

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION
DKT NO. DG 21-130
LIBERTY UTILITIES (EnergyNorth Natural Gas) CORP.
D/B/A LIBERTY
Winter 2021/2022 Cost of Gas and Summer 2022 Cost of Gas
And
DKT No. DG 21-132
LIBERTY UTILITES (EnergyNorth Natural Gas) CORP.
D/B/A/ LIBERTY-KEENE
Winter 2021/2022 Cost of Gas

The Department of Energy’s Post-Hearing Motion
Seeking Suspension of Otherwise Automatic Prudence and/or Finality regarding Over/Under
Reconciliations for the period November 1, 2020 through October 31, 2021 in the Referenced
Dockets; and

Addressing Liberty’s Self-Described Application of an August 1, 2021 Tariff Formula to the
period November 1, 2020 through July 31, 2021, in its (pending) RDAF Winter 2020-21
/Summer 2022 Reconciliation

NOW COMES the Department of Energy (Energy) and, as permitted at hearing, files this post-hearing motion seeking suspension of an otherwise automatic prudence and/or finality regarding over/under reconciliations for the period November 1, 2020 through October 31, 2021 in the referenced cost of gas (COG) dockets, including but not limited to both the revenue decoupling adjustment factor (RDAF), the local distribution adjustment clause (LDAC) and including Energy’s Audit Division’s review of the Company’s reconciliation filings in both of the above referenced dockets, Dockets No. DG 21-130 and DG 21-132.¹ Energy’s request for a

¹ For simplicity, any reference to “the docket” shall include both Dockets No. DG 21-130 and DG 21-132 unless otherwise explicitly noted. Similarly, any reference to “Liberty” or “the Company” shall include both Liberty

suspension of finality and prudence does not compromise the Commission's ability to determine cost of gas rates effective November 1, 2021.

At the request of the Chairwoman at hearing, Energy shall also address Liberty's self-described application of a new RDAF formula, submitted pursuant to a DG 21-105 Settlement Agreement (hereinafter the "new RDAF formula") as applied to the period October 1, 2020 through October 31, 2021. It appears that a temporary rate adjustment approving changes in decoupling rates implicates the over/under calculations at issue in the pending cost of gas dockets and the \$ 4 million. This requires further inquiry, and the new tariff pages, including RDAF components have not been found compliant.

In support of its motion, Energy states as follows:

A. Background

On September, 1, 2021, Liberty EnergyNorth's Winter 2021-22 and Summer 2022 cost of gas filing (pp 250+) was docketed as Docket No. DG 21-130.

On September 15, 2021, Liberty-Keene's Winter 2021-22 Winter cost of gas filing (pp. 46 +) was docketed as Docket No. DG 21-132.

On October 4, 2021, the Office of the Consumer Advocate (OCA) filed a Motion in *Limine*, asking the Public Utilities Commission (Commission or PUC) to find as a matter of law that Liberty may not recover approximately \$ 4 million which Liberty claims was refunded to residential customers due to a "mismatched" RDAF formula. The OCA stated that refund would constitute illegal retroactive rate making. In Liberty's view the "mismatch" caused Liberty to conclude the \$4 million was an over collection for the two year period November 1, 2018 to October 31, 2019 and November 1, 2019 to October 21, 2020.

On October 14, 2021, Energy filed a motion in support of the OCA's motion in *limine* or in the alternative to bifurcate the matter for a later proceeding in the cost of gas docket and to remove the \$ 4 million from the rates to be implemented November 1, 2021. Energy argued that the \$ 4 million refund was an over-recovery that had been included as the base for *forecasted* rates for the period November 1 2019- October 31, 2020 (see Dkt No. 19-145) and November 1, 2020 to October 21, 2021 (see Dkt. No 20-141) and was therefore final. See Order No. 26, 480 (May 14, 2021) at 18-20 (Dkt No. DG 20-152, explaining the structure of the COG mechanism

EnergyNorth and Liberty-Keene, unless explicitly stated. Hearing exhibits that were identified in both dockets shall be identified by exhibit numbers assigned in Docket DG 21-130.

and prudence review in New Hampshire). Energy also argued that Liberty was solely responsible for its decoupling [RDAF] formula, the formula inputs and the application of that formula.

On October 14, 2021, Liberty filed an objection to the OCA's Motion in Limine.

On October 22, 2021, the Commission issued Order No. 26,535 limiting the scope of the October 25, 2021 hearing and dismissing Liberty's request to recover \$ 4 million without prejudice.

In these expedited dockets, Liberty EnergyNorth filed updated filings approximately three business days before hearing, significantly increasing its requested rates². At the direction of the PUC, Liberty filed a red-lined version of its updated petition, showing all changes, on Friday October 22, 2021 at approximately 3:40 p.m. mere hours before the next business day and hearing date. A red-lined version with bates stamped pages was filed post hearing on October 26, 2021. Based upon information and belief, the updated filing made in excess of 1,700 changes to testimony and schedules. Energy assumes, but lacks sufficient time to confirm, that all the updates match Exhibit 2 as filed at hearing. These significant changes are reason, in addition to the significant substantive reasons outlined below, to consider suspending finality or prudence regarding over/under calculations.

Energy's Audit Division issued a report on Liberty's reconciliation for the Winter 2020-21 and Summer 2022 period³ on October 13, 2021 with an Addendum dated October 2020. Liberty's filed reconciliation forms the base layer upon which Liberty's forecasted rates rest. The Audit Division identified but express an opinion about the appropriateness of the proposed prior period refund recoveries at issue (the \$ 4 million), the Company's general ledger rolling under-recovery, and a variance as compared with the current filing. Audit indicated it understood the issue(s) were currently under review by the Commission in the DG 21-130 docket. See Hearing Exhibit 18 at Bates 000017 (As explained at hearing, Energy marked the report "confidential" due to use of financial numbers Liberty had marked confidential in its filing).

Energy's Audit Division has not audited the very recently updated revised testimony and schedules, including reconciliation filings, filed on October 19- 20, 2021, October 22, 2021, and October 25-26, 2021, which serve as the basis for the updated forecasted rates Liberty is asking the Commission to approve.

At hearing, Liberty could not explain what portion of the alleged \$4 million recovery on its General Ledger related to the Winter 2020-2021 period, or why or when the amount, intentionally refunded to customers between November 1, 2018 and October 31, 2020, and approved by the Commission, was included as a sum to be refunded to the Company. Energy will not have an opportunity to review Liberty's responses to the Commission's record requests

² At hearing, Liberty's counsel indicated the refiling date were dates Energy agreed with. While technically true, the dates were the result of the parties' compromises and the earliest possible date Energy could obtain Liberty's revised filing without engaging in further motions practice before the Commission.

³ And an Audit for Liberty-Keene's Winter 2020-21 reconciliation period

or inquire further. This is prejudicial to the Department of Energy (unless finality and prudence are temporarily suspended)

B. The Commission should suspend the automatic prudence and/or finality that will otherwise attach to all over/under calculations in this docket since they serve as the base for approved cost of gas rates effective November 1, 2021

Energy's request for a suspension of finality and prudence does not compromise the Commission's ability to determine cost of gas rates effective November 1, 2021. Absent an explicit ruling from the PUC, suspending the finality and (or) prudence of any over/under reconciliation in this docket for the period November 1, 2020 through October 31, 2021 however, the over/under reconciliations and audits in this docket seem poised to unintentionally approve Liberty's request to recover all or a significant part of the \$ 4 million dollars as issue, which the Commission has relegated to a separate hearing. This is so notwithstanding Liberty's asserted removal of a \$ 2 million recovery from proposed rates per Liberty's updated filing made on or about October 20, 2021.

Liberty's updated filing included many changes, was not itself subject to audit, and was filed two business days before hearing. Liberty's mere assertion that the updated filing does not include any part of the filing is unpersuasive in light of repeated Company errors in this docket with regard to the decoupling formula "mismatch" and even in the recent rate case, where Liberty's initial estimate of revenue deficiency failed to include decoupling revenue and Residential Low Income Assistance Program Revenue.

Absent explicit suspension, automatic finality and prudence would apply to over and under calculations based on the Commission's Order No. 26, 480 at 18-20.

Liberty asserts suspension is unnecessary precisely because it needs all remediation clauses, such as the RDAF and LDAC, and audits related to its general ledger, to be endlessly susceptible to "do-overs" in order to attain its goal of recovering \$ 4 million from its customers. A procedural sleight of hand on Liberty's part should not moot the very question relegated to a different docket, Liberty's request to recover \$ 4 million. Neither should it turn the cost of gas mechanism against itself, by rendering rushed and unexplained over/under calculations in this docket permanently unreviewable.

Liberty's interpretation of the common law is too broad

Temporarily suspending prudence or finality, until a future cost of gas docket and/or the resolution of the \$ 4 million docket, is a neutral step. Energy would agree a suspension is without prejudice to Liberty's arguing that reconciliation clauses allow endless "do-overs" and/or that the Commission lacks the authority to suspend finality with regard to reconciling factors or clauses. Suspension is not unprecedented; in similar circumstances, when the Commission lacked confidence in documentation and review in a 1982 COG docket, the Commission explicitly suspended finality pending further review. See Hearing Exhibit ##Concord Natural Gas Corp 67 N.H Puc 180 (February 24, 1982) Dkt No. DR 81-284 Ruling on Utility's Motion for Clarification and Other Relief (no Order number assigned) ("When [in

the future] the cost of gas [adjustment] revenues and costs are confirmed by an audit by the Commission staff, the Commission will consider the issue finalized”)

C. Liberty seems to have applied the new RDAF formula, which Liberty asserts was effective in a tariff dated August 1, 2021, to the period November 1, 2020 through July 31, 2020, and possibly to calendar year 2019 as well. This fact pattern requires further focus and inquiry.

First, it is unclear that Liberty’s Tariff 11, dated August 1, 2021, is fully in effect. Tariff No. 11 RDAF language has not been found compliant by the Commission. See Docket No. DG 21-105, NH PUC Tariff Administrator Letter of Non-Compliance, dated September 13, 2021, Tariff No. 11 (“Original page 101 **does not reflect any changes to the RDAF for any class of customer and that the methodology was altered by the Settlement Agreement and the Commission’s Order**”) (emphasis added). If Tariff 11, is not effective with regard to the new RDAF formula in the DG 21-105 settlement, there may be no basis for Liberty’s application of the new formula even as of August 1, 2021 forward, until the compliant RDAF pages are filed. Liberty’s answer to the Commission’s request for a new tariff page was to assert that no new filing was necessary because the issue would be resolved in the pending cost of gas case. See DG 21-105 Liberty Letter dated September 14, 2021. Liberty further explained “...There is nothing in the Settlement Agreement or Order No. 26,505 that contemplates or approves any changes to the RDAF effective August 1, 2020...” This is confusing, given that at hearing Liberty stated that the “new” RDAF formula was applied effective October 1, 2020. See also Hearing Exhibit 18, Liberty counsel asserts the new RDAF formula is not applicable until November 1, 2021 (a statement counsel withdrew at hearing)

Turning to the period prior to August 1, 2021, upon preliminary review Liberty seems to have applied the new RDAF formula to calendar year 2019 and also to the period January 1, 2020 through October 31, 2021. This very early application of what became the “new” RDAF formula (a formula without the alleged “mismatch” in the “old” RDAF formula) seems to stem from a decoupling adjustment made during the Temporary Rate case, described in Temporary Hearing Exhibit 6.

Those decoupling adjustments, which seem to resolve the “mismatch” were inconsistent with then-effective Tariff No. 9 and Tariff No. 10 as previously understood and applied. The application of the “new RDAF formula” in this manner, is directly involved in the over/under calculations at issue in the reconciliation of the Winter 2020-2021 cost of gas over/under collections, and perhaps in reconciliations involving calendar year 2019 as well.

If finality and prudence are suspended, there will also be additional time to consider this tariff issue raised by the Office of Consumer Advocate at hearing – whether Liberty could apply a new RDAF formula, pursuant to a final Settlement Agreement approved by the Commission and allegedly memorialized in a new tariff dated August 1, 2021, to a retroactive period, i.e. October 2020 through July 31, 2021, and perhaps even earlier, inclusive of calendar year 2019. See Temporary Hearing Exhibit 6, DG 21-105.

WHEREFORE, the Department of Energy respectfully requests the Public Utilities Commission to:

- A. SUSPEND the automatic prudence and/or finality that will otherwise attach to all over/under calculations in this docket, calculations which serves as the base for approved cost of gas rates effective November 1, 2021, until such time as those matters are explicitly found prudent and/or final in a subsequent hearing on the \$ 4 million matter (to be heard in another docket) or a subsequent cost of gas proceeding in each docket, or in a proceeding on the related tariff matters. See Order No. 26,480 (May 14, 2021) at 18-20; and
- B. SUSPEND Liberty's application of the new RDAF formula to the November 1, 2020 through October 31, 2021 reconciliation period in the pending docket, and to calendar year 2019 as relevant to the COG over/under reconciliations; and
- C. SCHEDULE a hearing on the tariff matters, to resolve legal questions and calculate appropriate refund to customers, if any; and
- D. ORDER Liberty to address the tariff non-compliance in Docket DG 21-105 (an RDAF tariff page 101); and
- E. GRANT such other and further relief as is equitable and just.

Respectfully Submitted,

/s/ Mary E. Schwarzer

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October 27, 2021

CERTIFICATE OF SERVICE

October 27, 2021

I hereby certify that a copy of this pleading has provided via electronic mail to the individuals included on the Public Utility Commission's service list in this docket.

/s/ Mary E. Schwarzer

Mary E. Schwarzer