

Liberty Utilities Gets Tree'd

By **DONALD M. KREIS** November 8, 2024

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Power to the People is a column by Donald M. Kreis, New Hampshire's Consumer Advocate. Kreis and his staff of four represent the interests of residential utility customers before the NH Public Utilities Commission and elsewhere.

By DONALD M. KREIS, Power to the People

One sure sign of a sore loser is the sight of someone trying to change the rules of the game as defeat looms. Take, for example, New Hampshire's smallest electric utility: Granite State Electric Company, which does business under the trade name "Liberty."

An electric utility in New Hampshire has just one job: keep the lights on. But there is an implacable enemy: trees.

Whenever it gets windy around here, tree limbs break off. If a broken limb happens to be near an electric distribution line hanging from utility poles, the limb can and often will crash into the wire and cause a power failure.

We live amid a perpetual freak-out over the prospect of a big blackout caused by failures in the federally regulated bulk power transmission system – the result being that New England pays the highest transmission rates in the country. But, by far the biggest cause of outages is a local phenomenon: tree limbs falling onto distribution circuits like the one wired up to your home or business.

So it was, four years ago, that Liberty promised it would go through all of its distribution circuits on a four-year cycle and trim the trees along those circuits to prevent tree limbs from causing outages. They made that promise in the context of [settling a rate case](#) to which we, the Office of the Consumer Advocate, were a party as the representative of the company's residential customers.

Liberty promised to do its required tree trimming on an annual budget of \$2.2 million. We even gave them some wiggle room, agreeing they could recover up to \$2.42 million in actual tree trimming costs. All of this was explicitly [approved by the Public Utilities Commission](#) (PUC).

But it didn't happen.

To meet that four-year cycle, Liberty would have had to trim 214 miles of distribution circuits a year. Last year, Liberty's crews trimmed just 146 miles.

The 2020 settlement agreement aside, the PUC has a rule requiring electric utilities to trim the trees along their distribution lines on at least a five-year cycle. That would require 194 miles of tree trimming a year.

Ordinarily, we'd hash this out in a rate case at the PUC. But the two rate cases Liberty filed last year quickly turned into a fiasco; it turned out that, because of Liberty's switch to a new accounting and billing system two years ago, the information submitted by the company was unreliable.

So, rather than wait for the rate case to sort itself out, back in May our office filed a formal [complaint](#) with the PUC. We alleged that Liberty had both violated the terms of its PUC-approved settlement agreement from 2020 as well as the PUC's own rule governing tree trimming by electric utilities.

To its great credit, the PUC took our complaint seriously. The regulators [summoned the parties](#) (us, the utility, and the state's Department of Energy) to a prehearing conference in late August.

And, after the prehearing conference, the PUC issued an [order](#) stating: "The parties agreed with the Commission's proposal to convert the proceeding to a show cause docket verses an investigatory docket."

That was a victory for ratepayers. A big one.

By converting the case to a "show cause" proceeding, the PUC was ruling, in effect, that no facts were in dispute – that it was clear the utility had screwed up. The only remaining questions were what to do about it, and for that purpose the PUC told the parties to submit legal briefs.

[We did exactly that](#), on October 22. So did [Liberty](#), and the [Department of Energy](#).

But, guess what? Liberty read the briefs and now it wants to change the rules of the game so that it does not have to show cause before the PUC why the utility should not incur fines and other punishments for failing to keep its promises, and follow the rules, about tree trimming.

On November 1, it emerged that Liberty had hired a fancy Boston law firm – Keegin Werlin – to take over the case. And that’s when the company played the “sore loser” card.

Specifically, Liberty filed a pleading with the PUC captioned “[Motion for Revised Process](#).”

You could be forgiven for reading a phrase like that and assuming it’s some kind of well-established legal trick – something people learn in law school and often refer to in Latin to enhance the intrigue. (My favorite example is the legal doctrine of *res ipsa loquitur* – which, loosely translated, means “duh . . . it’s obvious.”)

But, in this instance, Liberty and its lawyers just made this up. “Motion for Revised Process” more accurately means “Motion to Allow Us to Walk Back What We Have Already Said and Pursue a Different Strategy Better Calculated to Make Sure We Win by Evading Scrutiny.”

Maybe you think I am exaggerating? I am not. Here’s the heart of Liberty’s argument:

“As we prepare our reply brief, it has become clear to us that foundational facts and circumstances necessary for the Commission to resolve the contested issues judiciously and on the basis of evidence are not included in the record. . . . The Company acknowledges that this proposal represents a reversal of its position at the pre-hearing conference and accepts responsibility for any confusion or inconvenience that this may cause to the parties or the Commission.”

Confusion? Inconvenience? Hardly.

What we have here is a blatant example of a utility that is not just backtracking. Liberty is using procedural ploys to wriggle out of responsibility for failing to keep its promises and failing to keep the trees in its rights-of-way trimmed so that limbs don’t fall and the lights don’t go out.

If only this were an isolated example. But as to both its electric and gas utilities in New Hampshire, Liberty is building quite a record of errors, omissions, miscues, and failures. The two rate cases Liberty filed last year have both blown up in the company’s face and the docket of open cases at the PUC is riddled with instances of other problems with these utilities.

Liberty's parent company – Algonquin Power and Utilities Corporation, based in Ontario – has owned Granite State Electric Company and its sibling, Energy North Natural Gas Corporation – since 2012. Algonquin should now sell these companies to a new owner, capable of operating them competently.