petition?**

A. Based on the Company's operating experience over the seven years that the four-year trim cycle had been in place (2017-2023) and the experience with exponential cost increases occurring in the 2020-2022 timeframe, it became clear to the Company that the ongoing costs of the program could not be justified by an increase in reliability performance that would be sufficient to warrant the significant cost. Therefore, in the May 2023 rate filing, the Company proposed to transition back to the standard five-year trim cycle in recognition that the five-year cycle will better balance safety and reliability with affordability for the benefit of customers. The Company's VMP proposals in the rate case included other features to assist in supporting the program.

**Q. Has the Company maintained its track record for good reliability performance since 2020, despite the challenges of the VMP?**

A. Yes, it has. Although the VMP is a critical element of the Company's reliability strategy on the distribution system, there are other investments that the Company makes that have a substantial impact on maintaining and improving safe and reliable service for customers.

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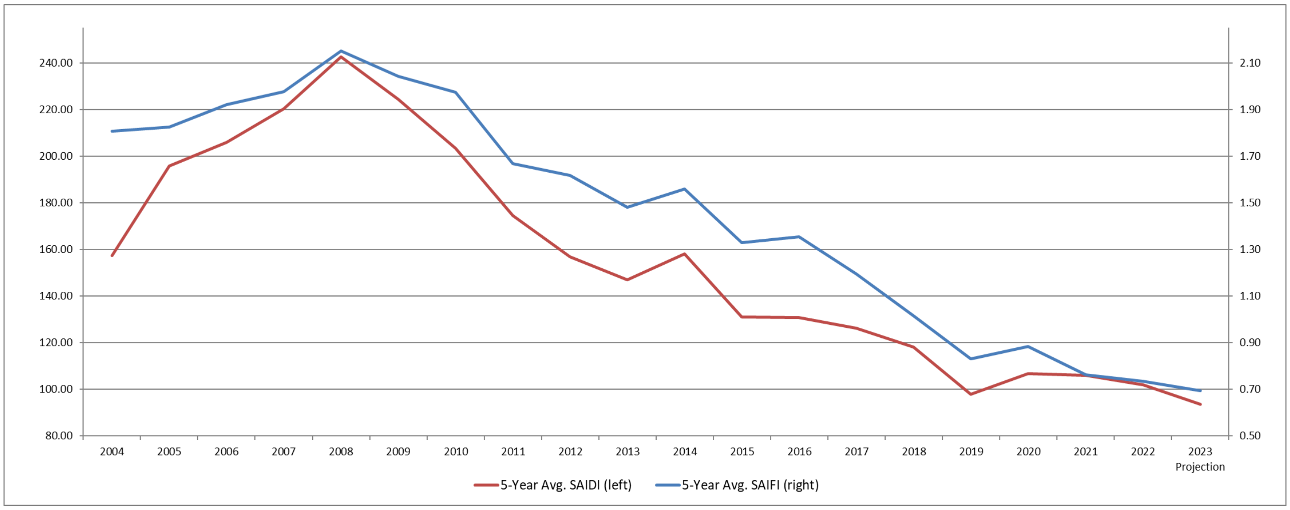
[7] The proposed settlement agreement was filed in Docket No. DE 23-039 on November 18, 2024. The Commission has scheduled hearings on the settlement agreement for January 15 and 23, 2025.

For example, the Company's investments in reconductoring projects, installation of reclosers and cut-out mounted reclosers has played a vital role in maintaining and improving reliability on the system over the past several years. Figure 1, below, shows that the Company's five-year performance on System Average Interruption Frequency ("SAIFI") and System Average Interruption Duration ("SAIDI") have improved substantially over the long-term, 2004 to 2023. Figures 1 and Figure 2, below show that, although slightly higher than calendar year 2022, the Company had a good year of reliability performance in 2023, with a final SAIDI and SAIFI of 94.9 and 0.71 respectively. Moreover, over the five-year stretch, 2019 to 2023, the Company's SAIDI/SAIFI performance generally remained stable or improved, notwithstanding the serious challenges encountered in meeting the four-year maintenance cycle over that time period.

**Figure 1: LUSC SAIDI/SAIFI Performance Data**

| Performance Year | Customer Interruptions | Customer Minutes Interrupted | Sum of SAIFI (right) | 5-Year Avg. SAIFI (right) | Sum of SAIDI (left) | 5-Year Avg. SAIDI (left) |
|---|---|---|---|---|---|---|
| 2019 | 27,269 | 3,161,319 | 0.61 | 0.83 | 70.66 | 97.88 |
| 2020 | 38,628 | 4,736,058 | 0.85 | 0.88 | 104.75 | 106.61 |
| 2021 | 31,534 | 5,208,246 | 0.69 | 0.76 | 114.46 | 105.88 |
| 2022 | 27,258 | 3,758,826 | 0.60 | 0.73 | 82.25 | 101.94 |
| 2023 | 32,435 | 4,331,883 | 0.71 | 0.69 | 94.90 | 93.40 |

**Figure 2: LUSC SAIDI/SAIFI Performance**




## IV. LIBERTY'S EXPERIENCE IN 2021-2024

**Q. What are the terms of the 2020 Settlement Agreement in relation to the VMP?**

A. Paragraph G (2) of the 2020 Settlement Agreement addresses the Company's VMP, stating:

> Under the VMP, the Company shall maintain a four-year cycle for tree trimming and vegetation management and shall continue with the filings and reporting requirements currently in place. The base rate increase agreed to in this Agreement includes an increase in the VMP spending to $2,200,000 for 2020, which shall continue until changed in a future base rate case. The Company shall not recover any VMP expenses that exceed 10% of that amount, or in excess of $2,420,000, through the annual reconciliation filing, or otherwise. The VMP spending shall be reconciled each year, with any under spending carried into the next program year or returned to customers, as determined by the Commission.

Thus, the Settlement Agreement contemplated that the Company would maintain a four-year cycle for tree trimming and would recover up to $2,420,000 for that work through a combination of base rates ($2.2 million) and an additional ten percent that could be requested through an annual reconciliation filing. At the time that the Company entered into the Settlement Agreement, the Company had recently issued an RFP that resulted in a bid from ClearWay (an existing VMP contractor) that would have allowed the Company to maintain a four-year trim cycle without unreasonably exceeding the $2,420,000 recoverable from customers.

**Q. Please describe the circumstances surrounding the ClearWay contract.**

A. On July 7, 2020, Liberty issued an RFP for four years of cycle trim work and vegetation management services ("Cycle Trim Work") for its electric circuit distribution system in its New Hampshire service areas. The RFP also requested that the winning bidder form up to 20 crews to respond to storm emergencies. The July 7, 2020 RFP covered the four-year trim cycle for calendar years 2021 through 2024. On September 14, 2020, ClearWay submitted its bid in response to the RFP. ClearWay was one of four companies that responded to the RFP. Having concluded that ClearWay's bid complied with the RFP and was the lowest cost, on October 9, 2020, Liberty held a pre-bid acceptance meeting with ClearWay at Liberty's headquarters in Londonderry, New Hampshire. During the October 9, 2020 meeting, the Company sought assurance that the rate offered by ClearWay for vegetation management would be sufficient for ClearWay to complete the job. Liberty did not want ClearWay to have insufficient revenue from the contract to perform the required work. ClearWay assured the Company that the rate was sufficient. On November 12, 2020, based on ClearWay's response to the RFP and the representations made by ClearWay, Liberty rejected the three other bids and awarded the Cycle Trim Work to ClearWay. The awarded Contract start date was January 1, 2021, and the Contract end date was December 31, 2024.

**Q. Did the Company expect that ClearWay would be able to perform its four-year contract?**

A. Yes. Although ClearWay was relatively new to Liberty's system, it had performed well in 2020. ClearWay's per-mile cost in its bid also allowed Liberty to maintain the four-year trim cycle agreed to in the Settlement Agreement. Based on these considerations, Liberty awarded the four-year VMP contract to ClearWay.

**Q. Did ClearWay perform its four-year contract?**

A. No. As noted above, ClearWay's contract commenced on January 1, 2021. For 2021, the Company planned for ClearWay to perform 234.87 miles of trimming, consistent with a four-year trim cycle. In January 2021, ClearWay immediately fell behind schedule for Cycle Trim Work. To assist, Liberty provided ClearWay's employees with supervision and training, which ClearWay should have provided. Liberty also hired the firm Environmental Consultants ("ECI") to triage the situation by overseeing ClearWay crews and to help ClearWay perform the Cycle Trim Work pursuant to the specifications and schedule. The Company's costs for ECI were approximately $100,000. By February 2021, ClearWay remained behind on the Cycle Trim Work under the contract.

On February 17, 2021, the Company called a meeting with ClearWay's Operations Manager and ECI employees to inquire whether ClearWay would be able to ramp up and have its crews complete the required mileage at the contract price. At this time, ClearWay's Operations Manager assured the Company that ClearWay would be able to complete the work at the contract price. However, on March 3, 2021, ClearWay remained behind schedule, the Company called a meeting with ClearWay's owner to express Liberty's continued concern with ClearWay's ability to perform and, again, the Company was assured that ClearWay would be able to fulfill its contractual obligations.

Less than two weeks later, on March 12, 2021, ClearWay informed the Company that it needed to leave the existing jobs with Liberty in New Hampshire as soon as possible because ClearWay could not meet its payroll obligations to its employees. On March 13, 2021, ClearWay crews began to walk off the jobs being performed for Liberty under the contract. ClearWay's Operations Manager then notified the Company that ClearWay crews would no longer provide any services to Liberty after March 15, 2021. On March 15, 2021, ClearWay crews did not show up for work.

As of that moment, the Company had no crews to perform the 2021 VMP work. ClearWay did not ever appear back on site, instead breaching its contract with the Company and pulling all of its crews out of New Hampshire. On April 27, 2021, Liberty, through counsel, provided formal written notice to ClearWay that it had materially breached the Contract and that Liberty was terminating the Contract effective as of April 28, 2021. On December 20, 2021, Liberty filed suit against ClearWay and its owner.

**Q. What did Liberty do in response to ClearWay's breach of contract?**

A. Liberty immediately sought replacement contractors to perform its 2021 VMP work. As a result of ClearWay's abandonment of the Cycle Trim Work, Liberty was left severely behind schedule to meet the expectations for the VMP cycle trim in 2021, which Liberty recognized would cause a cascading effect into future years. Liberty was forced to hire another tree trimming contractor, Asplundh Tree Expert, LLC ("Asplundh"), to perform the required Cycle Trim Work over the course of four years at a significant additional expense. Asplundh's bid in response to the July 2020 RFP was runner-up to ClearWay's bid. However, by the time Liberty contracted with Asplundh in March 2021, Asplundh's work rates had increased, as a result of the ongoing economic disruption. Liberty contacted the remaining bidders to its 2020 RFP, but none were willing or able to complete additional trim work.

However, ClearWay was so significantly behind on its Cycle Trim Work that Asplundh was unable to catch up and, as a result, Liberty was required to bring in an extra crew from Florida comprised of 16 workers. The cost of these crews was in the range of $40,000 per week to assist Asplundh in getting the necessary work completed as well as to keep the ECI contractor on the job. At this level of cost, the work effort was not sustainable.

Therefore, the Company subsequently issued a new RFP in 2022 to obtain resources to continue work toward the mileage goals. The Company's RFP sought bids to complete two circuits in 2022. In response to that RFP, Liberty received only three bids. This was a significant decrease in the number of bids as compared to RFP participation prior to the COVID-19 pandemic. As discussed below, pre-pandemic, the Company would have expected to receive in the range of six bids, creating a more competitive solicitation process. Of the three bids that the Company did receive, only one was reasonable and included the ability to trim both circuits. However, the "reasonable" bidder was ultimately unable to perform any of the work and withdrew its bid. The remaining two bids would have trimmed only one circuit (each) and at a cost of 150% or 200% higher than the contractor that was awarded the 2022 work.

To mitigate resource issues experienced during 2022, the Company did not issue a new RFP for 2023. Instead, the Company continued its work with the existing vendor. Awarding the 2023 work to its existing contractor saved time because no onboarding was necessary and also allowed the Company to keep existing crews on location in Salem where crew attrition has been particularly problematic.

**Q. Was ClearWay's breach of contract indicative of a more foundational problem in the labor markets in 2021?**

A. Yes, it was. In 2021, the COVID-19 pandemic destabilized the operations of many vegetation management contractors due to a multitude of factors. Generally, these factors include: (1) an inability to hire due to the proliferation of unemployment compensation; (2) limitations on crew mobility and boarding; (3) restrictions on the use of three-person crews due to social distancing requirements; (4) an inability to obtain licenses (CDL, pesticide, arborist) due to state department closures; and (5) increased absenteeism for childcare and quarantine requirements. Labor shortages for tree crews continue even today and vegetation management labor resources have become extremely limited. This is apparent by the fact that not only have fewer vendors responded to RFPs, but those vendors have fewer tree crews available to perform the work. Due to these factors, there was a severe labor shortage affecting the availability of tree crews and the Company simply could not obtain labor resources to do the planned work.

In addition, these labor shortages seriously affected the cost-per-mile for contractors. For example, Liberty's trimming cost was approximately $12,500 per mile in 2022. Bringing additional crews on to the system to perform trimming in 2022, consistent with a four-year cycle, would have increased costs to somewhere in the range of $20,000 to $40,000 per mile, based on cost information received from Liberty's contractors. The Company decided that it was simply not appropriate to pay these exorbitant prices because, once an external vendor realizes that the Company will pay for services at these high levels, it could mean that the cost never goes down. If the Company were to agree to pay significantly higher costs simply to stay on track with the four-year cycle, it sends a signal to its contractors that higher bids are acceptable.

For the Company, this was especially problematic, given that the number of bidders has decreased significantly. There was no doubt in the Company's mind that agreeing to pay exorbitant costs for routine trimming would be detrimental to customers in the long run because it would increase the baseline costs for this routine work. By limiting the amount the Company was willing to pay on a per-mile basis, the Company was able to avoid a significant increase in its cost per mile in the longer run. However, in 2021, 2022 and 2023, this also meant that the Company could not complete the work plan consistent with a four-year cycle in those same years. The Company cannot conduct the tree work through the plan without the use of external crews and the external crews were either not available or were so costly that the Company was simply prevented from doing work above and beyond the budget level.

**Q. Was the Company's annual trimming cost for a four-year cycle anywhere in the range of $2,420,000, during the years 2020 through 2023?**

A. No, not at all. First, because ClearWay's breach occurred nearly four months into the 2021 calendar year, and labor resources were severely constrained in the marketplace, the Company was not able to find replacement crews to get back on plan for 2021. With the unavailability of needed resources, Liberty was able to complete only 83.94 miles in 2021. Moreover, the miles that did get done came at a significantly higher cost than anticipated at the outset of the 2021-2024 four-year cycle, just months earlier.

**Q. Would you please summarize the Company's program progress and costs over the period 2020 through 2024?**

Yes. In 2020, the Company's contractual cost per mile was $11,601. This cost rose to $19,763 in 2021. The cost per mile for 2024 is approximately $15,000, representing a decrease from the 2021 cost level, but still significantly higher than in 2020 and significantly higher than the original ClearWay contract. In between, costs soared to unprecedented levels and the Company had to pull back to avoid falling into the trap of paying high costs that would not roll back. As a result, the Company had to reprioritize its VMP work in 2022, 2023, and 2024. As is the case in many areas of the economy, vegetation management costs have escalated exponentially since the COVID-19 pandemic started in 2020 and have not leveled off even today. The rise in costs was unprecedented and the upward trend in prices for crew labor was not foreseeable even at the end of 2020, when the Company entered into the Settlement Agreement. Thus, when ClearWay breached its contract with Liberty, the Company was left to re-evaluate its VMP activities to ensure that the program was balancing reliability and safety objectives with cost.

**Q. Please provide a summary of the work completed beginning in 2018.**

A. Table 2, below, shows a summary of the work planned and performed for the VMP, along with the cost figures. The Company supported the program over and above the cost recovery cap in 2020 and 2022. The Company did not seek recovery of the amounts that exceeded the cost recovery cap set forth in the Settlement Agreement.

**Table 2: Annual Performance Summary**

| | **Actual CY 2018** | **Actual CY 2019** | **Actual CY 2020** | **Actual CY 2021** | **Actual CY 2022** | **Actual CY 2023** |
|---|---|---|---|---|---|---|
| Planned Miles | 220 | 222 | 223.78 | 234.87 | 152.93 | 165.09 |
| Miles Completed | 220 | 222 | 194.13 | 84 | 162.41 | 146.34 |
| Total Cost | $2,422,443 | $2,096,528 | $2,461,000 | $1,870,000 | $3,229,000 | $2,149,000 |
| Cost Per Mile | $11,034 | $9,425 | $12,678 | $22,288 | $19,384 | $14,724 |

**Q. What does Table 2 demonstrate in terms of the progress and performance of the Company's VMP?**

A. Table 2 demonstrates that the Company was on track for a four-year cycle trim in 2018 and 2019. In 2020, the challenges of the COVID-19 pandemic started to have an impact, with progress slowing and costs trending up. In March 2021, the Company's contractor, ClearWay, abandoned the contract and it was not possible for the Company to recover in 2021 because there were simply no replacement resources to be found. As a result of the steps that the Company took to re-staff the program, the Company completed approximately 75% of the pro rata four-year quota (162.41 miles vs. 222 miles), which was approximately 10 miles more than planned. In 2023, the Company completed approximately 65% of the pro rata four-year quota (146.34 miles v. 222 miles). Completion of this level of work was a significant feat in light of the resource constraints and the upward trending cost per mile. Even if the Company could have paid the exorbitant costs demanded by the available contractors, there were simply not enough crews to perform *all* of the cycle trim work, in any event. In each year, the Company completed the maximum number of miles that it could without incurring unreasonable costs reflecting the market disruptions. In total, across the years 2021-2023, the Company paid out approximately $480,000 more than collected through rates ($2,240,000 annually).

**Q. In the hearing approving the Settlement Agreement, the Company committed to maintaining a safe and reliable system through its VMP even if the costs exceed the cost recovery cap. Has the Company spent more on its VMP work than the amount allowed for cost recovery in any year since 2020?**

A. Yes. Since 2020, the Company spent approximately $480,000 more than it is allowed to recover through base rates or reconciliation in 2022. The Company did not seek recovery of that amount in its VMP reconciliation filing or its base distribution rate proceeding. This is consistent with the Company's commitment in the Settlement Agreement. At the hearing in DE 19-064, Liberty confirmed that its cost recovery for vegetation management was limited to $2,420,000 but that the Company would spend what is necessary to maintain a safe and reliable system. Liberty has honored that commitment with safety and reliability of the system maintained or improved over the timeframe.

**Q. You stated above that the Company began executing multi-year contracts in 2017. Was the Company able to enter into multi-year contracts immediately following ClearWay's breach?**

A. No. In fact, ClearWay's breach has had a particularly negative impact in the Salem area where there is increased competition for crews with other utilities. In addition, due to the increased costs, the Company was concerned about entering into a multi-year contract for the full cycle trimming that could lock in high prices during the economic challenges experienced in the 2021 and 2022 timeframe.

**Q. What are the labor challenges that are specific to Salem?**

A. As noted above, approximately half of the Company's customers are served in the Salem service area. This is the Company's most densely populated area of the service territory. The Salem area borders Massachusetts and is a northern suburb in the greater Boston metro area. As a result of its proximity to Boston, the Salem area has a higher cost of living than the other areas of the Company's New Hampshire service territory. There are also more job opportunities in the Salem area due to its location.

This increased cost of living and available job opportunities creates challenges for the Company to retain a qualified VMP workforce at this location because there is more competition. As a result, the costs to perform vegetation management work in the Salem area are higher than in other areas of the Company's service territory because the third-party contractors available at this location must pay their crews a higher wage. In addition, there is a higher turnover in the Salem area because crews are able to leverage their experience and obtain higher paying positions in this region of New Hampshire or across the border in Massachusetts.

**Q. Has the Company been able to mitigate contracting challenges going into 2025?**

A. Yes. The Company is addressing the contracting challenges by instituting the opportunity for bidders to include an escalation factor in their bids in the multi-year RFPs. This escalation factor is designed to address the increase in costs that contractors are facing and entice the contractors to bid in response to the Company's RFPs. Liberty is also attempting to introduce metrics to track the hours worked to potentially inform other contract models for cost flexibility. By providing these additional guardrails to its contractors, Liberty expects that it will receive more bids and, accordingly, more competitive pricing for its customers.

**Q. Did the Company report on its vegetation management performance each year since the Settlement Agreement was approved?**

A. Yes. The Settlement Agreement required Liberty to continue its annual reporting to the Department of Energy. The Company has complied with this annual reporting requirement by submitting its proposed vegetation management plan for the upcoming calendar year on November 15$^{th}$ of each year. These vegetation management plans are then filed with the Commission as part of Liberty's annual reconciliation and rate adjustment filing. The annual reconciliation and rate adjustment filings are submitted on March 15 to reconcile the actual vegetation management costs for the prior calendar year. Through these filings, the Company reported on the challenges that were occurring and, in each year, the

Commission made it clear that future review of the VMP progress and performance would be subject to review in the Company's upcoming rate case, which the Company expected and welcomed. Below is a summary of these filings.

**Table 3. Performance Reporting[8]**

| Docket | Performance Year | Summary of Reporting | Commission Order |
|---|---|---|---|
| DE 21-049 | 2020 | • Summary of variance between original budget and actual costs; and<br>• Reliability results. | Order No. 26,478 (finding that Liberty's 2020 performance was consistent with the program goals and parameters). |
| DE 22-014 | 2021 | • Notification of ClearWay breach of cosantract and resulting impacts on 2021 and 2022; and<br>• Liberty's efforts to retain replacement crews including the associated cost. | Order No. 26,620 (approving reconciliation including budget carry-over to 2022; finding that Liberty's VMP activities in 2021 were generally consistent with the program goals and parameters). |
| DE 23-031 | 2022 | • Explanation of how the Company was able to complete more miles than planned;<br>• Summary of the Company's efforts to retain crews in Salem;<br>• Explanation for how the Company reallocated funding to address increased costs for contractors. | Order No. 26,805 (approving reconciliation and finding that the Company's VMP activities in 2023 were generally consistent with the program goals and parameters). |

[8] Each of the filings presented in this table included the total planned miles, the total completed miles, and the total costs consistent with the information presented in Table 2, above.

| Docket | Performance Year | Summary of Reporting | Commission Order |
|---|---|---|---|
| DE 24-044 | 2023 | • Explanation of the storm support and capital work necessary in Salem that prevented the Company from completing both planned circuits and resulting in underspending for 2023; and<br>• Explanation of how funds were reallocated from tree removal to address increased contractor costs. | Order No. 26,998 (approving the reconciliation based on a finding that its VMP activities were generally consistent with program goals and parameters. The Company also approved Liberty's proposal to carry $50,240 into 2024 and noting Liberty's representation that it would dedicate those funds to hazard tree removal). |

**Q. Did the Company experience any other challenges over the timeframe 2021-2023?**

A. Yes. At the time that the Company filed its petition in DE 19-064, it was receiving vegetation management contributions from Consolidated Communications, Inc. ("CCI") based on a joint pole ownership agreement. These contributions ceased in 2020 (the fourth year of the first, four-year cycle) because CCI terminated its agreement with the Company. The benefits to telecommunications providers associated with tree trimming are not as significant as the benefits to electric providers like Liberty. As a result, electric providers may properly bear these costs as the primary beneficiary. For example, when a storm event occurs, there is far more pressure on the electric distribution company to restore power in a timely manner than there is for a telecommunications company. This is because electric service is necessary for safety in a way that telecommunications infrastructure is not. In addition to critical facilities and/or medical customers who require around-the-clock electric service, customers rely on their electric service for heating during the winter and for air conditioning during the summer. In the rural portions of the Company's service territory, many customers also rely on their electric service to operate wells necessary to have water in their homes. These critical functions must be restored timely and for this reason, the benefits of vegetation management accrue more significantly to the electric provider.

The Company has also experienced increasing traffic control requirements and costs. The traffic control industry is subject to the same increasing cost and resource issues facing the vegetation management industry as a whole. Communities in New Hampshire have also implemented new ordinances (or interpreted existing ordinances differently) to require Liberty to use police personnel in lieu of private traffic control companies. These police personnel are more expensive per hour driving up costs for VMP work. Because the Company cannot negotiate these costs, the only way to mitigate these costs would be to delay trimming work in communities with police personnel requirements.

**Q. Did the Company take steps to mitigate the impacts of the cost increases and resource constraints that occurred beginning in 2021?**

A. Yes. As part of the Company's efforts in 2022 to mitigate the increased costs and continued workforce issues, the Company worked to encourage use of mechanized equipment and took extra steps in an effort to retain a dedicated crew in Salem to increase the Company's ability to respond to emergent work at this location. Based on the success of this crew allocation in Salem in the fall of 2022, the Company maintained a dedicated crew in Salem for 2023.

**Q. Did the Company's proposal in Docket No. DE 23-039 include maintaining the four-year trim cycle?**

A. No. Based on the challenges that the Company has experienced; the changes in the industry for vegetation management services; and the known resource constraints and associated cost pressures, the Company proposed to move to a five-year trim cycle. A five-year trim cycle is consistent with the Commission's rules, accepted VMP standards, and was determined by Liberty to be sustainable going forward. Most importantly, it is the Company's assessment that system reliability will be maintained and improved with a five-year cycle in place, accompanied by an investment strategy that supports the system in that regard.

**Q. How does the Company plan to approach the five-year trim cycle?**

A. As the Company commences on the next five-year cycle starting January 1, 2025, the Company plans to use several strategies to identify and prioritize the highest value trimming to be undertaken each year over the next five years, recognizing that the trim schedule slowed in the prior four-year cycle due to the challenges explained above in 2021-2023. As proven over the last several years, trim cycles are not an exact science but rather are a planning standard that is intended to ensure that all circuits are trimmed on a consistent basis. There will always be circumstances that support deviation from this planning standard where the overall goal is to maintain and improve system reliability and other investment strategies are working toward the same goal. Accordingly, the Company plans to employ a five-year trim cycle standard, allowing considerations of tree conditions, emergent issues and community preferences.

**Q. The Company recently filed a settlement agreement in Docket No. DE 23-039 to resolve the Company's pending base distribution rate petition. Does that settlement agreement include modifications to the Company's VMP?**

A. It is our understanding that the settlement agreement filed in Docket No. DE 23-039 was intended to resolve that proceeding through limited substantive changes to the Company's existing rates and operations. As a result, the settlement agreement in that proceeding did not include significant changes to the Company's existing VMP. The settlement agreement did increase the funding available for the Company's VMP on an annual basis. The settlement agreement also includes a requirement for the Company to trim 117 miles in 2025 and 2026; and to designate one tree crew to hazard tree removals.

**Q. Is the Company's commitment to trim 117 miles associated with a specific trim cycle?**

A. No. The Company committed to trimming 117 miles because it is the number of miles that can be trimmed under the proposed VMP cost-recovery cap based on the results of Liberty's most recent RFP for cycle trimming. The Company has proposed a comprehensive VMP in Docket No. DE 23-039 that was designed for consistency with best practices and included a significant increase in funding. Due to the cost pressures and labor resource issues that have occurred since 2020, the Company's existing VMP is constrained by an unsustainable cost framework that does not adequately fund the VMP.

**Q. How did the Company determine that a commitment to trim 117 miles during 2025 and 2026 was an appropriate metric?**

A. The settlement agreement proposed in DE 23-039 includes an increase in funding for the Company's VMP. However, even with the increase in funding and the agreed-upon terms of the Company's VMP in the settlement agreement, it is not feasible for the Company to complete a larger complement of trim miles without a more comprehensive plan and solution to the VMP, as agreed to by all parties and approved by the Commission. Liberty agreed to the 117-mile commitment to create a metric that the Commission and parties to the settlement agreement could use to monitor Liberty's VMP until a more comprehensive solution can be reached.

## IV. LIBERTY'S PROPOSAL FOR A REMEDY

**Q. In its August 28, 2024 Procedural Order, the Commission posed the question of whether the Company is in contempt of the DE 19-064 Settlement Agreement. Although this is a legal conclusion, do you have an opinion?**

A. At all times during the challenges encountered 2020-2023, the Company did the best it could under difficult and extenuating circumstances and the Company has continued to maintain reliability and service to customers. The Company completed as much mileage as it possibly could under highly unusual circumstances, characterized by serious resource constraints and exponential cost increases over which the Company had no control. Since 2020, the Company spent approximately $480,000 more than it is allowed to recover through base rates or reconciliation in 2022 and the Company did not seek recovery of that amount in its VMP reconciliation filing or its base distribution rate proceeding. The Company represented that it would spend what is necessary to maintain a safe and reliable system and Liberty has honored that commitment with safety and reliability of the system maintained or improved over the timeframe.

**Q. In its August 28, 2024 Procedural Order, the Commission posed the question of what is the appropriate remedy if the Company is found in contempt of the DE 19-064 Settlement Agreement. Above, you discuss the challenges that have prevented Liberty from remaining on schedule with a four-year trim cycle. In your opinion, what is the appropriate remedy to address these challenges?**

A. With respect to the issue of how to move forward, the Company suggests that the Commission should allow Liberty to propose a comprehensive VMP similar to what was proposed in DE 23-039. As discussed above, the Company agreed to the settlement agreement proposed in DE 23-039 to resolve that proceeding and continues to support approval of the current settlement agreement. Pursuant to the terms of that settlement agreement, the Company cannot file its next base distribution rate proceeding earlier than the calendar (test) year ending December 31, 2025. However, the Company supports discussions regarding the Company's VMP sooner than its next rate case to begin exploring how its VMP and associated funding level can be modified to address the challenges described above and ensure that the program is sustainable. The challenges that began in 2021 will not be fully resolved until a more comprehensive VMP solution is put in place. The key components of that comprehensive solution will be moving to a five-year trim cycle and creating an adequate, sustainable funding mechanism for the VMP.

The greatest challenge for Liberty going forward will be to minimize cost increases in its VMP contracts. The Company has a two-year contract for 2025 and 2026 that includes a significant increase in costs over 2024. This increase is largely a function of the labor market issues including the historical trend of labor moving out of the tree industry due to strenuous physical requirements, pay rates that have not kept pace with the required skill set, and non-tree industry wages that have increased the competition for resources. In addition to these labor-market issues, the costs of vehicles and fuels have increased significantly including for tree vendors. An adequate funding mechanism for the VMP will provide Liberty will greater certainty to support its contract negotiations. If the Company is not afforded an opportunity to recover its reasonable and necessarily incurred costs, it cannot negotiate long-term contracts and provide the associated rate protection to its customers.

**Q. The initial briefs of the OCA and DOE addressed the Commission's question regarding an appropriate remedy. Have you reviewed those initial briefs?**

A. Yes, we have.

**Q. The DOE asserts that the appropriate remedy is for the Commission to determine the costs to address the miles that were not completed over the past several years and for the Company's shareholders to bear those costs because Liberty should have performed that tree trimming using the funding allowed by the Settlement Agreement. Do you agree?**

A. No, we do not. There are two fundamental flaws with that recommendation. First, the Company could not have remained fully aligned with the schedule for a four-year trim cycle because, beginning in 2021, the labor simply was not available to conduct the program work. Second, as discussed in detail above, the costs associated with the four-year trim cycle greatly exceeded the funding allowed under the Settlement Agreement when the Company was forced to re-bid its work after ClearWay's breach of contract. The interests of customers would not have been served by circumstances where the Company has agreed to fund trimming at substantially higher prices than what customers would want to pay in the longer term. The Company's strategies for maintaining substantial progress within a four-year cycle (i.e., completing upwards of 65-75% of the trim cycle mileage) were successful in meeting the safety and reliability needs of the system. Therefore, no penalty is warranted under the circumstances.

**Q. The OCA also argues that the appropriate remedy is for the Company to absorb the costs associated with the "deferred" tree trimming. The OCA states that the cost to implement that remedy is $3.58 million. Is the OCA's calculation of the cost associated with that punitive remedy correct?**

A. No. The OCA is relying on the Company's 2023 Vegetation Management Plan, which estimated the total cost to complete all cycle work as $6 million. Subtracting the $2.42 million allowed for cost recovery results in the $3.58 million that OCA is arguing should be borne by Liberty. This figure was not intended to be relied upon for decision making but was provided to the Commission for illustrative purposes only. In light of the ongoing challenges facing the VMP, Liberty sought to demonstrate the impacts of those challenges. However, the $6 million figure was not based on an actual RFP response.

In light of the rising costs for vegetation management work, the Company issued a request for proposals that sought to complete VMP work up to its allowed cost recovery cap. The $6 million figure was calculated by multiplying the total number of miles and the cost per mile for the work to be performed up to $2.42 million. The $6 million figure is not based on an RFP issued to complete 408 miles in 2023. Further, there was no confirmation that sufficient crew resources were available to complete 408 miles in 2023. It is highly unlikely, based on Liberty's recent experience, that it would have been able to complete 408 miles in one year for $6 million (or for any cost given labor constraints).

**Q. What is the Company's annual operating budget?**

A. The Company's annual operating budget for 2023 was $20.5 million and for 2024 is $28.5 million. Accordingly, the OCA is suggesting that the Company should be compelled to absorb $3.58 million for vegetation management work that was not needed to sustain system performance. Not only is this amount more than double the vegetation management cost recovery cap agreed to in the Settlement Agreement, it represents approximately 17.5 percent of the Company's 2023 operating budget and approximately 12.6 percent of the Company's 2024 operating budget. This amount, even if correct, which it is not, would constitute a substantial penalty to the Company without any basis given all of the steps that the Company took to execute on the VMP over this challenging time period.

**Q. What would be the financial impact to the Company's operating budget associated with the unrecoverable $3.58 million discussed above?**

A. Hypothetically speaking, if the Company had been able to complete the pro rata trim cycle mileage in 2023 at a cost of $6 million, the impact of the unrecoverable amount would have been significant and would jeopardize the financial integrity of the Company. This is particularly true where the Company has been under-earning for a number of years.

**Q. In addition to these inaccurate cost concerns with the OCA's calculation, are there any other issues with this proposed remedy?**

A. Yes. The OCA's proposal assumes that the Company would have been able to obtain a sufficient number of crews to complete the work within a year. There is no factual basis for this assumption. As described above, the main challenge that the Company had to confront was the complete unavailability of needed external crews to perform the work.

These resource shortages continue today and do not support a remedy that requires the Company to double its annual trim amount. There are simply not adequate numbers of trained and qualified vegetation management crews available to work in the Company's service territory and to maintain a pace for tree trimming that is beyond what the system needs to maintain reliability. It is also important to note that this is not a new problem. The labor shortage and associated inability to perform all backlogged work on an expedited basis was caused by the labor shortage. The labor shortage has therefore created a cycle of incomplete cycle trimming that has built up year-over-year and cannot be addressed through unlimited spending.

**Q. OCA alleges in its petition that customers are paying higher than necessary rates because vegetation management work is occurring during storm restoration instead of as part of the Company's annual cycle trimming. Is this assertion accurate?**

A. No, not at all. To start, it is nearly impossible to conclude that specific storm restoration work could be avoided by cycle trimming. There will always be vegetation management work necessary during a storm event and there are factors that lead to tree damage during storms that would not be avoided by operation of a utility's vegetation management program. For example, a snowstorm that occurs in the fall when trees still have foliage will result in more tree damage than a snowstorm that occurs in winter when trees have already lost their leaves. This is because snow clings to the leaves making the branches heavier causing snapping of the branches. It would not be accurate to conclude that additional cycle trimming can mitigate the impacts of an early snowstorm. Further, the Company recovers the costs of its storm restoration work through a separate funding mechanism. Liberty's storm fund recovery filings have not increased since 2021 when its cycle trimming program was impacted by cost and labor pressures. Third, by diverting vegetation management crews to respond to the storm event, the Company does not have to bring more expensive contractors onto its system to perform storm work. These tree trimming contractors are already familiar with the system and are therefore able to perform the storm work more quickly. Therefore, the Company's customers have not incurred higher rates related to storm work.

**Q. The second component of the OCA's proposed remedy includes financial penalties against the Company and its chief executive officer. Have the Company's customers been harmed by the Company's inability to maintain a four-year trim cycle?**

A. No. The Company has not recovered more VMP costs than are allowed by the Settlement Agreement. To the extent that the Company spent more than it is allowed to recover, it has borne those costs. To the extent that the Company spent less than it recovered through base rates, that amount was used in the next year to offset VMP costs, as authorized by the Commission. In addition, despite the challenges it has faced, Liberty's reliability has not declined.

**Q. RSA 365:42 allows the Commission to impose financial penalties against an officer or agent of a utility where the officer or agent has willfully violated an order of the Commission. The OCA asserts that the Commission should exercise this authority and impose a financial penalty against Algonquin Power & Utilities Corp.'s ("Algonquin") CEO. Is the CEO of Algonquin personally responsible for any component of the Company's VMP?**

A. The CEO of Algonquin became interim CEO on August 10, 2023, and was named CEO on May 9. 2024. We are not aware of any actions or oversight taken by the CEO of Algonquin with respect to the Company's VMP.

## V. CONCLUSION

**Q. Has the Company complied with the Settlement Agreement with respect to its vegetation management program and taken all reasonable steps to mitigate the challenges it has experienced since 2021?**

Yes. The Company has worked diligently to meet its obligations while balancing the associated costs and has ensured that customers have not been harmed by the circumstances that have occurred well beyond the Company's control.

The Company substantially completed its planned trim work in 2020 but extenuating circumstances in 2021 derailed the four-year trim cycle and placed unsurmountable cost pressures on 2022 and 2023. The COVID-19 pandemic has also had lasting impacts on resource availability that have increased competition for crews and resulted in a narrower pool of qualified vendors. These cost pressures and resource challenges continue to date. Liberty also did not anticipate continuing its VMP subject to the terms of the Settlement Agreement beyond 2023 because the Settlement Agreement contemplated the filing of a petition to adjust base distribution rates based on a 2022 calendar year test year. As a result, the Company has had to continue its VMP without the ability to increase its funding as anticipated in the Settlement Agreement.

Accordingly, penalties are unwarranted and unsupported by the facts. A comprehensive, non-punitive solution that allows the Company to move forward with a five-year trim cycle and adequate funding is the appropriate remedy to ensure that Liberty is able to continue to meet its obligation to provide customers with safe and reliable service at reasonable rates.