

STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

Docket DG 23-067

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

Request for Change in Distribution Rates

Motion for Stay of Proceeding

Pursuant to N.H. Code Admin. Rules Puc 203.07, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (“Liberty” or the “Company”) hereby moves the New Hampshire Public Utilities Commission (“Commission”) to stay this proceeding until April 12 or such other date as determined by the Commission. As detailed below, the Company is proposing to stay the proceeding to allow the Company time to file an expert consulting report in response to certain issues raised by the Department of Energy’s (“DOE”) Audit Division with respect to the Company’s accounting records for the 2022 test year relied on in this proceeding. The Company has met with the DOE regarding the proposal to stay this proceeding and file a third-party report. DOE has not taken any position regarding these proposals but indicated that it will review and respond to this Motion.

The Company has engaged PwC¹ to perform a review that will assess the overall reliability of the data used for the Company’s filing in this proceeding and the Company’s basis for asserting

¹ The Company is aware that there are concerns with the Company retaining the third-party consultant that were raised during the hearings in its affiliate’s rate proceeding (Docket DE 23-039) regarding a DOE motion to dismiss (Docket DE 23-039, 2024 Jan. 23 Tr. at 130). However, as the Company’s affiliate explained during those hearings (and was confirmed by the Department of Energy) there are timing constraints that preclude retention of a third-party by the DOE (*id.* at 101). It is true that the Company has worked with PwC on other matters; however, this should not serve as a basis for concluding that PwC cannot perform an independent review. Sean Riley, a Partner at PwC, will be personally signing the expert consulting report. Mr. Riley is a Certified Public Accountant and therefore

such data is reliable. PwC has indicated that this review could be completed by April 1, 2024. Accordingly, the Company will submit the resulting expert consulting report on or about April 5, 2024. Following filing of the expert consulting report, the Company will make PwC available for questions from the Commission and/or parties to this proceeding.

As detailed below, there is good reason to allow a stay and filing of the PwC expert consulting report to aid the Commission's consideration of the issues raised by the DOE Audit Division. In addition to aiding the Commission's consideration of the Audit Division's final report issued on January 30, 2024 (the "Audit Report"), the expert consulting report is expected to narrow the issues for settlement or hearing in this matter.

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

1. On July 27, 2023, Liberty filed its petition requesting a change in distribution rates (the "Petition") together with supporting testimony and attachments. The Company's Petition included a request to implement temporary rates effective October 1, 2023. On August 25, 2023, the Commission issued Order No. 26,877 suspending the Company's proposed tariffs for a period not to exceed 12 months and scheduling a hearing on Liberty's request for temporary rates for September 27, 2023. The Commission issued a procedural order on September 27, 2023 rescheduling the hearing on temporary rates to October 27, 2023.
2. On October 19, 2023, the Commission issued a Prehearing Order that included a procedural schedule for this docket based on the joint procedural schedule submitted to the Commission on September 28, 2023 by Liberty, DOE and the Office of the

is subject to professional and ethical standards (e.g., the Association of International Certified Professional Accountants Code of Professional Conduct).

Consumer Advocate (“OCA”). In accordance with the procedural schedule, the parties to this proceeding have engaged in a robust discovery process including the responses to data requests and participation in technical sessions. As of the date of this Motion, the next procedural milestone is the filing of DOE and OCA testimony on February 21, 2024.

3. On October 31, 2023, the Commission issued Order No. 26,899 determining temporary rates for effect November 1, 2023.
4. The DOE filed a Motion for Rehearing with respect to Order No. 26,899 determining temporary rates on November 30, 2023. The Company objected to the DOE’s Motion for Rehearing on December 7, 2023. The Commission issued Order No. 26,923 granting rehearing on December 29, 2023.² The Commission’s Order No. 26,923 scheduled a hearing for January 8, 2024 to further develop the record and hear from the parties with respect to the issues raised in DOE’s Motion for Rehearing and Liberty’s objection to same. The Commission’s Order No. 26,923 further noted that “larger issues surrounding the Company’s rate proceeding are potentially in play, in light of recent developments involving the Company’s electric utility affiliates’ distribution rate case, considered by the Commission in Docket No. DE 23-039. . . . This has led to concerns by the Commission that there are similar potential issues relation to this proceeding” Order No. 26,923, at 3.
5. At the January 8, 2024 hearing, the Commission asked the parties to comment, as part of their position statements, on the “implication of the DOE’s Audit Report for the

² At the January 8, 2024 hearing the OCA requested and the Commission agreed to receive legal briefs regarding the rate effective date for temporary rates. Reply briefs were submitted to the Commission on January 30, 2024. A final determination on this issue remains pending.

- Granite State Electric affiliate, and associated pleadings”³ to this proceeding (2024 Jan. 8 Tr. at 5). In response to this request, the DOE represented that it expected to file a motion to dismiss this proceeding that would be similar to the motion to dismiss filed in Docket DE 23-039⁴ (*id.* at 10).
6. Simultaneously with this regulatory proceeding, the DOE Audit Division conducted an investigation that resulted in a final audit report. The final audit report was issued on January 30, 2024 (*i.e.*, after the January 8, 2024 hearing) (the “Audit Report”).
 7. The Audit Report includes an audit issue 1 that is substantially similar to audit issue 1 from the final audit report issued in Docket DE 23-039. Audit issue 1 from the final audit report issued in Docket No. DE 23-039 was a focus of the Department of Energy’s motion to dismiss the rate filing in Docket No. DE 23-039. Accordingly, the Company expects that the DOE will (consistent with its representations at the January 8, 2024 hearing) file a motion to dismiss this proceeding.
 8. The Commission held two days of hearings on the DOE’s motion to dismiss filed in Docket DE 23-039. Based on the issues raised by the parties and Commission in those hearings, the Company has determined that a third-party review of its 2022 test year data prior to the filing of any intervenor testimony would result in a more efficient

³ The DOE filed a Motion to Dismiss the Rate Filing of the Company’s electric affiliate Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty in Docket No. DE 23-039. At the same time that the DOE filed its motion to dismiss in that proceeding it also filed a motion to stay Docket No. DE 23-039 that was granted by the Commission. The stay of Docket No. DE 23-039 was recently extended through February 16, 2024. Docket No. DE 23-039 January 24, 2024 Procedural Order. The Company’s affiliate is filing a motion to extend such stay to allow for the filing of an expert consulting report in Docket DE 23-039; *i.e.*, the Company’s affiliate is making a similar proposal to the proposal set forth in this motion. The Company’s affiliate submitted its rate filing to the Commission on May 5, 2023 versus the Company’s July 27, 2023 rate filing in this proceeding. Accordingly, PwC will complete its review of the Company’s affiliate first and therefore the stay in Docket DE 23-039 is proposed to end prior to the expiration of the stay proposed in this proceeding.

⁴ The OCA noted that it does not have an audit division and therefore would be “taking great interest” in the findings of the DOE Audit Division (2024 Jan. 8 Tr. at 13). The OCA has supported the DOE’s motion to dismiss the rate filing of the Company’s affiliate in Docket No. DE 23-039.

- proceeding. Accordingly, the Company is requesting to stay this proceeding before the filing of any intervenor testimony to avoid the expenditure of additional resources by intervenors until such time as the third-party review is available.
9. Specifically, during the January 23, 2024 hearing in DE 23-039, the Commission noted that it faces a difficult task based on the vastly different positions of the DOE and the Company's affiliate in that proceeding (see Docket DE 23-039, 2024 Jan. 23 Tr. at 267-268).⁵ The Company understands this concern and recognizes the difficult task that is before the Commission in light of the parties' opposing views. Should the DOE file a motion to dismiss in this proceeding, the Company anticipates that the Commission will be faced with a similarly difficult task that would be assisted by an independent review of the Company's financial data.
10. Accordingly, to assist the Commission's decision making and respond to issues raised by the Audit Report, the Company has retained PwC⁶ to perform the following tasks: (a) assess the overall reliability of the data used to support the Company's rate filing and the Company's basis for asserting that such data is reliable; (b) examine the reconciliations between (i) the Company's 2022 general ledger; (ii) the Company's annual report; and (iii) the Company's revenue requirement schedules submitted in this proceeding, inclusive of adjustments identified during this proceeding. The objective

⁵ The OCA supports the motion to dismiss filed in Docket No. DE 23-039; the OCA filed a response to the motion to dismiss on December 26, 2023 and confirmed its support for dismissal of the proceeding during the January 4 and January 23, 2024 hearings in Docket DE 23-039. The basis for the OCA's position is the DOE's Audit Division's investigation including its final audit report.

⁶ During the course of the hearings on the motion to dismiss in Docket No. DE 23-039, the DOE and OCA rejected the Company's affiliate's proposal to retain a third-party and therefore the Company does not anticipate engagement from these parties as part of the third-party review process that would benefit from waiting for a determination on the motion to dismiss in Docket No. DE 23-039. The Company has, however, continued to perform outreach to DOE in order to keep DOE apprised of the actions it is undertaking.

of this review will be to determine whether the Company's 2022 test year financial data can be relied on for purposes of setting rates. At the conclusion of PwC's review, PwC will issue an expert consulting report that will be filed with the Commission.

11. An expert consulting report is subject to a set of guidelines that govern how the investigation is conducted and how the report is prepared. These guidelines will allow PwC to provide testimony to the Commission in response to questions from the Commission and other parties (e.g., DOE and OCA).
12. Following receipt of the PwC expert consulting report, the Company requests that the Commission set a procedural schedule for the remainder of this proceeding.
13. As noted above, the next procedural milestone is the filing of testimony by the DOE and OCA. If the Company's request to stay the proceeding is granted, the Company requests that such stay commence immediately. Staying the proceeding immediately will allow parties to have the benefit of the expert consulting report prior to the filing of any testimony. The Company expects that this will narrow the issues presented in such testimony.
14. Further, if the parties determine that issuing additional discovery would assist with their review of the expert consulting report from PwC, the Company proposes that such an opportunity be included in the procedural schedule issued following stay of the proceeding. For example, if the proceeding resumes on April 15 following the Commission's receipt of the expert consulting report the schedule could move forward as follows:⁷

- a. April 5, 2024: PwC Expert Consulting Report filing;

⁷ This proposed procedural schedule is provided for illustrative purposes. If this Motion is granted, the Company will work with parties to develop a formal proposal to be submitted to the Commission prior to expiration of the stay period.

- b. April 12, 2024: expiration of the stay of the proceeding;
- c. April 19, 2024: Deadline to issue discovery to the Company regarding PwC Report;
- d. May 3, 2024: Deadline for Company to respond to data requests;
- e. May 31, 2024: Deadline for DOE and OCA testimony
- f. June 11, 2024: Deadline for Company to issue data requests to DOE, OCA
- g. June 25, 2024: Deadline for DOE, OCA to respond to data requests;
- h. Week of July 8, 2024: settlement discussions/technical sessions and/or hearing regarding the PwC expert consulting report;
- i. July 15, 2024: Liberty rebuttal testimony and updated revenue requirement;⁸
- j. Week of July 15, 2024: Commission status conference to provide update on status of settlement discussions and determine dates for hearing.⁹

15. Due to the timing of the motion to dismiss filed in Docket DE 23-039 (on the same date that intervenor testimony was due), the parties to that proceeding had already expended significant efforts that could be rendered moot if the motion to dismiss is granted. The Company's proposal to stay this proceeding prior to the filing of testimony by DOE and OCA seeks to avoid such a result while simultaneously addressing the underlying concerns that have been raised regarding the Company's 2022 test year financial data.

16. The Company's proposal to stay this proceeding for approximately ten weeks will directly address the issues raised in the Audit Report regarding the Company's test year financial data and allow the proceeding to move forward with the benefit of an independent, third-party review that could narrow the issues for settlement and/or litigation during hearings.

17. Based on the foregoing, the Company respectfully requests to stay this proceeding until April 12, 2024 to allow the Company to submit the expert consulting report from PwC.

⁸ The Company's updated revenue requirement would include all adjustments identified during the course of this proceeding (through the discovery and audit process or independently by the Company) and any further adjustments identified during the third-party review by PwC (if any are identified).

⁹ Hearings in this proceeding were originally scheduled to commence on May 14, 2024 and conclude by June 12, 2024. Prior to the prehearing conference the Company would work with the other parties to propose new hearing dates for the Commission's consideration.

The Company confirms that engagement of PwC is an expense that will be borne by the Company (not ratepayers) and that the Company will forego recoupment during this stay period.

18. As noted above, the Company has met with the DOE regarding the proposal to stay this proceeding and file a third-party report. DOE has not taken any position regarding these proposals but indicated that it will review and respond to this Motion.

WHEREFORE, Liberty respectfully requests that this Commission:

- A. Grant, Liberty's Motion;
- B. Stay this proceeding until April 12, 2024 to allow the Company to file an expert consulting report; and
- C. Grant such further relief as it deems appropriate.

Respectfully submitted,

Liberty Utilities (Granite State Electric)
Corp., d/b/a Liberty

By its Attorneys,



Date: February 5, 2024

By: _____
Michael J. Sheehan, Esq. #6590
114 North Main Street
Concord, NH 03301
(603) 425-8085
Michael.Sheehan@libertyutilites.com

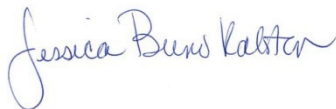


By: _____
Jessica Buno Ralston, Esq.
Keegan Werlin LLP
99 High Street, Suite 2900

Boston, MA 02110
(617) 951-1400
jralston@keeganwerlin.com

Certificate of Service

I hereby certify that on February 5, 2024, a copy of this Motion to Stay Proceeding has been forwarded to the service list for docket DG 23-067.

A handwritten signature in blue ink that reads "Jessica Buno Ralston". The signature is written in a cursive style with a large initial 'J'.

Jessica Buno Ralston