

STATE OF NEW HAMPSHIRE
PUBLIC UTILITES COMMISSION

Docket No. DG 22-015

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY-KEENE DIVISION

Liberty-Keene Division Summer 2022 Cost of Gas

Department of Energy's
Emergency Motion for Hearing Before May 1, 2022 To Set Rates Effective May 1,
and Response to Liberty-Keene's Expedited Motion for Clarification

NOW COMES the Department of Energy (DOE), by and through counsel, and respectfully files this *Emergency Motion for Hearing Before May 1, 2022*, to urge the Commission to hold a hearing before May 1, 2022, as required by law, to extend the Liberty-Keene Winter 2021-22 COG rates currently in effect through May 30, 2022, to ensure rates are in place effective May 1, 2022, and to make further response to Liberty-Keene's *Expedited Motion for Clarification of Order No. 26,615* (filed April 25, 2022).

In support of its motion, the DOE states as follows:

I. COG Background: A Hearing before May 1, 2022 is Necessary

1. The Commission sets Liberty-Keene cost of gas (COG) rates on a seasonal basis. Winter COG rates are authorized for the winter period, defined in the tariff as the period November 1 through April 30; Summer rates are authorized for the summer period, defined in the tariff as the period May 1 through October 31. *Liberty Utilities Original Tariff Page 31*, paragraph 16.2 (B) ("A cost of gas rate will be calculated for the winter heating period, defined as the period from November 1 through April 30, and a cost of gas rate will be calculated for the summer period, defined as the period from May 1, through October 31); *see e.g.*, Order No.

26,542 (Oct. 29, 2021) (Dkt. No. DG 21-132, Liberty Keene Winter 2021-22 COG)¹; Order No. 26,475 (April 30, 2021) (Dkt. No. 21-050 Liberty-Keene Summer 2021 COG).

2. Although [t]here are no statutes or Commission rules regarding how a [COG] is to be structured or calculated,” *see Claremont Gas Light Company*, Order No. 17,949, 70 NH PUC 940 (November 15, 1985), the COG mechanism evolved from, and the COG was originally adjudicated within, periodic rate cases. *See id.* at 938. COG dockets result in adjudicated rates, and therefore a hearing is always held in advance of any change in a rate. The hearing ensures that the Company obtains timely recovery of its costs, and that customers obtain safe and reliable service at just and reasonable rates. *See, e.g.*, RSA Chapter 378:28 (permanent rates) RSA 378:27 (temporary rates); Order No. 26,480 at 16-20 (May 14, 2021) (Dkt. No. DG 20-152) (describing the history, function, and Commission review of the COG mechanism and).

3. As stated in RSA 378:3 “Unless the commission otherwise orders, no change shall be made in any rate, fare, charge or price, which shall have been filed or published by a public utility in compliance with the requirements hereof, except after 30 days’ notice to the commission and such notice to the public as the commission shall direct.” Emphasis added; *see also* RSA 378:7 (the commission shall determine, after a hearing, the just and reasonable or lawful rates demanded or collected, or proposed to be demanded or collected, by any public utility for service rendered or to be rendered). The required hearing also gives the Commission an opportunity for review and verification of schedules and other information presented by a utility, following review and input from the DOE. *See* Order No. 26,615 (April 22, 2022) at 2 (The Commission “must engage in required review and analysis of the Liberty-Keene COG

¹ Order No. 26,542 at 1 states “In this order the Commission approves, on a provisional and interim basis, **cost of gas [COG] for all customers for the 2021-2022 winter period. . .**” (Emphasis added). The same Order at 9 states “Ordered, that Northern Utilities Inc. (*sic*, Liberty-Keene)’s **2021-2022 winter period COG per therm rates** effective for services rendered on or after November 1, 2021 are approved” (Emphasis added).

pursuant to the ratemaking standards of RSA Chapter 378, [its] responsibilities under RSA 374:4 and allied statutes and [its] general obligation to ensure just and reasonable rate based on accurate accounting, books, and records.”)

4. To permit flexibility in response to potential volatile fuel costs, *inter alia*, the COG process is designed such that the Commission approves an initial set of rates for the first month of each season. Thereafter, without further Commission action, the initial rate may be adjusted during a defined period, effective the first of each subsequent month, by an increase of 25%, or in the alternative it may be lowered without restriction. *See* Order No. 26,480 at 16-20 (May 14, 2021)

II. Liberty-Keene Summer 2022 COG Docket

5. On March 15, 2022, Liberty-Keene filed its initial petition for proposed Summer 2022 COG rates. On March 29, 2022, the Commission issued a *Commencement of Adjudicative Proceeding and Notice of Prehearing Conference*, scheduling a hearing for April 26, 2022. On April 4, 2022, the prehearing conference was held, as scheduled. On April 6, 2022, by procedural order, the Commission directed Liberty-Keene (and DOE) to coordinate to file a copy of the DOE’s *Final Audit Report* regarding Liberty-Keene’s Summer 2022 (*sic*, 2021) Summer COG Reconciliation. Liberty-Keene inadvertently missed the April 15 filing date, filing the requested report and its excel file on April 21. *See Liberty-Keene’s Motion for Clarification* at 2 (filed April 25, 2022).²

6. On April 22, the Commission issued Order No. 26,615, suspending the proposed Liberty-Keene Summer 2022 tariff for a period of three months, pending further investigation,

² At hearing, DOE clarified it did not object to Liberty filing the DOE Final Audit Report, in response to the Commission’s request that it be provided and stated that the only purportedly confidential material in the report was material Liberty had previously designated as “confidential.” April 4, 2022 Transcript in Dkt. No. 22-015 at 33-34.

and rescheduling the April 26, 2022 hearing for May 17, 2022 at 1:30 p.m. Order No. 26,615 also “expects that the Commission would render its decision on the COG rates by the end of May 2022.”

7. On April 25, 2022, Liberty-Keene file a *Motion for Clarification of Order 26,615*, asking the Commission to “clarify” what rates to apply effective May 1, 2022, *without* a hearing, and describing “likely options” as:

- the proposed, unreviewed, Liberty-Keene Summer 2022 COG rate of \$1.6643 per therm (the rate suspended in Order No. 26,615);
- the previous Liberty-Keene Summer 2021 COG rate of \$1.1821, approved in Order No. 26,475 (April 30 2021) and
- the current Liberty-Keene rate of \$2.4835 per therm (the Winter 2021-22 rate), approved in Order No. 26,542.

III. The DOE Urges the Commission to Hold a Hearing Before May 1, 2022 to Extend Winter COG Rates, Otherwise No Rate Will Be Clearly in Place

8. As explained above, as a matter of law, a hearing is necessary to implement any change in rate and must be preceded by careful Commission review of the petition, including prefiled testimony and schedules. *See* RSA 378:3, :7; Order No. 26,480 at 16-20 (May 14, 2021); Order No. 26,615.

9. The Liberty-Keene Winter 2021-2022 COG rates have already been subject to the required notice, hearing, and Commission (and DOE) review. Moreover, those rates are currently in effect. Thus, following a hearing, the Commission can enlarge the winter period for the Liberty-Keene Division only, and for a limited period of time (the month of May), without changing any rates, consistent with RSA 378:3 and :7. This makes extending the Winter 2021-2022 period the most reasonable solution of the three Liberty-Keene proposed. Nonetheless

based on information and belief, the current situation is unprecedented. The COG proceeding has never before been suspended; at a minimum, a hearing has been held and an interim rate put in place on or before May 1. In the opinion of the DOE, this sort of emergency hearing should be avoided, and the traditional COG process adhered to.

10. The proposed solution could be accomplished by a narrow and specific statement in Liberty's Original Tariff page 31, i.e., "For the Liberty-Keene franchise only, effective May 1, 2022, the winter period shall run from November 1, 2022 through May 30, 2022, subject to the month of May continuing to be included in Summer 2022 reconciliation calculations." *See* Liberty Utilities Original Tariff Page 31, paragraph 16.2 (B). The Commission may also wish to make this specific tariff revision controlling with regard to other Liberty-Keene tariff provisions, or otherwise seek the Company's input on appropriate tariff amendments.

11. Absent amendment, given the definition of winter and summer periods in effect in the tariff provisions governing Liberty-Keene, there will be no COG rate in effect as of May 1, 2022. This will create complexity, and may result in disrupted service, or otherwise raise thorny questions about the imposition of retroactive rates (for the month of May) that are best avoided. *See Appeal of Pennichuck Water Works*, 120 N.H. 562, 565 (1980) quotations and *citations omitted*, ("the State may not create a new obligation in respect to a transaction already past"); *Opinion of the Justices*, 123 N.H. 349, 354 (1983) ("Because utilities are constitutionally prohibited from seeking rate increases for services rendered prior to the date they make such requests, [citation omitted] the legislature could not retrospectively tax utility franchises").

12. Liberty-Keene's proposal that the Summer 2021 COG rates be re-imposed is ill-advised. The new rates would constitute a change in rates, prohibited by RSA 378:3; the

Summer 2021 period, as defined in the tariff is over; and Summer 2021 market conditions are not applicable to May 2022.

13. Liberty-Keene's proposal that the proposed Summer 2022 COG rates be imposed is also ill-advised. Not only will the proposed rates constitute a change in rates, prohibited by RSA 378:3, :7, but the Summer 2022 rates have not been reviewed or subjected to an adjudicative process, which is likely to require a minimum of approximately 3 hours.

14. Moreover, Liberty filed an updated petition on April 25, 2022, changing Schedule I-2 to correct an error in the Commercial and Industrial LDAC, and changing Schedule B to account for an alleged \$19K credit error with regard to 2022 prospective incremental rates. This scope of change cannot be reviewed in a brief hearing before May 1, 2022. This scope of change is also inconsistent with Liberty-Keene's agreement that petition updates would not be filed after April 7, 2022 (absent unusual circumstances). *See* procedural schedule in Liberty-Keene's March 15, 2022 cover letter; December 27, 2021 *Joint Report on LDAC and COG proceedings (Liberty-Keene)* pursuant to Commission Order No. 26,542, an Attachment to the DOE Appearance filed March 29, 2022 in this docket. At least some of the errors Liberty corrected on April 25, 2022 were discovered well in advance of that date. Accordingly, these are not "unusual circumstances," and Liberty ought not to be allowed to implement an updated petition filed one day before what was to have been the hearing date.

15. In sum, extending the Winter 2021-2022 period by one month is the most effective, and most simple remedy to ensure reasonable rates are in place for Liberty-Keene, effective May 1, 2022 for the month of May. It will also avoid challenging questions about continued service for existing customers, timely recovery for the utility (subject to reconciliation), and avoid thorny questions regarding retroactive rate making. If the Commission prefers to keep the three-

month suspension implemented in Order No. 26,616 in place, so long as Order No. 26,542 were also extended, the Company could use trigger fillings to adjust the rate effective June 1, 2022.

IV. **A Brief Hearing to Extend the Winter 2021-22 Period May Be Held Thursday, April 28th after 2 p.m. on Friday April 29th**

16. The DOE proposes that the Commission schedule a hearing before May 1, 2022, with a duration of approximately one hour in which to consider the DOE's proposal that the winter period be extended. DOE notes that extending the current Liberty-Keene "winter" rates was also proposed by Liberty-Keene, although Liberty-Keene believes rates can be changed by way of motions practice only; a proposal that is inconsistent with the law, for the reasons explained above.

17. DOE proposes that the Commission issue an immediate notice of hearing, for hearing on Thursday April 28, 2022 after 2 p.m. or Friday, April 29, 2022. Notice could be posted on the Commission website, in the docket and on Liberty-Keene's website. This would constitute timely notice and is not inconsistent with RSA 541-A or the Commission's rules.

WHEREFORE, the Department of Energy respectfully requests that the Commission:

- A. SCHEDULE a (brief) Hearing for Thursday April 27, 2022 after 2 p.m. or Friday April 28, 2022 to consider setting Liberty-Keene COG rates effective May 1, 2022;
- B. DEFINE AND EXTEND the Winter 2021-2022 period for Liberty-Keene only, and Order No. 26,542, effective May 1, 2022, as running from November 1, 2021 through May 30, 2022, and direct Liberty to file compliant tariff pages forthwith, as described above;
- C. SET final initial Summer 2022 rates for Liberty-Keene, effective June 1, 2022, to be reconciled to account for the over-collection resulting from the May 2022 rates, if any.

In the Alternative, extend the Winter 2021-22 period for Liberty-Keene for the full three months of suspension defined in Order No. 26,615 (April 22, 2022), such that the trigger filing mechanism approved in Order No. 26,542 (Oct 29, 2021) allows Liberty-Keene to make rate adjustments as low as appropriate, pending a final initial Summer 2022 rate, and future reconciliation; and

- C. PROVIDE NOTICE of the hearing by posting the order in the Commission website, and directing Liberty-Keene to post notice on its Company website, and otherwise waive any notice requirements Commission rules may require, due to need to establish rates effective May 1, 2022; and
- D. GRANT such other and further relief as is equitable and just.

Respectfully Submitted,

/s/ Mary E. Schwarzer

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April 26, 2022

CERTIFICATE OF SERVICE

April 26, 2022

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