

STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

Docket DE 23-039

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

Request for Change in Distribution Rates

Opposition to Department of Energy’s Expedited Motion to Stay Proceeding

Pursuant to N.H. Code Admin. Rules Puc 203.07, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (“Liberty” or the “Company”) hereby responds to the Department of Energy’s (“DOE”) December 13, 2023 Expedited Motion to Stay Proceeding (the “Motion to Stay”). The Motion requests that the New Hampshire Public Utilities Commission (the “Commission”) stay this proceeding pending a decision on the DOE’s Motion to Dismiss, also filed on December 13, 2023 (“Motion to Dismiss”). The DOE has requested that the Commission immediately stay this case to prevent parties from expending further time and resources while the Commission considers the Motion to Dismiss (Motion to Stay at 1). Accordingly, the Motion to Stay further requests that the Commission waive the ten (10) day period for objections to the Motion to Stay (Motion to Stay at 3).¹

The Commission should deny the Motion to Stay. DOE seeks an extreme remedy in its Motion to Dismiss, which if granted, would deny the Company cost recovery of **any** of its

¹ The Company objects to the DOE’s request to waive the ten-day objection period pursuant to Puc 203.07(c) but has filed its response on the next business day following submission of the Motion to Stay to ensure it is afforded an opportunity to oppose the substance of the Motion to Stay. For all the same reasons that a Motion to Stay is unwarranted, there was no basis to waive the ten-day period for objections. The party most impacted by a stay of the proceeding is the same party with the burden of responding to the Motion to Dismiss (i.e., the Company). Denying the Company an opportunity to respond to the Motion to Stay at the same time as the Motion to Dismiss does not serve the public interest or promote efficient resolution of any issues in this proceeding. Nevertheless, the Company acknowledges that this is moot based on its submission of this objection prior to the ten-day objection period.

increased cost to serve customers. The Commission should allow this case to continue at least until it has received the Company's response to the Motion to Dismiss because based on the current procedural schedule and the timing of DOE's Motion to Dismiss, it is unlikely that any significant resources will be expended before the deadline for the Company to respond to the Motion to Dismiss. To the contrary, granting the Motion to Stay before the Company has had an opportunity to respond to the Motion to Dismiss deprives the Commission of complete information. Granting a stay of the proceeding is not a decision that should be taken lightly because it will have significant impacts; a stay would result in unnecessary delays in this proceeding should the Motion to Dismiss be denied and real harm to the Company.

In support of its opposition to DOE's Motion, Liberty states the following:

I. Background

1. On July 24, 2023, the Commission issued a Procedural Order setting a procedural schedule for this docket based on an assented to procedural schedule filed by DOE on July 12, 2023. As of the date of this objection, the next procedural milestones are the issuance of data requests to intervenors on December 20, 2023, responses to data requests by intervenors on January 9, 2024, and the Company's rebuttal testimony on January 17, 2024. Rebuttal testimony will be followed by settlement discussions on January 24 and 25, 2024, and a prehearing conference on January 30, 2024. Hearings are scheduled to begin on February 13, 2024.
2. On October 25, 2023, the DOE's Audit Division issued a final audit report to the Company and DOE (Motion to Dismiss at 6).

3. The parties to this proceeding engaged in two days of technical sessions on October 26 and October 30, 2023.² The Company responded to numerous follow up data requests after the October technical sessions. Testimony from DOE and intervenors was filed on December 13, 2023 (i.e., the same date that the Motion to Dismiss was filed).
4. The Motion to Stay argues that a stay is necessary to avoid requiring the parties to expend resources and engage in efforts that may be rendered meaningless (Motion to Stay at 2). However, as discussed above, there is only one procedural deadline applicable to intervenors during the next thirty (30) days (the deadline to respond to any data requests issued by Liberty) and this deadline is not until after the Company's deadline to respond to the Motion to Dismiss. The only party with any deadlines before a response to the Motion to Dismiss is due is the Company; the deadline for the Company to issue discovery to intervenors is December 20, 2023. Accordingly, the only party that is likely to expend significant resources before the deadline to respond to the Motion to Dismiss is the Company.³
5. Maintaining the procedural schedule at least until the Company has an opportunity to respond to the Motion to Dismiss will ensure that the Commission has sufficient information to reach its decision on the Motion to Stay.
6. In support of its Motion to Stay, DOE cites a recent Commission decision where the Commission granted a request to stay a proceeding (Motion to Stay at 2 citing Order No. 26,841 at 7). However, the decision referenced by DOE is easily distinguishable

² The dates for technical sessions were amended to accommodate a DOE scheduling conflict; accordingly the technical session scheduled for October 25, 2023 was moved to October 30, 2023.

³ DOE and intervenors filed sixteen separate pieces of testimony on December 13, 2023 regarding a range of topics.

from the situation presented here. The Commission granted a stay in Docket No. DW 22-082 to allow the parties additional time for negotiations that could result in cost savings and/or narrowing of issues for Commission consideration. Order No. 26,841, at 7. Further, the negotiations that would occur during the stay period in that proceeding were such that the parties could become exempt from Commission regulation. Id. at 8.

7. Here, DOE has failed to demonstrate that *any* efficiencies or narrowing of issues for Commission consideration will result from the proposed stay of this proceeding (i.e., DOE is not proposing a stay to work with the Company to address any of the issues it alleges in its Motion to Dismiss). The DOE's Motion to Dismiss does not seek to narrow the issues before the Commission but instead offers only an "all or nothing" approach. The only way that a stay of this proceeding could have resulted in avoiding costs and expenditure of resources by the parties would have been if the Motion to Dismiss and Motion to Stay had been filed earlier in the procedural schedule.⁴ Granting the Motion to Stay at this stage will only serve to put all parties, and the Commission, in a worse position by resulting in unnecessary delays to the procedural schedule and/or a compressed procedural schedule should the Motion to Dismiss be denied.
8. The Company requests that the Commission defer a decision on the Motion to Stay until the Company has been afforded an opportunity to respond to the Motion to Dismiss. As part of its response to the Motion to Dismiss, the Company will address whether a stay would be appropriate to address the issues raised by DOE or if any such

⁴ It is noteworthy that the Audit Report relied on by the Department of Energy in support of the Motion to Dismiss was issued on October 25, 2023 but the DOE waited approximately six weeks to file the Motion to Dismiss on the same date that intervenor testimony was due. If DOE had filed its Motion to Dismiss ahead of the December 13, 2023 deadline, there could have been an avoidance of resources by the parties to this proceeding.

a stay could narrow issues before the Commission. This is consistent with Puc 203.07(e) which provides ten days to respond to both a motion for a stay and a motion to dismiss.

WHEREFORE, Liberty respectfully requests that this Commission:

- A. Deny DOE's Motion to Stay;
- B. Defer its decision regarding whether a stay of the proceeding appropriate until the Company has responded to the Motion to Dismiss; and
- C. Grant such further relief as it deems appropriate.

Respectfully submitted,

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

By its Attorneys,



Date: December 14, 2023

By: _____
Michael J. Sheehan, Esq. #6590
114 North Main Street
Concord, NH 03301
(603) 425-8085
Michael.Sheehan@libertyutilites.com

Jessica Buno Ralston

By: _____

Jessica Buno Ralston, Esq.

Keegan Werlin LLP

99 High Street, Suite 2900

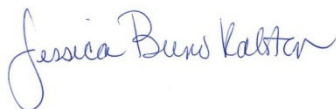
Boston, MA 02110

(617) 951-1400

jralston@keeganwerlin.com

Certificate of Service

I hereby certify that on December 14, 2023, a copy of this response to Department of Energy's Expedited Motion to Stay Proceeding has been forwarded to the service list for docket DE 23-039.

A handwritten signature in blue ink that reads "Jessica Buno Ralston". The signature is written in a cursive style.

Jessica Buno Ralston