

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 23-003**

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

**Proposed Purchase of Receivables Program**

**Examiners' Report and Recommended Order**

NOTICE: This report and recommendation constitute the findings and recommendation of the assigned examiner. Although it is in the form of an order, it does not constitute Commission action. Exceptions to or comments on this report and recommendation may be filed by January 2, 2024, for the Commission's consideration. In order for any further replies to be considered, a notice of intent must be filed by January 4, 2024, and replies must be filed by January 12, 2024.

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This order addresses Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty's (Liberty) proposed purchase of receivables (POR) program framework under RSA 53-E:9 and N.H. Code Admin. R. Puc chapter 2200. The proposed Discount Percentage Rate (DPR) calculation is not fully consistent with statutory requirements related to the cost of collection efforts and working capital. This order approves other parts of the proposed POR program, including the timing of payments, the treatment of competitive suppliers, and expanding the scope of this proceeding to consider changes to Liberty's tariffs and supplier agreements necessary to implement the proposed POR program. This matter is continued to a second phase to establish or clarify determinants in the DPR calculation framework and to consider necessary amendments to Liberty's Electric Supplier Services Master Agreement and Electricity Delivery Service Tariff.

**I. PROCEDURAL HISTORY**

On January 10, 2023, Liberty filed a proposed POR program (Exh. 1). On February 2, the Commission commenced and publicly noticed an adjudicative

proceeding (Notice) to consider Liberty's proposed POR program under RSA 53-E:9 and Puc chapter 2200.

The parties to this matter are Liberty, the New Hampshire Department of Energy (DOE); the Community Power Coalition of New Hampshire (CPCNH); and Direct Energy Services, LLC, Direct Energy Business, LLC, Direct Energy Business Marketing, LLC, Reliant Energy Northeast LLC, and XOOM Energy New Hampshire, LLC (together, the NRG Retail Companies).

On June 23, the DOE, CPCNH, and the NRG Retail Companies, respectively, pre-filed a technical statement (Exh. 2), testimony (Exh. 3), and comments (Exh. 4). On September 13, Liberty filed a settlement agreement (Settlement Agreement or Exh. 5) on behalf of all parties. On September 19, there was a hearing on the Settlement Agreement.

Liberty's initial proposal and subsequent docket entries, other than information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at

<https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-003.html>.

## **II. BACKGROUND**

RSA chapter 53-E authorizes municipalities and counties in New Hampshire to establish and operate aggregation programs for retail electric customers within their boundaries, providing access to competitive markets for electric energy supply and related energy services. RSA 53-E:1. In 2021, RSA chapter 53-E was amended to authorize municipalities and counties to enroll customers on an "opt-out" basis<sup>1</sup> and to require utilities to offer POR programs. RSA 53-E:7 and :9.

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<sup>1</sup> "Opt-out" means that any retail customer currently receiving default energy service from their utility would be automatically enrolled in a municipal or county aggregation program. RSA 53-E:7, II(V).

A POR program is a billing arrangement where the utility purchases an aggregation program's accounts receivable, subject to a Commission-approved DPR. RSA 53-E:9, II. A POR program applies if an aggregation program utilizes a utility's consolidated billing service.<sup>2</sup> If an aggregation program elects to use consolidated billing, the retail customer receives one bill from their distribution utility containing both the energy service charge from the aggregation program and the distribution utility's other service charges. Under a POR program, the utility purchases the accounts receivable of the aggregation program. Aggregation programs are thereby guaranteed payments from the utility for energy service charges on a regular basis without managing or pursuing collections for unpaid balances. *See* Exh. 2 at Bates page 2.

### **III. DISCUSSION**

#### **a. Standard of Review**

Liberty's POR program proposal must be consistent with both the parameters in RSA 53-E:9, II and the public good. Pursuant to RSA 53-E:9, I, POR programs must be available to aggregation programs and competitive electric power suppliers (CEPS) serving aggregation programs. If proposed and assented to by the utility, a POR program may also apply to CEPS generally if the Commission determines that it is for the public good. *Id.* Because Liberty's proposed POR program is applicable to CEPS generally, *see* Exh. 5 at Bates page 2; *see also* September 19, 2023 Hearing Transcript (Tr. Sept. 19) at 16, the public good standard explicitly applies.<sup>3</sup>

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<sup>2</sup> Billing services may be "consolidated" whereby the utility issues a single bill which includes charges for electric power supply and energy services as well as the utility's charges for electric service, or "separate" whereby an aggregation program issues customer bills for the electric power supply and energy services. Puc 2205.16(a).

<sup>3</sup> The Commission's Notice also identifies Puc chapter 2200 as a standard of review, although there are no rules that prescribe requirements specific to any POR program proposal other than a filing deadline at Puc 2205.16(e), the Commission's rulemaking authority also supports that the public good standard applies to this proceeding. RSA 53-E:7, X ("...to the extent authorities granted to municipalities and

Under RSA 53-E:9, II, a proposed POR program must address three key issues: what the utility will discount aggregation programs' accounts receivable by (the DPR), when the utility will pay aggregation programs, and how the POR program will be subject to ongoing Commission oversight. Each POR program's DPR must equal the utility's uncollectible rate. RSA 53-E:9, II. The utility's uncollectible rate must include two types of costs: "capitalized and operating costs specific to the implementation and operation of the purchase of receivables program, including working capital" and "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." *Id.* Pro rata costs must include, but not be limited to, increases to the utility's bad debt write-offs from POR program participants. *Id.* Costs arising from different rate components and determination of the uncollectible rate shall be allocated equitably. *Id.*

The public good standard has not been evaluated in the context of RSA chapter 53-E, however, the New Hampshire Supreme Court has interpreted the public good standard broadly to include the needs of particular persons directly affected, the needs of the public at large, and the general welfare of the utility involved. *See, e.g., Boston Maine R.R. v. State*, 102 N.H. 9, 10, (1959). Moreover, for something to be in the public good, it cannot be otherwise forbidden by law. *Id.* In the context of asset transfers, the Commission has interpreted the public good to include a determination that the transaction will not harm ratepayers. Order No. 23,044 (October 26, 1998).

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counties by this chapter materially affect the interests of electric distribution utilities and their customers, to reasonably balance such interests with those of municipalities and counties for the public good, which may also be done through adjudicative proceedings to the extent specified or not addressed in rules.")

Finally, the POR program presented to the Commission for approval is in the form of a settlement, N.H. Code Admin. R. Puc 203.20(b) also applies, requiring that settlement be approved if the result is just and reasonable and serves the public interest. This report addresses the specific statutory parameters, the public good standard, and concludes by addressing the Settlement Agreement overall.

### **1. The DPR Calculation**

The proposed DPR calculation focuses on incremental costs to implement and operate the POR program, but does not address all statutory requirements and appears to recast “pro rata share” to mean incremental costs.<sup>4</sup> The record also demonstrates that existing systems and personnel will support the POR program without quantifying and allocating (or demonstrating that no allocation is equitable) a portion of administrative costs or costs related to collection efforts. Therefore, RSA 53-E:9, II’s parameters and the public good standard require that the proposed DPR calculation be refined or further substantiated in a subsequent phase of this proceeding.

As drawn from the Settlement Agreement, the proposed DPR calculation applies to accounts receivable for Supplier Service.<sup>5</sup> The DPR framework will be calculated for two different customer classifications, the small customer group and the large customer group, however, during the first year, Liberty will calculate a single DPR to be applied to all customer classes. Exh. 5 at Bates page 3. The DPR calculation consists of three inputs:

- 1) Uncollectible percentage. The sum of the net write-offs for Supplier Service for the participating customer class, based on actual data for the most

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<sup>4</sup> “Incremental cost” is defined as additional or increased costs. Black’s Law Dictionary page 690 (5th ed. 1979). Whereas “pro rata” is defined as proportionately; according to a certain rate, percentage, or proportion. *Id.* at page 1098.

<sup>5</sup> The Settlement Agree defines “Supplier Service.” Supplier Service generally means the sale of all requirements, load-following electricity service to a customer by an aggregation program or CEPS. Exh. 5 at Bates page 2 n. 1.

- recent calendar year, divided by the total amounts billed by the Company, including late payment fees if included in net write-offs, to that participating customer class for Supplier Service during the same period.
- 2) Administrative cost percentage. The total actual administrative costs and any forecasted incremental costs of POR program administration and collection to be recovered for the subsequent year divided by the total amounts billed for Supplier Service by the Company for the most recent calendar year. Administrative costs shall include the recovery of costs directly related to the development and implementation of changes to billing, information, and accounting systems required to implement the billing and payment procedures related to the POR program into the Company's consolidated billing service, to be amortized and recovered over a five-year period.
  - 3) Past period reconciliation percentage. The sum 12 months of Actual Uncollectible Costs less monthly Actual Supplier Discounts Applied; plus Monthly Interest Accrued; all divided by Actual Supplier Billings.

Exh. 5. at Bates pages 5–6.<sup>6</sup>

Capitalized and operating costs related to the implementation and operation of the POR program are treated as incremental costs of the POR program that will be recovered from POR program participants through the Uncollectable Percentage and Administrative Cost Percentage.

The proposed calculation of the uncollectable rate tracks net write-offs for Supplier Service attributable to POR participants separately from default service customers, consistent with principles of cost causation. The uncollectable rate, called the Uncollectable Percentage, is the quotient of net write-offs for Supplier Service divided by total amounts billed for Supplier Service, by customer group.

Capitalized costs to implement the POR program consist of estimated costs to modify Liberty's billing system. According to Liberty, modifications to its billing system are necessary to facilitate a POR program. Exh. 1 at Bates page 16. Liberty estimates that modifications to its billing system to implement the POR program will cost approximately \$477,000. Tr. Sep. 19 at 3. The Settlement Agreement proposes to

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<sup>6</sup> Each input summarized above is further defined in the Settlement Agreement.

amortize and recover these costs over a 5-year period, commencing once the POR program is implemented. Exh. 5 at Bates page 6. This recovery period is a modification of Liberty's initially proposed 3-year period. Exh 1 at Bates page 12. Liberty affirmed that these capitalized costs are distinct from, and will not be included in, its general distribution rate base. Tr. Sep. 19 at 13. The modifications will be made to a relatively new billing system. Exh 2 at Bates page 3. These costs will be subject to future review for reasonableness. Tr. Sep. 19 at 32.

The estimated implementation costs presented by Liberty are not insignificant, however, the record supports finding that modifications are necessary to implement the proposed POR program, the modifications will be made to a modern billing system, and once booked, the costs will be subject to future review for reasonableness by the Commission and interested parties. The longer amortization period of 5 years will also spread the costs over a larger time than initially proposed, lessening the rate impact resulting from implementation costs and providing an opportunity for the costs to be spread out to a potentially expanding customer group. The record therefore supports that the estimated costs are necessary to implement the POR program in accordance with RSA 53-E:9, II, and therefore are properly included in the DPR, subject only to the opportunity to review actual booked costs for reasonableness.

With respect to costs of administering collection efforts, Liberty initially stated that it plans to utilize existing technology and current employees to administer the program, but did not quantify an estimated cost of so doing. Exh. 1 at Bates page 12. The DOE agreed that pro rata share of costs should be interpreted as incremental costs. Exh. 2 at Bates page 3. In the Settlement Agreement the ongoing cost of administering collection efforts is a field in the illustrative DPR calculation, although no value is estimated. Exh. 5 at Bates page 12-13.

RSA 53-E:9, II requires that a pro rata share of administering collection efforts include increases in the utility's bad debt write-offs attributable to participants in the purchase of receivables program, however bad debt write-offs is not the exclusive or exhaustive definition of collection efforts cost. As discussed above, bad debt write-offs of POR program participants will be tracked separately and allocated by customer class. Nonetheless, a POR program must include a proportional share of baseline collection efforts costs, which could also encompass costs of payment collections activities by the utility or its contractors, shut-offs, billing arrangements, and associated reporting. Liberty conceded that it did not allocate any existing administrative costs to the POR program. The record does not establish whether Liberty does or does not have other collection efforts costs, whether those costs are collected from default service customers or through distribution rates, nor address a variety of variables that potentially could shift such costs from one customer group to another including the demographics of participating aggregation programs and CEPS customers.

Furthermore, despite also being a required input and being a field in the illustrative DPR calculation, no value is estimated for working capital. The record contains some discussion of working capital. According to Mr. Below's pre-filed testimony there "should be no material working capital needs for this program." Exh. 3 at Bates page 7. The conclusion that there should be no material working capital, however, does not satisfy a standard that requires working capital be included in the DPR.

Although costs may be equitably allocated, they cannot be ignored pursuant to the RSA 53-E:9, II's express requirements or the public good standard. *See also*, RSA 53-E:5. Aggregation programs and CEPS utilizing the POR program must pay both the



full incremental share of implementation and operations costs necessary to administer the POR program, and not less than their fair share of base administration costs, including collection efforts costs. The public good standard similarly requires that the interests of the utility and its ratepayers be considered, and that the POR program cause no harm to either. Therefore, Liberty must establish how it will quantify and account for a pro rata share of collection efforts and working capital, or demonstrate that these factors are not quantifiable in order for the proposed POR program to be consistent with RSA 53-E:9, II and the public good.

## **2. Timely Payment**

RSA 53-E:9, II requires that payment from a utility to an aggregation program or CEPS for Supplier Service occur in a timely manner. The proposed POR program framework establishes a method to determine when Liberty will pay third party suppliers for accounts receivable for Supplier Service, and provides for annual updates of the payment date. The payment period will be based on the average combined payment period for all customers on the Liberty's default energy service. Exh. 5 at Bates pages 5–6. The payment date shall be on the closest business day approximately equal to the mid-point of the billing month plus the average payment period from billing to utility receipt of customer payments. *Id.* The payment date shall be calculated based on the methodology most recently approved by the Commission. *Id.* The “methodology most recently approved by the Commission” refers to the most recent lead-lag study, which may be directly from a rate case or as adjusted in an energy service proceeding. Tr. Sep. 19 at 26–30, 52.

The timing of payment directly impacts the operations and cashflow of Liberty, aggregation programs, and CEPS. The terms of payment were modified over the course of this proceeding to maximize consistency between the state's utilities at the request

of the intervenors. See Exh. 4 at Bates page 7; Exh. 3 at Bates pages 4–5. The record supports that the proposed methodology of determining when payment will occur that is consistent with the requirement that payment occur in a timely manner and balances the interests of suppliers with the utility and its customers.

### **3. Ongoing Oversight**

The POR program meets the ongoing oversight requirement through an annual filing and update obligation. Exh. 5 at Bates page 4. This filing would be made on March 1 of each year to update the DPR for effect as of the May 1 for the forthcoming year. *Id.* The annual filing would update DPR calculations, reconcile the prior period, update the payment date to be in effect for the forthcoming 12-month period, and include documentation supporting all relevant calculations. *Id.* This annual filing and level of detail reasonably and adequately provides the Commission and interested parties the opportunity to oversee the POR program and update the DPR rate on a routine, prospective basis.

### **4. Treatment of Competitive Suppliers**

The proposed POR program treats CEPS utilizing consolidated billing service the same as aggregation programs and CEPS serving aggregation programs, requiring all CEPS utilizing consolidated billing to participate in the proposed POR program for all rate classes. Tr. Sep. 19 at 16. CEPS may also elect to use separate billing service. *Id.* According to Liberty, treating CEPS the same as aggregation programs reduces costs and administrative burdens on Liberty. *Id.* at 50. In addition, including CEPS in the proposed POR program generally has the potential to spread incremental costs to implement the proposed POR program over a wider group of participating entities and their customers and avoid shifting bad debt. *Id.* at 48.

The record supports that the public good standard is met, subject to a second phase in this proceeding as discussed above to ensure POR program costs will not be borne by Liberty or non-participating customers. Specifically, extending the POR program to CEPS will likely reduce administrative burdens on Liberty because Liberty will not need to maintain and administer separate billing processes and systems for CEPS utilizing consolidated billing. Additionally, the participation of CEPS in the POR Program may benefit all POR program participants and their customers by spreading capitalized and operational costs associated with the POR program to a broader group of participating retail customers.

#### **5. Tariff and Supplier Services Agreements**

The Settlement Agreement also requests that this proceeding be continued into a separately noticed phase to consider amendments to Liberty's Electric Supplier Services Master Agreement and Electricity Delivery Service Tariff necessary to implement the POR program. Exh. 5 at Bates pages 4–5. The parties agree that changes to Liberty's tariff and supplier services agreements are necessary to implement the POR program and that additional public notice would be advisable due to the scope of the Commission's Notice. The Commission's Notice was limited to whether Liberty's proposed POR program was consistent with the requirements of RSA 53-E and Puc chapter 2200. Notice at 2. It is reasonable to separately notice an additional phase of this proceeding to consider changes to Liberty's delivery service tariff and Electric Supplier Services Master Agreement.

#### **IV. CONCLUSION**

RSA 53-E:9, II contains strict parameters for any proposed POR program. These parameters, superimposed with the public good standard, create a high bar for any proposed POR program to meet because the program must effectively indemnify both

the utility and non-participating customers from bearing implementation or operation costs. This expressly includes a pro rata share of base costs associated with collection efforts and working capital. The proposed POR program framework presented through the Settlement Agreement is largely consistent with both RSA 53-E-9, II and the public good standard, with the exception of showing that a pro rata share of costs of administering collection efforts and working capital will be recovered through the DPR calculation. Due to those inconsistent components in the DPR calculation, the Settlement Agreement cannot be approved in full because it is not just, reasonable, or serving the public interest if not fully consistent with applicable statutory requirements and the intent that the utility and non-participating consumers not assume any costs arising from a POR program's use. The same analysis applies under the public good standard.

Accordingly, although the request for approval of the Settlement Agreement is denied, the proposed POR program is approved in part, and this proceeding is continued to a second phase to establish how Liberty will quantify and apportion a pro rata share of collection efforts and working capital in the DPR, or demonstrate that these factors are not quantifiable. Consistent with the parties' request in the Settlement Agreement, the second phase shall also consider changes to Liberty's Electric Supplier Services Master Agreement and Electricity Delivery Service Tariff necessary to implement the POR Program. A recommended supplemental order of notice is filed with this report and order.

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

**ORDERED**, that, Pursuant to RSA 53-E:9 and N.H. Code Admin. R. chapter 2200, the Settlement Agreement is **DENIED**, however Liberty's proposed POR program

framework presented in the Settlement Agreement is **APPROVED IN PART** as discussed herein, effective upon the Commission's adoption of this order; and it is

**FURTHER ORDERED**, that this matter is **CONTINUED** to a second phase to establish how Liberty will quantify and apportion a pro rata share of collection efforts and working capital in the DPR, or demonstrate that these factors are not quantifiable, and to consider necessary amendments to Liberty's Electric Supplier Services Master Agreement and Electricity Delivery Service Tariff.

DATED:  
December 22, 2023



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Docket#: 23-003

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