

## RRA REGULATORY FOCUS

**NH regulators halt Liberty electric rate case to weigh motion to dismiss**

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Market Intelligence

In a Jan. 8 order, the New Hampshire Public Utilities Commission said it will hear continuing arguments Jan. 23 in the state Department of Energy's motion to dismiss Liberty Utilities (Granite State Electric) Corp's request for an electric distribution rate change in Docket No. DE-23-039.

The department (DOE) asserts that the utility's test year financial information in the proceeding cannot be relied upon due to a change Liberty made to its software systems in October 2022, which DOE said impacted the company's financial accounting. The DOE asked for a stay in the proceeding, which the commission (PUC) granted in late December 2023.

Liberty asserts DOE's claims are baseless and has asked the PUC to adjust the procedural schedule in the case to allow for an additional exchange of information to address DOE's concerns.

**The Take**

- The New Hampshire Department of Energy filed an expedited motion with the commission in December 2023 to stay the rate case proceeding in conjunction with a separate motion to dismiss the case, asserting that the 2022 test year financial information on which the rate filing is based cannot be relied on to set new rates. The DOE argued that the stay was necessary to avoid expending unnecessary expense and effort that may be rendered meaningless if the case is dismissed. The PUC granted the stay in late December 2023.
- The state's Office of Consumer Advocate (OCA) supports the stay in the case, and in a filing, it said it would ask the PUC to require Liberty shareholders to pay OCA's costs incurred in connection with the proceeding if the motion to dismiss is granted.
- Aside from the motions to stay and dismiss, DOE and OCA also oppose Liberty's multiyear electric rate plan proposal, with both proposing in separate testimony a lower rate increase than that sought by the utility and a return on equity (ROE) that is below the recent average of returns authorized for electric utilities nationwide in 2023.
- Regulatory Research Associates views New Hampshire regulation as somewhat more restrictive than average from an investor perspective. While many of the rate proceedings before the PUC in recent years have been resolved via settlements, in some instances, the stipulated equity returns have been below the prevailing industry averages when established. For additional details, see the New Hampshire commission profile

Liberty is an Algonquin Power & Utilities Corp. subsidiary. In May 2023, the company filed for a multiyear electric rate increase totaling \$21 million and associated proposals for performance-based ratemaking. The utility filed updated revenue requirement and rate schedules in June 2023 to reflect a settlement agreement between Liberty, DOE, OCA and the New Hampshire PUC staff that authorized the company an approximately \$5.5 million temporary rate increase.

The company's proposed revenue increase is based on an adjusted test year ended Dec. 31, 2022, and is for the rate years ended June 30 of 2024, 2025, and 2026.

**Motion to dismiss, stay; Liberty response**

In December 2023, the DOE moved the PUC to dismiss Liberty's rate filing on grounds that the utility's 2022 test year financial information — including revenues, expenses and plant-in-service — on which the rate application is based, cannot be relied upon due to a change Liberty made to its software systems that DOE claims impacted the company's financial accounting.

"As regulators, we are required to carefully examine the financial data filed by a utility in support of proposed rate changes to ensure that those rates, if approved, are just and reasonable," DOE said in a statement. "When that data cannot be trusted, the best approach is to start a new rate case based on reliable, timely data...The motion and testimony filed...with the PUC clearly demonstrate that Liberty has not met its burden to justify the rates they proposed."

In the motion to stay the proceeding, DOE had sought a waiver of a 10-day deadline for parties to file objections to DOE's motions to prevent parties from unnecessary time and resource expenditures while awaiting a PUC decision on the motion to dismiss. The PUC declined to waive the objection period and ordered parties to be prepared to discuss on Jan. 4 "the criteria for granting the DOE's Motion to Dismiss, including the threshold question of whether Liberty has adequately presented accurate and complete books and records in support of its rate case to enable this rate case review proceeding to continue."

On Dec. 14, 2023, Liberty filed its objection to the DOE's motion to stay, describing it as an extreme remedy that would deny recovery of any of the increased costs to serve customers; on Dec. 26, 2023, Liberty objected to the motion to dismiss.

"DOE seeks to derail the Company's rate filing by asserting an unsupported and insufficient claim that leverages circumstances surrounding the Company's implementation of a new information system that will provide substantial benefit to customers over the long term," Liberty said in its objection. "If the Commission were to grant the Motion to Dismiss, the outcome would be to deny the Company its constitutional and statutory right to petition for rate relief; to have the opportunity for the Commission to review its prudently incurred costs and render determinations on the fair and reasonable return; and to maintain its financial integrity as is necessary for the Company to fulfill its public-service obligation to customers."

**DOE recommendations**

In conjunction with its motions to stay and to dismiss, the DOE recommended in separate testimony that the PUC deny the company's request for an electric distribution rate increase. In the event the PUC proceeds with the rate request, the DOE asked commissioners to adjudicate the request under a traditional cost-of-service ratemaking approach, as opposed to Liberty's proposals for performance-based ratemaking (PBR) and a multiyear rate plan (MYRP). The DOE also provided a multiyear revenue requirement calculation should the PUC approve Liberty's proposed MYRP methodology.

"[B]y presenting a recommended revenue requirement, and by providing the [DOE's] position on the many other issues raised in this case, we are not overlooking the fundamental issues that exist concerning the test year data, and in no way are we accepting test year information as accurate. The Department believes that the appropriate action for the Commission is to grant the Motion to Dismiss," DOE said in testimony.

The DOE recommends an approximately \$2.04 million rate increase, premised on a 9.25% ROE and a 7.61% return on a year-end 2022 rate base valued at \$171.6 million. The DOE also recommended an additional \$2.45 million "step" adjustment that includes the PUC-approved rate of return and depreciation accrual rates in the rate case.

The DOE's recommendations use a historical test year ended Dec. 31, 2022, and "inferred" company balances and figures that utilize updated revenue requirement and other financial information filed by Liberty on Nov. 27, 2023. The DOE developed its proposed step increase from Liberty's forecast 2023 plant additions, excluding revenue-generating and other plant additions.

The department proposed a downward adjustment to \$171.6 million from \$188 million, Liberty's proposed rate base for the adjusted 2022 test year, including a \$16.3 million reduction related to transmission and electric vehicle plant-in-service. The DOE's recommendation also incorporates slight changes to other rate base components, including cash working capital, revenues and expenses. The department's recommended adjustments also increased Liberty's proposed operating income to \$11.6 million from \$8.2 million for the adjusted test year.

The department's recommended ROE is below the 9.55% average of returns authorized for electric utilities nationwide in cases decided during the first nine months of 2023 and the average for full year 2022, according to RRA. The average ROE authorized electric utilities in all cases, including limited-issue rider proceedings, was 9.55% in rate cases decided in the first nine months of 2023, modestly above the 9.54% average for full year 2022. There were 37 electric ROE authorizations in the first nine months of 2023 versus 53 in full year 2022.

For a discussion of trends in ROE authorizations and other rate case parameters, refer to RRA's "Major Rate Case Decisions Quarterly Update."

#### *MYRP and PBR recommendations*

If the PUC approves Liberty's proposed MYRP methodology, the DOE recommends a cumulative \$7.5 million rate increase, premised on a 9.25% ROE and a 7.55% return on rate base valued at about \$206.1 million for an adjusted 2022 test year. The \$7.5 million rate increase consists of rate increases of \$3.9 million from the 2023-24 rate year; \$1.2 million for the 2024-25 rate year; and \$2.3 million for the 2025-26 rate year.

In testimony, the DOE recommended the PUC reject most elements of Liberty's proposed MYRP, its proposals for performance-based ratemaking, as well as performance incentive mechanisms related to reliability, time-of-use electric rates and distributed energy. The DOE also asserted that Liberty's proposed MYRP shifts risks from the company to customers without any commensurate benefit and contains no cost-efficiency incentives.

The DOE recommended that the PUC instead adopt an alternative PBR framework that incorporates, among other elements, improved cost efficiency incentives, protects the company against unforeseen costs and includes an earnings-sharing mechanism and an updated revenue decoupling mechanism.

Liberty's PBR proposal in the present case includes a three-year rate plan and an earnings-sharing mechanism that would allocate a portion of surplus earnings or deficits to customers if the company's adjusted earnings vary from a certain level. The company also proposes performance incentive mechanisms tied to service reliability, the expansion of residential and small commercial time-of-use rates to lower peak demand, the evaluation and approval of distributed generation applications, and electric vehicle penetration rates.

Prior to Liberty's PBR and MYRP proposal, New Hampshire's investor-owned utilities have traditionally been authorized incremental "step adjustments" to rates, subject to PUC review, to reflect the revenue requirement associated with certain future rate base additions and programs.

#### **Overview of rate request**

This proceeding was initiated in March 2023 when Liberty submitted a notice of intent to file for a multiyear electric rate increase. The initial rate filing was dismissed by PUC order on May 2, 2023, until Liberty submitted its Federal Energy Regulatory Commission Form 1 with the federal agency. Liberty indicated it planned to file the FERC Form 1 on May 5, 2023.

For the rate years ended June 30 of 2024, 2025 and 2026, Liberty, on May 5, 2023, initially proposed base rate increases of \$15.5 million (33.3%), \$2.6 million (5.7%) and \$3 million (6.5%), respectively. The utility proposed deferring a portion of the first-year increase and spreading recovery of the overall increase and associated carrying charges over the three-year period, resulting in levelized rate increases of approximately \$9.3 million, or 20.1%, each year.

In June 2023, Liberty filed updated revenue requirement and rate schedules reflecting a settlement agreement addressing temporary rates.

On Nov. 27, 2023, Liberty updated its proposed rate increase to \$20.5 million over three years and its proposal to moderate customer impacts by leveling the increases to about \$9 million each year, with deferred amounts to accumulate carrying charges of about \$0.760 million at the end of rate-year three.

#### **RRA's view of New Hampshire utility regulation**

New Hampshire regulation has been somewhat more restrictive than average from an investor perspective. While many of the rate proceedings before the PUC in recent years have been resolved via settlements, in some instances, the stipulated equity returns have been somewhat below the prevailing industry averages when established. While rate decisions take a full year to be adjudicated, the utilities are permitted to implement interim rates upon demonstration that a reasonable return is not being earned.

RRA accords New Hampshire an Average/2 rating.

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