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

New Hampshire Department of Energy
Motion to Dismiss Rate Proceeding

Pursuant to New Hampshire Code Admin. Rule Puc 203.07, the New Hampshire Department of Energy ("Department" or "DOE") hereby moves the Public Utilities Commission ("Commission") to dismiss the July 27, 2023 Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty ("Liberty" or "Company") Request for Change in Distribution Rates ("Rate Filing"), on the grounds that the 2022 (test year) financial information (revenues, expenses, and plant in service) on which the rate filing is based cannot be reasonably relied on and therefore Liberty has not met and cannot meet its burden to prove that its proposed rates are just and reasonable.

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

I. Introduction

1. On July 27, 2023, Liberty petitioned the Commission pursuant to RSA 378:27 and RSA 378:28 to fix, determine, and prescribe (1) an increase in permanent rates to be effective with service rendered on and after October 1, 2023, (2) temporary rates to be effective on and after October 1, 2023, pending the Commission's final determination on the Company's request for a permanent rate increase, and (3) three step adjustments proposed for effect on August 1, 2024; August 1, 2025; and August 1, 2026.

2. In Order No. 26,877, the Commission suspended Liberty's proposed rates pending investigation. The Commission included as issues presented in the filing, among others, "whether the ratemaking methodologies proposed by Liberty are accurate, internally consistent, and consistent with all relevant law, regulations, and Commission orders; and, whether the burden of proof under RSA 378:8 is met for each rate and ratemaking methodology change proposed …."

3. The Department is participating in this matter pursuant to RSA 12-P:3, III.[1] The Department has undertaken a significant investigation of Liberty's Rate Filing as well as its books and records on file with the Commission. The Department's review spanned over six (6) months and included an audit by the Department's Audit Division ("Audit"), review of written testimony, participation in technical session(s) with Liberty and the Office of the Consumer Advocate ("OCA"), drafting seven (7) sets of discovery requests, and reviewing numerous responses to Department and OCA issued discovery requests.

II. <u>Standard of Review for Motions to Dismiss</u>

4. In ruling on a motion to dismiss, the Commission accepts as true all factual assertions contained in the petition, supporting pleadings, and testimony to determine whether those facts, and all reasonable inferences therefrom, could support the relief requested. *Eversource Energy*, Order No. 26,534 at 7 (October 22, 2021). In addition, the Commission will construe all inferences in the light most favorable to the Petitioners. *PNE Energy Supply, LLC*, Order No. 25,881 at 3 (April 8, 2016). The Commission engages "in a threshold inquiry that tests

[1] The OCA is also a party in this proceeding.

the facts in the complaint against the applicable law." *Eversource Energy,* Order No. 26,534 at 7.

5. For the reasons outlined and explained further below, even if all factual assertions in this Rate Filing are taken as true, the unreliability and inconsistency presented throughout Liberty's filings, and the inferences to be drawn from this unreliability, do not support Liberty's requested rate relief.

III. Test Year Data is Critical in Setting Rates

6. The Commission sets rates based on a historical test year adjusted for known and measurable changes. It is Liberty's burden to establish the accuracy of its test year data. Absent correct, reliable, and verified test year data, the Department is unable to make a rate recommendation, and the Commission is unable to determine whether the proposed permanent rates are just and reasonable, as required under RSA 378:7.

7. Other states likewise stress the importance of accurate test year data. "The task of a commission is to base future rates upon known past and present conditions through the use of data generated during a specific test period." *Michaelson v. New England Tel. & Tel. Co.*, 121 R.I. 722, 734 (R.I. 1979) (quoting *Narragansett Electric Co. v. Harsch*, 368 A.2d 1194, 1206 (R.I. 1977)). "The objective of test year figures is to reflect typical conditions." *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n*, 178 Pa. Super. 46, 66, (Pa. Super. Ct. 1955). "The accuracy of the test year must be established by the utility." *Mississippi Public Service Com. v. Mississippi Power Co.*, 429 So. 2d 883, 901 (Miss. 1983).

IV. Liberty's F-16 Annual Report

8. Form F-16 Annual Report for Gas Utilities, Licensees and Others ("F-16 Annual Report") is an annual report required by Puc 509.04. The F-16 Annual Report contains detailed accounting results for (in this instance) the calendar year ending December 31, 2022, including revenues, operation and maintenance expenses, depreciation, plant assets, liabilities, and debt and equity levels, all of which form the foundation for a utility's rate increase request.

9. Liberty filed its F-16 Annual Report for 2022 on May 31, 2023. As discussed in detail below, during the course of an audit performed by the Department, Liberty provided Audit with several corrected pages to amend its filed F-16 Annual Report. These corrections were not filed with the Commission to the knowledge and belief of the Department.

10. The Department can use the information in the F-16 Annual Report to monitor a utility's financial situation between rate cases, including whether a utility is earning its allowed rate of return. As part of its standard review of a rate filing, the Department verifies that the test year information contained in a rate request filing agrees with levels reported in the F-16 Annual Report, as well as with the utility's general ledger, income statement, and balance sheet – collectively referred to herein as the Company's books and records, or books. Further, to satisfy Puc 1604.01(a)(19) (PUC Full Rate Case Filing Requirements), in its Rate Filing, Liberty referenced its 2022 F-16 Annual Report in lieu of providing certain required financial information. Thus, the information contained in the F-16 Annual Report is essential to the

Department's review of the Rate Filing.

11. RSA 378:27, which concerns requests for temporary rates, states that "temporary rates shall be sufficient to yield not less than a reasonable return on the cost of the property of the utility used and useful in the public service less accrued depreciation, as shown by the reports of the utility filed with the commission and the department of energy . . . ." The F-16 Annual Report is one such report and given the short review period available for temporary rates, is generally presumed accurate for use in setting temporary rates.

12. RSA 378:28, which concerns permanent rate requests, states "[s]o far as possible, the provisions of RSA 378:27 shall be applied by the commission in fixing and determining permanent rates, as well as temporary rates." Thus, the Department cannot adequately review whether Liberty's proposed permanent rates reflect a reasonable return on net plant without an accurate F-16 Annual Report for the test year ending December 31, 2022.

13. Liberty implemented a new customer accounting and billing system (referred to by Liberty as "SAP") in October 2022, *i.e.,* during the test year in this case. *Direct Testimony of Lauren A. Preston*, pp. 8-9 of 23 (July 27, 2023 Liberty Rate Filing). As detailed further below, the information Liberty provided in this case demonstrates that the SAP implementation during the test year has rendered the information contained in its books and records unreliable for use in evaluating the proposed rates.

V. The DOE Audit Report Highlights Many Significant Discrepancies Between Liberty's Books and Records, F-16 Annual Report and Rate Filing.

14. The Department's Audit Division completed an audit of the Company's Rate Filing and underlying books and records. Typically, an audit involves verifying the financial information in the rate filing to the Company's books and records and its F-16 Annual Report. Since the source of the information contained in the Rate Filing and Liberty's 2022 F-16 Annual Report is the Company's general ledger, all three pieces of information should match.

15. The Audit Division issued a Final Audit Report dated January 30, 2024 (Audit Report), which is attached to this Motion as Attachment 1. The Audit Report contains many indications that Liberty's test year books and records do not form a reliable basis for setting just and reasonable rates in this case.

16. The Audit Report at p. 7 describes numerous corrections Liberty made to its filed 2022 F-16 Annual Report, as a result of four written audit inquiries resulting from Audit's annual review of the F-16 Annual Report. Significant accounts such as plant in service, construction work in progress, operating revenues, and general and administrative charges were all impacted by the various revisions. Audit based its work on these revised F-16 Annual Report pages. However, the Department believes these revised pages were not filed with the Commission. The Department finds only one version of the F-16 Annual Report filed in the Commission's e-filing library and on the Commission's website. This version was filed May 31, 2023. As a result, it may be difficult for the Commission and parties to follow the Audit Report and the F-16 Annual Report. For example, the e-filed F-16 Annual Report shows a balance in account 920 - A&G Salaries of $17,422,083 whereas the Audit Report at p. 196, shows that account

balance as $15,957,477 - a significant difference.[2]

17. Audit Issue #1 describes a fundamental problem with Liberty's Rate Filing; *i.e.*, neither the Company's F-16 Annual Report nor the schedules in Liberty's Rate Filing match the Company's books and records. The Audit Report states:

> "Audit noted that coding issues, which Liberty identified when compiling the F-16 annual report and rate filing resulted in accounts and/or transactions that appeared in one account in SAP [general ledger], but were reflected in another account or not included in the revenue requirement schedules. Audit requested clarification of when the reclassifications and/or 'mapping issues' were corrected, and was told that the corrections were not reflected in the SAP [general ledger] system in 2022. Rather, '*throughout 2023, as these* [issues] *have been identified, we are correcting those through manual journal entries or updating the treatment of WBS in the system, as applicable*.'
>
> As a result, the 2022 F-16 and rate filing revenue requirement schedules do not actually agree with the general ledger <u>accounts</u> at the end of the test year, without the addition to or removal of the numerous 'adjustments' which did not take place during the test year, or at the year-end closing of the financial records."
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> Audit Report at p. 194.

18. In other words, Liberty understood that its F-16 Annual Report for 2022 did not match its books and records at the end of the test year 2022, and Liberty did not attempt to align the two. When Audit asked Liberty about the various discrepancies it found between the Company's books and the 2022 F-16 Annual Report, Liberty provided a list of the adjusting entries it had made when compiling the F-16 Annual Report.[3] Liberty essentially produced and presented

[2] In Liberty's SAP general ledger, that balance is $15,957,477, but in the Rate Filing (Attachment TJC/CDC-1, Schedule RR-EN-2-1 or Bates p. II-080) that balance is reported as $1,706,504 – a staggering difference, and this is only one of dozens of differences between the F-16 Annual Report and the Rate Filing. *See* Audit Report at p. 196 and compare the two far right columns, and the further discussion of Audit Issue #1.

[3] See Audit Issues #21 and # 23 for additional instances of mapping issues related to the transition from Great Plains legacy system to SAP. Audit Report at pp. 232 and 235.

three sets of test year financial records that do not match each other: the books and records – including the general ledger, the F-16 Annual Report, and the Rate Filing schedules.

19. Further, in comparing the F-16 Annual Report and Liberty's Rate Case filing, Audit found that approximately 25 accounts had significant (greater than $50,000) discrepancies in the year end 2022 balances, including many discrepancies greater than $500,000. *See* Audit Report at p. 196. Several examples are summarized below:

    a. Account 874 Mains Services Expenses - Liberty's F-16 balance was $4,268,786 while the Rate Filing Schedule RR-EN-2-1 is $4,922,998;

    b. Account 887, Maintenance of Mains - Liberty's F-16 balance was $1,641,220 while the Rate Filing Schedule RR-EN-2-1 is $2,306,529;

    c. Account 902, Meter Reading - Liberty's F-16 balance was $1,136,505 while the Rate Filing Schedule RR-EN-2-1 is $453,911;

    d. Account 920, A&G Salaries Liberty's F-16 balance was $15,957,477 while the Rate Filing Schedule RR-EN-2-1 is $1,706,504 - ***a discrepancy of over $14 million***; and

    e. Account 926, Employee Pensions and Benefits - Liberty's F-16 balance was $5,238,414 while the Rate Filing Schedule RR-EN-2-1 is $7,240,313.[4]

20. Further adding to the concerns about the reliability of the Rate Filing figures is the fact that Liberty's Vice President of Finance and Administration attested that all differences between the Company's books and records and its test year rate case data "have been expressly noted." *See* July 27, 2023 Rate Filing at Bates p. I-142. Whether one interprets the attestation to refer to differences between the books and records and the Rate Filing, or the differences between the F-16 Annual Report and the Rate Filing, the Department finds no notation (express or otherwise) of these differences. This required and useful check on the Rate Filing appears to

[4] Refer to Audit Report at p. 196 for a complete list of all these discrepancies.

have been disregarded by Liberty.

21. Audit drew two significant conclusions from its comparison of the books and records, the F-16 Annual Report, and the rate case schedules:

   a. "Liberty provided a variety of summaries detailing unverified line item entries and/or accounts that comprise the variances. Some of those reported figures indicate expense accounts in balance sheet accounts, balance sheet accounts in the wrong balance sheet accounts, and expense accounts in the wrong expense accounts. *Audit is unable to determine if the annual report is accurate, or if the filing is accurate.*" (emphasis added).

      Audit Report at pp. 196-197.

   b. "As noted in the . . . above, the income statement accounts reflected on the revenue requirement filing do not agree with the SAP accounts. Throughout the text of this report, identification of balance sheet accounts that did not agree with the year-end SAP balances have also been documented.

      Audit was provided reconciliations of many of the variances, but detailed testing of those to ensure the reported ending balances are correct was not [*sic]* accomplished.

      Audit therefore cannot conclude, as the Company has, that the financial records are accurate." (emphasis added).

      Audit Report at p. 198.

22. The Audit Report highlighted several other issues adding to the concern over using the 2022 books to set rates. In particular Audit identified Issue #2 involving Accumulated Depreciation and Cost of Removal. Both amounts directly affect rate base.

23. <u>Accumulated Depreciation</u> – Audit found differences in Liberty's Accumulated Depreciation figures compared to Liberty's Continuing Property Records (CPR), its general ledger (SAP),

its F-16 Annual Report, and its Rate Filing. Liberty could not provide explanations of these differences and thus the Audit concluded:

> "Audit is not able to verify the validity of the figures included for 2022. **Recommendation** The accumulated depreciation balance should be the same across the CPR, GL, filing, and annual report. The Company should explain any differences and make any needed adjustments to the GL and filing."
>
> Audit Report at p. 199.

24. Cost of Removal – The Audit Report discusses the fact that Liberty's Rate Filing did not include cost of removal in its accumulated depreciation figures, thus overstating rate base by over $30,000,000. Audit Report pp. 199-200. This error was discussed by Liberty at a hearing held on temporary rates in October, 2023. Transcript October 27, 2023 at p. 20. Liberty agrees that any updated Rate Filing would need to reflect cost of removal, thus reducing rate base by approximately $30,000,000.

25. Amortization Expense – The Audit Report, Audit Issue # 12, explains where expense items were shown in different expense accounts when comparing the Company's F-16 Annual Report to its Rate Filing schedule RR-EN-2-1. For rate setting purposes, these discrepancies between expense accounts generally offset each other. However, one discrepancy is more significant. Liberty's F-16 Annual Report shows $62,068 recorded in account 174 Miscellaneous Current and Accrued Assets (an asset account which would not be included in rate base) while the Rate Filing has this amount recorded in account 407.4, an Amortization Expense Account, which flows directly into Liberty's revenue requirement.

26. Capital Project Expensed – Audit also outlined in Audit Issue #20 that Liberty recorded the costs of a paving project in Nashua to account 921 (Office Supplies and Expense) instead of capitalizing the project. Audit Report at p. 231.[5] This results in an overstatement of Operations and Maintenance ("O&M") expense which flows directly into Liberty's revenue requirement, while understating Plant in Service which is included in rate base.

27. Payroll and Payroll Taxes – Utility payroll is a major O&M and capital cost that directly affects the rate case revenue requirement. Liberty reported that its test year (2022) payroll totaled over $15.3 million, but Audit could not confirm the accuracy of this due to SAP implementation as described in Audit Issues #26, #27, and #28. Audit Report at p. 170.

28. One of Audit's key functions in a rate case is to verify the figures presented by a utility in its payroll register to the various O&M and capital accounts presented in a rate filing. This helps to ensure that the rates established cover a verified amount of payroll costs incurred by the utility. The Audit Report at p. 238 states that Liberty was not able to provide the report typically used to make this verification because of the conversion to SAP. Liberty provided no other report to enable such verification, and thus Audit was not able to reconcile Liberty's final pay period of the test year payroll costs to the various general ledger accounts. While the Audit Report indicates that the RR-EN-2-1 (Bates p. II-080) reported payroll costs were tied to the noted SAP accounts, Audit was not able to verify the accuracy of the reported payroll figures to those specific accounts.

[5] Audit also identified incorrect accounting for inspection cost, which were booked to account 921 instead of account 863, transmission mains expense. Audit Report at p. 231. This error would not affect Liberty's proposed revenue requirement.

29. Similarly, Audit was not able to verify the accuracy of the payroll accruals because post-SAP implementation, sufficient payroll detail could not be provided. Audit Report at p. 239. Further, Liberty conceded that it booked payroll taxes for October, November, and December, 2022 (*i.e.,* post SAP implementation) to the wrong account and that it needed to correct its Rate Filing for this error. Audit Report at p. 240.

30. <u>Unbilled Revenues</u> – The Department has discovered that SAP implementation led to numerous billing errors and data discrepancies which substantively impact the underlying test year figures. Liberty acknowledged in prefiled testimony that test year revenue and service charges are understated in the Rate Filing as a result of the SAP implementation. "Due to the conversion to Customer First, the Company placed a halt on most nonrecurring charges in October 2022. Therefore, the Company believes the test year revenue and occurrences are understated." *Direct Testimony of Tyler J. Culbertson,* Bates p. II-192, lines 3-5 (July 27, 2023 Rate Filing).

The Department explored the question of delayed bills due to Customer First/SAP implementation during discovery. In Data Request DOE 2-3, the Department asked Liberty to quantify the extent of revenues that went unbilled in 2022 due to SAP implementation, but Liberty did not provide a quantitative response. See Attachment 2 to this Motion. In Data Response DOE 2-46 (provide as Attachment 3 to this Motion), Liberty stated that "within two months after Go Live, there were fewer than 600 Liberty EnergyNorth accounts, out of more than 90,000, that needed intervention and data corrections to send a bill on the new system. These were substantially completed by the end of February 2023." Thus, it appears that test year sales and billing determinants for up to 600 customers were lower than they should have been because of late bills due to SAP implementation.

31. SAP in Liberty's Cost of Gas Docket – Evidence and testimony in DG 23-076 (Liberty/EnergyNorth's most recent cost of gas proceeding) further supports the Department's position that the SAP conversion yielded errors of significant magnitude concerning 2022 information. In October 2023, on the eve of a hearing in DG 23-076, the Company identified an SAP error that required a $12 million adjustment. *See* DG 23-076, Order 26,898 (October 31, 2023) at pp. 5, 7, 10; Transcript October 19, 2023 Hearing at pp. 60-61, 65-66, 80-81-120-121. The error, although "netting to zero" for the year ($12 million added to the Winter Period, $12 million subtracted from Summer Period) meant that what Liberty EnergyNorth had understood as an $8.5 million over collection during the prior Peak Winter Period (2022-2023) was actually "roughly a $3.5 million under-recovery." Transcript October 19, 2023 Hearing at pp. 60-61. The significant SAP conversion error resulted in a flurry of activity by the parties and the Commission, including a significantly revised filing by Liberty, a responsive supplemental technical statement from the Department, and ultimately a new Liberty proposed rate increase to peak period gas rates for residential customers, all occurring within 8 business days. *See* DG 23-076, Order No. 26,898 at p. 5; Supplemental Technical Statement of Arif & Alam (Oct. 26, 2023) at p. 2 (R-3 residential rates per therm for the Peak period rose from a proposed $0.6175 per therm to $0.7563 per therm). Further, Liberty/EnergyNorth concluded that this last-minute correction was needed because a prior SAP conversion correction was, itself, incorrect. *See* Transcript Oct. 19, 2023 Hearing at 65-66 (SAP correction made prior to the "eve of hearing" was "an incorrect correction"). Thus,

in late 2023, Liberty continued to uncover significant SAP related errors, and demonstrate an inability to definitively correct SAP errors. Cost of Gas rates ultimately approved in that docket were conditional. DG 23-076, Order No. 26,898 at 7, 9.

32. These audit issues indicate that the conversion from Great Plains to SAP and Liberty's new accounting and billing system appear to be unstable, rendering the 2022 test year books and records unsuitable for rate setting. This underscores the need to have an IT audit performed to assure stability of the newly implemented SAP system before any new rate case is filed.

V. **<u>Motions to Dismiss Rate Cases are Not an Unprecedented Remedy Where Financial Information is Suspect or Where the Filing Materials are Insufficient.</u>**

33. Motions to dismiss rate cases due to unreliable financial information are not unprecedented. Multiple state public utility commissions have considered such motions, and either granted the motions and dismissed the proceeding or denied such motion but ultimately dismissed the proceeding based on unreliable test year financial data.

34. The Public Utilities Commission of Texas dismissed a water utility's 1981 requested revenue increase due to insufficient and non-credible financial information provided by the Company, even after the utility was given an opportunity to correct the deficiencies in its filing. The Commission found that it did not have jurisdiction where the filing was incomplete under the Commission's procedural rules. *1981 Texas PUC, Docket No. 3546.*

35. The Florida Public Service Commission dismissed a water utility's 2007 rate filing after Commission staff had conducted discovery and raised concerns that the data supplied by the utility was unreliable. In response to Commission questions about apparent errors in the utility's data, the utility stated that it did not know the magnitude of those errors. After finding that the data contained in various reports filed by the utility did not match, and that the test year data was unreliable due to multiple defects in the test year billing determinants, the Commission dismissed the Company's filing and stated that, "[i]f we were to set noncompensatory rates, we believe this would further perpetuate the frequency of rate case filings by the utility. Therefore, we find that setting rates based on flawed data would be neither fair nor reasonable to the customers or the utility." *Florida Public Service Commission, Docket No. 060262-WS (2007)*.

36. The District of Columbia Court of Appeals affirmed a decision of the Public Service Commission of the District of Columbia to grant intervenors' motions to dismiss a utility's application for temporary rate relief before any hearings were held connected to the permanent rate case. The Commission had granted the motion to dismiss on the basis that the utility's allegations, even if taken as proven, failed to establish a *prima facie* case for the requested relief. In affirming the Commission's decision, the Court also stated that, "[t]he risk that its own inefficiency or external business may prevent the utility from achieving a specified rate of return is allocated to [the utility]." *Potomac Electric Power Co. v. Public Service Com.,* 457 A.2d 1776 (1983).

37. The Minnesota Public Utilities Commission did not grant a motion to dismiss, but ultimately denied an electric utility its requested rate increase in 1990, [“b]ecause of grave doubts about the accuracy, reliability, and predictive value of the test year budget data submitted by the Company. The Commission finds that the rate case record does not demonstrate that existing rates are unjust and unreasonable, which is necessary for approval of a general rate increase. Neither does the record provide a reliable basis for setting new just and reasonable rates.” The Commission went on to say “[t]hose substantiating documents are not included with the filing. With errors and deviations of the magnitude discovered in the forecasted material supplied, [the utility] has not met its burden of supplying adequate substantiating evidence with its notice of change in rates.” Finally, the Commission described issues with the utility’s accounting methods, stating “[a]gain, the Company’s failure to present information in recognizable and usable form compounded the complexity of this case, which would have been complex under the most favorable circumstances.” *Minnesota Public Utilities Commission, Docket No. E-002/GR-89-865 (1990)*.

VII. **<u>Conclusion</u>**

This Motion demonstrates in detail why 2022 was not suitable for use by Liberty as a test year for rate setting. The Petitioner chooses the test year in a rate case, and Liberty chose a test year during which it transitioned to a new billing and accounting system. Before embarking on that transition, Liberty knew or should have known that IT transitions of that magnitude are risky and errors in data within the new system can occur following the transition. Before Liberty closed its test year books and before it filed its F-16, it knew or should have known that there were errors in the data within its SAP system. Before Liberty filed its Rate Filing, it knew this. Yet, Liberty did not reveal these errors and adjustments to its books and records and F-16 when it filed its Rate Filing, despite attesting that it had expressly noted all discrepancies. Instead, Liberty only identified them during the Department's audit and discovery. Liberty chose unwisely and its customers should not continue to pay the costs of a Rate Filing proceeding, which is based on unreliable financial information. Simply put, permanent rates should not be based on the 2022 financial information Liberty has presented in this case.

WHEREFORE, the Department respectfully requests that the Commission:

1. Dismiss Liberty's pending rate request for permanent rates with prejudice; and
2. Grants other such relief as the Commission deems appropriate.

Respectfully submitted,

New Hampshire Department of Energy

By its Attorneys,

/s/ Paul B. Dexter
/s/ Molly M. Lynch

21 South Fruit Street, Suite 10
Concord, NH 03301
603-271-3670

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