

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 20-152

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

KEENE DIVISION

WINTER 2020-2021 COST OF GAS

Motion for Rehearing of Order No. 26,480

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty, through counsel, respectfully moves the Commission pursuant to RSA 541:3 for rehearing of Order No. 26,480 (May 14, 2021) (the “Order”).

In that Order, the Commission disallowed Liberty’s request to recover 26 months of compressed natural gas (“CNG”) demand charges for the period August 2017 through September 2019. Order at 26. The Commission found that Liberty’s actions in “contracting to pay demand charges when Liberty did so was economically and foreseeably wasteful and therefore imprudent.” Order at 20.

Liberty moves for rehearing because the Commission’s decision to deny recovery of CNG demand charges from May 1, 2018, through September 30, 2019, is unreasonable, unlawful, and contrary to the evidence in the case. Put simply, for the demand charges from May 2018 through September 2019, Liberty seeks rehearing because Order No. 26,126 (May 1, 2018) (the “2018 Order”) approved as “just and reasonable” the Summer 2018 cost of gas (“COG”) rates that included those CNG demand charges. In the Order, the Commission incorrectly stated that the

“CNG related costs were not approved by the Commission as prudent” in the 2018 Order. Order at 20-21.

Legal Standard

Boiled down, Liberty is entitled to rehearing because the Order is unreasonable, unlawful, and misapplies the underlying facts. This motion establishes that rehearing is necessary under the applicable standard set forth in RSA 541:3.

The Commission may grant rehearing or reconsideration for “good reason” if the moving party shows that an order is unlawful or unreasonable. A successful motion must establish “good reason” by showing that there are matters that the Commission “overlooked or mistakenly conceived in the original decision,” or by presenting new evidence that was “unavailable prior to the issuance of the underlying decision.” A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome.

Liberty Utilities (EnergyNorth Natural Gas) Corp., Order No. 26,087 at 3-4 (Dec. 18, 2017) (citations omitted).

Rehearing is necessary because the Order retroactively denied recovery of the CNG demand charges from May 2018 through September 2019 that the Commission previously approved as “just and reasonable” in the 2018 Order. It is improper and unlawful for the Commission to retroactively deny recovery in this case.

Background

As stated in the Order, Liberty signed contracts for a vendor to provide a CNG decompression facility for Liberty’s use, and to deliver trailers of CNG as needed to serve Liberty’s natural gas customers in Keene. Order at 4. Liberty first signed an October 2016 CNG contract for the term December 2016 through May 2017. That initial contract was intended to provide approximately 15,000 MMBTUs per year for a decompression facility behind the Price

Chopper supermarket in the Monadnock Marketplace. Transcript of October 23, 2020, hearing at 82, 84. The pricing in this initial contract was a relatively high commodity cost, but no demand charges. *Id.* That initial contract was terminated and replaced with a November 2016 contract with increased gas volume of 51,000 MMBTUs and an expanded term from May 2017 through April 2020 to serve a larger customer base. *Id.* at 90; Exhibit 18. The pricing of the November 2016 contract included a substantially lower commodity cost and included demand charges not present in the initial contract. October 23, 2020, Transcript at 82; Exhibit 18.

The Company allocates the demand charge over the months of the summer and winter periods. The Company incurs commodity charges only for the CNG actually used. Exhibit 4 at Bates 7-8. Liberty executed an amendment to that May 2017 contract to change the start date to July 1, 2017. Exhibit 18.

The vendor delivered the CNG decompression facility in July 2017, triggering the CNG demand charges at issue here, which are effectively lease payments for the facility. Liberty made the first payment for demand charges in August 2017. *Id.* at 8-9.

Although Liberty intended to begin delivering CNG in the summer of 2017, Liberty did not commence service and did not seek to recover CNG costs in its summer 2017 COG filing, nor in its winter 2017 COG filing. Exhibit 6 at Bates 15. Liberty does not contest the Order's denial of cost recovery for the demand charges from August 2017 through May 1, 2018.

The 2018 COG Proceeding

In the Company's Summer 2018 COG filing, the Company informed the Commission that the Company intended to begin CNG service in the June or July 2018, and thus the

Company included the demand charges and the projected CNG commodity prices in the proposed Summer 2018 COG rates, as described below.

First, the Company's prefiled testimony explained that the Summer 2018 COG rates included CNG demand charges:

Q. Does the Company plan to incorporate CNG into the portfolio this summer?

A. Yes. If approved, the Company plans to utilize CNG to serve a portion of the distribution system starting in late June or early July.

Docket No. DG 18-052, Hearing Exhibit 1, at Bates 009.

Q. Is there a demand charge for the CNG and if so, how does the Company plan to recover the demand costs?

A. Yes. There is a demand charge for the CNG. The demand charge is a fixed charge, which is paid by the Company in 12 monthly installments, totaling If the use of CNG is approved, the Company anticipates allocating the demand charge on a pro-rata basis proportionate to the percentage of off-peak and peak period loads to total annual load. For example, the off-peak load percentage to total annual load is approximately 20% and therefore the expectation would be to recover 20% of the demand charge ... during the off-peak period, while the remaining 80% ... would be collected during the peak period.

Id. at Bates 010 (confidential figures omitted).

Second, the schedules calculating the proposed COG rate included the CNG demand charges and the projected CNG commodity costs. *Id.* at Bates 029.

And third, the Company explained at hearing that the 2018 Summer COG rates included CNG demand charges:

Q ... Additionally, in your testimony on Page 9 -- I'm sorry, Bates Page 010, you indicate that the CNG projected price -- sorry, that the CNG price is projected to be lower than the projected cost of spot propane. Is that right?

A (Gilbertson) Yes.

Q And the reflection of CNG in this proposal is as of July 1st, is that right?

A (Gilbertson) Yes. But the demand charges are as of May.

Transcript of April 25, 2018, Hearing in Docket No. DG 18-052, at 39.

Finally, there was discussion between the Company and the Chair about the status of the Safety Division's review, the completion of which was necessary to the Company's ability to commence CNG service that summer:

CHAIRMAN HONIGBERG: Mr. Sheehan, what is the status of the discussions with, I assume it's with the Safety Division, on CNG?

MR. SHEEHAN: As you'll recall, the Commission's order from October, in 17-068, directed us not to serve CNG until the Safety Division files a report saying X, Y, and Z. We went back and forth with the Safety Division through the end of the year, but we are now waiting for the report. We have heard informally that it is imminent, but we have no more concrete information as to that. When it's filed, if it says we're good to go, great. We would expect the Commission to approve that. If there are things we need to correct, and I suspect they would be in the nature of minor modifications to whatever manuals or procedures we have, we will make those promptly, and again, hopefully get to being able to use the CNG.

The other issue out there is the modest tariff charge in the related docket that would allow the Keene tariff to include CNG measurement. So, that's sort of the companion that is still out there as well.

So, our hope is, frankly, that the Safety Division files its report, we can respond quickly, and Staff can make a recommendation as to the tariff.

The concern we have primarily is, assuming this is going to happen, it is the Monadnock Marketplace customers that need to be converted to allow the shutdown of the blower system. And if this stretches too long, we will run into the trouble of it getting cold, and it's difficult to convert the Monadnock Marketplace when it's cold, because these are restaurants and commercial buildings.

So, ideally, we have the okay this summer, we can get the conversions done in good weather, and we'll be good to go for this winter. And then the long-term plan is to address the permanent facility we're planning now, that would be for '19.

CHAIRMAN HONIGBERG: Okay. Thank you.

Id. at 50 - 52.

Therefore, by the close of the hearing the Commission knew that the Company intended to serve CNG that summer, that the proposed COG rates included the commodity cost of the projected CNG use and the allocated share of the CNG demand charges, and that the Safety Division review of the CNG facility was not yet complete.¹

With that knowledge, the Commission approved the Summer 2018 COG rate exactly as proposed by the Company, which means that the Commission approved the CNG demand charges beginning May 1, 2018: “Based on our review of the record in this docket, we approve the proposed 2018 summer season COG rate as just and reasonable under RSA 374:2 and RSA 378:7.” *Id.* at 5. Since the COG rates proposed by the Company included the CNG demand charges, by approving those rates, the Commission necessarily approved the CNG demand charges that were embedded in those rates beginning May 1, 2018.²

¹ See Order No. 26,126 at 4-5 (“Liberty stated that [it] plans to use Compressed Natural Gas (‘CNG’) to serve a portion of the Keene system starting in late June or early July, and the costs presented in this case included CNG costs. Liberty stated that the cost of the CNG was lower than the spot price of propane”).

² Staff also agreed that the CNG demand charges were prudent because Staff recommended that the Commission approve the COG rates as filed: “But, in terms of the rate proposed, Staff supports the rate in [Liberty’s] filing.” *Id.* at 48. By supporting the proposed rates in April 2018, Staff agreed that it was reasonable and appropriate for the Company to begin recovering the demand charges through the COG rates, beginning May 1, 2018.

In the Order, however, the Commission incorrectly found that the 2018 Summer COG rates did not include CNG demand charges. This finding that the 2018 Order did not approve the CNG demand charges is incorrect as a matter of law and fact.

If the Commission thought in during the Summer 2018 COG proceedings that the demand charges in the 2017 CNG were imprudent, or that Liberty was unreasonable in thinking it could begin CNG service in the summer of 2018, the Commission would have rejected the proposed rates that included CNG costs, and approved revised rates that only included propane.³ The Commission did not take that course. Rather, the Commission approved the COG rates, and thus the CNG demand charges, in the 2018 Order. As a matter of law, it was unreasonable and unlawful for the Commission to retroactively reverse approval for those demand charges in this proceeding.

That is, at the time Liberty proposed recovery of the CNG demand charges through the 2018 Summer COG rates, Commission Staff *agreed* that it was reasonable to anticipate Liberty would serve CNG in the summer of 2018, and the Commission *declared* it to be reasonable by approving the proposed COG rate.

The Order Misconstrued the Importance of the 2018 Order

“[P]rudence judges an investment or expenditure in light of what due care required at the time an investment or expenditure was planned and made....” *Appeal of Conservation Law*

³ Indeed, the Commission followed precisely this course of action in the Winter 2018 COG proceeding when the Commission rejected the proposed COG rates that included CNG costs and approved Staff’s alternative rates that did not include CNG when it became clear that the Company would not be able to serve CNG that winter. Order No. 26,184 (Oct. 30, 2018). Liberty did not seek rehearing because the Commission did not disallow the CNG demand costs – the order was silent on that issue.

Foundation, 127 N.H. 606, 637 (1986). The Order recognized this well-known standard: “One of the critical prudence considerations when evaluating actions and decisions is to eschew the perspective of hindsight, and rather to ‘consider the actions in light of the conditions and circumstances as they existed at the time they were taken.’” Order at 20 (citation omitted).

The Commission, however, did not address the prudence of incurring the CNG demand charges as of May 2018. The Order reviewed the Company’s decision to sign the CNG contract in 2017, then disregarded the circumstances that were presented in the spring of 2018, and disregarded the rates put in place by the 2018 Order. Ultimately, the record is clear that the 2018 Order approved CNG demand charges from May 2018 through September 2019, and the Order should reflect the approval and prudence of those charges.

Unfortunately, the Order does not correctly apply the 2018 Order relating to those demand charges. To start, the Order focused on the time that Liberty signed the CNG contract in late 2016, and signed an amendment in early 2017, rather than examining the facts and circumstances in 2018 when Liberty first asked that the CNG demand charges be included in rates. Liberty acknowledges that signing the CNG contract in 2017 may have been premature, but Liberty is no longer pursuing recovery of the demand charges from 2017 until May 2018. Thus, the Order’s focus on what Liberty should have known in 2017 when the Company first signed the CNG contract is misplaced and does not address the 2018-2019 demand charges. Put another way, the Company’s actions in signing the CNG contract in 2017 does not alter the fact that the demand charges for May 2018 through September 2019 were approved as prudent based on the underlying record. On this record, denial of those demand charges is unfair and unlawful.

Further, by focusing on the 2017 time frame, the Order overlooks and disregards the importance of, and simply misconstrued, the 2018 Order. The Commission's misunderstanding of the 2018 Order is clear from the Order's brief summary of the 2018 docket:

The Summer 2018 COG proceeding was the filing in which Liberty introduced CNG supply. Liberty did not request reimbursement for any CNG related incurred costs or revenues for 2017, as part of the "step one" over and under recovery calculation. *Thus, CNG related costs were not approved by the Commission as prudent.* See Order No. 26,126 (May 1, 2018).

Order at 20-21 (emphasis added). On that point, the Order is incorrect in stating "CNG related costs were not approved" in the 2018 Order. As noted above, that 2018 Order approved and implemented the CNG demand charges from May 2018 through September 2019.

Liberty does not collect demand charges after-the-fact. Rather, Liberty includes demand charges in its going-forward COG rates so that Liberty recovers demand charges (and other COG charges) as they are incurred. It is only the reconciliation of actual and projected costs that occurs after the fact. *See, e.g.*, the reconciliation of 2019-2020 demand charges in the original filing in this docket, Exhibit 4 at Bates 007 and 028.

On this point, the Order is based on a clear error of law. By focusing on the 2017 decision to sign the CNG contract and overlooking the fact that the 2018 Order implemented CNG demand charges beginning in May 2018, the Commission failed to understand that the 2018 Order in fact approved collection of the CNG demand charges as just and reasonable. Put simply, by issuing the 2018 Order including CNG demand charges, the Commission by definition found that it was then prudent to incur the demand charges beginning May 1, 2018. That question turned on Liberty's knowledge in the spring of 2018, as contained in its Summer

2018 COG filing. As detailed above, Liberty, Staff, and the Commission all agreed that including the demand charges in rates was prudent beginning May 1, 2018.

Finally, the Commission analysis in approving CNG demand charges as part of the Summer 2018 COG rates was the same analysis that the Commission performed in approving CNG demand charges in four consecutive COG proceedings beginning with the Winter 2019-2020 COG rates. The demand charges that the Commission approved in those four orders arise from the same CNG contract critiqued in the Order, yet neither the Commission, Staff, nor the OCA objected to including the CNG demand charges in rates during those subsequent proceedings. The Commission found in those proceedings that rates including CNG demand charges were just and reasonable. *See* Order No. 26,241 (Apr. 29, 2019) (approving COG rates which included CNG demand charges, without comment); Order No. 26,305 (Oct. 31, 2019) (approving COG rates with embedded CNG demand charges, contingent on the possibility that the Company may have to refund any incremental difference between the overall cost of CNG and of propane); Order No. 26,351 (Apr. 30, 2020) (approving COG rate as proposed, including current CNG demand charges), and Order No. 26,421 (Oct. 30, 2020) and Order No. 26,428 (Dec. 2, 2020) (both approving Staff's proposed COG rates that included current CNG demand charges).

The Commission made the very same finding in the 2018 Order. The fact that Liberty did not provide CNG service in 2018 is irrelevant to whether it was prudent in May 2018 to include CNG demand charges in rates.

For these reasons, Liberty respectfully seeks rehearing because the Commission's decision denying recovery of CNG demand charges from May 1, 2018, through September 30, 2019, is unreasonable, unlawful, and contrary to Order 26,126.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant this motion for rehearing and reconsider the Order in light of the information described above;
- B. Order that Liberty may recover the CNG demand charges incurred from May 1, 2018, through September 2019; and
- C. Grant such other relief as is just and equitable.

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

By its Attorney,



Date: June 11, 2021

By: _____

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Certificate of Service

I hereby certify that on June 11, 2021, a copy of this Motion has been forwarded to the service list.



Michael J. Sheehan