

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Docket No. DG 22-\_\_\_

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

**Petition for Approval to Recover Revenue Decoupling Adjustment Factor Costs**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (“Liberty” or “the Company”), through counsel, respectfully petitions the New Hampshire Public Utilities Commission (“Commission”) for authority to recover approximately \$4 million which the Company was incorrectly directed to return to customers due to an error embedded in the tariff that first implemented the Company’s Revenue Decoupling Mechanism (“RDM”) as of November 2018. The tariff error was later corrected during the Company’s most recent rate case, Docket No. DG 20-105. Liberty seeks to recover this amount over a two-year period beginning November 1, 2022.

In support of this petition, the Company states as follows:

1. In Order No. 26,211 (April 27, 2018), the Commission approved the Company’s RDM to go into effect on November 1, 2018.
2. Liberty’s RDM establishes per-customer revenue targets for each rate class, which are referred to as the “allowed” revenue targets. In the annual RDM reconciliation, the allowed revenue target for each rate class is compared to the “actual” revenues collected from customers in each respective rate class. The difference between allowed revenue targets and actual revenues collected is refunded to, or collected from, customers through a reconciling rate mechanism known as the Revenue Decoupling Adjustment Factor (“RDAF”). Through

this annual reconciliation process, the Commission ensures that Company obtains recovery of its total authorized revenue, no more and no less.

3. However, as the accompanying testimony of Erica L. Menard demonstrates, this important goal was not achieved during the first two years of the RDM. Embedded in the 2018 tariff was a mismatch in the language that governed the annual reconciliation of the allowed and actual revenues for the low-income R-4 rate class. The tariff directed a comparison of allowed revenues calculated using the lower, discounted rates charged to R-4 customers, with the actual revenues from those customers calculated using the higher, non-discounted R-3 rates. This improper comparison of the allowed revenue targets (which were naturally much lower due to the discount) to the actual revenues collected (which were calculated based on the higher, non-discounted rate) suggested that Liberty's actual R-4 revenues far exceeded the allowed revenues and thus compelled the refunds at issue in this petition, even though no refund was due.
4. The allowed revenue targets (discounted) were the wrong numbers to be compared to the actual revenues collected (non-discounted), which is the flaw that was embedded in the 2018 tariff language.
5. The RDM tariff should have directed a comparison of non-discounted target revenues to non-discounted actual revenues (or vice versa, a comparison of discounted target revenues to discounted actual revenues), so that both sides of the comparison would have treated the R-4 rate discount in the same fashion resulting in an accurate calculation of the amount Liberty over- or under-collected for that rate class. Instead, the mismatch embedded in the tariff made it appear that the actual revenues collected far exceeded the allowed revenue target, spurring

the refunds to customers in those cost of gas (“COG”) dockets where the reconciliation occurred.

6. The tariff language was corrected in the most recent rate case, Docket No. DG 20-105, and the Company applied the new tariff language in its most recent COG filing where the 2020–2021 RDAF reconciliation occurred, Docket No. DG 21-130.
7. Given its complexity, the Commission removed this RDAF issue from the 2021–2022 cost of gas proceeding, Docket No. DG 21-130, so that it could be separately reviewed and decided on a less compressed time frame. Order No. 26,535 at 1.
8. Liberty now seeks authority to recover the \$4 million incorrectly returned to customers over the first two decoupling years, 2018–2019 and 2019–2020.
9. The Commission has authority to grant Liberty’s request in this petition as illustrated by a number of orders approving refunds and collections to correct errors in other reconciling charges, some of which errors were years in the making, and to correct simple failures to properly implement approved rates. The Commission’s overriding goal has been to reach the correct answer.
10. In 2019, the Commission approved the return to customers of \$9 million that was discovered by Liberty’s electric affiliate after auditing the beginning balances of several reconciling charges, which audit reached back to the company’s acquisition from Nation Grid in 2012. Order No. 26,264 at 8 (June 24, 2019) (“Liberty testified that in 2018, the Company had uncovered several prior period adjustments that amounted to a significant over-collection. Half of the over-collection, or approximately \$4.6 million, is included in the reconciliation for the energy service period beginning August 1, 2019.”)

11. A similar audit of other reconciling charges for the same company, also dating back to National Grid's ownership, resulted in a charge to customers of approximately \$900,000, which the Commission approved in Order No. 26,243 (Apr. 30, 2019). As stated in the order the prior year where the Commission directed this audit, the goal was to "establish[ ] accurate balances of over/under recovered ... costs." Order No. 26,140 at 10 (May 31, 2018).
12. The Commission did not endeavor to determine who was at fault for the improper beginning balances in these two cases and there was no mention of "retroactive ratemaking" by any party when the Commission directed the \$9 million refund to customers in Order No. 26,264 or the \$900,000 collection from customers in Order No. 26,243.
13. Liberty had previously conducted similar "beginning balance" audits on other reconciling charges within the COG. See Order No. 25,781 at 6 (Apr. 27, 2015) ("Mr. Simek testified that the Commission Audit Division's review of Liberty's summer 2014 COG filing has been completed and that it identified some issues with Liberty's starting balances").
14. Although not the precise situation presented here, the Commission has also approved corrective charges when utilities simply made billing errors that resulted in the company not collecting approved revenues. (Liberty did not make a billing error but applied tariff language that resulted in Liberty not collecting its approved revenues.) In Order No. 21,897, 80 NH PUC 721 (Nov. 6, 1995) Northern Utilities simply "failed to change billing rates on the January 1, 1995, effective date the Commission had authorized Northern to collect the Business Profits Tax in its rates." After receiving input from Northern, five other regulated utilities, the OCA, and Commission Staff on the issue of whether a utility may recoup revenues lost due to such a billing error, the Commission approved Northern's retroactive collection of approved rates:

We find that utilities are entitled to collect their tariffed rates though they ought to collect them in a timely manner. 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, in an amount and manner approved by the Commission. Requiring prior approval of the amount and manner of collection will provide an opportunity to tailor the remedy to fit each situation.

80 NH PUC at 723.

15. And in Order 25,286 (Oct. 31, 2011), the Commission also approved a one-time adjustment factor to EnergyNorth's local distribution adjustment charge ("LDAC") to correct the company's application of the incorrect gas allowance percentage for a 13-month period. The Commission stated: "With regard to the gas allocation LDAC factor proposed by the Company, we find it to be an appropriate remedy for the misallocation of the past 12-month period, and approve it." *Id.* at 14.
16. In light of the facts of this case, where Liberty in good faith adhered to a flawed tariff, and the precedent cited above, it is reasonable, appropriate, and the correct result for the Company to recover the amounts erroneously returned to customers during the annual decoupling cycles of 2018–2019 and 2019–2020. This will carry out the intent of the RDM reconciliation and produce just and reasonable rates as required by RSA 378:7.
17. Liberty thus respectfully asks that the Commission authorize the Company to recover through the RDAF the \$4,023,830 under-collection associated with the low-income discount over a two-year period to commence November 1, 2022, commensurate with the timeframe of the under-collection itself.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant the Company's request to recover \$4,023,830 through the RDAF over two years, without carrying charges, beginning November 1, 2022; and
- B. Grant such further relief as is just and equitable.

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

By its Attorney,



Date: July 5, 2022

By: \_\_\_\_\_

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Certificate of Service

I hereby certify that on July 5, 2022, a copy of this Motion has been forwarded to the Department of Energy and the Office of the Consumer Advocate.

A handwritten signature in cursive script, appearing to read "M. Sheehan".

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Michael J. Sheehan