

STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

Docket No. DE 23-039

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

Request for Change in Distribution Rates

Objection to Motion to Dismiss Rate Filing by the Department of Energy

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 objects to the Motion to Dismiss Rate Filing (the “Motion to Dismiss”), filed by the Department of Energy (“DOE”) on December 13, 2023. The Motion to Dismiss requests that the New Hampshire Public Utilities Commission (the “Commission”) dismiss the Company’s May 5, 2023 rate filing in this proceeding (the “Petition”) based on DOE’s assertion that the Company’s financial records cannot be reasonably relied upon. The Commission should deny the Motion to Dismiss as baseless.

By its Motion to Dismiss, DOE seeks to derail the Company’s rate filing by asserting an unsupported and insufficient claim that leverages circumstances surrounding the Company’s implementation of a new information system that will provide substantial benefit to customers over the long term. If the Commission were to grant the Motion to Dismiss, the outcome would be to deny the Company its constitutional and statutory right to petition for rate relief; to have the opportunity for the Commission to review its prudently incurred costs and render determinations on the fair and reasonable return; and to maintain its financial integrity as is necessary for the Company to fulfill its public-service obligation to customers. Under the Commission’s standard, a motion to dismiss must demonstrate that the Company’s filing is so deficient that there is no

basis for the Commission to grant the relief requested even after accepting all of the assertions in the filing as true, meaning that -- dismissing a rate filing is a very significant matter. The Company has legal rights to obtain the Commission's consideration of rate relief, and dismissal of a rate filing at this stage of the proceeding for an extended, indefinite time period would need to have an incredibly sound basis. DOE's Motion to Dismiss falls far short of this meaningful threshold.

Most notably, DOE's Motion to Dismiss fails to make any demonstration that the substantial evidence already provided by the Company in support of its request for a rate change through its initial filing, discovery, informal technical sessions, and in response to the investigation conducted by the DOE's Audit Division ("DOE Audit") – producing evidence that the DOE itself relied on to conduct its *own* rate calculations – is so deficient that there is no basis for the Commission to make determinations on the Company's rate filing. DOE cannot have it both ways. Either the information produced by the Company in this proceeding is sufficient to support a rate calculation – or it is not. Thus, DOE's own presentation in this case demonstrates that there is no fatal flaw in the Company's rate filing and associated documentation, data production, or analysis. Instead, the Company has implemented a new accounting system that *does* involve change and *does* require explanation and familiarization. Like any new system, there are lessons learned in implementation. However, there is no inherent flaw or systemic obstacle to the conduct of this proceeding and the system will be the same system in place should DOE prevail on its Motion to Dismiss and win a delay.

As a result, the appropriate response to DOE's Motion to Dismiss is the identification of a plan to assist DOE (and the Commission) in its familiarization of the new system and new presentation of information. In other words, to the extent that there is a concern with the Company's data or analysis – it is a concern that can be solved in the context of this proceeding.

The Company fully understands and accepts its burden in this regard and is fully committed to this objective. However, the solution is *not* to dismiss the Company's entire rate application so that the whole process simply occurs at another time. This would be an extreme, unwarranted, and unfair outcome for the Company. Accordingly, the Commission should deny the Motion to Dismiss and, instead, hold the Company to the standard that it has in this proceeding to make its case, which will require the Company to address DOE's concerns through the process.

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

I. Procedural History

The Company submitted its Petition to change distribution rates on May 5, 2023.¹ The Company's Petition sought an increase in rates of \$15,487,002 based on a revenue requirement calculated using test year 2022 data (Attachment KMJ/DSD-1) and compared to rates in effect as of March 1, 2023. During the Discovery phase of this proceeding, the Company has responded to hundreds of data requests from the DOE and other parties and participated in five days of technical sessions. DOE Audit conducted an audit that also included numerous information requests leading to an October 25, 2023 final audit report (see, Motion to Dismiss, Att. A). Based on adjustments identified by the Company and other parties during the discovery phase, technical session discussions, and DOE Audit's report, the Company and the parties agreed that the Company would provide an updated revenue requirement to the parties on November 27, 2023.²

¹ The Company's initial filing submitted on April 28, 2023 was rejected by the Commission on May 2, 2023 due to the Company's reliance in the initial filing on a FERC Form 1 to be filed on May 5, 2023.

² The updated revenue requirement is included herewith as Attachment 1. Attachment 1 was distributed to the discovery service list in this docket, consistent with previous practice before the Commission on November 27, 2023. Attachment 1 is an updated version of Attachment KMJ/DSD-1, originally provided in support of the Company's Petition. Attachment 1 reflects updates and corrections resulting from the audit and discovery phases of the proceeding and memorializes agreed-to adjustments identified to date in order to assist parties in the development of testimony. The Company plans to provide a further updated revenue requirement as a hearing exhibit to address any further adjustments that may be identified prior to hearings.

On December 13, 2023, DOE filed its Motion to Dismiss together with an Expedited Motion to Stay Proceeding (the “Motion to Stay”). The Company objected to the Motion to Stay on December 14, 2023 and requested that the Commission defer any decision regarding stay of this proceeding until after the deadline for responses to the Motion to Dismiss. The Commission issued a Procedural Order on December 15, 2023 denying DOE’s request to waive the objection period for the Motion to Stay, confirming the deadline for responses to the Motion to Stay and Motion to Dismiss (December 26, 2023), and scheduling a January 4, 2024 hearing on the Motion to Stay and Motion to Dismiss.

Also, on December 13, 2023, the following parties submitted their initial testimony: DOE, Office of the Consumer Advocate (“OCA”), Community Power Coalition of New Hampshire, the Trustees of Dartmouth College, and Walmart, Inc. The Conservation Law Foundation and Clean Energy New Hampshire are parties to this proceeding but did not submit initial testimony.

Liberty timely issued data requests to the parties regarding their initial testimony on December 20, 2023. Responses to Liberty’s data requests are due on January 9, 2024. The next procedural milestone is the deadline for Liberty’s rebuttal testimony on January 17, 2024.

II. Factual Background

In October 2022, Liberty converted from its legacy system (referred to as “Great Plains”) to an SAP system (May 5, 2023 Testimony of Lauren Preston at 8). The Company’s legacy system had become outdated (*id.* at 4). As explained in the Company’s initial filing, the Company (and its affiliates) undertook an enterprise-wide effort called “Customer First” to replace the existing systems. Customer First includes the transition to an SAP accounting system (*id.*). The legacy system had reached the end of its useful life and its capabilities were insufficient to meet the needs of the Company and its customers. The Company recognized that conversion to an SAP system

would present challenges – as all major system implementations do -- but in light of the obsolescence of the existing systems and the substantial benefits available with the new system, the Company had to move forward to implement a new system to assure the reliability of the Company’s financial reporting systems and related information systems.

SAP uses a natural accounting method, which means that financial information is recorded in Generally Accepted Accounting Principles (“GAAP”) accounts. For ratemaking purposes before the Commission, the Company must use the Federal Energy Regulatory Commission (“FERC”) Uniform System of Accounts. As a result, the SAP accounts must be mapped to the appropriate FERC accounts for the purpose of generating the Company’s FERC Form 1 and preparing regulatory schedules. This mapping was not necessary under the Company’s legacy accounting system as both the natural accounts and FERC regulatory accounts were combined into one account field. Conversion from the Great Plains system to the SAP system also required the Company to map the legacy data from Great Plains to the new SAP accounts.

In addition to the presentation differences between the Company’s legacy system and the new SAP system, Liberty had to make a number of adjustments to its records in order to ensure that the mapping from Great Plains to SAP and from the SAP accounts to the FERC accounts were accurate. These adjustments were performed during three different time periods: (1) during the last quarter of 2022 (adjustments reflected on the 2022 books); (2) during preparation of the FERC Form 1 and revenue requirement schedules for this case (adjustments made post-closing of the 2022 books and reflected in the revenue requirement filed on May 5, 2023); and (3) adjustments made after the filing of this proceeding (adjustments reflected in the November 27, 2023 revenue requirement update).

The Company has worked diligently to identify necessary adjustments and reflect these

adjustments in the proposed revenue requirement. However, the timing of these adjustments has resulted in a discrete, traceable variance between the year-end 2022 SAP balances; the FERC Form 1; and the revenue requirement schedules. This variance was summarized in the DOE Audit's Final Report and is not disputed by the Company.

Each adjustment or correction has been explained to the DOE through the DOE Audit's investigation and/or during the discovery process. To the extent DOE disagrees with the Company's revenue requirement presented at hearings, DOE can present its case to the contrary and the Company will produce its evidentiary rebuttal supporting the necessary cost increases.

III. Standard of Review

The Commission has found that, in ruling on a motion to dismiss, it must determine “whether the facts alleged in the petition and supporting pleadings and testimony, and all reasonable inferences, could support the relief sought.” Eversource Energy, Order No. 26,534, at 7 (2021). Because such motions are decided before the factual record is developed, the Commission is required to assume that all of the petitioner's assertions are true. Id. citing Public Serv. Co. of N.H., Order No. 25,213 at 71 (Apr. 18, 2011). This means that the Commission must view all inferences in the light most favorable to the petitioners. PNE Energy Supply, LLC, Order No. 25,881, at 3 (2016). Where a plaintiff's pleadings are merely conclusions of law, the Commission engages in a threshold inquiry that tests the facts against the applicable law. Order No. 26,534 citing Clark v. N.H. Dep't of Emp't Sec., 171 N.H. 639, 645 (2019).

IV. Legal Analysis

The DOE's Motion to Dismiss is wholly without merit and therefore fails to meet the standard for dismissal. Under the Commission's standard, a motion to dismiss must demonstrate that the Company's filing is so deficient that there is no basis for the Commission to grant the

relief requested, even after accepting all of the assertions in the filing as true. The Motion to Dismiss does not meet this standard and therefore the proceeding should be allowed to move forward and conclude with a determination on the merits of the Company's proposals, as set forth in the Petition.

In this instance, the Company has requested an adjustment to its base distribution rates to reflect an increased cost of service since the most recent base-rate proceeding. The DOE has failed to show, viewing the record in a light most favorable to Liberty, that the evidence is *so deficient* that no decision by the Commission on the Company's rate petition can be made. The DOE instead has merely raised issues of fact and/or law with respect to the *amount* of adjustment that is appropriate. Rate setting is a determination for the Commission, not the DOE. Accordingly, reaching a determination on what level of rate adjustment is warranted based on the evidence presented in this proceeding should be determined by the Commission following a hearing and full development of the record.

The Commission is authorized to fix rates after a hearing, upon a determination that such rates are just and reasonable (RSA 378:7). Where a utility seeks to increase its rates, such utility bears the burden pursuant to RSA 378:8 of demonstrating the necessity of such increase. Pursuant to RSA 378:28, the Commission is authorized "to receive and consider any evidence that may be pertinent and material to the determination of a just and reasonable rate base and a just and reasonable rate of return thereon." The Motion to Dismiss argues that there is no evidence that the Commission has or could receive during the remainder of this proceeding that would address the concerns raised by DOE with respect to certain adjustments to the Company's test year books and records. This is simply not accurate.

A. The Company Has Provided Sufficient Evidence to Support an Adjustment in Rates.

The Commission's standard of review requires the Commission to determine whether the record (as currently before it) could reasonably support the relief sought. Eversource Energy, Order No. 26,534, at 7 (2021). For purposes of deciding a motion to dismiss, the "record" necessarily consists of the Company's filings, which the Commission must accept as true under established precedent. Thus, the determination that the Commission must make now is whether the proposed rates could be found to be just and reasonable based on the proposed revenue requirement.

In a base distribution rate proceeding, rates are derived from a revenue requirement calculated using a utility's books and records for the selected test year, subject to certain adjustments. To prepare the proposed revenue requirement in a rate case, the utility starts with its books and records with full knowledge that its actual, unadjusted books and records for the test year will not be a one-for-one match with the revenue requirement that is ultimately proposed in support of a change in rates. The Motion to Dismiss plays on this practicality, concluding that, because there is an alleged "unexplained" variance between the Company's books and records, FERC Form 1, and proposed revenue requirement schedules, none of these records is reliable (Motion at 4). However, this conclusion is erroneous and unsubstantiated.

First, Liberty has explained the variance. Second, it is not unusual for there to be variances between the three sets of data because the three sets of data are used for three separate purposes and are developed at different points in time. What the Commission should evaluate during the hearing phase of this proceeding is whether the Company has adequately supported and explained these variances to allow the Commission to set rates based on the revenue requirement calculated by the Company. This will involve the Commission's evaluation of the record presented at

hearing, including the Company's initial filing (e.g., the initial testimony and supporting attachments of Kristin Jardin and Daniel Dane providing a detailed explanation for how the revenue requirement was derived), as updated for hearing, as well as all necessary adjustments identified by the parties and/or the Company.³

The circumstances that have led to DOE's Motion to Dismiss is that the variance between the Company's books of record, FERC Form 1, and the revenue requirement schedules presented in this proceeding *is greater* for the 2022 test year than in other years. If this variance was unexplained, which it is not, the sheer existence of the variance would not even support the Motion to Dismiss, given that the sheer existence of a variance does not lead inexorably to the conclusion that the revenue requirement as proposed at hearing is materially inaccurate. This is the crucial flaw in DOE's Motion to Dismiss. Liberty implemented a new SAP accounting system during the last three months of 2022 (May 5, 2023 Testimony of Lauren Preston at 8). Any time that a new accounting system is implemented, adjustments will be necessary. Post-implementation adjustments are expected and planned for when a utility is implementing a new accounting system because there is virtually no possibility that the system will be implemented without exceptions that have to be resolved post-implementation.

Implementation of the new SAP accounting system had two impacts on the parties' ability to compare the Company's accounting records to the FERC Form 1 and the revenue requirement: (1) certain adjustments were necessary after the closing of the 2022 books; and (2) data is presented in a different format in SAP than the Company's prior Great Plains system. The need to make

³ If the Motion to Dismiss is denied, the Company plans to submit a final, updated revenue requirement as a hearing exhibit or in support of a proposed settlement agreement. This final updated revenue requirement would reflect all adjustments included in the November 27, 2023 revenue requirement served on the discovery service list, and any further adjustments made in response to the proposed third-party review and intervenor testimony, or any adjustments agreed to through settlement negotiations as is typically the case in rate cases before this Commission.

adjustments after the closing of the 2022 books means that the 2022 books do not reflect the adjustments made after January 1, 2023 to produce the Company's revenue requirement and FERC Form 1. However, it is not unusual to identify and make adjustments after the fiscal year accounting closing for the subsequent year. Making adjustments in 2023 contributed to the variance observed by DOE and the Audit Division. However, the basis for this variance has been explained by the Company and does not impact the revenue requirement because the adjustments will be reflected in the revenue requirement for this case.

The Company acknowledges that the change in accounting systems required a shift in understanding for DOE staff and DOE Audit, particularly given that the SAP system is not used by other New Hampshire utilities, thereby creating an issue of "first impression" for DOE staff and DOE Audit. Also, additional time was needed to gather data to respond to the resulting data requests. To mitigate these impacts, Liberty met with DOE Audit on May 16, 2023 to provide a walk-through of the SAP system. During the May 16, 2023 meeting, the Company presented its numbers, account structure, and the settlement process for the SAP system. In addition, the Company explained to DOE Audit the account mapping from the legacy Great Plains System to the SAP system during the audit investigation. The Company also provided the mapping file that explains how information was mapped from the legacy Great Plains system to the SAP system in response to an audit request on June 5, 2023. The mapping file provided to DOE Audit included the Great Plains account number, SAP natural account, and SAP regulatory account. The Company also provided a file with the mapping from the Company's books to the FERC Form 1. Based on the foregoing, it is eminently clear that the Company willingly cooperated to provide a detailed roadmap for reviewing the books and records within the first month of this proceeding. It is unclear what specific issues remain to be solved in relation to DOE's concerns.

Once the Commission considers the Company's initial filing together with these steps taken by the Company to address the variances between its general ledger, the FERC Form 1, and the revenue requirement, it will be apparent that there is no basis to dismiss the proceeding. Although DOE has gone to great lengths to argue to the contrary through recitation of legal cases in Section VIII of its Motion, DOE has failed to put forth case law that has any applicability here. In fact, it is notable that DOE was unable to cite *any* New Hampshire precedent. It is also telling that DOE failed to tie any of the cited cases directly to the facts in this proceeding (see, Motion at Section VIII). Instead, the Motion simply lists a series of cases across the United States where a regulatory commission considered dismissal of a request for a rate increase. Those cases do not support dismissing the Company's Petition in this case.

For example, the first case cited by DOE is a Texas case from 1981 where a water utility attempted to impose a sewer surcharge. 1981 Texas PUC, Docket No. 3546 (Motion to Dismiss, App. 2). In that proceeding the water utility filed a three-page document in support of its initial filing that was supported by three pages of testimony, three one-page exhibits, and a one-page document labeled as "schedule P." Id. The water utility did not file schedules A-M or R despite a requirement to do so. Id. Instead, the water utility stated that schedules A-M and R, as filed in a different docket, should be incorporated by reference. Id. The versions of schedules A-M and R that were incorporated by reference by the petitioning water utility had previously been determined by the commission to be fatally defective. Id. Accordingly, the commission determined that the water utility's sewer surcharge must be dismissed because its rate filing was deficient. Id. DOE fails to correlate these facts, nor this result, to anything in this case. Moreover, the Commission has not made any prior determinations regarding any component of the Company's filing that would render it deficient. No party has alleged that the Company's May 5,

2023 filing was missing any required schedules. Therefore, unlike the Texas water utility, the Company has satisfied all filing requirements.

Similarly, the Florida Public Service Commission case cited by DOE is equally irrelevant. DOE apparently cites this case because it involves an inconsistency between data sets. Florida Public Service Commission, Docket 060262-WS (2007) (Motion to Dismiss, App. 3). However, in that case, the water utility experienced faulty meters that resulted in data with large variances between the test year and subsequent years. *Id.* When questioned about these inconsistencies and the impacts of the identified defective meters, the water utility was unable to reconcile the variances between the data. *Id.* By contrast, Liberty has been able to reconcile the identified inconsistencies and has provided a detailed explanation for the analysis undertaken that supports the accuracy of its data.

The two last cases cited by DOE are similarly distinguishable from this proceeding. In the Minnesota Public Utilities Commission case, the utility attempted to base its rate request on a test year forecast of management projections of what the Company's financial needs would be. Minnesota Public Utilities Commission, Docket No. E-002/GR 89-865 (1990) (Motion to Dismiss, App. 5, at 7). This use of a management projection (rather than actual, historical data) required the commission to consider the accuracy and credibility of the utility's overall budgeting process. The public utility commission ultimately concluded that the utility's budgeting process resulted in a pattern of overestimating expenses that could not provide a reliable foundation from which to determine just and reasonable rates. *Id.* Specifically, the audit relied on by the public utility commission found that the forecast for 100 items in the sample exceeded actual expenditures by 27.12%. *Id.* Here, the total adjustments to the revenue requirement as updated on November 27, 2023 is less than two percent (see Att. 1).

The District of Columbia Court of Appeals case involved two applications for emergency rate relief and a failure by the utility to meet the specific standard of review applicable to such requests. Potomac Electric Power Co. v. Public Service Com., 457 A.2d 776 (1983) (Motion to Dismiss, App. 4). In that case, the utility's application failed to address certain components of the factors that must be considered by the Commission. Id. at 785. Accordingly, there was simply no information for the Commission to rely on in reaching its decision. Here, it cannot be argued that Liberty presented no information on which the Commission could base a decision. Instead, the Company has provided extensive evidence in support of its request to adjust rates and extensive evidence to address the variances between its data sources. The adequacy of the record is affirmed by the voluminous intervenor testimony filed on December 13, 2023 that includes detailed recommendations for the Commission's consideration in setting rates. For example, DOE witness Mullinax makes a revenue requirement recommendation that includes 15 specific adjustments. It is not clear how the DOE could ever support such a recommendation without having sufficient information from the Company to do so.

Based on the foregoing, there is sufficient evidence to support a determination by the Commission that an adjustment to the Company's rates can be considered, subject to a hearing on the merits. Although there is disagreement between DOE and the Company with respect to the Company's revenue requirement, this disagreement should be resolved on the record after a hearing, not by a judgment of dismissal precluding any factual inquiry.

B. The Department of Energy Mischaracterizes the Company's Updated Revenue Requirement as an "Attempt to Cure."

The Motion to Dismiss attempts to characterize the Company's November 27, 2023 updated revenue requirement as an attempt to cure deficiencies in the Company's initial filing (Motion to Dismiss at 17-19). This characterization is simply not correct. As the DOE concedes,

the November 27, 2023 filing was a typical filing made during a rate proceeding that is intended to narrow disputed issues before hearings (*id.* at 17). In fact, the DOE *requested* that the Company produce the November 27, 2023 filing to assist its preparation of testimony by alleviating the need for the DOE witnesses to address issues that have been resolved through the discovery and audit processes. See, November 14, 2023 letter from DOE to the Commission requesting an amendment to the procedural schedule. Further, as part of its November 19, 2023 response to DOE's November 14, 2023 request, the Company reiterated that the updated revenue requirement would memorialize adjustments already identified and agreed to during the proceeding, but would not present any new information. Based on the foregoing, it is clear that the November 27th filing was a routine rate-case filing and not an attempt to “eradicate a fundamental problem” with the Company's initial filing (see, Motion to Dismiss at 17).

In support of its contention that the November 27, 2023 update filing should be viewed as evidence of a flawed filing and grounds for dismissal, the Motion to Dismiss cites to a Massachusetts Department of Public Utilities (“Massachusetts DPU”) decision from 1983. In that proceeding, the petitioner failed to timely comply with directives from its prior rate proceeding that should have been filed before or with the utility's initial filing. D.P.U. 1300, at 13 (Motion to Dismiss, App. 1, at 5). Based in part on the petitioner's failure to timely address these directives, the Massachusetts Office of Attorney General filed a motion to dismiss that was denied by the Massachusetts DPU. *Id.* The Massachusetts DPU denied the motion to dismiss because prior to its ruling on the motion to dismiss, the petitioner had complied with the outstanding directives. *Id.* (emphasis added). It is important to note that, by not complying with the relevant directives, the utility had failed to file specific reports or data that were not otherwise included in the utility's

initial filing. See, id. Here, there is no claim or contention that the Company failed to meet a filing requirement.

In addition, the DOE fails to identify a much more recent decision where the Massachusetts Attorney General challenged a utility's rate filing on the basis of alleged accounting obstacles involving the same issue regarding "natural accounts" that the Company is encountering here. Specifically, in Boston Gas Company and Colonial Gas Company each d/b/a National Grid, D.P.U. 20-120 (2021),⁴ the Attorney General contested accounting changes that resulted from the use of "natural accounting" preventing an analysis of costs by "functional area," contending that, although the Company provided its historical service company charges by current functional cost centers for both the fiscal year and calendar years 2015 through 2020, it did not provide comparable amounts for either the adjusted test year or the rate year. D.P.U. 20-120, at 10. The Attorney General argued that "this lack of information ... significantly impede[s] attempts to determine whether the requested rate year NGSC charges are reasonable, particularly in light of the significant level of NGSC expense and annual increases." Id.

The Department rejected these arguments stating that:

The Company has also provided documentation mapping the accounts maintained in its internal accounting system to the accounts reported in the annual returns to the Department in accordance with the Department's Uniform System of Accounts for Gas Companies (RR-DPU-3).¹⁸ The Department has examined these schedules and is satisfied that the information is sufficient to tie the Company's test-year account balances back to its annual returns.

FN18 states: The Company's internal account numbers **are based on an alphanumeric system of "natural accounts"** (i.e., groupings of various accounts by function). While gas companies are permitted to use their own accounting systems for financial reporting purposes, they are required to report to the Department based on the Uniform System of Accounts for Gas Companies. 220 CMR 50.00, General Instruction 1, Form of Books and Accounts Prescribed. A company that maintains a different accounting system is required to maintain a list

⁴ The Massachusetts Department of Public Utilities' decision in docket D.P.U. 20-120 is provided as Attachment 2.

reconciling the accounts and subaccounts it uses with those required by the Department. 220 CMR 50.00, General Instruction 1, Form of Books and Accounts Prescribed.

D.P.U. 20-120, at 15 (citations omitted) (emphasis added).

Ultimately, the Massachusetts DPU found that, “based on our review, we conclude that the aforementioned information allows for a meaningful review of year-to-year changes in expense levels in order to determine whether the Company’s test-year expenses and revenues are representative of its ongoing costs and revenues, are reasonable in amount, and account for any seasonal variability.” *Id.* at 18. Thus, while the Massachusetts DPU did state in its earlier decision that companies cannot be permitted to circumvent the full statutory review period (six months at the time of this decision) by delaying the filing of necessary information,⁵ the November 27 updates filing is clearly not providing the same type of information as in the Massachusetts matter and the cited case thus is not relevant. *See*, D.P.U. 1300, at 13 (Motion to Dismiss, at App. 1, at 5). The Company’s November 27, 2023 updated revenue requirement adjusted the calculations previously filed and reflected adjustments identified and resolved during the previous months. In addition, the Company has provided requisite information “mapping” the new natural accounts to regulatory accounts.

C. Issues Related to the Effectiveness of SAP are an Issue for Hearings.

The Motion to Dismiss introduces two categories of issues that are not relevant to the Motion to Dismiss, but presumably are intended to undermine the benefits of the Company’s conversion to SAP: (1) alleged data issues observed by DOE in other dockets; and (2) alleged

⁵ The Massachusetts suspension period was six months in 1982 when the relevant case was filed. This is **half** of the current New Hampshire suspension period and therefore it is difficult to draw any comparisons between the Massachusetts case and the instant case. The update filing was submitted ahead of intervenor testimony, rebuttal testimony, and hearings. Further, pursuant to the current procedural schedule a decision on final rates is not expected until June 30, 2024. Arguing that the Company attempted to circumvent the statutory review period by submitting its update filing to parties on November 27, 2023 is nonsensical.

billing and customer satisfaction issues (Motion to Dismiss at 19-22). Even if the DOE's assertions that the Company has experienced a decrease in customer satisfaction associated with implementation of the SAP system, this would not warrant dismissal of the proceeding.

The Motion to Dismiss argues that the SAP system implementation has coincided with a significant deterioration in customer service "as measured by the number of Liberty's customers that has contacted the [DOE's] Consumer Services Division seeking help with or clarification concerning a Liberty bill" (Motion to Dismiss at 20-21). However, more than half of the cited customer contacts were unrelated to and thus did not result from the conversion to the SAP system. Many of these customer contacts actually resulted from macroeconomic factors (e.g., increased energy and other commodity prices) that are beyond Liberty's control and wholly unrelated to the SAP system conversion.

The Motion to Dismiss states that other electric utilities did not experience a similar increase in customer contacts following billing and accounting system conversions (Motion to Dismiss at 21). However, the Motion to Dismiss does not address whether there were any additional factors that may have contributed to the increase in customer contacts during the 12 months following implementation of the SAP system such as increased supply prices; the Motion to Dismiss also fails to address whether the other New Hampshire electric utilities experienced any increase in customer contacts during the same time period despite acknowledging that cost is the "overwhelmingly top complaint of dissatisfied customers" (id. at 21-22).

DOE does not seek dismissal because of decreased customer satisfaction. Nonetheless, the initial testimony of Lauren Preston submitted with the Company's Petition details the benefits of the SAP implementation for customers including long-term benefits that have not yet been realized (Direct Testimony of Lauren Preston at 6-8). Therefore, the Commission should review the

evidence presented by all parties at hearing with respect to customer billing and only then determine whether any disallowances or other remedies are warranted (see, e.g., Direct Testimony of DOE Witness Amanda Noonan). This is exactly the type of review and determination that is appropriate for a hearing. Similarly, the DOE's assertions that SAP has led to data issues in unrelated dockets are irrelevant to the Motion to Dismiss and are appropriately considered (after the Company is afforded an opportunity to respond) if DOE recommends a cost disallowance associated with SAP. Alleged SAP data issues do not warrant dismissal of this proceeding.

D. The Audit Report Does Not Support Dismissal of the Company's Rate Case.

The Company's request in this proceeding is for approval of the test year revenue requirement as the basis for adjusting its rates on a going forward basis. The Audit relied on by DOE's motion to Dismiss is an investigation to verify the books and records of the Company that support this revenue requirement calculation. Here, DOE Audit identified 28 Audit Issues. The Motion to Dismiss devotes approximately six pages to demonstrating that DOE Audit determined that the Company's accounting records do not match its 2022 FERC Form 1 or its revenue requirement schedules and that certain adjustments were required (Motion to Dismiss at 6-12). This is not contested. It is also not determinative of the Company's request in this proceeding.

The Company has taken reasonable and appropriate steps to make necessary adjustments to its records prior to the filing of this case and, if the Motion to Dismiss is denied, will provide additional detail regarding these steps in its rebuttal testimony. Attachment 1 confirms that the Company has incorporated these adjustments into the revenue requirement. The magnitude of the adjustments identified during this proceeding, including the issues identified by DOE Audit, is less than three percent of the 2022 test year proforma revenue increase included in the Petition. Accordingly, the Audit Report does not support dismissal of the proceeding.

However, as detailed below, the Company acknowledges that because adjustments were made to the produce the Company's FERC Form 1 and 2022 test year revenue requirement there remain outstanding concerns from DOE with respect to whether those adjustments are reflected on the Company's books. Liberty agrees that DOE Audit does not typically review the Company's records beyond the test year as part of a rate proceeding. Accordingly, the Company is willing to provide additional information that would demonstrate to DOE Audit that the identified adjustments are appropriately reflected on the Company's books.

IV. IF SUPPLEMENTAL EVIDENCE WOULD AID THE COMMISSION'S REVIEW, THE COMPANY IS READY TO PROVIDE THAT INFORMATION

The DOE's Motion to Stay requested an expedited stay of this proceeding to prevent parties from expending further resources while the Motion to Dismiss is decided. The Company objected to the expedited request for a stay and instead requested that the Commission defer any determination regarding whether a stay is warranted until responses to the Motion to Dismiss had been filed. The Company's objection noted that, if the Motion to Dismiss is denied, a stay would only disrupt the procedural schedule to the detriment of the Commission and the parties that have already expended significant time and resources to review the Petition.

As detailed above, the DOE has failed to satisfy the standard of review applicable to a motion to dismiss. At best, the DOE has identified potential arguments in support of any disallowances that it may recommend. These recommendations should be evaluated by the Commission following a hearing. The Company does acknowledge that the transition to its SAP system – and the need to gain familiarity with the changes -- complicated DOE's review in this proceeding and has been difficult to complete under the normal procedural schedule. To address this issue and provide the DOE with the time required to perform its review, the Company would not object to an adjustment of the procedural schedule that would allow for the proceeding continue

while the Company provides additional information to address discrete issues identified by DOE and/or DOE Audit, to the extent that those issues can be reasonably and clearly identified. To facilitate this proposal, the Company respectfully requests that the DOE be directed to identify the discrete information necessary to address their concerns regarding data presentation variances between the SAP records, FERC Form 1, and revenue requirement. The Company also respectfully requests that a procedural schedule be established for exchange of this additional information. The Company will take all necessary steps to make its case before the Commission, including addressing the issues raised by DOE, but the DOE should not be permitted to leverage the implementation of a new accounting system to dismiss this proceeding.

V. CONCLUSION

WHEREFORE, Liberty respectfully requests that this Commission:

- A. Deny DOE's Motion to Dismiss;
- B. Adjust the procedural schedule to allow for an additional exchange of information to address DOE's concerns; and
- C. Grant such further relief as it deems appropriate.

Respectfully submitted,

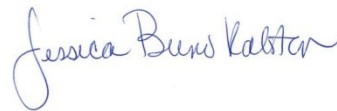
Liberty Utilities (Granite State Electric)
Corp., d/b/a Liberty

By its Attorneys,



Date: December 26, 2023

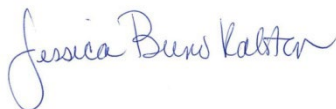
By: _____
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By: _____
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Certificate of Service

I hereby certify that on December 26, 2023, a copy of this objection to the Department of Energy's Motion to Dismiss Proceeding has been electronically 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