

**STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION**

Docket No. DG 20-105

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty
Distribution Service Rate Case

REBUTTAL TESTIMONY

OF

STEVEN E. MULLEN

April 29, 2021



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1 **I. INTRODUCTION AND BACKGROUND**

2 **Q. Please state your name and business address.**

3 A. My name is Steven E. Mullen. My business address is 15 Buttrick Road, Londonderry,
4 New Hampshire.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by Liberty Utilities Service Corp. (“LUSC”) as Director, Rates and
7 Regulatory Affairs. I am responsible for rates and regulatory affairs for Liberty Utilities
8 (EnergyNorth Natural Gas) Corp. (“EnergyNorth” or “the Company”) and Liberty
9 Utilities (Granite State Electric) Corp. (“Granite State”) in New Hampshire, Liberty
10 Utilities (Peach State Natural Gas) Corp. in Georgia, and Liberty Utilities (St. Lawrence
11 Gas) Corp. in New York.

12 **Q. On whose behalf are you testifying today?**

13 A. I am testifying on behalf of EnergyNorth.

14 **Q. Have you previously submitted testimony in this proceeding?**

15 A. Yes. I submitted testimony as part of the Company’s July 31, 2020, initial filing
16 requesting an increase in distribution rates. My educational background, professional
17 background, and qualifications are contained in that prior testimony.

18 **Q. What is the purpose of your testimony?**

19 A. My testimony responds to certain topics included in the testimony filed by Commission
20 Staff (“Staff”) and the Office of the Consumer Advocate (“OCA”) in this rate case
21 proceeding. I provide comments with respect to the topics of depreciation reserve

1 imbalance amortization as well as the Company's proposed property tax reconciliation
2 mechanism.

3 **II. DEPRECIATION RESERVE IMBALANCE AMORTIZATION**

4 **Q. With respect to the depreciation reserve, what was required as part of the**
5 **Commission's Order No. 26,122 in Docket No. DG 17-048?**

6 A. A relatively large depreciation reserve deficiency of just over \$9.9 million was
7 determined in that docket, and the order approved its amortization over a six-year period.
8 As part of its order, the Commission adopted the Company's position to perform a re-
9 examination of the reserve variance in EnergyNorth's next rate case, rather than
10 performing a full depreciation study.

11 **Q. Has that analysis been performed?**

12 A. Yes. As described in my July 31, 2020, direct testimony, the Company engaged the
13 services of Management Applications Consulting, Inc. ("MAC"), which is the same
14 consulting firm that prepared the depreciation study in Docket No. DG 17-048, in order
15 to leverage the consultant's knowledge of the proceeding as well as its existing database
16 of Company plant information. A copy of MAC's technical report describing its findings
17 and recommendations was provided as Attachment SEM-3 to my direct testimony.

18 **Q. What were the results of that analysis?**

19 A. The results of the review were that the reserve deficiency had actually grown since the
20 last rate case to \$16.4 million rather than decreasing as expected. MAC's technical report

1 included a description of what they believed were the underlying factors along with the
2 following recommendations in Figure 1:

3 **Figure 1**

1. Continue to record and document the Company's 10% COR by plant account.
2. In order to evaluate the current level of COR, a detailed effort coordinated between engineering (field) and accounting be undertaken for all major plant activity with respect to identifying/estimating activities relating solely to COR (plant and labor associated with activities). This should consider various types of projects where one can balance small and large projects to achieve an outcome to compare with the current 10% estimated level.
3. Once in place, consider maintaining this process going forwards to ensure that the new proposed levels are supportable.
4. The efforts surrounding the application of Items 1 – 3, above, should be undertaken as soon as possible such that the results will be available to influence the Company's next depreciation study.
5. Recommend that a new depreciation study be undertaken with the calendar year 2020 data included to ascertain if the life analyses support a longer average service life for any accounts. This should be prepared in early 2021 to provide you with immediate information as to the possible impact along with the technical support to possibly suspend the current allowed annual recovery of the shortfall.

4
5 **Q. What were the positions of the Staff and the OCA with respect to those**
6 **recommendations?**

7 A. While they were generally in agreement with most of MAC's recommendations,
8 particularly with respect to examining the Cost of Removal (referred to as "COR" in the
9 above recommendations and hereinafter), they appeared to take the position that tasks
10 such as a study of the COR could be completed in a relatively short period of time and,
11 thus, that a new depreciation study could be performed soon to incorporate the results of
12 the COR analysis. Consistent with that position, both Staff and the OCA recommended
13 that the current six-year depreciation reserve deficiency amortization approved in DG 17-
14 048 should cease, in contrast to MAC's first recommendation.

1 **Q. What concerns does the Company have with the recommendations of the Staff and**
2 **the OCA on this issue?**

3 A. There are two main concerns. The first is that their positions do not account for the scope
4 of work involved with MAC's second recommendation pertaining to the analysis of the
5 COR. The second concern is that since the current depreciation reserve deficiency
6 amortization serves to *reduce* the depreciation, ceasing that amortization will only
7 increase the depreciation reserve deficiency until such time as the COR analysis and
8 depreciation study can be completed, and the results of such analyses can be incorporated
9 into EnergyNorth's rates.

10 **Q. Please describe the actions the Company has taken with respect to MAC's second**
11 **recommendation and the expected length of time such an analysis of the COR will**
12 **take.**

13 A. Following the receipt of MAC's report in July 2020, the Company met during Fall 2020
14 to determine a plan of action for conducting the COR analysis. This goes beyond a mere
15 paper exercise of reviewing past transactions. Rather, in order to have a coordinated
16 effort of field personnel and accounting personnel, it was determined that the most
17 effective way to perform the analysis of activities associated with cost of removal
18 activities¹ would be as projects are being completed during the 2021 construction season.
19 Consistent with MAC's recommendation, the Company will be selecting a sample of jobs

¹ As defined in the Code of Federal Regulations, Title 18, Chapter I, Subchapter F, Part 201, "cost of removal" is defined as "the cost of demolishing, dismantling, tearing down or otherwise removing gas plant, including the cost of transportation and handling incidental thereto."

1 of various size that involve removal cost. The review will analyze the initial project
2 estimate, actual field samples, and final job invoicing to determine an aggregated cost of
3 removal average. Considering that a sample of projects would be used, it is expected that
4 the COR analysis could be completed around the end of the construction season.

5 **Q. Given the necessary time to complete that analysis, is it appropriate to conduct a**
6 **new depreciation study immediately?**

7 A. No. As stated by MAC and as agreed by the Staff and the OCA, the COR is a necessary
8 input to the results of any depreciation study. As the current COR percentage of 10
9 percent has been in use by the Company for many years going back through prior
10 ownership it is important to avoid short-term or hasty decisions that could result in
11 unintended consequences. A new depreciation study should only be completed once the
12 results of the COR analysis are complete, which would be after the 2021 calendar year is
13 complete.

14 **Q. When could the results of a new depreciation study be incorporated into**
15 **EnergyNorth's rates?**

16 A. Consistent with the Company's initial filing in the proceeding, as well as the Rebuttal
17 Testimony of Company witnesses Brian Frost, Robert Mostone, and Heather Tebbetts
18 that is simultaneously being filed with this testimony, such results could be incorporated
19 into a step adjustment for effect in 2022 related to capital additions placed in service
20 through December 31, 2021.

1 **Q. Please describe the Company's second concern regarding ceasing the current**
2 **depreciation reserve deficiency amortization.**

3 A. As stated earlier, a prior depreciation reserve deficiency of over \$9.9 million was
4 determined in DG 17-048 and is currently being amortized over six years. That
5 amortization serves to reduce the depreciation reserve deficiency, all else being equal.
6 Given the countervailing factors described in MAC's report and the need to perform a
7 COR analysis, it is expected that the depreciation reserve deficiency has continued and
8 will continue to grow beyond the \$16.4 million determined using plant balances as of the
9 end of 2020. The continued six-year amortization of the reserve deficiency will help
10 offset the results of the factors that are otherwise outstripping the effect of the
11 amortization. Ceasing the amortization prior to having results of a COR analysis and
12 depreciation study will most likely result in a larger amount to be dealt with in the future,
13 which raises concerns of intergenerational equity.

14 **Q. Have you reviewed the positions in your rebuttal testimony on this topic with MAC?**

15 A. Yes. MAC reviewed this portion of the testimony and I can represent that MAC is in
16 agreement with the positions in this testimony and finds that these positions are
17 consistent with their prior recommendations.

1 **III. PROPERTY TAX RECONCILIATION AND RECOVERY MECHANISM**

2 **Q. What did the Company request with respect to a mechanism for reconciling and**
3 **recovering annual changes in property taxes?**

4 A. The Company requested approval of a property tax recovery mechanism, consistent with
5 RSA 72:8-d and -e, to capture the impact of annual property tax increases that are beyond
6 the Company's control as a result of the implementation of the statutes. Part of the
7 referenced statutes required the Commission to establish by order a rate recovery
8 mechanism for the property taxes paid by a public utility.

9 **Q. Does the law prescribe a certain rate recovery mechanism to be implemented?**

10 A. No. The law states as follows:

11 **72:8-e Recovery of Taxes by Electric, Gas and Water Utility**

12 **Companies.** For the implementation period of the valuation of utility
13 company assets under RSA 72:8-d, VI and terminating with the property
14 tax year effective April 1, 2024, the public utility commission shall by
15 order establish a rate recovery mechanism for any public utility owning
16 property that meets the definition of utility company assets under RSA
17 72:8-d, I. Such rate recovery mechanism shall either:

18 I. Adjust annually to recover all property taxes paid by each such utility on
19 such utility company assets based upon the methodology set forth in of
20 RSA 72:8-d; or

21
22 II. Be established in an alternative manner acceptable to both the utility
23 and the public utility commission.

1 **Q. Taking into account the last sentence quoted above, does the Company have a**
2 **proposed mechanism to capture the changes in property taxes that it will experience**
3 **pursuant to RSA 72:8-d?**

4 A. Consistent with RSA 72:8-e, II, the Company proposed a simplified mechanism that
5 would annually compare the most recent municipal and state property tax bills to the
6 amount currently collected in distribution rates. Such a mechanism would be simple to
7 implement, administer, and verify, and would be consistent with the letter and spirit of
8 the cost recovery contemplated in the law. Although the Company's proposed
9 mechanism would cover all property taxes paid in a year and not just the property that is
10 considered "utility company assets" pursuant to RSA 72:8-d, such a proposed mechanism
11 is clearly within what is allowed as an "alternative manner acceptable to both the utility
12 and the public utility(sic) commission."

13 **Q. What are the benefits of the Company's proposed simplified approach?**

14 A. First, it would simplify the verification process when an annual filing is made. Parties
15 would not need to pore through property tax bills to try to determine which items might
16 not be included in the definition of "utility company assets" as defined in the statute.
17 Indeed, as acknowledged by Staff in its testimony,² non-qualifying municipal property
18 taxes only amount to approximately 0.2 percent of the Company's total property taxes, so
19 it does not seem efficient to require additional paperwork and calculations for such an
20 insignificant portion of the overall property taxes. Second, inclusion of all property taxes

² March 18, 2021, Direct Testimony of Donna H. Mullinax, Bates 000046, lines 6-8.

1 in the mechanism would simplify the process of determining what is already being
2 recovered in rates without having to pore through past filings for rate cases and step
3 adjustment filings. This is particularly of note with respect to step increases. The
4 methodology that has been in place used a percentage applied to the total plant
5 investment. If all property taxes are not included in the mechanism, a determination of
6 whether any of the plant was non-qualifying would have to be made in addition to
7 determining how much of the percentage applied to state property taxes.

8 **Q. What did Staff state as its reason for opposing such a simplified reconciliation and
9 recovery mechanism that includes all property taxes?**

10 A. The only stated reason was that the mechanism included property taxes beyond those
11 specifically identified in the statute. Staff did not identify any potential harm or problems
12 that would arise if the Company's proposal was adopted.

13 **Q. Would the Company profit if its proposed property tax mechanism is adopted?**

14 A. No. Property taxes are a pass-through cost, albeit a significant one. One impact that
15 would occur is that adoption of the Company's proposed mechanism would help alleviate
16 some of the earnings attrition that occurs between rate cases, as described in my original
17 testimony.

18 **Q. Could adoption of the Company's proposed mechanism have any impact on future
19 step adjustment filings?**

20 A. Yes. As described above, currently step adjustments use a percentage method of
21 including property taxes associated with approved capital investments. If the Company's

1 proposed mechanism is adopted, there would not be a need to include a property tax
2 calculation in step adjustment filings as the property taxes would be captured through the
3 annual reconciliation mechanism.

4 **Q. Does this conclude your testimony?**

5 A. Yes, it does.