

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Docket No. DG 23-067

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

Request for Change in Distribution Rates

**Motion for an Order *Nisi* Approving Temporary Rates, Effective October 1, 2023**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (“Liberty” or the “Company”), through counsel, respectfully moves the New Hampshire Public Utilities Commission (“Commission”) for an order *nisi* approving an \$8,706,258 temporary rate increase, effective October 1, 2023, subject to modification and reconciliation after the rescheduled October 27, 2023, hearing.

In support of this motion, Liberty states as follows:

1. In Order No. 26,877 (Aug. 25, 2023), the Commission scheduled a September 27, 2023, hearing on temporary rates. The scheduled date was not conditioned on the parties reaching settlement in advance.
2. On September 20, 2023, Liberty timely filed a witness and exhibit list and Exhibit 1, the testimony and schedules supporting its request for temporary rates. The witness list disclosed the three witnesses who would be present at hearing to adopt testimony and provide testimony in support of the Company’s request for temporary rates.

3. Two of Liberty's witnesses traveled from out of state and were in Concord on September 27, 2023, ready to appear at the scheduled hearing, adopt their testimony, and support Liberty's request for temporary rates, whether it was pursuant to a settlement or not.
4. During the days leading up to the September 27 hearing, the parties engaged in lengthy and good-faith negotiations to reach agreement on temporary rates. The parties advised the Commission during the September 21 prehearing conference that they would undertake settlement discussions in the coming days and were optimistic that settlement could be reached in advance of the September 27 hearing (i.e., during the subsequent four business day).<sup>1</sup>
5. Following these negotiations, all parties to this proceeding (the Department of Energy, the Office of the Consumer Advocate, and the Company) filed letters with the Commission confirming that the parties reached settlement late on September 26 that would result in a temporary rate increase of \$8,706,258 effective October 1, 2023. This settlement agreement resolved several complex and contested issues.
6. The Company provided the Commission with the revised model that supports the settlement figure of \$8,706,258, which is marked as Exhibit 2 and would have been adopted and explained by the Company's witnesses at the September 27 hearing.

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<sup>1</sup> Liberty acknowledges the requirement of Puc 203.20(e) that "Settlements and stipulations shall be filed no less than 5 days prior to the hearing, except as provided in (f)." It was known to all parties and the Commission on September 20 that it was unlikely that a settlement on temporary rates would have been filed five days before the September 27 hearing. Understanding the Commission later rejected this approach, the Company planned to invoke Puc 203.02(f) which states: "The commission shall accept late-filed stipulations and settlements when such acceptance: (1) Promotes the orderly and efficient conduct of the proceeding; and (2) Will not impair the rights of any party to the proceeding." Acceptance of the settlement would have eliminated the further process that will now occur, and since all parties supported the settlement no rights would have been impaired.

7. However, while the parties were wrapping up their settlement negotiations late on September 26, the Commission cancelled the September 27 hearing because “the New Hampshire Department of Energy (DOE) has not filed a written position regarding the Company’s temporary rate proposal with the Commission, nor has a settlement agreement been filed for the Commission’s consideration.” September 26, 2023, Procedural Order at 1. The Commission also made clear that temporary rates would not go into effect October 1. *Id.*
8. On September 27 the Commission issued a procedural order denying the request of all three parties to reinstate the hearing to review the settlement based on its determination that “the Commission does not view an acceptance of the DOE-Liberty late-filed settlement hours in advance of hearing as promoting the orderly and efficient conduct of this proceeding, or not impairing the rights of any party to the proceeding.” September 27, 2023, Procedural Order at 2 *citing* Puc 203.20(f).
9. The Company files this motion to respectfully request that the Commission allow for the implementation of the temporary rates that have been agreed to by all parties subject to any adjustment following the October 27 hearing. The Company does not object to the October 27 hearing where the Commission will have the opportunity to review the settlement and make any changes it deems just and reasonable.
10. The Commission’s cancelation of the September 27 hearing has impaired the rights of the Company by denying the Company its opportunity to timely present its temporary rate proposal and collect the revenues contemplated by its proposal and/or the settlement

agreement that has been reached. The parties were not required to file a settlement and Liberty was prepared to present its temporary rate proposal even without settlement.

11. The Company also respectfully requests that the Commission grant this request because the Company should not be harmed because the Commission did not have the benefit of DOE's position statement. September 26, 2023, Procedural Order at 1 (citing the lack of a DOE position statement as the primary basis for canceling the hearing).<sup>2</sup> DOE suffers no harm from the delayed hearing. As detailed below, the Company will suffer substantial harm.
12. By postponing the hearing on temporary rates until October 27, the earliest date on which the Company can begin collecting the approved temporary rate increase is November 1. Assuming the Commission approves the agreed \$8,706,258 temporary rate increase, moving the effective date from October 1 to November 1 will cause Liberty to lose the opportunity to collect approximately \$500,000 in revenues that the parties agreed Liberty should collect. This harm will be compounded when permanent rates are approved and reconciled to the date of temporary rates as the reconciliation will also be calculated on a November 1 versus an October 1 start date. Liberty will thus not collect one month of the difference between temporary and permanent rates that would have accrued over the month of October 2023.
13. The Commission has authority to approve the temporary rate increase by order *nisi*.<sup>3</sup>

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<sup>2</sup> The absence of a settlement agreement alone would not have been grounds to cancel the hearing as it was set to address Liberty's temporary rate request without settlement.

<sup>3</sup> "Nisi" is defined as, "Taking effect at a specified date only if no cause is shown for modification during the interim." The American Heritage Dictionary of the English Language, 5<sup>th</sup> Edition.

14. The temporary rate statute authorizes the Commission to set temporary rates “after reasonable notice and hearing.” RSA 378:27. And the more general statute authorizing rate changes similarly requires a hearing: “Whenever the commission shall be of opinion, after a hearing ... that the maximum rates, fares or charges chargeable by any such public utility are insufficient, the commission shall determine the just and reasonable or lawful rates ....” RSA 378:7.
15. However, the Commission has long employed orders *nisi* as an alternative and acceptable means of approving rate changes without a hearing. The *nisi* process satisfies the statutory hearing requirement because it allows for a hearing after-the-fact if there is an objection to the rate change and a request for a hearing that the Commission determines to be reasonable.
16. In the past year alone the Commission has authorized at least five rate changes without hearings by issuing orders *nisi*. See; Order No. 26,875 (Aug. 21, 2023) (approving a settlement imposing a new charge for Pennichuck Water Works to recover certain capital investments); Order No. 26,859 (July 12, 2023) (approving a change in Northern Utilities’ distribution rates associated with a step increase); Order No. 26,792 (Mar. 29, 2023) (approving a change to Eversource’s line extension rates as consistent with a prior settlement agreement and order); Order No. 26,767 (Jan. 27, 2023) (approving a settlement agreement that provides for new charge for Pennichuck East Utility to recover capital investments that would increase the average residential customer’s monthly bill by \$4.18).
17. The circumstances of this case also warrant approval of the agreed temporary rates effective October 1, 2023. First, Liberty was prepared to go forward with the September

27 hearing, regardless of whether settlement could be reached. Liberty has presented the supporting evidence and its witnesses, two of whom travelled from out-of-state, were in Concord. Second, the parties did reach a settlement and all agreed that a temporary rate increase of \$8,706,258 effective October 1 is just and reasonable. Third, all parties wrote to the Commission indicating their agreement that the best course was to hold the hearing on September 27 as scheduled, which would allow for an October 1 effective date. And fourth, a delayed effective date will cause Liberty substantial and unwarranted financial harm.

18. Alternatively, the Company requests that the Commission establish November 1, 2023, as the effective date for temporary rates and that the November 1, 2023, temporary rates include recovery of the revenues that would have been recovered in October. Allowing recovery of the entire revenue requirement associated with the temporary rate settlement agreement over the period of November 1, 2023, through July 31, 2024, is necessary to ensure that the Company will receive the full benefit of the settlement agreement reached between the parties regarding temporary rates. This is also consistent with the Company's request in its petition for implementation of temporary rates to smooth the transition to permanent rates that the Commission may order in this docket. Absent a mechanism for recovering the full revenue requirement associated with the settlement agreement, the Company will not receive the full benefit of the negotiated settlement agreement thereby undermining the settlement negotiation process.

19. Allowing for recovery of the full revenue requirement over the period of November 1, 2023, through July 31, 2024, is within the Commission's discretion pursuant to RSA 378:7

and RSA 374:4. This is also consistent with prior Commission decisions allowing a truncated recovery period in proceedings where hearings were delayed to allow for a sufficient review period. See Docket DE 22-030, Order No. 26,709 (2022) (allowing a nine month recovery to accommodate Commission review). See also Docket DG 20-105, Order No. 26,654 (2022).

20. Given that the Commission’s role is to fairly balance the interests of the utilities and its customers,<sup>4</sup> this is an instance where that balancing strongly weighs in favor of approving the agreed temporary rates effective October 1 on a *nisi* basis or, in the alternative, allowing the Company to recover the full revenue requirement associated with the settlement agreement (including revenues that would have been collected in October) beginning on November 1. Both approaches proposed by the Company still allow the Commission to investigate the settlement agreement and resulting rates at the October 27, 2023, hearing.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant the Company’s request for an order nisi approving a \$8,706,258 temporary rate increase effective October 1, 2023, subject any modification and reconciliation if the Commission approves a different temporary rate increase after the October 27, 2023, hearing;
- B. In the alternative, grant the Company’s request to recover the full revenue requirement associated with the settlement agreement beginning on November 1, 2023;
- C. Grant such other relief as is just and reasonable and consistent with the public interest.

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<sup>4</sup> “The establishment of ‘just and reasonable’ rates involves a balancing of investor and ratepayer interests.” *Appeal of Richards*, 134 N.H. 148, 169 (1991).

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

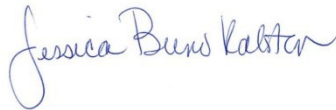
By its Attorneys,



Date: September 28, 2023

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

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Certificate of Service

I hereby certify that on September 28, 2023, a copy of this Motion has been electronically forwarded to the service list.



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Michael J. Sheehan