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21 S. Fruit St., Suite 10
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October 13, 2023

Attorney Stephen E. Woodbury
PO Box 92
Salem, NH 03079

Re: CPT 2023-003, Complaint of [REDACTED] against Liberty Utilities; Department of Energy Letter regarding Lack of Jurisdiction over Complaint

Attorney Woodbury:

This letter serves as acknowledgment that the New Hampshire Department of Energy (DOE or Department) has received the formal complaint (Complaint) of [REDACTED] (Complainant) against Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (Liberty or the Company), which was filed electronically with the DOE via email on June 20, 2023. The DOE has assigned complaint number CPT 2023-003 to the Complaint.

The DOE has waived the filing of paper copies in this matter, and any future correspondence related to the above complaint should be emailed to proceedings@energy.nh.gov.

The DOE is unable to grant the relief requested in the Complaint. Neither the DOE nor the Public Utilities Commission (Commission) have jurisdiction to award damages, as requested in the Complaint. Pursuant to RSA 490-505, the relief requested in the Complaint falls under the jurisdiction of the New Hampshire district and superior courts.¹ This is so even where the request for civil damages is based upon a purported violation of Commission or Department rule, or the terms and conditions of a company's tariff. See Order No. 23,734 (June 28, 2001) in Docket No. DE 01-023 ("Even though our imprimatur confers upon a tariff the force and effect of law, we are no more empowered to adjudicate civil damages claims implicating the tariff than the Legislature would be the appropriate forum for adjudication of a civil damages claim that implicates a provision of the New Hampshire Revised Statutes.").

The Commission has previously asserted that it does not have the authority to award damages. See Orders No. 23,734 (June 28, 2001) and 24,121 (February 6, 2003) in

¹ See RSA 502-A:14, II: "All district courts shall have concurrent jurisdiction with the superior court of civil actions for damages in which the damages claimed do not exceed \$25,000, the title to real estate is not involved and the plaintiff or defendant resides within the district where such court is located". See also RSA 491:7: "The superior court shall take cognizance of civil actions and pleas, real, personal, and mixed, according to the course of the common law..."

Docket No. DE 01-023 (concluding that the Commission's statutory authority does not allow it to award civil damages to utility customers); and Order No. 24,440 (March 4, 2005) in Docket No. DT 03-153 (dismissing a customer complaint against a utility when customer's only requested relief was for monetary damages, and finding that the Commission's authority under reparations statutes RSA 365:3 and 365:29 did not extend to the request for damages). RSA 365:29, which governs the Commission's authority to order a utility to make reparations, allows the Commission to order reparations when the Commission finds that, "an illegal or unjustly discriminatory rate, fare, charge, or price has been collected for any service." The Complainant in this case does not allege that Liberty charged him an illegal rate, fare, charge, or price in connection with its services. Therefore, the Commission's authority to order reparations in specific instances does not apply to Complainant's allegations and requests for relief.

The Complainant also requests attorney's fees pursuant to RSA 365:38-a, which allows cost recovery in certain circumstances in proceedings before the Commission. The DOE does not have jurisdiction to allow cost recovery under the statute. As the DOE cannot bring civil damage proceedings before the Commission, and neither agency has jurisdiction to grant attorney's fees under RSA 365:38-a, the DOE declines to bring proceedings on its own motion before the Commission. See Puc 204.02(a) (complaint must be within Commission's jurisdiction to resolve); RSA 365:4 (Department has discretion whether to bring proceedings before the Commission).

The DOE notes that Complainant's argument that Liberty violated Puc 304.02(c) is not supported by the Complaint. That rule requires a utility to, "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." Complainant states that "It is obvious that the variation in this case exceeded 5 percent." Complainant also states, however, that, "the neutral on the secondary transformer . . . failed causing a power surge in the neighborhood" and that, "a Neutral line had fallen off the transformer causing a power surge to the affected properties." Pursuant to Puc 304.02(m)(4), voltage outside the 5% limit shall not be considered a violation where it arises from the failure of equipment, and pursuant to Puc 304.02(n), a voltage variation shall not be considered a violation if it does not occur more than once per day and does not exceed 2 minutes in duration. Complainant does not allege that this is a recurrent problem, or that the surge that affected his home exceeded 2 minutes in duration.

In addition, during a review of an informal complaint previously submitted to the Department's Consumer Division by the Complainant, the Department's Enforcement Division reviewed a statement of the worker who responded to the event and a picture of the eyelet that failed, causing the neutral wire to fall away from the transformer. The Enforcement Division observed that the picture did not show any sign of heating, and that the eyelet appeared to fail due to poor casting. Based on these facts, the Enforcement Division concluded that no further investigation of this one-time event, voltage fluctuations in the area of Complainant's property, or Liberty's practices is necessary.

RSA 365:1-4 and Puc 204 govern the formal process for complaints to the Department. They allow the Department to investigate alleged violations of law, and the discretion whether to bring proceedings before the Commission. RSA 365:4 allows a Complainant to petition the Commission to open an adjudicative proceeding if the Complainant is unsatisfied with the Department's disposition of the Complaint. The Complainant should consider this letter to be confirmation that the DOE has disposed of the Complainant's requests for damages and attorney's fees.

Sincerely,

/s/ Alexandra K. Ladwig

Alexandra K. Ladwig
Staff Attorney/Hearings Examiner
Department of Energy