

**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**

**Motion for Leave to Respond to the Objection of the Department of Energy to  
Motion to Extend Stay of Proceeding**

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (“Liberty” or the “Company”) hereby moves the New Hampshire Public Utilities Commission (“Commission”) for leave to respond to the New Hampshire Department of Energy’s (“DOE”) Objection to the Company’s Motion to Extend Stay of Proceeding (“Motion”). As part of this response, Liberty is including an affidavit from PwC regarding its evaluation and report it will make available to the Commission. The Company believes that it is important for the Commission to consider PwC’s statement about the work it will undertake when it evaluates the DOE Objection. Mr. Riley, a nationally recognized expert in utility accounting and with significant experience in SAP, makes clear that PwC’s review will include an assessment of the data conversion from the Company’s legacy system to SAP and the mapping of natural to regulatory general ledger accounts within SAP and then assess the completeness and accuracy of adjustments recorded – the very issues that concern DOE. Simply put, it is in the public interest for the Commission to receive the PwC report as part of this case.

In support of this Motion and Response, Liberty states as follows:

**I. The Third-Party Review Undertaken by PwC Will be Relevant, Credible and in the Public Interest**

In its Objection, DOE attempts to preemptively discredit the proposed PwC review by broadly stating the PwC review “would not address the fundamental question of the reliability of the 2022 financial information.” (Objection at 9). Specifically, DOE raises the following concerns: (1) the DOE argues that the review will not change the closed 2022 books; (2) the review will not address the “underlying IT issues;” (3) the timeline for performing the review is too compressed; and (4) the Company has engaged PwC without input from DOE.

As an initial matter, the Company disagrees that the PwC review will not address the core issue of whether the Commission can set rates using the Company’s 2022 financial data. PwC’s review will include an assessment of the appropriateness and completeness of adjustments the Company made to its financial data that were reflected in its FERC Form 1 and revenue requirement schedules based on those adjustments (*see* Riley Affidavit at 3-4). Fundamentally, this assessment will allow PwC to opine on whether the financial data upon which the revenue requirement is predicated can be relied on for purposes of setting rates (*id.*). The review by PwC will also address the issues that DOE has characterized as an “IT audit.” That is, PwC will review the data conversion from the Company’s legacy system to SAP and the mapping of natural to regulatory general ledger accounts within SAP and then assess the completeness and accuracy of adjustments recorded. This is the very information that will be helpful to the Commission and that the DOE itself says it requires. There is no sensible reason to not receive this information from PwC within the next month.

The Commission should place no weight on DOE’s assertions that the timeline proposed by the Company will be inadequate to perform a review and that somehow PwC’s work will not be credible given the proposed completion date of the work. DOE has dismissed the PwC work before

it has even been completed. Mr. Riley's affidavit is clear that PwC can complete the work on time and in a reputable manner. See Riley Affidavit at 5). PwC is an independent, nationally recognized accounting firm. The Commission should trust that PwC, not DOE, is in the best position to assess whether it can complete work on time and in a professionally reputable manner and thus should place no credence on its concerns.

Further, the Commission should not be swayed by DOE's complaints that the Company moved forward with the third party review without its input or signoff. The Company has made repeated efforts to reach out and discuss the third party review with DOE, to no avail. Liberty met with DOE prior to DOE filing its motion to dismiss, discussed the third-party review during the January hearings, and met again with senior DOE staff prior to filing the Motion, all to provide DOE the opportunity to weigh in on the nature and scope of the third-party review. DOE declined the offers and declined to provide its input. The Company made these efforts even in the face of DOE's statements at the January 4 and 23 hearings that it does not support the proposal (2023 Jan. 4 Tr. at 70-73; 2024 Jan. 23 Tr. at 130). DOE has made it clear that it does not want to work in a collaborative manner on this matter. The Company respectfully requests that the Commission focus on the public interest, which supports receiving and reviewing the information in the context of this rate proceeding.

Finally, DOE argues that the Company has proposed an expert consulting report and that the DOE is concerned that this report will "not be performed according to generally accepted audit standards" (Objection at 11). As explained in the Motion, the Company has retained PwC to provide an expert consulting report specifically because such a report will allow PwC to testify before the Commission and respond to questions from the Commission and other parties (Motion at 5-6; see also 2024 Jan. 23 Tr. at 276-277; see also Riley Affidavit at 3). PwC's expert consulting

report is subject to the professional and ethical guidelines set forth in the American Institute of Certified Public Accountants (“AICPA”) Code of Conduct and will be presented to the Commission via testimony given under oath. Also at the February 2, 2024, meeting, The Company generally described the scope of work to be performed by PwC at its February 2, 2024, meeting with DOE and offered to provide the detailed scope that governs PwC’s engagement. It is therefore confusing that the DOE continues to argue that the scope of work is “vague” despite being afforded an opportunity to review, provide input, and ask questions about the scope. The DOE cannot be heard to argue that the Company has failed to act collaboratively while simultaneously misrepresenting the efforts that have been made by the Company to include input from the DOE.

II. Granting the Company’s Request to Respond to the DOE Objection is in the Public Interest

The Commission’s procedural rules contemplate that parties may file motions and objections thereto. See Puc 203.07. There is no explicit provision (or prohibition) in the Commission’s administrative rules that address when a party may file a reply to an objection. Puc 201.05 provides that in the absence of a statutory preclusion the Commission may waive any provisions in its rules upon a finding that the waiver “serves the public interest” and the waiver will not “disrupt the orderly and efficient resolution of matters before the Commission.” Puc 201.05(a). Therefore, to the extent Puc 203.07 precludes submission of replies to objections to motions, a waiver is appropriate in this instance to allow the Company to respond to certain assertions set forth in the Objection.

Specifically, it is in the public interest for the Commission to consider the Company’s reply because the DOE has made misstatements in the Objection that should be corrected before the Commission reaches its decision. Further, granting Liberty’s request to reply to the DOE’s Objection will not disrupt the orderly and efficient resolution of matters before the Commission

since this matter has already been stayed through February 29, 2024, and the Commission has not yet ruled on the underlying Motion to Dismiss filed by the DOE. Allowing Liberty's reply would simply provide the Commission with additional information useful in its decision making without impacting the current procedural schedule.

### III. Reply to DOE Objection

As detailed below, the Commission has authority to grant the Motion pursuant to RSA 541-A:31 because the Company has demonstrated that extending the stay of this proceeding to allow the Company to submit an expert consulting report will promote the efficient resolution of the Motion to Dismiss and the Company's Petition. Specifically, an extension of the stay will assist the Commission's determination of whether this case can move forward using 2022 financial data; a determination that the Commission has identified as challenging in light of the vastly different positions taken by the DOE and the Company. The DOE's attempts to introduce new evidence and/or issues should be disregarded as irrelevant to the Company's Motion.

#### A. The Commission is Authorized to Extend the Stay of this Proceeding

DOE argues that Liberty fails to satisfy the burdens of Puc 202.04, Puc 203.30, and/or RSA 541-A:31 (Objection at 4). However, the only standard applicable to the Company's Motion is RSA 541-A:31, and it is clear that this statute authorizes the Commission to grant Liberty's Motion. The Commission has recognized in this docket that it has the authority to direct the timing and process of an adjudicatory proceeding, which 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. Order No. 26,924 at 3 (Dec. 29, 2023) (citing Residents of Colonial Drive, Moultonborough, Order No. 26,481 (2023)).

While the Company did not explicitly cite to RSA 541-A:31 in its Motion, it did specifically address how its Motion will promote the efficient resolution of the issues before the Commission (Motion at 5, 7). The Company's Motion cites to the hearing transcript from the January 23, 2024, hearing where the Commission noted that it faces a difficult task based on the vastly different positions presented by the DOE and the Company (Motion at 4 citing 2024 Jan. 23 Tr. at 267-268). The Company's Motion explained that the Company's proposal is intended to assist the Commission with reaching a decision in light of those vastly different positions (Motion at 4-5).

The Company's Motion further explained that its proposal for a third-party review is designed to directly address the issues raised by the DOE and allow the proceeding to move forward without sacrificing the efforts undertaken by all parties to-date (Motion at 7). Finally, the Company's Motion stated that the proposal is expected to result in a more efficient proceeding (should the DOE's Motion to Dismiss be denied) because the expert consulting report is expected to narrow the issues for settlement and/or litigation during hearings (id.). Accordingly, it is clear that the Company's request will promote the efficient resolution of issues before the Commission and therefore the Commission has the power to grant the Company's Motion and briefly extend the stay of this proceeding.<sup>1</sup>

The DOE's argument that the proposal would not support efficient resolution of this proceeding is based on the DOE's position that the Company's 2022 financial data cannot be relied on (Objection at 11). The DOE's "solution" to this issue is to suggest that the Company should

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<sup>1</sup> The Motion was filed on February 5, 2024; on February 5, 2024, the proceeding was stayed through February 16, 2024, pursuant to the Commission's ruling issued from the bench at the January 23, 2024, hearing and memorialized in its January 25, 2024, procedural order. On February 6, 2024, the Commission issued an order extending the stay *sua sponte* (and unrelated to the Motion) until February 29, 2024. Accordingly, the Company's request to extend the stay by one month as set forth in the Motion has become a request for a 15 day extension in light of the Commission's February 6, 2024, procedural order.

file a new petition based on 2023 or 2024 data (id.). This solution ignores the work that has already been undertaken by the parties in this proceeding that would become moot. In light of the short extension requested by the Company until March 15 (just two weeks beyond the current stay) and the Company's representation that the expert consulting report will directly address whether the 2022 financial data can be relied on, it is difficult to conclude that starting over is a more efficient resolution of this proceeding. Should the Commission decide that the 2022 financial data can be relied on and deny the Motion to Dismiss, the parties would be able to salvage the work undertaken between May 2023 and December 2023. Denying the Motion and immediately granting the Motion to Dismiss ensures that any work already undertaken becomes moot.

The DOE's attempt to mischaracterize the Company's Motion as either a request for an extension of time or a request to file evidence after the closing of a hearing should be disregarded (DOE Objection at 1-2). The DOE's argument that the Company's Motion is a motion for an extension of time is difficult to address because the DOE fails to even identify the deadline that the Company is allegedly seeking to extend. In fact, there are currently no deadlines applicable to the Company in this proceeding. It is undisputed that the procedural schedule in this matter is currently stayed through February 29, 2024, with the exception of the Commission's consideration of the Motion to Dismiss. Order No. 26,294 at 4 (2023); see also February 6, 2024, Procedural Order. Accordingly, there is no deadline to be extended and Puc 202.04 is thus inapplicable.

Similarly, Puc 203.30 does not apply. Pursuant to Puc 203.30, the Commission may authorize the filing of exhibits after the close of a hearing if the Commission finds that the late submission will enhance its ability to resolve the matter in dispute. It is clear that Puc 203.30 is not applicable here because the record in this proceeding *is not closed*. If the DOE's Motion to Dismiss is denied (as the Company has argued it should be), the procedural schedule would resume

and continue with additional discovery, rebuttal testimony, and *evidentiary hearings*. See the July 24, 2023, Procedural Order (adopting the proposed procedural schedule for this proceeding and setting eight days of hearings). Accordingly, the Commission expressly anticipated the receipt of additional information for purposes of developing the record in this proceeding. The Company's proposal to file a third-party report and allow for discovery and/or a hearing on that report represents a proposal to amend the procedural schedule but is not a request to offer evidence after the record has been closed. The Motion specifically addresses this request to amend the procedural schedule including time for parties to review the third-party report, issue discovery regarding the third-party report, and conduct cross examination regarding the third-party report<sup>2</sup> (Motion at 6).

As discussed above, RSA 541-A:31 authorizes the Commission to grant the Motion. However, even if the Commission were to apply Puc 202.04 and/or Puc 203.30 as suggested by DOE, the Company's Motion should be granted. As set forth in the DOE's Objection, a request for an extension of time should be granted where (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. Puc 202.04(c).

In support of its objection to the Company's alleged request for an extension of time, DOE argues that dismissal of the Company's petition in this proceeding would not cause undue hardship or inconvenience to the Company because DOE alleges that the Company does not have an urgent need for rate relief (DOE Objection at 4-5). This argument appears to create a deadline for increasing the Company's distribution rates and then argue that indefinitely extending the time for

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<sup>2</sup> The DOE notes in its objection that it does not agree to the "compressed schedule proposed by the Company" (DOE Objection at 5, fn. 1). The Company reiterates that the procedural schedule was included in its Motion for illustrative purposes only and that the Company stated that it would work with the parties to develop a formal proposal to be presented to the Commission (Motion at 6, fn. 5).

granting such an increase would not cause undue hardship or inconvenience to the Company. Even assuming arguendo that there was a deadline applicable *to the Company* with respect to increasing its own distribution rates (which there is not) and *that the Company were seeking to extend such a deadline*, the DOE's attempts to argue that there would be no hardship to the Company are flawed.

The DOE supports this argument based on the DOE's recommendation to increase rates by \$2.0 million versus the Company's request for a \$15.5 million increase and the DOE's assertion that the Company is earning a sufficient return on rate base<sup>3</sup> (Objection. at 5). The DOE appears to be arguing that the Commission must accept the DOE's recommendation over the evidence presented by the Company. This is the opposite of the standard of review applicable to the Motion to Dismiss (and the Company's return on rate base is ultimately irrelevant to the Motion).

The standard of review applicable to a motion to dismiss requires the Commission to view all inferences in the light most favorable to the *petitioners*, not the moving party. *See PNE Energy Supply LLC*, Order No. 25,881, at 3 (2016). The Company's May 5, 2023, Petition filed in this case states that "[t]he Company files this case because, under the rates currently in effect, it is unable to earn the rate of return authorized by the Commission in Docket [DE] 19-064." (Petition at 2). The Company's Petition also requests an annual increase in distribution rates of \$15,487,002 (*id.* at 1). Accordingly, the DOE's recommendations cannot simply be accepted as fact and used to support a determination that the Company will not experience undue hardship because DOE is not the petitioner in this proceeding and the Commission must assume the facts as presented by the Company.

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<sup>3</sup> The DOE's reliance on the Company's testimony at the January 23, 2024, hearing that there are no concerns regarding the financial health of the Company and its parent organization are misguided (DOE Objection at 4 citing 2024 Jan. 23 Tr. at 230-231). The Company's testimony was that it is able to meet its financial obligations (2024 Jan. 23 Tr. at 230-231). This does not equate to earning its authorized rate of return.

Similarly, Puc 203.30 supports acceptance of the Company's proposed third-party report. Pursuant to Puc 203.30(c), in determining whether to admit the late filed exhibit in the record, the Commission considers: (1) the probative value of the exhibit; and (2) whether the opportunity to submit a document impeaching or rebutting the late filed exhibit without further hearing shall adequately protect the parties' right of cross examination pursuant to RSA 541-A: 33, IV. The probative value of the expert consulting report is clear -- it will directly address the issues raised by DOE regarding the reliability of the Company's 2022 financial data and assist the Commission's review of same (*see* Riley Affidavit at 3-4<sup>4</sup>). And there can be no concerns regarding the right to cross-examination because the Company's Motion expressly proposes that opportunity following a period of additional discovery. In fact (as discussed in more detail above and in the Affidavit of Sean Riley), the Company has engaged PwC to produce an expert consulting report to ensure that PwC will be permitted to testify before the Commission and respond to cross-examination by the parties (Motion at 5-6; see also Riley Affidavit at 3). Based on the foregoing, the Commission is authorized to grant the Motion regardless of which provision of law it applies to the Company's proposal.

WHEREFORE, Liberty respectfully requests that this Commission:

- A. Grant, Liberty's request to respond to DOE's Objection;
- B. Grant the Company's motion to extend the stay of this proceeding; and
- C. Grant such further relief as it deems appropriate.

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<sup>4</sup> As set forth in his affidavit, Mr. Riley is the partner at Pricewaterhouse Cooper ("PwC") overseeing the review of the Company's 2022 financial data to respond to the issues raised in this proceeding. Mr. Riley has provided an affidavit attached to this response intended to provide additional clarity regarding PwC's engagement and scope of work.

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

By its Attorneys,



Date: February 15, 2024

By:

Michael J. Sheehan, Esq. #6590  
114 North Main Street  
Concord, NH 03301  
(603) 425-8085  
[Michael.Sheehan@libertyutilities.com](mailto:Michael.Sheehan@libertyutilities.com)



By:

Jessica Buno Ralston, Esq.  
Keegan Werlin LLP  
99 High Street, Suite 2900  
Boston, MA 02110  
(617) 951-1400  
[jralston@keeganwerlin.com](mailto:jralston@keeganwerlin.com)

Certificate of Service

I hereby certify that on February 15, 2024, a copy of this Motion to Reply to the Department of Energy's Objection has been forwarded to the service list for docket DE 23-039.



Jessica Buno Ralston