

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 19-064**

**LIBERTY UTILITIES (GRANITE STATE ELECTRIC) CORP.  
D/B/A LIBERTY UTILITIES**

**Petition for Permanent and Temporary Rates**

**Order Following Hearing on 2019 Step Adjustment**

**ORDER NO. 26,377**

**June 30, 2020**

**APPEARANCES:** Michael J. Sheehan, Esq., on behalf of Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities; the Office of the Consumer Advocate by D. Maurice Kreis Esq., on behalf of residential ratepayers; Paul B. Dexter, Esq., and Brian D. Buckley, Esq., on behalf of Commission Staff.

In this order, the Commission authorizes Liberty to recover through distribution rates effective July 1, 2020, the revenue requirement of \$1,324,527 associated with \$8,581,402 in total investments placed in service in 2019.

**I. PROCEDURAL HISTORY**

On May 26, 2020, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities (Liberty or the Company) filed a Settlement Agreement in this docket, resolving outstanding issues relating to its Petition for Permanent and Temporary Rates. Permanent rates established pursuant to Liberty's Settlement Agreement were based on a 2018 test year. The Settlement Agreement contained a provision for three step adjustments for capital investments made in calendar years 2019, 2020, and 2021, effective July 1 of 2020, 2021, and 2022 respectively, and subject to further review by the Commission.

On June 9, 2020, the Commission conducted a hearing relating to the Settlement Agreement. The Office of the Consumer Advocate (OCA) previously filed a letter of participation in this docket on April 1, 2019.

On June 22, 2020, the Commission conducted a hearing on Liberty's proposed step adjustment for investments made in calendar year 2019. On May 26, Liberty also filed the testimony of Heather M. Tebbetts, Manager of Rates and Regulatory Affairs for Liberty, and Anthony Strabone, Manager of Electrical Engineering for Liberty which they presented at the hearing. The Commission made two record requests (designated as Hearing Exhibits 63 and 64) requiring Liberty to file additional information related to its Salem Walk-In Center Relocation, which is one of the capital investments made in 2019. Liberty responded on June 25, 2020. The hearing was continued until June 25, 2020, at which time the Commission heard closing arguments from Staff and Liberty.

The Settlement Agreement, exhibits, and other docket filings, other than any information for which confidential treatment has been requested of or granted by the Commission, are posted at <https://www.puc.nh.gov/Regulatory/Docketbk/2019/19-064.html>.

## **II. MOTION FOR PROTECTIVE ORDER**

On June 18, 2020, Liberty filed a Motion for Protective Order Related to Discovery Response to Staff 2-3 pursuant to New Hampshire Code of Administrative Rules, Puc 203.08, seeking to protect portions of its response to Staff 2-3. The response contains detailed commercial customer load data in support of the Company's projected load forecast. Liberty argued that anticipated demand of individual customers is confidential and protected from disclosure pursuant to RSA 363:37, RSA 363:38 and RSA 91-A:5, IV. Liberty represented that

these responses constitute “confidential, commercial, or financial information” under RSA 91-A:5, IV. Neither Staff nor any party objected to Liberty’s request.

### **III. POSITIONS OF THE PARTIES AND STAFF**

#### **A. Liberty**

Liberty requested the rate adjustment pursuant to Section II, subsection B of the Settlement Agreement. Liberty sought recovery for \$8,761,603 of investments placed in service during calendar year 2019, with an associated revenue requirement of \$1,349,466. Liberty stated that the bill impact for a residential customer using 650 kWh per month and taking energy service from the Company’s default service offering would be an increase to their monthly bill of \$1.50, or 1.2 percent, from \$118.40 to \$119.89 per month.

Liberty stated that the 12 investments eligible for recovery in this step adjustment were agreed upon in the Settlement Agreement in this docket. Liberty testified that all those investments were put into service in 2019, are used and useful, and were prudently incurred.

At the June 22 hearing, Liberty argued that Staff’s examination in this step adjustment phase of Liberty’s decision to pursue the 12 projects was precluded by the Settlement Agreement. According to Liberty, because Staff agreed in Settlement to include the projects on the list of eligible assets, Staff had agreed that the 12 projects were prudently selected for construction by Liberty. Thus, Liberty argued, Staff’s scope of inquiry regarding prudence in this step adjustment phase was limited to the prudent execution of the projects. Liberty, however, acknowledged that the Commission could review the prudent selection of the projects and stated that the evidentiary record proves that the projects were both prudently selected and prudently executed.

**B. OCA**

The OCA participated in the June 22, 2020, hearing, but took no position on Liberty's proposed 2019 step adjustment.

**C. Staff**

At the June 22 hearing, Staff argued that its prudence review of the 12 projects eligible for recovery in this phase should not be limited by its agreement in the Settlement to include those projects on the list of projects eligible for recovery through the step adjustment. Staff noted that it could not have fully investigated the prudence of the projects in the permanent rate phase of the case because the assets were not completed during much of the permanent rate investigation. Further, Staff argued that the permanent rate investigation focused on test year investments and the step adjustment investments were all put into service after the test year and therefore the permanent rate increase in the Settlement Agreement was not based on these projects. Thus, Staff argues, this step adjustment phase is the only opportunity for the Commission to review these projects thoroughly. Staff noted that the Settlement Agreement lengthens the time for review of step adjustment projects compared to past practices and the reason for that extra time was to allow for a robust review including all aspects of prudence.

Concerning the specific projects for which recovery is sought, Staff raised questions about Meters and Transformers, the Salem Walk-In Center Relocation, and the Golden Rock Projects.

*Meters and Transformers*

Staff questioned whether Liberty's practice of pre-capitalizing meters and transformers was appropriate. Under that practice, Liberty charges the costs of meters and transformers (and the estimated labor to install the meters) to capital accounts upon purchase, rather than waiting

until the meters are actually placed in service. Liberty began pre-capitalizing meters in 2018. Staff concluded that the rate impacts of pre-capitalizing meters and transformers would be minimal because under traditional accounting treatment, meters and transformers (but not installation labor) are recorded as inventory which is included in rate base. Staff recommended that the Commission rely on its Audit Division to verify the pre-capitalized assets were placed in service in 2019 and should be recovered through the step adjustment. The Audit Division is expected to address that issue in its Final Audit Report.

*Salem Walk-In Center Relocation*

In 2019, Liberty relocated its customer Walk-In Center from 9 Lowell Road in Salem, where it had been since 2014, to office space Liberty leased and renovated at 130 Main Street in Salem. The total capital investment for this project was \$567,737. Staff recommended that only \$300,000 be included in rate base, because when Liberty decided to pursue the project, it considered only part of the total costs of the project and because Liberty failed to adequately analyze alternatives.

Staff noted that Liberty's Business Case and Capital Project Form, which memorialize the decision to pursue the project, show that Liberty only considered \$300,000 in capital investments (\$20,000 for engineering, \$275,000 for construction/contractor costs and \$5,000 undetailed) to renovate 130 Main Street. Staff noted that the Business Case analysis failed to consider several cost items that eventually made up the final investment amount of \$567,737 including computer costs, internal labor, burdens (which is overhead that gets allocated from Liberty's headquarters to every capital project), furniture, audio-visual equipment, a conference room at 130 Main St, an accessible bathroom at 130 Main Street, and the cost of renovating 9 Lowell Road once the employees had relocated to 130 Main Street. Staff noted that the

Change Order Form (which should have been used to memorialize Liberty's decision to review changes to the project) was completed several months after the project was completed.

Therefore, Staff argued, it could not have factored into Liberty's decision to complete the project, despite the cost almost doubling from the original estimate. Further, Staff noted, Liberty's Business Case (and the Change Order Report) failed to include the lease costs and operation and maintenance costs for 130 Main Street.

In addition, Staff argued that Liberty did not study re-configuring the existing driveways and parking at 9 Lowell Road to address the safety concerns Liberty had about customers visiting a site that also housed electric operations. Staff also faulted Liberty for not considering consolidating the Salem Walk-In Center into its Londonderry Walk-In Center.

Staff recommended allowing Liberty to recover its original project estimate of \$300,000, following the Commission's reasoning in Docket No. DG 17-048 where the Commission allowed Liberty to recover only a portion of its investment in the Concord training center. In that case, the Commission found that although the decision to build the training center was not prudent (because it failed to include many obvious cost items in its decision-making) the center was constructed and used and useful in utility service, so full exclusion from rate base was not warranted.

#### *Golden Rock Projects*

Staff recommended that the Commission withhold judgment on the projects related to the Golden Rock substation until more information (that the Company has or is in the process of compiling) could be filed in the docket and reviewed by Staff and the Commission. Staff noted that Liberty justified the Golden Rock investments on the basis of two factors: the condition of existing assets in Salem (substations at Baron Avenue and Salem Depot), and the current and

projected load at Tuscan Village (a large commercial development underway in Salem). Staff argued that the asset condition reports provided by the Company for Baron Avenue and Salem Depot do not demonstrate that the assets should be removed from service, but instead indicate that Liberty should re-test and monitor those assets. Also, Staff argued that Liberty did not provide any detailed support for the load projections for Tuscan Village – especially the southern portion of the Tuscan development that is largely under construction at this time.

Staff recommended that the Commission require Liberty to file all this information in the docket, allow time for discovery and Staff rebuttal testimony, and hold a hearing and decide by October 31, 2020, if the Golden Rock assets should be recovered in this step adjustment.

#### **D. Liberty Rebuttal**

Liberty disagreed with Staff's position on the Salem Walk-In Center distinguishing the project from the Concord training center; arguing that Liberty did not need detailed studies of 9 Lowell Road to know that it needed more space to house all the employees stationed there; explaining that its move to 130 Main Street solved its safety concerns, was consistent with assurances it made when Liberty acquired the company that it would maintain local walk-in centers, and that consolidation in Londonderry was not a viable option because many of its Salem area customers could not drive to Londonderry to transact business. Liberty noted that the Salem Walk-In Center was very busy.

Liberty stated that the decision to invest in the Golden Rock project was made several years ago and that the information Staff seeks was not available to decision makers at that time and therefore not relevant to the question of prudence. Liberty said it had more recent asset condition reports for Baron Avenue and Salem Depot and asserted that it demonstrated that Baron Avenue and Salem Depot need to be replaced.

Liberty stated that its projected load at Tuscan Village had not changed and that actual load is coming on line each day. In response to questioning, Liberty said that even with the Golden Rock investments under review here, it is concerned about its current system being able to handle all the load while further system upgrades are made.

Liberty said it had updated its 2017 Salem Area Study, a comprehensive study of its plans for upgrades to the Salem area, and that the information would be provided in the near future.

#### **IV. COMMISSION ANALYSIS**

The Commission's analysis relative to the step adjustment process, meters and transformers, the Salem Walk-In Center, and the Golden Rock Projects are discussed in turn below.

##### *Step Adjustment Process*

While Liberty argued that Staff's scope of inquiry regarding prudence in this step adjustment phase was limited, Liberty acknowledged that the Commission could review both the selection and execution of the projects for prudence. The Commission must find investments prudent, used, and useful under RSA 378:28 before including a return on those investments in permanent rates. Without such inquiry, the Commission could not make the required finding.

##### *Meters and Transformers*

The record established that all the meters and transformers for which the Company seeks cost recovery were in service and used and useful as of December 31, 2019. As a result, we find that Liberty may recover the cost of those items through the Step Adjustment. We adopt Staff's suggestion that our approval of cost recovery be subject to verification by the Commission's Audit Division in its Final Audit Report, and further review and reconciliation if issues are identified.

*Salem Walk-In Center*

Staff argued that Liberty's management review and oversight of the Salem Walk-In Center was severely flawed. Staff asserted that Liberty failed to include many major, reasonably foreseeable costs such as burdens, internal labor, computer costs, the conference room and accessible bathroom, the cost of the lease for the Main Street location, and the renovations at 9 Lowell Road in its assessment of the project. Liberty did not use the Company's Change Order Form process to review additional costs, as its capital expenditure policy requires it to do. Instead, the Company filled out a Change Order Form after project completion, and attributed the cost increases to the conference room and bathroom even though the final costs show those items were a very small portion of the cost increases.

We find the record demonstrates a lack of adequate management oversight with respect to project details, cost containment, and requirements to follow the Company's written procedures. Management reviewed the project and decided to proceed when the incomplete costs were estimated to be \$300,000. There is no evidence management would have determined the project was prudent if the cost was estimated at \$500,000, or closer to the actual cost, and no evidence that management was aware the project was being expanded and costs were increasing. Liberty's management team should have considered burdens, which represent approximately 30 percent of the total cost. Prudent decisions cannot be made if significant, foreseeable cost elements of a project are overlooked at the outset and meaningful re-examination of costs does not take place during project execution, as costs increase. At a minimum, failure to demonstrate that overlooked costs were meaningfully reexamined makes it difficult for a utility to meet its burden to prove its actions were prudent.

We accept Liberty's argument that deciding against consolidating the walk in function in Londonderry did not require detailed examination, given the popularity of the Salem Walk-In Center and Liberty's knowledge of its customer base. We also find it was reasonable to modify the new space with a conference room and accessible bathroom while the project was on-going. Although modifications at 9 Lowell Road should have been anticipated, we accept those renovations as prudent.

We do not allow recovery of the burdens as they should have been foreseen but were not included in the project at the time the Company decided to proceed. Liberty did not demonstrate appropriate management involvement in this capital investment. A utility must follow its written procedures (e.g. its capital expenditure policy), provided those procedures are reasonable. Management must take responsibility for ensuring investments would be made as if it were a privately held company. Accordingly, we will allow the investment costs for the Salem Walk-In Center excluding burdens. The amount, therefore, that may be included in rate base is \$387,166. *See Exh. 41 at 64.*

#### *Golden Rock Projects*

We will allow Liberty to recover the costs of these projects through the Step Adjustment proposed. Based on the record before us, we find that the existing substations are in declining condition and the Golden Rock investments are prudent and appropriate to improve system reliability. Our decision is based largely on the relatively low costs of the Golden Rock investments (\$3.3 million) as compared to the rest of the Salem-area investments that Liberty discussed in its testimony in the permanent rate case (\$27 million for a new substation at Rockingham and two new 115 kV supply lines). Our decision today is limited to the Golden

Rock investments before us. Additional potential infrastructure upgrades, including the Rockingham Substation and new 115 kV lines are not before us today.

We expect Liberty to conduct a thorough review of existing assets based on the latest information available and a robust analysis of all available options to serve load projected for the Salem area. We believe that a detailed load forecast is a key foundation for any major assets expansion, such as the one Liberty is undertaking in Salem.

Liberty is put on notice that the task of serving future load in a least cost fashion lies with the utility, not with its existing customers, as does the financial risk of serving that load.

Given the significant costs projected to serve Salem, and to allow Staff and others to monitor the situation in Salem as circumstances unfold, we direct Liberty to file in this docket the information that Staff and Liberty indicated was forthcoming; the updated Salem Area Study, all the asset condition reports concerning Baron Avenue and Salem Depot, and a detailed forecast of Tuscan Village and other Salem load with as much detail as needed to support the forecast. In addition, in order to aid Staff and others in evaluating the asset condition reports, we require Liberty to file any and all existing substation standards, policies, and procedures. Such information must be provided by September 1, 2020, and if the information is not available at that time, then, Liberty must seek an extension of this filing deadline and provide good reasons why the information is not available.

In conclusion, subject to the review and any reconciliation recommended by Commission's Audit Staff, and reflecting the disallowance of \$180,201 of the Salem Walk-In Center investment, we approve the calculation of the step increase proposed in Liberty's filing and find that the resulting rates are just and reasonable as required by RSA 374:2, RSA 378:5,

and RSA 378:7. We approve the rates for effect with services rendered on and after July 1, 2020.

*Motion for Protective Order*

RSA Chapter 91-A ensures public access to information about the conduct and activities of government agencies or “public bodies” such as the Commission. Disclosure of records may be required unless the information is protected by statute under RSA 91-A:4 or exempt under RSA 91-A:5.<sup>1</sup> The Commission routinely protects information related to commercial customers’ fuel pricing and usage profile information. *See, e.g., Northern Utilities, Inc.*, Order No. 25,700 (August 1, 2014); *Northern Utilities, Inc.*, Order No. 25,330 (February 6, 2012) (protecting pricing and fuel-usage data of commercial gas utility customers).

We agree with Liberty that the information contained in the discovery responses it seeks to protect constitutes confidential information under RSA 91-A:5, IV. While the public may have some interest in the information (*e.g.*, to aid in its understanding of the Commission’s analysis in this proceeding), we find that the public’s interest is outweighed by Liberty’s and its customers’ privacy interests, and that disclosure of some of the information could result in commercial harm to Liberty and to Liberty ratepayers.

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

**ORDERED**, that the step increase to be added to distribution rates, as calculated by Liberty’s filing and supplemented by testimony and record request responses for its 2019 capital investments, as reduced for the disallowance of a portion of the Salem Walk-In Center investment, consistent with this decision, is hereby APPROVED; and it is

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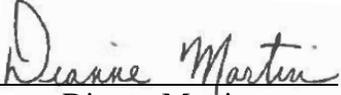
<sup>1</sup> Liberty asserted that RSA 363:37-38 establishes “individual customer data” as a subset of “confidential, commercial, or financial information” under RSA 91-A:5, IV. Motion at 2.

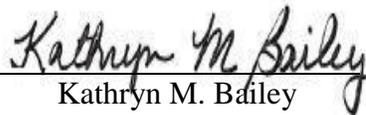
**FURTHER ORDERED**, that Liberty is authorized to implement the rates approved herein on a service-rendered basis effective July 1, 2020; and it is

**FURTHER ORDERED**, that Liberty shall file tariff pages as required by N.H. Code Admin. R., Puc 1603 conforming to this order within 15 days hereof; and it is

**FURTHER ORDERED**, that Liberty's motion for protective order is GRANTED.

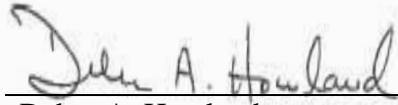
By order of the Public Utilities Commission of New Hampshire this thirtieth day of June, 2020.

  
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Dianne Martin  
Chairwoman

  
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Kathryn M. Bailey  
Commissioner

  
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Michael S. Giaimo  
Commissioner

Attested by:

  
\_\_\_\_\_  
Debra A. Howland  
Executive Director

## Service List - Docket Related

Docket# : 19-064

Printed: 6/30/2020

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