

**BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

LIBERTY UTILITIES (GRANITE STATE : DOCKET NO. DE 23-003
ELECTRIC) CORP. D/B/A LIBERTY :
PROPOSED PURCHASE OF RECEIVABLES :
PROGRAM : OCTOBER 8, 2024

**NRG RETAIL COMPANIES’ COMMENTS
RE SUPPLIER TERMS AND CONDITIONS AND
ENERGY SERVICE SUPPLIER AGREEMENT**

Direct Energy Services, LLC; Direct Energy Business, LLC d/b/a NRG Business; NRG Business Marketing f/k/a Direct Energy Business Marketing, LLC; Reliant Energy Northeast LLC d/b/a NRG Home; and XOOM Energy New Hampshire, LLC (collectively, the “NRG Retail Companies”) hereby submit comments regarding the proposed changes to the Terms and Conditions for Suppliers (“Terms and Conditions”) and Energy Service Supplier Agreement (“ESSA”) submitted on September 24, 2024 by Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (“Liberty” or “Company”) in the above-captioned proceeding.

INTRODUCTION

New Hampshire’s municipal aggregation law¹ authorizes municipalities to aggregate electric power supply and operate approved community aggregation programs.² In 2021, the New Hampshire legislature amended that law to authorize the purchase of receivables of competitive electric power suppliers (“CEPS”) by the electric distribution utilities (“EDUs”).³

On October 7, 2022, the Public Utilities Commission (“Commission” or “NHPUC”) filed final rules with the Division of Administrative Rules implementing the provisions of RSA 53-E

¹ Revised Statutes Annotated (“RSA”) Chapter 53-E.

² RSA 53-E:3-a.

³ RSA 53-E:9,II.

(“Puc 2200 Rules”).⁴ Among other things, the Puc 2200 Rules required each EDU to propose a purchase of receivables (“POR”) program.⁵ In compliance with this requirement, on January 10, 2023, Liberty filed testimony and supporting materials outlining a proposal for a POR program.⁶

On August 16, 2024, the Commission issued an Order Approving Settlement Agreement authorizing Liberty to implement a POR program.⁷ The Order also continued this proceeding to a second phase for the Commission to review the Company’s proposed revisions to its ESSA and Terms and Conditions.⁸

On September 4, 2024, the Commission issued a Supplemental Order of Notice that, among other things, directed the Company to file proposed changes to the Terms and Conditions and ESSA and offered parties an opportunity to submit comments on those proposed changes.⁹ In accordance with the Notice, on September 24, 2024, Liberty filed proposed revisions to the Terms and Conditions and ESSA.¹⁰ The NRG Retail Companies hereby submit their comments regarding the revised Terms and Conditions and ESSA.

COMMENTS

The Liberty Terms and Conditions and ESSA are fundamentally flawed and include significant definitional and typographical errors. Thus, for the reasons set forth more fully below,

⁴ See Docket No. DRM 21-142, *Community Power Coalition of New Hampshire Petition for Rulemaking to Implement RSA 53-E for Community Power Aggregations by Stakeholders*, Notice No. 2022-14 – Adoption of Final Rules (Oct. 7, 2022).

⁵ Puc 2205.16(e).

⁶ See Liberty Proposed Purchase of Receivables Program (Jan. 10, 2023).

⁷ Order No. 27,047 (Aug. 16, 2024) (“Order”).

⁸ *Id.* at 10.

⁹ Supplemental Order of Notice (Sep. 4, 2024) (“Notice”).

¹⁰ See Direct Testimony of Robert Garcia and Melyssa M. Flaherty (Sep. 24, 2024) (“Testimony”), Attachments.

the NRG Retail Companies request that the Commission direct Liberty to revise the Terms and Conditions and ESSA as described herein.¹¹

I. LIBERTY SHOULD NOT BE PERMITTED TO CHANGE THE DISCOUNT PERCENTAGE RATE CALCULATION

Liberty has modified the description of the formula for calculating the Discount Percentage Rate from what was approved in the Settlement Agreement.¹² In doing so, Liberty has fundamentally changed parts of the calculation. For example, the description of the Uncollectible Percentage in the Settlement Agreement states:

UPcc (uncollectible percentage for each customer class) = the sum of the net write-offs for Supplier Service for the participating customer class, based on actual data for the most recent calendar year, divided by the total amounts billed by the Company, including late payment fees if included in net write-offs, to that participating customer class for Supplier Service during the same period.

Notwithstanding the foregoing, during the first year of POR program operation, the uncollectible percentage shall be the total amount of net write-offs by the Company based on actual data for the most recent calendar year, divided by the total amounts billed by the Company, including late payment fees if included in net write-offs, during the same period.¹³

However, Liberty changed this description in the Terms and Conditions to read:

UPcg (Uncollectible Percentage for each Customer Group) is the sum of the net write-offs *for Energy Service* for the Customer Group, based on actual data from the most recent calendar year, divided by the total amounts billed by the Company *for Energy Service provided by the Supplier*, including late payment fees, to that Customer Group.

¹¹ Liberty provided a redline reflecting the proposed revisions to the Terms and Conditions. *See* Testimony, Attachment 2. However, the redline showed changes when no changes were actually made. *Id.* In addition, Liberty did not provide a redline of the ESSA. *Id.* As a consequence, given the fundamental concerns with the Liberty materials described herein and the more limited time available to review the Liberty materials as compared to the materials of the other two EDUs, the NRG Retail Companies were not in a position to provide a comprehensive analysis of the typographical and housekeeping changes that are needed. However, such changes will be needed before final changes are adopted. *See, e.g.,* Testimony, Attachment 2, at 42 (“implantation” should be “implementation”).

¹² *Compare* Settlement Agreement (“Settlement Agreement”), at 5 *with* Testimony, Attachment 2, at 44.

¹³ Settlement Agreement, at 5.

Notwithstanding the foregoing, during the initial period after POR implementation, the single UPcg applicable to receivables purchased from the Supplier for the Large Customer Group and Small Customer Group shall be the total amount of net write-offs by the Company based on actual data for the most recent calendar year, divided by the total amounts billed by the Company *for Energy Service provided by the Supplier*, including late payment fees, during that calendar year.¹⁴

First and foremost, by definition, Energy Service cannot be provided by a CEPS. In fact, the definition of Energy Service specifically denotes that it is energy “supplied to a Customer who is *not* receiving Energy Service from a Supplier.”¹⁵ Moreover, by adding the emphasized language, Liberty has substantially changed the Uncollectible Percentage calculation to one that will, among other things, result in different Uncollectible Percentages for each and every supplier.¹⁶

The Discount Percentage Rate calculation was a key element of the Settlement Agreement. Had Liberty proposed the language that it is now proposing to describe the Uncollectible Percentage calculation, the NRG Retail Companies would not have agreed to the settlement. Liberty should not be permitted to unilaterally rewrite the terms of that agreement. Thus, to ensure the terms of the Settlement Agreement are satisfied, the NRG Retail Companies request that the Commission order Liberty to incorporate the entire description of the Discount Percentage Rate calculation from the Settlement Agreement¹⁷ into the Terms and Conditions *without change*.

II. LIBERTY SHOULD NOT BE PERMITTED TO RETURN THE CUSTOMERS OF EXISTING CEPS TO DEFAULT SERVICE AFTER POR IMPLEMENTATION

Liberty proposes to add the following provision to the Terms and Conditions:

¹⁴ Testimony, Attachment 2, at 44 (emphasis added).

¹⁵ *Id.* at 20 (emphasis added).

¹⁶ *See id.* at 44 (referring to “the Supplier” in description of Uncollectible Percentage calculation).

¹⁷ *See* Settlement Agreement, at § II.I.

In the event that a Supplier who entered a CEPS Agreement prior to a final Commission Order in Docket No. DE 23-003 does not enter into an ESS Agreement by January 31, 2025, the Company will return its Customers to the Company's Energy Service effective on the first scheduled meter reading after April 1, 2025.¹⁸

If this provision is implemented, customers who made an affirmative choice to choose an offers made by CEPS will be returned to default service. While the NRG Retail Companies appreciate Liberty's desire to have all CEPS sign the new ESSA, if an existing CEPS is not utilizing consolidated billing, there is no reason that Liberty and the CEPS could not continue to operate under the existing agreement. Moreover, even if an existing CEPS is using Consolidated Billing Service, there is a far less drastic remedy available than returning all the CEPS' customers to default service in direct contravention of the choice made by those customers and to the customers' potential detriment if the customer is purchasing a product from a CEPS that is not available from Liberty (e.g., long-term fixed price, added renewable content, lower price, etc.). Thus, the NRG Retail Companies request that the Commission require Liberty to modify this provision to indicate that if an existing CEPS does not timely enter into a new agreement, all of the CEPS' customers will be moved to Standard Billing Service.

III. LIBERTY SHOULD BE ORDERED TO REMOVE OUTDATED REFERENCES

The ESSA provides that any terms used in the ESSA but not defined shall have the meaning set forth in the Interim Procedures or the Company's tariff.¹⁹ The Interim Procedures are the original requirements applicable to CEPS serving Liberty customers.²⁰ Those procedures were only a temporary measure to be used until the Commission adopted registration and

¹⁸ Testimony, Attachment 2, at 34.

¹⁹ Testimony, Attachment 1, at 1.

²⁰ See Order No. 23,041 (Oct. 7, 1998).

consumer protection regulations applicable to CEPS.²¹ Years ago, the Commission adopted the Puc 2000 rules.²² Those rules have replaced the Interim Procedures.²³ Accordingly, the references to the Interim Procedures should be replaced with references to Puc 2000. Similarly, Liberty should be required to update other outdated references in the ESSA and Terms and Conditions, including without limitation, removing references to the Commission as the entity responsible for Aggregator and CEPS registrations,²⁴ removing references to Transition Service,²⁵ removing the \$5.00 fee/enrollment,²⁶ and updating the payment hierarchy.²⁷

IV. THE COMMISSION SHOULD REQUIRE EACH OF THE EDUS TO ADOPT CONSISTENT SUPPLIER TERMS AND AGREEMENTS

There are significant differences between the supplier terms and conditions and agreements of the three EDUs. However, as a general matter, there is no reason for these differences. For instance, Unitil Energy Systems, Inc. (“Unitil”) has proposed using “the prime rate, as defined in PUC 1202.13” to calculate the interest in its past period reconciliation percentage by customer class.²⁸ In Puc 1202.13, the prime rate is defined as: “the rate reported in the Wall Street Journal on the first business day of the month preceding the beginning of each calendar quarter, or the average of the rates so reported that day.”²⁹ Liberty proposes using the “Prime Rate,”³⁰ which is

²¹ Order No. 23,041 (Oct. 7, 1998) (noting that the interim procedures governing CEPS registration and consumer protection would apply until final rules were issued).

²² See #7758 Adopting Puc 2000 Competitive Electric Power Supplier Rules (Sep. 4, 2002).

²³ See Order No. 23,041 (Oct. 7, 1998) (noting that the interim procedures governing CEPS registration and consumer protection would apply until final rules were issued).

²⁴ See, e.g., Testimony, Attachment 2, at 25.

²⁵ See, e.g., Testimony, Attachment 1, at 3.

²⁶ See *id.* at 17.

²⁷ See *id.* at 25 (reflecting incorrect payment priority).

²⁸ Docket No. DE 23-002, *Unitil Energy Systems, Inc. Proposed Purchase of Receivables Program*, Unitil Energy Systems, Inc. Joint Supplement Testimony of Christopher J. Goulding, Joseph F. Conneely, Jeffrey M. Pentz, S. Elena Demeris, and Gary Mathews (Oct. 4, 2024), Attachment IP-Supplemental-4, Original Page 40B.

²⁹ Puc 1202.13.

³⁰ Testimony, Attachment 2, at 17.

defined slightly differently as: “the prime rate, fixed on a quarterly basis and established as reported in the Wall Street Journal on the first business day of the month preceding the calendar quarter.”³¹ Eversource proposes “using the prime rate as reported in the Wall Street Journal, consistent with the interest calculation performed by the Company for other annually reconciling rate mechanisms.”³² The NRG Retail Companies recognize that both Puc 1202.13 and the Liberty and Eversource definitions refer to the prime rate reported in the Wall Street Journal.³³ However, each of the EDU’s description of how the Wall Street Journal rate is determined varies. Moreover, if Puc 1202.13 is changed in the future to use some other bases to determine the prime rate, the change will only apply to the Unitil interest calculation even though all the EDUs are subject to Puc 1202.13.

Another example of inconsistencies is the indemnity language used by the EDUs. Both Unitil and Eversource provide for mutual indemnities.³⁴ Liberty, on the other hand, only provides for an indemnity in favor of Liberty.³⁵ Given that the EDUs control the vast majority of the data used to calculate customer bills and to determine the load reported to ISO-NE for CEPS, mutual indemnities are more appropriate because they provide CEPS with protections from claims resulting from the acts or omissions of the EDU.

³¹ Liberty Electricity Delivery Service Tariff (“Tariff”), First Revised Page 21D.

³² Docket No. DE 23-004, *Public Service Company of New Hampshire d/b/a Eversource Energy Proposed Purchase of Receivables Program*, Technical Statement of Brendan J. O’Brien, Scott R. Anderson, and Daryush Donyavi (Sep. 23, 2024), Attachments, Terms and Conditions for Energy Service Providers (“Eversource Terms and Conditions”), § 9(d).

³³ Compare Puc 1202.13 with Eversource Terms and Conditions, § 9(d).

³⁴ See Docket No. DE 23-004, *Public Service Company of New Hampshire d/b/a Eversource Energy Proposed Purchase of Receivables Program*, Technical Statement of Brendan J. O’Brien, Scott R. Anderson, and Daryush Donyavi (Sep. 23, 2024), Attachments, Electric Supplier Services Master Agreement (“Eversource Agreement”), at § XIII; Docket No. DE 23-002, *Unitil Energy Systems, Inc. Proposed Purchase of Receivables Program*, Unitil Energy Systems, Inc. Joint Supplement Testimony of Christopher J. Goulding, Joseph F. Conneely, Jeffrey M. Pentz, S. Elena Demeris, and Gary Mathews (Oct. 4, 2024), Attachment IP-Supplemental-3 (“Unitil TPA Redline”), First Revised Page 93.

³⁵ Testimony, Attachment 2, at 21.

There are also inconsistencies in the period of time the EDUs provide CEPS to cure a default. Unitil provides a 30-day cure period³⁶ while Eversource and Liberty only provide a 15-day cure period.³⁷ Depending on the nature of the purported breach, a cure may not be able to be effectuated in a 15-day period. Thus, all of the EDUs should be required to provide for a 30-day cure period.

The above only provide a few examples of the inconsistencies between the EDUs. To avoid inconsistencies in the manner in which the EDUs administer their supplier terms and agreements, the NRG Retail Companies request that the Commission require each of the EDUs to adopt identical terms and agreements except to the extent changes are needed to account for operational differences at the EDUs. In addition, to ensure that future changes do not create inconsistencies between the EDUs, the Commission should also require the EDUs to receive approval from the Commission for any future changes to those documents that would be generally applicable to CEPS.

V. THE ESSA SHOULD PROPERLY REFLECT THE TERMS OF THE SETTLEMENT AGREEMENT

Liberty proposes revising the “EDI Standards” definition.³⁸ However, Liberty’s proposal still refers to the 1998 New Hampshire Electronic Data Interchange (“EDI”) Working Group report and proposes to layer the Massachusetts Electronic Business Transactions (“EBT”) Working Group standards onto the requirements in that report.³⁹ This would not accurately reflect how electronic EDI transactions are currently processed because the Massachusetts

³⁶ Unitil TPA Redline, First Revised Page 92.

³⁷ Testimony, Attachment 1, at 23; Eversource Agreement, § XI.

³⁸ Testimony, Attachment 2, at 25-26; *see also* Testimony, at 4-5.

³⁹ Testimony, Attachment 2, at 25-26.

standards do not incorporate all of the requirements from the 1998 New Hampshire Working Group report.

Thus, the NRG Retail Companies recommend that Liberty be required to redefine the EDI Standards to capture the current standards and to allow for the evolution of the applicable standards over time. For example, Liberty could define the EDI standards as: “The electronic data interchange protocols and standards approved by the NHPUC for use by the Company.” This broader definition would, consistent with the Settlement Agreement, allow the Commission to authorize the continued use of the Massachusetts EBT Working Group Standards but also account for the possibility that New Hampshire specific standards may apply in the future.

VI. THE PROPOSED MODIFICATIONS TO THE TERMS AND CONDITIONS AND ESSA GO BEYOND THOSE NECESSARY TO IMPLEMENT POR

The NRG Retail Companies support changes to the Terms and Conditions and ESSA that are necessary to implement POR to incorporate community power aggregations, and those of housekeeping nature. However, some of the changes proposed by Liberty go beyond those areas. For instance, Liberty proposed changes to various Tariff provisions outside of the Terms and Conditions.⁴⁰ These revisions go beyond those necessary to implement POR and, unless they are truly housekeeping changes, should be rejected.

In addition, Liberty has also proposed changes to the Terms and Conditions and ESSA that are unrelated to POR and that are not of a housekeeping nature. For example, Liberty proposed changes in the ESSA to the load reporting provision of the ESSA.⁴¹ Liberty does not explain why this change is necessary or how it relates to implementation of POR.⁴² Thus, the

⁴⁰ See Testimony, Attachment 2.

⁴¹ Testimony, Attachment 2, at 14.

⁴² See, generally, Testimony.

NRG Retail Companies request that the Commission direct Liberty to limit its proposed revisions to those necessary to implement POR, to incorporate community power aggregations, and those of housekeeping nature (e.g., revisions to outdated provisions, correction of typographical errors).

CONCLUSION

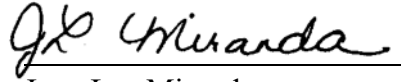
For all the foregoing reasons, the NRG Retail Companies request that the Commission direct Liberty to revise the Terms and Conditions and ESSA as outlined herein.

Respectfully Submitted,
DIRECT ENERGY SERVICES, LLC;
DIRECT ENERGY BUSINESS, LLC; NRG
BUSINESS MARKETING, LLC;
RELIANT ENERGY NORTHEAST LLC;
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CERTIFICATE OF SERVICE

I hereby certify that a copy of these Comments have this day been sent via electronic mail or first-class mail to all persons on the service list.

A handwritten signature in black ink that reads "Joey Lee Miranda". The signature is written in a cursive style and is positioned above a horizontal line.

Joey Lee Miranda

Dated: October 8, 2024