

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**Docket No. DG 17-048**

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.  
d/b/a LIBERTY UTILITIES**

**Distribution Service Rate Case**

**Objection to the Admission into Evidence of Staff's Supplemental Testimony**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities ("EnergyNorth" or the "Company"), through counsel, respectfully objects to the admission into evidence of Staff's Supplemental Testimony of Jayson P. Laflamme and Donna H. Mullinax.

In support of this objection, the Company states as follows:

1. On March 16, 2018, after two days of hearings on the merits and shortly before the conclusion of the case, Staff filed the "supplemental" testimony of witnesses who previously filed testimony on the Company's requested revenue requirement.
2. The impermissible topics covered by Staff's supplemental testimony include: (1) subjects already covered in Staff's direct testimony; (2) corrections to Staff's original testimony; (3) a shopping list of those parts of the OCA-Liberty settlement agreement that Staff has now decided to support as Staff abandons its original testimony; (4) an "update" of the revenue requirement contained in Staff's direct testimony to account for those parts of the settlement agreement Staff can accept (ignoring the fact that the Settlement Agreement must be taken as a whole and not carved into its component pieces – Liberty and the OCA agreed to *all* aspects of the settlement agreement, not just those that Staff can now accept); and (5) Staff's calculation of the impact of tax reform, but which Staff incorrectly applied to the revenue

requirement in Liberty's rebuttal testimony – which is not before the Commission for approval -- rather than the revenue requirement in the settlement agreement.

3. The submission of prefiled testimony is governed by Commission rules and the particular procedural schedule approved in this docket.
4. Staff's supplemental testimony is not permitted by the Commission's procedural schedule approved on May 31, 2017, which called for the usual sequence of Staff and OCA testimony in November 2017 and Company rebuttal testimony in January 2018. Staff cannot ignore the constraints of the procedural schedule.
5. The rules-based authority under which Staff could file supplemental testimony is Puc 203.06(e), which does not permit what Staff filed here. That rule states:

If the scope of a proceeding is expanded or issues arise which were not reasonably anticipated by the petitioner, the commission shall allow the petitioner to file supplemental direct testimony or comments on the new or unanticipated issues.

Other than tax reform, the scope of this docket has not expanded and there are no issues addressed in the supplemental testimony that Staff could not have reasonably anticipated.

6. As for tax reform, the Commission issued Order No 26,096 (Jan. 3, 2018) in Docket No. IR 18-001, which stated that:

Several utilities have rate cases being investigated by the Commission. Those utilities shall consider whether a rate reduction associated with the reduced tax obligations of the 2017 Tax Act, BET, and BPT, can be effected within the schedule for those rate cases

*Id.* at 3. Staff has thus been on notice since January 3 that tax reform may be addressed in this docket. Filing its proposal to address tax reform at this late stage is contrary to the intent of Order No. 26,096, and unfair to the Company and to the OCA. Moreover, Liberty's

agreement in the settlement to flow the benefit of lower taxes to customers earlier than would otherwise be the case absent settlement does not give Staff authority to propose that this issue be fully adjudicated in this docket.

7. Finally, Staff's untimely filing of its supplemental testimony deprives the Company of reasonable notice of Staff's new positions and of the opportunity to conduct discovery on Staff's new arguments and calculations, or to present rebuttal to Staff's positions, in violation of the Company's procedural due process rights.

WHEREFORE, Liberty respectfully asks that the Commission:

- A. Deny admission into evidence of Staff's supplemental testimony and attachments; and
- B. Grant such other relief as is just and reasonable and consistent with the public interest.

Respectfully submitted,

Liberty Utilities (EnergyNorth Natural Gas) Corp.  
d/b/a Liberty Utilities

By its Attorney,



Date: March 20, 2018

By: \_\_\_\_\_  
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Certificate of Service

I hereby certify that on March 20, 2018, a copy of this motion has been forwarded to the service list.

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By: \_\_\_\_\_  
Michael J. Sheehan