

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 06-107

LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP. d/b/a LIBERTY

Annual Storm Fund Report – Calendar Year 2019

DE 21-073

LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP. d/b/a LIBERTY

Annual Storm Fund Report – Calendar Year 2020

Order Following Hearing on Recovery of Storm Expenses from Storm Fund

O R D E R N O. 26,724

November 18, 2022

I. BACKGROUND AND PROCEDURAL HISTORY

On July 12, 2007, the Commission issued Order No. 24,777, approving a settlement agreement in Docket No. DG 06-107 (Settlement Agreement) that provided for the creation of a storm contingency fund (Storm Fund) by Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (Liberty)). The Settlement Agreement provided for the establishment of the Storm Fund, to be funded at a fixed annual amount by ratepayers and used to pay for Liberty’s operation and maintenance costs incurred as the result of “major storms.” The Settlement Agreement directed Liberty to file annual Storm Fund reports detailing the collections credited to the fund, details of any qualifying “major storm” costs that were charged to the fund during the preceding calendar year, and a description of qualifying storm events including a summary of the damage to the distribution system and the number and length of outages. Order No. 24,777 at 13-14.

On March 30, 2020, in Docket No. DG 06-107, Liberty filed its Calendar Year 2019 Storm Fund Report (2019 Report). Liberty requested recovery of costs related to two pre-staging storm events and three qualifying storm events from the Storm Fund. Liberty's total costs for the five identified events are \$1,915,458.15.

On March 23, 2021, in Docket No. DG 06-107, Staff of the Commission, now the Department of Energy (DOE), filed a Memorandum (March 23 Memorandum) recommending that the Commission disallow recovery of \$706,838 of the \$1,915,458.15 in costs from the 2019 Report, and adjust the 2019 Report to remove the Liberty's capitalization of transportation depreciation through the burden rate.

On April 1, 2021, in Docket No. DE 21-073, Liberty filed its Calendar Year 2020 Storm Fund Report (2020 Report). Liberty requested recovery of costs related to four pre-staging storm events and one qualifying storm event from the Storm Fund. Liberty's total operating costs for the five identified events are \$927,195.38. In addition, Liberty reported \$71,157 in costs incurred in 2017, stated it inadvertently omitted these costs in a prior audit report, and requested to have these costs included in a subsequent audit report.

On April 23, 2021, in Docket No. DG 06-107, the Commission issued a Secretarial Letter (April 23 Order) addressing Liberty's 2019 Report. In that Order, the Commission disallowed recovery of \$706,838 out of the initial \$1,915,458.15 Liberty recovered from the Storm Fund, excluded any amounts derived from the capitalization of transportation depreciation through the burden rate, and directed Liberty to ensure that all future requests for approval of recovery from the Storm Fund are prepared in accordance with applicable regulatory accounting requirements.

On May 21, 2021, in Docket No. DG 06-107, Liberty filed a motion for rehearing of the April 23 Order. Staff of the Commission objected.

On June 18, 2021, in Docket No. DG 06-107, the Commission directed Commission Staff to supplement their response to Liberty's motion with legal argument in support of their position, suspended the April 23 Order pending further consideration pursuant to RSA 365:21, and indicated that the Commission would schedule a hearing at a later time, if necessary. Staff of the Commission filed a supplemental response to Liberty's motion on June 30, 2021. On July 13, 2021, Liberty filed a motion for leave to file a sur-reply, as well as its sur-reply. On July 22, 2021, the Commission granted leave to file a sur-reply, accepting Liberty's sur-reply into the record.

On September 1, 2021, in Docket No. DG 06-107, the Commission issued Order No. 26,514 granting Liberty's May 21, 2021 motion for rehearing. The Commission found that that an evidentiary hearing would assist the Commission in reaching a decision on the contested issues related to Liberty's 2019 Report.

On May 23, 2022, in Docket Nos. DG 06-107 and DE 21-073, the Commission scheduled a joint hearing to occur on July 21, 2022 regarding the 2019 and 2020 Reports.

On June 16, 2022, in Docket No. DE 21-073, the DOE (previously Commission Staff) issued a Memorandum (June 16 Memorandum) recommending that: (1) the Commission disallow recovery of \$340,882, from the 2020 Storm Fund; (2) Liberty terminate its practice of capitalizing transportation depreciation through the burden rate in future storm cost filings; and (3) Liberty calculate and submit a Storm Recovery Adjustment Factor (SRAF) rate, to return to ratepayers the Storm Fund balance of \$1,861,474.

On July 21, 2022, in Docket Nos. DG 06-107 and DE 21-073, the Commission held a joint hearing on the 2019 and 2020 Reports and recommendations.

On August 5, 2022, in Docket Nos. DG 06-107 and DE 21-073, Liberty filed closing arguments and a response to a Commission record request issued at the July 21, 2022 hearing.

On August 24, 2022, in Docket Nos. DG 06-107 and DE 21-073, the DOE filed closing arguments and a response to a Commission record request issued at the July 21, 2022 hearing.

Liberty's annual storm reports and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are available on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2006/06-107.html> and <https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-073.html>.

II. POSITIONS OF THE PARTIES

a. Department of Energy

The DOE recommends that the Commission disallow recovery of \$706,838 of the \$1,915,458.15 in costs from the Storm Fund that Liberty included in the 2019 Report and approve the recovery of the remaining costs. The DOE recommends that the Commission disallow recovery of \$340,882 in costs from the Storm Fund that Liberty included in the 2020 Report and approve the recovery of the remaining costs.¹

In support of its position, the DOE argues that four storm events do not qualify as "major storms" in 2019 and 2020. According to the DOE, not all service interruptions are considered "troubles" as defined by the Settlement Agreement approved in Order No. 24,777; only trouble spots on "primary or secondary"

¹ The DOE initially requested that the Commission direct Liberty to return to ratepayers the current Storm Fund balance of \$1,861,474; at the hearing the DOE and Liberty agreed that Liberty would refund the accumulated Storm Fund balance of \$1,861,474 to ratepayers. The DOE also withdrew its requests related to transportation equipment depreciation charges in the burden rate, without prejudice by agreement of the parties, with the intent of addressing this issue in a future rate case.

distribution lines that cause customer outages are classified as “troubles.” The DOE excludes “service lines” from its definition of “primary or secondary lines.” The DOE therefore disagrees with Liberty’s inclusion of customer service troubles occurring on “service lines” in the counting of concurrent troubles for purpose of meeting the “major storm” threshold. Furthermore, the DOE disagrees with Liberty’s interpretation of “concurrent.” The DOE argues that “concurrent” means simultaneous at a specific moment in time, as opposed to including all troubles from beginning to the end of a storm event.

The DOE argues that the Commission should look to the intent of the contracting parties at the time of the agreement in construing its terms. The DOE noted that the Settlement Agreement requires Liberty to report the number and length of outages. According to the DOE, Liberty’s interpretation of the word “troubles” would render the “primary and secondary lines” provision superfluous. The DOE also clarified its position on whether “troubles” and “outages” are interchangeable, stating that they are only interchangeable when occurring on primary or secondary lines.

The DOE also referenced a dictionary definition of “concurrent” as “operating or occurring at the same time” or “running in parallel.” The DOE argued that this definition is consistent with the Settlement Agreement’s requirement that annual storm reports contain not only the number of outages, but also the length of outages. The DOE argued that its analysis and definitions are consistent with industry use of those terms. Finally, the DOE challenged Liberty’s past practice argument, arguing there is no evidence that the Staff of the Commission’s ever endorsed or even understood Liberty’s interpretations.

b. Liberty

Liberty maintains that all costs reported in the 2019 and 2020 Reports were properly recovered from the Storm Fund. In reply to the DOE's arguments, Liberty encourages the Commission to use rules governing contract interpretation in construing the terms "concurrent troubles" and "secondary lines." Liberty argues that "concurrent troubles" include all outages occurring between the start of the first outage and the start of the last outage during a storm event or events, and that "secondary lines" are inclusive of "service lines." Liberty argues that its course of past dealings weighs in favor of these interpretations because they are consistent with past practice and have been affirmed by years of Commission acquiescence.

III. COMMISSION ANALYSIS

We authorize recovery of all reported 2019 and 2020 costs from the Storm Fund because we do not find that the qualifications of a "major storm" have been misapplied by Liberty. We review Liberty's 2019 and 2020 Reports for conformity with the terms of the Settlement Agreement approved by Order No. 24,777. The Settlement Agreement defined "major storm" as a severe weather event or events causing 30 concurrent troubles and 15% of customers interrupted, or 45 concurrent troubles. Exh. 10 at Bates page 5. Troubles are further defined as interruption events occurring on either primary or secondary lines. *Id.* In resolving this dispute over the definition of a "major storm" under the terms of the Settlement Agreement, we are mindful that the purpose of the Storm Fund is to "pay for all of the operation and maintenance costs incurred by the Company as a result of major storms." *Id.*

We interpret the term "interruption event" as used in the Settlement Agreement's definition of "troubles" to be the loss of power to any conductor serving a customer or customers from the distribution system. According to FERC accounting,

“services” are utility capital assets consisting of conductors from the point where wires leave the pole or distribution box to the point of connection with the customer’s outlet or wiring. Exh. 30B at Bates page 2. We are not convinced that the reference to “primary or secondary lines” in defining “troubles” specifically or intentionally excludes part of Liberty’s distribution system based on a distinction between secondary lines and service lines because that distinction is not explicit within the text and the purpose of the storm fund, as described in the Settlement Agreement, is to pay for all operation and maintenance costs.

We acknowledge that the distinction between 30 troubles affecting 15% of customers and 45 troubles may be only 15 individual customer interruptions based on this interpretation. If figures in the Settlement Agreement are outdated, or terminology is not sufficiently specific based on industry standards, we encourage Liberty and the DOE to update applicable thresholds and criteria in Liberty’s next rate case.


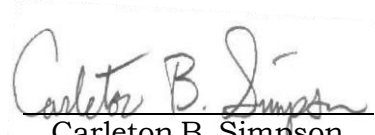
Finally, we address the term “concurrent” as used in the Settlement Agreement’s definition of “major storm.” The words “weather event or events causing” that precede the specified number of concurrent troubles place emphasis on a causation requirement. Because of this requirement, we do not agree “concurrent” should be pinpointed to a single moment in time as the DOE proposes. Such an interpretation would sever any trouble from a storm event once a restoration event occurs despite the trouble being caused by the storm and needing to be tracked for purposes of the storm report. As such, we find Liberty’s interpretation of “concurrent troubles” as the sum of all troubles from the start of the first trouble to the start of the last trouble within a storm event or events to be reasonable.

Based upon the foregoing, it is hereby

ORDERED, that Liberty's 2019 and 2020 Reports are APPROVED without disallowance; and it is

FURTHER ORDERED, that the Department of Energy's request to withdraw without prejudice its request related to transportation equipment depreciation charges in the burden rate is GRANTED.

By order of the Public Utilities Commission of New Hampshire this eighteenth day of November, 2022.


Pradip K. Chattopadhyay
Commissioner
Carleton B. Simpson
Commissioner

Service List - Docket Related

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