STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DE 23-044

LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP.
d/b/a LIBERTY

2023 Default Service Solicitations

Objection to Motion for Rehearing

Liberty Utilities (Granite State Electric) Corp., d/b/a Liberty, through counsel, respectfully objects to the Department of Energy's motion for rehearing of Order No. 27,025 (June 24, 2024) (the "Order") because the motion does not demonstrate that the Order is "unlawful or unreasonable" as required by RSA 541:4, and because any items the Order may have "overlooked or mistakenly perceived" are minor and do not affect the substance of the Commission's analysis and conclusion.

Background

The Order accurately summarized the relevant factual history. That is, Liberty bought the statutorily required eight percent of 2020 Class III RECs (the "RECs") in July 2020 at a price higher than the prevailing Alternative Compliance Payment (ACP) level, but at a substantial savings over a new ACP level that the Legislature had recently approved. The Governor subsequently vetoed the omnibus bill that contained the higher ACP, which veto the Legislature sustained.

Separately, the Commission later reduced the eight percent requirement to two percent for Class III RECs, leaving Liberty with more RECs than needed. Liberty banked and used as

many of the RECS over the following two years as permitted under the law, RSA 362-F:7, and then sought to recover the cost of the unused RECs in this docket. Importantly, Liberty opted "as a compromise," Order at 3, not to seek recovery of the incremental amount paid for the RECs in excess of the prevailing ACP, forgoing the argument that it was reasonable for Liberty to rely on legislation passed by both the House and Senate when it bought RECs at a price lower than the ACP contained in the new legislation.

Finally, the Department acknowledged that it would have been prudent for the Company to have purchased in June 2020 the full eight percent of RECs at a price at or below the ACP. Transcript of December 12, 2023, hearing at 74 (lines 9-13), at 81 (lines 4-20), and at 86 (lines 14-23) ("if the prices that they purchased RECs at were below the Class III ACP, I don't think we'd be having much of a disagreement").

The Commission allowed Liberty to recover the costs of the unused RECs at the ACP price, as follows:

> In navigating the shifting sands of the Class III REC compliance environment in the summer of 2020, with the potential of the (to-be-vetoed) HB 1234 increasing ACP rates to $55/MWh, and concerns about Liberty meeting the 8 percent Class III attainment level prevailing at that time, the Company acted on the razor's edge of prudency in acquiring the RECs in question. We will therefore finalize the compromise recommended by the Company, wherein Liberty would only recover the cost of these RECs to the then-operative ACP cost level of $34.54 through its Default Service rates.
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> Order at 5.

The Department's Motion for Rehearing

The Department's motion claims that there are "multiple instances" in the Order that demonstrate the Commission "mistakenly perceived" the renewable portfolio standard ("RPS")

compliance process. Those instances include, first, an alleged misunderstanding that the RPS compliance year begins and ends mid-year, rather than on a calendar year basis. A fair reading of the Order reveals an understanding that the RECs must have been generated during a calendar year, but that the utilities must prove compliance (either through REC purchases or ACP payments) by the end of June each year. The relevant point the Commission plainly – and correctly – made is that Liberty faced a difficult decision in July 2020 to buy RECs at a price substantially below the ACP that had recently been approved by the Legislature, and in an amount (eight percent) that was firmly set in law, but that could possibly be changed in the future. The Order's reference to a "2021-2022" compliance year (rather than a 2020 compliance year with proof of compliance being due in June 2021), was plainly a reference to the fact that utilities can purchase 2020 RECs through June 2021. And any possible confusion over the start and end of the relevant compliance year is not relevant to the substance of the Order's conclusion. That is, the Order did not reach its conclusion because the Commission thought the compliance year was 2020-2021, rather than calendar year 2020.

Second, the motion alleges that the Order misunderstood the timing of Liberty's July 2020 purchase of the RECs in relation to Liberty having to demonstrate 2020 compliance by June 2021. The Department argues that the Commission thought Liberty was facing an "impending deadline in July 2020" when it bought the RECs. The plain reading of the Order suggests otherwise. The Commission recites the various changes in the ACP and percentage requirements that have occurred over the years, citing to the Commission and Department orders lowering the Class III requirement and the proposed legislative changes to the ACP, all to support the Order's reasonable conclusion that Liberty was "navigating the shifting sands of the Class III REC compliance environment in the summer of 2020." Order at 5. The Order does not

suggest Liberty made a last-minute decision, rather that it made a difficult decision given all the factors that could change.

Finally, the motion alleges the Order misunderstood the process by which the Commission (and now the Department) may reduce the requirement for Class III RECs from the statutorily required eight percent to some lower level, and thus the Department dismissed as misguided the Order's suggestion that the Department inform the Commission (and others) of the "directional outcomes for REC attainment **and** ACP level-setting, whenever possible," Order at 5 (emphasis added), perhaps during the electric utilities' default service proceedings. The Department dismissed this suggestion because "the new ACP rates are calculated and published in accordance with statute by January 31 for that compliance year," and thus could not possibly provide any helpful information on the schedule of the default service hearings. Motion at 6.

The motion mis-read the sentence from the Order quoted above. The Order asked the Department to advise the Commission of both "REC attainment" and "ACP level-setting." The Department's response that the ACP level must be published by January 31 each year answers one part of the Order's request but ignores the other. As to the request for an update on "REC attainment," it is entirely reasonable for the Department to advise the Commission of the likely direction of the required Class III REC amount as it is now in the Department's sole authority whether to lower the Class III requirement and, if so, how much. *See* RSA 362-F:4, VI. The Order's citation to the various times that the required quantity of Class III RECs changes, citing to prior Commission and Department orders to that effect, demonstrate that the Commission fully understands that process. And the Commission's understanding (or even misunderstanding) of the processes to change the level of required RECs and the ACP are irrelevant to the Order's conclusion. What is relevant is that those data points had changed (or

almost changed) a number of times, which was a factor Liberty had to consider when buying RECs in July 2020.

The Department's Alternative Argument Does Not Warrant Relief

The Department's alternative theory, that the Order is "unlawful and unreasonable" should be rejected, because the Department's argument is merely a repetition of what it previously presented, and the Commission rejected: "a prudent utility manager, eleven-months before any compliance deadline, should be aware of both current requirements and conditions, and the potential changes to Class III REC requirements and must be held accountable for any decisions made." Motion at 8 (emphasis added). This is precisely the argument the Department advanced at the December 12, 2023, hearing, and in its September 1, 2023, prefiled testimony.

Legal Standard

The purpose of a rehearing motion is to direct the Commission's "attention to matters said to have been overlooked or mistakenly conceived in the original decision, and thus invites reconsideration upon the record upon which that decision rested." *Dumais v. State of New Hampshire Personnel Commission*, 118 N.H. 309, 311 (1978) (citation omitted). "A successful motion must do more than merely restate prior arguments and ask for a different outcome." Order No. 25,970 at 4-5, 10 (Dec. 7, 2016). A rehearing may be granted if the Commission finds "good reason" which must be established by showing that the Commission either overlooked or mistakenly conceived matters in its original decision, or "by presenting new evidence that could not have been presented at the hearing." Order No. 26,772 at 3 (Feb. 8, 2023) (citations omitted).

The Department's motion for rehearing should be denied because it does not point to matters that the Commission may have overlooked or mistakenly conceived and that were material in reaching the Order's conclusion, and the Department's attempt to relitigate issues directly resolved is not a proper basis for rehearing.

WHEREFORE, Liberty respectfully requests that the Commission:

a. Deny the Department's motion for rehearing; and

b. Order such further relief as may be just and equitable.

Respectfully submitted,

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

Date: July 31, 2024

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Certificate of Service

I hereby certify that on July 31, 2024, a copy of this objection has been electronically forwarded to the service list in this docket.

Michael J. Sheehan