

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 20-152

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY UTILITIES—KEENE DIVISION**

Winter 2020-2021 Cost of Gas

Order on Motion for Rehearing of Order No. 26,480

ORDER NO. 26,498

July 12, 2021

In this order, the Commission denies the motion of Liberty Utilities for rehearing of Order No. 26,480 (May 14, 2021).

I. PROCEDURAL HISTORY

On September 17, 2020, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities Keene Division (Liberty or the Company) filed its proposed cost of gas (COG) and fixed price option (FPO) rates for winter 2020-2021. The Company's proposed rates were based on forecasted propane and compressed natural gas (CNG) supply costs, including but not limited to a proposed prorated portion of CNG supply contract demand charges incurred over a period of 26 months prior to the Company commencing natural gas service, from August 2017 through September 2019 (historic demand charges).

The Commission held hearings in this matter on October 23, November 2, and November 18, 2020. The Commission issued Order No. 26,428 (December 2, 2020), approving a COG rate and a FPO rate for Liberty Keene customers for the winter period, November 1, 2020, through April 30, 2021, on a provisional basis and deferring a decision regarding whether Liberty Keene may recover historic demand charges. The Commission issued Order No. 26,480 (May 14, 2021) (Order 26,480) disallowing recovery of the historic demand charges, finding that Liberty failed

to demonstrate that the historic demand charges were prudently incurred, and determining that no prior Commission order found the contract underlying the historic demand charges to be prudent.

On June 11, 2021, Liberty filed a motion for rehearing of Order No. 26,480, requesting the Commission grant recovery of the portion of the historic demand charges incurred from May 1, 2018, through September 30, 2019.

On June 18, 2021, both the Office of the Consumer Advocate (OCA) and Staff of the Commission participating in the docket, now staff of the Department of Energy (Staff) filed objections to Liberty's motion (OCA Objection and Staff Objection, respectively). On June 30, Staff filed a corrected first page of its objection.

Liberty's motion for rehearing, hearing transcripts and exhibits, the Commission's underlying orders in this matter, the OCA and Staff's objections, and other docket filings, except for any information for which confidential treatment is requested of or granted by the Commission, are posted at: <https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-152.html>.

II. POSITIONS OF THE PARTIES

A. Liberty

In its motion, Liberty requested rehearing of Order 26,480. Liberty argued that Order 26,480 is unreasonable, unlawful, and misapplies the underlying facts. In support of its position Liberty focused on Order No. 26,126 (May 1, 2018) (Order 26,126), issued in its 2018 Summer COG proceeding (docket DG 18-052). *Id.* at 3-7. According to Liberty, Order 26,126 establishes that the Commission knowingly approved of the historic demand charges beginning May 1, 2018, because it found the Summer COG rates to be reasonable. *Id.* Liberty argued because the Commission approved of Summer 2018 COG rates that included CNG commodity costs, it follows that the Commission approved of the historic demand charges as of that date, and declared the historic demand charges to be reasonable. *Id.*

Liberty also argued that the Commission misconstrued the importance Order 26,126 by focusing on the Company's contracting from late 2016 through early 2017 in reaching its decision to find the historic demand charges imprudent. *Id.* at 8. While acknowledging that signing the CNG contract in 2017 may have been premature, Liberty argued that when the Company first signed the CNG contract does not alter the prudence of the demand charges between May 2018 and September 2019. *Id.* According to Liberty, the Commission failed to understand that by implementing CNG demand charges in COG dockets, beginning with Order 26,126, the Commission determined it was prudent to incur demand charges as of that date. *Id.* at 9.

B. Office of the Consumer Advocate

The OCA objected to Liberty's motion. According to the OCA, Liberty's motion fails on four grounds: 1) the Company acknowledged in 2018 and 2019 that the CNG Demand Charges were unapproved; 2) Liberty's reliance on approved of rates does not justify charges incurred for which no rate is applied; 3) the Company restated prior arguments hoping for a different outcome; and 4) the Company did not present new evidence. OCA Objection at 2. In support of its position that Liberty acknowledged the historic demand charges were unapproved, the OCA referenced documentation in dockets DG 18-052 and DG 19-068, showing the Company listed "unapproved CNG charges" in its own December 2018 filing and did not object to Commission Audit Staff's reports in 2019 and 2020 that characterized the historic demand charges as "unapproved" through October 2019. *Id.* at 2-5. The OCA disagreed with Liberty's premise that approval of forecasted rates resulted in approval or a prudence determination relating to the historical demand charges. *Id.* at 5-6. The OCA noted that prior to this docket the Company had not sought recovery of the historical demand charges. *Id.*

C. Staff

Staff objected to Liberty's motion. Staff argued in the first instance that Liberty's motion should be denied for procedural reasons because no matters were overlooked by the Commission and no new evidence was submitted that was not available prior to the issuance of Order 26,480. Staff Objection at 4. According to Staff, the Company already raised and litigated the question of whether the Commission made a prudence determination in previous COG dockets. *Id.* at 4-5. Staff noted that certain evidence upon which the motion for rehearing relies was available, but not used as evidence, during the original hearing. *Id.* at 6-7.

Staff also argued that Liberty's motion should be denied because the Company misunderstood the documents it referenced. *Id.* at 8-10. According to Staff, Liberty failed to distinguish between the just and reasonable standard and the prudence standard, emphasizing that in 2018 the prospective costs were found to be reasonable, whereas Order 26,480 found the historic demand charges imprudent for the first time, as it was the first time the Company requested recovery of those charges. *Id.* at 10-11. Staff noted that prospective charges are based on projected costs, which may equally adjust upward or downward and are reconcilable. *Id.* at 13-14.

III. COMMISSION ANALYSIS

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, *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

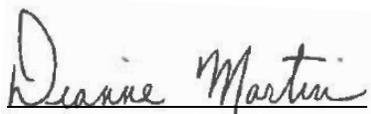
outcome. *Abenaki Water Company, Inc. – Rosebrook Water System*, Order No. 26,312 at 8 (November 27, 2019).

We find that Liberty has not met the standard for rehearing. We agree with the OCA and Staff that Liberty repeats the same arguments it made prior to the issuance of Order 26,480. Liberty also has not offered any new evidence that was not available to at the time of the initial decision. The Commission fully considered the Company's arguments during the underlying proceeding, and found that the Company did not prove the demand charges incurred from August 2017 through September 2019 were prudently incurred. The Commission also expressly found that no prior Commission order has found the contract underlying the historic demand charges to be prudent. In addition, we note the information provided by the OCA demonstrating the Company characterized the historic demand charges as being unapproved in late 2018, and did not object to Commission Staff characterizations of the historic demand charges as being unapproved in 2019 and 2020.

Based upon the foregoing, it is hereby

ORDERED, that the Motion of Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities Keene Division for rehearing is **DENIED**.

By order of the Public Utilities Commission of New Hampshire this twelfth day of July, 2021.



Dianne Martin
Chairwoman



Daniel C. Goldner
Commissioner

Service List - Docket Related

Docket# : 20-152

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