

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DE 22-039

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

Petition for Permanent Rates

Objection to Motion to Dismiss Rate Filing Without Prejudice

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (“Liberty” or the “Company”), through counsel, respectfully objects to the Department of Energy’s to *Motion to Dismiss Rate Filing Without Prejudice Re-File after a FERC Form 1 for 2022 is Submitted* because (1) a FERC Form 1 is not a prerequisite to a rate case filing, (2) because all the relevant information that will be in Liberty’s FERC Form 1 was included in the rate case filing and thus DOE will suffer no harm, and (3) the FERC Form 1 will be filed no later than May 5, 2023.

In support of the objection, Liberty represents as follows:

1. Prior to the Company filing its distribution in this docket, DOE filed a motion to dismiss based on the Company not having filed a FERC Form 1. The FERC Form 1 is primarily an annual financial report that electric distribution utilities must file with the Federal Energy Regulatory Commission (“FERC”). Liberty’s 2022 FERC Form 1 was due on April 18, 2023. On April 3, 2023, Liberty requested and obtained an extension of the filing date until May 31, 2023.
2. The Commission’s rules require the Company to file the FERC Form 1 with the Commission “at the same time it files such report with the FERC.” Puc 308.10(a). Liberty will timely file the FERC Form 1 with the Commission when it makes the filing with the FERC.

3. In its motion DOE argues the FERC Form 1 is a necessary prerequisite to a rate case and that this docket cannot proceed until Liberty files the form. Given the statutory 12-month limit on the Commission's time to review a rate case, RSA 378:6, I(a), DOE argues dismissal without prejudice to refiling is the appropriate remedy, so that the 12 month investigation period would re-start with the refiling.

A FERC Form 1 is Not a Prerequisite for a Rate Case.

4. DOE's motion should be denied, first, because the relevant statutes and rules do *not* require the filing of a FERC Form 1.
5. RSA 378:27 authorizes the Commission to approve "reasonable temporary rates" to allow recovery of "not less than a reasonable return ... as shown by the reports of the utility filed with the commission and the department of energy" This statute does not require a FERC Form 1 that has not yet been filed.
6. RSA 378:28 authorizes the Commission to approve permanent rates, and it adopts the same language of the temporary rate statute above, again not requiring a yet-to-be-filed FERC Form 1.
7. As is often the case, the Legislature authorized the Commission to promulgate rules that specify what utilities must file in rate cases, to essentially define "the reports of the utility filed with the commission and the department of energy." RSA 365:8(e) ("Standards and procedures for filing requirements for tariffs"); and RSA 378:1 ("Every public utility shall file with the public utilities commission, and shall print and keep open to public inspection, schedules

showing the rates, fares, charges and prices for any service rendered or to be rendered in accordance with the rules adopted by the commission pursuant to RSA 541-A”).

8. The Commission adopted such rules, codified at Puc 1604, titled “Full Rate Case Filing Requirements.” These rules itemize in great detail what must be included with a rate case filing, yet they do not require a FERC Form 1. Rather, Puc 1604 requires the filing of other detailed financial information, including the following:

- (1) The utility's internal financial reports for the following periods: a. For the first and last month of the test year; b. For the entire test year; and c. For the 12 months or 5 quarters prior to the test year;

- (2) Annual reports to stockholders and statistical supplements, if any, for the most recent 2 years;

- (3) Federal income tax reconciliation for the test year;

- (9) The utility's chart of accounts, if different from the uniform system of accounts established by the commission as part of Puc 300, Puc 400, Puc 500, Puc 600 and Puc 700;

- (10) The utility's Securities and Exchange Commission 10K forms and 10Q forms or hyperlinks thereto, for the most recent 2 years;

- (19) Balance sheets and income statements for the previous 2 years if not previously filed with the commission;

- (20) Quarterly income statements for the previous 2 years if not previously filed with the commission;

- (21) Quarterly sales volumes for the previous 2 years, itemized for residential and other classifications of service, if not previously filed with the commission;

9. Puc 1604.07(a) dictates how the above requirements are to be organized in a rate case filing and the information to be included to evaluate the Company’s requested rate change:

- (a) A utility shall include with the “Filing Requirement Schedules” required by Puc 1604.06 each of the following:

- (1) "Computation of Revenue Deficiency";
- (2) "Schedule 1 - Operating Income Statement";
- (3) "Schedule 1 Attachment - Pro Forma Adjustment Income or Expense";
- (4) "Schedule 1A - Property Taxes";
- (5) "Schedule 1B - Payroll";
- (6) "Schedule 1C - Normalization";
- (7) "Schedule 2 - Assets and Deferred Charges";
- (8) "Schedule 2A - Stockholders Equity and Liabilities";
- (9) "Schedule 2B- Material and Supplies";
- (10) "Schedule 2C - Contributions in Aid of Construction";
- (11) "Schedule 3 - Rate Base";
- (12) "Schedule 3A - Working Capital";
- (13) "Schedule 3 Attachment - Pro Forma Adjustment Rate Base"; and
- (14) "Schedule 3 Attachment - Name of Account".

10. And for each of the above items, Puc 1604.07(b) prescribes the details of what must be included. For example,

(b) The "Computation of Revenue Deficiency" schedule for the test year ended shall include for the actual test period, the proposed required increase, and the pro forma test period, the following: (1) Rate base from "Schedule 3-Rate Base"; (2) Rate of return; (3) Income required; (4) Adjusted net operating income from "Schedule 1"; (5) Income deficiency; (6) Tax effect by percentage; and (7) Revenue deficiency.

(c) A utility shall provide on a document entitled "Schedule 1 - Operating Income Statement" revenue figures for the 12-month period, pro forma adjustments, adjustments to the test year, first preceding year and second preceding year.

These detailed requirements continue through Puc 1604.07(w).

11. Puc 1604 does *not* require the Company to include the FERC Form 1 in its submission nor for it to have filed the FERC Form 1 elsewhere. The Company has provided every document required, each of which has been developed as required by the statute.
12. Although Liberty acknowledges that the FERC Form 1 is a helpful document to guide the review of its rate case filing, it is plainly not required and its omission is not sufficient grounds to dismiss a compliant rate case filing.

DOE Can Demonstrate No Harm

13. DOE argues that the FERC Form 1 is necessary for its review “because the Department cannot adequately review whether the proposed temporary rates or the permanent rates reflect a reasonable return on net plant, as required by RSA 378:27 and :28 without a FERC Form 1.”
14. *All* of the relevant information in a FERC Form 1 is included in the rate case filing requirements of Puc 1604, and Liberty included *all* of the information required by Puc 1604 in this filing. DOE has more than sufficient information to review Liberty’s filing.
15. Thus, there is more than ample information for DOE to thoroughly review Liberty’s filing. Absence of a FERC Form 1, which is not required, does not support dismissal of the rate case filing.
16. Liberty, however, faces substantial harm if DOE’s motion is granted. The rate case is required because the Company cannot earn its authorized return at its current retail rates. Approving the DOE’s motion would extend the time period over during which that situation would exist, almost certainly creating a significant financial harm.

Liberty will File its 2022 FERC Form 1 No Later Than May 5, 2023.

17. Although DOE's motion is not supported by the law, and although DOE will suffer no harm from not having a FERC Form 1, both as demonstrated above, Liberty has already committed to DOE staff that it will redeploy internal resources in order to file the 2022 FERC Form 1 no later than May 5. Liberty notes that this is well ahead of the May 31 deadline established by the extension the FERC granted shortly after it received Liberty's request. The Company will provide the Commission, the DOE, and the Office of Consumer Advocate copies of the submission on May 5.

The Motion to Dismiss Could Have Been Avoided Had DOE Raised Its Concern in a More Timely Manner

18. Liberty gave notice to the Commission on April 11, 2023, that its 2022 FERC Form 1 would be delayed. At that time, Liberty had already provided notice of its intent to file a rate case. Yet the DOE waited 17 days, until April 28, to file its motion.

19. Liberty has since committed to filing the 2022 FERC Form 1 on May 5, which is 7 days after the DOE made its motion.

20. Had the DOE raised its concerns earlier, either directly to the Company or by filing its motion to dismiss, Liberty could have accelerated its work on the filing in the same manner that it now has, and in fact could have had more time to finalize the Form 1 such that it could already have been on file when the rate case was submitted, rendering moot the question of whether harm or inconvenience would come to any party. Although DOE was not required to file its Motion by any specific date, Liberty nonetheless urges the Commission to consider the fairness of

imposing severe financial sanctions over an issue which the Company could have, and demonstrably would have, resolved, regardless of its conviction that the DOE's position is incorrect.

Conclusion

21. The Commission should deny DOE's motion to dismiss for lack of a FERC Form 1 because it is not supported by the law, because Liberty has included in its filing all the information that will be included in the FERC Form 1, and because Liberty will file the FERC Form 1 shortly, rendering moot DOE's claims based on the time sensitive nature of rate cases.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Deny DOE's Motion *to Dismiss Rate Filing Without Prejudice Re-File after a FERC Form 1 for 2022 is Submitted*; and
- B. Grant such other relief as is just and reasonable and consistent with the public interest.

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

By its Attorney,

Date: May 1, 2023

By: _____
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Certificate of Service

I hereby certify that on May 1, 2023, a copy of this objection has been forwarded to the service list.

A handwritten signature in black ink, appearing to read "M. Sheehan", written in a cursive style.

Michael J. Sheehan