

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 24-066

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

Petition to Amend Tariff

**COMMENCEMENT OF ADJUDICATIVE PROCEEDING,
NOTICE OF PREHEARING CONFERENCE, AND NOTICE OF HEARING**

On April 22, 2024 Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (Liberty) filed a petition to amend to its tariff to allow it recover costs associated with municipal requirements to construct, modify, or relocate utility facilities that Liberty would not have otherwise incurred.¹ All docket filings, other than any information subject to confidential treatment, are available on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2024/24-066.html>.

I. BACKGROUND AND PROCEDURAL HISTORY

In Order No. 26,494 (July 1, 2021) in Docket No. DE 19-064, the Commission addressed a step increase to Liberty's permanent rates that included, among other capital expenses, costs related to moving overhead wires underground as part of development project in the Town of Salem (Salem). Order No. 26,49 at 5. Liberty represented that while it ordinarily would not have buried the lines, it did so at the direction of Salem. At hearing, the Commission expressed concern that Salem's requirement that Liberty bury the lines resulted in all of Liberty's ratepayers—including those in other municipalities—bearing the extra cost rather than just the residents of Salem. *Id.* Liberty responded that it passed the cost onto its ratepayers

¹ In its petition, Liberty stated that Attachment A included both clean and annotated tariff pages demonstrating the proposed changes to the tariff's language. Liberty, however, inadvertently omitted Attachment A in its initial filing and subsequently filed it on April 30. However, Attachment A only includes an annotated version of the proposed tariff pages, which contain an effective date of July 1, 2020. The Commission assumes Attachment A was filed for demonstrative purposes only.

because there was no language in its tariff that would allow it to charge the incremental cost to a municipality in such circumstances. In response, the Commission stated:

[C]oncerning the issue of relocation of poles and wires from overhead to underground at a customer's request, as happened in Salem, we require that [Liberty] propose to modify its tariff, as soon as practical, so that all customers who request relocation of existing overhead facilities be required to pay the excess cost, if the customer requests those facilities to be placed underground.

Id. at 7.

Heeding the Commission's directive, Liberty proposed language to allow it to recover these costs from municipalities in its proposed tariff in its pending rate case, Docket No. DE 23-039, with the intention that the tariff changes would go into effect by September 2024 and thus apply to planned projects in the fall of 2024. Because Docket No. DE 23-039 is unlikely to be resolved this year, Liberty filed the instant petition to amend its existing tariff to allow for recovery from municipalities in these circumstances.

Specifically, Liberty seeks to add the following language to Page 16 of its tariff:

In the event that a municipality or other governmental agency ("municipality") requests or compels the Company directly or indirectly to

- (i) install facilities in addition to, different from, or instead of facilities which the Company would otherwise install;
- (ii) remove existing facilities and replace them with facilities different from facilities which the Company would otherwise provide; or
- (iii) modify facilities which the Company would otherwise not modify, or modify facilities in a manner different from the manner in which the Company would otherwise perform,

any incremental costs associated with such installation, relocation, or modification shall be recovered from the municipality.

The municipality will have the option to either pay the full incremental costs before the start of construction or sign an agreement to pay the amount in 60 equal payments, plus interest at the rate of interest

applicable to the Company's customer deposit accounts at the time of execution of the payment agreement. Once construction is complete, the Company shall true-up any estimated project costs used with actual costs, and either refund or charge the municipality accordingly over the term of the payment agreement, with interest.

All facilities the Company is requested or compelled to install in accordance with this section are the property of the Company.

See Petition, Attachment A. In its petition, Liberty noted that this language only applies to municipalities that mandate the company undertake certain actions because its tariff already includes language that allows it to recover the incremental costs resulting from individual customers' requests.

Liberty represents that the Commission should review this proposed change under New Hampshire Code of Administrative Rules, Puc 1605.01(b), which applies to a "Service or Tariff Change other than Full Rate Case" and where the proposal does not result "in a significant change to the return on the cost of the property of the utility used and useful in the provision of services." Liberty represents that under this rule, its petition can be approved without a hearing because its proposed changes do not alter the company's rates. See Petition at 5.²

The New Hampshire Department of Energy and the Office of the Consumer Advocate both filed notices of appearances in this docket. In addition, Salem filed a motion to intervene on the grounds that its interests would be affected by the outcome of these proceedings.

Given that Liberty's proposed amendment would affect all municipalities in Liberty's franchise area, and Salem has specifically sought to intervene on the grounds that its interests are likely to be affected by the outcome of this docket, the

² Liberty also suggests that the Commission allow the proposed changes to take effect as a matter of law per Puc 1603.07(a). However, because Liberty did not file tariff pages in a manner consistent with Puc 1603.05, see Footnote 1, Puc 1603.07 is inapplicable.

Commission believes that an adjudicative proceeding is appropriate. The Commission will schedule a prehearing conference at which all parties should come prepared to discuss their initial positions on Liberty's proposed amendment, including the appropriate process for resolving the petition.

II. ISSUES PRESENTED

The filing presents, *inter alia*, the following issues: whether allowing Liberty to recover costs for a project it would not have incurred in the absence of a municipal requirement is just and reasonable and should therefore be permitted; if so, whether Liberty's proposed language is the most effective way of achieving this goal; and whether any other legal authorities, such as local ordinances or state statutes, may be implicated by the decision in this docket. Accordingly, an adjudicative proceeding will be convened to address these issues.

The Commission will be conducting the prehearing conference and any hearings scheduled in this matter in person. The Commission will consider requests to conduct hearings using a hybrid format to permit remote participation by a specific individual only if the Commission has determined that a sufficient reason has been provided for why that individual would be unable to attend in person. Any party requesting that a specific individual be permitted to participate remotely should file a written request with the Commission's Clerk's Office no later than fifteen (15) days prior to the prehearing conference or hearing date. If the Commission determines that one or more individuals will be permitted to appear remotely, then individuals in the Commission's hearing room, including the Commissioners, will be broadcast on a web-enabled platform.

Based upon the foregoing, it is hereby

ORDERED, that an adjudicative proceeding be commenced for the purpose of reviewing and resolving the foregoing issues pursuant to RSA chapter 541-A and the Commission's procedural rules; and it is

FURTHER ORDERED, that the Commission will hold a prehearing conference, pursuant to N.H. Admin. R., Puc 203.15, at its offices located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on July 3, 2024, at 9:00 a.m., at which each party should be prepared to address any of the issues set forth in N.H. Admin. R., Puc 203.15. We also assign a member of the Commission's staff to hear the parties, report the facts, and make recommendations at this prehearing conference pursuant to RSA 363:17. Attorney Ben Martin-McDonough, a Senior Advisor to the Commission, is assigned to serve as examiner for the prehearing conference, report the facts, and draft a recommended order on any issues that need to be addressed at the conference. Any party may request that this conference be held "by the full commission, or a majority thereof" so long as that request is made 5 days before the date of the conference. RSA 363:17.; and it is

FURTHER ORDERED, that during the prehearing conference, the Commission will consider the matters listed in Puc 203.15(c) and (d), including the establishment of a procedural schedule governing the remainder of the proceeding. Parties and potential parties are encouraged to facilitate the development of a procedural schedule by conferring prior to the prehearing conference, so that the presiding officer can address any matters on which there is disagreement during the prehearing conference. Any procedural schedule, however, will not be approved until after the prehearing conference and after consulting the Commission's calendar; and it is

FURTHER ORDERED, that, immediately following the prehearing conference, Liberty shall make appropriate personnel available for the parties to hold a technical session to review the filing; and it is

FURTHER ORDERED, that any entity or individual may petition to intervene and seek to be admitted as a party in this proceeding. Each party has the right to have an attorney represent the party at the party's own expense; and it is

FURTHER ORDERED, that, consistent with N.H. Admin. R., Puc 203.17 and Puc 203.02, any entity or individual seeking to intervene in the proceeding shall file with the Commission a petition to intervene with copies sent to Liberty and any other parties on the service list, on or before June 21, 2024. The petition shall state the facts demonstrating how the petitioner's rights, duties, privileges, immunities, or other substantial interests may be affected by the proceeding, consistent with N.H. Admin. R., Puc 203.17; and it is

FURTHER ORDERED, that any party objecting to a petition to intervene make said objection on or before June 28, 2024; and it is

FURTHER ORDERED, that parties shall file any proposed exhibits, written testimony, motions, or other documents intended to become part of the record in this proceeding with the Commission. Pursuant to the secretarial letter issued on March 17, 2020, which is posted on the Commission's website at <https://www.puc.nh.gov/Regulatory/Secretarial%20Letters/20200317-SecLtr-Temp-Changes-in-Filing-Requirements.pdf>, all Commission rules requiring the filing of paper copies are suspended until further notice. Parties may elect to submit any filing in electronic form unless otherwise ordered by the Commission. Filings will be considered filed as of the time the electronic copy is received by the Commission; and it is

FURTHER ORDERED, that routine procedural inquiries may be made by contacting the Commission's Clerk's Office at (603) 271-2431 or ClerksOffice@puc.nh.gov. All requests to the Commission should be made in a written pleading filed with the Commission. Unless otherwise authorized by law, *ex parte* communications are prohibited; and it is

FURTHER ORDERED, that pursuant to N.H. Admin. R., Puc 203.12, Liberty shall notify all entities and individuals desiring to be heard at this hearing by publishing a copy of this order of notice on its website no later than two business days after the date of issue, such publication to be documented by affidavit filed with the Commission on or before June 12, 2024. In addition, the Clerk shall publish this order of notice on the Commission's website no later than two business days after the date of issue; and it is

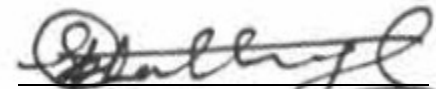
FURTHER ORDERED, that the Commission will schedule a hearing in this matter at its offices located at 21 S. Fruit St., Suite 10, Concord, New Hampshire, on August 15, 2024, at 9:00 a.m. If the parties do not believe this hearing is necessary, they should inform the hearing examiner at the prehearing conference; and it is

FURTHER ORDERED, that any hearings in this matter shall be conducted in accordance with the attached hearing guidelines.

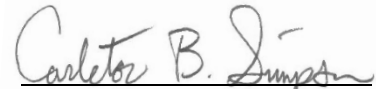
So ordered, this sixth day of June, 2024.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Individuals needing assistance or auxiliary communication aids due to sensory impairment or other disability should contact the NHPUC, 21 S. Fruit St., Suite 10, Concord, New Hampshire 03301-2429; 603-271-2431; TDD Access: Relay N.H. 1-800-735-2964. Notification of the need for assistance should be made one week prior to the scheduled event.

Service List - Docket Related

Docket#: 24-066

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