

**BEFORE THE NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 23-067

**Liberty Utilities (ENERGYNORTH NATRUAL GAS) CORP. D/B/A LIBERTY
Request for Change in Distribution Rates**

**New Hampshire Department of Energy Partial Objection and Partial Assent
to Liberty Utilities Motion for Stay of Proceeding**

The New Hampshire Department of Energy (“Department” or “DOE”) hereby provides its Partial Assent and Partial Objection (“Partial Objection and Assent”) to the Motion for Stay of Proceeding filed by Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (“Liberty Gas” or “Company”). *See* RSA 541-A:30. The Department respectfully requests that the Public Utilities Commission (“Commission”) stay this proceeding on an expedited basis until the Commission rules on the DOE’s Motion to Dismiss pending in DE 23-039, Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (“Liberty Electric”), Request for Change in Distribution Rates, and the forthcoming DOE Motion to Dismiss the Request for Change in Distribution Rates in this docket, to prevent the Commission and the parties from needlessly expending further, costly time and resources.

In support of this Partial Objection and Assent, the Department states as follows:

I. Procedural History (including Liberty’s Electric Rate Case in part)

1. On March 29, 2023, Liberty Electric filed a notice with the Commission to seek a multi-year revenue increase based on a test year ending December 31, 2022. The following day the Commission acknowledged and docketed the filing as DE 23-039 (“Electric Rate Case”).

2. Approximately three months later, on June 26, 2023, Liberty Gas filed a notice with the Commission seeking an overall increase in annual distribution revenue of approximately \$29

million also based on a test year ending December 31, 2022. The next day the Commission acknowledged and docketed the filing as DG 23-067.

3. On September 28, 2023, the parties to this docket (DG 23-067) filed an assented-to proposed procedural schedule to govern this proceeding.¹
4. On October 19, 2023 the Commission approved the parties' proposed schedule with slight modifications in a Procedural Order.²
5. During the course of the Electric Rate Case, the Department identified significant accounting issues with the rate filing and the supporting financial information, and on December 13, 2023, the DOE filed a Motion to Dismiss relying in large part on the Audit Report prepared by the DOE's Audit Division ("Final Electric Audit Report"). In its Motion to Dismiss the Electric Rate Case, the Department argued that the 2022 (test year) financial information (revenues, expenses, and plant in service) on which the rate filing was based could not be reasonably relied upon primarily due to issues arising from Liberty implementing a new accounting and billing system during the test year.³ The Department argued that Liberty Electric had not met and could not meet its burden to prove that any proposed rates were just and reasonable. That same day, the Department also filed a Motion to Stay the Electric Rate Case in order to conserve resources while the Commission considered the Motion to Dismiss.

¹ Docket No. DE 23-067, Tab 23.

² Docket No. DE 23-067, Tab 28.

³ Liberty Gas also implemented this new accounting and billing system during its test year and as discussed below, the Department has analogous concerns about the reliability of the financial information used by Liberty in the Gas Rate Case.

6. On December 26, 2023, Liberty Electric objected to the DOE's Motion to Dismiss in the Electric Rate Case.
7. On December 29, 2023, the Commission issued Order No. 26,924 granting the Department's Motion to Stay in the Electric Rate Case until January 31, 2024.
8. On January 4 and 23, 2024, the Commission held hearings on the Department's Motion to Dismiss.
9. On January 30, 2024, the DOE Audit Division completed its Final Audit Report for Liberty Gas in this docket ("Final Gas Audit Report") and like in the Electric Rate Case, the Final Gas Audit Report detailed numerous instances where the financial records for the 2022 test year appear unreliable and not suitable for setting rates. Audit Issue 1 of the Final Gas Audit Report is provided as Attachment 1 to this Partial Objection and Assent. Audit Issue 1 of the Final Gas Audit Report shows approximately 25 accounts where the balances in the Company's rate filing vary significantly (more than \$50,000) from the balances shown in the Company's F-16 Annual Report, which is filed pursuant to Puc 509.04. The forthcoming DOE Motion to Dismiss will explain this concern in detail as well as other discrepancies in the Liberty Gas Rate filing. In particular, the Department believes that an Information Technology Audit is required due to the implementation of the new accounting and billing system.
10. On February 5, 2024, Liberty Electric filed a Motion to Extend Stay in the Electric Rate Case until March 15, 2024, to allow for additional time to submit an expert consulting report in response to issues raised by the DOE's Motion to Dismiss the Electric Rate Case.

11. Similarly, on February 5, 2024, Liberty Gas also filed a Motion for Stay of this docket to April 12, 2024, to allow the Company time to file an expert consulting report in response to issues highlighted in the Final Gas Audit Report.
12. On February 6, 2024, in the Electric Rate Case, the Commission *sua sponte* further extended the stay until February 29, 2024.
13. Pursuant to the procedural schedule approved by the Commission, the DOE's and Office of Consumer Advocate's testimony is due February 21, 2024.
14. The Department plans to file a Motion to Dismiss in the Liberty Gas case during the week of February 12, 2024, based in a large part on the findings in the Final Gas Audit Report.

II. Position of the Department

15. The Department assents to Liberty Gas's request for a stay of this proceeding, but not for the reasons the Company asks the Commission to adopt and rely upon. Rather, the Department believes this rate case should be dismissed. The Department supports a stay on an expedited basis until the Commission rules on the Motion to Dismiss in the Electric Rate Case and the Department's forthcoming Motion to Dismiss in DG 23-067. The DOE's testimony is due in less than two weeks and significant, rate-payer-funded resources are being, and will continue to be, dedicated to meeting that deadline if this case is not stayed. To allow a proceeding to continue when the underlying data and information basis of the case are in significant question would require the Department and other parties to continue to expend resources and engage in efforts that may be rendered wasteful. If the Commission grants the Department's forthcoming Motion to

Dismiss the Gas Rate Case, then resources expended between this date and such dismissal, such as preparing testimony, would be rendered fruitless and avoidable.

16. Even if the Commission denies the Department's Motion to Dismiss the Gas Rate Case, and the Company prepares an expert consulting report, and presumably revises its rate filing, that may render significant portions of the DOE's testimony moot.

17. Pursuant to RSA 541-A:31 and N.H. Code of Admin. R. Puc 203.13 and 203.15, the Commission has authority to direct the timing and process of an adjudicatory proceeding. That authority includes the power to stay or suspend activity in an adjudication when doing so would promote the efficient resolution of issues before the Commission. *Residents of Colonial Drive, Moultonborough, Order No. 26,841 at 7 (June 8, 2023)*. Granting the Company's Motion for a Stay, for the reasons suggested by the Department, will promote efficiency, because if the DOE's Motion to Dismiss the Electric Rate Case and prospective Motion to Dismiss the Gas Rate Case are granted, the stay will have avoided the expenditure of resources.

18. The Department also requests that the Commission waive the 10-day filing deadline under Puc 203.07(e), for filing objections to a motion, and issue a decision on Liberty Gas's Motion to Stay, as modified by the Department's Partial Objection and Assent, as soon as is practicable. A waiver of the 10-day deadline for objections would serve the public interest pursuant to Puc 201.05(a)(1) and (b) and would not disrupt the orderly and efficient resolution of the proceedings, pursuant to Puc 201.05(a)(2). Granting Liberty's Motion to Stay would prevent the inefficient expenditure of time and resources by the Department and the other parties, while the Commission considers the Department's Motions to Dismiss in DG 23-067 and DE 23-039.

WHEREFORE, the Department respectfully requests that the Commission:

1) Stay this proceeding until the Commission rules on the Department's pending Motion to Dismiss in the Electric Rate Case and the Department's forthcoming Motion to Dismiss in this Liberty Gas Rate Case; and

2) Waive the 10-day deadline for objections under Puc 203.07(e) and rule on this Liberty's Motion for Stay as soon as is practicable; and

2) Grant such other relief as is just and required.

Respectfully submitted,

New Hampshire Department of Energy

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Date: February 12, 2024