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December 27, 2021

New Hampshire Public Utilities Commission  
21 South Fruit Street, Suite 10  
Concord, New Hampshire 03301

Re: Docket Nos. DG 21-130 and DG 21-132  
Energy North Natural Gas Corp. d/b/a Liberty  
Cost of Gas Proceedings

To the Commission:

As the Commission is aware, on October 29, 2021 the Commission entered Order Nos. 26,541 and 26,542 in the above-referenced proceedings, in each instance requiring the subject utility within 60 days to “explore with the parties to this docket a separate filing schedule and process for review and approval of LDAC [Local Distribution Adjustment Clause] charges, as well as a modified schedule for filing updates to the COG [Cost of Gas] rates prior to hearing.” Such ‘explorations’ duly occurred among Energy North Natural Gas Corp., the Department of Energy, and the Office of the Consumer Advocate (“OCA”). Thereafter, earlier today, the Department filed a report in each docket reflecting agreements reached between the Department and Energy North Natural Gas Corp.

The purpose of this letter is to advise the Commission that the OCA does not concur in these recommendations. It is the position of the OCA that in commencing future COG and LDAC proceedings, the Commission must comply with the relevant provisions of the Administrative Procedure Act (RSA 541-A) and the Commission’s procedural rules (N.H. Code Admin. Rules Ch. Puc 200).

Specifically, paragraph II(a) of RSA 541-A:31 provides that the Commission “may commence an adjudicative proceeding at any time with respect to a matter within the agency’s jurisdiction.” Paragraph V(b) of RSA 541-A:31 authorizes the Commission to “schedule one or more prehearing conferences prior to beginning informal hearings,” which may include consideration *inter alia* of “[a]ny . . . matters which aid in the disposition of the proceeding.” Paragraphs (a) and (d) of Rule Puc 203.15 thus state that upon motion of a party or on its own motion, the Commission “*shall* . . . schedule one or more prehearing conferences” which “*shall* . . . include . . . [e]stablishment of a procedural schedule to govern the remainder of the proceeding” (emphasis added).

Therefore, in the respectful opinion of the OCA the Commission may not commence an adjudicative proceeding based on a procedural schedule previously agreed to by a utility and the Department or, indeed, previously endorsed by the Commission itself. Rather, the Commission must give the OCA and, potentially, other parties, the opportunity to be heard on the question of what schedule should apply to the proceeding. If the Commission commences LDAC and/or COG proceedings without scheduling a prehearing conference on its own motion, the agency may expect the OCA to tender such a request pursuant to Rule Puc 203.15(a).

The OCA is aware of the Commission's longstanding custom of eschewing these procedures in certain proceedings (e.g., COG/LDAC dockets for natural gas utilities and default energy service proceedings for electric distribution utilities) on the assumption that logistical and practical considerations require a compressed procedural schedule that does not allow for a prehearing conference and discussions of scheduling matters. This is a reasonable approach in default energy service proceedings, at least when semi-annual default energy service procurements occur in routine fashion, which is the reason the OCA has not invoked its rights under RSA 541-A:31 and Rule Puc 203.15 in such dockets. It is not necessarily so in LDAC/COG cases.

To the extent Energy North Natural Gas, the Department, and/or the Commission may deem the prehearing conference requirement to be onerous or impractical in some circumstances, there are at least four alternatives to pursue: (1) the subject utility could brief the OCA and other potential parties prior to filing a petition and obtain an agreement not to seek a prehearing conference, (2) the subject utility could narrow the issues raised in any petition to such an extent that no reasonable party would object to expedited treatment, (3) the Commission could open a docket prior to the submission of a petition as authorized by RSA 541-A:31, II(a) but in sufficient time to conduct a prehearing conference while still allowing for expedited treatment, or (4) the Commission could amend its procedural rules to allow certain adjudicative proceedings to move forward without prehearing conferences in appropriate circumstances. However, waiver of the prehearing conference requirement pursuant to Rule Puc 201.05 ("Waiver of Rules") would not be appropriate because such a course of action would not "serve[] the public interest" nor fail to "disrupt the orderly and efficient resolution of matters before the commission" as required by that rule.

Thank you for this opportunity for the OCA to provide its position on these procedural questions. Please do not hesitate to contact me if there are any questions or concerns.

Sincerely,



Donald M. Kreis  
Consumer Advocate

Cc: Service Lists in DG 21-130 and DG 21-132  
Counsel for Northern Utilities d/b/a Unitil