

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DE 23-003

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

Proposed Purchase of Receivables Program

Order Approving Settlement Agreement

ORDER NO. 27,047

August 16, 2024

In this order, the Commission approves the parties' settlement agreement regarding Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty's (Liberty or the Company) proposed Purchase of Receivables (POR) Program. This proceeding is continued to a second phase to consider the Company's proposed revisions to its "Electric Supplier Services Master Agreement" (ESSMA) and "Electricity Delivery Service Tariff NHPUC No. 21" (Tariff).

I. BACKGROUND AND PROCEDURAL HISTORY

In 2021, HB 315 was enacted, which amended RSA chapter 53-E by, among other things, adding new section RSA 53-E:9, entitled "Billing Arrangements." RSA 53-E:9 required each electric distribution utility to propose a POR program for Commission review and approval in which the utility would pay the amounts due from customers to "suppliers" for electricity supply and related services less a discount percentage rate (DPR). Puc 2205.16(e) of the Commission's Chapter Puc 2200, "Municipal and County Aggregation Rules," required utilities to file their proposed POR programs within 90 days of the rules' October 12, 2022 effective date, or by January 10, 2023.

Liberty submitted its proposed POR Program (the Program) filing on January 10, 2023. All docket filings, other than any information subject to confidential treatment, are available on the Commission's website at <https://www.puc.nh.gov/regulatory/Docketbk/2023/23-003.html>.

On February 2, 2023, the Commission issued an order of notice scheduling a prehearing conference on March 21, 2023. During the prehearing conference, the Commission granted petitions to intervene filed by the Community Power Coalition of New Hampshire (CPCNH) and a number of companies collectively referred to as the "NRG Retail Companies" (NRG). Transcript of March 21, 2023 Hearing at 4.

The Commission issued a procedural order on September 1, 2023 assigning a member of Commission staff, Eric Wind, Esq., as a hearing examiner pursuant to RSA 363:17. The hearing examiner was appointed to conduct the hearing regarding the Company's Program, report the facts, and draft a recommended final order. The parties then had 10 calendar days to file comments or exceptions to the hearing examiner's report and recommended order.

The parties filed a settlement agreement on September 13, 2023 (Settlement Agreement), and a hearing was held on September 19, 2023. On December 22, 2023, the hearing examiner issued his report and recommended order (together, the Report), which recommended that the Settlement Agreement be denied in part.

By procedural order dated December 29, 2023, the Commission extended the deadline for filing exceptions or comments to the Report to January 12, 2024. Comments and exceptions were subsequently filed by Liberty, NRG, and CPCNH. The New Hampshire Department of Energy (DOE) did not file any response to the Report.

II. SETTLEMENT AGREEMENT

The Settlement Agreement explains how the Company's Program would work. All competitive electric power suppliers (CEPSs) and community power aggregations (CPAs) choosing consolidated billing¹ would automatically be enrolled in the Program. Settlement Agreement, Section II(A). Enrolled CEPSs and CPAs (collectively, suppliers) would be required to sell their accounts receivable for all consolidated billing customers to the Company. *Id.*

The Company would pay all participating suppliers the full amounts due for "supplier service" minus a DPR, which would be calculated separately for two customer classes: the Small and Large Customer Groups. *Id.* at Section II(B) and (C). However, for the first year of the Program, the Company would calculate a single DPR applicable to both customer classes. *Id.* at Section II(C). The Company would pay participating suppliers monthly using the same payment date for both customer classes. *Id.*, Section II(D). Following the Program's initial implementation period, the Company would submit an annual reconciliation filing with the Commission by March 1 each year for revised DPRs and a revised payment date effective May 1. *Id.*, Section II(G).

A formula for calculating the DPR is contained in Section II(I) of the Settlement Agreement. This formula would consider the following factors for each customer class:

(1) Uncollectible Percentage, which is "the sum of the net write-offs for Supplier Service for the participating customer class, based on actual data for the recent calendar year, divided by the total amounts billed by the Company, including late payment fees if included in net write-offs, to that participating customer class for Supplier Service during the same period."

(2) Administrative Cost Percentage equal to "the total actual administrative costs and any forecasted incremental costs of POR program administration and collection to be recovered for the subsequent year divided by the total amounts billed for Supplier Service by the Company for the most recent calendar year. Administrative costs shall include the recovery of costs directly related to the

¹ Consolidated billing is explained in the Report at 3 and 3, n.2.

development and implementation of changes to billing, information, and accounting systems required to implement the billing and payment procedures related to the POR program into the Company's consolidated billing service, to be amortized and recovered over a five-year period;" and

(3) a Past Period Reconciliation Percentage, which is the "[s]um of 12 months of Actual Uncollectible Costs less monthly Actual Supplier Discounts Applied, plus Monthly Interest Accrued divided by Actual Supplier Billings."

Id.

The parties agreed that the proceeding in this docket would be bifurcated. *Id.*, Section II(H). The first phase of the proceeding would consist of the Commission's review of the Settlement Agreement. *See id.* Assuming the Commission issued an order approving the Settlement Agreement, the Commission would review the Company's proposed revisions to its ESSMA and Tariff in the second phase of the proceeding. *See id.* If the Commission issued an order approving the proposed revisions, the Company would implement the Program after it received executed revised ESSMAs. *See id.*

The parties agreed that the Company shall implement its POR program on the first day of the month following notice by the Company to the Commission that all system modifications necessary to implement the Program have been completed, tested, and fully operational. *See id.*, Section II(E). Furthermore, the parties agreed that implementation of the Program was conditioned on the proposed amended Tariff terms and conditions and ESSMA provisions being finalized and approved. *See id.*

Following initial implementation of the Program, the Company shall make an annual filing with the Commission on or before March 1 of each year. *See id.*, Section II(G). The annual filing shall provide the calculation of the DPRs, related reconciliation for prior periods and the payment date to be in effect for the forthcoming 12-month period, effective as of May 1. *See id.*

III. HEARING EXAMINER'S REPORT AND RECOMMENDED ORDER

The Report determined that the Company's inclusion of CEPSs in the Program

met the public good standard under RSA 53-E:9, I, “subject to a second phase in this proceeding . . . to ensure POR program costs will not be borne by [the Company] or non-participating customers.” *Id.* at 11. It also found that the Program adequately addressed when the Company would pay participating suppliers and how the Program would be subject to the Commission’s oversight, so that it recommended approval of these portions of the Settlement Agreement. *Id.* at 1, 9-12.

However, the Report did not recommend approval of the Settlement Agreement’s proposed calculation of the DPR. *Id.* at 1, 9, 11-12. Although Liberty did allocate capital costs that it estimated would be needed to modify its billing system over a five-year period, the Report found that the Program failed to include a pro rata share of baseline collection efforts costs, which could include “costs of payment collections activities by the utility or its contractors, shut-offs, billing arrangements, and associated reporting,” and noted the Company conceded that it had not allocated any existing administrative costs to the Program. *Id.* at 8. The Report acknowledged that the Company expected to use its existing personnel to administer the Program, and that both the Company and the DOE agreed the phrase “pro rata share” of costs contained in RSA 53-E:9, II should be interpreted as “incremental costs.” *Id.* at 7. The Report defined “incremental cost” as “additional or increased costs.” *Id.* at 5, n.4 (citing Black’s Law Dictionary 690 (5th ed. 1979)).

In addition, the Report stated that Liberty estimated no value for working capital. *Id.* at 8. It concluded that, for the Program to comply with RSA 53-E:9, II and the public good standard, the Company must either establish how the Program will account for working capital and a pro rata share of collection efforts costs or demonstrate that these factors were not quantifiable. *Id.* at 9. It recommended that the proceeding be continued to a second phase to allow the Company to do so and for the

Commission to consider necessary amendments to the Company's ESSMA and Tariff. *Id.* at 1, 12. The Report included a draft recommended supplemental order of notice.

IV. POSITIONS OF THE PARTIES

A. LIBERTY

In its comments and exceptions to the Report (Liberty Comments), the Company contended that the Report misinterpreted RSA 53-E:9, II to require that utility POR programs allocate a pro rata share of baseline collection costs and working capital costs to participating suppliers. Liberty Comments at 2, 4-10. Instead, the Company maintained that the intent of the statute was to ensure that any *incremental* administrative costs caused by POR programs were not recovered from the utility or its customers who were not participating in the POR program, an interpretation of RSA 53-E:9, II it stated was shared by the DOE.² *Id.* at 3-9. The Company added that it included its existing baseline collection and working capital costs in base distribution rates. *Id.* at 7. It did not allocate them to different customer groups, because customers were free to migrate to and from default service and its alternatives. *Id.* at 8. Furthermore, the Company's systems did not track existing collection costs by specific charge categories on customers' bills. *Id.*

The Company stated that it had not identified any incremental working capital costs that should be included in its initial DPR calculation. *Id.* at 10. Yet it would continue to monitor and track any such impacts of the Program and, if they were quantifiable and incremental, it would propose a working capital component in future DPR calculations. *Id.* at 10-11. The Company requested that the Commission approve

² See June 23, 2023 DOE Technical Statement of Amanda O. Noonan, Elizabeth R. Nixon, and Scott T. Balise at 3.

the Settlement Agreement in full as in compliance with both RSA 53-E:9, II and the public interest. *Id.* at 9, 11.

B. NRG

NRG, in its exceptions to the Report (NRG Exceptions), also requested the Commission to approve the Settlement Agreement as consistent with the requirements of RSA 53-E:9, II. NRG Exceptions at 5. It argued that none of the Company's baseline administrative and collection costs could be attributed to the Program when it had not been implemented. *Id.* at 4.

C. CPCNH

CPCNH joined in the Company's comments and exceptions. It included suggestions for amendments to both the Report and the recommended supplemental order of notice.

V. STANDARD OF REVIEW

The Commission is not bound by the recommendations of a hearing examiner appointed pursuant to RSA 363:17 in matters of fact or law. *N. New England Tel. Operations, LLC*, Order No. 25,538 at 5 (June 27, 2013). It can consider additional material, such as exceptions or comments to a hearing examiner's report, in deciding the issues before it. *See id.* at 6-7. Therefore, the Commission will consider the Report, as well as the comments and exceptions filed by the Company, NRG, and CPCNH.

The Commission must decide whether the result of parties' Settlement Agreement "is just and reasonable and serves the public interest." N.H. Admin. R., Puc 203.20(b). Even when all parties have agreed to a settlement, the Commission must independently determine whether the result complies with applicable standards. *Abenaki Water Co., Inc.*, Order No. 26,549 at 9 (November 12, 2021).

This proceeding involves the interpretation of RSA 53-E:9, so that principles of statutory construction apply. The words of a statute should be interpreted according to their plain and ordinary meaning and in the context of the statute as a whole.

Hardy v. Chester Arms, LLC, 2024 N.H. LEXIS 5, 11 (2024). Statutory provisions involving the same subject matter should be construed together, “so that they lead to a logical result reflective of the legislative purpose of the statutes.” *Petition of State*, 172 N.H. 493, 496 (2019). A statute also should be interpreted to avoid an absurd or unjust result. *Hardy*, 2024 N.H. LEXIS at 11.

VI. COMMISSION ANALYSIS

RSA 53-E:9 requires utility POR programs to: (1) make timely payment of amounts due to “suppliers” for electricity supply and related services less a DPR; (2) calculate the DPR to recover costs related to the POR program; and (3) periodically adjust the DPR, subject to the Commission’s approval. Pursuant to RSA 53-E:9, I, “suppliers” may include competitive electric power suppliers, such as CEPSs, if proposed by the utility and found by the Commission, after notice and hearing, to be for the public good.

After reviewing the Report, the Commission adopts the Hearing Examiner’s recommendation to bifurcate this proceeding and to approve those portions of the parties’ Settlement Agreement concerning when the Company would pay participating suppliers and how the Program would be subject to the Commission’s oversight, with the exception of the proposed May 1 effective date applicable to annual reconciliation filings.³ Additionally, the Commission adopts the Report’s determination that the

³ Given the proposed March 1 annual reconciliation filing date contained in the parties’ Settlement Agreement, a May 1 effective date applicable to reconciliation filings would not provide sufficient time for notice, input from the DOE and interested parties, any necessary proceedings, and issuance of the Commission’s order.

Program's inclusion of CEPSs as "participating suppliers" meets the public good standard contained in RSA 53-E:9, I. The remaining issue is whether the Company's proposed DPR calculation contained in Section II(I) of the Settlement Agreement complies with RSA 53-E:9, II.

RSA 53-E:9, II provides that the DPR will be equal to a utility's actual uncollectible rate with adjustments to recover certain types of costs that may arise from the POR program. The Report determined that the parties' proposed DPR calculation did not comply with RSA 53-A:9, II because it did not expressly refer to working capital or a pro rata share of collection efforts costs, cost components specified in the statute. Report at 1, 5, 7-9. It stated that a POR program must include a proportional share of baseline collection efforts costs, not just incremental costs. *Id.* at 8-9. As interpreted in the Report, RSA 53-E:9, II would require all POR programs to provide for the recovery of these costs, including existing costs, unless they are shown to be unquantifiable.

As the Commission stated in *Unitil Energy Systems, Inc.*, Order No. 27,036 (July 19, 2024), RSA 53-E:9, II does not require the DPR to account for working capital unless it is required to implement and operate the utility's POR program or require the DPR to account for collection efforts costs that cannot be attributed to a utility's POR program. *Id.* at 9-10. We find that the Company has adequately explained why the proposed DPR calculation does not presently include these cost components. We determine that the parties' proposed DPR calculation contained in Section II of the Settlement Agreement complies with RSA 53-E:9, II because it provides for the recovery of the costs arising from the Program, including a working capital component if one is later identified.

We find that the result of the Settlement Agreement is just and reasonable and serves the public interest, because the Settlement Agreement establishes a POR program that will facilitate electric aggregation programs while recovering the Program's costs from those using it. Other than the proposed May 1 effective date for reconciliation filings, we approve the Settlement Agreement in its entirety. Unless the Commission provides otherwise in a subsequent order, the effective date applicable to reconciliation filings is extended to August 1.

The effective date of the initial POR program will be determined during the second phase of this proceeding. After its commencement of the initial DPR, the Company shall make an annual filing with the Commission on or before March 1 of each year following the initial implementation of the Program. Such filings shall include the calculations for the respective DPRs, the reconciliation for the prior period, documentation supporting all relevant calculations, and the payment date for the following 12-month period.

This proceeding is continued to a second phase in which the Commission will review the Company's proposed revisions to its ESSMA and Tariff. The Commission will commence this phase of the proceeding by issuing a supplemental order of notice.

Based upon the foregoing, it is hereby

ORDERED, the Report is ADOPTED in part, as discussed in the foregoing order; and it is

FURTHER ORDERED, that the Settlement Agreement is APPROVED, with the exception of the proposed May 1 effective date; and it is

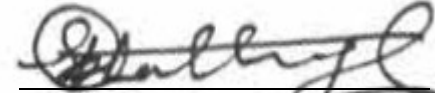
FURTHER ORDERED, that the effective date for the Company's annual reconciliation, after the initial reconciliation, is extended to August 1; and it is

FURTHER ORDERED, that this proceeding is continued to a second phase to review the Company's proposed revisions to its ESSMA and Tariff.

By order of the Public Utilities Commission of New Hampshire this sixteenth day of August, 2024.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner

Service List - Docket Related

Docket#: 23-003

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