

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 21-130

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS)

d/b/a LIBERTY

2021-2022 Cost of Gas

Order Establishing Cost of Gas Rates

O R D E R N O. 26,541

October 29, 2021

In this order the Commission approves on an interim and provisional basis a winter 2021/2022 Cost of Gas (COG) rate of \$1.1339 per therm for residential customers, a \$0.5768 per therm increase compared to last winter's initial residential COG rate of \$0.5571 per therm. The Commission also approves on an interim and provisional basis a summer 2022 COG rate of \$0.5587 per therm for residential customers, a \$0.2439 per therm increase compared to last summer's initial residential COG rate of \$0.3148 per therm. The Commission requires Liberty to recalculate its fixed price option (FPO) for residential customers to be 2 cents higher than the winter COG rates. The increased costs for the winter and summer periods are reflective of the commodity market and the company's management related thereto.

I. PROCEDURAL HISTORY

On September 1, 2021, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (Liberty or the Company) submitted a winter 2021/2022 and summer 2022 cost of gas filing outlining its proposed COG for the winter period (November 1, 2021 through April 30, 2022) and the summer period (May 1, 2022 through October 31, 2022), including proposed local distribution adjustment charges (LDAC) for the period

of November 1, 2021 through October 31, 2022. On September 21, 2021, the Office of Consumer Advocate (OCA) filed a letter indicating that it would be participating in the docket on behalf of residential ratepayers.

OCA filed a motion in limine on October 4, 2021, and Liberty filed an objection to the motion on October 14, 2021. On October 19, 2021 the Company filed updated testimonies and schedules. On October 22, 2021, the Commission issued Order No. 26,535 dismissing Liberty's request to recover \$4,024.830 relating to the prior 2018-2020 period without prejudice and limiting the scope of this docket.

A hearing was held on October 25, 2021, and parties filed briefs on October 27, 2021. The COG submission and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, will be posted to the Commission's website at

<https://www.puc.nh.gov/Regulatory/Docketbk/2021/21-130.html>.

II. BACKGROUND

The Cost of Gas adjustment mechanism was implemented in 1974 during a time of rapidly changing prices to reflect increases and decreases in energy supply costs in customer rates without having to go through extended proceedings to change fuel delivery rates. Liberty has limited control over the market price of natural gas, which is an unregulated commodity. Similarly, it has limited control over items such as fuel transportation. The COG adjustment mechanism allows the Company to pass those costs on to its customers directly and efficiently without mark-up or profit. COG rates are initially set using projected costs and sales for the upcoming winter period, which runs from November 1 through April 30 and through the summer period which runs from May 1 to October 31.

Through the COG adjustment mechanism, the Company may adjust COG rates monthly to incorporate changes in the propane and natural gas markets based on actual costs to date and projected costs for the remainder of the period. While there is no limitation on reductions to COG rates, rates may be adjusted upward without Commission action up to a cumulative maximum of 25 percent above the approved rate. To the extent that adjustments are based on projected costs, they are subject to periodic reconciliation, after all actual costs are known and reported.

As in prior years, Liberty offered residential customers the opportunity to lock in a specific price per therm for gas supply through its FPO program. Under the program, a customer pays one price per therm for the gas supply portion of the monthly bill from November 1 through April 30, regardless of market-price fluctuations. In contrast, the non-FPO COG rate fluctuates with market prices and is subject to monthly increases or decreases.

The Commission has also historically set the local distribution adjustment clause (LDAC) within the context of COG proceedings. The LDAC allows for recovery of expenses the Commission has approved in prior dockets, through a per therm charge to be determined and implemented through annual COG proceedings. LDAC expenses have historically included, among others which may be approved by the Commission, costs associated with energy efficiency, the revenue decoupling adjustment factor, winter period surcharges, environmental surcharges, rate case expenses, and residential low-income assistance program costs.

III. POSITIONS OF THE PARTIES

A. Liberty

Liberty's September 1, 2021 filing, which was updated on October 19, 2021, included proposed tariff pages, schedules, and direct testimony and related

attachments from: David B. Simek and Catherine A. McNamara; Deborah M. Gilbertson; and Mary E. Casey. According to the direct testimony of David B. Simek and Catherine A. McNamara, the proposed firm sales winter 2021/2022 COG rate is \$1.1339 per therm for residential customers, a \$0.5768 per therm increase compared to last winter's initial residential COG rate of \$0.5571 per therm. The proposed changes to Liberty's residential firm sales winter COG and LDAC rates are expected to increase a residential heating customer's total bill for the winter period by approximately \$469.43 or 55.15 percent.

The proposed winter 2021/2022 commercial and industrial (C&I) high winter use COG rate is \$1.1341 per therm. The proposed changes in the C&I COG and LDAC rates are expected to increase an average C&I G-41 customer's winter bill by approximately \$1,293.37 or 60.32 percent over the winter period.

The proposed firm sales summer 2022 COG rate is \$0.5587 per therm for residential customers, a \$0.2439 per therm increase compared to last summer's initial residential COG rate of \$0.3148 per therm. The proposed change in residential COG and LDAC rates is expected to increase a residential heating customer's summer bill by approximately \$35.34 or 14.76 percent over the entire summer period. Liberty proposes summer 2022 COG rates of \$0.5593 per therm for C&I high winter use customers and \$0.5580 per therm for C&I low winter use customers. The proposed changes in the C&I COG and LDAC rates for high and low winter C&I customers are expected to increase an average C&I customer's summer bill by 45.71 percent and 41.81 percent, respectively, over the entire summer period. Liberty requests that the percentage used to calculate the maximum allowed COG rate be increased for the summer period from 25 percent to 40 percent.

Liberty's Fixed Price Option Program ("FPO") rates were set at \$0.0200 per therm higher than the initial proposed COG rate. The initial proposed FPO rate for the 2021/2022 winter period, was \$0.9256 per therm for residential customers. This compares to the FPO rate approved for the 2020/2021 winter period of \$0.5771 per therm for residential customers. This represents a \$0.3485 per therm or 60.4% increase in the residential FPO rate. The total bill impact on the winter period bills for an average FPO heating customer using 667 therms is an increase of approximately \$232.45 or 60.4% compared to last winter's approved FPO rate. The estimated winter period bill for an average residential heating customer opting for the FPO would be approximately \$138.94 (or 22.5%) lower than the bill under the proposed cost of gas rates, assuming no monthly adjustments to the COG rate during the winter period.

Several surcharges are included in the proposed LDAC of \$0.1444 per therm for residential customers and \$0.0878 per therm for C&I customers, compared to the \$0.0589 per therm and \$0.0555 per therm rates, respectively, that are currently in effect. The proposed Energy Efficiency Charge is \$0.0861 per therm for residential customers and \$0.0408 per therm for C&I customers, compared to the \$0.0831 and \$0.0441 per therm rates currently in effect. The proposed charge to recover expenses related to the Gas Assistance Program is \$0.0156 per therm.

The proposed Revenue Decoupling Adjustment Factor, which recovers the difference between the Actual Base Revenue per customer and the Benchmark Base Revenue per customer, is \$0.0152 per therm for residential customers and \$0.0039 per therm for C&I customers, compared to the respective (\$0.0562) per therm and (\$0.0206) per therm rates currently in effect. Liberty proposes reconciling the Revenue Decoupling Adjustment Factor retroactively based on a claimed error during the 2018-2019 and 2019-2020 periods stemming from the previous rate case. The amount of

the total adjustment is \$4,024,830 which Liberty proposed to collect over two cost of gas periods in the amount of approximately \$2 million per year beginning November 1, 2021. It proposes an Environmental Surcharge for Manufactured Gas Plant Remediation for the period from November 1, 2021 to October 31, 2022 of \$0.0155 per therm. Finally, the proposed Rate Case Expense Factor rate is \$0.0121 per therm. Liberty is updating its Company Allowance (for lost and unaccounted for gas and Company use of gas) for the period of November 2021 through October 2022 to 1.22 percent. Liberty also proposes changes to its Peaking Demand Charge and capacity allocator percentages.

At hearing and in its brief, Liberty argued that the Commission should approve the FPO, even though it is lower than the updated COG rate, because customers have signed up for the rate based on the Liberty letter issued earlier. Further, according to Liberty it is not clear that the FPO rate will actually be higher than the market rate of natural gas over the whole winter period.

Liberty also maintained that earlier LDAC rates incorporating claimed mistakes in calculations are not final rates and can be adjusted later. Liberty asserted that it was proper to apply the tariff effective August 1, 2021, to the entire COG period, from November 1, 2020, to October 31, 2021. Finally, Liberty did not object to moving the dispute over the approximate \$4 million retroactive adjustment to a separate docket. Liberty maintained that it was not necessary for the Commission to clarify that COG rates approved effective November 1, 2021, are provisional and subject to further adjustment because that is true of all COG rates.

A. OCA

At hearing and in its brief, the OCA argued that the Commission should either raise the FPO rate, eliminate the FPO offering, or have Liberty shareholders pay any

costs above the FPO rate incurred by Liberty in serving the customers for the winter period. OCA argued that it was not fair to burden all non-FPO customers with the costs of offering FPO customers below market rates. Further, the OCA argued that the Commission has suspended the proposed FPO in the past, and that Liberty's letter to customers advised them that the rate had to be approved by the Commission and was thus subject to a condition precedent.

OCA argued that a number of issues surrounding the revenue decoupling adjustment factor (RDAF) remained in dispute at the conclusion of the hearing, including the requested \$4 million recovery, the effective date of the new RDAF, and the operation of the new RDAF tariff.

B. Energy

At hearing, Energy recommended reforming the COG and LDAC process to allow more time to consider rate changes and to require earlier filings of updated rates. In its brief, Energy moved to have the Commission suspend any automatic prudence or finality regarding Liberty's proposed under or over recoveries for the November 1, 2020 through October 31, 2021 period, in both the Liberty EnergyNorth docket, DG 21-130, and the Liberty-Keene docket, DG 21-132. This request was based upon disputes over the operation of the RDAF, the timing of the implementation of the new tariff, the lack of a conforming accepted tariff to date for the RDAF, and the lack of a completed audit of the reconciliation,

Energy also pointed out that Liberty's recent updates contain extensive revisions that have not been audited. As a result, Energy is not able to determine whether Liberty has actually removed all of the \$4 million adjustment from the prior period reconciliations, or from the current LDAC rates. Citing a prior Commission order, *Liberty Utilities (Energynorth Natural Gas) Corp. D/B/A/ Liberty Utilities—Keene*

Division Winter 2020-2021 Cost of Gas Order, 26,480 (May 14, 2021) at 18-19, Energy argued that it is necessary to deny the otherwise assumed finality associated with approving COG rates based upon prior period reconciliations.

C. COMMISSION ANALYSIS

The Commission has broad statutory authority to set rates in addition to “powers inherent within its broad grant” of express authority. *See Appeal of Verizon New England, Inc.*, 153 N.H. 50, 64-66 (2005) (citations omitted). The Commission applies the “just and reasonable” ratemaking standard of RSA 374:2 and RSA 378:7 when setting COG rates. We find it just and reasonable to fix interim, adjustable, and reconcilable COG rates because we do not have a record in this docket sufficient to set final COG rates.

We are disappointed that Liberty’s current gas procurement, including hedging, storage, pipeline, and peaking strategy was not more effective at reducing the market volatility reflected in the large rate increase in COG rates. In the future we will consider reviewing Liberty’s gas dispatch decisions to ensure that costs are kept as low as possible.

We have ordered that issues relating to Liberty’s requested retroactive adjustment be examined in a new docket to be opened following a completed filing by Liberty explaining the earlier miscalculations, including a petition and supporting testimony and schedules. *See Order No. 26,535* (October 22, 2021). Once that filing is made and the new docket is established we ask that the parties complete review of, and discovery on, Liberty’s updated COG testimony and schedules in that docket.

With respect to Liberty’s proposed recovery of rate case expenses through the LDAC, we note that rate case expenses have not yet been approved in Docket DG 20-105. In Docket DG 20-105, the recovery of rate case expenses through the LDAC was

conditionally approved, pending submission of a request consistent with the NH Code Admin. Rules Puc Ch. 1900, Energy's audit, review, and submission of a recommendation in Docket DG 20-105, and thereafter, a review and determination regarding those expenses by the Commission. As confirmed by Liberty in Docket DG 20-105 "It is expected that following review [Energy] will submit a recommendation in the docket detailing the results of its review which then can be taken into consideration as part of the upcoming [LDAC] proceeding *prior to any recovery of rate case expenses* commencing on November 1, 2021." Motion for Recovery of Rate Case Expenses, Docket DG 20-105, tab 86, at 3-4, September 30, 2021.

To date, Energy has not submitted its recommendation and a determination has therefore not been made in Docket DG-20-105. Puc 1904.01 specifically prohibits recovery of rate case expenses prior to those expenses having been *first* been found by the commission to be just and reasonable and in the public interest and otherwise conforming to the requirements of Chapter Puc 1900. Those findings have not occurred here. We therefore direct Liberty to remove rate case expenses from the LDAC charge to be implemented on November 1, 2021. We intend to make a determination of an appropriate rate case expense surcharge in docket 20-105, in an expeditious manner following the filing of a recommendation on rate case expenses in Docket DG 20-105 by Energy.

We approve the COG rates and the LDAC rates contained in the updated Hearing Exhibit 1, adjusted by the removal of rate case expenses and any remaining expenses related to the claimed \$4 million miscalculation in the 2018-2020 timeframe, on a provisional and interim basis pending the development of a more complete record and further hearings in the new docket. Once a final COG and LDAC rate is approved, Liberty shall adjust its COG and LDAC rates on the first day of the following month for

the duration of the winter period, or if delayed beyond the winter period then during the following 2022 summer period.

We also find, given the significant increase in natural gas supply costs that have occurred between Liberty's filing of its COG and FPO rates on September 1 and its updated COG filing on October 19, and the likelihood of resulting incremental costs being shouldered by non-FPO customers if the FPO program were to be implemented as proposed, that the FPO rates filed on September 1 are not just and reasonable under RSA 374:2 and RSA 378:7. As a result, we reject those rates and direct Liberty to offer those customers that elected to enroll in the FPO the following two options: (1) Participate in the FPO for the 2021-2022 winter heating season at a recalculated FPO rate two cents higher than the Non-FPO COG rate approved herein, or (2) De-enroll from the FPO and take service under the COG rate.

We have considered Liberty's request to raise the cap on the summer COG from a cumulative 25 percent to a cumulative 40 percent and we do not find that amount of adjustment, without Commission review, to be reasonable. Going forward, Liberty is required 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.

Liberty's current hedging program was approved in Order No. 25,691 (July 10, 2014) and is summarized in Exhibit 35. While the current hedging program has produced a net cost to ratepayers of \$5,500,000 over the last 3 years, we recognize that significant benefits have been achieved in prior time periods. Since more than 7 years have elapsed since the hedging authorization, and given that the market is not static, we recommend that Liberty and the parties explore industry best practices and share the findings with the Commission in a future docket.

The Commission notes from the response to Record Request 2-1, Exhibit 33, relating to the Company's actions to reduce bill impacts on customers given the rising commodity prices, the lack of concrete actions that the company has taken to mitigate ratepayer impact, resulting in no documented reductions in cost to offset COG increases. At the same time, the Commission appreciates the clarity and helpful summaries in Exhibit 36, which clearly show the details on LDAC rates in the current period and preceding three periods.

Based upon the foregoing, it is hereby

ORDERED, that Liberty EnergyNorth's 2021-2022 winter period COG per therm rates effective for service rendered on or after November 1, 2021, and Liberty EnergyNorth's 2022 summer period COG per therm rates effective May 1, 2022, are provisionally approved on an interim basis as set forth in this order, as follows:

Customer Class	2021-22 Winter COG	2021-22 Winter Maximum COG	2022 Summer COG	2022 Summer Maximum COG	2021-22 Winter COG (FPO)
Residential	\$1.1339	\$1.4174	\$0.5587	\$0.6984	\$1.1539
C&I Low Winter Use	\$1.1324	\$1.4155	\$0.5580	\$0.6975	
C&I High Winter Use	\$1.1341	\$1.4176	\$0.5593	\$0.6991	

and it is

FURTHER ORDERED, that Liberty EnergyNorth may, without further Commission action, adjust the COG rates based on the projected over- or under-collection for the period, the adjusted rate to be effective the first day of the month and not to exceed, cumulatively, a maximum rate of 25 percent above the approved rate

(said maximum rates identified in the table above) with no limitation on reductions to the COG rates; and it is

FURTHER ORDERED, that Liberty EnergyNorth shall provide the Commission with its monthly calculation of the projected over- or under-collection, along with the resulting revised COG rates for the subsequent month, not less than five business days prior to the first day of the subsequent month. Liberty EnergyNorth shall include revised Calculation of the Firm Sales Cost of Gas Rate annotated tariff pages and revised rate schedules under separate cover letter if Liberty EnergyNorth elects to adjust COG rates, with revised annotated tariff pages to be filed; and it is

FURTHER ORDERED, that the over- or under-collection shall accrue interest at the prime rate as reported by the Federal Reserve Statistical Release of Selected Interest Rates, the rate to be adjusted monthly; and it is

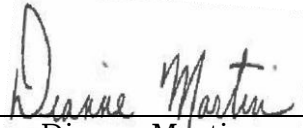
FURTHER ORDERED, that Liberty EnergyNorth's proposed LDAC per therm rates for the period November 1, 2021, through October 31, 2022, effective for service rendered on or after November 1, 2021, are approved on a provisional interim basis at \$0.1444 per therm for residential customers and \$0.0878 per therm for C&I customers, with adjustments to remove rate case expenses and RDAF as discussed in this order, and subject to further interim adjustments following Commission decisions on various rate elements contained in the LDAC; and it is

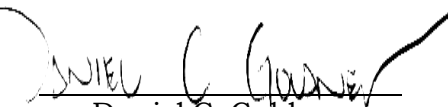
FURTHER ORDERED, Liberty shall explore with the parties to this docket a separate filing schedule and process for review and approval of LDAC charges, as well as a modified schedule for filing updates to the COG rates prior to hearing, and report their recommendations to the Commission within 60 days of this order; and it is

FURTHER ORDERED, that none of the COG and LDAC rates provisionally approved as interim rates today comprise final Commission decisions on those rates or on the various inputs to those rates; and it is

FURTHER ORDERED, that Liberty EnergyNorth shall promptly file properly annotated tariff pages in compliance with this order no later than 15 days from the issuance date of this order.

By order of the Public Utilities Commission of New Hampshire this twenty-ninth day of October, 2021.



Dianne Martin
Chairwoman

Daniel C. Goldner
Commissioner

Service List - Docket Related

Docket# : 21-130

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