

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 19-064**

**LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP.**

**Petition for Permanent and Temporary Rates**

**Order Approving Temporary Rates**

**ORDER NO. 26,267**

**June 28, 2019**

**APPEARANCES:** Michael J. Sheehan, Esq., on behalf of Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities; the Office of the Consumer Advocate by D. Maurice Kreis Esq., on behalf of residential ratepayers; Clifton Below on behalf of the City of Lebanon; Primmer Piper Eggleston & Cramer PC, by Elijah D. Emerson, Esq., on behalf of Clean Energy of New Hampshire; and Paul B. Dexter, Esq., on behalf of Commission Staff.

This order approves a temporary increase of \$2,093,349 in Liberty's annual electric distribution revenues, effective July 1, 2019. For an average residential ratepayer, this will result in an increase of approximately \$2.48, or about 2 percent of the total monthly bill. At the end of this proceeding, the permanent rates approved will be reconciled back to the effective date of the temporary increase.

**I. PROCEDURAL HISTORY**

On April 30, 2019, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (Liberty or the Company) filed a Petition for Permanent and Temporary Rates pursuant to RSA 378:27 and RSA 378:28. Liberty requested a permanent rate increase of \$5,683,102 in annual distribution revenues and a temporary increase of \$2,093,349 in annual distribution revenues. Liberty proposed the temporary increase to be effective for services rendered on and after July 1, 2019. With its petition, Liberty filed a proposed tariff containing rates designed to collect the requested increases along with testimony and related exhibits.

On April 1, 2019, the Office of the Consumer Advocate (OCA) notified the Commission that it would be participating in this proceeding on behalf of residential ratepayers pursuant to RSA 363:28. On May 13, 2019, the Commission issued Order No. 26,252 suspending the proposed tariff and scheduling a Prehearing Conference and technical session for May 30, 2019. The City of Lebanon (Lebanon or the City) filed a Petition to Intervene on May 23, 2019, and Clean Energy New Hampshire (CENH) filed a Petition to Intervene on May 24, 2019. The Commission granted both petitions to intervene at the May 30 Prehearing Conference. On June 6, the Commission issued a secretarial letter approving a procedural schedule that was negotiated by the parties at the May 30 technical session, which included a hearing on temporary rates on June 14, 2019.

At the June 14 hearing, Liberty presented two witnesses, Philip E. Greene, Senior Financial Regulatory Analyst for Liberty Utilities Service Corp., and David B. Simek, Manager of Rates and Regulatory Affairs for Liberty Utilities Service Corp, concerning the proposed temporary rates. Clifton Below, Assistant Mayor of Lebanon provided testimony for the City in support of its request that the Commission approve Liberty's proposed permanent Outdoor Lighting Service Rate LED-2 (Rate LED-2) as part of temporary rates.

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. Liberty**

Liberty requested approval to implement temporary rates designed to collect \$2,093,349 on an annual basis for effect July 1, 2019. Exh. 1 at II-007. Liberty stated that the primary driver of the need to increase rates relates to capital investments made by the Company since its last rate case. The Company proposed no change in revenue allocation or rate design in connection with the proposed temporary rates. Liberty stated that for 2018, it earned a return of

6.43 percent on distribution rate base, which is below 7.69 percent, the return on rate base computed using the return on equity of 9.4 percent authorized by the Commission in Liberty's last rate case, Docket No. DE 16-393. *Id.* at II-008.

Liberty based its request for temporary rates on the Company's financial statements for the year ending 2018, with adjustments to remove non-distribution revenue and costs, to remove other non-recurring items, to reflect the recently reduced tax rates in the amortization of excess accumulated deferred income taxes, to compute rate base, and to normalize income tax expense. Liberty computed the revenue deficiency using the Company's actual cost of debt along with the capital structure and return on equity approved by the Commission in DE 16-393. Exh. 1 at II-009 – II-010.

According to Liberty, the proposed temporary rates will allow the Company to earn no more than a reasonable return on its investment calculated based on the books and records on file with the Commission. Temporary rates for an average residential ratepayer using 650 kWh per month will result in an increase of \$2.48, or 2.01 percent of their total monthly bill. *Id.* at II-019. Customers will be protected from being overcharged if the final rates are lower than the proposed temporary rates due to the reconciling nature of temporary rates. *Id.* at II-012 – II-013.

Liberty provided a corrected version of its proposed Rate LED-2 and supported the City's request that the Commission approve proposed Rate LED-2 on a temporary basis. Exhs. 2 and 3.

#### **B. Office of the Consumer Advocate**

The OCA stated support for Liberty's temporary rate request as presented. In the OCA's view, implementing a temporary rate increase will provide for a smoother transition from current rates to permanent rates at the end of the proceeding. The OCA opposed the City's request for implementing Rate LED-2 on a temporary basis, arguing that the purpose of the temporary rate

statute, RSA 378:27, is to protect utilities from confiscatory rates. According to the OCA, approval of a new rate (as opposed to an increase in an existing rate) in the temporary rate phase would set a concerning precedent. The OCA supported the City's conversion to LED street lights in 2019 if the conversion could be done by a means other than temporary rates.

### **C. City of Lebanon**

The City did not object to Liberty's proposed temporary rates. The City requested that Liberty be permitted to implement Rate LED-2 on a temporary basis, effective July 1, 2019. Lebanon stated that it has the funds available to begin deploying LED streetlights in 2019, if that rate were to be available. The City also stated that Liberty's currently effective Outdoor Lighting Service Rate M does not allow the City to pay for the LED lighting fixtures, which Lebanon wants to do because of its ability to finance the fixture costs at lower rates than available through Rate M.

The City argued that RSA 378:27 does not prohibit the Company from offering Rate LED-2 on a temporary basis. Lebanon said it understands that if Rate LED-2 is approved on a temporary basis, the revenues collected will be subject to reconciliation and recoupment once permanent rates are approved.

The City stated that no other municipality in Liberty's service territory would likely take advantage of Rate LED-2 during 2019 because any town would need to secure funding through a town meeting process that could not occur until 2020. The City opined that the State of New Hampshire might also be in a position to take advantage of Rate LED-2 in 2019.

### **D. Clean Energy New Hampshire**

CENH did not object to the proposed temporary rate increase. CENH supported approval of Rate LED-2 on a temporary basis to allow the City to deploy LED streetlights in 2019.

### **E. Staff**

Staff recommended approval of the temporary rate request as presented by Liberty, noting that the rates were based on the books and records of the Company (appropriately adjusted) and that the net plant and revenue figures used to calculate the proposed rates could be traced to Liberty's FERC Form 1. Staff noted that the temporary request is 37 percent of the permanent rate request, which is less than what the Company requested for a temporary rate increase in its last rate case.

Staff opposed approval of Rate LED-2 on a temporary basis. Like the OCA, Staff argued that approval of Rate LED-2 in the temporary phase is inconsistent with how temporary rates have been approved in past rate cases. Staff argued against establishing a precedent that would allow utilities to propose new rates for new services as temporary rates, without a robust review and investigation. Staff supported the City's efforts to deploy LED streetlights in the summer of 2019 and suggested that Liberty and Lebanon consider submitting a special contract, pursuant to RSA 378:20.

## **III. COMMISSION ANALYSIS**

### **A. Temporary Rates**

RSA 378:27 requires the Commission to set reasonable temporary rates that are "sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation, as shown by the reports of the utility filed with the commission, unless there appears to be reasonable ground for questioning the figures in such reports." The New Hampshire Supreme Court has explained that "[t]his standard is 'less stringent' than the standard for permanent rates, in that temporary rates shall be determined expeditiously, 'without such investigation as might be deemed necessary to a

determination of permanent rates.”” *Appeal of the Office of Consumer Advocate*, 134 NH 651, 660 (1991) (citation omitted).

Based on the record in this case, we find that a temporary rate increase of \$2,093,349 appropriately balances the interests of Liberty’s customers with the interests of its shareholders. For purposes of temporary rates, and the more limited investigation envisioned by RSA 378:27, we find that the record justifies the increase. The increase is based on the books and records of the Company, as traced to the Company’s FERC Form 1 on file with the Commission, with reasonable adjustments to reflect normalized distribution operations. The record demonstrates that in 2018 Liberty earned less than its allowed rate of return on rate base. All parties support, or do not object to, the proposed temporary rate amount. Accordingly, we approve the temporary rate increase as proposed, subject to reconciliation.

#### **B. Rate LED-2**

The temporary rate statute quoted above focuses on allowing a utility to earn “not less than a reasonable return” on utility investment while permanent rates are reviewed and established. Outdoor lighting accounted for about one percent of Liberty’s revenues in 2018. FERC Form 1 at 304. We conclude that implementing Rate LED-2 will not significantly influence whether Liberty earns “not less than a reasonable return” on its utility investment and therefore we decline to approve Rate LED-2 as part of temporary rates.<sup>1</sup>

We are concerned that implementing a new rate in the temporary phase could complicate the recoupment required by RSA 378:29, a calculation that proved complex in the most recent rate case for Liberty’s natural gas affiliate. *See* Order No. 26,187, *Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities* (2018).

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<sup>1</sup> Presumably, Rate LED-2 will produce lower revenues than Rate M because of the energy savings expected from LED fixtures.

We appreciate Liberty's willingness to work with the City to achieve LED street lighting deployment during 2019 and urge the parties to use an alternative regulatory mechanism, such as a special contract, to accomplish the parties' goals of rapid deployment and rate reconciliation, before a permanent tariff is approved. We recommend that such mechanism terminate upon any approval of Rate LED-2, so the City will take service under generally available rates, terms, and conditions, once available.

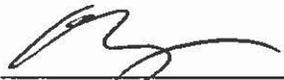
**Based upon the foregoing, it is hereby**

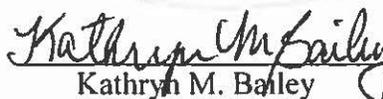
**ORDERED**, that Liberty is authorized to collect temporary rates designed to increase revenue by \$2,093,349 on an annual basis, as discussed herein, effective with service rendered July 1, 2019; and it is

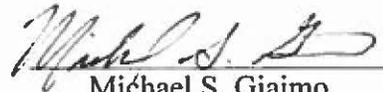
**FURTHER ORDERED**, that Liberty shall file with the Commission properly annotated tariff pages consistent with this order within 10 days of the date of this order, as required by N.H. Code Admin. Rules Puc 1603; and it is

**FURTHER ORDERED**, that Liberty's request to offer proposed Rate LED-2 effective on July 1, 2019, on a temporary basis, is denied.

By order of the Public Utilities Commission of New Hampshire this twenty-eighth day of June, 2019.

  
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Martin P. Honigberg  
Chairman

  
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Kathryn M. Bailey  
Commissioner

  
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Michael S. Gaimo  
Commissioner

Attested by:

  
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