

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 19-064

**LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP.
D/B/A LIBERTY UTILITIES**

Petition for Permanent and Temporary Rates

Order Approving Settlement and Permanent Rates

ORDER NO. 26,376

June 30, 2020

APPEARANCES: Michael J. Sheehan, Esq., on behalf of Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities; the Office of the Consumer Advocate by D. Maurice Kreis Esq., on behalf of residential ratepayers; Clifton Below on behalf of the City of Lebanon; Madeleine Mineau on behalf of Clean Energy of New Hampshire; Christopher Skoglund on behalf of the New Hampshire Department of Environmental Services; and Paul B. Dexter, Esq. and Brian D. Buckley, Esq., on behalf of Commission Staff.

In this order, the Commission approves a permanent distribution rate increase for Liberty Utilities effective July 1, 2020. For a typical residential customer taking default energy service and using 650 kilowatt hours per month, this approval results in a 3.16 percent increase in monthly bills over rates in effect on May 30, 2019, from \$114.77 to \$118.39 per month.¹

I. PROCEDURAL HISTORY

On March 27, 2019, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (Liberty or the Company) filed a Notice of Intent to File Rate Schedules, followed by a Petition for Permanent and Temporary Rates pursuant to RSA 378:27 and 378:28 on April 30. Liberty's petition requested that the Commission: (1) grant a temporary rate increase of \$2,093,349 in annual distribution revenue effective on or after July 1, 2019; (2) order that such temporary rates

¹ Liberty has proposed additional rate changes in other proceedings for effect on July 1, which will also have an impact on customer bills.

remain in effect until a final determination of the Company's request for a permanent rate increase; (3) grant the Company's request for a permanent rate increase of \$5,683,102 in annual distribution revenue to be effective with service rendered on or after July 1, 2019; and (4) grant the Company a step increase of \$2,293,431 in annual distribution revenues for capital investments made through December 31, 2019, effective no earlier than January 1, 2020. Liberty alleged that under the rates currently in effect, the Company is unable to earn the rate of return authorized by the Commission. Liberty also filed direct testimony and exhibits in support of the proposed rates.

In Order No. 26,252 (May 13, 2019), the Commission suspended Liberty's proposed tariffs pending further investigation pursuant to RSA 378:6, I(a). In Order No. 26,267 (June 28, 2019), the Commission approved a temporary increase of \$2,093,349 in Liberty's annual electric distribution revenues, effective July 1, 2019, but denied the Company's request to offer its proposed LED-2 rate on a temporary basis.

The Office of the Consumer Advocate (OCA) notified the Commission that it would be participating in this proceeding on behalf of residential ratepayers pursuant to RSA 363:28. The City of Lebanon, Clean Energy New Hampshire, and the New Hampshire Department of Environmental Services (DES), each submitted intervention requests that were subsequently granted.

On November 22, Liberty filed the technical statements of Philip E. Green, David B. Simek, and Heather Tebbetts, to reflect new or updated information and to make changes identified during the discovery process. The technical statements proposed to increase Liberty's annual permanent rates by approximately \$990,000, to a total of \$6,673,493, and modified Liberty's proposed tariff.

On December 6, 2019, Staff of the Commission (Staff) recommended a permanent rate increase of \$29,539, which included reducing Liberty's proposed rate base by \$6,206,314. Staff filed direct testimony and exhibits in support of the recommendation. Also on December 6, the OCA recommended a permanent rate increase of \$3,480,489, and filed direct testimony and exhibits supporting its recommendation. On December 9, the City of Lebanon filed the testimony of Clifton C. Below relating to Liberty's proposed updates to its street lighting tariff and offerings. On January 30, 2020, Liberty filed rebuttal testimony wherein the Company reduced its increase request to \$6,340,293.

On May 25, 2020, the parties filed a Settlement Agreement (Settlement Agreement), including attachments, which, if approved, would resolve all issues raised in this case. The petition and subsequent docket filings, other than any information for which confidential treatment has been requested of or granted by the Commission, are posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2019/19-064.html>.

II. Motion for Protective Order Related to Discovery Responses

On June 5, 2020, Liberty moved for an order pursuant to the New Hampshire Code of Administrative Rules, Puc 203.08, to protect portions of its responses to various data requests. Liberty asserted that each of its identified responses are exempt from disclosure under RSA 91-A:5, IV. Liberty requested confidential treatment of portions of its responses to OCA 1-2, 6-15, and Staff 7-1. The Company said portions of those responses contain proprietary models of Liberty's consultant. Liberty argued that disclosure of its consultant's proprietary models would cause its consultant competitive harm.

Liberty also requested confidential treatment of portions of its responses to OCA 1-10, 1-17, 1-37, 2-49, 2-50, 7-1, 7-5, and 7-10; OCA TS 1-16, 2-2, and 2-7; as well as

Staff 3-14, 6-2, and 6-4. Liberty stated that each of those responses contain compensation information that is traceable to specific employees. Liberty argued that disclosure of compensation information traceable to specific employees constitutes an invasion of privacy and could cause the Company competitive harm. Liberty requested confidential treatment of portions of its response to Staff 5-7 containing the names of customers who asserted certain claims. Liberty argued that this class of information is confidential information specifically protected from disclosure by RSA 363:38. Liberty requested confidential treatment of portions of its responses to OCA 7-34 and Staff 8-14 containing confidential operational and financial information belonging to the Company. Liberty argued that disclosure of operational and financial information belonging to the Company would cause competitive harm to the Company and its customers. No party objected to Liberty's request.

III. PRE-SETTLEMENT POSITIONS

A. Liberty

The Company used 2018 as its test year in developing its permanent rate filing. Liberty stated that its test year rate base was \$106,180,186, and that its 2018 base distribution revenue was \$39,758,220. The Company stated that its overall rate of return was 6.43 percent during the test year, 1.26 percent less than the 7.69 percent rate of return authorized by the Commission pursuant to *Liberty Utilities (Granite State Electric) Corp.*, Order No. 26,005 (April 12, 2017). Liberty initially proposed annual distribution revenues of \$45,441,952, an increase of \$5,683,102 or 14.3 percent. Additionally, Liberty proposed a step increase of \$2,293,145, or an additional 5.8 percent based on capital expenditures becoming used and useful in 2019, along with a request to explore a multi-year rate plan that would include a series of annual step adjustments to recover future capital investments. Liberty's initially proposed

increase in distribution revenue, inclusive of both permanent rates and step increases, totaled \$7,976,877 or a 20.1 percent increase. Liberty requested an effective date of July 1, 2019, for permanent rates and an effective date no earlier than January 1, 2020, for the step adjustment. In November, Liberty filed corrections and updates based on the discovery process. The net impact of this filing was an increase to the Company's revenue deficiency of \$990,390, resulting in a revised permanent rate increase request of \$6,673,493 (excluding the step adjustment).

Liberty proposed a return on equity of 10 percent, a capital structure of 55 percent equity and 45 percent debt, and cost of debt of 5.97 percent, resulting in an overall rate of return of 8.19 percent. Additionally, Liberty requested that the amount of operation and maintenance expenses associated with its Vegetation Management Program included in base rates be increased from \$1,500,000 to \$1,944,000, plus an additional \$400,000 for the next four years to address deferred tree removals.

With its request for permanent rates, Liberty also asked approval of the following additional measures: (1) a revenue decoupling mechanism that would remove the link between customer sales and revenues; (2) increased fees the Company charges larger customers to connect with its distribution system; (3) increased fees Liberty charges to extend its distribution lines; (4) changes to LED street lighting rates and terms, including provisions for customers to pay upfront for the cost of LED fixtures; (5) a new electric vehicle charging rate; and (6) several other changes to the Company's tariffs, terms, and conditions. Liberty proposed to increase residential customer charges from \$14.02 to \$14.76 per month under the permanent rates. Under the step adjustments, all rate elements, including all customer charges, would have increased on an equal percentage basis.

Liberty responded to Staff and the OCA's testimony. Liberty disagreed with Staff's challenges to capital projects, and provided supplemental information on the Company's capital budgeting and planning process. Liberty also defended the continuation of the Reliability Enhancement Program and the costs associated with the vegetation management program. Liberty agreed with certain adjustments from Staff's recommendation and from the Staff audit report, resulting in a modified revenue deficiency of \$6,340,293, which is \$333,200 less than the deficiency that Liberty proposed in its updated filing. Liberty re-iterated its position that a return on equity of 10.0 percent with a 55/45 equity/debt capital structure was reasonable.

B. OCA

The OCA proposed a test year-rate base of \$102,932,498, with an overall rate of return of 7.21 percent. The OCA based the rate of return on an 8.23 percent return on equity, a capital structure of 55 percent equity and 45 percent debt, and a 5.97 percent cost of debt. The OCA supported a 2019 step increase of an additional \$10,302,736 in rate base; however, it opposed step increases beyond 2019 being approved in this proceeding. Instead, OCA recommended examining performance based regulation for future ratemaking decisions. The OCA made recommendations regarding implementation of, and modifications to, Liberty's revenue decoupling proposal. The OCA recommended that customer charges to residential customers be reduced to \$10 per month when the permanent rates are implemented.

C. City of Lebanon

The City of Lebanon filed testimony regarding Liberty's proposed LED-2 street lighting tariff option. While generally in support of the proposed tariff, the City of Lebanon recommended modification to the tariff to allow municipalities to continue to own streetlights

that they are required to purchase under the tariff, instead of requiring them to be transferred to the utility as contribution in aid of construction.

D. Staff

Staff recommended a permanent rate increase of \$29,539. Staff also recommended a reduction to Liberty's proposed rate base in the amount of \$6,206,314, resulting in an adjusted rate base of \$96,817,905. Staff recommended denial of Liberty's proposed 2019 step adjustment, as well as any proposed future step adjustments.

Staff proposed an overall rate of return of 7.11 percent, based on a return on equity of 8.25 percent, a capital structure of 50 percent equity and 50 percent debt, while accepting the Company's 5.97 percent cost of debt. Regarding vegetation management, Staff recommended a new base rate amount of \$1,678,000 for the vegetation management program, and ending the reliability enhancement program in 2021.

Staff recommended that residential customer charges be increased by 10 percent, to bring them closer to the marginal cost of service as calculated by Staff's consultant. Staff also recommended that Liberty's distribution planning criteria be revised to allow greater review of various options to serve load before plant investments are made. Staff recommended no changes to Liberty's proposed decoupling proposal.

IV. SETTLEMENT AGREEMENT

The full terms of the Settlement Agreement are found at Hearing Exhibit (Exh.) 37, which contains a 21-page settlement, and 223 pages of attachments. The Settlement Agreement was supported by Liberty, OCA, City of Lebanon, Clean Energy New Hampshire, and Staff (Settling Parties). DES did not sign the Settlement Agreement but submitted a letter of support

for sections of it. The Settling Parties agreed that the Settlement Agreement resolves all issues regarding Liberty's request for permanent rates in this proceeding.

Under the Settlement Agreement, effective July 1, 2020, Liberty would receive a permanent rate increase of \$4,150,000 based on a cost of equity of 9.1 percent, and a capital structure of 52 percent equity and 48 percent debt. This increase would be reconcilable to July 1, 2019, the effective date of temporary rates in this docket. The total estimated amount of recoupment of the difference between temporary rates and permanent rates would be \$1,835,991, which would be recovered through a uniform percentage change to all rates and charges, excluding the customer charges for domestic service rates. If approved, the Company would recover \$553,641 in rate case expenses in the same manner as recoupment, subject to reconciliation to final amounts incurred and to Staff audit of those expenses.

Under the terms of the Settlement Agreement, the Company would also be permitted to recover additional revenue in the form of three step increases in rates for capital additions placed in service as of December 31, 2019, December 31, 2020, and December 31, 2021. The first of such step increases is estimated at approximately \$1,400,000, the second step increase is estimated at approximately \$1,800,000, and the third step increase is capped at \$1,800,000. Each step increase would be based on the actual amount of the investments. All step increases would be subject to further review and determination by the Commission. The Settlement requires that these step increase reviews be afforded a review period of approximately 90 days and would require Liberty to pre-file substantial documentation of each capital project identified for review. The third step increase would be conditioned on Liberty proposing a performance-based ratemaking mechanism for consideration in its next rate case.

Under the Settlement Agreement, the Company's Reliability Enhancement Program (REP) would terminate following the final order in the "Calendar Year 2020 Annual Report and Reconciliation and Rate Adjustment Filing" docket. The Vegetation Management Program (VMP) would maintain a four-year cycle of tree trimming and vegetation management, and the Company would be required to comply with the filing and reporting requirements currently in place. According to the Settlement Agreement, Liberty would follow the planning criteria contained in the Distribution Planning Criteria and Strategy document for projects put into service after December 31, 2020.

The Settlement Agreement would set residential customer charges at \$14.74, which would remain unchanged as other rate elements are increased for the three step adjustments, rate case expenses, and for the final REP year. Liberty would also implement a decoupling mechanism effective July 1, 2021. Before implementing the decoupling mechanism, the Settling Parties would review and agree on applicable tariff language prior to Liberty's submission to the Commission. The Settling Parties agreed to additional steps and timelines for implementing the decoupling mechanism. In addition, Liberty would be permitted to continue the Lost Revenue Adjustment Mechanism for calendar years 2019 and 2020.

The Settling Parties requested that the Commission approve the revised version of proposed Tariff No. 21, replacing Tariff No. 20. The revised version of proposed Tariff No. 21 contains the increased rates and charges effective July 1, 2020, as well as modifications and additions related to EV service, implementation of an LED-Outdoor Lighting tariff, and changes to interconnection fees. Per the Settlement Agreement, the net lead/lag days would be 24.2 days. The Settlement Agreement contains terms relating to Liberty's depreciation reserve, depreciation rates, and pole attachment fees.

The Settling Parties agreed that Staff, the OCA, and Liberty will meet to discuss the Company's reporting requirements to determine potential eliminations, consolidations, or changes to frequency or deadlines; as well as a plan to engage in a collaborative process to determine the most beneficial default smart inverter settings based on the Institute of Electrical and Electronics Engineers' revised standards for grid interconnection of distributed energy resources. The Settlement Agreement provided that Liberty's next general distribution rate case would be based on a test year no earlier than the twelve-month period ending December 31, 2022.

V. COMMISSION ANALYSIS

Settlement Agreement

The Commission is authorized to fix rates after a hearing, upon determining that rates, fares, and charges are just and reasonable. RSA 378:7. In circumstances where a utility seeks to increase rates, the utility bears the burden of proving the necessity of the increase pursuant to RSA 378:8. In determining whether rates are just and reasonable, the Commission must balance the customers' interest in paying no higher rates than are required against the investors' interest in obtaining a reasonable return on their investment. *Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). In this way, the Commission serves as arbiter between the interests of customers and those of regulated utilities. *See* RSA 363:17-a; *see also* *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,202 at 17 (March 10, 2011).

Pursuant to RSA 541-A:31, V(a), informal disposition may be made of any contested case at any time prior to the entry of a final decision or order, by stipulation, agreed settlement, consent order, or default, Puc 203.20(b) requires the Commission to determine, prior to

approving disposition of a contested case by settlement, that the settlement results are just and reasonable and serve the public interest.

In general, the Commission encourages parties to attempt to reach a settlement of issues through negotiation and compromise, as it is an opportunity for creative problem solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation. *EnergyNorth Natural Gas, Inc. d/b/a National Grid NH*, Order No. 25,202 at 18 (March 10, 2011). Even where all parties join a settlement agreement, however, the Commission cannot approve it without independently determining that the result comports with applicable standards. *Id.* As the Settlement Agreement pertains to a rate case, the underlying standard to be applied is whether the resulting rates are just and reasonable. RSA 378:7.

The Settlement Agreement calls for an overall revenue increase of \$4,150,000 plus step increases of approximately \$1,400,000, \$1,800,000, and \$1,800,000, effective for capital investments placed in service on December 31, 2019, December 31, 2020, and December 31, 2021, respectively. The revenue increase of \$4,150,000 will result in a 3.16 percent increase in monthly bills over rates in effect on May 30, 2019, from \$114.77 per month, to \$118.39 per month, for a typical residential customer taking electric supply from Liberty Utilities and using 650 kilowatt hours per month.

We compare these amounts to the revenue increase sought by Liberty (a revenue increase of \$6,340,293 plus a 2020 step adjustment of approximately \$2.3 million together with a request for multiple yearly step adjustments beyond 2020), to that originally recommended by Staff (\$29,539 revenue increase with no step adjustments) and to that recommended by the OCA (\$3,480,489 with one smaller step adjustment than requested by Liberty). From that comparison,

we understand that the amount of the revenue increase in the Settlement Agreement represents a negotiated amount that the Settling Parties agreed will provide the Company the revenues necessary to provide safe and reliable service. We find the compromise by Liberty, Staff, and the OCA to be an indication that the Settlement Agreement is reasonable. *See Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities*, Order No. 25,638 at 15-16 (March 17, 2014). This increase provides for a return on equity of 9.1 percent, and a capital structure of 52 percent equity and 48 percent debt.

Based on the evidence before us, we find the capital structure, overall rate of return, and return on equity, to be reasonable, though we recognize the significant volatility and changes in the markets over the last several months. *See Exhs. 14, 18, 24, 35, and Hearing Transcript of June 9, 2020 at 82-83, 112-115, and 123-125.* We also note that the return on equity we are approving is within the scope of recent equity returns approved by the Commission, a reasonable but by no means definitive indication of an appropriate return on equity. *See Bluefield Water Works & Improvement Co. v. P.S.C. of West Virginia*, 262 U.S. 679 (1923) and *F.P.C. v. Hope Natural Gas Co.*, 320 U.S. 591 (1944), *see, e.g., Unitil Energy Systems Inc.*, Order No. 26,007 at 16-17 (April 20, 2017) (approving a return on equity of 9.5 percent); *Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty Utilities*, Order No. 26,122 at 43 (April 27, 2018) (approving a return on equity of 9.3 percent); *Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities*, Order No. 26,005 at 13 (April 12, 2017) (approving a return on equity of 9.4 percent).

The record before us included significant testimony made under oath and adopted during the hearing that was sufficient to make the required findings. We have reviewed the record and conclude that the Settlement Agreement balances the interests of the customers' desire to pay no

higher rates than reasonably necessary and the investors' right to earn a reasonable return on their investment. *See Eastman Sewer Company, Inc.*, 138 N.H. 221, 225 (1994). Accordingly, we find the resulting rates just and reasonable as required by RSA 374:2 and RSA 378:28.

The Settlement Agreement represents a global settlement of all issues in this proceeding by parties with diverse interests. We find the settlement results are just and reasonable and serve the public interest. We therefore approve the Settlement Agreement, without modification.

Motion for Protective Order Related to Discovery Responses

RSA Chapter 91-A, ensures public access to information relative to the conduct and activities of government agencies or "public bodies" such as the Commission. Disclosure of records may be required unless the information is protected by statute under RSA 91-A:4, or exempt from disclosure under RSA 91-A:5. RSA 91-A:5, IV, exempts several categories of information, including personnel practices; confidential, commercial, or financial information; and personnel files. In each instance, the party seeking protection of the information in question has the burden of showing that a privacy interest exists, and that its interest in confidentiality outweighs the public's interest in disclosure. *Union Leader Corp. v. Town of Salem*, 173 N.H. ___, ___ (decided May 29, 2020) (slip op. at 11) (citing *Prof'l Firefighters of N.H. v. Local Gov't Ctr.*, 159 N.H. 699, 707 (2010)). The Commission's rules require a motion for confidential treatment to include, among other things, a "[s]pecific reference to the statutory or common law support for confidentiality" and a "detailed statement of the harm that would result from disclosure." Puc 203.08. The benefits of disclosure to the public are then weighed against the interest(s) in nondisclosure.

Liberty asserted that confidential, commercial, financial, or personnel exemptions apply to its different responses. With respect to the disclosure of the confidential, commercial, or

financial information, we find that Liberty has identified privacy interests, and that disclosure is likely to cause competitive harm to Liberty and its consultant. Similarly, with respect to the personnel information, we find that Liberty has identified a privacy interest and that disclosure is likely to cause competitive harm to Liberty. Finally, we agree that RSA 363:38 protects the identified customer claim data and therefore RSA 91-A:4 applies.

Next, we must consider the public interest in disclosure. Here, Liberty seeks to protect a consultant's proprietary model, individual employee compensation information, and specific internal operational and financial information. This information is unlikely to inform the public of the Commission's regulatory activities. On balance, the public's interest in disclosure of this information is outweighed by the potential harm to Liberty, its customers, and its consultant. Therefore, we grant Liberty's Motion for a Protective Order.

This ruling is subject to our ongoing authority, on our own motion, or on the motion of Staff, any party, or member of the public to reconsider our determination. *See* Puc 203.08(k).

Based upon the foregoing, it is hereby

ORDERED, that the Settlement Agreement regarding Permanent Distribution Rates among Liberty Utilities, Staff, the Office of the Consumer Advocate, the City of Lebanon, and Clean Energy New Hampshire is hereby APPROVED; and it is

FURTHER ORDERED, that Liberty Utilities is hereby authorized to begin recovery of the increase to its revenue requirement of \$4,150,000 in rates effective with service rendered on and after July 1, 2020, to be reconciled to temporary rates approved in Order No. 26,267 (June 28, 2019) over a two-year period, from July 1, 2020, through June 30, 2022, consistent with the Settlement Agreement; and it is

FURTHER ORDERED, that Liberty Utilities is authorized to recover just and reasonable rate case expenses over a two-year period, from July 1, 2020, through June 30, 2022; and it is

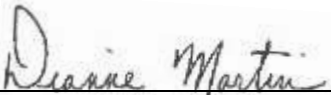
FURTHER ORDERED, that Liberty Utilities is authorized to recover step increases as provided in the Settlement Agreement, subject to further review and determination by the Commission for effect July 1, 2020, July 1, 2021, and July 1, 2022; and it is

FURTHER ORDERED, that Liberty Utilities shall file all necessary documentation and reports in support of regulatory costs as noted above, and the step increases, as required by the Settlement Agreement; and it is

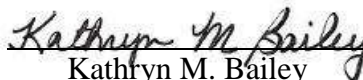
FURTHER ORDERED, that Liberty Utilities' Motion for Protective Order Related to Discovery Responses is GRANTED; and it is

FURTHER ORDERED, that Liberty Utilities shall file tariffs conforming to this order within 15 days of the date of this Order pursuant to N.H. Code Admin. R., Puc 1603.02(b).

By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 2020.



Dianne Martin
Chairwoman

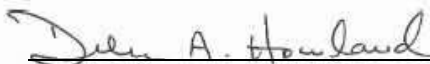


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
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Service List - Docket Related

Docket# : 19-064

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