STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DE 23-003

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

Proposed Purchase of Receivables Program

COMMENTS AND EXCEPTIONS TO HEARINGS EXAMINER'S REPORT AND RECOMMENDED ORDER

Pursuant to the Procedural Orders issued by the New Hampshire Public Utilities Commission ("Commission") on September 1, 2023, and December 29, 2023, Liberty Utilities (Granite State Electric Corp.) d/b/a Liberty ("Liberty" or the "Company"), respectfully submits these Comments and Exceptions to the Hearings Examiner's Report and Recommended Order filed on December 22, 2023 (the "Report").

The Report recommends that the Commission deny the Settlement Agreement while approving—in part—the proposed purchase of receivables ("POR") program framework presented in the Settlement Agreement. Report at 12-13.

According to the Report, RSA 53-E:9, II requires electric distribution utility to allocate a pro rata share of existing, "baseline" collection costs and working capital to suppliers participating in the POR Program. *Id*. at 4-5, 8. Based on this interpretation of the statute, the Report contends the Settlement Agreement does not comply because it "recast[s] 'pro rata share' to mean incremental costs [of administration and collection]," and does include any existing administrative and collections costs or working capital. *Id*. at 5, 8-9.

The Hearing Examiner recommends that during the second phase of the proceeding, the Company be required to "quantify and apportion a pro rata share of collection efforts and working capital in the [Discount Percentage Rate ("DPR")], or demonstrate that these factors are not quantifiable." *Id.* at 12, 13.

For the reasons discussed below, Liberty submits that RSA 53-E:9 does not require the pro rata allocation of "baseline" utility costs for collection activities and the immateriality of working capital was demonstrated during the September 19, 2023, hearing.[1] Accordingly, the Settlement Agreement should be approved as filed and in full.

In support of these Comments and Exceptions, Liberty states as follows:

1. On January 10, 2023, the Company filed a proposal for its POR program, consistent with RSA 53-E:9 and N.H. Admin. Rules Puc 2205.16(e). The direct testimony of Erica L. Menard included with that filing states that "the Company will regularly evaluate and track (as necessary) any **incremental** costs directly associated with the ongoing administration of the POR program and to the extent it starts to incur such costs on a recurring basis, it may seek approval from the Commission to adjust the [administrative cost percentage ("ACP")] component of the DPR to recover those costs." Hearing Exhibit 1, at Bates 12 (emphasis added).

2. Following three sets of discovery and two technical sessions, the Department of Energy (the "Department), the Community Power Coalition of New Hampshire ("CPCNH") and the NRG Retail Companies[2] (together with Liberty, the "Settling Parties") filed written technical statements,

[1] As noted below, however, the Company will monitor and track any such impacts on working capital once the POR program has been implemented and will propose to include a working capital component in subsequent DPR re-calculations if the impacts are significant and quantifiable.

[2] The "NRG Retail Companies" are Direct Energy Services, LLC, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Reliant Energy Northeast LLC, and XOOM Energy New Hampshire, LLC.

testimony, and comments, respectively, on June 23, 2023. Hearing Exhibits 2, 3, 4. In its Technical Statement, the DOE states:

> The Department supports Liberty's view that the pro rata share of the costs of administering collection efforts referenced in RSA 53-E:9, II **should be interpreted as the incremental costs incurred by Liberty**. In the Department's view, this approach is consistent with the requirement in RSA 53-E:9, II that a utility and its customers not participating in the POR Program should not bear costs associated with its use.

Hearing Exhibit 2, at Bates Page 3 (emphasis added).

3. The Settling Parties engaged in settlement discussions on June 29, 2023, July 18, 2023, July 26, 2023, and September 11, 2023, which ultimately led to the Settlement Agreement filed with the Commission on September 13, 2023 (marked as Hearing Exhibit 5).[3] The Settlement Agreement provides that the DPR formula includes an ACP component, which is defined as:

> [T]otal actual administrative costs and any forecasted administrative costs of POR program administration and collection to be recovered for the subsequent year divided by the total amounts billed for Supplier Service by the Company for the most recent calendar year. Administrative costs shall include the recovery of costs directly related to the development and implementation of changes to billing, information, and accounting systems required to implement the billing and payment procedures related to the POR program into the Company's consolidated billing service, to be amortized and recovered over a five-year period.

Hearing Exhibit 5, at Bates Pages 5-6.

4.` On September 19, 2023, the Hearing Examiner held a hearing on the Settlement Agreement reached by the Settling Parties. The Hearings Examiner did not ask any questions concerning the inclusion of a pro rata share of existing baseline costs to administer the POR program.

[3] The settlement discussions held on July 18 and July 26 included representatives of Unitil Energy Systems, Inc. and Public Service Company of New Hampshire d/b/a Eversource Energy. The purpose of those joint settlement discussions was to achieve consistency, where possible, among the POR programs to be implemented by the three electric distribution companies.

5. The Hearing Examiner interprets RSA 53-E:9, II as requiring each electric distribution utility to allocate a portion of "baseline collection efforts costs" and working capital to suppliers participating in the POR Program. Report at 8. According to the Report, because the DPR set forth in Settlement Agreement will not recover both the cost of implementation and a pro rata share of existing, baseline administration costs, it does not comply with RSA 53-E:9, II. *Id.* at 8.

6. For the reasons discussed here, RSA 53-E:9, II does not require the electric distribution companies to recover a pro rata allocation of "baseline collection efforts costs" but instead requires the electric distribution companies to recover only the incremental costs of program administration. This conclusion is supported by a logical construction of the statute using long-standing principles of statutory interpretation.

7. When interpreting a statute, the language of the statute must be examined first, considered as a whole, and given its plain and ordinary meaning, in order to determine the intent of the legislature. *Appeal of Mullen,* 169 N.H. 392, 402 (2016). Statutory language must be interpreted "in the context of the overall statutory scheme and not in isolation . . . [and it is necessary to] construe all parts of a statute together to effectuate its overall purpose and to avoid an absurd or unjust result. This review enables [the adjudicator] to interpret statutory language in light of the policy or purpose sought to be advanced by the statutory scheme." *Petition of State of New Hampshire,* 175 N.H. 547, 550-551 (2022) (citation omitted). It is necessary to "not consider words and phrases in isolation, but rather within the context of the statute as a whole." *Appeal of Algonquin Gas Transmission,* 170 N.H. 763, 770 (2018) (citation omitted). Legislative history need not be considered unless the language of the statute is ambiguous. *Appeal of Mullen,* 169 N.H. at 402. And if statutory language is ambiguous and reliance on legislative history is necessary, the Supreme Court has held that "[w]here that history plainly supports a particular

construction of the statute, we will adopt that construction, since our task in interpreting statutes is to determine legislative intent." *Union Leader Corp. v. New Hampshire Ret. Sys.,* 162 N.H. 673, 678 (2011) (internal quotations and citation omitted).

8. Application of those principles of statutory construction to RSA 53-E:9, II demonstrates that the Report's conclusion is inconsistent with the plain language and overall statutory scheme of RSA 53-E:9, II. The starting point for this analysis is the full text of RSA 53-E:9, II, which reads as follows (emphasis added):

> Each electric distribution utility shall propose to the commission for review and approval a program for the purchase of receivables of the supplier in which the utility shall pay in a timely manner the amounts due such suppliers from customers for electricity supply and related services less a discount percentage rate equal to the utility's actual uncollectible rate, adjusted to recover capitalized and operating costs **specific to the implementation and operation of the purchase of receivables program**, including working capital. Additionally, such discount rate adjustments shall include a pro rata share of the cost of administering collection efforts **such that the utility's participation in the purchase of receivables program shall not require the utility or non-participating consumers to assume any costs arising from its use**. Such pro rata costs must include, but not be limited to, any **increases** in the utility's bad debt write-offs **attributable to participants in the purchase of receivables program**, as approved by the commission. However, the allocation of costs arising from different rate components and determination of the uncollectible rate shall be equitably allocated between such suppliers, utility provided default service, and other utility charges that are a part of consolidated billing by the utility as approved by the commission. The discount percentage rate shall be subject to periodic adjustment as approved by the commission.

When the statute is read as a whole, with particular attention to the language in bold, the purpose is plain: Customers not enrolled in community power aggregations and customers remaining on utility default service should not be required to bear the *incremental* costs caused by the POR program. This conclusion is reached by giving the terms "arising from," "increases," and "attributable to participants" their plain and ordinary meaning. These terms are to be read as

language of qualification, limiting cost recovery to the *incremental* costs associated with administering the POR program.

The phrase "**arising from**" means causally connected to. The phrase "arising from its **use**" refers to the "use" of the POR program by participating suppliers, meaning that the purpose of the sentence is to ensure that no new, incremental costs related to POR program administration will be borne by non-participating customers or the utility.

As the Report acknowledges, the term "incremental costs" is defined as additional or **increased** costs. Report at 5 n 4. *citing* Black's Law Dictionary page 690 (5th ed. 1979). Thus, the use of the word "**increases**" in the statute further reinforces the interpretation that the DPR should recover only the *incremental* costs that would not exist *but for* the POR program.

The phrase "**attributable to participants**" means caused or brought about by. This phrase, like the term "increases" and the phrase "arising from its use," further reinforces the interpretation that there must be a causal link between the cost and the new POR program. Specifically, this phrase demonstrates that the legislative intent is for the electric distribution utilities to recover only the *incremental* costs of administration *caused by suppliers* (i.e., participants) enrolled in the POR program.

By reading these terms in context and construing them together, it is plain that they are intended to ensure that the utility and its ratepayers are held harmless from the *incremental* costs associated with administering the POR program.

9. In contrast to the holistic reading of the statute discussed above, the Report isolates the single phrase "pro rata share" and concludes that the proposed DPR calculation recasts "pro rata share" to mean incremental costs. Report at 5. However, a key maxim of statutory construction is that statutory provisions are not to be read in isolation. *See Rye Beach Country Club v. Town of*

Rye, 143 N.H. 122, 125 ("[W]e interpret statutes in the context of the overall statutory scheme and not in isolation.")(citations omitted). Accordingly, the "pro rata share" language must be read in the context of the entire sentence in which it appears, and in the context of the statute as a whole. The latter half of the second sentence in which the "pro rata share" language appears makes clear that such proration applies to "**costs arising from**" the POR program, i.e., incremental costs. The latter half of the third sentence in which the "pro rata share" language appears makes clear that such proration applies to cost "**increases** . . . **attributable to participants**" in the POR program, i.e., incremental costs.

10. The foregoing discussion demonstrates that the Report has misinterpreted RSA 53-E:9, II, in contravention of well-established principles of statutory construction. It is important also to recognize the practical implications of that misinterpretation, in order to "avoid an absurd or unjust result." *See Petition of State of New Hampshire,* 175 N.H. at 550 (citation omitted).

11. The Report implies that it would be necessary for a utility POR program to include, as a proportional share of baseline collection efforts, the costs of payment collections activities by the utility or its contractors, shut-offs, billing arrangements, and associated reporting. The Report further notes that "[t]he record does not establish whether Liberty does or does not have other collection efforts costs, whether those costs are collected from default service customers or through distribution rates, nor [does it] address a variety of variables that potentially could shift such costs from one customer group to another including the demographics of participating aggregation programs and CEPS customers." Report at 8.[4]

12. Liberty's existing, "baseline" collection costs are included in base distribution rates and not allocated to competitive electric power suppliers, community power aggregations serving

[4] The reference to "demographics" in this context is unclear; and, as noted above, there were no questions regarding this issue during the hearing held on September 19, 2023.

as load-serving entities, or utility default service customers. It would be extremely difficult to directly assign existing, "baseline" collection costs to POR program participants, default service customers, and utility distribution customers because customers are free to migrate to and from default service to competitive supply alternatives or to community power aggregation programs, where available. Any pro rata share allocation methodology would have to account for those "moving target" impacts. In addition, the Company's systems do not currently track existing collections costs by specific categories of charges on the customers' bills, whether it be customer charges, distribution and transmission service, utility default service supply charges, or third-party supply charges included in consolidated billing.

13. As noted above, the Report recommends that that the Commission deny the Settlement Agreement and examine the Company's "baseline" collection and working capital costs in Phase II of this proceeding. This approach will delay the testing and modifications necessary to implement the POR program because those activities are contingent upon Commission approval of the Settlement Agreement. Hearing Exhibit 5, at § 2.10. Such a result would not be in the public interest.

14. As noted above, the Report recommends that that the Commission deny the Settlement Agreement and examine the Company's "baseline" collection and working capital costs in Phase II of this proceeding. This approach will delay the testing and modifications necessary to implement the POR program because those activities are contingent upon Commission approval of the Settlement Agreement. Hearing Exhibit 5, at § 2.10. Such a result would not be in the public interest.

15. The Report asserts that the POR program framework presented in the Settlement Agreement is largely consistent with both RSA 53-E:9, II and the public good standard, with the

exception of the statutory requirement that a pro rata share of existing collection costs and working capital be recovered through the DPR. For the reasons discussed herein, RSA 53-E-9, II should be read as requiring each electric distribution utility to recover only the incremental cost of administration and not existing, "baseline" costs. Therefore, the Settlement Agreement complies with both RSA 53-E:9, II, and the public interest standard in its entirety, and should be approved in its entirety, by the Commission.

16. Regarding working capital, the direct testimony of Erica L. Menard also stated that the Company "proposes to make a single monthly payment on the last Business Day of the calendar month to each participating Competitive Supplier for all POR customers billed on their behalf during the prior calendar month of service" Hearing Exhibit 1, at Bates 12.

17. The Testimony of Clifton C. Below stated "CPCNH disagrees with payment occurring on the last business day of the month following the month customer are billed. If such an approach was applied to all [POR] programs, the utilities would have use of millions of dollars beyond their average lag in receipt of funds from customer and suppliers would have to carry that additional cost of working capital beyond the average lag in customers payments" Hearing Exhibit 3, at 3. The Testimony of Clifton C. Below continued: "if supplier payments are made on average with the same average lag in payment that they experience, adjusted annually to the most recent calendar year lead-lag study, then there should be no material working capital needs for this program" *Id.*, at 7.

18. The Settlement Agreement provides "[p]ayments to CEPS and CPAs enrolled in the POR program shall be made monthly based on the combined average payment period for all customers on the Company's default energy service and consolidated billing service" Hearing Exhibit 5, Bates 3.

19. During the September 19, 2023, hearing on the Settlement Agreement, the Hearing Examiner asked Mr. Below about his concerns regarding the payment date and how the Settlement addresses those concerns Hearing Transcript at 27, lines 17-22. Mr. Below responded:

> in [his] testimony, the concern was that the original proposal was to make the payment at the end of the month, following the month that the bills were issued. And that appeared to be longer than what the typical lag was in customer payment…[O]ver the course of a month, depending on when the meter read cycle is, on average, meter reads are in the middle of the month, assuming even distribution of meter reads, which seems to be the case ... [F]rom that date that the meters are read and the bills issued, which is going to be on the average in the middle of the month, the lag, in terms of when payment is made to the CEPS or the Community Power Aggregation, would be equal to the average time the customers typically remit payment for their bills... [T]his would essentially replicate, at least on average, what the typical cash flow into the supplier is. So that there's no shifting, in terms of the cost of working capital, to cover those expenses.

Id. at 27-29. The Hearing Examiner did not have any follow up questions on the cost of working capital.

20. The Hearing Examiner recommends that during the second phase of the proceeding, the Company be required to "quantify and apportion a pro rata share of collection efforts and working capital in the [Discount Percentage Rate ("DPR")] or demonstrate that these factors are not quantifiable." Report at 12, 13. As noted above, the demonstration that working capital is immaterial to include in the DPR since the payments to CEPS or the CPA would be occurring on the same average lag of payments made by customers occurred during the September 19, 2023, hearing.

21. Although the Company has not identified any potential incremental working capital impacts that should be included in the initial DPR calculation, the Company will monitor and track any such impacts once the POR program has been implemented and will propose to include a

working capital component in subsequent DPR re-calculations if the impacts are significant and quantifiable.

22. Finally, the Company provided the Department of Energy with a draft of this filing, and the Department authorized the Company to represent that the Department supports the above comments and exceptions.

WHEREFORE, Liberty respectfully requests that the Commission approve the Settlement Agreement, as filed and in full, and grant such other or further relief as may be just and reasonable.

Respectfully submitted,
Liberty Utilities (Granite State Electric) Corp., d/b/a Liberty
By its Attorney,

Date: January 12, 2024 By: _____

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Certificate of Service

I hereby certify that on January 12, 2024, a copy of this filing has been electronically forwarded to the service list in this docket.

_____
Michael J. Sheehan