

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 17-048

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

Petition for Permanent and Temporary Rates

Order Granting Re-Hearing

ORDER NO. 26,149

June 22, 2018

APPEARANCES: Michael J. Sheehan, Esq., on behalf of Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities; the Office of the Consumer Advocate by D. Maurice Kreis, Esq., on behalf of residential ratepayers; and Paul B. Dexter, Esq., and Alexander F. Speidel, Esq., on behalf of Commission Staff.

In this order, the Commission grants Liberty's Motion for Rehearing in part and requires additional information from Liberty to allow further review of its claim that the rate order issued in this case on April 27, 2018, will not provide the intended revenues.

PROCEDURAL HISTORY

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty or the Company) filed a Petition for Permanent and Temporary Rates on April 28, 2017. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission's website at <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-048.html>.

Liberty's petition requested: (1) a permanent increase in Liberty's distribution rates effective with service rendered on or after July 1, 2017, designed to yield an increase of \$13,749,361 in annual revenues; (2) temporary rates effective with service rendered on or after July 1, 2017, designed to yield an increase of \$7,778,497 in annual revenues for its EnergyNorth Division; and (3) a step adjustment in rates designed to yield an increase of \$6,071,562 in annual

revenues (to recover costs associated with approximately \$41 million of capital expenditures projected to be made during 2017). By letter dated April 3, 2017, the Office of Consumer Advocate (OCA) indicated that it would be participating in the proceeding pursuant to RSA 363:28.

The Commission approved temporary rates in Order No. 26,035 (June 30, 2017) effective July 1, 2017, increasing the Company's revenue by \$6,750,000 annually.

On February 27, 2018, Liberty and OCA filed a settlement in this matter which provided for a permanent annual rate increase of \$10.3 million. Staff opposed the settlement. On April 27, 2018, the Commission issued an order rejecting the settlement and approving a permanent rate increase for Liberty effective May 1, 2018, of \$8,060,117, with a step increase effective the same day of \$4,729,953. Order No. 26,122 (April 27, 2018) (the Order) at 2. The Order included approvals of significant reductions in customer charges and corresponding increases in volumetric charges. The Order also approved a decoupling proposal applicable to all rate classes.

On May 25, 2018, Liberty filed a Motion for Rehearing of Order No. 26,122 to determine if the Order's rate design changes were intended to go into effect on May 1, 2018. If the rate design changes are effective May 1, 2018, rather than November 1, 2018, then the Company claims that it will be impossible to recover the full amount of the \$8,060,117 annual permanent distribution revenue increase in 2018. If May 1, 2018, was not intended to be the effective date of the rate design changes, then Liberty moved for clarification that the rate design changes are to go into effect November 1, 2018. Because Liberty implemented the rate design changes on May 1, 2018, it claims that in 2018, it will collect \$3,079,391 less than the increased revenue approved. Liberty seeks approval to recover this perceived shortfall through the Rate Case

Temporary Rate Reconciliation component of the Local Delivery Adjustment Clause (LDAC) over an 18-month period commencing July 1, 2018.

Staff filed an Objection to Liberty's Motion (Objection) on June 4, 2018. In its Objection, Staff stated that if the Commission wished to further explore the issues raised by Liberty, the Commission should require Liberty to file additional information about the claimed shortfall and about the effect of synchronizing the implementation dates for the rate design changes and decoupling.

Liberty filed a Response to Staff's Objection (Response) on June 6 requesting that the Commission find that the timing of rate design and decoupling implementation will cost Liberty money, and requesting a hearing to present evidence on the calculation and recovery of that shortfall.

I. POSITIONS

A. Liberty

In its Motion, Liberty claims that, because the rate design changes were implemented May 1, it is impossible for Liberty to collect the \$8,060,117 increase in 2018, as the Order intended. Motion at 1, 2, and 9. It claims that the reduced customer charges it proposed as part of a Settlement with the OCA were part of an integrated package that also included a higher overall permanent rate increase and thus Liberty was "willing to live with" the May 1 rate design implementation. Liberty argues that the Commission should not have approved this one part of the Settlement (May 1 implementation of rate design changes) as a separate term. Motion at 7. Liberty states that the Order linked the rate design changes with decoupling and thus the rate design changes should not be implemented until November 2018, when decoupling was ordered. Motion at 5-8.

According to Liberty, it implemented the rate design changes on May 1, 2018, “out of an abundance of caution.” It asked that instead of reversing those rates and re-implementing them on November 1 (which it claims would confuse customers), the Commission should allow Liberty to collect the calculated shortfall of the May 1 rate design implementation (\$3,079,391) over 18 months through the LDAC. Motion at 1.

In its Response, Liberty disagrees with Staff’s assessment that the Order did not intend for Liberty to collect annual revenues increased by \$8,060,117 in 2018, but rather over a 12-month period beginning May 1, 2018. Liberty states that based on the approval of temporary rates effective July 1, 2017, it is entitled to collect the revenue increase of \$8,060,117 over every 12-month period following July 1, 2017. Response at 2. Further, Liberty repeats its concerns with the Commission’s approval of specific terms contained in a comprehensive Settlement. Response at 4. Regarding Staff’s criticism of the calculated shortfall, Liberty acknowledged that there are several approaches to fairly calculate the shortfall and suggests that a hearing would be the best way to present and explain the various approaches. Response at 3.

B. OCA

The OCA submitted no comments on the Motion, Objection, and Response.

C. Staff

Staff asks the Commission to deny Liberty’s Motion because the Order granted Liberty precisely what it requested in terms of implementation dates for rate design changes and decoupling. Objection at 2. Further, Staff states that Liberty’s Motion is misguided because it focuses on the impact of the approved rates on calendar year 2018 when in fact the rates were approved effective May 1, 2018, and thus were designed to collect the \$8,060,117 over the 12-month period beginning May 1, 2018, not calendar year 2018. Objection at 3.

Staff also pointed out that Liberty's calculation of its shortfall was flawed. Objection at 3-4. Staff stated that if the Commission sought to explore Liberty's request further, it should require Liberty to calculate precisely the impact of the Order on 2018 revenues by accounting for the rate design changes in the eight-month period from May 1, 2018, until December 31, 2018, not just the summer months that Liberty analyzed. Further, Staff said that the impacts of temporary rates and recoupment on 2018 revenues should be analyzed. Finally, Staff disputed Liberty's claim that a revenue shortfall will occur unless rate design and decoupling are implemented simultaneously, and recommended that the Commission require Liberty to calculate the impact of decoupling assuming implementation of decoupling was moved up to May 1, 2018, to coincide with the rate design changes. Objection at 4-5.

II. COMMISSION ANALYSIS

A. Rate Design

The Order at page 48 adopted the rate design proposed in the settlement. The settlement (in the section titled "Revenue Allocation and Rate Design") outlines the reduced residential customer charges and the corresponding increased volumetric charges and concludes by stating that "resulting rates are effective May 1, 2018, and continue without modification to rate design until the Company's next rate proceeding." Exh. 29 at 10. Thus, the order provided that the approved rates (including the changes to rate design) were approved effective May 1, 2018.

B. Decoupling

The Order states that "we approve the settlement decoupling proposal in concept" and "[b]ecause decoupling is slated for November 1, Liberty is directed to file within 45 days of this order illustrative tariffs demonstrating the rates, terms, and conditions required to implement decoupling in conformance with existing law." Order at 45-46. The settlement provides that the

“Settling Parties agree that the decoupling mechanism shall take effect beginning on November 1, 2018.” Exh. 29 at 12. Thus, no clarification is needed concerning the implementation dates for rate design (May 1, 2018) or decoupling (November 1, 2018).

C. Rehearing

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, *see 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. *Public Service Company of New Hampshire*, Order No. 25,239 at 8 (June 23, 2011).

1. Rate Adjustments and Timing

In this matter, Liberty claims that if rate design is implemented May 1, then it will be impossible for Liberty to collect the approved revenue increase in 2018. On the other hand, Staff claims that 2018 is not the relevant period to evaluate. The approved rates were designed to collect a permanent rate increase of \$8,060,177 over an annual period beginning May 1, 2018. No party has claimed that the rates will not achieve that purpose. Liberty claims that by virtue of the temporary rate approval and the recoupment provisions of RSA 378:29, Liberty should be able to collect its annual revenue increase of \$8,060,177 over any 12-month period beginning after July 1, 2017.

The temporary rates decision provided that beginning July 1, 2017, Liberty was authorized to charge increased rates designed to collect an additional \$6,750,000 on an annual

basis, as compared to adjusted, weather normalized, test year revenues. Our permanent rates decision allowed Liberty to charge increased rates designed to collect an additional \$8,060,117 on an annual basis, as compared to adjusted, weather normalized, test year revenues.

Based on the provisions of the recoupment statute and the Order at 51-52, Liberty is authorized to collect a recoupment amount equal to what would have been collected if the permanent rate increase of \$8,060,117 had been in effect during the temporary rate period (July 1, 2017, through April 30, 2018). We approved the settlement's proposed method of calculating and recovering this recoupment amount. Nonetheless, collection of the recoupment amount does not align with calendar year 2018. Rather, it begins May 1, 2018, and extends for 20 months until December 31, 2019.

Recoupment is designed to have the effect of granting the \$8,060,117 permanent increase effective July 1, 2017. But this is different from actually collecting the \$8,060,117 in calendar year 2018. That collection is delayed, because during parts of 2018, the temporary rates (but not the permanent rates) were collected, and not all of the recoupment amount will be collected in 2018 (some portion will carry into 2019). Based on the evidence presented, we are not persuaded by Liberty's assertion that it is entitled to collect the \$8,060,117 revenue increase during any 12-month period after July 1, 2017, including the calendar year 2018.

2. Liberty's Claimed Revenue Shortfall

Notwithstanding this analysis, we are concerned about Liberty's claim that our Order will cause a \$3 million revenue shortfall in 2018. In order to explore that claim further, we will grant rehearing on this issue. To facilitate the presentation of evidence, we require that Liberty provide within 14 days of this order a calculation showing the impact of the Order on its revenues, by month, for all months from July 1, 2017, through December 31, 2019. We request

that the calculation show the impact of three discreet items: temporary rate increase, permanent rate increase, and recoupment.¹ Because many of the months we will be considering have passed, we require that Liberty use actual sales and revenue information where available and estimates for future months. The calculation should follow Appendix 1 to this order.

3. Recoupment of Temporary and Permanent Rates

In addition, we request a refinement of the recoupment calculation we approved in the Order. We approved recoupment pursuant to RSA 378:29, which states that:

If, upon final disposition of the issues involved in such proceeding, the rates as finally determined, are in excess of the rates prescribed in such temporary order, then such public utility shall be permitted to amortize and recover, by means of a temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and in the gross income which would have been obtained under the rates finally determined if applied during the period such temporary rate order was in effect.

The recoupment calculation contained in the settlement (Exhibit 29, Attachment C, Bates page 20), which we approved, appears to produce a rough approximation of the statutory recoupment and requires some refinement. The Commission's recoupment calculation substituted the approved annual revenue requirement for that requested in and used in the settlement calculation. Order at Appendix 5. The settlement called for a surcharge designed to collect that amount over 20 months. The settlement anticipated updating the recoupment amount once actual sales for January through April 2018 were known. Exh. 29 at 9. The settlement recoupment method did not account for rate design changes in the permanent rates.

What the statute calls for, however, is calculating what would have been obtained if the finally approved rates had been in effect on July 1, 2017. This can be more precisely calculated by applying the approved rates to actual sales (billing determinants) from July 1, 2017, through

¹ We specifically exclude from our request, the impact of the 2018 step increase we approved in the Order, because no party has raised an issue with the step increase.

April 30, 2018, and comparing that total to what was actually collected under the temporary rates. In this case, where significant rate design changes took place for residential customers, we believe this refined calculation should be performed and reviewed. We request that Liberty provide this calculation within 14 days of this Order as specified in Appendix 2.²

Based upon the foregoing, it is hereby

ORDERED, that Liberty's Motion for Rehearing is granted in part; and it is

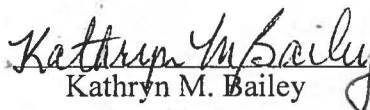
FURTHER ORDERED, that within 14 days of this Order, Liberty shall file in the docket the calculations requested above; and it is

FURTHER ORDERED, that after the calculations have been filed, Liberty, Staff, and the OCA, if it chooses to participate, shall meet in a technical session on a date to be determined by Staff and Liberty, and the OCA if it chooses to participate, to review the materials and to recommend to the Commission one or more proposed hearing dates.

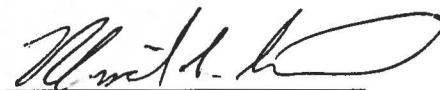
By order of the Public Utilities Commission of New Hampshire this twenty-second day of June, 2018.



Martin P. Honigberg
Chairman

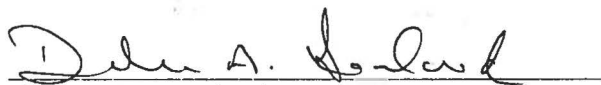


Kathryn M. Bailey
Commissioner



Michael S. Giaimo
Commissioner

Attested by:



Debra A. Howland
Executive Director

² First, we recognize that the statute refers to the impact of temporary/permanent rate differences on gross income, not revenues, but since all inputs to income except revenues are held constant in the calculation, we request that Liberty isolate revenues in the calculation, as is typically done. Second, we note that the refined recoupment calculation requested herein follows what Northern Utilities, Inc. provided and we approved in a 2013 rate case; DG 13-086.

SERVICE LIST - EMAIL ADDRESSES - DOCKET RELATED

Pursuant to N.H. Admin Rule Puc 203.11 (a) (1): Serve an electronic copy on each person identified on the service list.

Executive.Director@puc.nh.gov	
al-azad.iqbal@puc.nh.gov	steve.frink@puc.nh.gov
alexander.speidel@puc.nh.gov	steven.mullen@libertyutilities.com
amanda.noonan@puc.nh.gov	stower@nhla.org
bj@benjohnsonassociates.com	
brian.buckley@oca.nh.gov	
christian.brouillard@libertyutilities.com	
david.simek@libertyutilities.com	
dmullinax@blueridgecs.com	
donald.kreis@oca.nh.gov	
james.brennan@oca.nh.gov	
jayson.laflamme@puc.nh.gov	
jrw@psu.edu	
karen.sinville@libertyutilities.com	
kerri-lyn.gilpatric@puc.nh.gov	
maureen.karpf@libertyutilities.com	
michael.sheehan@libertyutilities.com	
ocalitigation@oca.nh.gov	
paul.dexter@puc.nh.gov	
Paul.Kasper@puc.nh.gov	
pradip.chattopadhyay@oca.nh.gov	
randy.knepper@puc.nh.gov	
rburke@nhla.org	
Stephen.Hall@libertyutilities.com	

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FILING INSTRUCTIONS:

- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with:**
- DEBRA A HOWLAND
EXEC DIRECTOR
NHPUC
21 S. FRUIT ST, SUITE 10
CONCORD NH 03301-2429
- b) Serve an electronic copy with each person identified on the Commission's service list and with the Office of Consumer Advocate.**
- c) Serve a written copy on each person on the service list not able to receive electronic mail.**