

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 23-067

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. d/b/a LIBERTY

Request for Change in Distribution Rates

Order Fixing, Determining, and Prescribing Temporary Rates

O R D E R N O. 26,899

October 31, 2023

In this order, the Commission approves an annual temporary rate increase of \$8,706,258 above the 2022 test year revenue, resulting in total annual gas distribution revenues of \$106,546,258, effective November 1, 2023. The Commission does not accept the agreement in principle reached by the Company, OCA, and DOE, however, that the temporary increase in rates be based on the recovery of \$8,706,258 over nine months, *i.e.*, from November 1, 2023 to July 31, 2024. Instead, the Commission approves, in line with prior Commission decisions, temporary rates based on the recovery of \$8,706,258 over twelve months, amounting to an 8.898 percent increase, *not* 10.33 percent, as was agreed upon by the parties. The Commission also approves the recovery of the temporary test year rate revenue requirement for the month of October, by directing that approximately \$500,000 be reconciled to account for the difference between the test year annual permanent and temporary revenue requirements. At the end of this proceeding, the permanent rates ultimately approved will be reconciled back to an effective date of October 1, 2023.

I. PROCEDURAL HISTORY

On July 27, 2023, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (Liberty, or the Company) filed a petition requesting that the Commission set temporary and permanent rates. With respect to temporary rates, Liberty asked the

Commission to increase its normalized test year distribution revenues by approximately \$15.3 million, through a uniform increase to all existing fixed and volumetric customer distribution charges and rates, for effect on October 1, 2023. (The Office of the Consumer Advocate (OCA) filed its letter of participation in this proceeding on July 26, 2023). Liberty filed the direct testimony of its personnel Mr. Tyler J. Culbertson and C. Drew Cayton, with supporting schedules, in conjunction with its temporary rate request. Hearing Exhibit 1.

By its Order No. 26,877 (August 25, 2023), the Commission originally scheduled a hearing regarding the Company's temporary rate proposal for September 27, 2023. On September 26, 2023, the Commission issued a procedural order cancelling the September 27 hearing, citing the fact that no written statement of position had been filed by the New Hampshire Department of Energy (DOE), nor any other party, regarding the Liberty proposal, nor had a settlement agreement been filed for the Commission's consideration. The procedural order also suspended the temporary rate tariff pages presented by Liberty beyond October 1, 2023. This procedural order triggered a series of filings from the Company, the DOE, and the OCA in late September 2023, advising the Commission that the parties had come to a settlement agreement in principle (though no formal temporary rates settlement agreement was or has been filed), and would jointly seek Commission approval for a temporary rate increase of approximately \$8.7 million. The Company subsequently filed revised temporary rate schedules in support of the settlement agreement in principle. Hearing Exhibit 3.

On September 29, 2023, the Commission issued a procedural order scheduling a hearing on temporary rates for October 27, 2023, and requesting that the DOE file written testimony in support of the settlement agreement in principle by October 20,

2023. On October 20, 2023, the DOE filed supporting testimony of Dr. Faisal Deen Arif, Gas Director at the DOE's Regulatory Support Division, offering analytical support for the settlement agreement in principle. Hearing Exhibit 4.

On October 24, 2023, the Company filed a "Status Update" with the Commission in this docket, stating that the Company, DOE, and OCA, remained in support of the settlement agreement in principle, and that a temporary rate increase revenue requirement of \$8,706,258 was being sought.

The October 27 hearing was held as scheduled, at which representatives of Liberty, the DOE, and the OCA appeared; the petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are available on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-067.html>

Following the hearing, on October 30, 2023, the Company re-filed Hearing Exhibit 3, re-filed the rate model previously filed by Liberty as Hearing Exhibit 5, and filed the Excel version of the temporary rate calculations submitted in Docket No. DG 20-105 in response to Data Request Staff 1-1 as Hearing Exhibit 6.

II. SUMMARY OF SETTLEMENT AGREEMENT IN PRINCIPLE ON TEMPORARY RATES

The settlement agreement in principle, without formal memorialization in a single document, entered into, and presented by, the Company, DOE, and the OCA made the following modifications to the original \$15.3 million temporary rate increase proposal by Liberty, as described in detail by the DOE through Dr. Arif's written testimony, Hearing Exhibit 4. Dr. Arif related that at a technical session, Liberty disclosed an error in the calculation of accumulated depreciation in the original temporary rate calculation. The accumulated depreciation amount included in the Company's original temporary rate request was understated by approximately \$30.4

million. This computational error had a direct impact on the Company's originally calculated Rate Base of \$527.7 million, which was revised downward to \$497.3 million as a direct consequence. Hearing Exhibit 4 at Bates Pages 5-6. A further downward adjustment to the temporary rates revenue requirement as part of the settlement agreement in principle resulted from application of the correct Weighted Average Cost of Capital (WACC) of 6.96 percent, as approved in the Company's last rate case, Docket No. DG 20-105, instead of the mistaken 7.10 percent WACC figure applied by the Company in its original temporary rate proposal. Hearing Exhibit 4 at Bates Page 6.

Dr. Arif also stated that the settlement agreement in principle revenue requirement incorporated Gas Assistance Program (GAP) revenues of \$1.3 million; the Company did not include these GAP revenues in its original temporary rate proposal. Furthermore, Dr. Arif stated that, as part of the settlement agreement in principle, for the limited purposes of temporary rate calculations, the Company agreed to remove one-half of the plant investment that it undertook associated with its recently implemented Customer First/SAP software program, or, one-half of the investment amount of \$30.4 million (as of the end of 2022). This served to further reduce the calculated rate base figure for the Company from \$497.3 million to \$482.2 million; these cumulative changes related to the settlement agreement in principle resulted in a settled revenue requirement for temporary rates of \$8,706,258. *Id.* at Bates Pages 6-7.

The Company, DOE, and the OCA provided oral testimony in support of the settlement agreement in principle on temporary rates at the October 27 hearing.

The DOE stated, through the hearing testimony of Dr. Arif, that it saw no technical difficulties posed by the one-month delay in assessing temporary rates until

November 1, and that it recommended approval of the rates proposed by the Company in connection with the settlement agreement in principle among the parties as just, reasonable, and in the public interest.

The OCA stated that it supported the proposed temporary rates, as modified by the Company in response to the settlement agreement in principle among the parties.

Liberty, in its closing statement, argued the proposed temporary rates submitted to the Commission were fair, just and reasonable, and that any temporary rate reconciliation could be effectuated through the mechanism of temporary-permanent rate recoupment at the termination of the overall rate case.

III. COMMISSION ANALYSIS

RSA 378:27 authorizes the Commission to set reasonable temporary rates that are “sufficient to yield not less than a reasonable return on the costs 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, unless there appears to be reasonable ground for questioning the figures in such reports.” The New Hampshire Supreme Court has explained that “[t]his standard is ‘less stringent’ than the standard for permanent rates, in that temporary rates shall be determined expeditiously, ‘without such investigation as might be deemed necessary to a determination of permanent rates.’” *Appeal of the Office of Consumer Advocate*, 134 N.H. 651, 660 (1991) (citation omitted).

Furthermore, informal disposition is encouraged and may be made of any case at any time prior to the entry of a final decision or order. RSA 541-A:31, V(a), :38. New Hampshire Code of Administrative Rules Puc 203.20(b) requires the Commission to determine, prior to approving a settlement, that the settlement results are just and reasonable and serve the public interest. The Commission encourages parties to

attempt to reach a settlement of issues through negotiation and compromise, as it is an opportunity for creative problem solving, allows the parties to reach a result more in line with their expectations, and is often a more expedient alternative to litigation. *See, e.g., Unitil Energy Systems, Inc.*, Order No. 26,623 at 20-21 (May 3, 2022) (citations omitted). Even when all parties join a settlement agreement, the Commission cannot approve it without independently determining that the result comports with applicable standards. *Id.* As the settlement agreement in principle, not formalized with a single memorialization document, considered here pertains to temporary rates, the underlying standard the Commission applies is that delineated in RSA 378:27.

Based on the record presented at hearing, the updated schedules filed by the Company (*see* Hearing Exhibits 2, 3, and 5), and the DOE's testimonial presentation by Dr. Arif, we find that a temporary increase to Liberty's annual revenue requirement of \$8,706,258 appropriately balances the interests of Liberty's customers with the interests of its shareholders. The temporary test year record justifies the annual revenue requirement increase based on the books and records of the Company. We also agree that the temporary rates, pursuant to the settlement agreement in principle reached among the parties, are appropriately adjusted to exclude recent billing system investment costs that might reasonably be questioned. We also commend the DOE for its work in correcting the other technical issues with the Company's original temporary rates proposal, such as that related to depreciation.

For purposes of temporary rates, and the more limited investigation envisioned by RSA 378:27, we however do not find that the agreed upon temporary 10.33 percent increase in distribution rates, that enables recovery of \$8,706,258 over November 1, 2023 to July 31, 2024, to be just and reasonable. Instead, the Commission approves the temporary rates based on the recovery of \$8,706,258 annually over twelve months,

which results in an 8.898 percent increase, as supported by Exhibit 2 and 5. The issue with what the parties have agreed to comes to the fore if one considers a situation wherein the approved permanent rates revenue requirement turns out to be exactly equal to the revenue requirement set per the test year's temporary revenue requirement, i.e., the permanent rates allow precisely 8.898 percent increase in revenue requirement. Under that situation, if the agreed-upon 10.33 percent increase in rates is made effective the Company will have to reconcile the difference between the 10.33 percent increase put in effect for temporary rates and the 8.98 percent increase that eventually is set for the permanent rates. All that would have happened would be that the Company would have received a return on capital to the Company that exceeds the previously Commission-approved return for the period November 2023 to July 2024 at the expense of the ratepayers, which ultimately would have to be corrected. We decline to enable the Company to have a right to a return on capital higher than what was approved in their prior base rate case, DG 20-105, even temporarily.

The parties effectively have proposed an annual temporary revenue increase of \$10.1 million, i.e., test year annual revenue multiplied by 10.33%, which is approximately \$1.4 million above the 2022 test year temporary revenue increase of \$8.7 million (Exhibit 2). The intention of the update was to address the approximately \$500,000 in revenue the Company would have lost for the month of October 2023. As the parties to the agreement in principle did not increase the rate base that requires a revenue requirement adjustment, the \$10.1 million increase would effectively increase the Weighted Average Cost of Capital (WACC) above the currently approved level. Allowing that would contradict precedent in the context of the temporary rate-setting approach previously approved by the Commission and would go against the purpose of

the temporary rate-setting. Further, the parties could not justify the increased WACC at hearing. The only rationale the parties could provide was that the parties agreed with the 10.33% increase.

In order to effectuate the rate relief sought by the Company to address its under-earning condition, and in the spirit of the Procedural Order dated September 29th, 2023, the Commission also approves the recovery of the temporary test year rate revenue requirement for the month of October, of approximately \$500,000, *see* Company Motion of September 28, 2023, at Page 4, at the time temporary rates are reconciled to the permanent rates. Thus, at the end of the proceeding, the permanent rates ultimately approved will be reconciled back to an effective date of the temporary increase, of October 1, 2023. We make no findings in this order that any capital investments are prudent, used, and useful; rather, we base our determination on a limited review of Liberty's reports on file with the Commission. The Commission's limited review indicates that the Company is not currently earning its allowed rate of return approved by the Commission in its last full distribution rate case, Docket No. DG 20-105. Temporary rates are therefore appropriate, allowing Liberty to earn closer to its previously authorized return on rate base. Liberty and its customers are further protected because temporary rates are subject to reconciliation at the conclusion of the permanent rates proceeding in this docket.

The Commission notes that the size of the temporary rate increase is significant. While the temporary rate increase is appropriate per statute, the amount of the increase points to a need for a high level of scrutiny in the permanent rate case.

Based upon the foregoing, it is hereby

ORDERED, that the test year revenue requirement increase of \$8.7 million is APPROVED as generally referenced in the settlement in principle reached by the parties, subject to the following conditions; and it is

FURTHER ORDERED, that a temporary rates increase of 8.898 percent based on the recovery of \$8,706,258 over twelve months, is APPROVED; and it is

FURTHER ORDERED, that Liberty shall re-submit its schedules, including bill impacts, for the implementation of temporary rates pursuant to the Commission's modifications by November 10, 2023; and it is

FURTHER ORDERED, that the temporary rates will be effective for service rendered on and after November 1, 2023, subject to reconciliation pursuant to RSA 378:29 at the conclusion of the permanent rate proceeding; and it is

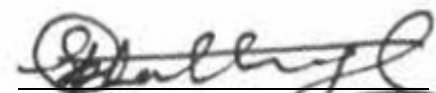
FURTHER ORDERED, that the lost revenue for the month of October, 2023, be recovered at the time temporary rates are reconciled to the permanent rates; and it is

FURTHER ORDERED, that Liberty shall submit with the Commission property annotated revised Tariff pages consistent with this Order within 15 days of the date of this Order, or November 15, 2023, as required by N.H. Code Admin. Rules, Puc 1603.

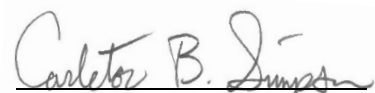
By order of the Public Utilities Commission of New Hampshire this thirty-first day of October, 2023.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner



Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-067

Printed: 10/31/2023

Email Addresses

ClerksOffice@puc.nh.gov
Ashraful.Alam@energy.nh.gov
Faisal.DeenArif@energy.nh.gov
Cherishe.Barbee@libertyutilities.com
Toby.Bishop@brattle.com
BremserAW@bv.com
Ann.Bulkley@brattle.com
CaytonD@bv.com
CroftM@bv.com
Michael.J.Crouse@oca.nh.gov
Tyler.Culbertson@libertyutilities.com
johndefever@yahoo.com
Energy-Litigation@energy.nh.gov
paul.b.dexter@energy.nh.gov
Shawn.Eck@libertyutilities.com
thomas.c.frantz@energy.nh.gov
maureen.karpf@libertyutilities.com
James.King@libertyutilities.com
tklaes@blueridgecs.com
donald.m.kreis@oca.nh.gov
Molly.M.Lynch@energy.nh.gov
Morgan.MacGregor@libertyutilities.com
Bradford.Marx@libertyutilities.com
Alyssa.Maston@libertyutilities.com
Erica.Menard@libertyutilities.com
tmlarkinassociates@gmail.com
dmullinax@blueridgecs.com
Tracy.Musto@libertyutilities.com
amanda.o.noonan@energy.nh.gov
ocalitigation@oca.nh.gov
Lauren.Preston@libertyutilities.com
Mary.Purvis@libertyutilities.com
jralston@keeganwerlin.com
aaron@rothschildfinancial.com
Todd.Schavrien@libertyutilities.com
Jill.Schwartz@libertyutilities.com
mary.e.schwarzer@energy.nh.gov

michael.sheehan@libertyutilities.com
david.simek@libertyutilities.com
SosnickKA@bv.com
heather.tebbetts@libertyutilities.com
Greg.Tillman@libertyutilities.com
Chris.Wall@brattle.com
Gregory.Waller@libertyutilities.com
jrw@psu.edu
Adam.Yusuf@Libertyutilities.com