

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 17-189

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

Petition to Approve Battery Storage Pilot Program

Order *Nisi* Extending Phase 1 Battery Installations

ORDER NO. 26,337

March 9, 2020

Pursuant to RSA 365:28, the Commission amends Order No. 26,209 (January 17, 2019), by extending until June 30, 2020, the deadline for installation of the first 100 customer-sited batteries in Phase 1 of Liberty Utilities' battery storage pilot program. Liberty will modify its customer agreement, marketing, educational, and disclosure materials to reflect notice requirement, timeline, rate, and method of communication for dispatch event changes, that differ from what Liberty originally agreed to pursuant to the earlier settlement agreement. This order is issued on a *nisi* basis to ensure that interested persons receive notice of the decision and have the opportunity to submit comments or request a hearing before the order becomes effective.

I. PROCEDURAL HISTORY

On January 17, 2019, The Commission conditionally approved implementation of Liberty Utilities' (Liberty or the Company) proposed battery storage pilot program. *See Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities*, Order No. 26,209 (January 17, 2019) (Order). The program's goal is to achieve customer savings through peak load reductions. *Id.* at 37. The Commission conditioned its approval on: 1) notification requirements for material cost increases; 2) ongoing consultation requirements relating to the time-of-use rate design

model; and 3) a Cybersecurity Plan filing requirement. *Id.* at 39-40. The Commission's Cybersecurity Plan filing requirement directed Liberty to file an amended Cybersecurity Plan.

Id. at 40. Additionally, the Commission directed:

Liberty must file a written certification signed by Mr. Eck, and also by a senior executive responsible for cybersecurity initiatives, confirming that such evaluations have been completed and conclusions reached, together with documentation describing in reasonable detail the supporting methodologies used in such determinations and include with a copy of its amended Cybersecurity Plan.

Id.

Liberty's pilot program was arrived at by settlement agreement, which the Commission approved in Order No. 26,209. The settlement agreement implements the pilot program in two phases. *Id.* at 16. Phase 1 involves the installation of not fewer than 100, nor more than 200, Tesla Powerwall 2 batteries. (Hearing Exhibit 18 at 6-9). The batteries may be installed behind the meter at up to 100 customers' premises. *Id.* The settlement agreement required:

Within nine (9) months following Commission approval of this settlement, at least 100 batteries shall have been installed and become fully operational and available for Liberty to control and dispatch. No batteries shall be installed in Phase 1 of the program later than twelve (12) months following Commission approval of this settlement.

Id. at 7.

Phase 1 concludes with an initial test period, beginning once the first 100 batteries are operational, and lasting for not less than 18 months. *Id.* at 8. Phase 2, which is conditioned on the demonstrated success of Phase 1, involves the installation of up to 300 additional batteries at customers' premises. *Id.* at 9-11. The nine-month period to install and make operational the first 100 batteries in Phase 1 expired in October 2019.

On October 17, 2019, Liberty filed a Motion to Extend (Liberty Motion). Liberty's Motion requested an extension of the deadline to February 28, 2020, for installation of the first

100 batteries. Liberty's Motion also requested extension of the deadline to install additional batteries during Phase 1 to May 31, 2020. No party objected to Liberty's Motion.

On November 26, 2019, Liberty filed a technical statement prepared by Heather Tebbetts (Tebbetts Statement). This technical statement detailed Liberty's cybersecurity review process. It also included updated time-of-use rates, changes in program implementation details and costs, eliminated the day ahead customer notification for dispatch events, changed the communication method for dispatch events, and changed the proposed methodology for baseline customer data collection.

On February 13, 2020, Commission Staff (Staff) filed a memorandum titled "Request for Extension of Phase 1 Installation Deadline – Staff Recommendation Regarding Deadline Extension" (Staff Recommendation). Staff recommended that the Commission approve an extension of the Phase 1 battery installation deadline to June 30, 2020, subject to conditions. On February 20, Liberty filed a response (Liberty Response) to Staff's Recommendation, agreeing that the deadline to install the first 100 batteries should be extended to June 30, 2020. Liberty agreed to Staff's recommendation, and stated that it does not request a hearing on this matter.

Liberty's Motion, the Staff Recommendation, and additional filings, other than any information for which confidential treatment has been requested of or granted by the Commission, are posted at: <http://puc.nh.gov/Regulatory/Docketbk/2017/17-189.html>.

II. POSITIONS OF LIBERTY AND STAFF

A. Liberty

Liberty requested extension of the first Phase 1 deadline for installation of a minimum of 100 batteries to February 28, 2020, and the second Phase 1 deadline for the installation of up to a total of 200 batteries to May 31, 2020. Liberty Motion at 1-2. In support of its request, the

Company stated that the modification was necessary because compliance with the Commission's cybersecurity requirement took longer than expected. *Id.* at 1. Liberty characterized the cybersecurity review as a prerequisite to the installation process. *Id.* Liberty also stated that it saw no further barriers to the installation process. *Id.* at 2.

B. Staff

Staff conditionally recommended the extension of the deadline for the installation of Phase 1 batteries to June 30, 2020. Staff Memo at 1.

Staff's first condition was that Liberty file documentation relating to the amended Cybersecurity Plan with the Commission, subject to an appropriate request for confidential treatment. *Id.* Staff stated that Liberty has satisfied the certification requirement and has submitted its amended Cybersecurity Plan. *Id.* Staff noted that Liberty allowed Safety Division Director Randy Knepper to review its supporting documentation. *Id.* Staff also noted that Mr. Knepper concluded that the documentation and Cybersecurity Plan are sufficient to meet the directives contained in the Order. *Id.* at 4. Staff stated that Liberty indicated it plans to file the documentation after determining what should be subject to a request for confidential treatment. *Id.* at 3. Staff concluded, pending the filing of the supporting documentation, that Liberty satisfied the Order's conditions relating to cybersecurity. *Id.* at 4.

Staff's second condition was that Liberty perform benefit-cost analyses both for Phase 1, and for Phase 1 and 2 combined, based on its actual Phase 1 experience. *Id.* at 8. This condition was raised to address the program changes outlined in the Tebbetts Statement and reviewed by Staff. *Id.* at 3. Staff characterized those changes, corrections, and updates as having the overall effect of increasing the implementation costs of the pilot program. *Id.* at 6. Staff recommended

that Phase 2 should remain conditional and proceed only if the Phase 1 analyses demonstrate positive net benefits, as required by the Order. *Id.*

Staff's third condition was for Liberty to modify its customer marketing, disclosure, educational, and contract materials. *Id.* at 1. Staff stated that Liberty changed its notice requirement, timeline, and method of communication for dispatch events. *Id.* at 6. Staff noted that Liberty's new notification and communication process differs from that contained in the settlement agreement. *Id.* Staff stated that Liberty should modify its customer agreement and other marketing, educational, and disclosure materials to reflect that change. *Id.* at 7. Staff requested that the revised materials be submitted to the Commission for review prior to being distributed. *Id.*

Staff's fourth condition was that pre-installation baseline data from participating customers be collected pursuant to the terms of the settlement agreement. *Id.* at 1. Staff stated that Liberty proposed to substitute concurrently collected data from a control group during the Phase 1 initial test period for actual baseline data from participating customers. *Id.* 8. Staff stated that it was not persuaded that actual baseline data collection should be foregone. *Id.* Staff recommended that Liberty begin installing 100 meters at prospective premises within one week of an order extending the Phase 1 battery installation deadline. *Id.*

C. Liberty Reply

Liberty agreed that the deadline to install the first 100 batteries should be extended to June 30, 2020, and agreed to Staff's conditions. Liberty Response at 1. *Id.* Liberty stated that it would file the cybersecurity documentation, and that it will complete an analysis of Phase 1 performance based on actual Phase 1 experience. *Id.* Liberty stated that it updated its customer marketing, disclosure, educational and contractual materials, has provided the revised contract to

Staff, and will provide the other materials to Staff. *Id.* at 1-2. Liberty accepted the condition relating to collection of pre-installation electricity usage data and installation of meters at prospective customer locations. *Id.* at 2. Liberty, however, pointed out that it was only obligated to install 50 meters, since the minimum number of customers for Phase 1 is 50. *Id.*

III. COMMISSION ANALYSIS

The Commission has the authority “after notice and hearing, to alter, amend, suspend, annul, set aside, or otherwise modify” its prior orders under RSA 365:28. The authority granted under this provision is to be “liberally construed.” *Appeal of the Office of the Consumer Advocate*, 134 N.H. 651, 657 (1991); *Meserve v. State*, 119 N.H. 149, 152 (1979).

Liberty’s Motion requested the extension of deadlines established by the approved settlement agreement to dates certain in February and May of 2020. Liberty stated that it was unable to meet the initial deadlines because of compliance requirements established by the Commission’s conditional approval of the settlement agreement. Staff subsequently recommended extension of the deadline for the installation of Phase 1 batteries to June 30, 2020, subject to additional conditions. Liberty, in turn, assented to Staff’s recommended deadline extension and conditions.

We note that the settlement agreement did not set specific dates to meet installation benchmarks and deadlines. Instead, the settlement agreement set an initial nine-month deadline to begin the initial test period with a minimum of 100 batteries, and a 12 month overall deadline for Phase 1 battery installations. Both deadlines were triggered by the Commission’s approval of the settlement agreement.

We exercise our authority to modify prior orders under RSA 365:28 to extend the deadlines associated with Phase 1 of the pilot program. We extend those deadlines consistent

with Staff's Recommendation, subject to clarifications in the body of this order.

In lieu of a hearing, we modify Order No. 26,209 by issuing this order on a *nisi* basis to ensure that all interested persons receive notice of the decision and have the opportunity to submit comments or request a hearing before the order becomes effective.

We note that Staff's Recommendation is subject to several conditions, to which Liberty agrees. Those conditions include requirements that Liberty: 1) file cybersecurity evaluation documentation; 2) complete future benefit-cost analysis based on its Phase 1 experience; 3) modify and submit its customer marketing, disclosure, educational, and contractual materials for Staff review; and 4) collect pre-installation electricity usage data from participating customers. We approve and adopt those conditions with the clarifications described below.

With respect to pre-installation electricity usage data, the settlement agreement stated that Liberty shall collect customer "load profile and demographic information, to be obtained at time of enrollment and during the pre-installation period." Hearing Exhibit 18 at 18. Staff maintained that baseline data must be collected from a substantial number of customers prior to battery installation. Staff Recommendation at 8. We interpret that condition to mean that meters at customer premises must be installed as expeditiously as possible, and before the initial test period begins. Liberty is correct that this may be as few as 50 meters for the Phase 1 program with a minimum quantity of 100 batteries, because each customer is required to have two batteries. In order to maintain the benefit of the original agreement, we direct that Liberty begin installing meters at customer premises within one week of the effective date of this order and that all premises participating in Phase 1 have a meter installed and operational by June 30, 2020.

To the extent that ambiguity exists between Staff's and Liberty's positions, we clarify that all meters for Phase 1 premises should be installed and operational on or before

June 30, 2020. A minimum of 100 batteries must be installed and operational on or before that date, at which point the initial test period will begin. The remainder of the batteries permitted in Phase 1, up to 200, must be installed and operational on or before September 30, 2020.

Except as modified by this order, Order No. 26,209 remains unmodified and in full force and effect. To facilitate efficient and timely administration of Phase 1 of the pilot program, we require Liberty to notify Staff once it has approved of and entered into binding contracts with its first 50 customers, signaling that it will begin installing meters and batteries under the terms of the approved settlement agreement. Additionally, we require Liberty to notify Staff once it has installed and made operational the first 100 batteries, signaling the beginning of the initial 18-month test period. Finally, we direct Liberty to notify the Commission of the number of meters installed as of June 30, 2020.

Based upon the foregoing, it is hereby

ORDERED *NISI*, that Order No. 26,209 is modified to extend the Phase 1 deadlines as discussed in the body of this order; and it is

FURTHER ORDERED, that the conditions proposed by Staff and assented to by Liberty, as clarified in the body of this order, are approved and adopted; and it is

FURTHER ORDERED, that Liberty shall cause a summary of this order, issued concurrently with this order, to be published once in a newspaper of general circulation within its franchise area, such publication to be no later than March 13, 2020, and to be documented by affidavit filed with the Commission on or before March 23, 2020; and it is

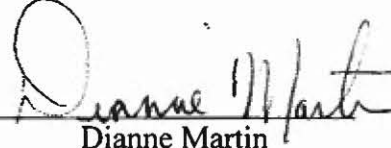
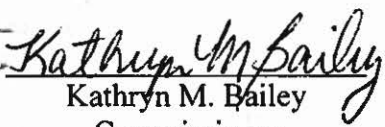

FURTHER ORDERED, that all persons interested in responding to this order *nisi* be notified that they may submit their comments or file a written request for a hearing that states the

reason and basis for a hearing no later than March 23, 2020, for the Commission's consideration; and it is

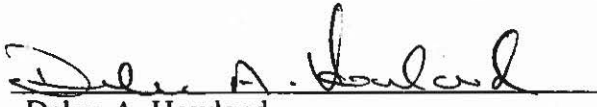
FURTHER ORDERED, that all persons interested in responding to such comments or request for hearing shall do so no later than March 30, 2020; and it is

FURTHER ORDERED, that this order *nisi* shall be effective March 31, 2020, unless the Commission provides otherwise in a supplemental order issued prior to the effective date.

By order of the Public Utilities Commission of New Hampshire this ninth day of March, 2020.

 Dianne Martin Chairwoman	 Kathryn M. Bailey Commissioner	 Michael S. Giaimo Commissioner
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Attested by:


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