

THE STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

DOCKET 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

Department of Energy's Objection to Liberty's proposed expedited review for an effective date of June 1, 2022, to any use of *Nisi* Process here, and Request for a Commission Order Regarding the Relief DOE Requests Before any COG Rate Increase Goes into Effect.

NOW COMES the Department of Energy (DOE), and objects to the request by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (Liberty) for expedited review of a 76% increase on current rates with an effective date of June 1, 2022, and to any use of a *nisi* ordering process in this instance, and requests a Commission order regarding the issues the DOE raises herein before any COG rate increase goes into effect. The DOE also asks that the Commission waive the ten-day time-period allotted for objections to motions in the Commission's procedural rules, and resolve matters the DOE raises here promptly. *See* Puc 203.07 (e).

In support of this motion, DOE states as follows:

1. On May 20, 2022, Liberty made a new filing in this cost of gas (COG) docket, seeking a 76% increase in the current Summer 2022 COG rate, over and above the existing maximum rate of \$0.6984 per therm for residential customers, for a new rate of \$1.2295 per therm, essentially a new 120% cap in relation to initial Summer 2022 rates, to be effective June 1, 2022. *See* Order

No. 26,541 (October 29, 2021) (setting Summer 2022 rates for EnergyNorth);¹ Liberty May 20 filing at 1-2. The Company is seeking this significant and immediate increase even though it anticipates “**substantial swings both up and down**” for the remainder of the Summer period. *Id.* at para 4 (emphasis added).

2. The DOE takes no position at this time on the merits of the actual increases requested, because the DOE has not had sufficient time to review the filing. The DOE reserves the right to object on the merits following further review. Instead, the DOE objects to the expedited process Liberty has requested to be effective June 1, and objects to any *nisi* process in this specific instance.

I. A June 1 date is inconsistent with the long-established COG mechanism to change an established cap mid-period, including notice, sufficient time for review and a hearing, consistent with RSA 378:3 and 378:7

3. Liberty seeks immediate relief, having filed for a rate increase in excess of the established cap on Friday afternoon, May 20, 2022, six business days before the proposed June 1 effective date. This timeframe is inconsistent with the standard COG process for a mid-period increase in an established cap and would create an unchecked process. Instead, a July 1 effective date would permit reasonable notice of the significant increase proposed, time to review the filing for accuracy as the COG mechanism and RSA 378 intends, and will not materially prejudice the Company. *See* Order No. 26,541 (October 29, 2021); Order No. 26,480 at 16-20 (May 14, 2021) (describing COG mechanism); Order No. 25,633 (Feb.28, 2014) (advance notice and a hearing occurred *before* a mid-period increase in COG rates was authorized)

¹ Initial and maximum commercial and industrial rates were also established in Order No. 26,541 at 1-13. For convenience and simplicity, this objection only discusses residential rates, as representative of all rate classes. By way of comparison, last year’s initial residential COG rate (the Summer 2021 rate) was \$0.3148 per therm. *Id.* at 1.

4. In its motion, Liberty asserts that the Commission “approved a similar mid-period increase” for Liberty’s cost of gas rate in Order No. 25,633 (February 28, 2014) “when commodity prices similarly rose higher than expected due to an abnormally cold winter.” Liberty May 20 filing, para. 12. The process the Commission followed in February of 2014, however, is markedly different than the one Liberty proposes here. In 2014, Liberty made a filing at the end of January 2014 for a rate increase to be effective beginning March 1, 2014. Thereafter, the Commission issued an order of notice, and scheduled a hearing for February 19, 2014. The OCA intervened, a hearing was held, and the Commission issued an order on the last day of February. *See* Order No. 25,633. In that docket (as in this one), Liberty initially estimated a \$9 million under-collection. Liberty adjusted that sum to \$5.1 million “in response to [PUC] Staff inquiries” to “minimize rate shock,” and “keep under-collections within the three-year historical average.” *Compare Id.* at 3 with Liberty’s April 25, 2022 trigger filing (estimating \$9 million under-collection).

5. The DOE does not contest that the Summer 2022 market is a volatile gas market, for reasons Liberty describes. There *might* be an emergency situation in the future that requires an expedited COG filing, and expedited review, six days prior to a requested effective date, assuming such a process is consistent with statutory requirements. The current conditions, however, do not constitute such an emergency. Liberty alleged a need to exceed the Summer 2022 cap as early as April 25, 2022, and prices have been trending upwards for some time. *See* Liberty Trigger filing dated April 25, 2022.

6. Moreover, as the Commission acknowledged in Order No. 25,633, COG rates are reviewed and approved if the rate is “just and reasonable... pursuant to RSA 378:7.” Order No. 25,633 at 4. RSA 378:7 directs that rates be adjusted “after a hearing.” RSA 378:7 (emphasis

added). Indeed, unusual market conditions, such as those at issue here, are particularly well-suited to adjudication through an evidentiary hearing. The General Court has determined that a deliberate, careful, and transparent process is the best safeguard of just and reasonable rates.

7. Liberty will not face material prejudice if the effective date of a rate increase is granted effective July 1, 2022, assuming for the sake of argument that the increase is warranted. Liberty will have four remaining summer months in which to recoup the contemplated under-collection. Delay until July 1 will have the significant benefit of providing sufficient notice, and sufficient time for the DOE and the Commission to consider Liberty's request and confirm the accuracy of Liberty's filing. *See* Liberty's May 10, 2022 filing in Dkt. No. 22-015, Bates 20-21. Delay until July 1, 2022 will also provide opportunity for the Commission to hold a hearing, as was done in 2014. *See* Order No. 25,633

8. In this instance, Liberty might have understandably wished to avoid preparing a filing earlier, in case market costs trended downward later in May. However, the burden of preparing a filing that *may* not be needed is more appropriately borne by the utility when the alternative is to effectively shift that burden to the Commission, DOE, possibly OCA, and customers in the form of limited or non-existent discovery, minimal review time, minimal notice, and potentially no hearing. *See* RSA 378:3 (standard notice of a change in rates is 30 days, although the Commission may order otherwise); RSA 378:7 (Commission to determine just and reasonable rates *after* a hearing); N.H. Admin. Rules, Puc 1603.07 (a) (tariff changes to be effective after 30 days' notice or issuance of a Commission order).

9. Rate increases that are 76% higher than the established (current \$0.6984) cap should generally be subject to discovery and scrutiny. *See* Order No. 26,541 at 10 (Commission

specifically declined to increase the COG Cap from 25% to 40% because it did “not find that amount of adjustment, without Commission review, to be reasonable”). The Commission and DOE both favor methodical review, consistent with well-established COG procedures and the history of the COG mechanism. *See* Order No. 26,480 at 16-20 (May 14, 2021) (COG mechanism replaced standard regulatory treatment of fuel costs found to be inflexible in light of rapidly changing prices in the 1970s; Commission favors a forward-looking semi-annual formula instead of monthly adjudication because “the semi-annual formula provided for rate continuity, stability, a reconciliation of estimated and actual gas costs and usage data, and a trigger mechanism that identifies excessive over or under collections during the semi-annual period”).

10. Liberty asserts that granting a 76% rate increase is in the public interest because it will allow it to “minimize the projected under-recovery in the same timeframe in which the customers incurred the cost of gas, as well as mitigate the impact [on future gas customers].” Liberty May 20 filing at para 10. Liberty has neglected to consider whether the public interest requires that customers be given more than a week’s notice of such a drastic increase to permit them to adjust their use. Liberty does not consider whether a reasonable period for both Commission and DOE review is appropriate. Liberty has not considered whether the public interest requires special and additional notice in this instance. Finally, Liberty has not accounted for the standard requirement for 30 days’ notice prior to a change in tariff rates, or the statutory requirement that a hearing be held to change rates, even in the case of a mid-season adjustment. *See* RSA 378:3; RSA 378:7; Order No. 25,633 (Feb 28, 2014).

11. DOE notes that the Commission “required” Liberty to “advise the Commission immediately when it appears that rates are projected to increase above the 25 percent cap so that the Commission may consider adjusting the rate above the cap.” Order No. 26,541 at 10. While

Liberty did provide some relevant information in a standard trigger filing dated April 25, 2022, DOE proposes that, should Liberty propose exceeding the existing cap in the future, that Liberty make a separate, detailed, and timely filing, explaining Liberty's intent to exceed the cap, when the rate will go into effect, and, of course, why the increase is necessary. This will better satisfy the Commission's requirement that Liberty give the Commission "immediate" notice. *See id.* That would emphasize the seriousness and likelihood of Liberty's intent in a manner that would permit advance discovery and/or a prehearing conference.

II. Six Business Days are Insufficient to Permit for a Meaningful *Nisi* process; Moreover RSA 378:3 and RSA 378:7 support holding a Hearing in Advance of this rate increase.

12. A *nisi* order grants relief without a hearing, subject to any party or otherwise interested person filing an objection or request for a hearing that persuades the Commission to hold a hearing before the relief goes into effect. The practice of issuing *nisi* orders has not been codified; however, it is a long-standing and long-accepted practice of the Commission. *See Appeal of the Office of Consumer Advocate*, 148 N.H. 134 (2002) (Court confirmed Commission order, finding that RSA 378:18 did not require an actual hearing).

13. The six business days that remain before Liberty's proposed June 1, 2022 effective date are insufficient to permit a meaningful *nisi* process. Notably, an order *nisi* requires a reasonable amount of advance notice. Time is needed to provide notice to the public and to permit parties to research, draft, and file any objections or requests for hearing. Time is needed for the Commission to review any objection or hearing requests. If warranted, time is needed to hold a hearing, and to permit the Commission to issue an order thereafter. All this must be accomplished before the specified effective date. In addition, *nisi* orders do not establish

procedural schedules, leaving more uncertainty than would generally be the case for parties' exchange of information.

14. Further, the Summer 2022 natural gas market does not constitute an emergency such that immediate Commission action is needed. For example, it is not the case that gas prices unexpectedly doubled in the last ten days. Cost have been trending upwards from some time. *See* April 25, 2022 trigger filing. While a future emergency might warrant immediate Commission action, that factual scenario does not exist here. The six days that remain before the effective date Liberty has requested are insufficient to allow a standard *nisi* process to operate as traditionally intended.

15. Finally, RSA 378:7 and RSA 378:3 both support the importance of as large a notice period as possible, and the importance of an actual hearing before the rate is changed. *See* Order No. 25,633 (February 28, 2014). Therefore, the Commission should not issue a *nisi* order approving a June 1st rate increase at this late date. The alternative to a *nisi* process is to direct the parties to establish a procedural schedule, and to hold a hearing mid-June, to permit the Commission to issue an order before July 1, 2022.

III. Waiver of the 10-day objection period, and resolution of the matters raised in DOE's objection on or before June 1, 2022, is in the public interest and will not disrupt this proceeding.

16. Waiver is appropriate if it is in the public interest and will not disrupt the orderly and efficient resolution of matters before the Commission. Puc 201.05 (a). It is important that the Commission resolve the issues DOE raises here in advance of any COG rate increase.

17. In this instance, application of the standard 10-day period under Puc 203.07 (c) for objections to a motion would prevent the Commission from ruling on the issues raised in DOE's objection before the June 1 proposed effective date. Thus, waiving the 10-day period will

permit, not disrupt, the orderly and efficient resolution of matters before the Commission, by allowing the Commission to issue a timely ruling on relevant matters, rather than rendering any ruling essentially moot.

18. Waiver is in the public interest because the Commission's analysis of whether the COG rate should be permitted to exceed the established Summer 2022 COG cap, and whether a *nisi* process is appropriate in these narrow circumstances, is significant and should be adjudicated before any increase in rates goes into effect. Accordingly, the requested rule waiver should be granted.

IV. Consumers should have individual notice

19. The Commission should also take steps to give consumers appropriate notice of the significant rate increase Liberty has requested before that rate increase goes into effect. Consumers who are unaware of the increase will be unable to adjust their consumption accordingly, thus defeating a key aspect of a managed monopoly. Commensurate with the substantive increase Liberty is requesting, DOE recommends that Liberty include a bill message telling customers what the increase is. The bill message should not just point them to a Company website as that assumes every customer has a computer and internet access. DOE recommends that the Director of the DOE Consumer Services Division also review and sign-off on Liberty's proposed bill message. Liberty should also provide additional information on its website and through social media.

WHEREFORE, for the reasons explained above, the Department of Energy respectfully requests that the Public Utilities Commission:

- A. RULE on the issues DOE raises in this objection on or before June 1, 2022, or before Liberty's proposed rate increase goes into effect;

- B. DENY Liberty's request to implement a Summer 2022 rate above the cap established in Order No.26,541, effective June 1, 2022; and instead construe the filing as a request to exceed existing rates to be effective July 1, 2022;
- C. ORDER Liberty to provide notice to customers of the new rates as outlined above and order Liberty and DOE to establish a discovery schedule that is as consistent with the Parties *Joint Report* (December 27, 2021) as time will allow;
- D. SCHEDULE a hearing on Liberty's filing on June 24 or June 27, 2022, with an order to issue on or before July 1, 2022;
- E. DIRECT Liberty to, in the future, file a *separate* pleading, appropriately titled, into the docket with notice of intent to exceed an established COG cap "immediately," and with relevant information outlined above, consistent with Order No. 26,541 at 10;
- F. WAIVE the ten-day period for objections and resolve the issues DOE raises herein on or before June 1, 2022; and
- G. GRANT such other and further relief as is equitable and just.

Respectfully Submitted,

/s/ *Mary E. Schwarzer*

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May 23, 2022

CERTIFICATE OF SERVICE

May 23, 2022

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

/s/ Mary E. Schwarzer

Mary E. Schwarzer