

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

Motion for Rehearing

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (“Liberty” or the “Company”), through counsel, respectfully moves the Commission pursuant to RSA 541:3 for rehearing of Order No. 26,122 (April 27, 2018) (the “Order”) to the extent the Order intended the rate design changes to go into effect on May 1, 2018. If the rate design changes are effective May 1, 2018, rather than November 1, 2018, then it is impossible for the Company to recover in 2018 the \$8.06 million annual permanent distribution revenue increase that was also approved in the Order, which is grounds for rehearing and may amount to an unconstitutional taking.

Liberty thus seeks rehearing to have the Commission state that the effective date of the rate design changes is November 1, 2018.¹

In the alternative, Liberty moves the Commission to simply clarify that the rate design changes are to go into effect November 1, 2018, to the extent that was always the Commission’s intent.

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

¹ Even though the Company claims in this motion that the new rate design should have an effective date of November 1, 2018, out of an abundance of caution the Company implemented the rate design changes as of May 1, 2018. If the Commission grants this motion, the Company proposes to recover the lost revenue at issue through the LDAC over a period of 18 months commencing July 1, 2018, rather than reverting to the old rate design now and then reverting back to the new rate design again on November 1, 2018, which would result in significant customer confusion.

1. The purpose of a motion for rehearing “is to direct attention to matters that have been overlooked or mistakenly conceived in the original decision.” *Dumais v. State*, 118 N.H. 309, 311 (1978) (internal quotations omitted). A motion for rehearing should identify the error to be reconsidered, describe how the error caused the order to be “unlawful or unreasonable,” RSA 541:4, and state the proposed resolution. The Commission may grant rehearing if it finds that the Company has shown “good reason” or “good cause” for the relief sought. *See Appeal of Gas Service, Inc.*, 121 NH 797, 801 (1981); *O’Loughlin v. NH Pers. Comm.*, 117 NH 999, 1004 (1977).
2. Three parts of the Order are relevant to this motion. First, the Order granted Liberty an \$8.06 million annual distribution revenue increase as of May 1, 2018. As is typical, the Order also authorized the Company to recover, through recoupment, the amount that the Company would have recovered as if the \$8.06 million rate increase went into effect on July 1, 2017, the effective date of the Commission-approved temporary rate increase. *See* Order at 51-52 (“The permanent rate increase of \$8,060,117 approved in this order is to be effective as of May 1, 2018. Pursuant to RSA 378:29, Liberty may collect an amount equal to what would have been collected if the permanent rate increase had been effect during the temporary rate period”); *see also* Eighth Ordering Clause, Order at 56 (“Liberty is authorized to begin recovery of the difference between the authorized annual temporary and permanent rates”).
3. What is important here is that the Order plainly authorized Liberty to collect an additional \$8.06 million in calendar year 2018, compared to the revenue level in the test year.

4. Second, at the request of Liberty and the Office of the Consumer Advocate (“OCA”), the Order approved a decoupling mechanism under which Liberty will recover its approved revenue requirement through a calculated revenue per customer per year. Order at 43 – 46.
5. For a simple example, if the Company’s approved annual revenue requirement is \$1,000,000 and Liberty has 10,000 customers, then the revenue-per-customer target would be \$100 and rates would be calculated to collect \$100 from each customer. The Company would calculate the per-customer target first, then develop the rates to collect only that amount. If the Company collected \$1,100,000 over the course of the year, the extra \$100,000 would be returned to customers through the annual reconciliation process. If the Company collected only \$900,000, the reconciliation would add \$100,000 to rates the following year to make the Company whole.
6. Under Liberty’s existing, non-decoupled rate structure, and using the same example, the Company would start with its approved revenue requirement of \$1,000,000, divide that by its estimated sales for the year, say 1,000,000 therms. Unlike revenue-per-decoupling where the Company calculates a per-customer target, here the Company would calculate a per-therm rate based on how much gas it planned to sell which, in this example, would be \$1 per therm. The other important difference is that if the Company sold 1,100,000 therms, the Company would keep the extra \$100,000, but if Liberty only sold 900,000 therms, Liberty would not be able to recover the \$100,000 shortfall from customers. Thus, by granting the OCA’s and Liberty’s request, the Company’s revenues are “decoupled” from its sales.

7. What is important here is that the revenue per customer decoupling mechanism will, as intended, stabilize the Company's *annual* revenue.
8. Third, the Order approved a substantial change to Liberty's rate design. "Rate design" is how a utility recovers its approved revenue requirement from the various customer classes through complex allocations, typically involving a combination of fixed and variable charges.
9. Under a traditional cost-per-therm rate structure (as opposed to a revenue-per-customer rate structure) utilities generally favor higher fixed charges and lower variable charges to increase the likelihood that they will recover their fixed costs and have stable revenue. In contrast, those advocating for price signals to encourage customers to conserve energy, like the OCA, favor lower fixed charges and higher variable charges, a rate design that makes customers aware of their usage and thus more likely to conserve, but this rate design also allows for utility revenue to vary, sometimes substantially.
10. The initial proposals of Liberty and the OCA followed this traditional path -- Liberty proposed higher fixed charges and the OCA proposed lower fixed charges.
11. This paradigm changed, however, after the OCA and Liberty agreed to jointly propose the revenue-per-customer decoupling mechanism. In conjunction with their decoupling proposal, the OCA and Liberty also asked the Commission to substantially lower fixed charges and raise variable charges (the "Rate Design"). The OCA did not need an incentive to agree to the Rate Design because the OCA always supported lower fixed charges as they provide the desired price signals. The Company, on the other hand, required a substantial motive because lower fixed charges are usually anathema to utilities. The

revenue stability that flows from decoupling provided that incentive, and Liberty also agreed to propose the Rate Design.

12. What is important here is that Liberty agreed to the Rate Design *only* because it was to be implemented in conjunction with decoupling.

13. The Order specifically recognized and approved what is described above, including the last and most important concept that the Rate Design and decoupling are intertwined and must be implemented simultaneously to make sure Liberty recovers its fixed costs.

14. First, the Commission ordered an \$8.06 million annual revenue increase retroactive to July 1, 2017, which, for purposes of this motion, authorized Liberty to recover an extra \$8.06 million in 2018:

FURTHER ORDERED, that Liberty be permitted to increase its base distribution rates effective with service rendered on and after May 1, 2018, by \$8,060,117 on an annual basis.

Order at 55.

Pursuant to RSA 378:29, Liberty may collect an amount equal to what would have been collected if the permanent rate increase had been effect during the temporary rate period.

Order at 51-52.

15. Second, the Order agreed that revenue-per-customer decoupling lowers the Company's revenue risk:

In this order, the Commission approves, for the first time in New Hampshire, a decoupling mechanism which allows rate adjustments for weather, energy efficiency, economic effects, and other variables and allows Liberty to earn distribution revenues on a per customer basis, thus eliminating substantial revenue risks.

Order at 1 (emphasis added).

Accordingly, to account for the decrease in risk Liberty will experience under the approved decoupling mechanism, we will set the ROE in this case at 9.3 percent.

Order at 43.

Liberty's distribution revenue per customer targets would be set based on test year information and then, going forward, rates would be adjusted twice annually (up or down) to allow the Company to collect its target revenue, calculated using actual customer counts.

Id.

16. Third, the Order recognized that Liberty substantially changed its position on rate design by agreeing to lower fixed charges consistent with the OCA's original position:

In its original filing, Liberty proposed significant increases to all its customer charges, based on the results of its marginal cost study and bill impact considerations.

The rates in the [joint OCA-Liberty proposal] are significantly different than the rates in Liberty's initial proposal. Customer charges for residential non-heating and heating customers would be set at \$14.88 per month, which is \$2.00 lower than the current R-1 amount and more than \$9.00 lower than the current R-3 charge.

The OCA originally proposed reducing customer charges for all classes.

Order at 47.

17. Fourth, the Order understood that the combination of the Rate Design and decoupling reduces Liberty's revenue risks:

Paired with this innovative decoupling mechanism is a modified rate design that lowers fixed customer charges. The reduction in risk leads to a return on equity of 9.3 percent ...

Order at 1.

18. Finally, in the passage that is most important to this motion, the Commission recognized that Liberty's revenues were at risk with lower customer charges and thus the

Order approved the Rate Design only because it was implemented along with the revenue-per-customer decoupling mechanism, which would protect Liberty from that risk:

Given that we approve the settlement decoupling mechanism, it follows that we approve the settlement rate design. We agree with Staff that decoupling greatly increases the Company's ability to recover its fixed costs and therefore, we are comfortable with the significant decreases to the residential customer charges contained in the settlement.

Order at 48 (emphasis added).

19. The problem that gives rise to this motion is that the Commission did not clearly state that the Rate Design should go into effect concurrently with decoupling on November 1, 2018.² There is no language in the Order that gives an implementation date for Rate Design. The only indications of an effective date are, first, the reference to the new \$14.88 customer charge in the section describing the Rate Design as proposed in the Settlement Agreement, Order at 47, which the Order approved a couple paragraphs later, Order at 48 (“we approve the settlement rate design”). Second, Appendix 7 to the Order shows the residential bill impact of the Order, which includes the Rate Design going into effect as of May 1, 2018.³ (Thus, the Company erred on the side of caution and implement Rate Design as of May 1, 2018.)⁴

² All agreed that the decoupling mechanism could not go into effect immediately for the practical reasons that the Company has to develop tariff language, implement changes to its billing system, and educate its customers of the changes. *See* Order at 45-46.

³ The heading of Appendix 7 contains a date of May 1, 2019, but the Company believes this date was a typographical error.

⁴ The inclusion of a May 1, 2018, effective date for the Rate Design in the OCA-Liberty settlement agreement is irrelevant. It is impermissible to remove a single term from a negotiated agreement which, by its express terms, stated that it is to be approved as a whole, and which the Order “reject[ed]” and “denied.” Order at 8, 55. Liberty was willing to live with a May 1, 2018, effective date for the Rate Design only in conjunction with the agreement’s other terms, not the least of which was the \$10.3 million annual revenue increase.

20. Absent a clear statement of the Rate Design's effective date, the relief sought in this motion is for the Commission to simply declare that the effective date of the Rate Design is November 1, 2018.
21. If the Commission intended a November 1, 2018, effective date for the Rate Design, then this motion merely seeks clarification of that finding.
22. If, however, the Commission intended a May 1, 2018, effective date for the Rate Design, then this motion seeks rehearing because a May 1, 2018, effective date causes the very harm that the Commission was trying to prevent when it wrote the highlighted sentence quoted in paragraph 18 above, and thus the Order satisfies the rehearing standard that the Commission "overlooked or mistakenly conceived" this issue, that the Order is "unlawful or unreasonable," and that there is "good reason" and "good cause" to grant the requested relief.
23. A May 1, 2018, effective date contradicts the express rationale in the Order because the Company cannot "recover its fixed costs" with the "significant decreases to the residential customer charges" if decoupling and Rate Design are not implemented together.
24. Similarly, if the Commission intended a May 1, 2018, effective date for the Rate Design with knowledge that it would preclude Liberty from recovering the \$8.06 million annual increase in 2018 granted in the same order, then the Commission would have violated Liberty's state and federal constitution rights against a government taking. *See Appeal of PSNH*, 122 N.H. 1062, 1070-71 (1982). The "just compensation" requirement arises whenever the exercise of governmental authority results in a taking of property. *Id.*

In order to assert the constitutional claim that the program constitutes a "taking" of client property in violation of the fifth and fourteenth amendments to the United States Constitution and part one, article twelve of the New Hampshire Constitution, a client would have to show that he

possessed a specific property interest and that he, in fact, had been unjustly deprived of that property interest.

Petition of N.H. Bar Association, 122 N.H. 971, 975 (1982).

25. The Order's grant of an \$8.06 million annual rate increase, which neither Staff nor the OCA has challenged, created a property interest that the Commission cannot unjustly take.

26. The Company has calculated the harm that will flow from an improper May 1, 2018, effective date. Applying the Rate Design to the Company's standard sales projections for the period May 1, 2018, through October 31, 2018, Liberty's revenues will be about \$3.08 million less than what they would have been had the Rate Design change taken effect November 1, 2018. In other words, solely due to the May 1, 2018, effective date of the Rate Design, it is impossible for the Company to collect the approved \$8.06 million rate increase this year. The calculation of this \$3.08 million loss is contained in Exhibit A.

WHEREFORE, Liberty respectfully asks that the Commission:

A. To the extent the Order intended a November 1, 2018, effective date for the Rate Design, clarify that finding and allow the Company to recover the \$3.08 million shortfall through the "Rate Case/Temporary Rate Reconciliation" component of the LDAC over an 18-month period commencing July 1, 2018;

B. In the alternative, to the extent the Order intended a May 1, 2018, effective date, grant rehearing for the reasons discussed above, declare that the effective date for the new rate design is November 1, 2018 coincident with the implementation of decoupling, and allow the Company to recover the \$3.08 million shortfall through the "Rate Case/Temporary Rate Reconciliation" component of the LDAC over an 18-month period commencing July 1, 2018; and

- C. 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: May 25, 2018

By: _____
Michael J. Sheehan, Senior Counsel #6590
116 North Main Street
Concord, NH 03301
Telephone (603) 724-2135
michael.sheehan@libertyutilities.com

Certificate of Service

I hereby certify that on May 25, 2018, a copy of this motion has been electronically forwarded to the service list and paper copies have been hand delivered to Commission Staff and the Office of the Consumer Advocate.



By: _____
Michael J. Sheehan