

**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
Request for Second Step Increase**

Order on Rehearing

O R D E R N O. 26,512

August 29, 2021

In this order, the Commission grants in part and denies in part Granite State Electric Corp., d/b/a Liberty Utilities', request for rehearing of Order No. 26,494 which ruled on a proposed second step increase to distribution rates.

I. PROCEDURAL HISTORY

Following an evidentiary hearing on June 24, 2021, the Commission issued Order No. 26,494 which authorized Granite State Electric Corp. d/b/a Liberty Utilities (Liberty) to recover through distribution rates effective July 1, 2021, the revenue requirement of approximately \$1.6 million associated with approximately \$10 million in total plant investments placed in service in 2020, and temporary rate recoupment. The final revenue requirement figure and rates were to be calculated by Liberty, consistent with the order, and those rates and revenue requirement were subject to audit by the Commission's Audit Division (now with the Department of Energy). The order further required Liberty to file conforming tariff pages reflecting the new rates within 15 days of the order.

Liberty filed tariffs on July 6, 2021 and a recalculation of the revenue requirement on July 8, 2021. On July 30, 2021, Liberty filed a motion for rehearing of Order No. 26,494 (Order).

II. POSITIONS OF THE PARTIES

Liberty Utilities

In its motion for rehearing, Liberty requested rehearing and reconsideration of two issues: (1) the Commission's determination to deny recovery through the step adjustment of approximately \$1.2 million of the Company's 2020 plant investment for its Battery Pilot Program; and (2) the Commission's directive to modify tariff language on customer responsibility for the costs of relocating existing overhead facilities to underground, which Liberty claimed was based on a misunderstanding of the record.

1. Battery Pilot Program Investments

In Order No. 26,376 (June 30, 2020), the Commission approved a settlement agreement (the "Settlement Agreement") in this docket, DE 19-064. The Settlement Agreement states: "The Company shall be permitted to recover approximately \$1.8 million in additional annual revenue in the form of a second step increase in rates for capital additions in service as of December 31, 2020, ..., following the process described below." Settlement Agreement, Exhibit 37, at Bates 004. Attachment 2 to the Settlement Agreement listed the 2020 projects that would comprise the 2021 step adjustment budget, including \$1.5 million for "GSE Backup Battery Program." Settlement Agreement at Bates 031; Order No. 26,376 at 8 (see Settlement Agreement, Exhibit 37, at Bates 031).

Liberty argued that its specific request for the 2021 step adjustment was consistent with the Settlement Agreement. The request sought to recover approximately \$1.2 million which was invested to install batteries at the homes of 60

customers in 2020. Exhibit 65 at Bates 30. In its motion, Liberty claimed there was no dispute that the batteries for these 60 customers were in service during 2020, and that they were available to be dispatched under the terms of the pilot program. Liberty asserted there was no evidence presented that the money spent in 2020 to install batteries the 60 customers was imprudent, or that the batteries were not used and useful. Liberty further claimed that the Order made no such findings.

a. Timing of CIAC Offset to Rate Base

The Order noted two concerns related to the Battery Pilot Program investments. First, the contributions in aid of construction (“CIACs”) totaling \$46,062 from nine of the 60 customers receiving battery’s in 2020, were not received until 2021. According to Liberty, due to this timing, the CIAC was not applied to reduce the rate base associated with those nine installations in 2020.

In its motion for rehearing, Liberty agreed that since the batteries were all placed in service during 2020, applying the CIAC amounts received in 2021 to reduce the 2020 plant costs would lead to a fair and equitable result, consistent with the design of the program. Liberty stated that the revenue requirement including all the 2020 battery pilot investments and all the 2020 and 2021 CIACs related to those 2020 battery installation would result in a \$9,471 reduction in the overall revenue requirement requested in the step adjustment.

b. Battery Pilot Participating Customer Data on Benefits

The second issue raised in the motion for rehearing related to the Commission’s exclusion of the Battery Pilot Program investment adjustment. The Order provided:

[W]e requested additional information related to the Battery Pilot Program during the hearing (Exh. 80 has been reserved for the response). For purposes of this step adjustment, we exclude the Battery Pilot Program investment adjustment until the requested information has been received and reviewed, and will consider recovery in a future rate case. Liberty is directed to recalculate its proposed rates with this exclusion reflected. Order at 6-7.

According to Liberty, the Commission's request was for Liberty to provide information on "the benefits to the battery storage customers for Q1 2021." Liberty asserted that it provided that information on July 15, 2021, in the form of a narrative response and supporting spreadsheet, marked as Exhibit 80. In summary, Exhibit 80 stated:

As of March 31, 2021, 77 customers had batteries installed and saved a total of \$7,041.72 by using the batteries to power their homes during the quarter based on the output of the batteries. To the extent that customers with batteries were in an area that experienced a power outage, these customers' batteries also provided backup power during that outage, thus the customer was not interrupted. Exhibit 80 at 2.

Liberty argued that this customer benefit analysis should not be central to the Commission's approval of the recovery of costs of the battery pilot in the step adjustment. Further, Liberty indicated that the Exhibit 80 analysis does not include the benefits arising from dispatching the batteries during peak events to lower Liberty's transmission costs, which, it says, is the central goal of the pilot program. Also, Liberty claims benefits to participating customers include potential Time of Use rate arbitrage, the net metering-equivalent monetary credits for energy exports during forecasted peak hours, and the availability of backup power supply during outages. According to Liberty, the extent to which participating customers realize those benefits will be a subject of data collection and analysis during Phase 1 and will inform the Phase 2 proposal. According to Liberty, the Commission did not request, and thus the Company did not provide, the benefits from the peak reduction realized through the dispatch of the batteries during the first quarter. Liberty asserts that information will be provided over the course of time as the parties evaluate the success of the battery storage pilot.

Liberty claimed the Order is unclear as to whether this exclusion from rate base was to remedy the first concern, the asymmetry of investments in 2020 and CIACs booked in 2021, the second concern, not having the information in Exhibit 80 available, or both. Given this uncertainty, Liberty sought rehearing and reconsideration of both potential bases for the Commission's decision to exclude the battery pilot investment from rate base.

Liberty argued that the financial impact of delaying recovery of the 2020 battery pilot program investments would be a reduction of approximately \$250,000 per year in revenue requirements. In addition, because the stay-out provision of the Settlement Agreement requires Liberty's next rate case to be filed no earlier than 2023 (based on a 2022 test year), Liberty states it will have no recovery of and on this investment for at least two years, totaling approximately \$500,000 in lost revenue.

Finally, Liberty calculated the revenue requirement with the CIAC mismatch corrected, but without removing the \$1.2 million from rate base for the battery pilot investment. The resulting revenue requirement is \$1,1785,595, as calculated in Attachment A to the motion.

2. Tariff for Customer Requested Conversion of Overhead to Underground Service

One of the projects allowed for recovery in the step adjustment included extra costs arising from the Town of Salem's requirement that Liberty install underground facilities where it had initially planned to construct overhead lines. The Order approved recovery of those costs, but directed Liberty to "propose to modify its tariff, as soon as practical, so that to all *customers* who request relocation of existing overhead facilities be required to pay the excess cost, if the customer requests those facilities to be placed underground." Order at 7 (emphasis added).

Liberty posits the Order is based on an apparent misunderstanding of the distinction between customer-driven requests and municipal directives where the Company is a license holder. According to Liberty, the Town of Salem was acting pursuant to its municipal powers as the grantor of a license to Liberty, rather than as a customer, and had the right to demand removal of the existing overhead lines which, in effect, required Liberty to install them underground in order to continue providing service to area customers.

Liberty claimed, that the Commission's directive to propose a change to its tariff would not address the issue of cost incurrence to relocate facilities as required by municipalities. Liberty stated that if the Commission is concerned about cost responsibility for *customer* requests to provide underground services, the Company's tariff already requires customers to pay the incremental cost of underground services.

III. COMMISSION ANALYSIS

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding, *O'Loughlin v. N.H. Personnel Comm'n*, 117 N.H. 999, 1004 (1977), or by identifying specific matters that were "overlooked or mistakenly conceived" by the Commission, *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Abenaki Water Company, Inc. – Rosebrook Water System*, Order No. 26,312 at 8 (November 27, 2019).

With regard to the issue of the timing of the CIAC offset to rate base, we find Liberty conceded that such an offset is fair and appropriate in its motion for rehearing. Liberty has recalculated the revenue requirement by applying the nine 2021 CIACs

(which total \$46,062) to decrease the 2020 investments. We therefore deny rehearing as to the CIAC timing issue and allow that offset to reduce the 2020 rate base by \$46,062.

Liberty asserts that there was no evidence presented that the battery pilot program investment in 2020 was imprudent, or that the batteries were not used and useful. However, Liberty's argument overlooks its own obligation. The burden of proof is on Liberty to establish that the investment was prudent, used and useful. Liberty failed to meet its burden.

The record request to be answered in Exhibit 80 required Liberty to show the benefits of the battery installation for each individual customer, with customer names redacted. See Transcript 6-24-2021 at 152-53. Instead, Liberty submitted Exhibit 80 with all customer data for the 60 customers aggregated. The Commission asked for a limited set of data for the first quarter of 2021 in order to review the progress and effectiveness of the battery pilot. At hearing, Liberty did not indicate that the request was burdensome, nor did it indicate that it could not comply with the record request. Therefore, we deny rehearing as to conditioning cost recovery for the battery pilot investment on production of a conforming response to Record Request 80 and review by the Commission thereafter.

We have considered Liberty's assertion that, if recovery of the \$1.2 million is denied until the next rate case, the lost revenues would be significant. Therefore, we will review the 2020 battery pilot investment to determine whether it was prudent, used, and useful and should be included in rate base, and the appropriateness of a rate adjustment, following receipt of a conforming Exhibit 80. Accordingly, we grant rehearing of the requirement that Liberty wait until its next rate case to obtain Commission review of its 2020 battery pilot investment.

We deny rehearing with regard to the issue of customer requests to place service underground and require Liberty to submit the specific current tariff provisions requiring customers to pay the incremental cost of underground services Liberty referenced in support of its request for rehearing to the Commission within 10 days of the date of this order. We will open a separate investigation to explore municipal requests to place service underground pursuant to RSA 231:177. In that investigation we will explore how the costs of such requests should be collected from customers. We also note that to the extent Liberty submits conforming tariffs, we require both an annotated tariff, redlined to show changes from the existing tariff, as well as a clean version, be submitted to the Commission. This will facilitate prompt Commission review of all tariff changes.

Based upon the foregoing, it is hereby

ORDERED, that the Motion for Rehearing is **DENIED** in part and **GRANTED** in part as set forth in this order; and it is


FURTHER ORDERED, that Liberty shall submit its current tariff provisions dealing with customer requests to place services underground within 10 days of this order; and it is

FURTHER ORDERED, that Liberty shall file with the Commission a revised Exhibit 80 consistent with the Record Request as described in this order.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of August, 2021.



Dianne Martin
Chairwoman



Daniel C. Goulet
Commissioner

Service List - Docket Related

Docket# : 19-064 Printed:

8/29/2021

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