

**BEFORE THE NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DG 23-067**

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. D/B/A/ LIBERTY**

**Request for Change in Distribution Rates**

**DEPARTMENT OF ENERGY’S MOTION FOR REHEARING OF ORDER NO. 26,899**

The Department of Energy (“DOE” or “Department”) pursuant to RSA 541:3 and Puc 203.07(a) respectfully moves the Public Utilities Commission (“PUC” or “Commission) to grant rehearing of PUC Order No. 26,899, Fixing, Determining, and Prescribing Temporary Rates regarding \$500,000 in recoupment for the month of October 2023. The DOE is participating in this matter pursuant to RSA 12-P:3, III.

In support of this Motion, the Department states as follows:

- I. Background.
  1. On July 27, 2023, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty or the Company) filed a petition to implement new permanent rates effective October 1, 2023, to set temporary rates, and to amend various tariffs.
  2. On July 26, 2023, the Office of Consumer Advocate (OCA) filed a letter of participation.
  3. On August 25, 2023, the PUC issued Order No. 26,877, which in part suspended Liberty’s proposed tariffs for a period not to exceed 12 months and scheduled a hearing on Liberty’s request for temporary rates on September 27, 2023.
  4. On September 26, 2023 the DOE filed a position statement on temporary rates, which explained that the parties (OCA, Liberty, and DOE) agreed that Liberty should increase rates on a temporary basis designed to collect an additional \$8,700,000 in revenue. That same day Liberty filed a Letter of Support of the DOE’s position statement, which clarified that the

temporary rate increase would be \$8,706,258. The OCA also that same day filed a letter to the Commission outlining its support for the Letter filed by the DOE. Recoupment (of the difference between the temporary rate increase and whatever permanent rates are ultimately approved in this matter) was not discussed in any of these filings.

5. The Commission cancelled the September 27, 2023 hearing on temporary rates given the late-filed settlement statement and rescheduled the hearing for October 27, 2023. PUC Procedural Orders dated September 26 and 27, 2023.
6. On September 28, 2023, Liberty filed a Motion for an Order *Nisi* Approving Temporary Rates in the amount of \$8,706,258 for effect October 1, 2023. In its Motion, Liberty argued that it would be harmed by postponing the hearing because the Company could not begin collecting temporary rates until after the October 27, 2023 hearing.

“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.”

Motion p. 4.

7. After raising this \$500,000 potential shortfall, the Company then requested the Commission to “[a]lternatively ... 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.” Motion p. 6 (emphasis added).
8. This became known as Liberty’s alternative request because in the prayers for relief the Company requested “in the alternative . . . to recover the full revenue requirement associated

with the settlement agreement beginning on November 1, 2023.” However, in this prayer, Liberty did not specify any recovery of recoupment for the lost October revenues.

9. The Department did not have an opportunity to respond to Liberty’s September 28<sup>th</sup> Motion for Order *Nisi* for Temporary Rates because the Commission issued its Order on September 29, 2023 denying Liberty’s request for an issuance of an Order *Nisi* approving the temporary rates with an effective date of October 1, 2023. In that Order, in dicta, the PUC stated that Liberty’s alternate relief “is reasonable, insofar as the recovery of the proposed settlement revenue requirement for temporary rates could be effectuated over a slightly shorter recovery period (of ***November 1, 2023 through July 31, 2024***).” Order p. 2 (emphasis added).

However, the PUC did not rule on this approach and stated that it should be “subject to review and hearing.” Order p. 2. The PUC did not address the lost October revenues specifically.

10. On October 19, 2023, the PUC issued a Pre-Hearing Order in this docket regarding several issues including the procedural schedule. The Order did not address temporary rates, except to state that temporary rates would be addressed at the October 27, 2023 hearing.

11. On October 24, 2023, Liberty filed a Status Update to the Commission regarding temporary rate settlement. This Status Update did not address recoupment or Liberty’s alternative request.

12. The Commission held a hearing on October 27, 2023 to consider temporary rates. At the hearing, DOE explained that the PUC did not need to consider recoupment at this time because recoupment was an issue to be reviewed during the permanent rates phase and Liberty and the OCA agreed. Hearing Transcript (October 27, 2023) at pp. 14-15. In fact, both the DOE and OCA emphasized that recoupment could not begin until temporary rates were in effect, “essentially, November 1st.” *Id.* at p. 14; *see also* p. 11.

13. On October 31, 2023, the PUC issued its Order No. 26,899 approving temporary rates in the amount of \$8,706,258 over a *twelve-month period*, which the PUC calculated to be an 8.898 percent increase in Liberty’s revenue requirement. Order p. 1. The PUC rejected the notion that the \$8,706,258 be collected over a nine (9) month period because that would give the company an increase in rates of 10.33 percent. Order pp. 1 and 7.
14. The Commission also approved “the recovery of the temporary test year rate revenue requirement for the month of October, of approximately \$500,000 . . . at the time temporary rates are reconciled to the permanent rates. Thus, at the end of the proceeding, the permanent rates ultimately approved will be reconciled back *to an effective date of the temporary increase, of October 1, 2023.*” Order p. 8. The PUC reasoned that this was appropriate given the Company’s September 28, 2023 Motion in which it explained that it would be harmed by losing the opportunity to collect temporary rates for the month of October. Order p. 8.
15. As discussed above, on page 8 of the Order the PUC directed that the temporary rates should be reconciled back to October 1, 2023. This seems contrary to page 9 of the Order where the PUC says that the temporary rates are effective “November 1, 2023” and “subject to reconciliation pursuant to RSA 378:29.”

## II. Reasons for Rehearing

16. State statute RSA 541:3 provides that within thirty (30) days of “any order or decision” of the Commission, any person directly affected by the decision may seek rehearing of the order or decision. The Commission “may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.” *Id.* Good reason may be shown by identifying new evidence that could not have been presented in the underlying proceeding or by identifying

specific matters that were overlooked or mistakenly conceived by the deciding tribunal.<sup>1</sup> A successful motion for rehearing does not merely reassert prior arguments and request a different outcome.<sup>2</sup> The law requires a motion for hearing to “set forth fully every ground upon which it is claimed that the decision or order complained of is unlawful or unreasonable.”

17. Several aspects of Order No. 26,899 provide good reason for rehearing. The parties did not have adequate notice as required by the Administrative Procedures Act (APA) that the PUC would be addressing recoupment at the October 27, 2023 hearing and subsequent order. Furthermore, at the hearing, the parties stated that recoupment did not need to be addressed and the OCA and the DOE specifically stated that recoupment could only begin when temporary rates went into effect. Hearing Transcript (October 27, 2023) at pp. 14-15. Rehearing is also appropriate because Order No. 26,899 is contrary to RSA 378:29, which only allows recoupment for the period when the temporary rates were in effect.

A. The \$500,000 Recoupment for the month of October violates the Administrative Procedures Act (APA).

18. The Department had no notice that recoupment was at issue at the October 27, 2023 hearing in violation of the APA. RSA 541-A:31, III(c) and (d). The PUC’s procedural orders issued on September 26, 27, and 29, 2023 made no reference to the recoupment statute nor did they alert the parties that the lost October revenues would be addressed. The procedural order issued on September 29<sup>th</sup> only stated that “subject to review and hearing, the approach delineated by Liberty as an *alternative* form of relief requested in its Motion is reasonable, insofar as the

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<sup>1</sup> *Public Service Company of New Hampshire*, Order No. 25,239 at p. 4-5 (June 23, 2011).

<sup>2</sup> *Id.* at 5.

recovery . . . could be effectuated over a slightly shorter recovery period (of November 1, 2023 through July 31, 2024).” Order p. 2. The Order did not indicate that the Commission would address recoupment or adjudicate Liberty’s claim that it would lose approximately \$500,000 in revenues if the rates were effective November 1 rather than October 1, 2023. Motion for Order *Nisi* p. 4 (September 28, 2023). Also, the DOE, OCA, and Liberty all stated in so many words that recoupment was not at issue and that recoupment would be appropriately dealt with as part of the permanent rate phase of the docket. Hearing Transcript (October 27, 2023) at pp. 14-15.

19. The APA requires that notice of a contested hearing<sup>3</sup> include “[a] reference to the particular sections of the statutes and rules involved” and “[a] short and plain statement of the issues involved.” RSA 541-A:31, III(c) and (d). The procedural orders issued on September 26, 27, September 29, and October 19, 2023 do not reference that recoupment would be addressed. Neither do they reference RSA 378:29, which sets out the method for calculating the recoupment amount.

B. Allowing Recovery of the \$500,000 Recoupment for the Month of October, 2023 Contradicts RSA 378:29.

20. Order No. 26,899 (October 31, 2023) is contrary to RSA 378:29, which states:

“If, upon final disposition of the issues involved in such proceeding, the rates as finally determined are in excess of the rates prescribed in such temporary order, then such public utility shall be permitted to amortize and recover, by means of a temporary increase over and above the rates finally determined, such sum as shall represent the difference between the gross income obtained from the rates prescribed in such temporary order and the gross income which would have been obtained under the rates finally determined if applied during the period such temporary order was in effect.”

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<sup>3</sup> The Administrative Procedures Act defines contested case as “a proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after notice and an opportunity for hearing.” RSA 541-A:1, IV.

21. As explained by the New Hampshire Supreme Court, “If the final rates are in excess of the temporary rates, the utility can recoup by a temporary increase in rates over the rates finally determined . . . .” *Pennichuck Water Works v. State*, 103 N.H. 49, 51 (1960).
22. The statute provides that recoupment can only occur during the period temporary rates are in effect, in this case, after November 1, 2023. Yet, at p. 9 of the Order, the Commission states, “[T]he permanent rates ultimately approved will be reconciled back to an effective date of the temporary increase, of October 1, 2023.” This contradicts RSA 378:29 because recoupment cannot begin in October as the temporary rates were not effective until November 1, 2023. Order No 26,899 at p. 9.
23. State statute RSA 378:29 specifies how the recoupment amount is to be recovered. The statute allows the utility to calculate the “gross income which would have been obtained” from the permanent rates, as applied to the period when the temporary rates were in effect and compare that to what was actually recovered under the temporary rates while they were in effect, and to recoup the difference. There is no authority to add an extra \$500,000 from a period prior to when the temporary rates were effective to that amount.

**WHEREFORE**, the Department respectfully requests that the Commission 1) grant rehearing to reconsider the PUC’s Order No. 26,899 dated October 31, 2023 regarding the additional \$500,000 recoupment amount which relates to a period prior to the effectiveness of the approved temporary rates, and recovery of which would contradict the recoupment calculation prescribed in RSA 378:29; and 2) defer the decision on recoupment to the permanent rate phase of this proceeding.

Respectfully submitted,

New Hampshire Department of Energy

By its Attorney,

*/s/ Molly M. Lynch*

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Date: November 30, 2023