BEFORE THE NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP. D/B/A LIBERTY PROPOSED PURCHASE OF RECEIVABLES PROGRAM	:	DOCKET NO. DE 23-003
	:	JANUARY 12, 2024

NRG RETAIL COMPANIES' EXCEPTIONS TO EXAMINERS' REPORT AND RECOMMENDED ORDER

Direct Energy Services, LLC; Direct Energy Business, LLC d/b/a NRG Business; NRG Business Marketing, LLC f/k/a Direct Energy Business Marketing, LLC; Reliant Energy Northeast LLC; and XOOM Energy New Hampshire, LLC (collectively, the "NRG Retail Companies") hereby submit these Exceptions to the December 22, 2023 Hearing Examiners' Report and Recommended Order[1] in the above-captioned proceeding.

BACKGROUND

On October 7, 2022, the Public Utilities Commission ("Commission") filed final rules with the Division of Administrative Rules implementing the provisions of RSA 53-E ("Puc 2200 Rules").[2] Among other things, the Puc 2200 Rules required each electric distribution utility to propose a purchase of receivables ("POR") program.[3]

In compliance with this requirement, on January 10, 2023, Liberty Utilities (Granite State Electric) Corporation d/b/a Liberty ("Liberty" or "Company") filed testimony and supporting materials outlining a proposal for a POR program.[4] On June 23, 2023, following discovery and technical sessions, the New Hampshire Department of Energy ("DOE"), Community Power

[1] Examiners' Report and Recommended Order (Dec. 22, 2023) ("Report").

[2] *See* Docket No. DRM 21-142, *Community Power Coalition of New Hampshire Petition for Rulemaking to Implement RSA 53-E for Community Power Aggregations by Stakeholders*, Notice No. 2022-14 – Adoption of Final Rules (Oct. 7, 2022).

[3] Puc 2205.16(e).

[4] *See* Exhibit 1.

Coalition of New Hampshire ("CPCNH"), and the NRG Retail Companies submitted a technical statement,[5] testimony,[6] and comments,[7] respectively, regarding Liberty's proposed POR program.

On September 13, 2023, Liberty filed a settlement agreement on behalf of all parties ("Settlement Agreement").[8] On September 19, 2023, a hearing was held on the Settlement Agreement.[9]

On December 22, 2023, the Hearing Examiner issued the Report.[10] The NRG Retail Companies now hereby submit these Exceptions pursuant to the Procedural Orders issued by the Commission on September 1, 2023 and December 29, 2023.

EXCEPTIONS

In the Report, the Hearing Examiner recommends that the Commission deny the Settlement Agreement but approve, in part, the proposed POR program framework.[11] The recommended denial of the Settlement Agreement is based on the finding that the costs of administering collection efforts and working capital to be recovered in the proposed Discount Percentage Rate ("DPR") are inconsistent with statutory requirements.[12] In particular, the Report finds that the Settlement Agreement "recast[s] 'pro rata share' to mean incremental costs."[13] However, this finding fails to account for the full text of RSA 53-E:9,II in contravention of the principles of statutory construction. Thus, for the reasons discussed more fully below, the NRG

[5] Exhibit 2.
[6] Exhibit 3.
[7] Exhibit 4.
[8] Exhibit 5.
[9] *See generally,* Hearing Transcript (Sep. 19, 2023) ("Transcript").
[10] *See* Report.
[11] *Id.* at 12-13.
[12] *Id.* at 1.
[13] *Id.* at 5.

Retail Companies request that the Commission find that the Settlement Agreement satisfies the requirements of RSA 53-E:9 and approve the Settlement Agreement.

I. LEGAL STANDARD

When interpreting a statute, the language of the statute must be interpreted "in the context of the overall statutory scheme and not in isolation."[14] To accomplish this, "all parts of a statute [must be construed] together to effectuate its overall purpose and to avoid an absurd or unjust result."[15] In this way, statutory language can be interpreted "in light of the policy or purpose sought to be advanced by the statutory scheme."[16] Thus, it is important to "not consider words and phrases in isolation, but rather within the context of the statute as a whole."[17]

II. THE SETTLEMENT AGREEMENT SATISFIES THE REQUIREMENTS OF RSA 53-E:9

The Report contends that the Settlement Agreement should not be approved because it "recast[s] 'pro rata share' to mean incremental costs" and does not include working capital or any existing administrative and collections costs.[18] According to the Report, RSA 53-E:9,II requires the electric distribution utility to allocate a pro rata share of existing, "baseline" collection costs to suppliers[19] participating in the POR program.[20] However, this conclusion is inconsistent with the plain language of the statute and overall statutory scheme.

RSA 53-E:9 provides, in pertinent part:

> Each electric distribution utility shall propose to the commission for review and approval a program for the purchase of receivables of the supplier in

[14] *Rye Beach Country Club v. Town of Rye*, 143 N.H. 122, 125 (1998).

[15] *Petition of State of New Hampshire,* 175 N.H. 547, 550 (2022) (citation omitted).

[16] *Id.* at 550-51 (citation omitted).

[17] *Appeal of Algonquin Gas Transmission,* 170 N.H. 763, 770 (2018) (citation omitted).

[18] Report, at 5, 8.

[19] Suppliers include community power aggregations serving as load-serving entities and competitive electric power suppliers.

[20] Report, at 8.

> which the utility shall pay in a timely manner the amounts due such suppliers from customers for electricity supply and related services less a discount percentage rate equal to the utility's actual uncollectible rate, adjusted to recover capitalized and operating costs ***specific to*** the implementation and operation of the purchase of receivables program, including working capital. Additionally, such discount rate adjustments shall include a ***pro rata share*** of the cost of administering collection efforts ***such that*** the utility's participation in the purchase of receivables program shall ***not require*** the utility or non-participating consumers to assume any costs ***arising from its use***. Such pro rata costs must include, but not be limited to, any increases in the utility's bad debt write-offs attributable to participants in the purchase of receivables program, as approved by the commission. However, the allocation of costs arising from different rate components and determination of the uncollectible rate shall be equitably allocated between such suppliers, utility provided default service, and other utility charges that are a part of consolidated billing by the utility as approved by the commission. The discount percentage rate shall be subject to periodic adjustment as approved by the commission.[21]

The emphasized text shows that the legislature intended suppliers to pay for all costs "specific to" and "arising from" the POR program "such that the utility's participation in the purchase of receivables program shall not require the utility or non-participating consumers to assume any [such] costs . . . . ."[22] The Settlement Agreement does just that.[23]

Because Liberty does not currently have a POR program,[24] none of its "baseline" administrative and collections costs can, by their nature, be "specific to" or "arise from" the POR program. Moreover, ***all*** implementation and ongoing costs "specific to" or "arising from" the POR program will be paid by suppliers.[25]

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[21] RSA 53:E-9,II (emphasis added).

[22] *Id.*

[23] *See, e.g.*, Transcript, at 49 (testifying that, as part of settlement, parties made sure that "there was no risk that utilities or non-participating -- customers not participating in the POR would bear any of the costs associated with its administration[a]nd . . . no one who's not participating in the POR has to bear ***any*** costs related to it.") (emphasis added).

[24] *See* Exhibit 5, at 1 ("This Settlement Agreement resolves all issues among the Settling Parties pertaining to the ***implementation*** by the Company of a purchase of receivables ('POR') program. . . .") (emphasis added).

[25] *See* Transcript, at 12-13 (testifying that POR implementation costs will be recovered through the DPR and not in rate base); *Id.* at 48 ("The ***entire*** implementation cost is to be recovered over five years. . . .") (emphasis added); *Id.* at 49 (testifying that, as part of settlement, parties made sure that "there was no risk that utilities or non-participating -- customers not participating in the POR would bear any of the costs associated with its administration[a]nd . . . no one who's not participating in the POR has to bear ***any*** costs related to it.") (emphasis added).

As the foregoing demonstrates, when the phrase "pro rata share" is considered within the context of the statute as whole (rather than in isolation),[26] suppliers will pay all costs "specific to" and "arising from" the POR program "such that the utility's participation in the purchase of receivables program shall not require the utility or non-participating consumers to assume any [such] costs . . . . ."[27] Thus, the Commission should find that the Settlement Agreement satisfies the requirements of RSA 53-E:9.

CONCLUSION

For all of the foregoing reasons, NRG Retail Companies respectfully request that the Commission approve the Settlement Agreement as filed.

Respectfully submitted,
DIRECT ENERGY SERVICES, LLC; DIRECT ENERGY BUSINESS, LLC D/B/A NRG BUSINESS; NRG BUSINESS MARKETING, LLC F/K/A DIRECT ENERGY BUSINESS MARKETING, LLC; RELIANT ENERGY NORTHEAST LLC; XOOM ENERGY NEW HAMPSHIRE, LLC

By 

Joey Lee Miranda
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103
Tel. No.: (860) 275-8200
Fax No.: (860) 275-8299
E-mail: jmiranda@rc.com

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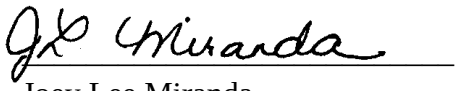
[26] *Algonquin Gas Transmission*, 170 N.H. at 770 (citation omitted).
[27] RSA 53-E:9,II.

CERTIFICATE OF SERVICE

I hereby certify that a copy of these Exceptions has this day been sent via electronic mail or first-class mail to all persons on the service list.



Joey Lee Miranda

Dated: January 12, 2024