

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 06-107

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

LIBERTY UTILITIES

Annual Storm Fund Report – Calendar Year 2019

Order on Rehearing

ORDER NO. 26,514

September 1, 2021

In this order the Commission grants Granite State Electric Corp., d/b/a Liberty Utility's request for rehearing and schedules a hearing concerning a Secretarial Letter issued on April 23, 2021, which denied Liberty's request for recovery of \$706,838 from the company's storm fund.

I. BACKGROUND

In its July 12, 2007 Order approving a settlement agreement in this docket ("Settlement Agreement"), the Commission authorized the creation of a storm contingency fund ("Storm Fund") by Granite State Electric, Corp., d/b/a Liberty Utilities (Liberty). See Order No. 24,777 at 75 (July 12, 2007). The Settlement Agreement provided that the Storm Fund is to be used to pay for operations and maintenance costs incurred by Liberty as the result of "major" storms. The Settlement Agreement also directed Liberty to file annual reports of Storm Fund activity. Order No. 24,777 at 13-14.

II. PROCEDURAL HISTORY

Liberty filed its Calendar Year 2019 Storm Fund Report (the 2019 Report) on March 30, 2020, providing the Commission with information related to the 2019

storms and the resulting 2019 Storm Fund activity. Liberty requested recovery of costs related to two pre-staging storm events and three qualifying storm events from its major Storm Fund account. Liberty's total operating costs for the five identified events is \$1,915,458.15. The filing does not trigger a rate change.

On March 23, 2021, staff of the Commission, now with the Department of Energy issued a Memorandum (the "Memorandum") recommending that the Commission (1) disallow recovery of \$706,838 from the 2019 Storm Fund, and (2) adjust the 2019 Report to remove the Company's capitalization of transportation depreciation through the burden rate.

On April 23, 2021, a Secretarial Letter was issued denying recovery of \$706,838 from the Storm Fund (Order). On May 21, 2021, Liberty filed a motion for rehearing of the Order. Staff of the Commission filed an objection to Liberty motion on May 26, 2021.

On June 18, 2021, the Commission directed Commission staff to supplement their response to Liberty's motion with legal argument in support of their position. The Commission also suspended its April 23, 2021 decision, pending further consideration, pursuant to RSA 365:21, and indicated that it would schedule a hearing at a later time, if it determined that a hearing is necessary.

Staff of the Commission filed a supplemental response to Liberty's motion on June 30, 2021, and on July 13, 2021, Liberty moved for leave to file a sur reply to the Energy supplemental response and attached it proposed sur-reply. On July 22, 2021, the Commission granted leave to file a sur-reply and accepted the sur-reply into the docket.

POSITIONS OF THE PARTIES

A. Liberty

Liberty asserts in its motion for rehearing that (1) the Secretarial Letter was issued without providing Liberty the constitutionally and statutorily required notice and opportunity to be heard, and (2) on the merits, the Secretarial Letter reached incorrect conclusions due to the lack of evidence and consideration of information and legal argument that Liberty would have provided. Thus, Liberty argued the Letter is “unlawful or unreasonable.” RSA 541:4, I.

Liberty also maintained the Commission acted without the evidentiary record necessary to reach proper conclusions.

On the substantive issues Liberty asserts that Commission staff’s interpretation of the Major Storm definition is incorrect and that Liberty’s storm related costs should not be disallowed on that basis. Liberty also asserts that its capitalization of transportation depreciation through the burden rate is consistent with FERC accounting requirements and should be allowed to continue.

In its surreply Liberty asserts that its failure to respond to the Memorandum within 30 days should not be interpreted as agreement with the recommendations.

Staff of the Commission (now with the Department of Energy)

In its recommendation, staff of the Commission asserted that none of the three storm events identified for recovery in Liberty’s Report meet the criteria for a qualifying “major storm” event found in the Settlement Agreement in this docket. Commission staff recommended that the costs related to these three storms, totaling \$706,838, be disallowed for cost recovery from the Company’s Storm Fund account. Commission staff recommended that the two pre-staging events meet the criteria for recovery of pre-staging costs from the Storm Fund account. As a result, they recommended recovery of \$1,206,255 for the two pre-staging events (excluding any amounts from the issue of capitalizing transportation depreciation through the burden rate).

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.” Not all service interruptions are considered “troubles” as defined in the above excerpt from the Settlement Agreement approved in Order No. 24,777. Only trouble spots on primary and secondary distribution lines that cause customer outages are classified as “troubles”.

Commission staff disagreed with Liberty’s inclusion of customer service troubles in the count of concurrent troubles for determining whether an event is a Major Storm event under the Settlement Agreement. Further, Commission staff disagreed with Liberty’s interpretation of simultaneous as including all incidents from beginning to the end of the storm event. When corrected for these issues, according to Commission staff none of the three storms qualified as major storm events.

III. COMMISSION ANALYSIS

Pursuant to RSA 541:3, the Commission may grant rehearing or reconsideration when a party states good reason for such relief. Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding, *O’Loughlin v. N.H. Personnel Comm’n*, 117 N.H. 999, 1004 (1977), or by identifying specific matters that were “overlooked or mistakenly conceived” by the Commission, *Dumais v. State*, 118 N.H. 309, 311 (1978). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome. *Abenaki Water Company, Inc. – Rosebrook Water System*, Order No. 26,312 at 8 (November 27, 2019).

We have considered Liberty's motion and the arguments on due process as well as the disagreement on definitions of a Major Storm event and FERC accounting rules. Given the record developed thus far, we find that an evidentiary hearing on disputed issues will assist the Commission in reaching a decision on Liberty's request to recover from the Storm Fund for events in 2019. Accordingly, we grant the motion for rehearing and schedule a hearing on the merits in this docket.

Based upon the foregoing, it is hereby

ORDERED, we **GRANT** the Motion for Rehearing as described in this order; and it is

FURTHER ORDERED, that a hearing on the issues and evidence related to Liberty's 2019 recovery from the Storm Fund will be held on October 4, 2021, beginning at 9:00 am.

By order of the Public Utilities Commission of New Hampshire this first day of September, 2021.



Dianne Martin
Chairwoman



Daniel C. Goldner
Commissioner

Service List - Docket Related

Docket# : 06-107

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