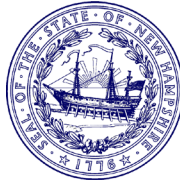


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DEPARTMENT OF ENERGY
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January 30, 2024

Daniel C. Goldner, Chairman
New Hampshire Public Utilities Commission
21 South Fruit Street
Concord, NH 03301

Re: DG 23-067; Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty; Request for Change in Distribution Rates; *Response to the Briefs Filed Regarding Temporary Rates*

Dear Chairman Goldner:

The Department of Energy (DOE or Department) is filing this letter to reiterate the position it articulated at the January 8, 2024 hearing whereby the effective date of Liberty Utilities (EnergyNorth Natural Gas) Corp. (Liberty's) temporary rates could be October 1, 2023.

As previously addressed at the January 8, 2024 hearing the Department believes the Public Utilities Commission (PUC) could set temporary rates effective October 1, 2023 at then current rates (0% increase) and then effective November 1, 2023 temporary rates would be increased 8.898%. *See* Order No. 26,899 (October 31, 2023) at 7. Thus, the time period for recouping the difference between temporary rates and permanent rates would begin on October 1, 2023. In the view of the Department, this approach would not violate RSA 378:27 or 378:29, as discussed in *Appeal of Pennichuck Water Works*, 120 N.H. 562 (1980). However, the New Hampshire Supreme Court did urge caution. "[I]t is a basic legal principal that a rate is made to operate in the future and cannot be made to apply retroactively." *Pennichuck*, 120 N.H. at 566 (quoting *Southwest Gas Cop. V. Pub. Serv. Comm'n.*, 86 Nev. 662, 669, 474 P.2d 379, 383 (1970)).

From a policy perspective, setting temporary rates effective October 1, 2023 would most closely allow Liberty to collect what was provided for in the settlement terms outlined in the Department's letter filed September 26, 2023, which contemplated implementation of the temporary rate increase as of October 1, 2023. However, setting temporary rates effective November 1, 2023 and delaying recoupment (the difference between temporary rates and permanent rates) until November 1, 2023 would also be an acceptable policy outcome.

Liberty has stated that the delay in implementation of the temporary rates was due to no fault of its own. *Opposition to the Department's Motion for Rehearing* (December 7, 2023) at pp. 7-8; Hearing Transcript (January 8, 2024) at p. 18. The Department noted

at the January 8 hearing that assessing “blame” for the delay in rate implementation of temporary rates and correcting for perceived “blame” may not be good policy.¹ Hearing Transcript (January 8, 2024) at pp. 20-21, 37. Regulatory proceedings involve timing risks which are appropriately borne by the utility seeking the rate increase, as long as delay was not the result of abuse of process, which is not the case here. *Id.* However, it should be noted that Liberty’s claim that it had no control over the delay in temporary rates does not appear to be supported by the facts and circumstances of this case. In the Department’s letter to the Commission dated September 26, 2023, the Department outlined the four differences between the Company’s original temporary rate increase request and the settled temporary increase, and the first factor was a significant error in rate base (accumulated depreciation) which Liberty disclosed while the settlement terms were being developed, and which took time for the DOE (and presumably OCA) to understand and assimilate into the settlement terms. The OCA also noted that Liberty shares responsibility for the postponement of the September 27, 2023 hearing. Brief (January 23, 2024) at 6. Liberty “could have sought waiver for the Commission’s acceptance of these materials (such as a late-filed settlement agreement), waiver of Puc 203.20€, or waiver of the Hearing Guidelines[.]” *Id.*

In summary, the Department views either result:

1. Implementing temporary rates at then current rates as of October 1, 2023 and increasing temporary rates as of November 1, 2023 (as outlined by the Commission at the January 8, 2023 hearing); or
2. Delaying temporary rate implementation until November 1, 2023 (as suggested by the OCA in its Initial Brief)

is acceptable from a legal and policy standpoint.

Consistent with the Commission’s current practices, this letter is being filed only in electronic form.

Sincerely,

/s/ Molly M. Lynch

Molly M. Lynch, Esq.
Staff Attorney/Hearings Examiner

cc: Service List.

¹ At the hearing Attorney Dexter explained, “There is no . . . provision that says the temporary rates have to be approved the date they ask [for] them. Regulatory processes take time. There was a lot of settlement discussions and things happening in that short period of time, and it so happened that the Commission chose to hold a hearing a month later and set the rates a month later. I think that’s just a fact. I don’t think there’s anything inherently wrong with that.” Transcript p. 20-21.

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