

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

**New Hampshire Department of Energy
Objection to Motion to Extend Stay of Proceeding**

Pursuant to New Hampshire Code Admin. Rule Puc 203.07, the New Hampshire Department of Energy (“Department” or “DOE”) hereby files this Objection to Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (“Liberty” or the “Company”)’s Motion to Extend Stay of Proceeding (“Liberty’s Motion”) filed February 5, 2024, in this matter. The Company requests that a stay be granted, “... so that the Company can complete a third-party review of its accounting records in order to provide assurance to the Commission and parties in this case.” *See* Liberty’s Motion at 1. The Department requests that the Commission deny the Company’s Motion and grant the Department’s Motion to Dismiss in the proceeding without further process.

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

1. The Department views Liberty’s Motion as a request for extension of time. However, Liberty’s Motion fails to cite, and fails to demonstrate that Liberty meets, the requirements for an extension of time established by the Public Utilities Commission (“Commission”) in N.H. Code of Admin. R. Puc 202.04. The Commission shall grant a request for extension of time if: (1) The party making the request has demonstrated that circumstances would cause undue hardship or inconvenience unless the request were granted; and (2) the extension would not unduly delay the proceeding or adversely affect

the rights of any party. *See* Puc 202.04(c). Indeed, Liberty’s request would not cause undue hardship or inconvenience on Liberty and would unduly delay the proceeding.

2. Although not characterized as such, the Company’s Motion also appears to request permission to allow evidence into the record after the close of a hearing. Puc 203.30 allows the Commission to accept the filing of an exhibit after the close of a hearing “if the commission finds that late submission of additional evidence will enhance its ability to resolve the matter in dispute.” However, a party making such a request to file an exhibit after the hearing must either make such a request orally before the close of the hearing or after the hearing by motion pursuant to Puc 203.06. Puc 203.06(e) allows a petitioner to file supplemental direct testimony or comments on new or unanticipated issues in a proceeding “[i]f the scope of a proceeding is expanded or issues arise which were not reasonably anticipated by the petitioner.” The issue of unreliable financial information was not unanticipated in this proceeding; Liberty and its parent company, Algonquin Power & Utilities Corporation, knew of the risk before filing the rate case (Transcript January 23, 2024, at 221-224, 270-273, and 289-291); and Liberty was reminded of the issue by the Department’s Motion to Dismiss. As described further below, Liberty has had multiple opportunities to address this issue without needing to file additional evidence after the hearing on the Motion to Dismiss concluded.
3. The Company also fails to cite and fails to demonstrate that Liberty’s proposal satisfies the burdens established in RSA 541-A:31 which gives the Commission authority to direct the timing and process of an adjudicatory proceeding. That authority includes the power

to stay or suspend activity in an adjudication when doing so would promote the efficient resolution of issues before the Commission. *Residents of Colonial Drive, Moultonborough*, Order No. 26,841 at 7 (June 8, 2023).

4. For the reasons set forth below, the Company has not met the burdens of Puc 202.04, Puc 203.30, or RSA 541-A:31.

I. The Company Has Not Demonstrated that Denying its Motion to Stay Would Cause Undue Hardship or Inconvenience.

5. The relevant procedural history (summarized below) demonstrates that Liberty has been allowed ample opportunity to present evidence to support its position that its 2022 books and records form a legally sufficient basis upon which to base its proposed rates:
 - a. On May 5, 2023, the Company refiled its full rate case filing, including the requirements of Puc 1604.01(a).¹
 - b. On December 13, 2023, the Department filed its Motion to Dismiss Rate Filing.
 - c. On December 15, 2023, the Commission issued a procedural order requiring the Company's response by December 26, 2023, and scheduled a hearing on the Department's Motion for January 4, 2024.
 - d. On December 26, 2023, the Company filed its Objection to the DOE Motion to Dismiss, including 562 pages of attachments.
 - e. On December 29, 2023, in Order No. 26,924, the Commission approved an Expedited Motion to Stay this proceeding filed by the Department, until January 31, 2024, to allow for the Commission's consideration of the DOE's Motion to Dismiss.²

¹ In Order No. 26,814 (May 2, 2023), the Commission rejected the Company's May 1 rate case filing as incomplete because the Company had not yet filed its 2022 FERC Form 1.

² Notably, the Department's Expedited Motion to Stay the general rate case proceeding was filed in conjunction with its Motion to Dismiss. The Department's Motion to Stay is distinguishable from the Company's Motion to Extend Stay of Proceeding in that the Company seeks additional time so that they may prepare and introduce new facts into the proceeding, separate from its petition, discovery responses, and testimony. The Department's Motion

- f. On January 4, 2024, the Commission held a half-day hearing on the Motion to Dismiss at which the Company presented its arguments against the Department's Motion to Dismiss.
 - g. On January 8, 2024, the Commission issued a procedural order scheduling a continued hearing regarding the DOE's Motion to Dismiss for January 23, 2024.
 - h. On January 23, 2024, the Commission held a full-day hearing on the Motion to Dismiss during which the Company offered direct testimony of its witnesses, cross-examined Department witnesses, and made a closing statement.
 - i. On January 25, 2024, the Commission issued a procedural order extending the stay in this proceeding, *See* Order No. 25,924 (December 29, 2023), from January 31, 2024, until February 16, 2024.
 - j. On February 6, the Commission, *sua sponte*, extended the stay until February 29, 2024.
6. Notwithstanding these opportunities to prepare and present testimony, exhibits, and oral arguments for the Commission's consideration in response to the Department's Motion to Dismiss, as well as the opportunity to cross examine DOE witnesses on the matter, the Company seeks yet another chance to make its case. To the extent Liberty would be inconvenienced by denial of its Motion, such inconvenience is the result of its own failure to present sufficient information in the past nine months since its rate case was filed.
7. While certainly an issue for further review if the case goes forward, a preliminary review of Liberty's most recent Form F-1, as well as the statements of Liberty's Vice President of Finance and Administration at the January 23, 2024, hearing (Transcript January 23,

to Stay was simply a procedural matter so that the Commission could examine the record considering the Department's Motion to Dismiss, and so that parties would not have to expend further resources in the proceeding until the Commission made a final decision on the Motion to Dismiss.

2024, at 230-231), would indicate that Liberty's need for rate relief is not urgent, and therefore, Liberty would not necessarily suffer undue financial hardship from a dismissal. Liberty's Form F-1 for the 12 months ending September 30, 2023, shows a return on rate base of 7.51% (Form F-1, Attachment 1, p. 1 of 2) and 6.77% (Form F-1, Attachment 2, p. 1 of 2) – with the difference depending on differing rate base treatment of certain deferred income taxes. These earned returns compare to Liberty's allowed rate of return (adjusted for 2022 debt) of 7.6%. (Schedule RR-5 from Liberty's May 5, 2023, Rate Case Filing, Bates II-208). This premise is further supported by the fact that the DOE's recommended revenue requirement for Rate Year 1, if the case goes forward, is \$2.0 million - far less than the \$15.5 million the Company seeks. (December 13, 2023, DOE Testimony of Donna H. Mullinax at 7-8).

8. Based on the ample opportunities the Company has had to present its case and the review of information indicating that its need for rate relief is not urgent, the Company will not be caused undue hardship or inconvenience by denying its request to extend the stay.

II. Extending the Stay for Further Review Would Unduly Delay the Proceeding Because Liberty's Proposed Remedy Does Not Address the Core Issue

9. Liberty proposes a new procedural schedule that extends the stay until March 15, prolonging any resolution on this issue until at least the end of April,³ all with the goal of

³ The Department does not concur with the compressed schedule proposed by the Company in its Motion, which calls for re-starting litigation of the rate case during April while the Department's Motion to Dismiss would still be pending. *See* Motion to Extend Stay of Proceeding at 6-7.

setting rates on 2022 financial information that the Department has clearly demonstrated to be unreliable.

10. At the January 23 hearing, Liberty testified extensively concerning mapping issues with its 2022 general ledger accounts. (Transcript January 23, 2024, at 157-164). Simply stated, certain account balances existing in the Company's legacy accounting system (Great Plains) at the time the Company transitioned to a new accounting system (SAP) were mapped to incorrect accounts in SAP. As a result, the 2022 general ledger upon which the Company's rate case is based contains errors, including many instances where balance sheet account balances were mapped to income statement accounts and vice versa. (Transcript January 23, 2024, at 19-20, 128). Liberty testified that the 2022 books are closed and will not be re-opened notwithstanding these errors. (Id. at 159-160). Liberty testified that it corrected for a substantial majority of these mapping issues when it prepared its FERC Form 1, after the 2022 books were closed, and that it corrected for more of these mapping issues when it prepared its May 5 rate filing (Id. at 160-162). Liberty went on to state that it would correct for more of these issues in an updated rate case calculation (Id. at 228-229, 274); and in its Motion, Liberty now states that it will file corrected rate case calculations after the third-party report is completed (Liberty's Motion at 6).

11. All of these efforts by Liberty are directed towards correcting the information contained in its 2022 books and records for use in this rate case. None of these actions will address the core issue underlying the DOE's Motion to Dismiss, which is that the closed 2022

financial information contains sufficient errors so that it cannot be reasonably relied on for setting rates. As the DOE stated at the January 23 hearing, RSA 378:27 and 28 allow the Commission to set rates based on the financial information reported to the Commission, “unless there appears to be reasonable grounds for questioning the figures in such reports.” Exhibit 8 (the DOE Audit Report) contains ample reasons for questioning the figures in Liberty’s financial reports and the data therein. What Liberty seeks to do with the third-party review and report is to produce corrected financial information that should have been prepared before the case was filed (but was not) and then ask the Commission to set rates on that corrected financial information. That is not the course of action or events called for by RSA 378:27 and 28, and allowing that would unduly delay the proceeding.

12. Additionally, the proposed third-party review would not address the incorrect test year sales and test year billing determinants which are used for rate design. Liberty has acknowledged that at least 684 customers’ bills were delayed from late 2022 due to SAP implementation and not billed until 2023. *See* Exhibit 8 at 239-254. Liberty’s proposed third-party review of its 2022 accounting records will not restate billing determinants, which are critical for designing just and reasonable rates. The Company should have made those adjustments in the May 5, 2023, filing, but did not.

13. Liberty’s proposed third-party review will not address underlying Information Technology (IT) issues, which, according to the Company, resulted in the inaccurate 2022 financial data used as the basis for this rate case. The DOE testified that Liberty

needs to undergo an IT audit to find and address the root cause of the mapping issues (Transcript January 23, 2024, at 23, 131). The scope of the report Liberty proposes does not include examination of IT problems or mapping errors. Absent such an IT audit to identify all remaining mapping issues, system corrections cannot be made, and accounts will continue to be mapped incorrectly.

14. Liberty's cover letter for its Motion states, "[t]he Company has engaged PwC, at the Company's expense, to provide an independent confirmation to the Commission of the reliability of the financial information relied on in this proceeding." Liberty's Motion at 5 states that the Company has engaged PwC to perform a review that will:

(a) assess the overall reliability of the data used to support the Company's rate filing and the Company's basis for asserting that such data is reliable; (b) examine the reconciliations between (i) the Company's 2022 general ledger; (ii) the Company's FERC Form 1; and (iii) the Company's revenue requirement schedules submitted in this proceeding, inclusive of adjustments identified during this proceeding.

In other words, Liberty is hiring a consultant to confirm what it already believes (that the 2022 financial information is reliable for rate setting), despite significant evidence to the contrary, and to do what the Company should have done before it filed this rate case.

15. The DOE understood Liberty's proposal as expressed by the Company on January 4 and January 23 to be an audit of its 2022 books and records to identify any additional accounting errors embedded in the books for 2022, before those books would be used for rate making purposes. "Assess[ing] the overall reliability of the data used to support the Company's rate filing" (see paragraph 14 above) could include an in-depth review of all test year transactions to try to determine that the books used for rate setting were accurate

(including reviewing and correcting for the many mapping issues already identified). However, that level of review seems unlikely in the short time frame specified by Liberty. The “assessment” could also mean that the consultant will simply review and confirm that the rate case schedules are corrected for errors that Liberty has already identified. This would not address the fundamental question of the reliability of the 2022 financial information.

16. The DOE also understood Liberty’s proposal as expressed by the Company on January 4 and January 23 to include an offer seeking agreement and cooperation between the Company, the DOE, the Office of the Consumer Advocate, and other parties regarding how the “assessment” would proceed. (Transcript January 4, 2024, at 59-61 and 104; Transcript January 23, 2024, at 276-277). The Company’s decision to move forward with retaining PwC without approval from the Commission or input from other parties represents a substantial variation from what it laid out at the hearings. Although the DOE expressed opposition to the Company’s proposal at the hearings, it laid out several elements it believed should be included in such a third-party audit, with the understanding that such input would be considered if the audit proposal were to move forward (Transcript January 23, 2024, at 133). The Department also expressed reservations about the proposed 90-day timeline (Id. at 131). The Company’s decision to move forward with hiring a third party to perform a review with a Company-determined scope in 30 days and without input from the other parties is a stark contrast to the proposed collaboratively-scoped 90-day review the Company represented to the

Commission and the parties at the January 4 and 23 hearings.

17. Aside from the additional time required for the Company's audit, if allowed, the Department will need time for further investigation, which could include retaining its own expert to evaluate the audit.⁴

18. Liberty's Motion to Extend Stay proposes to perform the review on an expedited basis – 30 days rather than the 90 days originally proposed by Liberty in the January 4 and January 23 hearings. This further calls into question the thoroughness, credibility, and future applicability of the report. The DOE Audit Report notes that the DOE Audit Staff, “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.” *See* Exhibit 8 at 27. Given the length of time the Company required to respond to questions asked by the DOE's Audit Staff, the DOE is concerned about the Company's ability to produce all of the information requested by the consultant in time for the consultant to draft and file a comprehensive report.⁵

19. If the Commission were to grant Liberty's Motion, some fundamental questions about Liberty's proposed consultant work would need to be addressed. The scope of the report

⁴ If the Department were to request to retain its own expert following the conclusion of Liberty's review, this would come with similar timing concerns to those laid out by the Department at hearing in its opposition to Liberty's proposal for a third-party review (Transcript January 23, 2024, at 132-133).

⁵ This is not including the Company's delayed responses to data requests by the DOE's regulatory staff, some of which were subject to an August 31, 2023, Motion to Compel when the Company still had not submitted data responses 19 business days after the deadline.

laid out in Liberty’s Motion was vague – indeed, no scope was provided beyond the two points cited in paragraph 14 above. Liberty states that the report is subject to a set of guidelines, but does not say what those guidelines are. The Company further explained that it engaged PwC to provide an “expert consulting report” rather than an audit report, but did not explain what an expert consulting report is, and how that differs from an audit. The Department is concerned that the assessment Liberty has now undertaken will not be performed according to generally accepted auditing standards. Finally, Liberty noted that it has worked with PwC on other matters, but does not further describe the Company’s relationship with PwC or the nature of these other matters.

III. Granting the Company’s Motion Would Not Promote the Efficient Resolution of Issues before the Commission.

20. The DOE reiterates its position that the 2022 test year is unreliable. Granting this extension will unduly delay the proceeding. This is not an efficient resolution of issues before the Commission. As 2024 marches on, using 2023 (or 2024) information for rate setting is likely a far more efficient way for Liberty to seek rate relief than continuing to try to resuscitate the 2022 test year. Liberty’s Vice President of Finance and Administration testified that in 2023 the mapping issues were largely behind Liberty. (Transcript January 23, 2024, at 164-165). Ensuring that its test year books are correct as well as consistent with its FERC Form 1 and rate case schedules in a new rate case is the best course of action for all involved.

21. The Department cautions however that if a 2023 test year is used, the Commission should require the Company to ensure comprehensive, and independent, financial and IT audits are completed *before* any rate case is filed. Additionally, any entries Liberty made to its 2023 books to correct for errors related to 2022 would need to be accounted for before the 2023 books could be used for rate setting. The same would be true for sales that should have been recorded in 2022 but were recorded in 2023 due to SAP-related billing delays. The Commission should also require Liberty to demonstrate that mechanisms have been put into place to ensure that all errors from the SAP conversion and other Company errors related to the 2022 test year preparation have been corrected and that those corrective measures are working as intended to ensure an accurate filing of a 2023 or 2024 test year.

IV. Conclusion

Pursuant to RSA 12-P: 2, IV, a key role of the Department is to ensure a complete record for consideration by the Commission, and pursuant to RSA 363:17-a, a key role of the Commission is to be the arbiter between the interests of Liberty and its customers. The Department believes the record concerning the Department's Motion to Dismiss and Liberty's Motion to Extend Stay is complete. As the DOE noted in its closing statement on January 23, in order to conclude that reasonable grounds exist for questioning the figures in the Company's filing pursuant to RSA 378:27-28, the Commission need only look at Exhibit 8, specifically Audit Issue Number 1 involving accounting issues; Audit Issue Number 12 involving test year revenue; Audit Issue Number 13 involving payroll; and Audit Issue Number 25 involving corporate allocations; as well as Exhibits 4 and 5, involving errors (some corrected and some to

be corrected) in the test year books upon which the Company's proposed rate relief is based. On the basis of these issues, the Commission should deny Liberty's Motion to Extend Stay of Proceeding and dismiss the pending rate filing so rates are not set based on the 2022 financial information provided by Liberty in this case.

WHEREFORE, the Department respectfully requests that the Commission:

- 1) Deny Liberty's Motion to Extend Stay;
- 2) Grant the Department's Motion to Dismiss without further process; and
- 3) Grant such other relief as is just and required.

Respectfully submitted,

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