

STATE OF NEW HAMPSHIRE
BEFORE THE
PUBLIC UTILITIES COMMISSION

Docket No. DG 22-041

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty
Revenue Decoupling Adjustment Factor

JOINT REBUTTAL TESTIMONY

OF

ERICA L. MENARD

AND

GREGG H. THERRIEN

May 23, 2023



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6 A. The ambiguous tariff language was established through negotiations with Commission Staff

7 and the Office of the Consumer Advocate during the rate case adopting the RDAF tariff, and

8 as a result followed by the Company in its reconciliation calculations, arriving at the

9 anomalous shortfall. The resulting necessary correction has been identified, quantified and

10 should be approved for collection by the Commission. 8

11 B. DOE acknowledges the tariff language issue and the mismatch in the Company’s decoupling

12 calculations; yet, asserts that Liberty does not have a valid claim. 9

13 C. Base rates, and therefore the recoupment calculation, were calculated correctly based on the

14 Commission’s approved revenue requirement for temporary, permanent, and permanent step

15 rates. 10

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1 **I. INTRODUCTION AND BACKGROUND**

2 **Q. Ms. Menard, please state your name, position, and business address.**

3 A. My name is Erica L. Menard, and my title is Senior Director, Rates and Regulatory
4 Affairs. My business address is 15 Buttrick Road, Londonderry, New Hampshire.

5 **Q. By whom are you employed and in what position?**

6 A. I am employed by Liberty Utilities Service Corp. (“LUSC”). LUSC provides local utility
7 management, shared services, and support to Liberty Utilities (EnergyNorth Natural Gas)
8 Corp. d/b/a Liberty (“Liberty” or “the Company”) and its regulated water, wastewater,
9 natural gas, and electric utility affiliates.

10 **Q. Mr. Therrien, please state your name, position, and business address**

11 A. My name is Gregg H. Therrien, and my title is Vice President with Concentric Energy
12 Advisors (“Concentric”). My business address is 293 Boston Post Road West, Suite 500,
13 Marlborough Massachusetts.

14 **Q. By whom are you employed and in what position?**

15 A. I am employed by Concentric Energy Advisors, Inc., providing financial and economic
16 advisory services to many and various energy and utility clients across North America.
17 Concentric’s regulatory, economic, and market analysis services include utility
18 ratemaking and regulatory advisory services; energy market assessments; market entry
19 and exit analysis; corporate and business unit strategy development; demand forecasting;
20 resource planning; and energy contract negotiations.

1 **Q. On whose behalf are you testifying today?**

2 A. We are testifying on behalf of Liberty.

3 **Q. Have you previously testified in regulatory proceedings before the New Hampshire**
4 **Public Utilities Commission (“NHPUC” or the “Commission”)?**

5 A. Yes, we have.

6 **Q. Have you previously submitted testimony in this proceeding?**

7 A. (Menard) Yes, I previously submitted direct testimony as a part of the Company’s initial
8 filing on July 5, 2022. My educational background, professional background, and
9 qualifications are contained in the prior testimony.

10 (Therrien) No, I have not previously submitted testimony in this proceeding, however, I
11 have been previously involved with the underlying proceedings upon which this
12 proceeding is based.

13 **Q. Mr. Therrien, please describe your professional background and qualifications.**

14 A. My professional qualifications and experience include regulatory strategy and financial
15 rate case expertise on behalf of regulated and unregulated entities in the natural gas,
16 electric, and water industries. Since joining Concentric in 2016, I have performed a
17 multitude of consulting engagements including expert testimony on the subjects of
18 allocated cost of service, rate design, rate consolidation, alternative rate plans,
19 decoupling, revenue requirements, and natural gas infrastructure replacement programs.

1 Prior to entering consulting, I held previous leadership level positions at Connecticut
2 Natural Gas Corporation and its affiliated companies for over 19 years, including
3 Director, Gas Construction at Connecticut Natural Gas and The Southern Connecticut
4 Gas Company and Director, Regulatory & Tariffs at UIL Holdings, Inc. My education
5 includes an M.B.A. from the University of Connecticut and a B.S. in Finance from
6 Bryant University. My full curriculum vitae is included as Attachment GHT-1.

7 **II. PURPOSE OF THE TESTIMONY AND SUMMARY OF REQUEST**

8 **Q. What is the purpose of your testimony?**

9 A. Our testimony provides rebuttal of the recommendations made in the testimony submitted
10 on behalf of the New Hampshire Department of Energy (“DOE”) by Faisal Deen Arif,
11 Director of Gas in the DOE Regulatory Division, and Mark Thompson, president of
12 Forefront Economics Inc. (the “DOE Testimony”).

13 **Q. What does the DOE recommend?**

14 A. The DOE recommends that the Commission should: (1) disallow Liberty’s claim to
15 recover \$4,023,830 from the first two Decoupling Years 2018/2019 and 2019/2020; and
16 (2) require the Company to return to customers \$2,152,105 in over-collections in R-4
17 discount it collected through recoupment during July 1, 2017, to October 31, 2018.

18 **Q. Is there a meritorious basis for the DOE’s recommendation?**

19 A. No, there is not. DOE states that Liberty’s claim to recover \$4,023,830 should be denied
20 because Liberty was compensated twice for the R-4 low-income discount, first through

1 the Residential Low Income Assistance Program (“RLIAP”) component of the Local
2 Distribution Adjustment Clause¹ (“LDAC”), and second through the revenue deficiency
3 calculation in the 2017 rate case, Docket No. DG 17-048.

4 In that regard, DOE claims that the Company over-recovered \$2,152,105 because the
5 Company’s distribution base revenue requirement compensated Liberty for the \$1.6
6 million of the R-4 discount during the temporary rate period from July 1, 2017, to
7 October 31, 2018.

8 **Q. Do you agree with the DOE recommendations?**

9 A. No, we do not. The Company’s request to recover \$4,023,830 from the first two
10 decoupling years is correct and appropriate. Further, the instant docket pertains
11 specifically to the reconciliation of the Company’s revenue decoupling compliance
12 filings, which is well-supported through the direct testimony of Erica L Menard.²
13 Although arguably outside the scope of this case, the Company will show that it was not
14 compensated twice for the R-4 low-income discount; nor did it over-recover
15 Commission-approved revenues for its temporary, permanent, or permanent step rates.

16 **Q. Did either of you participate in Docket No. DG 17-048?**

17 A. (Menard) No, I did not.

¹ Note in Tariff 10, the LDAC was defined as the Local Delivery Adjustment Clause. The current tariff defines the LDAC as the Local Delivery Adjustment Charge.

² Direct testimony of Erica L. Menard, “Revenue Decoupling Adjustment Factor” Docket No. DG 22-041 filed July 5, 2022.

1 (Therrien) Yes, I provided testimony on various topics in that rate case and was involved
2 in the discussions that led to the review, approval and implementation of the decoupling
3 mechanism.

4 **III. SUMMARY OF LIBERTY'S REBUTTAL ARGUMENTS**

5 **Q. Please summarize your rebuttal arguments.**

6 A. Our rebuttal arguments are as follows:

7 The petition in this docket asks the Commission to review the Revenue Decoupling
8 Mechanism ("RDM") reconciliation period calculations. Through the proceedings and
9 discussions to develop the RDM tariff, various changes were made to the RDM tariff to
10 address issues unrelated to the "mismatch" problem causing the Company's under-
11 collection of decoupling revenues. As a result of these changes, ambiguity was
12 inadvertently embedded in the tariff language – specifically, in relation to the benchmark
13 revenues to be used (rate class R-3 versus rate class R-4) for the purpose of reconciling
14 allowed versus actual revenues for rate class R-4. This ambiguity in tariff language
15 resulted in issues with the reconciliation calculation. Any corrections (either way) to the
16 RDM reconciliation should be made in this proceeding. The right thing to do is to correct
17 both the tariff (which was done as part of the subsequent rate case, Docket No. DG 20-
18 105) and to reimburse the Company for the incorrectly refunded amount (which is
19 requested here).

1 Although DOE acknowledges the tariff language issue and the mismatch in the
2 Company's decoupling calculations, DOE nevertheless improperly asserts that Liberty
3 does not have a valid claim.

4 Contrary to DOE's assertion, base rates were properly calculated correctly using the
5 Commission's approved revenue requirement for temporary, permanent, and permanent
6 step rates.

7 **IV. BACKGROUND AND SUMMARY OF THE COMPANY'S REQUEST**

8 **Q. Please briefly describe Liberty's revenue under-collection claim and its correlation
9 to the RDM.**

10 A. Liberty's RDM tariff establishes benchmark base revenue per-customer ("RPC") targets
11 for each rate class, which are referred to as the "allowed" revenue targets. In the annual
12 RDM reconciliation, the allowed revenue target for each rate class is compared to the
13 actual revenues collected from customers in each respective rate class. The difference
14 between allowed revenue targets and actual revenues collected is refunded to, or
15 collected from, customers through the Revenue Decoupling Adjustment Factor
16 ("RDAF") component of the annual LDAC rate.³ Through the RDM reconciliation
17 process, the Commission ensures that the Company obtained recovery of the total
18 authorized revenue, no more and no less. Any over-or-under collection would then be

³ Menard Direct Testimony at 1290-1296.

1 recovered prospectively, based on the Commission's findings and reconciliation
2 proceeding order.

3 As described in Ms. Menard's initial testimony, it is imperative that the allowed revenue
4 targets and the actual revenues collected are stated on a comparative basis for each rate
5 class, e.g., R-3 revenue targets are compared to R-3 actual revenues, so that the
6 differential between the allowed revenue target and actual revenues collected is truly the
7 amount that should be refunded to customers, or recovered back from customers, as part
8 of the annual RDM reconciliation. Assuring that this differential is correctly identified is
9 necessary to assure that the Company is collecting the authorized revenue requirement,
10 no more or no less.

11 However, it was discovered that the reconciliation of revenues for the R-4 low-income
12 class suffered from a mismatch embedded in the tariff between the allowed revenue
13 target (which was based on the discounted rates), and the actual revenues collected
14 (which was based on non-discounted rates). This improper comparison of the allowed
15 revenue targets (discounted) to the actual revenues collected (non-discounted) yielded a
16 refund to customers although no refund was due. This happened because the *discounted*
17 revenue targets were naturally lower than the *non-discounted* revenues collected for the
18 R-4 rate class, indicating that a refund was due to customers when – in fact – the allowed
19 revenue targets were fundamentally out of alignment with the computation of actual
20 revenues collected due to the mis-matched rates used in the calculation. During the
21 period that the mismatch was unresolved, the Company, following the then-approved

1 tariff language, issued refunds to customers as indicated by the RDM reconciliation
2 process, totaling \$4,023,830 over a two-year period from 2018 to 2020. Subsequently, in
3 in next rate case, DG 20-105, the mismatch in the Company's RDM tariff was corrected,
4 and the Commission approved the revised RDM tariff.

5 **V. COMPANY REBUTTAL DETAILED ARGUMENTS**

6 **A. The ambiguous tariff language was established through**
7 **negotiations with Commission Staff and the Office of the**
8 **Consumer Advocate during the rate case adopting the RDAF**
9 **tariff, and as a result followed by the Company in its**
10 **reconciliation calculations, arriving at the anomalous shortfall.**
11 **The resulting necessary correction has been identified,**
12 **quantified and should be approved for collection by the**
13 **Commission.**

14 **Q. Why should the Commission approve the Company's request for collection of**
15 **\$4,023,830?**

16 A. This docket is a reconciliation docket. By its nature, a reconciliation docket is a
17 regulatory proceeding designed to confirm that the rates and charges implemented by the
18 Company *specific to the reconciliation mechanism* are accurate and produced just and
19 reasonable rates. The Company has shown through its direct testimony in this
20 reconciliation docket that there was a mismatch in its decoupling calculation over two
21 concurrent decoupling periods, resulting in an over-refund of \$4,023,830. The
22 underlying tariff language (the source of the mismatch) has since been corrected. If the
23 adjustment were in the other direction (i.e., an over-collection by the Company) then the

1 Company would refund that amount to customers. Therefore, the Commission should
2 approve the identified correction in this RDM reconciliation proceeding.

3 **B. DOE acknowledges the tariff language issue and the mismatch**
4 **in the Company's decoupling calculations, yet asserts that**
5 **Liberty does not have a valid claim.**

6 **Q. Did the DOE witnesses acknowledge the tariff calculation mismatch?**

7 A. Yes, the DOE witnesses acknowledged that “there is a mismatch between the discounted
8 revenues Liberty actually received under the R-4 rate schedule and the revenues the
9 Company was required to calculate at the full R-3 rates for purposes of decoupling. The
10 difference between these two calculations equals the discount provided to the R-4
11 customers (the R-4 discount).”⁴

12 **Q. Why then, did the DOE witnesses assert that Liberty's claim is invalid?**

13 A. Here the DOE witnesses made a hard departure from the limited scope of this
14 reconciliation proceeding.⁵ Given their acknowledgement of the mismatch, they instead
15 seek to depart from the reconciliation process of this docket and introduce out-of-scope
16 arguments pertaining to the *base rate proceeding* in Docket No. 17-048. They argue that
17 the acknowledged under-collection through the RDM should not be corrected (i.e.,

⁴ DOE Testimony, Bates 000008 lines 1-4.

⁵ The Commission's order of notice in this docket states: “The filing presents, inter alia, the following issues: whether Liberty is entitled to recover amounts refunded from 2018 through 2020 pursuant to its application of an approved RDM tariff in effect at the time the refunds were made; and whether Liberty has appropriately calculated the amounts it claimed were improperly refunded to customers through the RDM from 2018 through 2020. Accordingly, an adjudicative proceeding will be convened to address these issues.” Commencement of Adjudicative Proceeding and Notice of Hearing, September 9, 2022, at page 3.

1 “Liberty does not have a valid claim”⁶ because, in their view, *base rates* were set
2 incorrectly.

3 **Q. Has DOE previously asserted this incorrect claim that the low-income discount was**
4 **being over-recovered (through base rates) during the Docket No. 17-048**
5 **proceeding?**

6 A. No, it has not. DOE has not ever recommended or suggested that the Company
7 understated its net operating income by not including \$1,638,828 from RLIAP during the
8 course of the base rate proceeding. If the Company had attempted to include \$1,638,828
9 in RLIAP in its operating income, it would have needed to remove RLIAP from the
10 LDAC in its entirety. Instead, the Company treated RLIAP as it has in past proceedings
11 as a cost recovered outside of base rates. This claim is meritless.

12 **C. Base rates, and therefore the recoupment calculation, were**
13 **calculated correctly based on the Commission’s approved**
14 **revenue requirement for temporary, permanent, and**
15 **permanent step rates.**

16 **Q. Please summarize DOE’s base rate argument.**

17 A. DOE claims that Liberty over-collected \$2,152,105 in base rates from July 1, 2017, to
18 October 31, 2018 (the 16 months prior to the first decoupling year).⁷ DOE asserts that

⁶ DOE Testimony, Bates 000008, line 5.

⁷ DOE Testimony, Bates 000008 lines 14-16.

1 the Company incorrectly accounted for Rate R-4 discounts in its revenue requirement
2 calculation.

3 **Q. Does the Company agree with this assertion?**

4 A. No, absolutely not. The Commission in Docket DG 17-048 established temporary rates
5 pursuant to a settlement agreement. In the Temporary Rates Settlement Agreement⁸ the
6 Company was allowed to recover an annual distribution service increase of \$6,750,000
7 effective for service rendered July 1, 2017. Attachment 1 to the Temporary Rates
8 Settlement Agreement clearly shows that the agreed-upon increase to base rates would be
9 implemented through an across-the-board increase of 9.56% to all firm rate classes
10 (including, of course, Rates R-3 and R-4). No other changes in rates were made as a
11 result of the Temporary Rates Settlement Agreement. The Settling Parties agreed that the
12 rates resulting from the Temporary Rates Settlement Agreement were just and
13 reasonable. (Temporary Rates Settlement Agreement, at page 2.) In addition, DOE's
14 current claim regarding an alleged over-collection, which was calculated in an overly
15 simplistic and faulty manner, inappropriately extended by six months the ten-month
16 period of recoupment between the implementation of temporary rates (July 1, 2017) and
17 the implementation of permanent rates (May 1, 2018).

⁸ "Settlement Agreement Regarding Temporary Rates," Docket No. DG 17-048, June 2, 2017, Exhibit 2.

1 **Q. Did the Company change its rate design or rate recovery mechanisms during this**
2 **time?**

3 A. No. Base rates continued to recover base rate revenues and the LDAC recovered
4 reconciled rate revenues, including the RLIAP.

5 **Q. Given the simplicity of the temporary rate across-the-board increase, did the**
6 **Company overcharge customers during the temporary rate period?**

7 A. No, it did not.

8 **Q. Temporary rates are subject to full reconciliation to permanent rates in accordance**
9 **with RSA 378:29. Were permanent rates calculated correctly?**

10 A. Yes.

11 **Q. Please explain.**

12 A. The final decision on Docket No. DG 17-048 resulted in a permanent base rate increase
13 of \$8,060,117 effective May 1, 2018. Order No. 26,122 at 55 (Apr. 27, 2018). This base
14 rate increase did not cover the cost associated with providing a low-income discount to
15 customers. As noted above, the cost to provide the low-income discount is recovered
16 separately through the RLIAP component of the LDAC, which is not a base rate.
17 Furthermore, it would be inappropriate to have included the R-4 low-income discount in
18 the base-rate revenue deficiency. The Company has never included recovery of the R-4
19 low-income discount as part of its base rate revenue requirement, nor does DOE make
20 any attempt to make such a demonstration. Instead, the Company has always

1 consistently recovered the low-income discount through a reconciling mechanism outside
2 of base rates.

3 **Q. Please respond to DOE’s claim that some of the revenues for serving R-4 customers**
4 **were excluded from base rates (i.e., the low-income discount), while the full cost of**
5 **servicing R-4 customers was included in base rates?**

6 A. DOE misunderstands how the Company recovers the cost of the low-income discount.
7 The Company does not recover the full cost of servicing low-income customers through
8 base rates. This is because the Company provides these customers with a discount to
9 their service rate. The difference between the amount the Company recovers in base
10 rates from low-income customers and the amount it costs the Company to serve these
11 customers is provided in a factor recovered outside of base rates, i.e., the RLIAP
12 embedded in the LDAC. As stated above, the Company’s permanent base rate increase
13 of \$8,060,117 in Docket No. DG 17-048 did not cover the cost associated with providing
14 a low-income discount to customers. DOE claims, “the revenue requirement calculation,
15 thus, compensated Liberty for the R-4 discount.”⁹ If the RLIAP discount was added to
16 actual revenues, then the Company would have recovered the RLIAP discount twice,
17 once through a distribution rate increase and second through LDAC rates. This did not
18 occur, nor has DOE offered any valid evidence showing that outcome to have occurred.

⁹ Arif-Thompson Direct Testimony at 14, line 2

1 **Q. Was the step rate adjustment incorporated correctly into base rates?**

2 A. Yes. The step rate adjustment was a further revenue adjustment allowance for base rate
3 revenue requirements and approved by the Commission. Order No. 26,122 at 55. The
4 change in base rates for the step adjustment did not alter the relationship between base
5 rates and the LDAC (or the embedded RLIAP).

6 **Q. Given that permanent rates and permanent step rates were calculated correctly, is
7 an adjustment to the temporary rates, as advocated by DOE, warranted?**

8 A. No, it is not. Temporary rates were appropriately reconciled pursuant to RSA 378:29 in
9 the establishment of permanent rates. As stated earlier, the recoupment period for the
10 reconciliation of permanent and temporary rates was only 10 months, not 16 months as
11 DOE has testified. The recoupment amount in Docket No. DG 17-048 was reviewed and
12 modified extensively during the hearing process and during the subsequent six-month
13 rehearing process. The recoupment amount was complicated by factors such as income
14 tax rate reductions due to the intervening Tax Cuts and Jobs Act of 2017, and revisions to
15 other first-time adjustments such as the introduction of a year-end customer count
16 adjustment. As a result of those complicating factors, the recoupment amount was
17 heavily scrutinized by the participants in Docket No. DG 17-048, including, then-
18 Commission Staff, was supported by the parties, and was approved by the Commission.¹⁰

¹⁰ See Order No. 26,149 (June 22, 2018) (granting rehearing); Order No. 26,156 (July 10, 2018) (granting request for clarification); and Order No. 26,187 (Nov. 2, 2018) (“resolv[ing] all pending issues raised on rehearing”).

1 **Q. Please respond to DOE’s claim that Liberty added the R-4 discount twice for rate**
2 **design.**

3 A. DOE misunderstands how the Company uses the revenue requirement to establish rates
4 for rate design purposes. DOE referenced Liberty’s rate design model, RATES-5, and
5 claimed that the R-4 discount of \$1,614,079 is added a second time. As described in
6 Attachment 8 to the DOE testimony, at Bates 000423-000424, rates are set in three steps:

7 • *First*, the “cost of service” is determined through a review of the Company’s
8 proposed revenue requirement. The proposed revenue requirement reflects the
9 total (representative) cost of serving all customers. *The rate that a low-income*
10 *customer will actually pay is irrelevant to this analysis.*

11 • *Second*, the allocated cost of service study (“ACOSS”) figures out the
12 proportional cost responsibility of each customer class, with all customers
13 included in one customer class or another. In this step, 100% of the cost to serve
14 low-income customers (and all other customers) are accurately reflected in the
15 revenue requirement and the ACOSS because the purpose of the study is to figure
16 out how the approved revenue requirement should be divided up across all
17 customer classes, in accordance with cost causation principles. *The rate that a*
18 *low-income customer will actually pay is irrelevant to this analysis.*

19 • *Third*, tariffed rates are then designed to recover the revenue requirement in
20 accordance with the cost-causation principles established through the ACOSS.
21 For low-income customers, the tariffed rate will be the residential rate that

1 recovers 100% of the proportional responsibility for the approved revenue
2 requirement, discounted by the amount of the low-income discount. In this step,
3 RLIAP revenues are incorporated into the revenue calculation so that tariffed
4 distribution rates plus the RLIAP revenues will produce recovery of 100% of the
5 allowed revenue requirement, all else remaining equal. As part of that rate design
6 process, the new RLIAP revenue amount is determined and removed from the
7 determination of base distribution rates, with the RLIAP amount to be recovered
8 100% through the RLIAP factor of the LDAC. DOE's analysis reflects a
9 misunderstanding of this ratemaking process.

10 **VI. CONCLUSION**

11 **Q. Please summarize your rebuttal testimony.**

12 A. Our rebuttal testimony responds to DOE's claims that Liberty was compensated twice for
13 the RLIAP, once through base distribution rates and a second time through the RLIAP
14 component of the LDAC rate. This assertion, as shown above and throughout the course
15 of the Company's testimony in this proceeding, is demonstrably false.

16 The Company also responds to DOE's claim that the Company over-collected the RLIAP
17 discount through its recoupment calculation over a sixteen-month period, therefore
18 claiming the Company should refund \$2,152,105 plus interest. The DOE did not dispute
19 the mismatch in the tariff language and supports Liberty's claim that a mismatch in the
20 calculation of benchmark revenue per customer and actual revenues exists, supporting the
21 Company's claim that by following the tariff as the Company did in its calculation of the

1 RDAF in decoupling years 1 and 2, the Company did in fact return \$4,023,830, which it
2 should have been entitled to recover but for the mis-match, and which it is appropriate to
3 seek recovery for in this proceeding.

4 **Q. Does this complete your testimony?**

5 A. Yes, it does.