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DEPARTMENT OF ENERGY
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August 6, 2024

Daniel C. Goldner, Chairman
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, NH 03301

Re: DE 24-066 Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty
Petition to Amend Tariff – DOE Response to Issues Presented in Examiner’s Report

Dear Chairman Goldner:

On July 9, 2024, the New Hampshire Public Utilities Commission (Commission) held a prehearing conference in the above referenced docket, which was attended by: Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (Liberty), the New Hampshire Department of Energy (Department), the Office of the Consumer Advocate, and the Town of Salem (Salem). On July 11, 2024, the Hearings Examiner overseeing the July 9 Prehearing Conference issued its Examiner’s Report and Recommendation which was adopted by the Commission on July 17, 2024. While the issues presented in this docket arise primarily out of specific requests by Salem, Liberty’s petition filed in this docket would impact all municipalities in Liberty’s service territory. As such, the Department provides the following response to issues raised in the Examiner’s Report, without addressing assertions regarding the Salem request specifically.

The July 11 Examiner’s Report presented several issues surrounding Liberty’s Petition, including the following question:

“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?”

RSA 231 does not require municipalities, or utilities, to bear the extra cost for any conditions imposed on licenses issued pursuant that statute. However, the Commission’s duty to ensure just and reasonable rates provides authority over how these costs are collected by a utility through rates. *See* RSA 378:7. The Department believes that sound regulatory and rate making policy would require the Commission to consider the

principles of fair allocation of costs and cost-causation.¹ A core principle of utility rate making is that costs should be borne by the entities that cause the costs.² It is the Department’s position that ratepayers residing outside the jurisdiction of municipalities requiring such changes should *not* bear the burden of paying these costs. This is a practice in other states, and the Department believes New Hampshire should be no different. *See e.g.*, Mass. Ann. Laws ch. 166 § 22L.

Furthermore, RSA 378:10 prohibits a public utility from making or giving, “any undue or unreasonable preference or advantage to any person or corporation, or to any *locality*, or to any particular description of service in any respect whatever or subject any particular person or corporation or *locality*, or any particular description of service, to any undue or unreasonable prejudice or disadvantage in any respect whatever.” *See* RSA 378:10 (emphasis added). Authorizing a utility to collect costs associated with the requirements of one municipality, from all utility customers, would be a violation of the prohibitions included in RSA 378:10. For example, a utility that undergrounds wires at a higher cost due to a municipal directive, when there are legal and viable lower cost options available, is conveying an undue preference or advantage to a municipality by then recovering those costs from ratepayers outside the municipality’s jurisdiction. Further, allowing such directives may incentivize some municipalities to impose requirements that are beyond the zone of reasonableness and what is necessary to provide safe and reliable service. Requiring the municipality, or its citizens, to cover the incremental costs above the lower cost option would insert reasonable guardrails between the RSA 231 and RSA 378 authorities.

The Commission could also interpret RSA 378:11 as authority to authorize a type of surcharge, similar to that of other jurisdictions, so that only the citizens of a municipality pay for any projects required by their governing body. *See* RSA 378:11 (“The provisions of RSA 378:10 shall not require absolute uniformity in the charges made and demanded by public utilities when the circumstances render any lack of uniformity reasonable[.]). The Commission may find that it would be reasonable, and thereby would not disadvantage a locality, if Liberty’s tariff included an additional charge to customers located within a municipality that imposed conditions on a license issued pursuant to RSA 231 resulting in extra costs. Notably, any such approval by the Commission could bring additional administrative costs and may require additional notice.

For the reasons stated herein, the Department recommends that the Commission approve Liberty’s tariff language as filed. As there are no facts in dispute, the Department

¹ The D.C. Circuit Court of Appeals recently upheld the Federal Power Act’s just and reasonable standard which incorporates the cost-causation principle where approved rates must reflect, to some degree, the costs actually caused by the customer who must pay them. *City of Lincoln v. FERC*, 89 F.4th 926, 931 (D.C. Cir. 2024).

² NARUC, *Primer on Rate Design for Cost-Reflective Tariffs*, p. 14, (January 2021) (“The principle of Cost Causation is fundamentally important when attributing costs to different customer classes. It states that costs should be borne by those who cause them to be incurred. This is not only fair but is also considered to be economically efficient as it sends the correct price signal to the consumer about how much it costs to service them.”)

believes this docket may be decided without a hearing. Therefore, the Department further recommends cancelling the hearing in this docket currently scheduled for August 15, 2024. Consistent with current Commission policy, this letter is being filed only in electronic form. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Matthew C. Young".

Matthew C. Young
Hearings Examiner/Staff Attorney

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Docket# : 24-066

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