



OFFICE OF THE CONSUMER ADVOCATE

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February 4, 2021

Ms. Debra A. Howland
Executive Director
New Hampshire Public Utilities Commission
21 South Fruit Street, Suite 10
Concord, New Hampshire 03301

Re: Docket No. DE 17-198
Granite State Electric Corp. d/b/a Liberty
Battery Storage Pilot Program

Dear Ms. Howland:

The Office of the Consumer Advocate (OCA) is in receipt of a recent flurry of submissions in the above referenced docket, specifically (1) a technical statement submitted by Liberty on January 22, 2021, seeking to revise the previously approved terms of its battery storage pilot project by allowing participating customers with both batteries and behind-the-meter solar panels to charge their batteries with energy drawn from the grid, (2) a memorandum from Staff filed on February 2, 2021 urging rejection of the Liberty request on the ground that it is “inconsistent with statutory provisions that restrict net metering to renewable energy sources,” and (3) an I-told-you-so letter from intervenor Sunrun, Inc., arguing that the Commission should never have let a regulated electric distribution utility conduct such a pilot, taking no position on Liberty’s request, and seeking an order making clear that during Phase II of the pilot “Liberty will have no control over customer and third-party-owned batteries” and also making clear that “Phase II of the pilot shall not be contingent upon successful completion of Phase I.”

Both the request of Liberty and that of Sunrun seek to modify certain determinations made by the Commission in Order No. 26,209 (January 17, 2019) approving a settlement agreement setting forth the terms of the pilot project. As such, their requests are governed by RSA 365:28, specifying that the Commission may “alter, amend, suspend, annul, set aside, or otherwise modify” a previously issued order – but only after notice and hearing. Further, N.H. Code Admin. Rules Puc 202.01 makes clear that a person seeking modification of a previously issued order of the Commission must make such a request by petition.

In these circumstances, the Commission should by secretarial letter direct Liberty and Sunrun to make their requests via a petition submitted pursuant to N.H. Code Admin. Rules Puc 203.06 or, at the very least, indicate whether they wish their respective letters to be treated as petitions. Rule 203.06(e) states that if “the scope of a proceeding is expanded or issues arise which were not reasonably anticipated by the petitioner, the commission shall allow the petitioner to file supplemental direct

testimony or comments on the new or unanticipated issues.” Thus Commission should ask Liberty and Sunrun whether they wish to submit prefiled testimony in these circumstances. The OCA believes prefiled testimony would be helpful and advisable.

Assuming that Liberty, Sunrun, or both seek to petition the Commission for modification of Order No. 26,209, the Commission should issue a supplemental order of notice and schedule a prehearing conference. That will give Staff and the parties, including any additional intervenors, an opportunity to advise the Commission and each other what additional steps are necessary to resolve the issues raised by Liberty and Sunrun at the requisite evidentiary hearing.

On the merits of the issues raised by the Liberty, Staff, and Sunrun positions the Office of the Consumer Advocate takes no position at this time. We certainly hope that the disputed issues can be resolved by settlement so that the battery storage pilot gets back on track and does not set back the cause of allowing customers to use behind-the-meter batteries to save money (via time-of-use rates) and partner with their utility for purposes of peak reduction. Our respective constituencies, our neighboring states, and the industry as a whole are watching.

Consistent with the Commission’s March 2020 directive, in light of the ongoing pandemic-related State of Emergency as declared by the Governor this letter is being filed in electronic form only.

Sincerely,

A handwritten signature in blue ink, appearing to read "Donald M. Kreis", written in a cursive style.

Donald M. Kreis
Consumer Advocate

cc: Service List, via e-mail