



1 Court Street
Lebanon, NH 03766
603-448-5899

June 14, 2017

NHPUC 19JUN17AM11:59

Ms. Debra Howland,
Executive Director
NH Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, N.H. 03301-2429

RE: **DE 17-078**, Complaint by One Court Street Associates against Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities

Dear Ms. Howland,

I am writing to advise the commission pursuant to Puc 204.04(a) that One Court Street Associates, as complainant, is not satisfied with Liberty Utilities response to our complaint, disseminated by email and cover letter dated 6/13/17 and filed at the commission today. We respectfully suggest that there does appear to a basis for our dispute and hence urge the commission to conduct an independent investigation pursuant to Puc 204.04(b) and RSA 365:4.

Hopefully this matter might be satisfactorily resolved in conjunction with a commission investigation, but in the event that it is not, we certainly want to reserve our right to request a hearing to have the complaint resolved in the context of an adjudicative proceeding pursuant to Puc 204.05(b).

It might be helpful in the context of such an investigation for the commission to ascertain from Liberty what customers are presently being served by the various underground electrical distribution facilities at issue in the former urban renewal area in downtown Lebanon, as well as who its actual customers were that were served by these underground and related facilities at the time they were initially installed. In the event this complaint escalates into an adjudicative proceeding and "in order to ensure reasonable notification to interested parties" we respectfully suggest that all current customers of GSE/LU who are served by any of the facilities in question in downtown Lebanon be directly mailed notice of the commencement of an adjudicative proceeding with an opportunity to

become parties to the proceeding pursuant to Puc 203.12. To the best of OCSA's knowledge and belief, such customers include, along with many others: the State of New Hampshire, the City of Lebanon, Ledyard Charter School, Citizens Bank, the Trustees of Dartmouth College, and the Dartmouth Hitchcock Medical Center. Few, if any, of these customers are aware that Liberty is disclaiming ownership and responsibility for primary service conductors and related distribution facilities beyond their individual point of interconnection to the grid.

Although not specifically called for at this time by PUC rules, we would like to point out some of the fallacies in Liberty's response to our complaint in support of the basis for our dispute. The most obvious error is Liberty's assertion that "the 'customer' was LHA because LHA owned the land where the line was buried, where the pad mounted transformer was installed, where the low voltage lines left the transformer, and where any buildings into which the low voltage lines travelled were located." Response at 3. The last clause is simply not true. To the best of OCSA's knowledge and belief, in 1969 and at no time since has the LHA owned "any buildings" in the urban renewal area "into which the low voltage line travelled were located" or otherwise. More importantly Liberty in its response has provided no documentation or even an assertion that LHA was purchasing electricity or taking electric service from any or all of the distribution facilities in question.

A basic definition of "customer" is "one that purchases a commodity or service."¹ A similar technical definition can be found at Puc 1202.07 which is essentially the same: an entity "who has contracted for electric . . . service from a utility." A public entity, by virtue of owning land on which investor owned utility facilities are located, does not make that entity a customer, simply because they own that land. To the best of OCSA's knowledge and belief the LHA did not in 1969, and at no time since, ever contract for or purchase electricity or electrical services from GSE or LU that utilize the underground or above ground distribution facilities that provide service to OCSA and other customers on the north side the Hanover Street Mall.

¹ www.merriam-webster.com/dictionary/customer, accessed on 6/14/17.

Liberty's assertion that "LHA was the only customer when the high voltage lines were buried in 1969" is also erroneous. GSE undoubtedly had numerous customers in the downtown urban renewal area that were being served by its overhead distribution system that was located on and over the same LHA and other public land where the replacement underground distribution system was installed and which, following cutover from overhead to underground service, continued to serve those same customers, including, among others, Hildreth's Hardware, Woolworth, Lewis Brothers Hardware, McNeil's Drug Store, the Currier Department Store, and the First National Bank of Lebanon. Contemporaneous GSE documents from 1965-1969 repeatedly refer to such customers in the plural. *See e.g.* OCSA-5, -34, -63. The exhibits compiled by OCSA, in total, demonstrate that GSE understood at the time that it was undergrounding its (the utility's) distribution system and that its customers were the owner/operators of the buildings being served, perhaps along with the tenants of the buildings. Hence in the application of the tariff provision that "underground service connected to the Company's underground cables beyond two feet inside the property line shall be paid for the Customer and shall be and remain the property of the Customer" (Response at 5) the property lines at issue should be, and were apparently in 1969 understood to be, the property lines of actual customers, meaning business property owners and/or operators, taking service from GSE at the time, or subsequently, and not the publicly owned parcels where the distribution facilities at issue were installed. (*See* Complaint at 2, 7-8, and OCSA-5, -17, -29, -34, and OCSA-63.) Again, no documentation or even an assertion has been brought forth to indicate the LHA was, in 1969 or at any time since then, taking electrical service at any point of interconnection located anywhere within the parcels of land where the underground conduit, primary (high) voltage conductors, transformer foundations, raceways housing primary voltage conductors, and terminal boxes or switch gear housing the points of interconnection with customer service conductors were located. Hence the location of these facilities cannot be considered to be on the premises of the LHA as a customer.

Liberty's statement at the top of page 4 of its response betrays a misunderstanding of what a tariff is. It states: "Tariff No. 6 was amended to allow the Company to own underground line, but only for certain

new residential developments.” Liberty goes on to argue that only in 1971 (or perhaps earlier) was their tariff amended to add language “that allowed for Liberty to install underground equipment in non-residential areas” under certain conditions. A tariff consists of a schedule of rates, charges, terms and conditions of service defining the utility’s relationship to its customers in the provision of its services, like a contract. GSE did not need a tariff provision to allow it to underground portions of its distribution system in non-residential areas. No statute or PUC rule requires such. GSE was free to do so at its own initiative or as part of a negotiated settlement in a dispute with public entities, not acting as customers of the utility but rather in the exercise of governmental authority and official public purpose. The City of Lebanon and the Lebanon Housing Authority were threatening litigation, not before the PUC or with regard to GSE’s tariff, but in New Hampshire courts as to the authority of a municipality to require a utility to place portions of its distribution system located in public ways, underground. The plan implemented resolved that dispute outside of the tariff, because it wasn’t about the relationship between the utility and a customer and the terms of it taking service. As near as I can tell, none of the property owners being served by the facilities in question at the time, the actual GSE customers, were directly a party to the resolution of this dispute except that they informally agreed to place their service connections underground up to the point of interconnection with the utility’s service.

Liberty’s concluding comment about OCSA’s and my personal “obvious frustration” “over the ownership and maintenance of the underground lines on private property in downtown Lebanon” again betrays a fundamental misunderstanding by Liberty of the facts, the history, and the law. The facilities in question were not then and are not now located on “private property.” The Lebanon Housing Authority is a statutory creation of the State of New Hampshire by RSA 203:4 and as such it was and continues to be “a public body corporate and politic, exercising public and essential governmental functions.” (RSA 203:8.) The urban redevelopment plan that it implemented in downtown Lebanon, including the negotiated resolution of the “modified overhead/underground” electric utility distribution system installed by Granite State Electric in 1969, with partial reimbursement by taxpayer funds, was expressly authorized as an

essential and official governmental function and public purpose by RSA Chapter 204 "Redevelopment Projects."

With regard to low or secondary voltage lines, notwithstanding the fact the GSE tariff in 1969 and representations by GSE at time indicated that they would "carry underground services two (2) feet inside of private property, except where the building is on the property line and in this case work would terminate outside the building" (OCSA-63), OCSA does not disagree that the secondary or low voltage service conductors up to the point of interconnection specified by the utility, even if that point is outside of the customer premises, are appropriately owned by and the responsibility of the customer. Our complaint did not assert otherwise. The equipment at issue in the complaint are only those elements of the distribution system that serve multiple customers located on different private properties, including the terminal box or distribution panel cabinets that house points of interconnection for multiple and separate properties and customers. Section 6 of GSE's Tariff # 6, apparently applicable in 1969, clearly and simply supports this appropriate delineation of ownership and responsibility that Liberty continues to deny. It is entitled "Point of Connection of Company's Service" and reads "The Customer shall wire to the point designated by the Company, at which point the Company will connect its service." Liberty 023. This is consistent with current tariff delineations of jurisdiction, ownership and responsibility and OCSA's theory of the case such as discussed in the Complaint at 6.

Finally, I'd like to note that a logical and perhaps necessary implication of Liberty's theory of the case is that they are, in effect, disclaiming that their franchise for the distribution of electricity within the City of Lebanon is exclusive, at least with regard to serial, if not parallel, facilities. Liberty has posited that certain underground high voltage conductors, conduits and other electrical distribution facilities, all serving multiple and separate private properties and customers, are not owned by it and are not its responsibility to maintain and replace. Therefore, they must instead be owned by and are the responsibility of some other intermediary entity, located upstream of actual individual retail end use electric customers. Whether this entity is the LHA, or some successor in interest, perhaps the City of

Lebanon or some collective aggregation of individual property owners and other customers served by the facilities in question, such entity or collective will need to fund the cost of maintaining and replacing such facilities if we, the customers, are to be assured of reliable service over the long run. I guess the only question might be whether such entity needs to set up shop as a regulated distribution utility under PUC jurisdiction and establish regulated rates, or if the responsible entity is the City, maybe it can just begin operations to maintain and replace the facilities at issue, and perhaps invest in and operate other electric distribution facilities not owned by Liberty but serving the public within City limits, and impose such charges as are needed under the authority of RSA 362:2 and RSA 38, outside of PUC jurisdiction.

Yours truly,

A handwritten signature in black ink that reads "Clifton Below". The signature is written in a cursive, slightly slanted style.

Clifton Below
Managing General Partner, One Court Street Associates