

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DE 23-044

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty
2023 Energy Service Solicitation

REBUTTAL TESTIMONY

OF

AARON J. DOLL

AND

CHRISTOPHER GREEN

November 30, 2023



1 **I. INTRODUCTION AND QUALIFICATIONS**

2 **Q. Please state your full name, business address, and position.**

3 A. [AD] My name is Aaron J. Doll, and my business address is 602 South Joplin Avenue,
4 Joplin, Missouri, 64081. I am the Senior Director of Energy Strategy in the Liberty
5 Central Region for Liberty Utilities Service Corp. (“LUSC”), which provides services to
6 The Empire District Electric Company d/b/a Liberty (“Empire”). Beginning in 2022, I
7 assumed responsibility for overseeing the procurement of power for Energy Service for
8 Liberty Utilities (Granite State Electric) Corp., (“Liberty” or the “Company”) and the
9 procurement of Renewable Energy Certificates (“RECs”).

10 A. [CG] My name is Christopher M. D. Green, and my business address is 602 South Joplin
11 Avenue, Joplin, Missouri. I am the Manager of Energy Market Operations as part of the
12 centralized Energy Support Services Department for Liberty Utilities Service Corp.
13 (“LUSC”), which provides services to Liberty Utilities (Granite State Electric) Corp.
14 d/b/a Liberty (“Granite State,” “Liberty,” or “the Company”). Part of my
15 responsibilities are to oversee the procurement of power for Energy Service for Granite
16 State as well as the procurement of Renewable Energy Certificates (“RECs”).

17
18 **Q. Please describe your educational background and training.**

19 1A. [AD] I graduated from Missouri State University in 2003 with a Bachelor of Science
20 degree in Psychology and a minor in Philosophy. I received a Master of Business
21 Administration from Missouri State University in 2008.

1 2A. [CG] I graduated from Northwest Missouri State University in 2011 with a Bachelor of
2 Science in Financial Management. I also received a Master of Business Administration
3 from Northwest Missouri State University in 2012.

4 **Q. Please describe your professional background.**

5 3A. [AD] I have worked for LUSC for approximately 17 years mostly with Empire, the
6 Company's electric affiliate in the Midwest. I worked in the Planning and Regulatory
7 Department for six years as a Planning Analyst and was responsible for load forecasting,
8 weather normalization, and sales and revenue variance analysis. In 2012, I transferred to
9 Empire's Supply Management department as the Market Risk Manager and eventually
10 the Manager of Market Settlements and Systems. In this capacity, I worked to facilitate
11 the migration of the daily power marketing activities from the Southwest Power Pool,
12 Inc. ("SPP") Energy Imbalance Market ("EIS") to the SPP Integrated Marketplace ("IM")
13 and oversaw the procurement of Transmission Congestion Rights ("TCRs"). I also
14 provided oversight of meter management, market settlements, and market applications.

15 In 2016, I was promoted to Director of Electric Procurement. In this role, I was
16 responsible for the procurement of fuel for electrical generation, the day-to-day
17 interfacing, systems and settlements with SPP as it relates to the IM, the long-term and
18 short-term load forecasting, and the production cost modeling. I also provided regulatory
19 support relating to those responsibilities. In 2019, I was promoted to Senior Director of
20 Energy Strategy which added strategic planning and regulatory assistance to my existing
21 responsibilities.

1 4A. [CG] In March 2015, I was hired into the LUSC energy trading group that operates in the
2 Southwest Power Pool (SPP). During my tenure I have held various positions with
3 primary responsibilities including budgeting company transmission costs, overseeing the
4 LUSC REC (Renewable Energy Credit) portfolio, managing SPP hedging mechanism
5 impacts, generation and load forecasting, fuel and purchased power reporting, and work
6 with the integrated resource planning (“IRP”) process.

7 **Q. Have you previously testified before the New Hampshire Public Utilities**
8 **Commission (“Commission”)?**

9 5A. [AD] Yes. I testified before the Commission in Docket No. DE 22-024, Liberty’s 2022
10 Default Service Filing.

11 6A. [CG] Yes. I testified before the Commission in Docket No. DE 23-044, Liberty’s 2022
12 Default Service Filing.

13 **Q. Have you testified before any other state regulatory agencies?**

14 A. [AD] Yes. I have testified before the Kansas Corporation Commission, the Oklahoma
15 Corporation Commission, the Missouri Public Service Commission, the Kentucky
16 Public Service Commission, and the Arkansas Public Service Commission.

17 A. [CG] No.

18 **Q. What is the purpose of your testimony?**

19 A. The purpose of our testimony is to rebut the testimony of Stephen R. Eckberg, filed
20 September 1, 2023, on behalf of the New Hampshire Department of Energy (“DOE”) in

1 which Mr. Eckberg concludes (1) that the purchase of the quantity of RECs in July 2020
2 to satisfy the statute's 8 percent RPS Class III requirement was imprudent, and (2) that
3 the remedy for the alleged imprudence is to disallow all costs for that portion of the
4 2020 Class III RECs that the Company was unable to use, i.e., the "stranded RECs."

5 Our testimony takes issue with both conclusions. Proper application of the prudence
6 standard should lead the Commission to conclude (1) that DOE failed to establish
7 imprudence, (2) that it was prudent for Liberty to purchase a sufficient number of Class
8 III RECs to satisfy the 8 percent requirement prior to the Commission's March 2021
9 opening of the docket that ultimately led to the requirement dropping from 8 percent to 2
10 percent, and (3) that the amount paid for those RECs for which Liberty seeks recovery,
11 the ACP price, was also prudent.

12 Mr. Eckberg unequivocally admits that purchasing RECs at or below the ACP price is
13 prudent. That same APC price is the price that Liberty seeks to recover here. However,
14 Mr. Eckberg incorrectly relies on perfect hindsight that the requirement for Class III
15 RECs would decrease from 8 percent to 2 percent late in the compliance year to opine
16 that this otherwise prudent purchase became imprudent in its entirety and that the remedy
17 should be disallowance of the total amount paid. That opinion results from an improper
18 application of the prudence standard. Mr. Eckberg should have based his proposed
19 remedy on a comparison of what he claims to be imprudent against what a prudent
20 manager would have done. A prudent manager would still have purchased sufficient
21 RECs to meet the 8 percent requirement at either the ACP price or perhaps a lower price

1 if available. Also, Mr. Eckberg necessarily – and incorrectly -- assumed, without
2 evidence, that Class III RECs were never available at a price at or below the ACP to
3 support his conclusion that Liberty never should have bought Class III RECs prior to the
4 opening of DE 21-037. However, Class III RECs did likely fall below ACP prior to the
5 Commission opening DE 21-037 in March 2021, thus it was otherwise prudent to
6 purchase RECs to meet the full 8 percent in the fall of 2020.

7 **Q. What are the relevant facts?**

8 A. The relevant facts are contained in the Supplemental Direct Testimony of John D.
9 Warsaw, filed in Docket No. DE 21-087 on January 21, 2022, and entered into
10 evidence in this docket as Exhibit 4 (confidential version) and Exhibit 5 (public version).

11 The key facts are as follows:

- 12 • Liberty purchased 35,497 Class III RECs in July 2020, which would have
13 satisfied the Company's projected requirement to acquire sufficient RECs to
14 offset 8 percent of the projected load for the 2020-2021 compliance year.
- 15 • In July of 2020, prior to the veto of bill 1234, Liberty purchased two tranches of
16 Class III RECs at prices that were higher than the established ACP. This
17 legislation sought to increase the Class III ACP to the 2017, 2018, and 2019
18 recognized ACP rate of \$55.00. All market indicators available at the time pointed
19 at a \$55.00 ACP until the time of the Governor veto. If not for the veto the two
20 tranches purchased would have likely saved customers approximately \$300,000.
21 This is consistent with the Liberty position as described in the hearing transcript
22 by John D. Warsaw in docket No. DE 22-024 on page 37.

- 1 • In the 2021 default service proceeding, the Company did not, and promised not to,
2 seek recovery of total costs of the Class III RECs that exceeded the ACP. See
3 Transcript of June 18, 2021, hearing in Docket No. DE 21-087 on page 93.
- 4 • On March 5, 2021, the Commission opened Docket No. DE 21-037 to consider
5 whether to reduce the statutorily required quantity of Class III RECs that
6 electricity providers had to acquire for the 2020-2021 compliance year, which
7 would end less than four months later.¹ RSA 362-F:4, VI. authorized the
8 Commission to modify Class III requirements “such that the requirements are
9 equal to an amount between 85 percent and 95 percent of the reasonably expected
10 potential annual output of available eligible sources after taking into account
11 demand from similar programs in other states.”
- 12 • At the public comment hearing in Docket No. DE 21-037, Liberty informed the
13 Commission that it had already acquired sufficient RECs to satisfy the then-
14 existing 8 percent requirement and that lowering the requirement may result in
15 Liberty having stranded RECs that could not be used for compliance. See
16 Transcript of March 29, 2021, public comment hearing in Docket DE 21-037 at
17 35-36.
- 18 • On April 20, 2021, the Commission lowered the Class III REC requirement for
19 the 2020-2021 compliance year from 8 percent to 2 percent. Order No. 26,472
20 (Apr. 20, 2021).

¹ “Admittedly, this is late in the 2020 compliance cycle as the final trading period for 2020 RECs produced in the fourth calendar quarter of 2020 runs from April 15, 2021 – June 15, 2021.” Eckberg testimony at Bates 009.

- 1 • Liberty used as many of the 2020 Class III RECs as legally permissible for the
2 compliance years ending June 2021, June 2022, and June 2023. *See* RSA 362-F-7.
- 3 • After exhausting its ability to use the 2020 Class III RECs, Liberty was left with
4 25,033 stranded RECs
- 5 • In this docket Liberty seeks an order confirming its ability to recover the
6 \$864,640 incurred to acquire these stranded RECS, which amount is calculated
7 using the ACP price, not the actual above-ACP purchase price.²

8 **Q. What is the issue the Commission must resolve related to the 2020 Class III RECs?**

9 A. The Commission must decide whether it would have been prudent for a reasonable
10 utility manager, relying on the known and available information at the time, to purchase
11 a sufficient number of Class III RECs to meet the statutory 8 percent requirement at the
12 ACP price.

13 **Q. What is the prudence standard you believe the Commission should follow?**

14 A. The Commission, of course, will determine the appropriate prudence standard, but its
15 prior orders have stated the following:

16 In Order No. 20,503 (June 5, 1992), 77 NH PUC 268, the Commission wrote:

17 Prudence is "essentially....an analogue of the common law negligence
18 standard." "While the scope of the prudence principle is by no means
19 clear, it at least requires the exclusion from rate base of costs that should
20 have been foreseen as wasteful." *Id.* "[P]rudence judges an investment or
21 expenditure in the light of what due care required at the time an
22 investment or expenditure was planned and made...."

² In Order No. 26,854 at 7 (June 30, 2023), the Commission approved rates that include recovery of the \$864,640 "on an interim basis" subject to further hearing and review.

1 The test of due care asks what a reasonable person would do under the
2 circumstances existing at the time of a decision. Stated differently, a lack
3 of due care is the failure to use that degree of care that the ordinary
4 reasonably careful and prudent person would use under like
5 circumstances.

6 (Citations omitted.) In Order No. 24,108, 87 NH PUC 876 (2002) the Commission
7 stated:

8 One of the critical prudence considerations when evaluating actions and
9 decisions is to not apply the perspective of hindsight, but rather to
10 consider the actions in light of the conditions and circumstances as they
11 existed at the time they were taken. In this temporal respect it is similar to
12 the duty of care in a case of negligence at common law, namely, what
13 would a reasonable person do at the time the decision was made.

14 (Citation omitted.) Finally, in Order No. 25,565 (Aug. 27, 2013), the Commission cited
15 other regulatory commissions that have taken a similar view of a prudence inquiry,
16 stating:

17 [Prudence] is the degree of care required by the circumstances under
18 which the action or conduct is to be exercised and judged by what is
19 known, or could have reasonably been known, at the time of the conduct.
20 In other words, whether an action will be considered prudent depends on
21 whether the action would be considered reasonable by a person with
22 similar skills and knowledge under similar circumstances. It is a term
23 often used interchangeably with what is considered “reasonable” under the
24 circumstances. The Commission must determine whether decisions were
25 made in a reasonable manner in light of the conditions or circumstances
26 that were known or reasonably should have been known when the decision
27 was made.

28 **Q. Did Mr. Eckberg properly apply these standards?**

29 A. No, we do not think so.

30 **Q. Please summarize Mr. Eckberg’s testimony.**

31 A. First, Mr. Eckberg’s testimony does not dispute any of the relevant facts, as summarized
32 above.

1 Second, after reciting the fact that Liberty bought Class III RECs in July 2020 at a price
2 above ACP, Mr. Eckberg concluded that the entire purchase was imprudent.

3 Finally, having concluded that the July 2020 transaction was imprudent, Mr. Eckberg
4 concluded that the remedy for this alleged imprudence was that Company should be
5 barred from recovering the \$864,640 in remaining costs Liberty incurred to acquire the
6 now-stranded Class III RECs.

7 **Q. Please explain how Mr. Eckberg did not follow the prudence standard.**

8 A. Once Mr. Eckberg concluded that the July 2020 purchase of RECs was imprudent
9 because of the above-ACP price, it was important to then consider what a reasonable
10 manager would have done in July 2020 and the following months, “in light of the
11 conditions or circumstances that were known or reasonably should have been known
12 when the decision was made.” Mr. Eckberg should have considered what a prudent
13 manager would have done in order to properly calculate what customers should, or
14 should not, have to pay for the stranded RECs. He did not do so. Rather, after finding
15 imprudence in the decision to buy the RECs at the above-ACP price, Mr. Eckberg
16 immediately concluded that the entire cost of the stranded RECs should be borne by the
17 Company, not customers.

1 **Q. What components of the REC purchase should have been considered before Mr.**
2 **Eckberg reached his recommendation to disallow these costs?**

3 A. There are inherently two components to the prudence of the REC purchase: (1) was it
4 reasonable to purchase any RECs at the time the RECs were purchased and, if so, (2)
5 under what conditions should RECs have been purchased?

6 We believe it was improper to immediately skip to the conclusion that the entire cost of
7 the stranded Class III RECs should be the Company's responsibility due to the
8 conditions under which they were purchased (i.e., the price paid relative to ACP)
9 without first analyzing whether purchasing any RECs at the time was prudent.

10 **Q. Did Mr. Eckberg express an opinion as to whether it would have been reasonable to**
11 **purchase Class III RECs at the time of the purchase?**

12 A. Yes, Mr. Eckberg essentially admitted that purchasing RECs at that time would have
13 been prudent: "Of course, if the Company's REC solicitations provide it with the
14 opportunity to purchase RECs at a price lower than the ACP, it should make that choice
15 to reduce overall RPS compliance costs." Eckberg testimony at Bates 013. In fact, one
16 of Mr. Eckberg's recommendations acknowledges that such purchases "at or below"
17 ACP are proper: "Direct Liberty to continue its practice of soliciting RECs via its RFP
18 process and to purchase additional RECs as needed via bilateral agreement or from REC
19 brokers when such opportunities arise and that all such purchases should be at prices at
20 or below the then prevailing REC Class specific ACP rates." Eckberg testimony at
21 Bates 003-004. Therefore, in setting the conditions for such a purchase (i.e., a price "at

1 or below” ACP), Mr. Eckberg acknowledged that purchasing RECs at that time was
2 prudent and that costs up to the product of the number of RECs multiplied by the ACP
3 price (or \$864,640 total) would be reasonable.

4 The Commission’s inquiry should end here. A decision to purchase the full 8 percent of
5 Class III RECs in July 2020 was reasonable, and the decision to purchase those RECs
6 “at or below” the ACP was also prudent. The Company should not bear the impact of
7 the Commission’s later decision to change the compliance requirement.

8 **Q. Even assuming the Liberty purchase was not made in July 2020, what would a**
9 **reasonable manager have found in the Class III market during the following**
10 **months?**

11 A. A reasonable manager would have continued to monitor the Class III REC market over
12 the following months in 2020 knowing that the Company had a statutory obligation to
13 meet the 8 percent requirement to see if Class III RECs were ever available at a price
14 below ACP.

15 **Q. What would that reasonable manager have found over the balance of 2020?**

16 A. Our research indicates that the Class III REC price likely dropped below the ACP level
17 on several occasions during the fall of 2020. Attachment AJD-CG-1 is a REC market
18 pricing indication sheet provided by a third party on a subscription basis, which shows
19 market pricing in the form of bid-ask spreads for most renewable energy credit markets
20 and supports the Company position that Class III RECs were available below the ACP
21 prior to the obligation being reduced. And Attachment AJD-CG-2 is another REC

1 market pricing indication sheet from an additional third-party source in support of the
2 Company position. This evidence demonstrates that Class III RECs were likely
3 available in the fall of 2020 at prices below the \$34.54 ACP.

4 **Q. What would a reasonable manager have done with that information?**

5 A. A reasonable manager, having found Class III RECs available at a price below ACP in
6 the fall of 2020 when the statutory requirement was 8 percent and when there was no
7 notice that the Commission would change that requirement, would have purchased
8 sufficient RECs to satisfy the 8 percent requirement. At the time of such a purchase at
9 prices reflected in Attachments AJD-CG-1 and AJD-CG-2, the prudent manager would
10 have saved customers several dollars for each REC as compared to the ACP.

11 **Q. Were Class III RECs available in late 2020 and early 2021?**

12 A. Yes, our research indicates Class III RECS were likely available. First, Attachments
13 AJD-CG-1 and AJD-CG-2 indicate there were sellers of Class III REC who were
14 offering those RECs at prices lower than the ACP.

15 Second, a generator of Class III RECs stated at the public comment hearing in DE 21-
16 037 that Class III RECS were available at a price less than ACP, although the exact
17 price was not disclosed. *See* Bridgewater Power Company's April 2, 2021, comments in
18 Docket No. DE 21-037 at 4 ("Indeed, BPC approached two of the LSEs who spoke at
19 the hearing on March 29, 2021, because BPC had available supply, and these same LSEs
20 who are now looking for the purchase requirement reduction did not offer any price for
21 BPC's supply. BPC was ready, willing, and able to sell that supply below the ACP")

1 (emphasis added). If BPC had Class III RECs available at below prices in late March
2 2021, it is likely those RECs would have been available earlier.

3 **Q. Would it have been prudent for a reasonable manager to buy sufficient RECs to**
4 **meet the 8 percent requirement prior to March 2021, when the Commission opened**
5 **Docket No. DE 21-037.**

6 A. Yes, again based on “what [was] known, or could have reasonably been known, at the
7 time of the conduct.” For most of the 2020 compliance year, which ended June 30, 2021,
8 (1) it was known that the statutory requirement for Class III RECs was 8 percent, (2)
9 there was no information available demonstrating that the Commission may change the
10 8 percent requirement until March 2021, (3) that the ACP level of \$34.54 was known, as
11 that is embedded in law. *See* RSA 362-F:10, II. Thus, if RECs were available at a price
12 below the ACP, it would have been prudent for the reasonable manager to purchase the
13 full 8 percent of those RECs and not pay the higher ACP. And as stated above, our
14 research demonstrates that Class III RECs were available prior to March 2021 at prices
15 below ACP. Thus, it would have been prudent to purchase Class III RECs sufficient to
16 meet the 8 percent requirement.

17 **Q. Did Mr. Eckberg conduct such an analysis?**

18 A. No. After Mr. Eckberg concluded that the July 2020 purchases of Class III RECs were
19 imprudent, he does not seem to have conducted any further analysis to determine the
20 appropriate remedy, including whether the Class III market price was ever below ACP.
21 However, Mr. Eckberg did not produce any such evidence. Rather, Mr. Eckberg seems

1 to have violated “[o]ne of the critical prudence considerations ... to not apply the
2 perspective of hindsight.” Mr. Eckberg’s conclusion essentially says the prudent
3 manager should have known the requirement would fall from 8 percent to 2 percent and
4 thus should not have made purchases to meet the 8 percent requirement during the first 8
5 months of the 2020 compliance year.

6 **Q. Did Mr. Eckberg present evidence that the price of Class III RECs never went**
7 **below the ACP?**

8 A. No. Mr. Eckberg presented no evidence of the market price of Class III RECs.

9 **Q. Why is that important?**

10 A. It does not appear that Mr. Eckberg considered that it would have been prudent for one
11 to purchase Class III RECs in a quantity to meet the 8 percent statutory requirement.
12 Had he considered that possibility, had he realized that a prudent manager could have
13 reasonably bought Class III RECs to meet the 8 percent requirement, then he would
14 have been compelled to demonstrate the Class III REC price never fell below ACP to
15 support his opinion of imprudence.

16 **Q. Could Mr. Eckberg have presented evidence that the market price for Class III**
17 **RECs never fell below the ACP level?**

18 A. Based on our research, no. As demonstrated above, the Class III REC price likely fell
19 below ACP at several points in time during the months prior to March 2021 when the
20 Commission opened Docket No. DE 21-037. Mr. Eckberg likely could not have proved
21 otherwise.

1 **Q. What conclusions does that lead you to?**

2 A. It leads to the conclusions, first, that it would have been prudent to have purchased Class
3 III RECs up to the 8 percent requirement at any time prior to the Commission opening
4 Docket No. DE 21-037. And second, as applied to this docket, it is appropriate for
5 Liberty to recover the costs incurred to purchase the RECs necessary to meet that 8
6 percent requirement, which costs are measured at the ACP, which is the \$864,640 at
7 issue here.

8 **Q. Does this complete your testimony?**

9 A. Yes, it does.