THE STATE OF NEW HAMPSHIRE

BEFORE THE

NEW HAMPSHIRE PUBLIC UTILITES COMMISSION

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty

Petition to Recover Revenue Decoupling Adjustment Factor Costs

Docket No. DG 22-041

NEW HAMPSHIRE DEPARTMENT OF ENERGY'S REPLY BRIEF

The New Hampshire Department of Energy ("DOE" or "Department") files this reply brief in opposition to Liberty's petition to recover $4 million passed back to customers through the revenue decoupling adjustment factor (RDAF) Year 1 (November, 1, 2018 to August 31, 2019) and RDAF Year 2 (September 1, 2019 to August 31, 2020). *See* June 22, 2023 Hearing Transcript at 26 (establishing filing schedule). Liberty has the burden of proof. NH Admin Code Admin Rule Puc 203.05.

I. INTRODUCTION

In this reply brief, the Department states that Liberty has not shown why the Department's technical analysis, summarized in Section A of the Department's Initial Brief, is anything other than accurate. The Department also explains why Liberty's legal analysis is misguided, and why the Commission authority Liberty cites it its initial brief actually supports the Department's analysis, and/or is readily distinguishable from the facts at issue in this RDAF docket.

By way of summary, the Department's Initial Brief described its analysis showing Liberty was not harmed by the "mismatch" and that the RDAF passback to customers was appropriate. The Department explained why Tariff 10's RDAF formula must be enforced as written and, in the alternative, why permitting Liberty to "correct its mismatch" would constitute impermissible

retroactive rate making. *See Appeal of Pennichuck Water Works*, 120 N.H. 562, 566-67 (1980); *Re Fitchburg Gas & Electric Light Co*. 440 Mass 625, 637-8 (2004) (a mechanically applied tariff formula is a fixed rate that cannot be changed outside the hearing procedures mandated by G.L. c 164 Sec 94)); Department Initial Brief at 11-16. The Department noted the significant fact that Liberty re-examined, re-adopted, and endorsed, the tariff formula and tariff language in a subsequent docket, Docket No. DG 19-145, and that Tariff 10 formula and language was (again) approved by the Commission. *See* Department Initial Brief at 10 (discussing Dkt. No DG 19-145 proceedings); OCA Initial Brief at 10, n.3. The Department also explained that even when a reconciling mechanism such as the LDAC is used, once the customer pays the over/under amount as determined by the filed formula, no more is owed regardless of whether the utility has in fact recovered its actual costs, because as between the customer and the utility, it is the utility which should bear the risk of any under recovery. "It is not the purpose of a fuel adjustment clause [which like the LDAC is a reconciling recovery mechanism] to relieve utilities of all the risks of doing business." *See Boston Edison Company v. FERC*, 611 F. 2d 8, 9-10 (1st Circuit 1979) [1]; Department Initial Brief at 12, at 19 (prudence of over/under calculation after Commission approval of reconciled amount).

II. ANALYSIS

A. The Department Demonstrated Clearly that Decoupling was Handled Fairly in Dkt. No. DG 17-048 and thus Should Not be Disturbed by the RDAF Docket; the Department's Demonstration Remains Undisputed by Any Facts.

In its written testimony (Exh. 4), and at the June 22 hearing, DOE established that the $8,060,117 revenue deficiency approved in DG 17-048 included all the cost to serve all of

[1] What the First Circuit referred to as a "fuel adjustment clause" when discussing Boston Edison's fuel adjustment clause is the functional equivalent of Liberty's LDAC and COG).

Liberty's customers (including its R-4 low-income customers). Exh. 4 at 200, 202; Tr at 181.[2] Further, in the calculation of this revenue deficiency, the test year revenues which cover Liberty's discount to R-4 customers (recorded on Liberty's books as negative gas costs in the amount of approximately $1.6 million) were removed.[3] This removal increases the revenue deficiency by that amount. The DOE, thus, demonstrated that the $8,060,117 revenue deficiency was the first instance where Liberty was compensated for the RLIAP discount.

This revenue deficiency of $8,060,117 was input directly into Liberty's rate design model (known as RATES-5) as part of the class revenue targets used to calculate the rates ultimately approved in DG 17-048. Tr. at 185-187; Exh. 4 at 186, line 43, at 327, line 43, and at 376, line 43; Exh. 4 at 429. Also, an R-4 low-income discount amount of $1,614,079 was directly input to the class revenue targets in the RATES -5 rate design model. Tr. at 188; Exh 4 at 186, line 42, at 327, line 42, and at 376, line 42. And the base rates revenue proofs on RATES-5 (Exh. 4 at 189, 328, and 377, lines152 and 153) show that Liberty collected its full revenue requirement from the approved base rates and that Liberty collected the RLIAP component in the LDAC (i.e., the second instance where Liberty was compensated for the R-4 discount).

Thus, the rates approved in DG 17-048 compensated Liberty twice for the R-4 discount, and accordingly, the "mismatch" Liberty cites in the RDAF portion of Tariff 10, appropriately works to offset this imbalance, and provide equity in the rate/decoupling package approved in DG 17-048.

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[2] Liberty confirms this. Exh. 4 at 424 ("The "cost of service" is determined through a review of the Company's proposed revenue requirement. The proposed revenue requirement reflects the total (representative) cost of serving all customers.")

[3] Liberty also confirms this. Exh 4 at 422. ("The amount of RLIAP revenues that were credited to expense account 8042 during 2016 was $1,638,827.7. … Also, note that the balance of all 804 accounts were removed from tab RR-EN-2-1 within the revenue requirement model on line 8.")

The Department expresses unequivocal disagreement with several statements in Liberty's Initial Brief, concerning the rates that were established in DG 17-048. Liberty states:

> [T]his Initial Brief responds to claims asserted by the New Hampshire Department of Energy ("DOE"), arguing that the Company has over-collected the low-income discount rate. This is a red herring devised solely to confuse (and defuse) the issue around the inequity of the Company's revenue loss through the RDM. DOE's assertion that the Company's base rates included recovery of the low-income discount -- essentially as a line-item expense in the cost of service -- ***is fully incorrect and should be squarely rejected.*** … **Liberty does not recover the total cost of serving low-income customers through base rates**. … **The Company has not collected the low-income discount in base rates and through the RLIAP, as claimed by DOE.** Liberty Initial Brief at 2 (emphasis added).

Liberty Initial Brief at 2 (emphasis added). Liberty goes on to state:

> DOE incorrectly characterizes the calculation and implementation of the Company's base rates. The final decision in Docket No. DG 17-048 resulted in a permanent base rate increase of $8,060,117 effective May 1, 2018. **This base rate increase did not cover the cost associated with providing the low-income discount to customers.** Liberty Initial Brief at 16.
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> **The permanent base rate increase of $8,060,117 in Docket No. DG 17-048 did not recover the low-income discount extended to customers.**

Liberty Initial Brief at 16-17 (emphasis added, citations omitted).

Contrary to these repeated, unsubstantiated claims, the Department demonstrated line-by-line how the revenue deficiency established in DG 17-048 of $8,060,117 included recovery of the low-income discount. Further, the Department demonstrated line-by-line how the rates designed in DG 17-048 were based on class revenue targets that included both this $8,070,116 and the $1,614,079 in R-4 discount/LDAC revenues. In contrast, Liberty has offered no evidence showing how or why the Department's analysis or conclusions are incorrect.

Liberty points to a pre-hearing email it drafted concerning this issue, wherein Liberty acknowledges that the full cost to serve R-4 customers is included in the revenue requirement calculation. Exh. 4 at 422-427. Where Liberty disagrees with the Department is that Liberty

claims that the rates calculated using its rate design model (RATES-5) do not collect the cost of the low-income discount twice. But the Department demonstrated beyond question that both elements (the revenue deficiency and the RLIAP discount) are included as inputs in the class revenue targets on RATES-5.

Liberty states: "DOE's analysis reflects a misunderstanding of this ratemaking process." Liberty Initial Brief at 18. In fact, the Department fully understands that inputs into the rate design model are what drive the result. In this case, the two inputs the Department has highlighted ($8,060,117 in revenue deficiency and $1,614,722 in RLIAP revenues) both compensate the Company for its low-income discount and thus the output of the model (final approved rates) likewise double compensate Liberty for this discount.

For comparison, the Department provided RATES-5 from DG 20-105 and the treatment of R-4 discount is clearly different. Exh. 4 at 424, Line 62 (no RLIAP revenue is added to the class revenue targets). This is consistent with the fact the Liberty's decoupling tariff language was changed in DG 20-105 to remove the "mismatch" language. Likewise, the Commission requested RATES-5 from DG 14-180 and again, the class revenues targets do not include the addition of RLIAP revenues. Exh. 8, Excel Tab RATES-5, Lines 38 (Delivery Revenue Requirement) and 40 (Total Revenue Requirement). This is consistent with the fact that Liberty did not have a decoupling mechanism in the DG-14-180 timeframe.

Per RSA 12-P:2, one of the Department's roles is to provide a complete record at hearing for consideration by the Commission. Liberty states that the Department efforts in this case serve to "confuse (and defuse)" the record. Liberty Initial Brief at 2. The Department takes strong issue with this characterization and assures the Commission that it stands behind its analysis and believes the detailed analysis and references the Department provided in the case

will give the Commission sufficient information to decide this case on the facts presented rather than on unsubstantiated assertions made by Liberty.

B. Liberty Misstates Facts Regarding the Materiality of the Relief Requested

The Department does not dispute that Liberty's claim to collect $4 million is material in amount from the perspective of both its shareholders' and its customers. However, in its Initial Brief, Liberty misstates facts surrounding the materiality of its $4 million request. Liberty's Initial Brief at p. 15 states that the $4 million equates to 14% of Liberty's overall total revenue in 2022. However, Liberty's witness testified the $4 million equates to 14% of Liberty's 2022 net income of $28.2 million. Tr. at 159. Importantly, either statement overstates the impact of the $4 million request, because the $4 million accrued over 2 years (approximately $ 2 million per year), and Liberty's request anticipates a recovery over a similar two-year period. Exh. 1 at 4, 65 and 69, 81. The better measure would be to compare one year's decoupling "shortfall" ($2 million) to one year's net income. Two million dollars would be 7% of $28.2 million in 2022 net income.

Of course, as compared to 2022 revenues, this percentage would be significantly smaller. Liberty's recent rate case filing in DG 23-067 lists Liberty's 2022 Operating Revenues at $209.5 million, which includes Cost of Gas & LDAC (excluding decoupling) Revenues of $110.7 million, for distribution operating revenues of $98.8 million. DG 23-067, Liberty's 7/27/23 Filing at Bates II-079. Thus, a $2 million decoupling "shortfall" equals about 2% of Liberty's 2022 distribution operating revenues.

C. The Commission authority Liberty cites in support of clawing back $4 million actually supports the Department's position in this docket or is readily distinguishable from the facts at issue here

In its initial brief, Liberty asserts that previous Commission authority allows or requires the Commission to permit Liberty to claw back $4 million that was passed back to customers years ago, even though the passback to customers was consistent with tariff language, audited reconciliations, approved by the Commission, and moreover consistent with the relief requested contemporaneously by the Company itself. *See* Liberty Initial Brief at 1, 10-16. As explained below, the authority Liberty cites actually supports the Department's position in this docket or is readily distinguishable from the facts at issue here. Accordingly, even if the Commission finds that the Tariff 10 language was ambiguous, the Commission should deny Liberty's request because it constitutes impermissible retroactive ratemaking.

1. Liberty's analysis is inapplicable because asymmetrical treatment of customers and the Company vis a vis Company error is permissible, fair, and because the "mistake" is not "numerical."

In its brief, Liberty argued that the Commission has "previously corrected mistakes after-the-fact to mitigate unintended **numerical** errors resulting in the reconciliation of significant revenues." Liberty's Initial Brief at 13 (emphasis added). First, the Tariff 10 formula cannot be construed as a numerical mistake. Liberty seeks to retroactively rewrite an approved tariff formula. Second, Liberty assumes that any Commission correction allowing a refund to a Company's customers would equally apply to permit a recovery by that Company, notwithstanding the Company's sole responsibility for the "mismatch" and the Company's responsibility to assume standard business risks. Liberty Brief at 1, 13-15. As the Department has shown, asymmetrical treatment, favoring reimbursement to customers, is established by statute in New Hampshire, and is fair, just and reasonable. *See* RSA 365:29, RSA 378:4;

Department's Initial Brief at 7-8 (When a utility has been granted the relief it seeks by the Commission in initial dockets, the General Court has not authorized retroactive recovery for that utility). In addition, the specific cases Liberty cites actually support the Department's position in this docket or are distinguishable for more specific reasons.

2. The Commission's *Concord Natural Gas* Orders fully support the Department's position that LDAC and COG clauses are reconciled and final every 12 months, and do not permit a Company "do-over" for Company mismanagement or other error.

Quoting *Concord Natural Gas Corp*. (*CNGC*), Liberty asserts that the nature of reconciling recovery clauses, such as the cost of gas (COG) and LDAC causes approved by the Commission are such that the Commission would correct any Company under-collection errors, irrespective of the time passed. *See* Liberty Initial Brief at 10, Concord Natural Gas Corp. 67 N.H. PUC 113, 114 (1982) (hereinafter "*CNGC Rehearing*"). Liberty accurately quotes *CNGC Rehearing* as stating **"...if the Commission Staff found errors in the past bookings of the cost of gas adjustment, an adjustment would be made**," however Liberty overlooks that *CNGS Rehearing* is referencing "errors" that occurred in the prior twelve-month period, or errors that were otherwise carved out during that twelve-month period for extended future review. *See* Liberty Brief at 9 (emphasis in original). The standard practice of twelve-month periods, and a "carve out" occur in the CNGS Order No. 15,285 (November 6, 1981) (hereinafter *CNGC Winter COG*) found at 66 NH PUC 480 (1981), an order that precedes *CNGC Rehearing*, quoted by Liberty (67 NH PUC 113 (1982).

In Order No. 15,285, *CNGS Winter COG*, the Commission held that late payment charges and penalties due to a gas company's exceeding tariff restrictions from its suppliers may not be included in its cost-of-gas adjustment. See 66 NH PUC at 481-82. The referenced order, issued **November 6, 1981**, stated:

> Consumers cannot and will not be held liable for the failure of a utility to pay its bills on time. Those charges should be booked below the line and thereby absorbed by stockholders. This is clearly an unreasonable burden to impose on consumers and evidence of mismanagement....
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> [It added] ... [T]wo penalties were in fact paid: One for $19,320 paid between **March 13, 1981 and April 14, 1981** and a second between **April 14, 1981 and May 15, 1981** of $19,880. . . . It is sufficient to state that penalties due to exceeding tariff restrictions from a supplier are not proper costs for ratepayers.

Id. (Emphasis added). As is apparent by comparing the date of the order, and the dates the penalties were paid, the Commission's references to "errors in past bookings" are to the review and reconciliation of actual gas costs for the COG Winter period from November 1, 1980 through October 31, 1981, i.e., the prior twelve-month period, and nothing more remote than that. Moreover, the Commission proceeded to "carved out" the entire under-collection at issue in the 1980-1981 Winter COG for further review in 1982:

> The commission would note that the approval of this rate does not in and of itself approve the undercollection that is part of the rate. Hearings held concerning the gas utilities have raised certain questions about the decisions made during the last winter season. Further, the commission has found in filings, items of expense that are unreasonable, reflective of mismanagement, nonutility in scope, and improper accounting practices. Consequently, the commission will open a new docket after January 1, 1982, to review the following: (1) the accuracy of the forecasts in this opinion; (2) the undercollection and the factors that caused it that is asserted in this docket (3) decisions on supply mix that have been made in the 1980-81 winter as well as those in the [then-future] 1981-82 winter, (4) a review of the proper expenses that can be allowed for cost of gas collection.

66 NH PUC at 486 (looking back no further than the prior 12-month period).

The referenced time period and carve-out is significant because CNGC proceeded to file both a Motion for Rehearing –which disposing Order Liberty quotes--, *see* 67 NH PUC 113, 114 (1982), and a subsequent "Motion for Clarification," resolved at 67 NH PUC 180 (1982). Those subsequent Commission orders contain important guidance on the finality of reconciling

mechanisms. Further, those subsequent 1982 orders are not 'retroactive" due to the "carve-out" made in November 1981. In resolving the CNGC's Motion for Rehearing, the Commission stated:

> The Commission does not accept the Company's argument that the disallowance of any portion of the penalty that was included in the [1981] summer cost of gas adjustment is retroactive rate making. . . .**As the penalty was included in the 1981 summer cost of gas adjustment, the exclusion of those costs will be reconciled in the next [1982] summer cost of gas adjustment** in order to return that revenue to the proper ratepayer. The Commission reiterates that it was correct in removing the penalties. . . .**The cost of gas adjustment clause is not a blank check for any company to recover costs which have not been reasonably incurred.**

67 NH PUC at 114. CNGC objected a second time and filed a motion for clarification. In its order resolving that motion, the Commission definitively stated:

> **When the cost of gas revenues and cost are confirmed by an audit by the Commission staff, the Commission will consider the issue finalized** . . . Therefore, this Commission reaffirms the previous decision that penalties incurred in connection with fuel costs are **not a legitimate expense to be charged to the ratepayer and finds that they are the responsibility of management to be borne by the stockholders**.

67 NH PUC at 180-181.

Applying the CNGC Orders' analysis to the $4 million RDAF refund Liberty now seeks, Liberty is responsible for the RDAF formula it created and enshrined in Tariff No. 10. The potential for unforeseen results is a standard business risk, and just as late payment charges and penalties are the responsibility of management to be borne by the stockholders, Liberty's management and stockholders should bear the alleged loss of the $ 4 million at issue, which the Department's demonstration of facts shows to be unsubstantiated. Thus, Liberty's request for relief should be denied.

Further, the RDAF money returned to customers at $2 million per year for two years was "finalized" long ago. *See* 67 NH PUC at 180-81; Order No. 26,187 at 10

(November 2, 2018) (Commission approving illustrative decoupling formula for Tarif 10 in Dkt.No 17-048). The $2 million RDAF return to customers was endorsed by the Company, reviewed and recommended by then-Commission Staff, and ultimately approved by the Commission in a cost of gas (COG) Order, effective November 1, 2019. *See* Order No. 26,306 (October 31, 2019, Dkt. No. DG 19-145) at 6-7 (approving LDAC rates including "approximately $2 .5 million dollars for ratepayers . . . from accurately accounting for R-3 and R-4 Revenue for the RDAF[4]" as "just and reasonable"). The 2019 Order did not carve out RDAF reconciliation for future review and became final as a matter of law on December 1, 2019. *See* RSA 541:6.

Similarly, the second RDAF return of $2 million to customers was proposed by the Company, reviewed by Commission Staff and ultimately approved by the Commission in a COG Order effective November 1, 2020. Order No. 26,419 at 7 (October 30, 2020, Dkt. No. 20-141 (approving RDAF as "just and reasonable" and noting that because actual costs and revenues are reconciled [i.e., "finalized"] every year, any adjustments required due to final audits and [future] actual costs can be made in the next COG filing.). Order No. 26,419 did not "carve out" the RDAF return to customers for further review, and became final as a matter of law, November 30, 2020.

The Commission has a responsibility to approve just and reasonable rates, based on the information provided to it. It accomplished that task when Liberty's COG Orders were first approved. The Commission does not have a responsibility to insulate Liberty from all risk, particularly risks resulting from granting Liberty the very relief it sought

[4] See Order No. 26,603 at 6 and 7 "At hearing, Staff expressed support for approval of the 2019-2020 COG and LDAC rates as filed on September 3, 2019 and revised by the Company in its October 8, 2019 filing.... [The Commission approves the RDAF "as revised in the October 8 filing, as just and reasonable."

in 2018, 2019 and 2020. *See Boston Edison Company v. FERC*, 611 F 2d at 9-10; Order No. 26,187 at 10 (approving illustrative RDAF tariff, in Dkt No. 17-048); Order No. 26,306 at 6-7 (Dkt. No. DG 19-145 COG Order); Order No. 26,419 at 7 (Dkt. No. DG 20-141 COG Order).

3. Liberty incorrectly identifies *Re Northern Utilities* as retroactive ratemaking; Northern Utilities involved a 6-month delay in the imposition of a rate increase that was authorized by the tariff at the beginning of the period in question.

Liberty describes *Re Northern Utilities*, 80 NH PUC 721 (November 6, 1995) as a case in which "Northern made a retroactive billing adjustment," and then argues that the relief Liberty seeks here is, similarly, a "retroactive billing adjustment." Liberty Brief at 14-15. Liberty is mistaken because the recovery Northern sought in the 1995 docket was a rate authorized by the tariff. Northern's under-collection occurred because Northern's inadvertently failed to charge increased billing rates as of the January 1, 1995 effective date authorized by the Commission, and by Northern's tariff. The Commission held that "**utilities are entitled to collect their tariffed rates though they ought to collect them in a timely manner**," and proceeded to require that "when a utility erroneously fails to **bill the tariffed rates** on the effective date authorized, then, depending on the circumstances, corrective billing is the appropriate remedy." 80 NH PUC at 724 (emphasis added) (directing Staff to commence rule-making).

In the Liberty matter at issue, the tariffed RDAF adjustment formula for the two-year period in question required Liberty to pass $2 million back to customers each year, and Liberty did. The relief Liberty seeks here is inconsistent with the tariff RDAF formula. Thus, in *Re Northern Utilities* supports the Department's argument that the Tariff 10 RDAF formula should be enforced as written. *Re Northern Utilities* also

supports the Department's argument that altering the formula to grant Liberty the relief it seeks would be impermissible retroactive rate making.

4. Liberty's return of a $1.3 million over-collection in gas Dkt. No. DG 18-137 and of approximately $9.9 million in electric Dkts. No. DE 19-059 and DE 19-062 were numerical errors, corrected with reference to contemporaneous and controlling tariff language mandated by standard accounting procedures.

In its brief, Liberty identifies several instances where it uncovered substantial over-collections resulting from "unintended numerical errors." Liberty Initial Brief at 13-16. Specifically, Liberty identified a $1.3 million over-collection that was returned to customers in gas Dkt. No. DG 18-137, and an approximately $9.9 million over-collection returned to Liberty electric customers in electric Dockets No. DE 19-059 and DE 19-062. *Id.* at 13-14. Liberty explained it investigated each over-collection when it discovered (through audit or otherwise) that the beginning balances in docket filings did not match the beginning balances shown on Liberty's General Ledger. Exhibit 1 (Liberty Testimony) Bates 080, 076-081. As a general matter, reconciling clauses that genuinely resolve actual "math" or "numerical" errors consistent with contemporaneous and controlling tariff language are not inappropriate. When a Company discovers an unsupported over-collection, it must account for and return it, so that its past practice is consistent with the then-controlling tariff. To do otherwise raises the specter of unjust enrichment at customers' expense and potentially poor business practices.

Liberty has not shown that any of the substantial over-collections it identified were a result of Liberty altering or re-interpreting prior tariff language to return money to customers. *See Fitchburg* 440 Mass at 637 ("The [tariff] formula itself is a fixed rate which cannot be changed . . . But the "dollars and cents" amount inserted into the flow-through formula is presumptively not fixed."). The Department further notes that in resolving the over-collections, Liberty was dealing with "flow through" over-collections, readily identifiable in existing

accounts that remained "over-collected" in the then-active Dkts. No. DG 18-137 and then-active electric dockets. *See* Liberty Brief at 14 ("[inaccurate] beginning balances were being carried through these yearly reconciliation filing. . . .inherited from National Grid"). The RDAF monies at issue here were fully reconciled, consistent with the existing Tariff 10 language (including the formula) and therefore are readily distinguishable from the corrections Liberty made in Dkts. No. DG 18-137, DE 19-059 and DE 19-062.

D. Liberty's argument that Tariff 10 contains a "latent ambiguity" is contradicted by Liberty's reaffirmation of the plain meaning of the formula in Docket No. DG 19-145.

In its reply brief, Liberty argues that Tariff 10 contains a latent ambiguity because what Liberty interprets as an implied purpose of the RDAF section (including the formula) is something Liberty also construes as inconsistent with the Tariff 10 RDAF formula as memorialized in the tariff. After drafting the language in Tariff 10, and after that language was approved in Order No. 26,187 (November 2, 2018, Dkt. No. 17-048), Liberty reaffirmed and readopted the formula and its application in Docket No. 19-145. *See* Department's Initial Brief at 10. Because Liberty has intentionally and explicitly re-adopted the plain meaning of the Tariff 10 language and formula, on the record, at hearing, by definition a "latent ambiguity" does not exist.

III. CONCLUSION

For the reasons above, and those in the Department's Initial Brief, the Department asks the Commission to find that Liberty has failed to meet its burden of proof and:

1) Deny Liberty's request to collect $4 million through its LDAC for decoupling funds passed back to customers in 2018-2020 on the grounds that Liberty was not economically disadvantaged by the passbacks;

2) Find that Tariff No. 10's RDAF formula is clear and must be enforced as written to leave the $4 million passback at issue with Liberty's customers, or in the alternative, if the Commission concludes the tariff is ambiguous,

   Find that Liberty's request to recovery $4 million dollars due to Company "error" is barred by the prohibition on retroactive ratemaking;

3) Find that Liberty was advantaged by over-collections estimated at $2.1 million for the period July 1, 2017 through October 31, 2018; and

4) Grant such other and further relief as is just and reasonable.

Respectfully submitted,

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Certificate of Service

I hereby certify that a copy of this pleading was provided via electronic mail to the individuals included in the Commission's service list for this docket on this date, July 27, 2023.

/s/ *Mary E. Schwarzer*
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