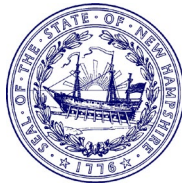


COMMISSIONER  
Jared S. Chicoine

DEPUTY COMMISSIONER  
Christopher J. Ellms, Jr.



TDD Access: Relay NH  
1-800-735-2964

Tel. (603) 271-3670

Website:  
www.energy.nh.gov

DEPARTMENT OF ENERGY  
21 S. Fruit St., Suite 10  
Concord, N.H. 03301-2429

November 21, 2023

Daniel C. Goldner, Chairman  
Public Utilities Commission  
21 S. Fruit Street  
Concord, NH 03301-2429

Re: DG 22-045 Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty, Winter 2022-2023 and Summer 2023 Cost of Gas, DOE's Puc 203.13 Request to Postpone Hearing Day Two, Scheduled for December 13, 2023 and for **EXPEDITED** Review of DOE's Request (with recommended procedural schedule)

Dear Chairman Goldner:

Pursuant to NH Administrative Rule Puc 203.13, the New Hampshire Department of Energy ("DOE" or "Department") asks the Commission to postpone Hearing Day Two in this docket, scheduled for December 13, 2023 and for **EXPEDITED** review of the DOE's request because Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty, (hereinafter "Liberty" or "the Company") has failed to provide discovery responses that DOE has diligently been seeking since August 11, 2023. These responses are necessary to DOE's analysis and are anticipated to allow DOE to reach a conclusion in this docket. See NH Code Admin Rules Puc 203.13. This letter addresses: the standard of review; outstanding discovery; DOE relief requested; DOE's related proposed procedural schedule.

In support, DOE states as follows:

### **I. Standard of Review**

The New Hampshire Code of Administrative Rules, Puc 203.13 *Postponement of Hearing*, provides that ". . . [t]he commission *shall* grant a request for postponement of a hearing if it finds that to do so would promote the orderly and efficient conduct of the proceeding." See Puc 203.13 (emphasis added). The rule also requires the moving party to make a request in writing at least seven days prior to the date of the hearing and "attempt to seek concurrence of the other parties."

### **II. DOE has Diligently Pursued Information Requested August 11, 2023**

On August 11, 2023, before the first day of hearing in this docket, DOE asked Liberty to provide key information that remains missing. DOE's August request was based upon information DOE obtained from its own Audit Division after formal discovery in DG 22-045 concluded. DOE's August 2023 request for information was pre-marked as Exhibit 32 for identification. See Attachment

1, (Exhibit 32, including “Attachment A”). At hearing, DOE requested and Liberty agreed to updated the Company’s responses to DOE data requests regarding reclassification and RDAF. *See* Transcript of August 30, 2023 Hearing (hereafter “Transcript”) 249-255 (referencing Exhibit 26 Bates 42-43). In September 2023, Liberty agreed to review DOE Exhibit 27 including DOE calculations and analysis and indicate whether Liberty agreed with DOE’s conclusions, and if not, why not. DOE’s expectations were confirmed in multiple meetings and informal emails among counsel including emails dated September 22, 2023 and October 3, 2023. Liberty has not provided these requested written updates or responses.

At the conclusion of the August 30, 2023 testimony, the Commission continued the hearing “so all parties will have an opportunity to examine the additional evidence and weight in.” *See* Transcript of August 30, 2023 Hearing (hereinafter “Transcript”) at 270 (quoting the Chairman); *id.* at 293 (Liberty will “be able to provide the information to DOE, do the analysis, and maybe can bring them the comfort that they don’t have today.”); 40-41-154, 264, 268, 269 (Exhibits 32 discussed); *Procedural Order Re: Continuation of Hearing and Record Requests* (September 1, 2023); *Procedural Order Re: Pending Requests* (setting December 13, 2023 hearing date)

In the opinion of the DOE, answers to questions raised in Exhibit 32 are necessary to allow DOE to reach a conclusion regarding whether Liberty has met its burden of proof to show that the Company’s RDAF protocol (e.g., “true-up process”), is consistent with Tariff No. 11 and otherwise reasonable to the extent Liberty made any assumptions or unstated/unreviewed calculations. *See* Transcript at 10-50 (Parties preliminary discussion regarding the Company’s revenue decoupling adjustment factor, decoupling and “counting customers.”). Liberty’s responses to DOE’s other outstanding questions described above are also expected.

Regarding Exhibit 32’s requests, the raw data sought in question 1 and 2 seems to have been provided. Yet Liberty has not provided DOE with responses to questions 3 and 4, including but not limited to completing DOE’s Table “Attachment A”. *See* Attachment 1. In an informal technical session held on November 17, 2023, Liberty informed DOE that its new target date for providing the information requested in Exhibit 32 is December 1, 2023.

Given that Liberty has failed to provide the discovery DOE identified (in August 2023) as necessary to allowing DOE to reach a conclusion, DOE asks the Commission to find that postponing the hearing is “consistent with the orderly and efficient resolution of this docket.” It will benefit no one to hold the December 13, 2023 hearing only to have DOE testify that insufficient information was provided. Further, December 1, 2023, that is only two business days before DOE’s exhibits are due, including but not limited to a supplemental Technical Statement, if any. In short, there is insufficient time to allow DOE to adequately review and discuss any discovery response Liberty plans to make on December 1, 2023. DOE further reserves the right to request an extended postponement if Liberty does not provide full and complete responses on (or before) December 1.

### **III. DOE Relief Requested**

Wherefore, for the reasons stated above, DOE respectfully requests that the Commission postpone Hearing Day Two in this docket currently scheduled for December 13, 2023. *See* Puc 203.13. Allowing DOE an opportunity to receive and review information it has been requesting since

August 2023 will promote the orderly and efficient conduct of the hearing. It will allow DOE to understand Liberty's actions and support a DOE conclusion as to whether Liberty has met its burden of proof to show that the Company's RDAF protocol (e.g., "true-up process"), is consistent with Tariff No. 11 and otherwise reasonable to the extent Liberty made any assumptions or unstated/unreviewed calculations.

OCA, by and through counsel, does not assent to the relief DOE requests. By and through counsel, Liberty will only assent if the hearing is held in early to mid-January and an order available February 1. This is not possible for DOE, given Liberty's delay in providing information DOE requested in August 2023 and DOE's need for review. Since Liberty and OCA were asked to assent, and since this letter is being filed within seven business days of the December 13, 2023 hearing date<sup>1</sup>, DOE has satisfied the requirements of Puc 203.13. Accordingly, DOE respectfully asks the Commission to postpone the December 13, 2023 hearing. DOE's related proposed procedural schedule follows.

#### IV. DOE's Proposed Procedural Schedule

DOE proposes that the hearing be held the **week of February 5, 2024**, with the understanding that this date is contingent upon Liberty filing adequate and meaningful responses on or before **December 1, 2023**, as the Company stated it would. DOE also respectfully requests that the current hearing date become an additional technical session for Liberty, the Office of the Consumer Advocate (OCA), and DOE regarding the missing (and prior) responses. Specifically, DOE asks that **a technical session be held on December 13, 2023 between 10 am and 1pm**. Finally, DOE proposes that DOE be permitted to file a supplemental **technical statement on or before January 19, 2024**.

Consistent with the Commission's current practice, this letter is being filed in electronic form. Thank you for your attention to this matter.

Respectfully Submitted,

*/s/ Mary E. Schwarzer*

Mary.E. Schwarzer  
Staff Attorney/Hearings Examiner

Encl. Attachment 1  
Cc: Service list

---

<sup>1</sup> Seven days prior to the December 13, 2023 hearing date is December 4, 2023.

ClerksOffice@puc.nh.gov  
Adam.Yusuf@Libertyutilities.com  
Alyssa.Maston@libertyutilities.com  
amanda.o.noonan@energy.nh.gov  
Ashraful.Alam@energy.nh.gov  
deborah.gilbertson@libertyutilities.com  
donald.m.kreis@oca.nh.gov  
Energy-Litigation@energy.nh.gov  
Erica.Menard@libertyutilities.com  
Faisal.DeenArif@energy.nh.gov  
hgp@PeachandAssociatesLLC.onmicrosoft.com  
James.King@libertyutilities.com  
Joshua.Tilbury@libertyutilities.com  
karen.j.moran@energy.nh.gov  
karen.sinville@libertyutilities.com  
Luke.Sanborn@libertyutilities.com  
mark@forecon.com  
mary.e.schwarzer@energy.nh.gov  
maureen.karpf@libertyutilities.com  
michael.sheehan@libertyutilities.com  
ocalitigation@oca.nh.gov  
paul.b.dexter@energy.nh.gov  
Sean.M.Courtois@energy.nh.gov  
thomas.c.frantz@energy.nh.gov  
Tyler.Culbertson@libertyutilities.com