

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

ANNUAL STORM REPORT FOR CALENDAR YEAR 2019

Staff Response to Liberty Motion for Rehearing

Staff of the New Hampshire Public Utilities Commission (Staff), through its counsel, and pursuant to the request of the Public Utilities Commission (Commission), respectfully submits this response to the motion for rehearing filed by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (Liberty, or the Company) in Docket 06-107 regarding the recovery of certain storm costs from the Company's Storm Contingency Fund established in that docket. Specifically, Liberty argues that it was denied due process because:

- (1) The Commission's decision² was issued without providing Liberty the constitutionally and statutorily required notice and opportunity to be heard, and
- (2) On the merits, the decision reached incorrect conclusions due to lack of evidence and consideration of information and legal argument that Liberty would have provided. The decision is thus 'unlawful or unreasonable' pursuant to RSA 541:4.

Legal Issue

Liberty seeks rehearing on an April 23, 2021 Commission decision approving the recovery of certain eligible costs and denying recovery of certain ineligible storm costs pertaining to a number of storm events that occurred in 2019. Secretarial Letter of 4-23-2021 (*approving in part and denying in part recovery of certain storm costs*). Staff respectfully disagrees with the Company's complaint. The applicable statute is as follows (emphasis added):

¹ Staff notes that Liberty chose to file its request for storm cost recovery in the Docket DG 06-107, the docket in which the Company's storm contingency fund was established, contrary to standard practice established subsequent to that docket of submitting new filings for new docket designation each year. The Company has correctly filed its request for 2021 storm cost recovery in a new docket, Docket DE 21-073.

² The Company refers to the Commission's decision in the 4-23-21 Secretarial Letter as an "order", however, for clarity, Staff has opted to refer to the letter as the Commission's "decision." There is no legal impact in referring to the Secretarial Letter as a "decision" under RSA 541:3, which applies to "any order or decision" of the Commission.

RSA 374:3.

541:3 Motion for Rehearing. – Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, *specifying in the motion all grounds for rehearing*, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

Staff argues as follows:

1. Staff was correct in its identification of the Company's incorrect accounting of the storm cost expenses submitted in its 2019 Storm Cost Recovery filing.
2. No due process violation occurred because the Company had 30 days to object to Staff's recommendation before a Commission decision was issued, but chose not to object or to respond to Staff's recommendation. As a result, there was no indication that the Company disagreed with Staff's recommendation, much less objected to it.
3. Nonetheless, Staff did not object to a rehearing on this issue and the Commission granted the Company's motion.
4. Nothing in the Company's motion for rehearing points to error in the Commission's decision.
5. The Company stated that "On the merits, the [decision] reached incorrect conclusions due to the lack of evidence and consideration of information and legal argument that Liberty would have provided. The [decision] is thus 'unlawful or unreasonable.' The Company cited to RSA 541:4 in support of its motion.
6. RSA 541:4 states as follows (emphasis added):

541:4 Specifications. – *Such motion shall set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.* No appeal from any order or decision of the commission shall be taken unless the appellant shall have made application for rehearing as herein provided, and when such application shall have been made, no ground not set forth therein shall be urged, relied on, or given any consideration by the court, unless the court for good cause shown shall allow the appellant to specify additional grounds.

7. In its motion, the Company cites, in particular, the following language from the settlement agreement that established the storm contingency fund which is the subject matter of this proceeding (Order No. 24,777 at 13-14 (July 12, 2007)):

A major storm is defined as a severe weather event or events causing 30 concurrent troubles (i.e., interruption events occurring on either primary or secondary lines) and 15 percent of customers interrupted or 45 concurrent troubles.

8. The above language mirrors that provided in testimony submitted by Steven E. Mullen on behalf of Commission Staff in that proceeding, DG 06-107. *See Tr.* at 13, lines 3-22.
9. As Liberty's motion states, on March 23, 2021, Staff filed its recommendation regarding the Company's request for recovery of storm expenses (Staff's Memorandum) in this proceeding.
10. Liberty's motion further recounts that Staff's Memorandum recommended "that the Commission (1) disallow recovery of \$706,838 from the Storm Fund as Liberty included in the 2019 Storm Report, and (2) adjust the 2019 Storm Report to remove the Company's capitalization of transportation depreciation through the burden rate.
11. In its motion for rehearing, the Company submits two legal arguments in objection to Staff's Memorandum of March 23, 2021 (emphasis added):

i. According to Liberty, "*The Staff Memorandum's first recommendation was based on new definitions, which Staff applied retroactively, of the terms "trouble" and "concurrent," which terms are contained in the 2007 settlement agreement as quoted above, and which terms govern whether a storm event qualifies as a "major storm" eligible for cost recovery from the Storm Fund;*" and

ii. According to Liberty, "*The [Commission's decision] also relied on the Staff Memorandum to remove costs for capitalization of transportation depreciation, but cited no authority for this change. Staff's position was that the Company incorrectly capitalized a portion of its fleet vehicle depreciation expense as a component of electric plant costs and should instead expense the entire amount. However, the Company's practice for the capitalization of transportation depreciation is supported by the FERC Uniform System of Accounts and is consistent with past practice.*

12. Staff posits that the Company's arguments have no basis in law or the language of the underlying settlement agreements it cites.

13. The initial settlement agreement in question was filed and approved in the docket in which the Company misfiled its 2019 request for storm cost recovery, that is in Docket 06-107. A subsequent, related settlement agreement was filed in Docket 13-063, in which the rate mechanism storm cost recovery was changed to increase recovery rates. There was no suggestion that the criteria for qualifying storms were to be changed.³

14. As Staff noted in its recommendation,

The Storm Fund was created to recover approved costs associated with qualifying major storms that meet certain criteria stipulated in Settlement Agreements approved in Order No. 24,777 and Order No. 25,738. The qualification of a major storm is determined by the following criteria: A major storm for Liberty is defined as a severe weather event or related events causing 30 concurrent “troubles” (i.e., interruption events occurring on either primary or secondary lines) with 15 percent of customers interrupted, or 45 concurrent troubles.”

15. Also in its recommendation, Staff cited to Docket DG 06-107, Order No. 24,777, pages 13 and 14, for the above definition of the criteria for a “major storm” for which the Company is permitted to recover qualifying costs.

16. In its recommendation, Staff reviewed the Company’s claim for the storm event that occurred on January 9, 2019, and concluded that this storm event did not qualify as a major storm under the 45 concurrent troubles criterion, nor did it meet the 30 concurrent events and 15% of customers affected criteria.

17. Staff also reviewed the Company’s claim for the storm event that occurred on October 17, 2019, and concluded that this storm event did not qualify as a major storm under the 45 concurrent troubles criterion, nor did it meet the 30 concurrent events with 15% of customers affected criteria.

18. Staff also reviewed the Company’s claim for the storm event that occurred on October 31, 2019, and concluded that this storm event did not qualify as a major storm under the 45 concurrent troubles criterion, nor did it meet the 30 concurrent events and 15% of customers affected criterion.

³ See Docket DG 06-107 Order No. 24,777 dated July 12, 2007 and Docket DE 13-063 Order No. 25,738 dated November 26, 2014 (*see, e.g.*, Tr. at 34, 51-53 regarding change in the amount of dollars to be recovered).

19. Staff further noted an issue identified by Commission Audit Staff relating to a re-occurring audit issue that was previously included in the Liberty rate case in Docket DE 19-064. *See Staff Recommendation, Attachment KFD-1, filed on March 23, 2021 in this proceeding. The identified audit issue addressed the Company's treatment of transportation charges and noted that Liberty has changed its procedure for charging transportation costs in both day-to-day operations and storm events. (Emphasis added.)* Staff noted that prior to 2018, the Company directly charged transportation costs to the work being performed, but since 2018, the Company has charged transportation costs as part of the burdens (indirect costs such as benefits, etc.) that are charged to open capital jobs in Account 107, which is assigned to capital investment jobs that are "in construction" and incurring construction work in progress (CWIP) charges.
20. The Commission's Audit Staff recommended the following, as cited in Staff's recommendation with respect to the Company's treatment of transportation costs (emphasis added):

Audit's recommendation is that the Company should not be capitalizing a portion of its depreciation expense, and should quantify the impact and adjust the filing accordingly. *Audit has stated that the practice of capitalizing depreciation through the burden account is not in compliance with FERC accounting. The Company is aware of Audit's position and has responded to Audit that the Company is in compliance with the FERC Chart of Accounts. The Company has stated that its practice is appropriate under guidance set forth in US GAAP standard ASC 360. In addition to citing US GAAP Standard 360, the Company has also stated that the capitalization of depreciation of transportation expenses falls under the FERC Code of Federal Regulations, Part 1767.16, Section (c) Components of Construction Costs, subsection (5) Special Machine Service. Audit does not agree that transportation costs for vehicles utilized in day-to-day operations be classified as Special Machine Service and assessed under the Special Machine Service section as an exception rather than as normal transportation assets the electric utility uses every day.*

21. Commission Audit Staff further noted, as follows:

Audit Comment. Because the FERC information above relates to the maintenance, operation and use of special machines, or the extended use of cars, trucks or trailers (transportation equipment), Audit reiterates the issue that inclusion of a portion of the depreciation expense for fleet assets in the BRD burden rate, for capitalization on a pro rata basis, should not be done in the

manner outlined. *See* Staff Recommendation, Att. KDF-1 *Audit Report* (September 30, 2020) at 16.

22. As outlined above, Staff reviewed the Company's filing in accordance with the criteria set forth in the applicable Settlement Agreements, and filed a recommendation on March 23, 2021.
23. The Company did not file a response to Staff's recommendation.
24. However, when, in the course of its review of Liberty's initial filing, Staff raised its concern with the Company that the three identified storm events did not rise to the level required under the applicable settlement agreements, the Company provided intra-company correspondence in support of its methodology for determining "concurrent" events and qualifying storms for purposes of recovery through the storm fund. *See* Attachment 1 (Liberty Storm Fund e-mail), Attachment 2 (Intra-Company Correspondence 1), Attachment 3 (Intra-Company Correspondence 2), and Attachment 4 (Annual Storm Fund Report 2013 Filing).
25. As "Intra-Company Correspondence 1 and 2" from 2013 indicate, the Company traditionally had interpreted "concurrent troubles" to mean "IDS events on the same day." (*See* Attachment 2 – "Correspondence 1 and 2 (2013)".)
26. Staff has understood the "concurrent" criterion to be consistent with the standard definition of "occurring at the same time."⁴
27. However, as indicated in Attachment 1, the Company email relaying Correspondence 1 and 2, the Company stated that "Concurrent" events are those events that occur *from the time the first outage is experienced until the last outage is experienced for primary and secondary lines.*" (emphasis added). (Attachment 2 – "Company Email (2021)").
28. Thus, it appears that the Company unilaterally changed its definition of the concurrent criterion for Major Storm Events at some point prior to or during 2013. Staff, perhaps naively, has taken for granted that the Company would apply the same widely understood

⁴ *See, e.g.*, the applicable *Merriam-Webster Dictionary* definition of 'concurrent' at [Concurrent | Definition of Concurrent by Merriam-Webster](#): "operating or occurring at the same time." *See also*, the applicable *Cambridge Dictionary* definition of 'concurrent' at [CONCURRENT | definition in the Cambridge English Dictionary](#) "happening or existing at the same time."

- definition, and thus was unaware of the Company's establishment of a new, admittedly creative definition to better suit its purposes.
29. Staff suggests that if settling parties intended to count all troubles from the beginning of storm to the end of a storm and the restoration of all customers as the criteria by which to determine storm cost recovery, those parties would not have specifically included the word "concurrent", unless it implies that such concurrent troubles are occurring at the same approximate time on any given day.

Accounting Methodology

30. The second issue raised by Liberty concerns accounting methodology applicable to the Company's claim for cost recovery. As noted above, the Commission's decision accepted Staff's recommendation to remove costs for the capitalization of transportation depreciation. Although the Company argued that there was no support for the Commission's decision on this issue, the Commission stated in its decision, as follows:

The Commission has reviewed Liberty's filings and Staff's recommendations. Based on its review, the Commission has denied Liberty's recovery from the Company's Storm Fund of the amount of \$706,838, and approved Liberty's recovery in the amount of \$1,206,255 from the Storm Fund, as well as appropriate carrying charges, effective December 31, 2019, but excluding any amounts derived from the capitalization of transportation depreciation through the burden rate. . . . The Commission further directs Liberty to ensure that all future requests for approval of recovery from the Company's Major Storm Fund are prepared in accordance with applicable FERC regulatory accounting requirements.

31. Staff's position was that the Company incorrectly capitalized a portion of its fleet vehicle depreciation expense as a component of electric plant costs and should instead expense the entire amount.
32. The Company argued its "*practice for the capitalization of transportation depreciation is supported by the FERC Uniform System of Accounts and is consistent with past practice*" (emphasis added). Liberty Motion for Rehearing at 3, para. 5.
33. Staff provided in its Recommendation, as follows (emphasis added):

The remaining issue identified by Audit relates to a *re-occurring audit issue that was previously included in the Liberty Rate Case Docket DE 19-064*. The audit issue addressed the Company's treatment of transportation charges. *Liberty has changed its procedure for charging transportation costs in both day-to-day operations and storm events*. Prior to 2018, the Company directly charged transportation costs to the work being performed. Since 2018, the transportation costs have been charged as part of the burdens (indirect costs such as benefits, etc.) that are charged to open capital jobs in Account 107. Account 107 is assigned to those capital jobs that are "in construction" and incurring construction work in progress (CWIP) charges. Audit identified this practice in the Final Audit Report based on the \$0 or no transportation charges in the overall Annual Storm Fund for year ending December 31, 2019. Audit's recommendation is that the Company should not be capitalizing a portion of its depreciation expense, and should quantify the impact and adjust the filing accordingly. Audit has stated that the practice of capitalizing depreciation through the burden account is not in compliance with FERC accounting. *The Company is aware of Audit's position and has responded to Audit that the Company is in compliance with the FERC Chart of Accounts*. The Company has stated that its practice is appropriate under guidance set forth in US GAAP standard ASC 360. In addition to citing US GAAP Standard 360, the Company has also stated that the capitalization of depreciation of transportation expenses falls under the FERC Code of Federal Regulations, Part 1767.16, Section (c) Components of Construction Costs, subsection (5) Special Machine Service. Audit does not agree that transportation costs for vehicles utilized in day-to-day operations be classified as Special Machine Service and assessed under the Special Machine Service section as an exception rather than as normal transportation assets the electric utility uses every day. *Staff supports Audit's findings, and recommends that the Commission order Liberty to terminate the practice of treating transportation depreciation as a capitalization through the burden rate, quantify the impact from this practice, adjust this filing, and comply with FERC for regulatory purposes.*

34. As supported by the above, Staff believes that the Company had ample opportunity to object to Staff's recommendation – but chose not to – in the 30 days between Staff's filing of its recommendation and the Commission's decision in its secretarial letter of April 23, 2021.
35. Nothing in its Motion for Rehearing supports a reversal of the Commission's decision.
36. As detailed above, Staff was clear in its assessment of the Company's filing and in its recommendation to deny certain costs related to the storm events that occurred in 2019, for which the Company filed for recovery.

37. Liberty's request that the Commission reject Staff's analysis and conclusions, and approve recovery of the denied costs from the Company's ratepayers is not warranted or justifiable under applicable law and policy.

Wherefore, Staff respectfully requests the Commission to provide the following relief:

- A. Deny the Company's request for recovery in Docket DG 06-107 of the storm costs identified in Staff's recommendation of March 23, 2021; and
- B. Confirm the Commission's decision as issued in its Secretarial Letter of April 23, 2021.

Respectfully submitted,

/s/ Lynn Fabrizio

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Attachment
cc: DG 06-107 Service List (electronically)