

BEFORE THE
NEW HAMPSHIRE PUBLIC UTILITIES COMMISSION

DOCKET DE 23-044

IN THE MATTER OF: Liberty Utilities (Granite State Electric) Corp.
d/b/a/ Liberty
2023 Default Service Solicitations

DIRECT TESTIMONY

OF

Stephen R. Eckberg
Utility Analyst
New Hampshire Department of Energy

September 1, 2023

1 **Q. Please state your full name.**

2 A. Stephen R. Eckberg.

3

4 **Q. By whom are you employed and what is your business address?**

5 A. I am employed as a utility analyst with the New Hampshire Department of Energy in the
6 Regulatory Support Division. My business address is 21 South Fruit Street, Suite 10,
7 Concord, NH, 03301.

8

9 **Q. Please summarize your relevant education and professional work experiences.**

10 A. In my current position as a regulatory analyst with the Regulatory Support Division, I focus
11 mainly on regulatory matters having to do with electric utilities. This includes a broad range
12 of regulatory matters including, but not limited to, default energy service, vegetation
13 management programs, major storm fund reviews, energy efficiency program review, and
14 depreciation study review. I was previously employed as a Utility Analyst with the New
15 Hampshire Office of Consumer Advocate (OCA) from 2007 to 2014. In 2014, I joined the
16 Sustainable Energy Division of the Public Utilities Commission (“PUC”). In 2019, I joined
17 the Commission’s Electric Division. In July 2021, with the passage of HB2, the New
18 Hampshire Legislature created the Department of Energy (“DOE” or “Department”) and I
19 became an employee of the Regulatory Support Division of DOE. I earned a B.S. in
20 Meteorology from the State University of New York at Oswego and an M.S. in Statistics
21 from the University of Southern Maine. I have worked in a variety of energy related analytic
22 and administrative roles for over 25 years. Attachment SRE-1 provides more complete

1 details of my education, professional work experience, and a list of testimonies I have filed
2 with the New Hampshire PUC.

3

4 **Q. What is the purpose of your testimony?**

5 A. The purpose of my testimony is to present DOE's position on Liberty's purchase of an
6 amount of 2020 vintage Class III Renewable Energy Certificates (RECs) at prices above the
7 then current and applicable Alternative Compliance Payment (ACP) rate per megawatt-hour
8 and to recommend that the portion of costs representing both excess quantity and excess cost
9 (above ACP) of the vintage 2020 Class III RECs be disallowed for collection from
10 ratepayers.

11

12 **Q: Please provide a summary of your recommendations regarding the Class III REC**
13 **situation.**

14 A: My recommendations to the Commission include:

15 1) Direct Liberty to include in its next reconciliation of Default Energy Service expenses
16 an adjustment to remove \$864,640 in costs (plus carrying charges) related to 25,033
17 vintage 2020 Class III RECs it purchased at prices greater than the then applicable ACP
18 rate for these RECs. The Department anticipates that Liberty will file its next
19 reconciliation of Energy Service expenses for the period August 1, 2023 – July 31, 2024
20 in late May 2024.

21 2) Direct Liberty to continue its practice of soliciting RECs via its RFP process and to
22 purchase additional RECs as needed via bilateral agreement or from REC brokers when
23 such opportunities arise and that all such purchases should be at prices at or below the

1 then prevailing REC Class specific ACP rates. *See* DE 23-044 Exhibit 3, Testimony of
2 John D. Warshaw, Bates 11-14 (description of Liberty’s RPS compliance REC
3 procurement process).

4
5 **Liberty’s 2020 Class III REC purchases**

6 **Q. Please provide details about Liberty’s purchase of the vintage 2020 Class III REC**
7 **which are the subject of your testimony.**

8 A: Liberty has provided a thorough presentation of its 2020 Class III REC purchases in the
9 “Supplemental Direct Testimony of John D. Warshaw filed January 31, 2022 in Docket DE
10 21-087” which has been entered as both Confidential Exhibit 4 (“Exh. 4”) and Redacted
11 Exhibit 5 (“Exh. 5”) in the current proceeding. That Supplemental Direct Testimony of Mr.
12 Warshaw was previously introduced in Docket DE 21-087 as Redacted Exhibit 13 and
13 Confidential Exhibit 14 to provide additional information about the Company’s Class III
14 REC purchases at that time.

15
16 **Q: Does Exh. 5 provide other useful information about Liberty’s REC procurement for**
17 **RPS compliance?**

18 A: Yes, Exh. 5 also provides a general description of the Company’s process of issuing RFPs to
19 solicit RECs in various RPS Classes and quantities that the Company anticipates it will need
20 to fulfill its RPS obligations annually. *See* Exh. 5 at Bates 7-8 describing RFPs issued.

21
22 **Q: How are the RPS compliance quantity requirements and the ACP rates set each year?**

1 A: The RPS compliance quantity requirements are set by statute, and in addition, the
2 Department has the authority to review and adjust the Class III requirement annually within
3 certain limits. The ACP rate is set by statute and adjusted annually by the Department using
4 the Consumer Price Index per the methodology provided in statute.

5
6 **Q: What is the relevant New Hampshire statute that governs the methodology for setting**
7 **the ACP rate for each REC Class including Class III?**

8 A: RSA 362-F – the Renewable Portfolio Standard (RPS) statute requires each electricity
9 provider to comply with certain provisions governing the details of the RPS and includes
10 details of how the Public Utilities Commission, now the Department of Energy, shall set the
11 ACP prices for each program compliance year. In particular, RSA 362-F:10, III, subparts
12 (a), (b), (c), and (d) provide the details regarding establishing the Class III ACP rate.

13
14 **362-F:10 Renewable Energy Fund. –**

15 I. [statutory language not reproduced here for brevity].

16 II. In lieu of meeting the portfolio requirements of RSA 362-F:3 for a given year if, and to the extent
17 sufficient certificates are not otherwise available at a price below the amounts specified in this paragraph,
18 an electricity provider may, at the time of report submission for that year under RSA 362-F:8, make
19 payment to the department of energy at the following rates for each megawatt-hour not met for a given
20 class obligation through the acquisition of certificates:

21 (a) Class I-\$55, except for that portion of the class electric renewable portfolio standards to be met
22 by qualifying renewable energy technologies producing useful thermal energy under RSA 362-F:3 which
23 shall be \$25 beginning January 1, 2013.

24 (b) Class II-\$55.

25 (c) Class III-\$31.50.

26 (d) Class IV-\$26.50.

27 III. (a) Beginning in 2013, the department of energy shall adjust these rates by January 31 of each year
28 using the Consumer Price Index as published by the Bureau of Labor Statistics of the United States
29 Department of Labor for classes III and IV and 1/2 of such Index for classes I and II.

30 (b) In lieu of the adjustments under subparagraph (a) for class III in 2015 and 2016, the class rate
31 in each of those years shall be \$45. In lieu of the adjustments under subparagraph (a) for class III in 2017,
32 2018, and 2019, the class rate in each of those years shall be \$55.

33 (c) By January 31, 2020 the department of energy shall compute the 2020 class III rate to equal the
34 rate that would have resulted in 2020 by the application of subparagraph (a) to the 2013 rate and each
35 subsequent year's rate to 2020.

36 (d) In 2021 and thereafter, the class III rate shall be determined by application of subparagraph (a)
37 to the prior year's rate.
38

1 **Q: Are these details regarding the ACP rate important in the current context of Liberty’s**
2 **vintage 2020 Class III REC purchases?**

3 A: Yes, these details are important in evaluating Liberty Class III REC purchase decisions. As
4 RSA 362-F:10, II states, “In lieu of meeting the portfolio standards [...] for a given year, if
5 and to the extent that sufficient certificates are not otherwise available at a price below the
6 amounts specified in this paragraph [i.e. below the ACP], an electricity provider [...] may
7 make payment to the department of energy at the following rates for each megawatt-hour of
8 energy not met for a given class obligation through the acquisition of certificates.”

9
10 **Q: What is the significance of RSA 362-F:10, II?**

11 A: My understanding is that this language means that an electric supplier with an RPS obligation
12 may meet its obligation by either purchasing RECs as required in each RPS category OR, if
13 sufficient RECs are not available at, or below, the ACP rate specified, the electric supplier
14 may pay the ACP rate for each megawatt-hour of compliance for which it does not have a
15 corresponding REC to meet its obligation.

16
17 **Q: Can you provide a brief summary of Liberty’s relevant Class III REC purchases, the**
18 **costs of which are the subject of this disagreement and your testimony?**

19 A: Liberty bought 35,497 Class III RECs in July 2020, an amount of Class III RECs sufficient to
20 meet its estimated Class III requirement for 2020.¹ The Class III requirement, at the time

¹ Note that Liberty also had 494 vintage 2019 Class III RECs banked and available for use in 2020. Liberty had a total of 35,991 Class III RECs available for use in 2020. See Exh. 5 at Bates 20, Rows F, G and K.

1 Liberty committed to purchase the RECs was the 8% of its total default energy sales.² That
2 8% rate was the rate set by statute at the time Liberty committed to purchase the RECs.

3

4 **Q: Did Liberty purchase these RECs at or below the ACP rate effective at the time of**
5 **purchase?**

6 A: No, they did not. In Exh. 5 at Bates 10 Lines 9-10, Mr. Warshaw states, “Subsequent to
7 making all its purchases, the Company determined that it had inadvertently purchased its
8 Class III RECs as a rate higher than the ACP.”

9

10 **Q: What was the applicable 2020 Class III ACP rate?**

11 A: The 2020 Class III ACP rate was \$34.54 per megawatt-hour of RPS compliance. So a
12 prudent purchase of Class III RECs would be one that acquired RECs at a price less than
13 \$34.54 each.

14

15 **Q: How and when is that applicable rate made known and available to utilities and electric**
16 **suppliers that have an RPS compliance obligation?**

17 A: Each year, the new ACP rates are calculated and published in accordance with statute by
18 January 31 for that compliance year³. So, by January 31, 2020, the Class III ACP rate, along
19 with ACP rates for all other RPS classes was published on the PUC website, now the
20 Department’s website.⁴

21

² Energy sold by competitive energy suppliers and delivered by Liberty to end use customers also meets RPS requirements through the compliance activities of those energy suppliers.

³ RSA 362-F:10, III (a) available at <https://www.gencourt.state.nh.us/rsa/html/XXXIV/362-F/362-F-mrg.htm>

⁴ <https://www.energy.nh.gov/renewable-energy/renewable-portfolio-standard>

1 **Q: Is it acceptable for Liberty to ask ratepayers to pay the price of these RECs which the**
2 **Company purchased at, admittedly, too high a price?**

3 A: No. In fact, Mr. Warshaw goes on to say, “Because Liberty did not believe it to be
4 appropriate for its customers to bear those extra costs, a downward adjustment was made to
5 reduce the amount to be recovered through rates.” In effect, the Company included in rates,
6 only the amount calculated as the correct applicable ACP rate times the number of Class III
7 RECs used for RPS compliance in 2020.

8

9 **Q: Do you agree with Liberty’s approach to remedying this situation?**

10 A: I agree with Liberty’s approach of including in its rates related to its 2020 RPS compliance
11 only the cost of the Class III RECs used valued at the correct ACP rate in effect at the time,
12 as well as costs applicable to other RPS Class costs. I do not agree with Liberty’s current
13 proposal to charge customers for costs related to Class III RECs which the Company has
14 ultimately been unable to use due to the PUC, and subsequently, the Department, reducing
15 the Class III RPS obligation as it is statutorily authorized to do. I will provide more detailed
16 discussion of my disagreement below. Thus far, I have primarily discussed the “price” issue
17 which is that Liberty purchased its Class III RECs at too high a price – above the ACP rate.

18 There is another aspect of the decision to consider also, and that is the “quantity” issue.

19

20 **Q: Please provide an explanation of the quantity issue that you mention, and how this is**
21 **relevant to the current situation.**

22 A: In the Exh. 5 testimony of Mr. Warshaw, he explains the additional complications
23 surrounding the “quantity” issue of the Class III RECs that the Company purchased. The

1 Company purchased a sufficient quantity of Class III RECs to meet an obligation of 8% of its
2 energy sales. At the time Liberty made the commitment to purchase that quantity of Class III
3 RECs, the RPS requirement was indeed 8%. Subsequent to Liberty's commitment and
4 purchase of these RECs, the PUC conducted a statutorily authorized review of the Class III
5 marketplace, held a public stakeholder session at which it took relevant input from
6 stakeholders – including Liberty. In Order No. 26,472, issued April 20, 2021, the PUC
7 reduced the Class III requirement for 2020 from 8% to 2% to reflect its assessment of the
8 availability of these RECs in the marketplace. Admittedly, this is late in the 2020
9 compliance cycle as the final trading period for 2020 RECs produced in the fourth calendar
10 quarter of 2020 runs from April 15, 2021 – June 15, 2021. *See* NEPOOL GIS REC
11 Production and Trading Calendar included as Attachment SRE-2. Each electric supplier
12 must submit its final 2020 RPS Compliance Report to the PUC by June 30 of each year. So
13 even with the change in 2020 Class III requirement which occurred in April 2021, electric
14 suppliers had nearly two months to acquire RECs needed and finalize their RPS compliance
15 portfolio. However, the quantity issue relevant here is that Liberty purchased *any* Class III
16 RECs at a price above the ACP.

17

18 **Q: Did Liberty need to take any actions to acquire more Class III RECs at that point in**
19 **time in 2021 – late in the 2020 compliance period?**

20 A: No, as I've discussed, and as Liberty testified, it already had sufficient Class III RECs to
21 meet the 8% requirement, so the reduction in the Class III requirement left it with quite a
22 different problem – too many Class III RECs and a significant concern that it might not be

1 able to use up all those Class III RECs in the 2020 compliance or in the two subsequent
2 years, even when they banked those extra Class III RECs for possible use in future years.

3
4 **Q: Before I ask you to explain about REC banking, would you please discuss more about**
5 **how the “price” and “quantity” issues which you’ve identified are connected?**

6 A: Yes. The issues of price and quantity are very connected as, together, they should inform all
7 REC purchase decisions. As Mr. Warshaw stated in Exh. 5 and as I explained above, the
8 Company realized that it had purchased 2020 Class III RECs at a price that was above the
9 applicable ACP rate. The Company took the step of “writing off” only the “above-ACP”
10 amount for the total number of 2020 Class III RECs that it purchased for both the RECS that
11 were used for 2020 RPS compliance and those that were banked for use in two future years
12 per statute. *See* Transcript of Hearing held June 18, 2021 in DE 21-08, page 21 “...we also
13 removed [\$]1.3 million in Class III renewable energy credit costs that were banked to be used
14 for future year compliance.” This write-off of above ACP costs cannot be used to separate
15 the issues of price and quantity. While writing off the above ACP amount of such a *wholly*
16 improper purchase may reduce the potential harm to ratepayers, it may not fully ameliorate
17 that potential harm because costs of that wholly improper purchase remain. I will address
18 this in more detail below.

19
20 **Q: Please explain more about REC banking which you just mentioned.**

21 A: An electric supplier may bank unused RECs then use a limited amount of them over the next
22 two RPS Compliance years. Only thirty (30) percent of an electric supplier’s specific Class
23 requirement may consist of banked RECs in accordance with RSA 362-F:7, I:

1 **362-F:7 Sale, Exchange, and Use of Certificates. –**

2 I. A certificate may be sold or otherwise exchanged by the source to which it was initially issued or by any other
3 person or entity that acquires the certificate. A certificate may only be used once for compliance with the
4 requirements of this chapter. It may not be used for compliance with this chapter if it has been or will be used
5 for compliance with any similar requirements of another non-federal jurisdiction, or otherwise sold, retired,
6 claimed, or represented as part of any other electrical energy output or sale. Certificates shall only be used by
7 providers of electricity for compliance with the requirements of RSA 362-F:3 in the year in which the
8 generation represented by the certificate was produced, **except that unused certificates of the proper class**
9 **issued for production during the prior 2 years may be used to meet up to 30 percent of a provider's**
10 **requirements for a given class obligation in the current year of compliance. [emphasis added]**
11

12 **Q: Please explain how this requirement regarding the use of banked RECs is applicable to**
13 **Liberty in this situation.**

14 A: Liberty purchased 35,497 Class III RECs in 2020 and used 8,419 vintage 2020 Class III RECs
15 in its 2020 RPS compliance in conjunction with some RECs they had banked from the prior
16 year⁵. They banked the remaining 27,078. In 2021, Liberty's Class III REC requirement
17 was 4,553; therefore, they could only use 1,366 banked RECs (30% x 4,553). In 2022,
18 Liberty's Class III REC requirement was 2,264; therefore, they could only use 679 banked
19 RECs (30% x 2,264). This has left Liberty, ultimately with a large number of 2020 vintage
20 Class III RECs that it was unable to use in 2020 or either of the two subsequent RPS
21 compliance years of 2021 and 2020. Specifically, the original 2020 purchase amount of
22 35,497 Class III RECs less those used in 2020, 2021, and 2022 leaves Liberty with 25,033
23 "stranded" or unusable 2020 vintage Class III RECs.
24

25 **Q: Did Liberty use all of their banked Class III RECs?**

⁵ Note that Liberty also had 494 vintage 2019 Class III RECs banked and available for use in 2020. Liberty had a total of 35,991 Class III RECs available for use in 2020. See Exh. 5 at Bates 20, Rows F, G and K.

1 A: No. As enumerated above Liberty has 25,033 remaining vintage 2020 Class III RECs that it is
2 unable to use. (35,497 bought in 2020 – 8,419 used in 2020 – 1,366 used in 2021 – 679 used
3 in 2022).

4

5 **Q: What does Liberty propose to do with the remaining banked RECs?**

6 A: Liberty is unable to use the remaining 25,033 vintage 2020 banked Class III RECs, but has
7 included the value of purchasing those unused banked RECs in their current RPS
8 reconciliation and compliance costs. See DE 23-044 Technical Statement of Tyler
9 Culbertson at Bates 73 which states:

10 “Liberty is also filing this technical statement in support of its request for approval to recover
11 \$864,640 for the 25,033 Class III RECs that the Company purchased in 2020 but has been
12 unable to use due to a reduction in the Class III obligation made after Liberty purchased these
13 RECs and due to the limits on the number of banked RECs that can be used in future
14 proceedings.”

15 A simple calculation using the numbers in Mr. Culbertson’s statement above shows the value
16 that the Company seeks to now collect from ratepayers related to these vintage 2020 Class III
17 RECs that it is unable to use is \$34.54 each. That value corresponds to the RPS 2020
18 Compliance Year Class III ACP.

19

20 **Q: Is this the Company’s proposed remedy that you indicated earlier that you disagree**
21 **with?**

22 A: Yes, it is.

23

24 **Q: Please explain why you disagree with the Company’s proposal to collect the amount**
25 **of \$864,640 related to these “stranded” vintage 2020 Class III RECs from ratepayers.**

1 A: In simple terms, the Company has already stated that when it purchased these vintage
2 2020 Class III RECs, it did so at a rate higher than the applicable ACP rate. That decision,
3 was, therefore, an imprudent decision. There is no reason why the Company should ever pay
4 more than the applicable Class specific ACP rate for RECs. If the regional REC market for a
5 particular NH Class of REC is trading at a price higher than our applicable ACP rate, the
6 Company should prudently choose not to buy RECs at that higher price and to instead pay
7 the ACP rate as needed for RPS compliance. Of course, if the Company's REC solicitations
8 provide it with the opportunity to purchase RECs at a price lower than the ACP, it should
9 make that choice to reduce overall RPS compliance costs.

10
11 **Q: Do I understand, then, that your position is that Liberty's costs related to these**
12 **"stranded" unusable vintage 2020 Class III RECs are the result of an imprudent**
13 **decision?**

14 A: That's correct. Ultimately, when Liberty made the decision to purchase those 2020 Class
15 III RECs at prices higher than the ACP – that was an imprudent decision. Liberty is not left
16 with "stranded" Class III RECs because the PUC and the Department reduced the Class III
17 RPS requirement in 2020, 2021, and 2022. While those Class III reductions do impact the
18 actual number of the 2020 Class III RECs that Liberty could use each year and therefore, the
19 final quantity of "stranded" unusable RECs, the fact that there are any "stranded" Class III
20 RECs at all is a direct result of Liberty having purchased Class III RECs at a price higher
21 than the ACP rate. Liberty has made efforts to only charge customers for the actual number
22 of Class III RECs used at the then applicable ACP rate, the fundamental fact remains that
23 their original decision to purchase Class III RECs at prices higher than the ACP rate was

1 imprudent. As a result, ratepayers should not be held responsible for any “stranded” REC
2 costs related to that initial imprudent decision.

3
4 **Q: What is your recommendation to the Commission?**

5 A: As explained in the Technical Statement of Mr. Culbertson quoted above, the Company
6 has included the amount of \$864,640 in the current reconciliation of RPS costs which is
7 included in the calculation of current energy service rates. I recommend that the PUC direct
8 the Company to return this amount of \$864,640, plus applicable carrying charges in its next
9 energy service reconciliation so that ratepayers are held harmless from the Company’s
10 imprudent decision to purchase vintage 2020 Class III RECs at rates higher than the
11 applicable ACP rate.

12
13 **Q: Do you have any other recommendations for the Commission?**

14 A: Yes. I recommend that the Commission direct Liberty to continue its practice of
15 soliciting RECs via its RFP process and to purchase additional RECs as needed via bilateral
16 agreements or from REC brokers when such opportunities arise and that all such purchases
17 should be at prices at or below the then prevailing REC Class specific ACP rates. *See* DE 23-
18 044 Exhibit 3, Testimony of John D. Warshaw, Bates 11-14 description of RPS compliance
19 REC procurement process.

20
21 **Q: Does this conclude your testimony?**

22 A: Yes.