

STATE OF NEW HAMPSHIRE
BEFORE THE PUBLIC UTILITIES COMMISSION

Docket No. DG 23-067

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

Request for Change in Distribution Rates

Objection to Motion to Dismiss Rate Filing by the Department of Energy

Pursuant to N.H. Code Admin. Rules Puc 203.07, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (“Liberty EnergyNorth” or the “Company”) hereby objects to the Motion to Dismiss Rate Filing (the “Motion”), filed by the Department of Energy (“DOE”) on February 16, 2024. The Motion requests that the New Hampshire Public Utilities Commission (the “Commission”) dismiss the Company’s July 27, 2023, rate filing (the “Petition”) based on DOE’s assertion that the Company’s financial records cannot be reasonably relied upon because of how accounts were mapped into the Company’s new SAP based accounting system and the resulting differences between the Company’s financial statements, annual report, and proposed revenue requirement.¹

While the Company believes that the Motion is without merit and should be rejected for the reasons stated below, it is in the public interest for the Commission to delay its determination on the Motion until such time as it receives PricewaterhouseCooper’s (“PwC”) review of the Company’s records, just as it is doing with the Liberty Utilities (Granite State Electric) Corp. (“Liberty Granite State”) case. See Order No. 26,952 (Feb. 22, 2024). To that end, the Company is amenable to having PwC review its 2023 records just as it will for Liberty Granite State,

¹ DOE has made similar arguments in the Company’s electric affiliate rate case, Docket No. DE 23-039.

provided that the Commission affords PwC additional time to conduct that more encompassing review.

In support of its opposition to DOE's Motion, Liberty EnergyNorth states the following:

I. Procedural History

The Company submitted its Petition to change distribution rates on July 27, 2023, seeking a rate increase of \$27,549,837 based on a revenue requirement calculated using test year 2022 data (Attachment TJC/CDC-1, Schedule RR-EN-1). During the Discovery phase of this proceeding, the Company has responded to hundreds of data requests from the DOE and Office of the Consumer Advocate ("OCA") and participated in a technical session on December 4, 2023. DOE Audit conducted an audit that also included numerous audit requests leading to a January 30, 2024, final audit report (the "Audit Report") (see, Motion, Att. 1).

On February 5, 2024, the Company filed a Motion to Stay this proceeding until April 12, 2024, to allow the Company time to file an expert consulting report in response to certain issues raised in the Audit Report with respect to the Company's accounting records for the 2022 test year ("Motion to Stay"). The DOE filed a partial objection and partial assent to the Motion to Stay on February 12, 2024 ("DOE Partial Objection"). The DOE Partial Objection assents to a stay of the proceeding but only until the Commission has ruled on the pending Motion to Dismiss filed in Docket No. DE 23-039² and the Motion that was subsequently filed in this proceeding (and that is the subject of this objection).

DOE filed its Motion on February 16, 2024, and four days later the DOE filed a request to modify the procedural schedule and grant an extension of time for DOE to file its testimony until April 19, 2024. The OCA objected to DOE's request and filed its initial testimony on February

² In Order No. 26,952 the Commission extended the stay in Docket No. DE 23-039 until April 15, 2024, to allow for PwC to complete its review of Liberty Granite State's 2022 and 2023 financial information.

21, 2024, consistent with existing procedural schedule. The DOE's request and the Company's Motion to Stay remain pending before the Commission. Accordingly, the next procedural milestones are the deadline for Liberty EnergyNorth to issue data requests to DOE and OCA on March 1, 2024, followed by a status conference on March 6, 2024.

II. Factual Background

In October 2022, Liberty EnergyNorth converted from its legacy Great Plains accounting system to an SAP-based system (July 27, 2023, Testimony of Lauren Preston at 9). The Company's legacy system had become outdated (*id.* at 4). As explained in the Company's initial filing, the Company (and its affiliates) undertook an enterprise-wide effort called "Customer First" to replace the existing systems, including the transition to an SAP accounting system (*id.* at 8; see also Att. A at 148³). The legacy system had reached the end of its useful life and its capabilities were insufficient to meet the needs of the Company and its customers (see Att. A at 149). The Company recognized that conversion to a new system would present challenges – as all major system implementations do -- but in light of the obsolescence of the existing systems and the substantial benefits available with the new system, the Company had to move forward to implement a new system to assure the reliability of the Company's financial reporting systems and related information systems.

Prior to converting to the new SAP accounting system, the Company undertook four key steps to transfer its legacy financial data. The Company: (1) created and designed the SAP chart of account; (2) converted data from the legacy Great Plains system to the new SAP system; (3) loaded data into the SAP system to create a starting point (*i.e.*, inputting the historical balance);

³ Attachment A is the transcript providing testimony in the Liberty Granite State rate proceeding (Docket No. DE 23-039), however, the facts surrounding the Company's preparation for the conversion to SAP is consistent for the Company because conversion to SAP as part of the Customer First project was an enterprise-wide project and occurred at the same time for the Company and Liberty Granite State.

and (4) validated, reconciled, and signed off on the data in the new SAP system (Att. A at 150-151). The Company also took steps to validate data entered into SAP after the system conversion (id. at 156-157). Following conversion to the SAP system, the Company continues to create new work breakdown structures for transactions within the SAP system (id. at 158). With the creation of each new work breakdown structure, there is a risk that an adjustment will become necessary and the Company has continued to monitor and validate the proper functioning of these work breakdown structures (id. at 158-159). The Company has gained valuable experience with this process and expects that the number of adjustments experienced in 2022 will decrease going forward and, in fact, has experienced the need for far fewer adjustments in 2023 (see id. at 164-165).

SAP uses a natural accounting method, which means that financial information is recorded in Generally Accepted Accounting Principles (“GAAP”) accounts (see Att. A at 155). For transactions that occurred beginning in October 2022 when the SAP accounting system went “live,” the transactions were directly input to the SAP system using the GAAP chart of accounts (see id.). For regulatory reporting purposes, the Company is also required to submit a Form F-16 Annual Report for Gas Utilities to the DOE and the Commission. En 509.02.⁴ As a result, the SAP accounts must be mapped to the appropriate regulatory accounts for the purpose of generating the Company’s F-16, for preparing revenue requirement schedules for this proceeding, and to meet other regulatory needs. This mapping was not necessary under the Company’s legacy accounting system as both the natural accounts and regulatory accounts were combined into one account field. Prior to the implementation of the SAP accounting system, the Company performed a testing

⁴ The DOE’s Rules for Gas Service, En 500, were adopted on October 24, 2023. The requirement to submit a Form F-16 was previously set forth in the Commission’s Rules for Gas Service, codified as the Puc 500 rules.

process to ensure that the mapping from the natural accounts to regulatory accounts was performing correctly (Att. A at 156).

In addition to the presentation differences between the Company's legacy system and the new SAP system, Liberty EnergyNorth had to make adjustments in order to ensure that the mapping from Great Plains to SAP and from the SAP natural accounts to the regulatory accounts were accurate. These adjustments were performed during four different time periods: (1) during the last quarter of 2022 (adjustments reflected on the 2022 books); (2) during preparation of the F-16 in May 2023; (3) during preparation of revenue requirement schedules for this case; and (4) adjustments made after the filing of this proceeding based on issues identified by the Company and also in response to discovery or audit requests.⁵ The first three categories of adjustments are all adjustments that the Company was aware of and had accounted for in the initial filing for this proceeding.

The Company has worked diligently to identify necessary adjustments and reflect these adjustments in the proposed revenue requirement. However, the timing of these adjustments has resulted in a discrete, traceable variance between the year-end 2022 SAP balances, the F-16, and the revenue requirement schedules. As discussed in more detailed below, the Company has explained these variances to DOE Audit (see Attachment B (Attachment B is the Company's response to Audit Request 35 mapping the differences between the Form F-16 and the Company's revenue requirement schedules)). The existence of these variances was summarized in the Audit Report and is not disputed by the Company. The variances have resulted, in part, due to the Company's decision not to reopen its 2022 general ledger to reflect the adjustments identified during preparation of the F-16 and revenue requirement schedules. The Company explained that

⁵ Adjustments made after the filing of the Company's Petition in this proceeding will be reflected in a future revenue requirement update.

it is not best practice to reopen the books once they have been closed, and thus reflecting adjustments in a future period is not abnormal (see Att. A at 160, 161-162, 166).

Each adjustment or correction has been explained to the DOE through the DOE Audit's investigation and/or during the discovery process. To the extent DOE disagrees with the Company's revenue requirement presented at hearings,⁶ DOE can present its case to the contrary and the Company will produce its evidentiary rebuttal supporting the necessary cost increases.

III. Standard of Review

The Commission has found that, in ruling on a motion to dismiss, it must determine “whether the facts alleged in the petition and supporting pleadings and testimony, and all reasonable inferences, could support the relief sought.” Eversource Energy, Order No. 26,534, at 7 (2021). Because such motions are decided before the factual record is developed, the Commission is required to assume that all of the petitioner's assertions are true, id. citing Public Serv. Co. of N.H., Order No. 25,213 at 71 (Apr. 18, 2011), and must view all inferences in the light most favorable to the petitioners, PNE Energy Supply, LLC, Order No. 25,881, at 3 (2016). Where the pleadings are merely conclusions of law, the Commission engages in a threshold inquiry that tests the facts against the applicable law. Order No. 26,534 citing Clark v. N.H. Dep't of Emp't Sec., 171 N.H. 639, 645 (2019).

IV. Legal Analysis

The Motion is without merit and therefore fails to meet the standard for dismissal. Under the Commission's standard, a motion to dismiss must demonstrate that the Company's filing is so deficient that there is no basis for the Commission to grant the relief requested, even after accepting

⁶ As detailed in the Company's Motion to Stay, the Company proposes to provide an updated revenue requirement with its rebuttal testimony. This updated revenue requirement would include the adjustments identified through discovery and the audit process, any adjustments identified by PwC (if any), and any additional adjustments that may be raised in intervenor testimony and agreed to by the Company, a common practice in rate proceedings.

all of the assertions in the filing as true. The Motion does not meet this standard and therefore the proceeding should be allowed to move forward and conclude with a determination on the merits of the Company's proposals, as set forth in the Petition.

In this instance, the Company has requested an adjustment to its base distribution rates to reflect an increased cost of service since the most recent base-rate proceeding, Docket No. DG 20-105. The DOE has failed to show, viewing the record in a light most favorable to Liberty EnergyNorth, that the evidence is *so deficient* that no decision by the Commission on the Company's rate petition can be made. The DOE instead has merely raised issues with respect to the *amount* of adjustment that is appropriate. Rate setting is a determination for the Commission, not the DOE. Accordingly, reaching a determination on what level of rate adjustment is warranted based on the evidence presented in this proceeding should be determined by the Commission following a hearing and full development of the record.

The Commission is authorized to fix rates after a hearing, upon a determination that such rates are just and reasonable (RSA 378:7). Where a utility seeks to increase its rates, such utility bears the burden pursuant to RSA 378:8 of demonstrating the necessity of such increase. Pursuant to RSA 378:28, the Commission is authorized "to receive and consider any evidence that may be pertinent and material to the determination of a just and reasonable rate base and a just and reasonable rate of return thereon." The Motion argues that there is no evidence that the Commission has or could receive during the remainder of this proceeding that would address the concerns raised by DOE with respect to certain adjustments to the Company's test year books and records. This is simply not accurate, particularly in light of the Company's proposal set forth in the Motion to Stay to submit a third-party expert consulting report that will directly address the issues raised by the DOE.

A. The Company Has Provided Sufficient Evidence to Support an Adjustment in Rates.

The Commission's standard of review requires the Commission to determine whether the record (as currently before it) could reasonably support the relief sought. Eversource Energy, Order No. 26,534, at 7 (2021). For purposes of deciding a motion to dismiss, the "record" necessarily consists of the Company's filings, which the Commission must accept as true under established precedent. Thus, the determination that the Commission must make now is whether the proposed rates could be found to be just and reasonable based on the proposed revenue requirement.

In a base distribution rate proceeding, rates are derived from a revenue requirement calculated using a utility's books and records for the selected test year, subject to certain adjustments. To prepare the proposed revenue requirement in a rate case, the utility starts with its books and records with full knowledge that its actual, unadjusted books and records for the test year will not be a one-for-one match with the revenue requirement that is ultimately proposed in support of a change in rates. The Motion plays on this practicality, concluding that, because there are variances between the Company's general ledger, F-16, and proposed revenue requirement schedules, the 2022 test year is "unsuitable for rate setting" (Motion at 14). However, this conclusion is erroneous and unsubstantiated.

First, Liberty EnergyNorth has explained the variance between the three sets of data reviewed by Audit and the circumstances leading to the variance in this proceeding. Second, it is not unusual for there to be variances between the three sets of data because the three sets of data are used for three separate purposes and are developed at different points in time. What the Commission should evaluate during the hearing phase of this proceeding is whether the Company has adequately supported and explained these variances to allow the Commission to set rates based

on the revenue requirement calculated by the Company. This will involve the Commission's evaluation of the record presented at hearing, including the Company's initial filing (e.g., the initial testimony and supporting attachments of C. Drew Cayton and Tyler Culbertson providing a detailed explanation for how the revenue requirement was derived), as updated for hearing, as well as all necessary adjustments identified by the parties and/or the Company. The Company's Motion to Stay includes an illustrative procedural schedule that anticipates the filing of an updated revenue requirement with the Company's rebuttal testimony (Motion to Stay at 7).

The circumstances that have led to the Motion is that the variance between the Company's general ledger, F-16, and the revenue requirement schedules presented in this proceeding *is greater* for the 2022 test year than in other years. If this variance was unexplained, which it is not, the sheer existence of the variance would not even support the Motion, given that the sheer existence of a variance does not lead inexorably to the conclusion that the revenue requirement as proposed at hearing is materially inaccurate. This is the crucial flaw in DOE's Motion. Liberty EnergyNorth implemented a new SAP accounting system during the last three months of 2022 (July 27, 2023 Testimony of Lauren Preston at 8). Any time that a new accounting system is implemented, adjustments will be necessary. Post-implementation adjustments are expected and planned for when a utility is implementing a new accounting system because there is virtually no possibility that the system will be implemented without exceptions that have to be resolved post-implementation.

Implementation of the new SAP accounting system had two impacts on the parties' ability to compare the Company's accounting records to the F-16 and the revenue requirement: (1) certain adjustments were necessary after the closing of the 2022 books; and (2) data and reports are presented differently in SAP than the Company's prior Great Plains system. The need to make

adjustments after closing the 2022 books means that the 2022 books do not reflect the adjustments made after January 1, 2023, to produce the Company's revenue requirement and F-16. However, it is not unusual to identify and make adjustments after the fiscal year accounting closing for the subsequent year (Att. A at 165). Making adjustments in 2023 contributed to the variance observed by DOE and the Audit Division. However, the basis for this variance has been explained by the Company and does not impact the revenue requirement because the adjustments will be reflected in the revenue requirement for this case (see Att. B (response to Audit Request 35)).

The Company acknowledges that the change in accounting systems required a shift in understanding for DOE staff and DOE Audit, particularly given that the SAP system is not used by other New Hampshire utilities, thereby creating an issue of "first impression" for DOE staff and DOE Audit. The Motion cites to one of these issues where the "familiar" format was no longer available and, based on the unavailability of a familiar report, Audit concluded that it cannot verify data (Motion at 11). Specifically, following conversion to the SAP system, the payroll report previously available to Audit is no longer available (id.). Audit agreed that the Company should not be required to create reports specifically for Audit (Att. A at 61). Nevertheless, the Motion points to the change in payroll information as evidence that the entire proceeding must be dismissed (Motion at 11). DOE includes this assertion in the Motion even though the Audit Report issue related to payroll does not recommend disallowance of any of the Company's payroll costs and even though the Company did provide its opex report that verifies its payroll costs (Motion, Att. 1, at 238). The Motion also fails to reference the detailed discussion provided by the Company regarding why the payroll report has changed (Motion, Att. 1 at 239). Specifically, Liberty EnergyNorth explained that it is not – and cannot -- preparing a previously available report that contains highly confidential pay detail by employee, and instead is using a report from SAP that

contains the same necessary information for calculating payroll accrual information without the risk of compromising confidential employee information (id.). To allow Audit to validate the SAP report, the Company made its payroll records available through the payroll audit (id.). Based on the foregoing, it is not reasonable to conclude that the payroll costs cannot be verified (Motion at 11). Instead, the DOE appears to be raising an “issue” that is appropriate for Commission review and determination at hearing.

In addition to explaining these changes in reporting format during the Audit investigation, the Company proactively met with DOE Audit on May 16, 2023, to provide a walk-through of the SAP system. This meeting occurred after the filing of the Liberty Granite State petition in Docket No. DE 23-039 and before the Company’s filing in this proceeding. During the May 16, 2023, meeting, the Company presented its numbers, account structure, and the settlement process for the SAP system. In addition, the Company explained to DOE Audit the account mapping from the legacy Great Plains System to the SAP system during the audit investigation. Audit was also provided with the mapping file that explains how information was mapped from the legacy Great Plains system to the SAP system in response to an audit request made to Liberty Granite State on June 5, 2023. The mapping file provided to DOE Audit included the Great Plains account number, SAP natural account, and SAP regulatory account. The Company also provided a file with the mapping from the Company’s books to the F-16 (Att. B (response to Audit Request 35)). Based on the foregoing, it is clear that the Company willingly cooperated to provide a detailed roadmap for reviewing the books and records. It is unclear what specific issues remain to be solved in relation to DOE’s concerns. The DOE’s Motion suggests an “IT Audit,” however, it is unclear what such an audit would accomplish that could not be accomplished through the third-party review proposed in the Company’s Motion to Stay (Motion at 14). An IT Audit would presumably

audit the Company's SAP system but would not directly address the issue raised by DOE regarding whether the 2022 data can be used to set rates. Further, PwC's assessment will include a root cause analysis to determine potential causes of the identified potential gaps/variances and the magnitude and nature of the adjustments (see Attachment E at 4⁷).

Once the Commission considers the Company's initial filing together with the steps taken by the Company to address the variances between its general ledger, the F-16, and the revenue requirement, it will be apparent that there is no basis to dismiss the proceeding. Nevertheless, the DOE even goes so far as to argue that the Company "disregarded" the "required and useful check" of its filing by allegedly failing to note the differences between the books and records and the filing in this proceeding (or the differences between the F-16 and the filing in this proceeding) (Motion at 8). In support of this assertion, DOE cites to the language in the attestation included in the Company's filing requirements and then points to differences between the F-16 and the revenue requirement schedules (id. at 8-9). The DOE appears to be trying to support its argument that the data can be found unreliable because the Company did not call attention to these variances. This argument ignores the Company's concerted effort to ensure that the information presented in the F-16 and the revenue requirement schedules *were accurate and that these efforts are the reason that the variances exist*. To the extent that there are variances between the three data sets, it is because the Company took specific actions to perform the type of check DOE is referencing (i.e., a final check to ensure that the numbers presented to the Commission and other parties are the correct numbers for rate setting purposes). The Company's adjusted financial data became the record supporting its revenue requirement and therefore is the only set of data that the Company is asking the parties to consider (i.e., the Company attested that the data presented in support of its

⁷ The affidavit of Sean Riley was filed in Docket No. DE 23-039 on February 15, 2024 to provide additional details regarding PwC's review and is included with this objection as Attachment E.

request was correct). Accordingly, the Company did perform the “required and useful check” referenced by the DOE (Motion at 8). However, based on the experience in this proceeding and in Docket No. DE 23-039, the Company understands that the DOE is interpreting the attestation language to require disclosure of the variances (even if such variances are limited to corrections for accuracy) and the Company therefore commits to including such an explanation in any future rate proceeding where there are variances between the three sets of data used by Audit to conduct its investigation.

Although DOE went to great lengths to argue to the contrary through recitation of legal cases in Section VIII of its Motion, DOE failed to put forth case law that has any applicability here. In fact, it is notable that DOE was unable to cite *any* New Hampshire precedent and DOE failed to tie any of the cited cases directly to the facts in this proceeding (see, Motion at Section V). Instead, the Motion simply lists a series of cases across the United States where a regulatory commission considered dismissal of a request for a rate increase. Those cases do not support dismissing the Company’s Petition in this case.

Most telling is that the DOE failed to cite a recent Massachusetts decision with eerily similar facts. The Massachusetts Attorney General challenged a utility’s rate filing on the basis of alleged accounting obstacles involving the same issue of “natural accounts” that the Company is encountering here. Specifically, in Boston Gas Company and Colonial Gas Company each d/b/a National Grid, D.P.U. 20-120 (2021),⁸ the Attorney General contested accounting changes that resulted from the use of “natural accounting”, preventing its analysis of costs by “functional area.” The Attorney General contended that, although the Company provided its historical charges by current functional cost centers for both the fiscal year and calendar years 2015 through 2020, it did

⁸ The Massachusetts Department of Public Utilities’ decision in docket D.P.U. 20-120 is provided as Attachment C.

not provide comparable amounts for either the adjusted test year or the rate year. D.P.U. 20-120, at 10. The Attorney General argued that “this lack of information ... significantly impede[s] attempts to determine whether the requested rate year NGSC charges are reasonable, particularly in light of the significant level of NGSC expense and annual increases.” *Id.*

The Massachusetts Department of Public Utilities rejected these arguments stating that:

The Company has also provided documentation mapping the accounts maintained in its internal accounting system to the accounts reported in the annual returns to the Department in accordance with the Department’s Uniform System of Accounts for Gas Companies (RR-DPU-3).¹⁸ The Department has examined these schedules and is satisfied that the information is sufficient **to tie the Company’s test-year account balances back to its annual returns.**

Footnote 18 states:

The Company’s internal account numbers are based on an alphanumeric system of “natural accounts” (i.e., groupings of various accounts by function). While gas companies are permitted to use their own accounting systems for financial reporting purposes, they are required to report to the Department based on the Uniform System of Accounts for Gas Companies. 220 CMR 50.00, General Instruction 1, Form of Books and Accounts Prescribed. A company that maintains a different accounting system is required to maintain a list reconciling the accounts and subaccounts it uses with those required by the Department. 220 CMR 50.00, General Instruction 1, Form of Books and Accounts Prescribed.

D.P.U. 20-120, at 15 (citations omitted) (emphasis added).

Ultimately, the Massachusetts Department of Public Utilities found that, “based on our review, we conclude that the aforementioned information allows for a meaningful review of year-to-year changes in expense levels in order to determine whether the Company’s test-year expenses and revenues are representative of its ongoing costs and revenues, are reasonable in amount, and account for any seasonal variability.” *Id.* at 18. Liberty’s revenue requirement schedules reflect the adjustments made to ensure that the Company’s financial data was correct at the time its Petition was filed. The Company provided explanations for those variances through the Audit process (see, e.g., Att. B).

As for the cases DOE did cite, they simply have no relevance here. The first is a Texas case from 1981 where a water utility attempted to impose a sewer surcharge. 1981 Texas PUC, Docket No. 3546. In that proceeding the water utility filed a three-page document in support of its initial filing that was supported by three pages of testimony, three one-page exhibits, and a one-page document labeled as “schedule P.” Id. The water utility did not file schedules A-M or R despite a requirement to do so. Id. Instead, the water utility stated that schedules A-M and R, as filed in a different docket, should be incorporated by reference. Id. The versions of schedules A-M and R that were incorporated by reference by the petitioning water utility had previously been determined by the commission to be fatally defective. Id. Accordingly, the commission determined that the water utility’s sewer surcharge must be dismissed because its rate filing was deficient. Id. DOE fails to correlate these facts and the reported result to anything in this case. Moreover, the Commission has not made any prior determinations regarding any component of the Company’s filing that would render it deficient. No party has alleged that the Company’s July 27, 2023, filing was missing any required schedules. Unlike the Texas water utility, the Company has satisfied all filing requirements.

Similarly, the Florida Public Service Commission case cited by DOE is equally irrelevant. DOE apparently cites this case because it involves an inconsistency between data sets. Florida Public Service Commission, Docket 060262-WS (2007). However, in that case the water utility experienced faulty meters that resulted in data with large variances between the test year and subsequent years. Id. When questioned about these inconsistencies and the impacts of the identified defective meters, the water utility was unable to reconcile the variances between the data. Id. By contrast, Liberty has reconciled the identified inconsistencies and has provided a detailed explanation for the analysis undertaken that supports the accuracy of its data.

The last two cases cited by DOE are similarly distinguishable from this proceeding. In the Minnesota Public Utilities Commission case, the utility attempted to base its rate request on a test year that consisted of management projections of what the Company's financial needs would be. Minnesota Public Utilities Commission, Docket No. E-002/GR 89-865 (1990). This use of a management projection (rather than actual, historical data) required the commission to consider the accuracy and credibility of the utility's overall budgeting process. The commission ultimately concluded that the utility's budgeting process resulted in a pattern of overestimating expenses that could not provide a reliable foundation from which to determine just and reasonable rates. *Id.* Specifically, the audit relied on by the commission found that the forecast for 100 items in the sample exceeded actual expenditures by 27.12%. *Id.*

Here, the majority of the adjustments discussed in the Audit and in the Motion were already accounted for in the Company's July 27, 2023, filing. For example, the DOE referenced a variance of over \$14 million between the Company's F-16 and its revenue requirement schedules (Motion at 8 (referring to the difference in the balance for Account 920 on the F-16 and in Schedule RR-EN-2-1)) (Motion at 8). The DOE presumably picked this variance due to its size. However, the Company already showed the calculation of the \$1,706,504 figure in its response to Audit Request AR 35 (Att. B). Accordingly, the \$1,706,504 included in the filing was intentional and based on a review by the Company prior to filing its petition. It is not an example of unreliable data.

Finally, the District of Columbia Court of Appeals case involved two applications for emergency rate relief and a failure by the utility to meet the specific standard of review applicable to such requests. Potomac Electric Power Co. v. Public Service Com., 457 A.2d 776 (1983). In that case, the utility's application failed to address certain factors that must be considered by the Commission. *Id.* at 785. Accordingly, there was simply no information for the Commission to

rely on in reaching its decision. Here, it cannot be argued that Liberty EnergyNorth presented no information on which the Commission could base a decision. Instead, the Company has provided extensive evidence in support of its request to adjust rates. For example, the Company's initial filing included testimony from Tracy Musto and Bradford Marx describing the \$123.1 million in capital investments made since the Company's last rate proceeding and not currently recovered through rates (July 27, 2023 Direct Testimony of T. Musto and B. Marx at 3). The Company has also filed testimony asserting that its operation and maintenance expenses have increased since its last rate case and that the Company will incur significant costs related to cybersecurity that are necessary to continue operation of its system in a safe, secure, and reliable manner (July 27, 2023 Direct Testimony of Sean Eck at 3).

Based on the foregoing, there is sufficient evidence to support a determination by the Commission that an adjustment to the Company's rates is necessary, subject to a hearing on the merits. Although there is disagreement between DOE and the Company with respect to the Company's revenue requirement, this disagreement should be resolved on the record after a hearing, not by a judgment of dismissal precluding any factual inquiry.

B. The DOE's Inaccurate Description of Revised F-16 Report Pages Should be Disregarded as Inapplicable to the Motion to Dismiss

The DOE references revisions made to certain pages of the Form F-16 in an attempt to discredit the Company by implying that the Commission and DOE would be unable to understand the Audit Report due to these revisions (Motion at 6). The revised F-16 pages are provided with this objection as Attachment D. It is important to note that the revised pages were provided to Audit and, therefore, Audit was able to refer to these revised pages when completing its audit investigation and preparing the Audit Report for this proceeding (Motion at 6). It is more important to note that the Company *was advised by Audit* that it did not need to refile its F-16 with

the Commission because DOE is responsible for verifying the Form F-16. Specifically, the DOE Audit Director advised the Company via email that Audit would update the F-16 report with any revised pages submitted by the Company and Audit would let the Company know when the F-16 was considered complete. The Company relied on this directive and its understanding that verification of the Form F-16 would be performed by Audit and addressed through the Audit Report filed with the Commission.

The Motion also improperly attempts to turn one issue that has already been identified and corrected by the Company into two issues (Motion at 9-10). The Motion includes two paragraphs tied to Audit Issue #2 which relate to accumulated depreciation (Motion, Att. 1 at 199). The recommendation related to Audit Issue #2 is for the Company to make any adjustments to the permanent rate filing schedules necessary to correct the cost of removal error that was previously corrected in the Company's temporary rate schedules (*id.* at 199-200). The Company agreed with this recommendation and stated that it will include this correction in its update of the revenue requirement (*id.*). The error related to cost or removal was addressed through the currently effective temporary rates, thus there is no dispute that the same correction would occur for permanent rates. The DOE's discussion of this issue is evidence of DOE's failure to understand the issue or another example of DOE's attempts to exaggerate.

C. The DOE Fails to Understand how Billing Determinants are Calculated

The DOE's Motion refers to "unbilled revenues" as evidence that the test year sales and billing determinants for up to 600 customers were lower than they should have been due to certain instances of delayed bills that should have been issued in 2022 but were delayed into 2023 (Motion at 12-13). This argument demonstrates a lack of understanding for how billing determinants were calculated for ratemaking purposes. There is no impact on billing determinants that could arise

due to delayed bills. The initial testimony of Company witness Kenneth Sosnick explains how billing determinants are calculated to set rates (July 27, 2023 Direct Testimony of Kenneth A. Sosnick at 20). As explained in Mr. Sosnick’s testimony, it is generally accepted practice in New Hampshire (and elsewhere) to set rates using normalized billing determinants instead of actuals (id.). Accordingly, the Company’s billing determinants in this proceeding have been calendarized and weather normalized and therefore the delayed billing referenced by DOE did not have any impact on the normalized billing determinants used for ratemaking. Any unbilled revenues in a particular year has no impact on the normalization process (see id.). That is because normalizing the determinants ensures that the inputs to the rate analysis better reflect the sales and revenues the Company would be likely to achieve in a normal year, rather than being skewed by unusual circumstances in a particular year (id.). Thus, the DOE’s assertions regarding unbilled revenues and billing determinants offer no support to its Motion.

D. Issues Related to the Company’s Cost of Gas Proceeding are Irrelevant to this Proceeding.

The Motion points to an issue identified and corrected by the Company in Docket DG 23-076 as evidence that the 2022 data cannot be relied on (Motion at 13-14). The error involved cost of gas revenues, which play no role in this rate case. The Company discovered that some cost of gas revenues that should have been allocated to the summer period were in fact allocated to the winter period. The Company discovered this error in early 2023 and corrected it. Unfortunately, due to human error, the correction was incorrect, so the Company had to fix the allocation as part of the cost of gas proceeding in the fall of 2024.

Thus, while an error did indeed occur in Docket No. DG 23-076, this error cannot be pointed to as a systematic problem with the Company’s SAP system or evidence that “in late 2023, Liberty continued to uncover significant SAP related errors, and demonstrate an inability to

definitively correct SAP errors” (Motion at 14). This is simply another opportunistic attempt by DOE to attack the credibility of the Company based on an incident where the Company identified and addressed an error, and implemented processes to avoid similar errors in the future. See Docket No. DG 23-076, October 23, 2023 letter (stating that the Company has implemented procedures to ensure the reconciliation amounts will be reviewed monthly). Contrary to DOE’s assertions, Liberty EnergyNorth’s actions in Docket No. DG 23-076 support a conclusion that the Company has remained diligent in its review of data and acted transparently when issues have been identified. The Company should not be punished in this docket for taking appropriate and reasonable steps in Docket DG 23-076.

IV. THE COMMISSION SHOULD GRANT THE COMPANY’S PENDING MOTION TO STAY THE PROCEEDING AND ALLOW THE COMPANY TO FILE THE EXPERT CONSULTING REPORT ADDRESSING DOE’S CONCERNS

As noted above, the Company filed its Motion to Stay on February 5, 2024. That motion requests a stay of this proceeding to allow the Company to perform and report on a third-party review to be conducted by PwC, which will assess the overall reliability of the data used for the Company’s filing in this proceeding and the Company’s basis for asserting that such data is reliable (Motion to Stay at 1-2). In response to the Motion to Stay, the DOE filed its partial objection on February 12, 2024, asserting that while DOE assents to a stay, such stay should be only until the Commission rules on the motion to dismiss filed in Docket No. DE 23-039 and the Motion in this docket (not yet filed at the time of DOE’s objection to the Motion to Stay) (DOE Partial Objection at 4-5).

As detailed above, it is the Company’s position that the DOE has failed to satisfy the standard of review applicable to a motion to dismiss. However, based on what has transpired in Docket No. DE 23-039, the Company is also cognizant of the difficult task faced by the

Commission to resolve the disparate positions of the DOE and the Company (Motion to Stay at 5 citing Docket No. DE 23-039, 2024 Jan. 23 Tr. at 267-268⁹). In recognition of that difficult task, the Company retained PwC to perform a third-party review on a timeline that would not unduly delay this proceeding (Motion to Stay at 5). Retention of PwC and the subsequent filing of an expert consulting report will provide the Commission with an independent review of the underlying data to assist the Commission’s review and “narrow the gap” between the DOE’s position and the Company’s position.

As the Commission recognized in Order No. 26,952, PwC is an accounting firm with significant expertise in the areas of utility accounting, including regulatory accounting and U.S. generally accepted accounting principles (“GAAP”) (see Att. E at 1). PwC also has experience SAP accounting systems, specifically as used by regulated utilities (id. at 2). Accordingly, PwC is capable of assessing the overall reliability of the Company’s financial data, the Company’s handling of the SAP mapping issues that resulted from its conversion to an SAP system during the test year, and reflection of identified adjustments in the schedules filed in support of the Company’s request for a rate change (see id.). PwC’s review will also include a root cause analysis to gain an understanding of the potential causes of the variances (id. at 4).

The Company’s proposal to briefly stay this proceeding and file an expert consulting report is not an attempt to cure a defective filing; rather these are proposals intended to aid the Commission’s decision making without undermining the efforts of all parties to-date (see, e.g., Motion at 2 (stating that the DOE has undertaken a significant investigation and that the DOE and OCA have engaged in an extensive discovery process)). As detailed above, the DOE’s argument is that the Commission cannot set rates because there are variances between the Company’s general

⁹ The January 23, 2024 transcript from Docket No. DE 23-039 is included with this objection as Attachment A.

ledger, F-16, and revenue requirement schedules (Motion at 7-8). This argument wholly ignores the issue of whether the variances can be explained by the Company and traced to correct revenue requirement schedules.

The DOE has never explained why rates cannot be set if the Commission can determine that the revenue requirement schedules used to develop rates are correct. The DOE has acknowledged that there will be adjustments made between the general ledger and a utility's regulatory reporting (Att. A at 67). Accordingly, the issue appears to be that the Company has failed to comply with some illusory requirement that any such variances must not exceed an unknown DOE threshold. Despite there being no basis for DOE's assertions, the Company has attempted to address DOE's concerns through its proposal to engage a third-party. The Company has further proposed to amend the procedural schedule to allow PwC to provide testimony before the Commission following a period of discovery on the expert consulting report's findings (Motion to Stay at 6-7). This comprehensive proposal has been outright rejected by the DOE but the Commission should not permit DOE to leverage the implementation of a new accounting system to dismiss this proceeding particularly in light of the Company's reasonable proposal set forth in the Motion to Stay.

In light of the Order No. 26,952, which stayed the Liberty Granite State case until April 15, 2024, to allow for PwC to review both the 2022 and 2023 records in that docket, the Company respectfully suggests the same course is prudent here. The Commission should stay this docket until mid-May to allow for PwC to complete a similar review of the Company's 2022 and 2023 records, and revisit the Motion at that time.

V. CONCLUSION

WHEREFORE, Liberty EnergyNorth respectfully requests that this Commission:

- A. Deny DOE's Motion to Dismiss;
- B. Grant the Company's pending Motion to Stay Proceeding; and
- C. Grant such further relief as it deems appropriate.

Respectfully submitted,

Liberty Utilities (EnergyNorth Natural Gas)
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By its Attorneys,



Date: February 26, 2024

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Certificate of Service

I hereby certify that on February 26, 2024, a copy of this objection to the Department of Energy's Motion to Dismiss Proceeding has been electronically 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, flowing style.

Jessica Buno Ralston