

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DE 24-066**

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

**Petition to Amend Tariff**

**Examiner's Report and Recommended Prehearing Order**

NOTICE: This report and recommendation constitute the findings and recommendation of the assigned examiner. Although it is in the form of an order, it does not constitute Commission action. Exceptions to or comments on this report and recommendation may be filed by July 15, 2024, for the Commission's consideration. If any party wishes to respond to an initial exception or comment, it must file notice of intent to do so by July 16, 2024 and its response no later than July 18, 2024.

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On July 9, 2024, the Commission held a prehearing conference in this matter pursuant to New Hampshire Code of Administrative Rules, Puc 203.15, which was attended by: Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (Liberty), the New Hampshire Department of Energy (DOE), the Office of the Consumer Advocate (OCA), and the Town of Salem (Salem). During the prehearing conference, the following issues were addressed:

1. Requests to Intervene

On May 15, 2024, Salem moved to intervene in this docket pursuant to Puc 203.17 and RSA 541-A:32. No party objected to Salem's motion to intervene. The Commission **GRANTS** Salem's motion to intervene on the grounds that Salem's rights and interests will be affected by the outcome of this docket and neither the interests of justice nor the prompt conduct of the proceedings will be impaired by allowing the intervention. See RSA 541-A:32.

## 2. Clarification of Issues Presented

Liberty clarified that its petition addresses circumstances where Liberty maintains utility infrastructure on municipally owned land pursuant to a license granted under RSA chapter 231, and the municipality imposes conditions upon the license that require Liberty to incur greater expenses than it otherwise would have in the normal course of business. Liberty's proposed amendment would require the municipality to pay the difference between the least-cost option and the option necessitated by the license conditions. In other words, Liberty's petition raises the following question: when a municipality imposes conditions on a license issued under RSA chapter 231, should Liberty pass any extra costs required by the conditions onto the municipality or ratepayers generally?

At the prehearing conference, Salem represented that it opposed Liberty's petition. Specifically, Salem maintained that RSA chapter 231 requires utilities to pay for any conditions imposed on utility infrastructure that a municipality finds are in the public good. Salem argued that, accordingly, Liberty's proposed amendment would violate the statute. Salem represented that it would seek to have Liberty's petition dismissed on this basis.

For their part, the DOE and the OCA indicated initial support for Liberty's petition. In fact, the OCA maintained that contrary to Salem's contentions, state law compels a municipality to pay for any difference between the least-cost option and any extra costs necessitated by conditions imposed by the municipality.<sup>1</sup>

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<sup>1</sup> The OCA also argued that Liberty's petition and proposed tariff changes should already be deemed effective under Puc 1603.07 because the Commission did not suspend them pursuant to RSA 378:6 and Liberty filed them more than thirty days prior to the prehearing conference. However, as the Commission already noted in the order of notice issued on June 6, 2024, Liberty's proposed tariff pages were not filed in conformance with Puc 1603.05 and thus Puc 1603.07 is inapplicable. See Docket No. DE 24-066, Commencement of Adjudicative Proceeding, Notice of Prehearing Conference, and Notice Of Hearing, at 3 n. 1 (June 6, 2024). Notably, the OCA did not move for rehearing of this conclusion.

Finally, Liberty represented that it was neutral as to whether the cost should be borne by municipalities or ratepayers, but that it desired clarity on the issue from the Commission.

In the Commission's view, the petition, as informed by the parties' arguments at the prehearing conference, raises the following three broad issues:

- (a) As a matter of law, is the municipality required to bear the extra cost for any conditions imposed on a license issued under RSA chapter 231? Or, conversely, is the utility required to bear the extra expense for said conditions as a matter of law?
- (b) If neither option in (a) is required as a matter of law, should the Commission otherwise approve the petition? Relevant to this consideration are the following questions:
  - i. What legal authority does the Commission have to require municipalities to pay the difference between the two options?
  - ii. Would requiring municipalities to pay the difference between the two options rather than ratepayers promote just and reasonable rates as required by RSA 374:2 and 378:7?
  - iii. What standard of review should the Commission apply to the petition?
  - iv. How have municipalities and utilities historically resolved this issue?
  - v. How do other utilities' tariffs address this issue?
  - vi. Are there any other legal or practical considerations the Commission should consider in reviewing Liberty's petition?
- (c) Assuming that it is appropriate to pass on the costs to municipalities, is Liberty's proposed language the most efficient and fair manner of doing so?
  - i. How will any disputes between a municipality and Liberty arising under this provision be resolved?
  - ii. Should the extra cost be passed onto the municipality directly or, as suggested by Liberty's counsel at the prehearing conference, should the costs be recovered through a surcharge on Liberty's customers within the municipality?
  - iii. Is Liberty's proposed language sufficiently narrow to only apply to circumstances wherein a municipality imposes conditions on licenses granted under RSA chapter 231?

### 3. Discovery

The parties agreed that Salem's initial challenge to the petition implicates solely questions of law and that discovery in this docket is therefore unnecessary at this time.

### 4. Procedural Schedule

At the prehearing conference, the parties agreed to the following schedule:

- Salem shall file an initial memorandum of law supporting its argument that the Commission should dismiss Liberty's petition by July 23, 2024. Although they are not required to, the other parties may also file initial memoranda supporting their positions by July 23, 2024.
- Any party may file a response to any issues raised in an initial memorandum by August 6, 2024.

At the prehearing conference, the parties agreed to address the preliminary issue of whether Liberty's petition is precluded by law in the briefing schedule, identified as issue (a) in Section 2 above. If Salem is correct and Liberty's petition is precluded as a matter of law, it is likely the Commission can resolve the petition based solely on these initial filings. However, if the petition is not precluded as a matter of law, the Commission will need to address issues (b) and (c) as outlined in Section 2 above and additional process may therefore be necessary. Significantly, if the OCA is correct and municipalities are required to cover these costs as a matter of law, the questions in issue (c) would still be relevant as to whether the Commission should approve the specific language Liberty proposed.

If the parties believe that the schedule laid out in this order should be amended for any reason, including to more efficiently resolve all issues raised in this docket, the Commission requests that they confer and file a joint procedural schedule.

5. Final Hearing Date(s) and Amount of Time Required

There is currently a hearing scheduled in this docket for August 15, 2024. The parties indicated that the hearing will likely be unnecessary if the issue can be resolved solely through briefing. The Commission will retain the hearing date at this time but may cancel it if it later determines the petition can be resolved through briefing. If any party believes that the Commission should hold the hearing, it should file notice to the docket to this effect by August 6, 2024.

*Ben Martin McDonough*

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Ben Martin-McDonough  
Hearing Examiner

July 11, 2024

# Service List - Docket Related

Docket#: 24-066

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