STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
D/B/A LIBERTY

Docket No. DG 21-130

Winter 2021/2022 Cost of Gas Filing and Summer 2022 Cost of Gas Filing

and

Docket No. DG 21-132

Keene Division -- Winter 2021/2022 Cost of Gas

Briefing Position

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty ("Liberty" or the "Company")[1] submits this statement of position to the New Hampshire Public Utilities Commission (the "Commission") in support of its request for approval of: (1) proposed cost of gas rates for EnergyNorth for the 2021/2022 Winter and proposed Local Distribution Adjustment Clause rate, both effective November 1, 2021, as well as cost of gas rates for the 2022 Summer Period; and (2) the Keene Division's proposed cost of gas rates for the 2021/2022 winter period, also to be effective beginning November 1, 2021.

This statement addresses three questions raised at the hearings conducted on Monday, October 25, 2021. These questions are: (1) whether there is any action that the Commission should take in relation to the Fixed Price Option ("FPO") programs as proposed for the upcoming winter season; (2) whether EnergyNorth has properly applied the new Revenue Decoupling Mechanism

[1] References to the Company in DG 21-130 shall be to "EnergyNorth," and references to the Company in DG 21-132 shall be to the "Keene Division." EnergyNorth and the Keene Division are both divisions of the same company, but are treated separately for purposes of setting cost of gas rates.

tariff language that became effective August 1, 2021, to the reconciliation required for decoupling years 2019/2020 and 2020/2021; and (3) whether there is any reason that the Commission should or should not declare findings with "finality" in this proceeding.

Brief Summary of the Company's Position.

As discussed below, the Commission should not take action on the FPO at this time because the FPO prices for the 2021/2022 Winter season were set in accordance with the tariffs and the actual impact to other customers, if any, will not be known until the upcoming winter period fully runs its course. Adjusting the proposed FPO rates is not necessary at this time because the Commission has authority to take steps if the programs place an undue burden on other customers and the Commission can do so only once the actual impact is known.

Likewise, with respect to the decoupling mechanism, the underlying record is clear that the Company has properly applied the Revenue Decoupling Mechanism tariff in this case.

Finally, there is no reason for the Commission to make any ruling with "finality" in this proceeding. Both the Cost of Gas ("COG") factors and the Local Distribution Adjustment Charge ("LDAC") are structured as reconciling mechanisms, allowing for adjustment following the Commission's consideration of issues on the merits.

1. The Commission Should Not Take Any Action on the Company's Fixed Price Option Programs.

At the hearings conducted on Monday, October 25, 2021, the issue was raised that the price for the FPO program for the winter 2021/2022 period is $0.9256 per therm for EnergyNorth residential customers as compared to a Cost of Gas rate of $1.1339 per therm for residential customers, representing a price differential of approximately $0.2083 per therm. For Keene

Division customers, the FPO price for the 2021/2022 winter period is $1.8941 per therm, as compared to the Cost of Gas rate of $1.9868 per therm for all customers, representing a price differential of $0.0927 per therm.

Pursuant to the approved tariff, the FPO programs are designed to be an alternative to the Company's traditional winter period cost of gas rate mechanism. Under the FPO for EnergyNorth, the Company is authorized to offer up to 50% of its prior winter period weather normalized firm sales under the FPO program. Similarly, for the Keene Division, the Company is authorized to offer up to 50% of its expected firm sales for the winter period under the FPO program. The cost of gas charge offered under both FPO Programs remains fixed for the winter period under both FPO Programs, i.e., from November 1 to April 30. Once elected, a customer must remain on the FPO Program unless service is terminated. There are no maximum or minimum usage levels. Of approximately 80,000 residential customers of EnergyNorth, Mr. Simek testified that 10,249 has signed up as of October 22, 2021, and of approximately 1,150 Keene customers, 127 have elected to participate in the FPO as of that same date.

The Keene Division FPO Program was approved by the Commission to address price volatility. <u>See</u> <u>New Hampshire Gas Corporation</u>, Order No. 23,457 (May 2, 2000). The EnergyNorth FPO Program was first approved in 2001 as an improvement to its prior Guaranteed Price Protection Program (GPPP) offered by KeySpan for the three prior years as a natural gas stability program. <u>EnergyNorth Natural Gas, Inc.</u>, Order No. 23,774 (Sept. 7, 2001). The FPO Program was approved to allow firm sales customers the option of paying a fixed rate during the winter months for purposes of protecting against winter price fluctuations. <u>Id</u>. In 2014, in Docket No. DG 14-133, the Commission approved EnergyNorth's proposal to limit the FPO Program to residential customers only. The Commission noted that unlike residential customers, commercial and industrial customers can buy natural gas from competitive suppliers and obtain a fixed price in that market. Id.

At the EnergyNorth hearing in DG 21-130, the OCA raised the concern that the FPO price extended to residential customers is low in relation to the proposed Cost of Gas rate and that, whereas any cost of gas not collected from the customers electing to participate in the FPO is later collected from all customers, this differential could cause undue burden to other customers. The OCA suggested that the Commission could take one of three different actions: (1) require the FPO rate to be increased, even though customers have already opted in at the current rates; (2) suspend the FPO program for the upcoming winter season; or (3) require Liberty's "shareholders" to absorb the differential.[2] The OCA repeated these proposals in the Keene Division hearing in DG 21-132. However, a warmer than expected winter, or other factors could cause gas prices to fall, in which case the current differential between the FPO rate and the non-FPO rate may decrease or potentially invert.

The Commission should not make any change to the FPO at this point in time. The Company has followed the rules for the FPO programs in setting the winter prices. No party has suggested differently. In some past years, participants in the FPO program have ended up paying more than the actual cost of gas because the actual cost of gas was lower than projected. In those circumstances, the amounts paid by FPO customers over actual cost were credited to *all* customers, thereby lowering the cost of gas for customers not participating in the FPO. Therefore, conversely, the cost differential between actual costs and forecast costs would be applied to all customers in a year where actual costs are higher than projected. This is how the program is designed and intended to work.

[2] The Company is not addressing the myriad legal errors that would occur if a ruling was made by the Commission to deny the Company recovery of gas costs associated with the FPO because such action is patently invalid from a legal perspective. The Company reserves its rights to object to any denial of gas cost recovery on this basis.

The Company does not disagree that the Commission's consideration of options may be appropriate to the extent that a serious imbalance exists between the costs paid by customers in the FPO and the costs paid by customers not electing the FPO. However, this outcome is not known yet, and has not occurred. Therefore, this is an issue that the Commission can and should consider at a future date after actual circumstances are known.

2. The Company Properly Applied the New Revenue Decoupling Mechanism Tariff.

At the DG 21-130 hearing conducted on October 25, 2021, a question was raised as to whether the Company properly applied the current tariff provisions for reconciliation of the Revenue Decoupling Mechanism. Specifically, the tariff provisions applicable to the Revenue Decoupling Mechanism were approved as part of the LDAC portion of the tariff in Docket No. 20-105 (Order No. 26,505), for effect as of August 1, 2021. See Settlement Agreement in DG 20-105, Exhibit 49, at Bates 018 and at Bates 087. The tariff provisions explain how the Revenue Decoupling Mechanism works, including the annual reconciliation process for comparing actual revenues collected to the target benchmark for base revenues. The annual reconciliation process is defined by the terms of the currently effective tariff, for an annual "decoupling year." Id. at Bates 089; Tariff No. 11 at Original Page 35.

Therefore, the Company has correctly applied the currently effective tariff terms to the 2020/2021 decoupling year, in its entirety.

Specifically, the tariff provisions establish the following:

A. Revenue Decoupling Adjustment Factor.

1. Purpose: The purpose of the Revenue Decoupling Adjustment Factor ("RDAF") is to establish procedures that allow the Company, subject to the jurisdiction of the NHPUC, to adjust, on an annual basis, its rates for firm gas sales and firm transportation in order to reconcile the difference between

the Actual Revenue collected and the Allowed Revenue.

2. Effective Date: The RDAF takes effect beginning on November 1, 2018, replacing the Lost Revenue Adjustment Mechanism (LRAM) established in Order No. 25,932 (Docket No. DE 15-137).

3. Applicability: The Revenue Decoupling Adjustment Factor and NWA shall apply to all of the Company's firm tariff rate schedules, excluding special contracts, as determined in accordance with the provisions of this RDAF and NWA.

Tariff No. 11 at Original Page 35.

The Description of the Revenue Decoupling Adjustment and Reconciliation process is stated as follows in the currently effective tariff:

> ***Each month the Company will record a Revenue Decoupling Adjustment in the RDA Accounts in accordance with generally accepted accounting principles***. The Revenue Decoupling Adjustment is the difference between the Monthly Allowed Revenue and the Monthly Actual Distribution Revenue. In addition, the reconciliation amounts collected or distributed through the RDAF are also recorded in the RDA Accounts for each Customer Class Group. The RDA Accounts accrue interest on the average monthly balance using the prime lending rate. ***At the conclusion of each Decoupling Year***, the sum of the balance in each of the RDA Accounts for each Customer Class Group ***shall be used to determine*** the RDAF for the next Billing Year.
>
> The RDAF to be applied to customers' bills in the Billing Year is the balance in the RDA Accounts at the end of the Decoupling Year for each Customer Class Group divided by the Forecast Throughput Volume for that Customer Class Group.

Id. at Original Page 38 (emphasis added).

In the currently effective tariff, the term "decoupling year," is defined as follows:

> Decoupling Year. The first Decoupling Year shall be the 10-month period from November 1, 2018 to August 31, 2019. Each subsequent Decoupling Year shall be the twelve months commencing September 1 through August 31.

Id. at Original Page 35.

Therefore, according to the tariff provisions, the reconciliation of the Revenue Decoupling Mechanism occurs once each year. The decoupling year is set as September 1 through August 31. At the time of reconciliation, the monthly benchmark (allowed revenues) and actual revenues booked each month for each rate class are summed to separate totals for the decoupling year. The sum of the actual revenue and the sum of the allowed revenue for the decoupling year are compared to determine whether there was an excess of actual revenue as compared to the allowed revenue, or whether there was a revenue deficiency. In the case of an excess, a refund would be due to customers over the LDAC period beginning November 1, whereas in the case of a deficit, a charge would be assessed to customers over that period.

The tariff language effective beginning August 1, 2021 is designed to establish conclusively that the allowed and actual revenues for all rate classes are calculated on the same basis, as determined over the course of the reconciled decoupling year that ended August 31, 2021, including the R-4 rate class. That is, the allowed and actual revenues for the R-4 class are calculated on the same basis as the non-discounted R-3 residential rate class.

Under the previous tariff language, the R-4 allowed revenue was determined on a discounted basis while the allowed revenue was calculated on a non-discounted basis. If, as was suggested at hearing by the OCA, the prior tariff language was to apply through July 31, 2021 (the day prior to the effective date of the new tariff language), that would only increase the amount of the refund ultimately due from customers and would be contrary to the intent of the tariff language supported by the OCA in the DG 20-105 proceeding, which corrected the mismatch in the use of discounted versus non-discounted revenues for the purposes of allowed and actual revenues, respectively.

Accordingly, the Company has appropriately followed the provisions of the currently effective tariff to perform the annual reconciliation in accordance with its terms. The tariff governs how the mechanism works. Two different mechanisms cannot be applied to perform the same reconciliation. Therefore, the currently effective tariff is the prevailing rule. This is different from a tariffed base rate, that has only prospective effect (because the base rate is a price that may only apply to future consumption, not past consumption).

3. The Commission Should Not Make Any Ruling on Finality in this Proceeding.

At the hearing conducted on October 25, 2021, Energy staff requested the Commission to make a finding that approval of the Cost of Gas factors would not create any "finality" with respect to "prudence" issues or the issue of the R-4 low-income refunds in the 2018/2019 and 2019/2020 decoupling years. Energy staff also appeared to assert that reconciling mechanisms are "final" after 12 months. As the Company stated at the hearing, it is not necessary for the Commission to take any action to address this request.

With respect to the assertion that reconciling mechanisms are "final" after 12 months, there is no such rule or precedent in New Hampshire. In fact, with respect to the Cost of Gas proceeding, the Commission has previously stated:

> The Commission does not accept the Company's argument that the disallowance of any portion of the penalty that was included in the summer cost of gas adjustment is retroactive ratemaking. The nature of the fuel clauses approved by this Commission are such that they are always based on estimated costs for a forward-looking period and a ***subject to reconciliation***. Over and under-collections are carried in deferred accounts and are brought forward to a future adjustment period. ***Furthermore, if the Commission Staff found errors in the past bookings of the cost of gas adjustment, an adjustment would be made***."

<u>Concord Natural Gas Corp.</u>, 67 N.H. PUC 113, 114 (1982) (emphasis added).

At the end of every order approving (with or without modifications) the cost of gas proceeding, the Commission includes a statement per the following, without any reference to "finality" after 12 months:

> Because actual costs and revenues are reconciled every year, any adjustments needed as a result of further inquiry into the matters addressed in this order, including final audits and actual costs, can be made in Liberty EnergyNorth's COG filing for 2021-2022.

Order No. 26,419 (Oct. 30, 2020), at 7.

Therefore, no additional statement by the Commission regarding "finality" is necessary or warranted in this proceeding. The Company does not object to such a finding because the Company agrees that there is no "finality" that applies in relation to a reconciling mechanism, but such a finding would be out of place and unwarranted given the standard language that the Commission already recites in its approvals of this reconciling mechanism. To that end, the Commission would have to explain why, on what basis, and for what purpose any finding of "*non*-finality" is being made.

4. Conclusion

Accordingly, for the reasons discussed above, the Commission should not take action on the FPO at this time. The Commission has authority to take steps if the impact of the programs places an undue burden on other customers and should only do so once the actual impact is known. Second, the Company has properly applied the Revenue Decoupling Mechanism tariff in this case. Lastly, there is no reason for the Commission to make any ruling with "finality" in this proceeding. The COG and LDAC are structured as reconciling mechanisms, allowing for adjustment following the Commission's consideration of issues on the merits.

Respectfully submitted,
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Liberty Utilities
By its Attorney,

Date: October 27, 2021 By: ___________________________________

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Certificate of Service

I certify that on June 27, 2021, a copy of this brief has been electronically forwarded to the service list.

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