

BEFORE THE NEW HAMPSHIRE DEPARTMENT OF ENERGY

FORMAL COMPLAINT PURSUANT TO NH RSA 365:1,2

RECEIVED

JUN 21 2023

NH DEPARTMENT
OF ENERGY

v

Liberty Utilities

Case No _____

Liability for Variation (Surge) Response and Damages

Now Comes [REDACTED], by and through his attorney, Stephen E Woodbury, Esq, and complains against Liberty Utilities as follows:

Substantive Facts

1. [REDACTED] is a retired New Hampshire electrical inspector who resides as [REDACTED]
[REDACTED]
2. On June 13, 2022, the neutral on the secondary transformer at [REDACTED] failed causing a power surge in the neighborhood.
3. A Salem Fire Department Report stated 6 houses were affected. "A transformer in front of [REDACTED] was found to be the cause – a Neutral line had fallen off the transformer causing a power surge to the affected properties."
4. After the accident, Liberty "split the load" and installed two new transformers.
5. [REDACTED] home suffered many items of damage which totaled \$1,089.45 in replacement cost.
6. [REDACTED] hired a licensed electrician to assist who invoiced \$795. The Fire Department had recommended residents hire a licensed electrician prior to reenergizing.

7. [REDACTED] submitted a claim to Liberty Utilities for \$2,884.45, on July 8, 2022 which also included his labor, enhanced compensatory damages, and reduced attorneys fees.
8. Liberty did not respond so a certified letter was sent on August 8, 2022.
9. Liberty responded on September 9, 2022 denying the claim for lack of proper grounding without ever inspecting the property.
10. On September 19, 2022, [REDACTED] attorney invited an inspection and disputed a lack of grounding, and put Liberty on notice they were apparently acting in bad faith and the electrical system met Code requirement based on [REDACTED] specialized knowledge.
11. On September 20, 2022, Liberty inspected the property and verbally advised [REDACTED] the grounding met code requirements.
12. On October 3, 2022, Liberty denied the claim stating a lack of grounding and lack of liability for fluctuating voltage without citing a PUC Regulation, Tariff, or court decision.
13. All of the allegations in paragraphs 1-12 are supported by documents or affidavits which can be procured during the investigation.

Prior Informal Proceedings

14. On November 27, 2022, [REDACTED] attorney asked the Department of Energy to mediate citing in part PUC 304.02(c) which makes a utility liable for variations greater than 5 percent.
15. On December 19, 2022, the Department of Energy created a complaint with no reference to mediation. The Department sent Liberty the July 8, 2022 letter it had already received without ever mentioning the crux of [REDACTED] claim is PUC 304.02(c).
16. On January 6, 2023, Liberty denied the claim saying [REDACTED] grounding failed, and

“under the terms of our tariff, Liberty is not responsible for the damage to items caused by fluctuating voltage due the opening of a neutral service conductor.” No language of the Tariff was quoted. No PUC regulation was cited.

17. The Department of Energy asked Liberty for some service records then the case languished.
18. On May 9, 2023, [REDACTED] attorney called the Department of Energy on the status then reminded them in writing that [REDACTED] is relying on PUC 304.02(c) to override the tariff claim.
19. On June 5, 2023, a Utility Analyst denied the claim based on a general statement of the inspection and the tariff with no mention of PUC 304.02(c). The Utility Analyst said recourse now would be to request to open a docket with the PUC.
20. On June 10, 2023, [REDACTED] attorney requested the Utility Analyst explain why PUC 304.02(c) does not apply since the tariff says Liberty is responsible for variations “as required by rules of the Commissioner.” Due process concerns were noted.
21. On June, 16, 2022, the Utility Analyst reversed its position and requested a “formal” complaint be filed with the Department, apparently because the Department had overlooked the PUC regulation in making its decision.
22. All of the allegations in paragraphs 14-21 are supported by documents that can be furnished upon investigation.

Violations of Law

A. Procedural

23. PUC 304.04(d) states: “When a utility determines that a voltage complaint is founded, or

unfounded, it shall provide written notification to the customer within 10 calendar days of such determination.

24. In this case, notice was first sent on July 8, 2023, but Liberty made no determination until September 9, 2023 without conducting an inspection of [REDACTED] property.

B. Surge or Variation Liability

25. Liberty's Tariff dated July 1, 2020 states in regards to variations (p 7): "The Company does not undertake to regulate the voltage or frequency of its service more closely than is standard commercial practice or required by the rules of the Commission."

26. PUC 304.02(c) states: "A utility shall maintain the nominal secondary voltage at the utility's service terminals or at the street lamp in the case of multiple street lighting as installed for each customer, within plus or minus 5% average RMS."

27. PUC 203.27 states the Commission can take Administrative Notice of "generally accepted technical or scientific facts within the Commission's specialized knowledge."

28. It is obvious the variation in this case exceeded 5 percent.

29. Courts from around the country hold utilities liable for power surges that are more than minimal in nature. See e.g. Comer v American Electric Power, 63 F.Supp 2d 927 (N.D. Ind 1999)(collecting cases) Cf Cincinnati Ins Co v PPL Corp., 979 F.Supp.2d 602 (E.D. Pa 2013)(strict liability)

30. There can also be liability for negligence. Alderwoods v Duquesne Light Co., 52 A.3d 347 (Pa Super Ct 2012)

31. NH PUC 306.01(a) requires Liberty to properly maintain its equipment.

32. Administrative notice can be taken, as well as evidence that will be produced, that the loss of

the neutral was caused by negligence, especially given the remedial repairs.

C. Bad Faith

33. Liberty denied the claim on September 9, 2022 for a lack of grounding admitting it had never inspected [REDACTED] property.

34. Liberty then denied this claim in part by stating there was not proper grounding when they in fact told [REDACTED] it met code requirements, and it was compliant which he knew as a former NH electrical inspector.

35. Liberty first cited the Tariff in response to the Department of Energy inquiry without disclosing the Tariff makes Liberty liable for variations that exceed PUC 304.02(c)'s 5 percent limit.

36. These acts of Liberty were made in knowing violation of the facts and law to deny a just claim, and warrant attorneys fees. LaMontange Builders Inc v Brooks, 154 N.H. 262 (2006).

37. The electrician who assisted [REDACTED] after the surge has stated that he is aware of New Hampshire public utilities honoring surge claims. (An affidavit or interview can be provided during the investigation.)

38. Upon information and belief, Liberty has paid other consumers surge claims.

39. Administrative notice can be taken New Hampshire utilities have paid other surge claims.

D. Public Interest

40. NH RSA 365:38-a permits an award of attorneys fees/costs.

WHEREFORE, [REDACTED] seek an order from this Department:

A. Granting all of the damages sought in his original claim to Liberty.

B. Awarding [REDACTED] his attorneys fees and costs;

C. Granting such other relief as may be just.

Respectfully submitted,

[REDACTED]
By His Attorney



/s/

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Dated: 6/20/23

I certify a copy of this Complaint was e-mailed to The Office of Consumer Advocate (oca@oca.nh.gov) and to the Department of Energy (energy-info@energy.nh.gov) on this 20th day of June, 2023.

/s/ 

Stephen E Woodbury