

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

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

Motion for Rehearing of Order No. 26,480

Docket No. DG 20-152

Objection of the Office of the Consumer Advocate to Motion for Rehearing

NOW COMES the Office of the Consumer Advocate (“OCA”), a party in this docket, and objects to the motion filed on June 11, 2021 by the Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Keene Division (“Liberty”) for rehearing of the Commission’s Order No. 26,344. In support of this objection, the OCA states as follows:

I. INTRODUCTION AND LEGAL STANDARD

Liberty invokes RSA 541:3 to seek rehearing of Order No. 26,480 (“Motion”), issued by the Commission on May 14, 2021 (“Order”). Order No. 26,480 disallowed recovery of Liberty’s compressed natural gas (“CNG”) demand charges for the period August 2017 through September 2018. Liberty’s motion laid out the applicable standard set forth in RSA 541:3, and cited *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 26,087 at 3-4 (Dec. 18, 2017):

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.

The Commission Order clearly lays out that “prudence is reviewed in a COG proceeding when a supply or demand element is reviewed and reconciled based on actual costs.” Order No. 26,480 at 19. Liberty’s motion for rehearing must fail for four distinct reasons. First, the Company itself states in a 12/24/2018 and a 3/29/2019 filing that the CNG Demand Charges are unapproved and therefore the Company fails to provide a “good reason” for rehearing because the Order is not unlawful for finding the 2018 Order did not approve the CNG demand charges. Second, Liberty’s reliance on an approval of rates does not justify charges incurred for which no rate is applied. Third, the Company repeatedly restates prior arguments hoping for a different outcome. Fourth, the Company fails to present new evidence.

**II. Liberty’s Motion Fails to Identify a “Good Reason” for Rehearing
Because the Order is not Unlawful**

a. Liberty Admitted CNG Demand Charges were Unapproved

The Company’s assertion that “the Order is incorrect in stating “CNG related costs were not approved” in the 2018 Order” (Motion at 9) is disingenuous at best because it has repeatedly acknowledged the CNG demand charges as unapproved. On December 24, 2018 the Company submitted its 2018 Summer Period Cost of Gas Reconciliation. *See* DG 18-052, tab 17, filed by Catherine A. McNamara. Page 2 of that reconciliation lists the over under collections for the period May 2018 through October 2018 including line 7 for “CNG Demand Charges” and line 8 for “*Unapproved CNG Charges.*” The amounts on line 8 are the negative of the amounts on line 7, therefore the Company acknowledges that the Demand Charges are unapproved.

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP D/B/A LIBERTY UTILITIES - KEENE DIVISION
(OVER)/UNDER COLLECTION - MAY 2018 THROUGH OCTOBER 2018

<u>COSTS</u>	<u>PRIOR</u>	Actual <u>May-18</u>	Actual <u>Jun-18</u>	Actual <u>Jul-18</u>	Actual <u>Aug-18</u>	Actual <u>Sep-18</u>	Actual <u>Oct-18</u>	<u>TOTAL</u>
1 FIRM SENDOUT (therms)		54,606	43,521	40,184	41,458	47,691	100,163	327,623
2 COMPANY USE (therms)		2,356	2,202	2,044	1,933	2,259	3,365	14,159
3 TOTAL SENDOUT (therms)		56,962	45,723	42,228	43,391	49,950	103,528	341,782
4 COST PER THERM	\$	1.2055	\$ 1.2025	\$ 1.2142	\$ 1.0817	\$ 1.1455	\$ 1.1903	\$ 1.1781
5 DIRECT PROPANE PURCHASED COSTS	\$	68,665	\$ 55,180	\$ 51,369	\$ 47,003	\$ 57,219	\$ 123,234	\$ 402,669
6 PROPANE COST ADJUSTMENTS	\$	(155,515)	\$ -	\$ -	\$ 145,836	\$ 32,481	\$ 38,782	\$ 61,584
7 CNG DEMAND CHARGES	\$	10,417	\$ (2,083)	\$ 4,167	\$ 4,167	\$ 4,167	\$ 4,167	\$ 25,000
8 UNAPPROVED CNG CHARGES	\$	(10,417)	\$ 2,083	\$ (4,167)	\$ (4,167)	\$ (4,167)	\$ (4,167)	\$ (25,000)
10 TOTAL PROPANE COSTS	\$	(86,850)	\$ 55,180	\$ 51,369	\$ 192,839	\$ 89,700	\$ 162,016	\$ 570,987

This acknowledgement that the CNG Demand Charges had not in fact been approved as part of the Order approving Summer Cost of Gas rates is reiterated in Schedule E of the filing for DG 19-068. *See* DG 18-052, tab 17, filed by Michael J. Sheehan.

The DG 18-052, 2018 Summer Cost of Gas Reconciliation, Final Audit Report, dated April 15, 2019, contains the following relevant information regarding CNG Demand charges:

- Page 2 lists the “Unapproved CNG Demand Charges.”
- Page 8 states: “The Company is not seeking recovery of CNG Demand charges during the Summer 2018 season. The filing only lists the charges for informational purposes according to the Company.”
- Page 22 states: “The general ledger contains the CNG Demand charges in the deferral account to accurately account for them even though *they are not authorized for collection on the filing.*”
- Page 23 states: “The Company had to account for them even though they were not authorized for, nor requested within, the 2018 Summer COG filing.”

If the Company was not seeking recovery of the CNG Demand Charges (page 8) then it cannot simultaneously claim that such charges were included and therefore

approved. Furthermore, there is no objection to the Final Audit Report in the Company's revised 2018 Summer Cost of Gas filing dated 04/26/2019.

The DG 19-068, 2019 Summer Cost of Gas Reconciliation, Final Audit Report, dated April 7, 2020 contains the following relevant information regarding CNG Demand charges:

- Page 3 states: "The Company going forward was to appropriately account for CNG Demand charges on the filing as either CNG Demand charges or an accounting adjustment but not a production cost rate case."
- Page 7 states: "The Company was *approved to collect the CNG Demand charges beginning in October 2019* with the temporary CNG facility."
- Page 11 states: "The general ledger contains the CNG Demand charges in the deferral account to accurately account for them *even though they are not authorized for collection* on the filing until October 2019."

Again in the following COG filing the company did not object to the characterization of the audit or seek clarification from the Commission on the issue of CNG Demand Charges prior to October 2019.

b. Commission Adherence to Precedent regarding an Approval of Rates as an Approval of a Contract

The underlying premise that "the 2018 Order approved CNG demand charges from May 2018 through September 2019" (Motion at 8 and also 1,6,7,9) is a shift from the Companies previous repeated implicit and explicit acknowledgement that the CNG demand charges prior to October 2019 were not approved, as detailed above. Though not specified in the Motion specifically, this shift in interpretation of Order No. 26,126 appears to be as a result of Order No, 26,409 issued by the Commission a few weeks ago regarding Granite Bridge. *See* Tr. 11/2/20 at 95. "We note that the two contracts that

Liberty sought approval for in this docket were discussed and approved in Liberty's 2018 Cost of Gas docket, DG 18-137." See Tr. 11/2/2020 at 96 and Order No. 26,409 at 14.

First, we note that the dismissal of the contracts for approval from the docket could have simply been done by stating there was no need for approval. Approval is an unfortunate turn of phrase in a docket where the contracts were barely discussed and not filed in the filing, or in front of the Commission, but were "approved" because the rates were approved.

Second, regardless of whether the Commission actually considers those contracts "approved" because the rates were approved, the Commission is not bound to make any kind of similar decision in this instance or retroactively to Order 26,126. No principle of New Hampshire law requires the Commission's fidelity to its own precedents or its explanation of any departures from prior decisions of the Commission. Indeed, the Commission is free to change its mind within the same case and reverse a prior decision as long as the new order "satisfies the requirements of due process" and is "legally correct." Appeal of Office of the Consumer Advocate, 134 N.H. 651, 657-58 (1991) (citation omitted).

III. Difference between Approval of Rates and Recovery of Cost

In the Order the Commission clearly, and in detail, articulated the numerous reasons that the CNG Demand Costs were not previously approved. The Company has admitted in several filings that the CNG Demand Costs were not previously approved. The Order clearly lays out the difference between the approval of forecasted rates which do not involve prudence review and the approval of reconciliation of actual costs which

does involve prudence review. To argue that the approval of rates implied an approval of the contract is contrary to what the Commission has repeatedly ordered.

In addition, the argument that the approval of forecasted rates results in the approval and prudence of CNG Demand Charges is nonsensical. The Summer 2018 COG filing that introduced CNG did so representing the cost of CNG as \$.0977 per therm less than spot propane. Yes, the calculations to determine the forecasted portion of the rate took CNG into consideration, and that CNG rate took the demand charges into consideration. A Cost of Gas rate is a price per therm. If no therms are delivered then there are no applicable approved rates.

The only recourse is to seek recovery of the costs as part of the reconciliation. The Commission has repeated that a prudence determination had not been made. Prior to this docket, the Company had not sought recovery of the historical demand charges. (October 23, Hearing Transcript, Bates 61). The Commission provided ample and thorough analysis as to why these historical CNG demand charges are not prudent.

IV. Liberty Restates Prior Arguments and Asks for a Different Outcome

Liberty has repeatedly made the argument that the CNG charges from August 2017 to September 2019 should be allowed because of Order No. 26,126 in the Summer 2018 (COG) hearing. Below are examples of the various times the Company has previously attempted to make the same argument as it does in this Motion:

The argument made in the Motion is also in the original Direct Testimony of Deborah M. Gilbertson, Catherine A. McNamara, and David B. Simek at Bates 8 and 9. The testimony poses the following question: “What is the basis for including the demand

charges from August 2017 through 16 September 2019 in this filing?” The response includes the assertion that: “The Commission approved the inclusion of CNG in the Summer 2018 Keene cost of gas rate, Order No. 26,126 (May 1, 2018).” DG 20-152, Tabs 1, 9, 12.

The argument made in the Motion is also in the Company rebuttal testimony of Steven E. Mullen at Bates 8: “The Company’s position with respect to the demand charges incurred during months prior to the commencement of natural gas service is that they should be recoverable because . . . the Commission approved the CNG contract and its demand charges in May 2018.” This rebuttal testimony includes additional arguments repeated in this motion for rehearing interspersed through Bates 13 to 20.

The legal issue presented here for reconsideration was addressed in each of the hearing sessions over roughly 65 pages of transcript:

- October 23 Hearing Transcript, Bates 28-30 by Liberty Attorney Sheehan
- October 23 Hearing Transcript, Bates 67-68 by Liberty witness Simek and McNamara responses
- November 2 Hearing Transcript, Bates 43-51 by PUC Staff
- November 2 Hearing Transcript, Bates 83 - 118 throughout Attorney Sheehan’s cross of PUC Staff
- November 18, Session 1, Hearing Transcript, Bates 31-42 by OCA Attorney Shute
- November 18, Session 2, Hearing Transcript, Bates 41 – 43 OCA Attorney Shute
- November 18, Session 2, Hearing Transcript, Bates 67 – 70 Attorney Sheehan

The Commission found that “a sufficient record has been developed in this proceeding to rule on Liberty’s request to recover historical demand charges.” Order No. 26,428 at 9. The Commission has addressed each point raised by the Company in its Order. This Motion on its face restates prior arguments and asks for a different outcome, contrary to the legal standard.

V. CONCLUSION

The Commission’s decision that the Company’s decision in incurring the historic demand charges was not prudent was a lawful decision that did not retroactively deny recovery. The arguments by the Company are incorrect, unpersuasive, and contrary to prior positions of the Company and Staff. Therefore, the Commission must deny this Motion.

WHEREFORE, the OCA respectfully requests that this honorable Commission:

- A. Deny the motion for rehearing filed by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Keene Division, and
- B. Grant any other such relief as it deems appropriate.

Sincerely,

/s/ Christa B. Shute

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Certificate of Service

I hereby certify that a copy of this Objection was provided via electronic mail to the individuals included on the Commission's service list for this docket.

/s/ Christa. B. Shute

Christa. B. Shute