BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

DE 23-039

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

Request for Change in Distribution Rates

Department of Energy Motion to Dismiss Rate Filing

The Department of Energy (Department or DOE) pursuant to New Hampshire Code Admin. Rule Puc 203.07 hereby moves the Public Utilities Commission (Commission or PUC) to dismiss the May 5, 2023 distribution rate filing of Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (Liberty or Company) on the grounds that the 2022 (test year) financial information (revenues, expenses, and plant in service) on which the rate filing is based cannot be reasonably relied on and therefore Liberty has not met and cannot meet its burden to prove that its proposed rates are just and reasonable. Efforts by Liberty to correct the financial information are incomplete, complicated, and represent a shifting of the burden of proof from Liberty to the Department, and other parties.

In support of this Motion, the Department states as follows:

I. <u>Introduction</u>

1. On May 5, 2023, Liberty petitioned the Commission pursuant to RSA 378:27 and RSA 378:28 to fix, determine, and prescribe (1) an increase in permanent rates to be effective with service rendered on and after July 1, 2023, (2) temporary rates to be effective on and after July 1, 2023, pending the Commission's final determination on the Company's request for a permanent rate increase, and (3) a three year forward-looking multi-year rate

plan (MYRP) for the rate years ending June 30, 2024, June 30, 2025, and June 30, 2026.[1] The May 5 filing is hereinafter referred to as Liberty's "Rate Filing."

2. In Order No. 26,829, the Commission suspended Liberty's proposed rates pending investigation. The Commission included as issues presented in the filing, among others, "whether the ratemaking methodologies proposed by Liberty for its MYRP and other rate proposals are accurate, internally consistent, and consistent with all relevant law, regulations, and Commission orders," and, "whether the burden of proof under RSA 378:8 is met for each rate and ratemaking methodology change proposed."

3. The Department is participating in this matter pursuant to RSA 12-P:3, III. The Office of the Consumer Advocate (OCA), the Trustees of Dartmouth College, Conservation Law Foundation, Clean Energy New Hampshire, the Community Power Coalition of New Hampshire, and Walmart, Inc. are also parties in this proceeding.

4. In Order No. 26,855, the Commission approved a settlement supported by Liberty, the Department, and the OCA allowing a temporary increase of $5,462,876 to Liberty's annual electric distribution revenues, effective July 1, 2023. This temporary rate settlement was reached prior to the Department's Audit Division (Audit or Audit Division) completing an audit of Liberty's test year financial information and before the Department (and the OCA) conducted a vast majority of discovery and investigation they

[1] Liberty initially filed its rate case proceeding on April 28, 2023, but the Commission rejected that filing as incomplete. Order 26,814 (May 2, 2023)

ultimately undertook on the rate filing.

II. <u>Standard of Review for Motions to Dismiss</u>

5. In ruling on a motion to dismiss, the Commission accepts as true all factual assertions contained in the petition, supporting pleadings, and testimony to determine whether those facts, and all reasonable inferences therefrom, could support the relief requested. *Eversource Energy, Order No. 26,534 at 7 (October 22, 2021*). In addition, the Commission will construe all inferences in the light most favorable to the Petitioners. *PNE Energy Supply, LLC, Order No. 25,881 at 3 (April 8, 2016)*. The Commission engages "in a threshold inquiry that tests the facts in the complaint against the applicable law." *Eversource Energy, Order No. 26,534 at 7.*

6. For the reasons outlined and explained further below, even if all factual assertions in its rate filing are taken as true, the unreliability and inconsistency presented throughout Liberty's filings and the inferences to be drawn from this unreliability do not support Liberty's requested rate relief.

III. <u>Test Year Data is Critical in Rate Setting</u>

7. The Commission sets rates based on a historical test year adjusted for known and measurable changes. It is Liberty's burden to establish the accuracy of its test year data. Absent correct, reliable, and verified test year data, the Department is unable to make a rate recommendation in this case and the Commission is unable to determine whether the proposed permanent rates are just and reasonable, as required under RSA 378:7.

8. Other states likewise stress the importance of accurate test year data. The task of a commission is to base future rates upon known past and present conditions through the use of data generated during a specific test period. *Michaelson v. New Eng. Tel. & Tel. Co., 121 R.I. 722, 734-735 (1979),* quoting *Narragansett Electric Co. v. Harsch, 117 R.I. 395, 416 (1977).* The object of test year figures is to reflect typical conditions. *City of Pittsburgh v. Pennsylvania Public Utility Commission, 178 Pa. Super. 46, 66, 112 (1955).* The accuracy of the test year must be established by the utility. *Mississippi Public Service Com. v. Mississippi Power Co., 429 So. 2d 883, 901 (1983).*

IV. The Information Contained in Liberty's FERC Form 1 is Not Consistent with Liberty's Books and Records and Therefore Neither are Reliable for Purposes of Establishing Rates

9. The Department has undertaken a significant investigation of Liberty's Rate Filing. The Department's review spanned over 7 months and included an audit of the matter by the Department's Audit Division, review of written testimony, participation in several technical sessions with Liberty and other parties, reviewing responses to more than 12 sets of Department issued discovery requests, and reviewing responses to discovery requests issued by other parties.

10. FERC Form No. 1 Annual Report of Major Electric Utilities, Licensees and Others (commonly referred to the FERC Form 1) is an annual report that contains detailed accounting results for (in this instance) the calendar year ending December 31, 2022, including revenues, operation and maintenance expenses, depreciation, plant assets, liabilities, and debt and equity levels, all of which form the foundation for a utility's rate

increase request. Liberty (and other electric utilities) are required to submit a FERC Form 1 to the Commission each year. Puc 308.10.

11. The Department can use the information in the FERC Form 1 to monitor a utility's financial situation between rate cases, including whether a utility is earning its allowed rate of return. As part of its standard review of a rate filing, the Department verifies that the test year information contained in a rate request filing agrees with levels reported in the FERC Form 1, as well as with the utility's general ledger, income statement, and balance sheet – collectively referred to herein as the Company's books and records, or books. Further, to satisfy Puc 1604.01(a)(19)-(21) (PUC Full Rate Case Filing Requirements), in its Rate Filing, Liberty referenced its FERC Form 1 in lieu of providing certain required financial information. Thus, the information contained in the FERC Form 1 is essential to the Department's review of the Rate Filing.

12. RSA 378:27, which concerns requests for temporary rates, states that "temporary rates shall be sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation, as shown by the reports of the utility filed with the commission and the department of energy." FERC Form 1 is one such report, and given the short review period available for temporary rates, is generally presumed accurate for use in setting temporary rates.

13. RSA 378:28, which concerns permanent rate requests, states "[s]o far as possible, the provisions of RSA 378:27 shall be applied by the commission in fixing and determining

permanent rates, as well as temporary rates." Thus, the Department cannot adequately review whether the proposed permanent rates reflect a reasonable return on net plant without an accurate FERC Form 1 for the calendar year ending December 31, 2022.

14. Liberty implemented a new customer accounting and billing system (referred to by Liberty as SAP) in October 2022, *i.e.,* during the test year in this case. *Direct Testimony of Lauren A. Preston*, page 6 of 22 (May 5, 2023 Liberty Rate Filing). As detailed further below, the information Liberty provides in this case demonstrates that the SAP implementation during the test year has rendered the Company's books and records unreliable for use in evaluating the rates proposed in this case.

A. <u>The DOE Audit Report Highlights Many Significant Discrepancies Between Liberty's Books and Records, FERC Form 1 and Rate Filing</u>

15. The Department's Audit Division completed an audit of the Company's rate filing and underlying books and records. Typically, an audit involves verifying the financial information in the rate filing to the Company's books and records and its FERC Form 1. Since the source of the information contained in the Rate Filing and FERC Form 1 is the Company's general ledger, all three pieces of information should match.

16. The Audit Division issued a Final Audit Report dated October 25, 2023 (Audit Report), which is attached to this Motion as Attachment 1. The Audit Report contains many indications that Liberty's test year books and records do not form a reliable basis for setting rates in this case.

17. Preliminarily, the Audit Report notes that the work of the Audit Division was not completed efficiently due to significant delays in Liberty providing requested information.

> [W]e were unable to efficiently complete our work due to the significant timing delays between asking questions of Liberty and receiving responses. Over the course of the audit, we asked 115 specific questions. Complete responses took from one week to five weeks for the Company to provide.

Audit Report at p. 1.

18. Audit Issue #1 describes a fundamental problem with Liberty's Rate Filing; *i.e.*, neither the Company's FERC Form 1 nor the schedules in Liberty's Rate Filing match the Company's books and records. The Audit Report states:

> Audit noted that coding issues, which Liberty identified when compiling the FERC Form 1, resulted in accounts and/or transactions that appeared in one account in SAP [general ledger], but were reflected in another account on the FERC Form 1. Audit requested clarification of when the reclassifications and/or "mapping issues" were corrected, and was told that the corrections were not reflected in the SAP [general ledger] system in 2022. Rather, "*throughout 2023, as these* [issues] *have been identified, we are correcting those through manual journal entries or updating the treatment of WBS in the system, as applicable*."
>
> As a result, the 2022 FERC Form 1 does not actually agree with the general ledger <u>accounts</u> at the end of the test year, without the addition to or removal of the numerous "adjustments" which did not take place during the test year, or at the year-end closing of the financial records. In addition, the [rate case] filing schedules, while reflecting the SAP accounts at year-end, do not literally reflect all of the accounts in the proper location.

Audit Report at p. 139.

19. In other words, Liberty understood that its FERC Form 1 for 2022 did not match its books and records at the end of the test year 2022, and Liberty did not attempt to align the two. Instead, during 2023, Liberty incorporated various accounting entries (that were not made on the books in 2022) into its 2022 FERC Form 1. When Audit asked Liberty about the

various discrepancies it found between the Company's books and the 2022 FERC Form 1, Liberty provided a list of the adjusting entries it had made when compiling the FERC Form 1. Audit also found that Liberty, in some instances, "corrected" certain figures in the Rate Filing schedules (similar to what was done with the FRC Form 1), and as a result, these rate case schedules did not match the books and records of the Company. Thus, Liberty essentially produced and presented three sets of test year financial records that do not match each other: the books and records – including the general ledger, the FERC Form 1, and the Rate Filing schedules.

20. Further, Audit cannot conclude that all the needed corrections to the books have been made. Thus, the Audit Report concludes:

> Because of the quantity of noted adjustments, and the time required to identify variances among the FERC Form 1 accounts, Audit is unable to determine if the reported adjustments are accurate nor if they represent all of the adjustments that should have been done.

Audit Report at p. 149.

21. The discrepancies between the books and records and the FERC Form 1 are both numerous and significant. The Audit Report identifies nearly 200 entries that would have needed to be made on the Company's books during the test year in order for the test year books to match the Company's FERC Form 1. *See* Audit Report at pp. 140-148. Liberty claims it made correcting entries in 2023, some on Liberty's own accord and some after the discrepancies were brought to the attention of Liberty by the Audit Division. Audit has not verified that any correcting entries have been made in 2023 (*i.e.*, post-test year).

22. The dollar amounts of these correcting entries are material and impactful. For example, the Audit Report at pp. 141-142 details dozens of entries that should have been made to record costs in account 920, Administrative and General Salaries on the Company's general ledger but were not. In Liberty's FERC Form 1, these charges show on Liberty's balance sheet in clearing account 184, while on the general ledger, these charges are in account 920, an income statement account. Importantly, account 920 would flow directly into the Company's revenue requirement as an Operation and Maintenance (O&M) expense account, while the clearing account 184 does not affect the Company's revenue requirement.

23. The table below, compiled by the Audit Division, highlights many discrepancies between Liberty's FERC Form 1 and the test year data in its Rate Filing. Schedule RR-2.10, which is Bates II-320-322 from Liberty's May 5, 2023 Rate Filing, shows Liberty's test year Administrative and General Expenses in detail. Several key accounts show significant differences.

	FERC Form 1	Total RR-2.10	=FERC minus RR-2.10			
FERC Form 1 acct 920	$ 2,877,428	$ 2,859,282	$ 18,146	see SAP accounts 142, 182.3, 184,		
FERC Form 1 acct 921	$ 2,287,231	$ 1,600,180	$ 687,051	-12444.13, in 242 per AR #39		
FERC Form 1 acct 922	$ (8,002,460)	$ (8,501,412)	$ 498,952	?		
FERC Form 1 acct 923	$ 2,381,415	$ 2,381,415	$ -			
FERC Form 1 acct 924	$ 1,589,317	$ 1,589,317	$ -	5,337.34 exclude from 924, in 242 per AR #39		
FERC Form 1 acct 925	$ 927,599	$ 927,599	$ -	$8,263.31 excluded from 925, in 242 per AR #39		
FERC Form 1 acct 926	$ 3,697,502	$ 4,053,502	$ (356,000)	exclude from 926 $17353.50and $5823.05, in 242 per AR #39, wh		
FERC Form 1 acct 928	$ 643,455	$ 643,455	$ -			
FERC Form 1 acct 930	$ (115,412)	$ (115,412)	$ -			
FERC Form 1 acct 931	$ 205,469	$ 205,469	$ -			
FERC Form 1 acct 935	$ 7,320	$ 7,322	$ (2)	immaterial		
	$ 6,498,864	$ 5,650,717	$ 848,147			
	$ (848,147)					

24. Similarly, at pp. 140 and 143, the Audit Report shows that $3,675,811 was recorded on the FERC Form 1 in an accounts payable balance sheet account (an account that does not

factor into revenue requirement) while the Company's general ledger shows that charge in account 593, an O&M expense account that would flow directly into the Company's revenue requirements calculation. Audit concluded that this amount was excluded from Liberty's rate filing (*See* Account 593 in Liberty's May 5 Rate Filing, at Bates II-314 through II-316 detailing Distribution Expenses); however, this clearly illustrates that the Company's books, its FERC Form 1, and its rate filing do not have consistent information.

25. Similarly, at pp. 147-148, the Audit Report details scores of entries that should have been made to Liberty's books, specifically in its Pension and Benefits expense account 926 (which directly affects revenue requirement) while instead these charges were recorded in a current liability balance sheet account, an account that has no impact on the Company's revenue requirement. But on the FERC Form 1, Liberty made the correcting entries. The table above shows a discrepancy of $356,000 between the rate case filing and the FERC Form 1 concerning account 926.

26. These are just three examples; there are many more detailed in the Audit Report. Based on the many discrepancies between the Company's FERC Form 1 and its books, the Audit Report's recommendation was clear:

> Liberty should have ensured that the actual financial records within the new SAP system were accurate, **prior to filing the current rate case.** (emphasis added)
>
> All transactional or system mapping adjustments should have been addressed.

Audit Report at p. 149

Simply put, with this many significant discrepancies between Liberty's FERC Form 1 and its books and records (which were used in its rate filing), Audit cannot verify that the starting point for the Company's rate request is accurate. Such verification is a critical function in allowing the Department to recommend just and reasonable rates. The Audit Division routinely performs this function for DOE in rate case reviews, including other recent cases presented by Liberty's electric and gas utilities.

27. Utility payroll is a major O&M and capital cost that directly affects the rate case revenue requirement. Liberty reported that its test year (2022) payroll totaled over $11.2 million. Audit Report at p. 171. One of Audit's key functions in a rate case is to verify the figures presented by a utility in its payroll register to the various O&M and capital accounts presented in a rate filing. This helps to ensures that the rates established cover a verified amount of payroll costs incurred by the utility. The Audit Report at p. 171 states that Liberty was not able to provide the report typically used to make this verification because of the conversion to SAP. Liberty provided no other report to enable such verification, and thus Audit was not able to reconcile Liberty's payroll costs to the various general ledger accounts. Similarly, concerning year end payroll accruals, Audit was not able to verify the accuracy of the payroll accruals because post-SAP implementation, sufficient payroll detail could not be provided. Audit Report at p. 173. Further, Liberty conceded that it booked $642,935 of payroll taxes to the wrong account following SAP implementation and that it needed to correct its rate case filing for this error. Audit Report at p. 174.

28. Test year revenues and test year depreciation in the Company's Rate Filing are misstated by $383,135 due to mis-mapping of accounts. The Audit Report at p. 170 details that Liberty included "Electric Revenue Other" in a schedule detailing depreciation expense (Rate Filing at Bates II-324, Schedule RR-2.12, line 8) and did not reflect that revenue on the schedule detailing test year Other Electric Revenue (Rate Filing at Bates II-311, Schedule RR-2.3).

29. Liberty's Rate Filing at Bates II-344, Schedule RR-3.8 states that Liberty's Total Rental Expense for 2022 was $71,285, consisting of lease payments for its Londonderry office of about $59,000 and unspecified other rents of about $12,000. After inquiry by DOE and OCA, Liberty reported that this rate filing schedule inadvertently omitted rental expense on the following properties: Liberty's training center in Concord, Liberty's Main St. office in Concord, and Liberty's Main St. office in Salem. *See* Liberty Response to DOE Data Request 4-48 as amended by Liberty's Response to OCA Data Request 3-66 (both provided as Attachment 2 to this Motion). Basic financial information, such as rental of key utility offices, must be presented accurately by the utility in the first instance. While Liberty agreed to correct for this error in an updated rate filing, Liberty should not be allowed to present financial information as accurate when in fact that information misstates as basic an item as rental expense on key utility property, and then correct the rate case filing only when questioned by DOE and OCA. *See* Audit Report at 184-185. The burden to present accurate test year information lies with the utility.

30. Given Liberty's corporate structure, substantial costs are billed from corporate affiliates to Liberty, and included in the financial statements on which Liberty's Rate Filing is premised. The Audit Report notes that Audit was unable to trace any corporate charges to specific general ledger accounts for November 2022 (the month Audit selected for review). After Liberty provided further information, Audit was only able to trace approximately $27,000 (out of total charges of approximately $629,000 for the month) to specific general ledger accounts. Thus, it remains unknown how much of Liberty's corporate allocated charges are included in the Company's revenue requirement in this case and whether those charges are appropriate for recovery in Liberty's rates. *See* Audit Report at 186. This is a clear example of Liberty failing to meet its burden of proof.

31. This Motion highlights only some of the many significant issues raised in the Audit Report. The Department urges the Commission to review the concise summaries of all 28 Audit issues, beginning at p. 139 of the Audit Report.

B. <u>The Department's Rate Case Review Uncovered Other Significant Errors and Omissions in Liberty's Rate Filing – Many Due to SAP Implementation</u>

32. In addition to the issues described in the Audit Report, other submissions by Liberty in this rate docket contain errors and omissions, many involving Liberty's implementation of the SAP enterprise software (which includes a new accounting system) in October 2022 (*i.e.,* during the test year). *See Direct Testimony of Lauren A. Preston*, p. 8, line 3 (May 5, 2023 Rate Filing).

33. The Department has discovered that SAP implementation led to billing errors and data discrepancies which substantively impact the underlying test year figures. To start, Liberty acknowledges in prefiled testimony that test year revenue and service charges are understated in the current filing as a result of the SAP implementation. *See Direct Testimony of Erica L. Menard*, Bates II-629, lines 10-14 (May 5, 2023 Rate Filing). "Due to the conversion to a new billing system, the Company suspended most nonrecurring charges in October 2022. Therefore, the Company believes the test year revenue and occurrences are understated."

34. Further, when questioned on the impact of the SAP implementation during discovery, Liberty's responses seemed contradictory. For example, in Data Request DOE 2-7, the Department asked Liberty to describe any and all problems or challenges that Liberty experienced during the implementation of its new customer information and billing system. Liberty provided a detailed response indicating that, for regular planned billing cycles, the majority of the customers were successfully billed during the first month of go-live and continue to be. However, Liberty acknowledged there were delays in cleaning up data anomalies and transactions related to system changes resulting in a backlog of approximately 670 unbilled accounts.

35. In data request DOE 2-8, the Department asked Liberty to provide an estimated or actual amount of 2022 distribution revenue that was not billed in 2022 (but was billed or is planned to be billed in 2023) due to the implementation of new SAP customer information and billing system. Liberty's responded that it "cannot easily estimate or quantify the

amount of 2022 distribution revenue not billed in 2022 due solely to the implementation of the new SAP customer information and billing system." Responses DOE 2-7 and DOE 2-8 are attached to this Motion as Attachment 3 and 4, respectively.

36. A backlog of 670 unbilled accounts due to the SAP implementation is a serious issue, the magnitude of which could not be adequately assessed because Liberty, in August 2023, was unable to quantify or even estimate the amount of 2022 distribution revenue not billed in 2022 due the SAP implementation. Then several months later, (on November 20, 2023), in response to a follow-up data request by DOE, Liberty quantified the amount of revenue not billed timely in the test year for those 670 customers. (According to Liberty's summary table it appears 684 customers, totaling $779,526 went unbilled). *See* DOE TS 2-66, p. 1 of 15, provided as Attachment 5 to this Motion. The Department maintains that Liberty should have disclosed up front the amount of test year revenue that went unbilled in 2022 due to SAP implementation when it presented its case. Liberty's failure to do so indicates that it has not met its burden of proof in this case.

37. In response to OCA TS 1-11 and OCA TS 1-12, Liberty admits that system mapping errors with SAP led to various accounting discrepancies. These responses are provided as Attachments 6 and 7 to this motion. OCA TS-1-11 asks a straightforward question about test year Office Related Expenses, while OCA TS-1-12 inquiries about Meals and Entertainment. Liberty's responses go into confusing detail about why these accounts do not contain the expenses one would expect them to include. The explanation of Office Related Expenses veers into a discussion about training cost and materials and supplies,

while the Meals and Entertainment response becomes an explanation about lease expense. These responses demonstrate why the Commission cannot rely on the test year information presented in the rate filing for setting base distribution rates.

38. Liberty also concedes that the SAP implementation impacted late payment penalties and collections in the test year. Specifically, Liberty's December 2022 Monthly Disconnection & Accounts Receivable Report (provided as Attachment 8 to this Motion) states:

> [M]ost of the low/zero activity in October is due to Liberty's transition to SAP, a new financial and billing system. For example, since SAP does not assess late penalties on a customer's first bill, and since the new billing system went live in October 2022, the new system treats the first monthly bill to be on November 1. Also, no collections activity occurred in October due to the implementation of the new billing system.

39. Beyond the SAP implementation, the Department has identified several significant errors in the rate filing. For example, in DOE 6-4, provided as Attachment 9 to this Motion, Liberty concedes that its normalized test year revenues were understated in the rate filing by over $2 million because Liberty calculated the revenues using rates that it later admitted (in DE 22-035 – Year 3 Step Increase) were too low. Then, pursuant to further questioning by the Department, Liberty corrected this normalized test year revenue figure yet again. *See* Response DOE 9-15 provided as Attachment 10 to this Motion. It is Liberty's burden to provide accurate information when first asked first. Relying on follow-up requests to correct previously provided information unfairly shifts Liberty's burden to other parties.

40. In Response DOE 6-23, (Attachment 11 to this Motion) dated September 15, 2023, concerning Vegetation Management costs, Liberty states that in the course of preparing

the response, it identified that its initial rate filing contained an erroneous schedule and definitions included on Bates pages II-572 through II-575 of the May 5, 2023 Rate Filing.[2] DOE 6-23 further admits that related Liberty responses submitted to the Department in the weeks and months prior were incorrect. Then in response to an inquiry by OCA, Liberty again revised its vegetation management details. *See* OCA 5-33 dated October 18, 2023 (Attachment 12 to this Motion).

V. <u>Liberty's Attempts to Cure the Test Year Record are Insufficient and Too Late</u>

41. On November 27, 2023, Liberty presented in discovery an "updated revenue requirement model" purporting to reflect all the various issues identified in the DOE Audit Report and in discovery responses that, in Liberty's view, need to be reflected in this docket's rate increase request. DOE has not been able to verify if this update (which contains 25 specific adjustments to the original revenue requirement) is comprehensive.

42. While typical in utility rate proceedings in New Hampshire as a means of simplifying disputed issues before hearings begin, such a filing does not eradicate the fundamental problems with the data that Liberty presented at the outset of this case, as detailed above. It does not change the books for 2022, and it does not change the FERC Form 1 for 2022; these two foundational sets of financial records remain unaligned. Any correcting entries Liberty made to its books in 2023 have not been audited by the Department's Audit Division because the audit in this case was limited to the test year (2022). It is unreasonable to expect the Department to audit more than one year of financial

[2] In this rate filing, Liberty seeks to nearly double the amount its customers currently pay for vegetation management.

information during a time-limited rate filing review.

43. Further, Liberty continues to disclose errors in its 2022 books and reiterates that necessary corrections were made to its 2023 books (and thus the 2022 test year books remain incorrect). On December 6, 2023, Liberty writes in a supplemental response to a Department discovery request first asked in early November:

> In the Company's new general ledger, SAP, intercompany balances are shown on a gross basis -- receivables are recorded in Intercompany Accounts Receivable (FERC account 146), and payables are recorded in Intercompany Accounts Payable (FERC account 234). When the Company transitioned to SAP, the legacy general ledger balance was brought over to one general ledger account in SAP. A manual journal entry was recorded to separate balances into the Intercompany Accounts Receivable and Intercompany Accounts Payable accounts. In the process of separating those balances, the Company inadvertently increased both the receivable and payable by $572.9 million. This does not change the net position which has been reported. The incorrect increases were the result of accumulating the monthly net changes in the intercompany payable account instead of taking the ending balances as of September 30, 2022. While the net balance remained and continues to be accurate, the individual balances of the receivable and payable were overstated as of December 31, 2022.
>
> The Company has made the correction as of December 2023 and notes that there is no change in the net balance of intercompany receivables/payables following the correction of these accounts. Supplemental Response to DOE TS 2-5 (Attachment 13 to this Motion).

44. While it is plausible that Liberty's updated filing improves the accuracy of Liberty's rate filing, it comes too late in the process to cure errors that were embedded in the initial filing. The petitioning utility carries the burden to produce accurate information at the outset of a rate proceeding. Failure to do so can be grounds for dismissal because of the impact a flawed filing can have on the ability of intervenors to review a rate filing in statutorily imposed review periods. The Massachusetts Department of Public Utilities stated in *Mass. D.P.U. 1300 (1983) at 5-6,* provided as Appendix 1 to this Motion:

> [W]hen information on these issues is not supplied until well into the proceeding, the department and intervenors are effectively deprived of the use of the full suspension. … The [Department of Public Utilities] has a responsibility to the public to ensure that the interests of ratepayers are protected and that the entire six-month statutory suspension period is available to examine the propriety of a rate filing. It is the department's duty to ensure that companies are not able to circumvent the full statutory review period by delaying the filing of necessary information.

The combined effect of the discrepancies in Liberty's books, FERC Form 1 and its Rate Filing, the numerous mistakes in the Rate Filing uncovered during discovery, and the number of corrections presented on November 30 have significantly distracted the Department in its effort to evaluate the other important parts of Liberty's complicated rate request, which includes a multiyear rate plan and performance base rates.

VI. <u>SAP Implementation Has Adversely Affected Information Presented in Other Liberty Dockets</u>

45. SAP implementation has led to issues in other dockets before the Commission. In DE 23-081, specifically data request DOE 1-1, the Department asked Liberty to explain why the number of equivalent bills for Rate G-1 in October 2022 was 104, while the previous month's number was 165. According to Liberty, the SAP implementation led to at least three-months of billing issues within the 2022 test year; October, November, and December. Liberty explained:

> The accounting periods September and October 2022 straddle an *extraordinary event* – the changeover from the Cogsdale billing system to the SAP billing system. The new SAP system went live on October 10, 2022. *This changeover resulted in a disruption of the usual timing of the posting processes for the next several months until the Billing Department was able to resolve the transition issues and render the bills*. This can be seen in the Attachment to Response to DOE 1-19 where the equivalent bill counts rise from a low of 103 in October 2022 to a high of 182 in January 2023 then come down thereafter. Thus, bills that would have normally been posted in the month

> in which the customers' meters were read were being posted in subsequent months. [emphasis added]

46. SAP implementation appears to have caused Liberty to provide estimated revenue and equivalent bills when actual data was required. In response to DOE 1-3(c) in DE 23-081, Liberty states:

> For the month of September 2022, there were two billing cycles (Cycle 19 and MV-90) during the end of the month that were based on estimates. The Distribution Revenues and Equivalent Bill Counts for those two cycles were derived from the actual September 2021 data."[3]

47. In DE 22-043, Liberty's monthly EAP reconciliation reports for October through December 2022 lacked key test year data because of the SAP system implementation. Liberty's February 8, 2023, filing in that docket states the "Number of Active EAP Participants by Discount Tier Levels and Amounts and Aging Report information were not available and were excluded from the original report." Problems persisted into 2023. The March 2023 and April 2023 EAP reconciliation reports state "[a]t the time of this filing, information for Active Participants by Discount Tier Levels and Amounts and Aging Report information provided monthly in the EAP filing was not available. Liberty will provide this information when available."[4] *See* Attachment 14 to this Motion.

VII. <u>Liberty's SAP Implementation Resulted in Significant Customer Complaints to the DEPARTMENT</u>

48. Liberty's conversion to SAP coincided with a significant deterioration in customer service as measured by the number of Liberty's customers that have contacted the Department's

[3] Liberty subsequently updated the estimate for actual figures on November 6, 2023 – only after the Department requested to extend the procedural schedule in DE 23-081 to allow further investigation.
[4] The March 2023 information was provided on April 25, 2023.

Consumer Services Division seeking help with or clarification concerning a Liberty bill. The Department tracks and categorizes all utility customer contacts. Two such categories are "Billing' and "Billing Adjustment." For the 12 months prior to Liberty's conversion to SAP, the Department received 14 contacts in these two categories. In the 12 months following SAP conversion, the Department received 121 Billing and Billing Adjustment contacts - a nearly nine-fold increase! Further, Referrals (which occur when a customer contacts the Department because they cannot get through to their utility) also increased. Pre-SAP, the Department received 130 referrals from Liberty customers. That figure nearly doubled (to 230) in the year following conversion to SAP.

49. Other electric utilities did not experience such a swing in customer contacts following similar billing and accounting system conversions. For Eversource, Billing and Billing adjustments went from 70 contacts pre-conversion in 2008 to 138 in the year following conversion. Referrals went from 5 to 8. For Unitil, 27 Billing and Billing adjustments contacts preceded its 2017 conversion while 43 occurred in the year following. Referrals for Unitil went from 181 pre-conversion to 52 post-conversion - a significant decrease.

50. Deterioration in customer service was also evident in Liberty's recently filed Customer Satisfaction Tracking results. *See* Attachment 15 to this Motion for the full Report by Luth Research. The Report leads with:

> Overall satisfaction with Liberty declined another 10 points this year (2023) to 53%. Excluding cost, satisfaction declined by 9 points, 66%.

Luth Report at 9.

In analyzing the reasons for the dissatisfaction, the Report states:

> Cost is overwhelmingly top complaint of dissatisfied customers, although billing problems are mentioned far more often this year than in 2022.
>
> Mentions of billing issues have more than tripled over the past year.

Id. at 12.

Customer quotes from the Luth Report include:

> Ever since Liberty switched over to their new system, they've tanked IMO! They can't get their train on track with billing, and somehow my Walmart is now having issues with receiving payments….

and:

> I have not received a paper statement in months. I also have not received an emailed bill. Then they shut off my power unannounced to me. They stated they mailed out a warning, but I never got it.

Id. at 14

Finally, only 53% of Liberty's customers are Very/Somewhat satisfied with Liberty's "Accuracy of Bill/Statement" (while 80% are Very/Somewhat Satisfied with Liberty's "Providing Reliable Electricity"). *Id*. at 20. And, four in five Liberty customers contacted the company in the past year, a significant increase since 2022 and the highest contact level measured since tracking began. *Id*. at 27.

VIII. Motions to Dismiss Rate Cases are Not an Unprecedented Remedy Where Financial Information is Suspect or Where the Filing Materials are Insufficient

51. Motions to dismiss rate cases due to unreliable financial information are not unprecedented. Multiple state public utility commissions have considered such motions, and either granted the motions and dismissed the proceeding or denied such motion but

ultimately dismissed the proceeding based on unreliable test year financial data.

52. The Public Utilities Commission of Texas dismissed a water utility's 1981 requested revenue increase due to insufficient and non-credible financial information provided by the Company, even after the utility was given an opportunity to correct the deficiencies in its filing. The Commission found that it did not have jurisdiction where the filing was incomplete under the Commission's procedural rules. *1981 Texas PUC, Docket No. 3546,* provided as Appendix 2 to this Motion.

53. The Florida Public Service Commission dismissed a water utility's 2007 rate filing after Commission staff had conducted discovery and raised concerns that the data supplied by the utility was unreliable. In response to Commission questions about apparent errors in the utility's data, the utility stated that it did not know the magnitude of those errors. After finding that the data contained in various reports filed by the utility did not match, and that the test year data was unreliable due to multiple defects in the test year billing determinants, the Commission dismissed the Company's filing and stated that, "[i]f we were to set noncompensatory rates, we believe this would further perpetuate the frequency of rate case filings by the utility. Therefore, we find that setting rates based on flawed data would be neither fair nor reasonable to the customers or the utility." *Florida Public Service Commission, Docket No. 060262-WS (2007),* provided as Appendix 3 to this Motion.

54. The District of Columbia Court of Appeals affirmed a decision of the Public Service Commission of the District of Columbia to grant intervenors' motions to dismiss a utility's application for temporary rate relief before any hearings were held connected to the permanent rate case. The Commission had granted the motion to dismiss on the basis that the utility's allegations, even if taken as proven, failed to establish a *prima facie* case for the requested relief. In affirming the Commission's decision, the Court also stated that, "[t]he risk that its own inefficiency or external business may prevent the utility from achieving a specified rate of return is allocated to [the utility]." *Potomac Electric Power Co. v. Public Service Com.,* 457 A.2d 1776 (1983), provided as Appendix 4 to this Motion.

55. The Minnesota Public Utilities Commission did not grant a motion to dismiss, but ultimately denied an electric utility its requested rate increase in 1990, ["b]ecause of grave doubts about the accuracy, reliability, and predictive value of the test year budget data submitted by the Company. *** The Commission finds that the rate case record does not demonstrate that existing rates are unjust and unreasonable, which is necessary for approval of a general rate increase. Neither does the record provide a reliable basis for setting new just and reasonable rates.". The Commission went on to say "[t]hose substantiating documents are not included with the filing. With errors and deviations of the magnitude discovered in the forecasted material supplied, [the utility] has not met its burden of supplying adequate substantiating evidence with its notice of change in rates." Finally, the Commission described issues with the utility's accounting methods, stating "[a]gain, the Company's failure to present information in recognizable and usable form

compounded the complexity of this case, which would have been complex under the most favorable circumstances." *Minnesota Public Utilities Commission, Docket No. E-002/GR-89-865(1990),* provided as Appendix 5 to this Motion.

IX. <u>Conclusion</u>

This Motion demonstrates in great detail why 2022 was not suitable for use by Liberty as a test year for rate setting. The Petitioner chooses the test year in a rate case, and given the obvious, known problems with its books and records and FERC Form 1, Liberty chose unwisely in this instance. Simply put, permanent rates should not be based on the 2022 financial information Liberty has presented in this case.

WHEREFORE, the Department respectfully requests that the Commission:

1. Dismiss Liberty's pending rate request for permanent rates;

2. Allow Liberty to make a subsequent permanent rate case filing but require Liberty to demonstrate before, or at the time it files the rate petition that its accounting books and records are accurate, that its FERC Form 1 matches its accounting books and records and that the rate filing match both its accounting books and records and its FERC Form 1; and

3. Grants other such relief as the Commission deems appropriate.

Respectfully submitted,

New Hampshire Department of Energy

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