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P R O C E E D I N G

1
2 CHAIRMAN GOLDNER: Okay. Good morning.
3 I'm Chairman Goldner. I'm joined today by
4 Commissioner Chattopadhyay and Commissioner
5 Simpson.

6 This is the rehearing for the temporary
7 rates issue in the Liberty-Gas distribution rate
8 case, which was granted by the Commission on
9 December 29th, 2023, by Order 26,923, in response
10 to a New Hampshire Department of Energy Motion
11 for Rehearing of Order Number 26,899, which fixed
12 temporary rates in this proceeding.

13 The Office of the Consumer Advocate
14 supported the DOE Motion for Rehearing, and the
15 Company opposed it.

16 This is an unusual situation, insofar
17 as the rehearing request by the Department of
18 Energy centered on the questions of revenue
19 requirement and recoupment for temporary rates,
20 that is the \$500,000 question.

21 But recent events involving the
22 Company's electric affiliate, Granite State
23 Electric, as indicated in 26 -- Order 26,923,
24 raised questions about the gas proceeding as

1 well.

2 First, we'll take appearances from the
3 parties. There are no intervenors in this
4 proceeding. Liberty, the DOE, and the OCA are
5 the three parties participating.

6 And we'll begin taking appearances with
7 the Department of Energy.

8 MR. DEXTER: Good morning, Mr.
9 Chairman, Commissioners. My name is Paul Dexter.
10 I'm appearing on behalf of the Department of
11 Energy. I'm joined by Co-Counsel Molly Lynch, as
12 well as Dr. Arif Faisal [sic] from the Regulatory
13 Department Gas Division.

14 CHAIRMAN GOLDNER: Thank you. And the
15 Office of the Consumer Advocate?

16 MR. CROUSE: Good morning,
17 Commissioners. My name is Michael Crouse, Staff
18 Attorney with the Office of the Consumer
19 Advocate, representing utility -- I'm sorry --
20 the residential ratepayers in this matter.

21 CHAIRMAN GOLDNER: Thank you. And
22 Liberty Utilities?

23 MS. RALSTON: Good morning. Jessica
24 Ralston, from the law firm Keegan Werlin, joined

1 by Michael Sheehan, in-house counsel for the
2 Company.

3 CHAIRMAN GOLDNER: Thank you.

4 So, the Commission would expect that,
5 as the moving party for the Motion for Rehearing,
6 the DOE would present its position first,
7 followed by the OCA, and then the Company.

8 There are no witnesses or exhibits
9 proposed for this rehearing. So, it appears that
10 we're left with the arguments being presented by
11 counsel for the parties today. All parties
12 should be ready to answer Commission questions
13 regarding the implication of the DOE's Audit
14 Report for the Granite State Electric affiliate,
15 and associated pleadings for this gas case -- for
16 this gas rate case proceeding.

17 Okay. Let's start with statements of
18 position, beginning with Attorney Dexter, and the
19 Department of Energy.

20 MR. DEXTER: Thank you, Mr. Chairman.

21 So, the Department filed a Motion for
22 Rehearing concerning Order Number 26,899. The
23 order was issued on October 31st, 2023. And that
24 order -- the Motion for Rehearing focused only on

1 the issue of temporary rate recoupment.

2 It is the position of the Department
3 that recoupment was not at issue in the temporary
4 rate hearing, and, in fact, needed not to be
5 addressed at this phase of the proceeding.

6 Temporary rate recoupment is generally an issue
7 that's decided in the permanent rate proceeding.
8 And I would point the Department -- pardon me --
9 point the Commission towards the last two Liberty
10 EnergyNorth rate cases, DG 17-049, which was a
11 litigated case. And, if you look at Order Number
12 26,122, at Pages 51 through 52, you'll see that
13 the issue of temporary to permanent rate
14 recoupment was decided in that order. There's
15 also an appendix to that order, Appendix 5, which
16 will point you to the calculation that was
17 approved in that case.

18 Three years later, in EnergyNorth's
19 next rate case, DG 20-105, which was a settled
20 case, if you go to Docket Tab 64 in that case,
21 you'll see a Settlement Agreement filed on
22 June 30th, 2021. And you'll see that that
23 Settlement Agreement also provided for the
24 calculation of temporary rate recoupment.

1 In this case, the Company has proposed
2 to move temporary rate recoupment from base
3 rates, where it's been in the last two cases, to
4 the LDAC. And I point you to Bates Page II-206,
5 from Docket Tab 4, which is the Company's
6 original filing in this case, July 27th, 2023.
7 The red-line tariff in that case will show where
8 the Company proposes to -- how the Company
9 proposes to include the temporary rate recoupment
10 through the LDAC.

11 So, in the view of the Department,
12 recoupment is an issue to be decided in the full
13 case, not the temporary rate case. And the
14 temporary rate case focuses on the amount to
15 collect, and the rates proposed to collect the
16 amount of temporary rates.

17 The Commission apparently saw that
18 differently, and issued the order on
19 October 31st, which did set temporary rates,
20 which we are not seeking rehearing of that part
21 of the decision. But it also included a
22 directive that the recoupment provision
23 effectively begin October 1st, 2023, which is one
24 month later than the date that the temporary

1 rates were set to take effect, which was
2 November 1st, 2023. And, as we laid out in the
3 Motion, we don't believe that's an appropriate
4 reading of the temporary rate recoupment statute.
5 RSA 378:29 is the statute that deals with
6 recoupment. It lays out the formula for
7 calculating recoupment. And it states that that
8 formula will look at the permanent rates --
9 sorry -- that will look at the temporary rates
10 that were approved, and it will look at the
11 permanent rates that are ultimately approved in
12 the case, and it will look at the impact on the
13 utility's gross income, applying those two
14 different sets of rates, and that difference
15 becomes the recoupment amount.

16 But the time period for that comparison
17 of the income under the temp. rates, versus the
18 income under the permanent rates, is specified in
19 the statute. It says -- the very last clause of
20 the statement says "if applied during the period
21 such temporary order was in effect."

22 So, I don't think there's any question
23 in this case that the temporary rate order was
24 effective November 1st, 2023, and the temporary

1 rates were effective November 1st, 2023. So, in
2 the view of the Department, that's when the
3 recoupment period should begin, and it should end
4 when the permanent rates are set.

5 That's really all we have to say, in a
6 nutshell, on that issue.

7 I can make some preliminary comments on
8 the section of the order on rehearing that talked
9 about the interplay between this case and the
10 electric case, if it's appropriate. There's a
11 few things that I'd like to put in the record.

12 One is that, as you know, in the
13 electric case, the Department's position was
14 based largely on the report of our Audit
15 Department. An audit is ongoing in the gas case.
16 The audit process is such that the Audit Division
17 issues a Draft Audit Report, presents it to the
18 Company for comment, and we talked about this
19 last week at the electric case. And, then, the
20 Company is allowed to comment in writing, and
21 then a Final Audit Report is issued.

22 I've been informed by our Audit
23 Department that their Draft Audit Report was
24 issued to Liberty on December 29th. And they

1 requested that Liberty reply to that Draft Audit
2 by January 12th, which would be later this week,
3 I guess.

4 I have not seen the Draft Audit Report.
5 But I did ask the auditor the question, which I
6 think was important, "will the Audit Report" --
7 "did the Draft Audit Report, on the gas side,
8 contain similar issues, mapping issues, regarding
9 the implementation of the SAP general ledger
10 system and the migration from the Great Plains
11 ledger system?" And I was informed that "yes, it
12 does." And to the same degree and seriousness
13 that's contained in the electric Audit Report
14 that we discussed last week.

15 So, given that, I would expect that the
16 Department would be filing a similar Motion to
17 Dismiss in this case. But I'm not in a position
18 to do that at this time, and I'm not really even
19 in a position to talk about the details of it,
20 because I haven't seen the Audit Report, and, in
21 fact, it's still a draft.

22 We recognize that there is a testimony
23 date looming in this case. DOE and OCA Testimony
24 is due February 21st. To the extent we were

1 planning to file a motion to dismiss in this
2 case, we would do everything we could to get that
3 in in advance of the testimony, which was not the
4 case, in the electric case, due to the timing.

5 I do believe that this Motion to
6 Dismiss in the gas case would go quicker than in
7 the electric case, because we have already
8 written it once. And, so, I don't believe it
9 will take the full six or eight weeks that it
10 took last time, between the issuance of the Audit
11 Report and the issuance of the Motion. And, of
12 course, any action taken by the PUC in the
13 electric case would have an impact on what we
14 filed in the gas case.

15 So, those are the preliminary thoughts
16 I have on the interplay between the two cases at
17 this time.

18 But, again, that was not the purpose of
19 us filing the Motion for Rehearing. We simply
20 believe that the Commission's order issued on
21 October 31st, 2023, concerning recoupment, did
22 not comply with 378:29. We believe it ought to
23 be reversed and amended, so that the recoupment
24 period starts on November 1st, 2023, consistent

1 with the statute.

2 Thank you.

3 CHAIRMAN GOLDNER: Thank you.

4 And we'll turn now to the OCA. And the
5 Commission would like to hear on both topics as
6 well, the OCA's thinking and position on that.

7 And, Attorney Dexter, that was exactly
8 right. It was our intention today to adjudicate
9 the \$500,000 question, but also to hear from the
10 parties on this other rather large, you know,
11 looming issue on the audit and the accounting.

12 So, okay. Now, we'll turn to Attorney
13 Crouse, and the OCA.

14 MR. CROUSE: Thank you.

15 I think, on the first matter, the OCA's
16 position is rather brief, and I would think Paul
17 Dexter has it right, and we would assume the
18 Department's position on this matter, regarding
19 the recoupment of temporary rates, and the
20 calculations and methodology described in RSA
21 378:29.

22 With regards to the Department's
23 potential Motion to Dismiss and what their Draft
24 Audit Report might contain, the OCA does have a

1 great interest in that, as I'm sure all the other
2 parties do, given the rather unprecedented
3 findings on the electric side.

4 The OCA does not have an audit
5 division, and, therefore, we are taking great
6 interest in what the Department's Audit Team will
7 find, as well as assessing the need of perhaps
8 hiring for our own audit team. That hasn't been
9 determined internally yet, but is of great
10 interest in this matter.

11 So, I don't think I have an official
12 position on that yet, but we will be taking great
13 interest in this matter.

14 CHAIRMAN GOLDNER: Thank you, Attorney
15 Crouse.

16 We'll turn now to Attorney Ralston, and
17 Liberty.

18 MS. RALSTON: Good morning. Thank you.

19 So, as detailed in the Company's
20 Objection to the Motion for Rehearing, there are
21 two issues before the Commission. One is whether
22 it should confirm that the Company is authorized
23 to recover the revenues that would have otherwise
24 been recovered during October of 2023, but for

1 the postponement of the September 27th hearing,
2 and how those October revenues should be
3 recovered.

4 The Department of Energy's Motion has
5 tried to tie these issues together, by arguing
6 that the Company cannot recover the October
7 revenues through recoupment, and, therefore, the
8 Company could not recover them at all. And the
9 Company doesn't think that is correct.

10 So, as an initial matter, the Company
11 disagrees that the Commission failed to provide
12 sufficient notice of the issues that were decided
13 in its Order Number 26,899. It was clear that
14 the Company's request to recover those October
15 revenues would be an issue at the October 27th
16 hearing.

17 The Department of Energy and the OCA
18 did not address the Company's proposal to recover
19 the October revenues specifically, but that
20 doesn't mean that they were not an issue at the
21 hearing.

22 The Company first raised the issue of
23 the October revenues in its September 28th motion
24 requesting an order *nisi*, and neither the DOE or

1 the OCA responded to that motion. The Commission
2 issued its September 29th order rescheduling the
3 temporary rate hearing, and specifically stated
4 that the Company's alternative request, which was
5 to recover the October revenues, was reasonable;
6 neither party responded to the order.

7 On October 16th, the Company filed
8 updated rate schedules that included a proposal
9 to recover the October revenues during a
10 nine-month temporary rate period. And, then, the
11 Department of Energy filed its testimony on
12 October 20th. That testimony didn't address the
13 Company's request to recover the October
14 revenues, and also didn't address those October
15 16th revised schedules.

16 I do acknowledge that the DOE stated,
17 in its Motion for Rehearing, that it didn't have
18 time to respond to the Company's September 28th
19 motion before the Commission issued an order the
20 following day, and I can certainly appreciate
21 that. However, the hearing was not until
22 October 27th, and the DOE had an opportunity to
23 provide testimony in between.

24 So, it's clear that there were multiple

1 opportunities to respond to the request to
2 recover the October revenues. And, so, this
3 argument that "there wasn't sufficient notice"
4 just doesn't -- is not persuasive.

5 The next argument is the Department of
6 Energy's arguing that the statute, RSA 378:29,
7 precludes recovery of the October revenues. As
8 the Company explained in its Objection, allowing
9 recovery of the October revenues is consistent
10 with the objective of temporary rates. The
11 objective of temporary rates is to allow the
12 utility to earn a reasonable rate of return. In
13 its Objection, the Company cited to a case law
14 that demonstrated that there's precedent for
15 allowing temporary rates to go into effect
16 retroactively in order to achieve this -- achieve
17 this objective, sorry.

18 So, it stands to reason that, if the
19 Commission could have set temporary rates
20 retroactively, there is no basis to conclude that
21 the Commission was not permitted to set the
22 recoupment period as beginning on October 1st.

23 However, it's not even necessary to
24 determine the recoupment period at this time,

1 because RSA 378:29 does not govern the
2 Commission's authority to approve the recovery of
3 these October revenues that are at issue here.
4 The Commission has already determined that it's
5 reasonable to allow recovery of those revenues,
6 and that's consistent with other Commission
7 orders cited in the Company's Objection, where
8 the Commission has allowed a truncated recovery
9 period where hearings have been delayed to allow
10 for additional Commission review.

11 The Company's original proposal was to
12 recover these revenues during the temporary rate
13 period. But another option would be to allow
14 recovery of these revenues by allowing the
15 Company to defer the October revenues to a
16 regulatory asset for recovery as part of
17 permanent rates.

18 Regardless of the recovery mechanism,
19 which is what we're really talking about here.
20 It's clear that the Company should not be harmed
21 due to procedural issues that were outside of its
22 control. The Company was prepared to move
23 forward with the September hearing date, and had
24 submitted its exhibits and its witness list.

1 As noted in the Commission's September
2 26th procedural order, that September hearing was
3 canceled, because a settlement agreement had not
4 been filed and because DOE had not filed a
5 position statement. Without a settlement
6 agreement, the Company had submitted its hearing
7 exhibits and was ready to move forward. The
8 Company has no control over DOE's position
9 statement or the timeline for settlement
10 discussions, particularly where the Company was
11 the only party that was faced with harm by
12 postponement of the hearing.

13 So, for these reasons, the Company is
14 respectfully requesting that the Commission
15 affirm its authorization for the Company to
16 recover the revenues that would have been
17 recovered in October, through whichever mechanism
18 is determined appropriate by the Commission.

19 Do you want the Company to also comment
20 on the other point?

21 CHAIRMAN GOLDNER: Yes, please.

22 MS. RALSTON: So, as Attorney Dexter
23 stated, the Company does have the Draft Audit
24 Report. It is a draft. The Company is working

1 through its review and response.

2 As Attorney Dexter also acknowledged,
3 there are audit issues that discuss the
4 conversion to SAP. Obviously, it's the same
5 system that's been implemented across the New
6 Hampshire jurisdiction. So, there were matching
7 -- "matching" -- mapping adjustments that were
8 made. But, similar to Attorney Dexter, we can't
9 speak to specifics. We're still reviewing.

10 But there are -- you know, it is the
11 same system. The Company has undergone the same
12 efforts to ensure that the books -- that the
13 books of using that as a starting place were
14 adjusted, and that the revenue requirement in
15 this case is accurate. And, so, you're going to
16 see that there were adjustments that needed to be
17 made to get that final result, where we have a
18 revenue requirement that is accurate and
19 reliable.

20 Thank you.

21 CHAIRMAN GOLDNER: Thank you. Okay.
22 We'll turn now to Commissioner questions,
23 beginning with Commissioner Simpson.

24 CMSR. SIMPSON: Thank you.

1 I'll start with the Department. I
2 think our intention was to enable the Company to
3 recover those revenues in the month of October.
4 And I just wanted to understand whether the
5 Department feels that there would be a more
6 appropriate path to enable the Company to do so?

7 MR. DEXTER: No, nothing comes to mind.
8 The Company laid out a possibility, but I don't
9 think that's the way the temporary rate statutes
10 operate. So, if they were to create some sort of
11 a regulatory asset, and collect that, I don't
12 know how the recoupment would handle that.

13 And I don't see any way that that
14 doesn't fall in violation of 378:29. Temporary
15 rates are to be recouped -- or, you know, the
16 differences are to be recouped pursuant to that
17 statute, effective the date of the temporary
18 rates. So, I don't see how the Company's
19 proposed mechanism fits in with that scheme.

20 It's regrettable that the temporary
21 rates were not -- I'm not even sure it's
22 regrettable, it's a fact that the temporary rates
23 were not implemented on the date that the Company
24 requested. There is no, you know, there's no

1 provision that says that the temporary rates have
2 to be approved the day they ask for them.

3 Regulatory processes take time. There was a lot
4 of settlement discussions and things happening in
5 that short period of time, and it so happened
6 that the Commission chose to hold a hearing a
7 month later and set the rates a month later. I
8 think that's just a fact. I don't think there's
9 anything inherently wrong with that.

10 It's not a tremendous amount of time
11 between the filing of the rates, which was right
12 around August 1st, and, you know, November 1st,
13 that's a matter of a couple months.

14 CMSR. SIMPSON: Uh-huh.

15 MR. DEXTER: But, no. I don't -- as
16 I'm sitting here, nothing's coming to mind as an
17 appropriate way to make up for that lost period
18 in October. And, if I think of anything while
19 the hearing is still going on, I'll put my hand
20 up and offer.

21 But that's all I have at this point.

22 CMSR. SIMPSON: Okay. Thank you,
23 Attorney Dexter.

24 And, then, I'll just turn to the

1 Company. Can you explain your proposal a bit
2 more with respect to the month of October, and
3 carrying a regulatory asset? When would you --
4 how would you account for that? Would you view
5 that as in compliance with the statute?

6 MS. RALSTON: You're talking about the
7 recoupment statute?

8 CMSR. SIMPSON: Uh-huh.

9 MS. RALSTON: Yes. So, I may have to
10 lean on someone else to discuss how we would
11 reflect it. I'm not sure --

12 CMSR. SIMPSON: And do you have a
13 number for what that month would be, roughly, in
14 terms of dollars?

15 MS. RALSTON: The dollar amount? I
16 think that we do, but I don't know we have it
17 this morning. I think we had calculated it at
18 the time that the September motion was filed, I
19 think it was roughly the --

20 *[Court reporter interruption.]*

21 MS. RALSTON: -- roughly \$500,000. We
22 can certainly get a specific number.

23 CMSR. SIMPSON: Okay.

24 MS. RALSTON: And, then, with respect

1 compliance with the statute, as I mentioned
2 earlier, and as detailed in the Company's
3 Objection, there is Commission precedence.
4 There's a Pennichuck Water Works case, where the
5 Commission allowed for temporary rates to go into
6 effect retroactively. And that seems to give the
7 Commission an opening to also allow for
8 recoupment that is prior to temporary rates.

9 So, I don't think that the Commission
10 is precluded from this arrangement.

11 CMSR. SIMPSON: Okay. And can you
12 restate the order where that Pennichuck case was
13 referenced?

14 MS. RALSTON: I don't know if it's in
15 an order. I have cited to it in the Objection,
16 the Company's Objection, at Page 7.

17 CMSR. SIMPSON: Okay.

18 MS. RALSTON: It's a Supreme Court
19 case.

20 CMSR. SIMPSON: Okay. Very good.
21 Thank you.

22 And I know you're still reviewing the
23 Audit Report. Is there anything that you're
24 thinking of doing or would like to provide, in

1 terms of alignment with what the Company has
2 proposed in your electric rate case to remedy
3 some of the concerns that exist around
4 accounting?

5 MS. RALSTON: So, are you referring to
6 the third party audit proposal?

7 CMSR. SIMPSON: That, and also a waiver
8 of the twelve-month period for the case.

9 MS. RALSTON: So, I think, given that
10 we just received the Draft Audit Report, we don't
11 have a firm proposal this morning. But those are
12 definitely things the Company is taking into
13 advisement, and would be open to, if that would
14 help remedy.

15 And I think we heard from the
16 Department of Energy last week it was unclear if
17 they were interested in those remedies. But it's
18 certainly the Company's -- something the Company
19 is considering, and, you know, would propose, if
20 it's determined to be appropriate.

21 CMSR. SIMPSON: Okay. Thank you.
22 That's all I have.

23 CHAIRMAN GOLDNER: Okay. We'll turn
24 now to Commissioner Chattopadhyay.

1 CMSR. CHATTOPADHYAY: So, this is --
2 I'm trying to make sure I'm following everything
3 correctly.

4 Is DOE saying that the recoupment
5 starting October 1st is already in place or it
6 will -- it's the way the order reads, that would
7 be allowed, you know, when the permanent rates
8 are set?

9 MR. DEXTER: I don't understand that
10 recoupment to be in place right now. I believe
11 the Commission's order specified a specific
12 percentage increase. And, if you remember back
13 to that hearing, we were talking about the
14 \$8.7 million. That was the amount of temporary
15 rates that were implemented. And there was a
16 question as to whether or not that was going to
17 be calculated over a nine-month period or a
18 twelve-month period. And the Commission's order
19 made it clear that that should be calculated over
20 a twelve-month period and, therefore, reduced the
21 percentage increase. That percentage increase, I
22 believe, was implemented, and I don't think that
23 included the "extra 500,000" for October.

24 CMSR. CHATTOPADHYAY: So, that is my

1 understanding. I just wanted to have a
2 confirmation as to how you perceived it, based on
3 what you discussed initially today. So just --
4 that was clarifying.

5 So, again, trying to understand, is it
6 the DOE's position that the recoupment begins
7 October 1st, as you understand what the order is
8 saying, while the temporary rate's effective date
9 is November 1st, that is not allowed?

10 MR. DEXTER: That's correct. And,
11 again, the statute specifies the -- it's a very
12 specific statute. It lays out the formula for
13 calculating recoupment. And part of that formula
14 is that the recoupment period starts the date the
15 temporary rates are in effect.

16 CMSR. CHATTOPADHYAY: So, this may be
17 ultimately about miscommunication. And there
18 was, in my opinion, there was enough in our
19 orders, perhaps, to indicate that we would -- we
20 agree that the amount that is associated with
21 October is to be allowed.

22 So, I'm trying to understand, if we --
23 if we clarified that the effective date is
24 October 1st, do you have a position of whether

1 that is okay or not?

2 MR. DEXTER: The effective date of the
3 temporary rates?

4 CMSR. CHATTOPADHYAY: Temporary rates.

5 MR. DEXTER: I believe that is allowed
6 under the Pennichuck case that the Company has
7 been citing.

8 CMSR. CHATTOPADHYAY: Okay.

9 MR. DEXTER: That case appears to, you
10 know, it's an old case, it's 40 plus years old,
11 but it appears to state that temporary rates can
12 be set effective as early as the date that the
13 permanent rate case was filed, which, in this
14 case, was July 27th.

15 CMSR. CHATTOPADHYAY: Okay.

16 MR. DEXTER: So, yes, I don't believe
17 it would be illegal, I hate to use that word in
18 an administrative proceeding, but I don't believe
19 it would be temporary to statute for the
20 Department -- for the Commission to have made the
21 temporary rates effective October 1st, but that's
22 not what the order did.

23 CMSR. CHATTOPADHYAY: That is -- again,
24 that's why I said, maybe there was

1 miscommunication, misunderstanding. So, that is
2 very helpful.

3 I just want to, again, going -- what
4 you just responded may make all of this moot, but
5 I still want to go through my line of
6 questioning, because I did get bogged down on
7 some things that I wanted to have clarification
8 on.

9 So, the first thing that I would ask
10 is, you know, in the Motion, the Department has
11 requested the Commission to "defer the decision
12 on recoupment", and I'm saying "the decision on
13 recoupment", for October 2023, "to the permanent
14 rate phase of this proceeding", it's in your
15 request.

16 I want to make sure, is it the
17 Department's position that whether or not the
18 Company be allowed to recover the reconciliation
19 associated with the month of October 2023 be
20 deferred to the permanent rate phase, or is it
21 the DOE's position that how the reconciliation
22 amount be recovered be deferred to the permanent
23 phase?

24 MR. DEXTER: Well, I think both

1 questions are more appropriately handled in the
2 permanent rate case. Because, at that time, you
3 know what the permanent rates are, and then you
4 can structure -- you can structure the recoupment
5 mechanism accordingly. So, I believe that's the
6 way the statute -- and that, to me, that's the
7 logical reading of the statute.

8 I'm not going to sit here and tell you
9 that it would be, again, contrary to the statute
10 to do it in this case, now that we've all had
11 notice that this issue is before you. But, to
12 me, that is the logical way to proceed, and it's
13 the way that it's been done in at least in the
14 last two EnergyNorth cases.

15 CMSR. CHATTOPADHYAY: Thank you. Do
16 you agree that, if October 1st is the date when
17 the temporary rates go into effect, the
18 difference between the permanent rates and the
19 temporary rates associated with that month should
20 not be part of the permanent rates revenue
21 requirement?

22 MR. DEXTER: I'm sorry, could you
23 repeat that? I thought you were going to ask a
24 different question, and I was already going to

1 the question I thought you were going to ask.

2 CMSR. CHATTOPADHYAY: It's a long
3 question. So, --

4 MR. DEXTER: Would you mind repeating
5 it please?

6 CMSR. CHATTOPADHYAY: Absolutely,
7 without a doubt.

8 Do you agree that, if October 1st is
9 the date when the temporary rates go into effect,
10 the difference between the permanent rates and
11 the temporary rates associated with that month
12 should not be part of the permanent rates revenue
13 requirement going forward?

14 MR. DEXTER: Well, I think the answer
15 is it should not be part of it. The way I
16 understand revenue requirements, is you look at
17 the rate base, the rate of return, the working
18 capital, the O&M, you look at all the elements
19 that go into revenue requirement and you come up
20 with a permanent rate amount, the difference, you
21 know. Then, when one of the details or, you
22 know, issues you have to deal with at the end of
23 the case is recoupment.

24 And, so, I think they're separate.

1 They get determined at the same time, but I don't
2 believe that that month that you're talking about
3 would in any way flow into the permanent revenue
4 requirement.

5 CMSR. CHATTOPADHYAY: And I was simply
6 looking for that confirmation, making sure that
7 things have been understood.

8 You agree that the \$500,000 amount
9 discussed in the docket until now is simply an
10 estimate?

11 MR. DEXTER: Yes.

12 CMSR. CHATTOPADHYAY: The actual
13 difference between the permanent rates and the
14 rates associated with October 2023 may be very
15 different, right?

16 MR. DEXTER: Yes.

17 CMSR. CHATTOPADHYAY: Okay. Trying to
18 confirm again that, if the Commission clarified
19 that the effective date for the temporary rates
20 is October 1st, 2023, that is one way out of this
21 miscommunication?

22 MR. DEXTER: It's the position of the
23 Department that that would not have violated the
24 statute.

1 CMSR. CHATTOPADHYAY: Thank you.

2 That's all I have.

3 CHAIRMAN GOLDNER: Thank you.

4 So, I just want to go back to you,
5 Attorney Dexter, and just ask you a couple of
6 questions.

7 So, if the Commission were to clarify
8 that October 1st was, in fact, the effective date
9 of the temporary rates, would the Department then
10 have a recommendation on how those -- how this
11 \$500,000 issue should be handled?

12 As, you know, a regulatory asset or,
13 you know, does the Department have a
14 recommendation for the Commission?

15 MR. DEXTER: I'd just like to take a
16 minute to confer with Dr. Arif please?

17 CHAIRMAN GOLDNER: Please. Take your
18 time.

19 *[Atty. Dexter and Dir. Arif*
20 *conferring.]*

21 MR. DEXTER: So, if I understand the
22 question, Mr. Chairman, I don't think there would
23 be a need for any sort of regulatory asset. If
24 the Commission were to go back and amend this

1 order, and say that "the temporary rates were
2 effective October 1st", now, we know they weren't
3 billed, but let's say they were effective
4 October 1st. Then, you get to the end of the
5 case, and then you know what the permanent rates
6 are, and then you calculate the recoupment amount
7 according to the statute, that would
8 automatically take you back to October 1st.

9 And, so, I don't believe there would
10 need to be any sort of a special mechanism, any
11 sort of a regulatory asset for this, you know,
12 "500,000" that occurred in October.

13 CHAIRMAN GOLDNER: Thank you. That's
14 very helpful.

15 So, I think this hearing today hinges
16 on the confusion or need for clarification of the
17 effective date of the temporary rates. Had it
18 been clear that that date was October 1st, then
19 the Department would have no concerns because of
20 the reconciliation process. But, because the
21 Department's interpretation was that the date was
22 November 1st, that was the cause of the Motion
23 for Rehearing?

24 *[Atty. Dexter and Dir. Arif*

1 *conferring.]*

2 MR. DEXTER: So, yes. I mean, legally,
3 we had the hearing in the end of October, but,
4 according to the Pennichuck, you could have made
5 the temporary rates effective October 1st. But
6 the number that we were talking about at the
7 hearing, the 8.7 million, was calculated as of
8 November 1st. So, it might have been a
9 completely different discussion at that hearing.
10 I don't remember where the 500,000 came from. I
11 think that was the effect of -- I guess we would
12 ask the Company to explain again where the
13 500,000 come from.

14 I'm sorry, I'm getting lost on what
15 your question was.

16 CHAIRMAN GOLDNER: I guess -- I guess
17 where I was going was, because there's a
18 reconciliation process at the end, we'll be able
19 to sort out what the October amount should have
20 been at the end of the process, and that will
21 then get reconciled with the permanent rates in
22 the rate case?

23 MR. DEXTER: Yes. As I said, I think
24 the math takes care of itself, once you know what

1 the permanent rates are, and once you know what
2 the starting point was. And, to us, it was clear
3 in the order that the starting point was
4 November 1st, and it was also clear to us that
5 the order was allowing for recoupment back to
6 October 1st.

7 And, in our view, that did not comply
8 with the statute, which is why we filed the
9 Motion.

10 CHAIRMAN GOLDNER: Perfect. Thank you.

11 I did have one follow-up, and then
12 Commissioner Chattopadhyay has another question
13 he would like to add.

14 So, I would like to leverage your years
15 of regulatory experience to ask a hypothetical
16 question. And that is that, if, in the future,
17 there was an event where another party, whether
18 it be the Department or the OCA, or whomever,
19 that was responsible for some kind of delay in
20 the process, if the -- if the company would then
21 be, in effect, penalized, as we are in this
22 circumstance here. So, part of the Company's
23 position is, taking it back out of the
24 hypothetical, that, you know, because of the late

1 filings, and the Commission's need to delay the
2 hearing because we were waiting on something from
3 the DOE, that, you know, now there's a
4 six-month -- or, a three-month -- I'm sorry, a
5 one-month period where they might not get
6 recoupment. So, it seems to me troubling that
7 the Company could be harmed for a delay caused by
8 another party.

9 MR. DEXTER: You know, nothing's
10 guaranteed in the regulatory process. Things
11 take time. I'm not sure, I know this is a
12 hypothetical, but I'm not sure that the
13 Department is willing to accept blame for the
14 delay in the hearing. We were prepared to go
15 forward on September 27th. We hadn't --

16 CHAIRMAN GOLDNER: But it's -- I'm
17 sorry, Mr. Dexter, for interrupting. I'm sorry
18 for mixing a hypothetical and a real. But, if we
19 could return to the hypothetical, if a party, if
20 any party, and I don't want to cast dispersions
21 at the Department, but, if any party were to
22 cause a delay, I just want to lean on your
23 regulatory experience to see what you would want
24 to do if that hypothetical did happen?

1 MR. DEXTER: You know, I don't -- I
2 don't think it's appropriate to assess blame. I
3 mean, first of all, you may not know exactly what
4 happened behind the scenes. I don't think it's
5 appropriate to assess blame, unless there was
6 some sort of blatant misuse of process, then
7 maybe it would be appropriate.

8 But regulatory matters take time.
9 There is no, you know, right for a utility to
10 have temporary rates at a particular point in
11 time. There actually are very few statutory
12 deadlines. The twelve-month deadline is one of
13 the ones that we've been struggling with in these
14 two cases. And the Department is appreciative of
15 the flexibility that Liberty has shown in this
16 case, you know, in these two cases, with regard
17 to that deadline. But I think the process has to
18 play out. Parties have to act in good faith.
19 And, if it turns out something takes longer than
20 it was expected to, I believe that's just a risk
21 that the Company has to bear in the case of a
22 rate increase. In the case of a rate decrease,
23 it would be the opposite.

24 Generally speaking, what we found, I

1 think, over the past couple of years is this --
2 we've had a couple of situations where, I
3 remember, in particular, a Liberty step
4 adjustment was delayed, and, so, therefore, the
5 Company was able to, you know, basically, you
6 know, recoup double for a while, but that gets
7 complicated. And particularly in the era of
8 decoupling, as we're finding in the decoupling
9 documents, because -- in the dockets. Because,
10 if you let a company, not "let", if you authorize
11 a company to over-collect or under-collect to
12 make up for some past differences, then that has
13 to be reversed a few months down, and, you know,
14 whenever that period has run its course.

15 And sometimes I think maybe we're
16 trying to be too precise with reconciliation.
17 Base rates are not meant to be reconciling,
18 because revenues aren't stable, rate base isn't
19 stable. Things happen over time. And, so, I --
20 sometimes I worry about a false sense of
21 precision with respect to base rate-setting.

22 But, as I said, particularly in the
23 decoupled environment, where every time there's a
24 base rate change, there have to be new revenue

1 targets, and a new decoupling calculation done.
2 We're finding that, in the case of Liberty's
3 electric decoupling case, there were four base
4 rate changes in a twelve-month period, and some
5 of them were related to things like that.

6 So, I guess it's a long way of saying,
7 no, I don't think it's necessary, or even
8 necessarily appropriate, for, in a hypothetical
9 situation, for the Commission to try to right a
10 wrong, you know, in the event that a case was
11 delayed, with the exception of, you know, some
12 blatant misuse of process, which we would not
13 support the Company being harmed in that
14 instance.

15 CHAIRMAN GOLDNER: Thank you. Attorney
16 Dexter.

17 I just want to ask the Company a
18 question, before I turn it over to Commissioner
19 Chattopadhyay.

20 So, if the Commission were to clarify
21 that the effective date of the temporary rates
22 was October 1st, and otherwise just move forward,
23 would the Company have any concerns with that
24 approach?

1 MS. RALSTON: No. No concerns.

2 CHAIRMAN GOLDNER: Thank you.

3 Commissioner Chattopadhyay.

4 CMSR. CHATTOPADHYAY: Yes. Going back
5 to the "October 1st being the effective date"
6 issue, if we were going and -- and clarifying
7 that, and we also said, because this is how it
8 played out, "for the month of October, the rates
9 are going to be same as what they were at that
10 point, before that, so the percentage increase is
11 zero percent for October, and, for November
12 onwards, it's whatever the percentage increase
13 was", is the DOE okay with that? Meaning, do you
14 think that's appropriate? Can temporary rates be
15 set differently for different months?

16 MR. DEXTER: And, so, the point of
17 that, if I may ask the Commissioner, would be to
18 keep the \$8.7 million figure that we were talking
19 about at the October 20 -- whatever the hearing
20 was in October, to keep that amount in play, if
21 you will, so as to not increase that amount? I
22 think that makes sense. So, I think what you'd
23 be saying is the Commission would set temporary
24 rates at existing rates for the month of

1 October 2023, and then allow an increase of 8., I
2 think it was 7 something [sic] percent, but, I'm
3 sorry, --

4 CMSR. CHATTOPADHYAY: I don't remember
5 the percentage.

6 MR. DEXTER: From November 1st.

7 CMSR. CHATTOPADHYAY: The point is, we
8 were still setting it as the twelve-month, you
9 know, temporary rates revenue requirement.

10 MR. DEXTER: I think it was 8.9 percent
11 increase. Could I just consult with Dr. Arif for
12 a moment?

13 CHAIRMAN GOLDNER: That's correct.

14 CMSR. CHATTOPADHYAY: Yes.

15 CHAIRMAN GOLDNER: That's correct,
16 though. Yes, the 8.898.

17 *[Atty. Dexter and Dir. Arif*
18 *conferring.]*

19 MR. DEXTER: Yes. I think that
20 proposal would keep the intent of the increase of
21 \$8.7 million over the twelve-month period. And,
22 yes, and I don't think that would violate any of
23 the statutes.

24 CMSR. CHATTOPADHYAY: Yes, I just

1 wanted to get a confirmation. Because,
2 otherwise, we will have to again deal with this
3 issue, but that's a clear way of proceeding.

4 Does the Company have any issue with
5 that?

6 MS. RALSTON: No, we don't.

7 CMSR. CHATTOPADHYAY: Thank you.

8 That's all I have.

9 CHAIRMAN GOLDNER: So, we'll take a
10 quick break, returning at ten o'clock, and to
11 wrap things up. Thank you. Off the record.

12 *(Recess taken at 9:51 a.m., and the*
13 *hearing resumed at 10:07 a.m.)*

14 CHAIRMAN GOLDNER: Okay. I'm going
15 to -- I'm going to repeat back what I think we
16 decided today, and make sure that everyone is
17 aligned, so that, when the order comes out, that
18 everyone is already on the same page. So, what
19 I'll do is I'll sort of state what I think we
20 agreed to, and then I'll get everyone's comments.

21 So, I believe the action is for the
22 Commission to clarify that the effective date of
23 the temporary rates was October 1st. That the
24 temporary rates of 8.9 percent will continue

1 until the new permanent rates are established.
2 The reconciliation will be done in the normal
3 fashion at that time, to adjust for any dollars,
4 plus or minus, at the time of the permanent
5 rates.

6 We're not going back to correct for
7 October. So, October is sort of effectively zero
8 in this model, but it's reconciled at the end.
9 So, if there was anything in October, or any
10 other month, then that gets taken care of at the
11 setting of the permanent rates.

12 So, I've done the best I could to
13 describe it. And I'll perhaps start with the
14 Department on -- if that is (a) acceptable to the
15 Department, and if that's what also -- well, I'll
16 just if that's acceptable to the Department?

17 MR. DEXTER: Well, in the Department's
18 view, it would not violate any statutes. It's
19 certainly not what we requested. We requested --
20 I guess it is what we requested, because it would
21 take care of the legal problem that we put before
22 you in our Motion.

23 So, yes. It's acceptable.

24 CHAIRMAN GOLDNER: Thank you. Attorney

1 Crouse?

2 MR. CROUSE: The position of the OCA
3 is -- well, my position is that I'm finding this
4 whole matter rather confusing to justify how this
5 doesn't seem to be retroactive ratemaking,
6 because RSA 378:29 clarifies the methodology and
7 pathway forward that wasn't met. So, when we
8 signed on in support of the Department's Motion,
9 we just don't see how October 1st can be the
10 effective date.

11 So, in your order released, it talked
12 about the opportunity to brief these issues.
13 And, in light of the Pennichuck case cited by
14 Liberty, the OCA would like to look into that
15 matter forward, just to make sure that, if this
16 is legally permissible, it's also a matter of
17 good public policy.

18 CHAIRMAN GOLDNER: Okay. So, the OCA
19 requests briefing on the "October 1st effective
20 date" issue?

21 MR. CROUSE: That's correct.

22 CHAIRMAN GOLDNER: Okay. And the
23 Company?

24 MS. RALSTON: So, the Company agrees

1 with the Commission's proposal. However, if the
2 Commission decides to grant the opportunity for
3 briefing, we would certainly want an opportunity
4 to respond to whatever the OCA files.

5 CHAIRMAN GOLDNER: Okay. Just a
6 moment.

7 *[Chairman Goldner and Atty. Speidel*
8 *conferring, and then Chairman Goldner,*
9 *Cmsr. Simpson, and Cmsr. Chattopadhyay*
10 *conferring.]*

11 CHAIRMAN GOLDNER: All right. So, if
12 the Commission were to grant briefing, Attorney
13 Crouse, how much time would you need?

14 MR. CROUSE: Would the week of the
15 22nd, a date in that week, be appropriate, just
16 given the full schedule that the OCA has the week
17 of the 15th and the holiday?

18 CHAIRMAN GOLDNER: Just a moment. Let
19 me pull up the calendar. So, the week of the
20 22nd?

21 MR. CROUSE: Yes. No particular day,
22 that would be fine.

23 CHAIRMAN GOLDNER: Okay. And, then,
24 how long would the Company or the DOE like for

1 the reply brief, if there is a reply brief?

2 MS. RALSTON: A week would be
3 acceptable.

4 CHAIRMAN GOLDNER: A week is fine. So,
5 Attorney Crouse, would the 23rd of January be
6 acceptable?

7 MR. CROUSE: That would be acceptable.
8 Thank you.

9 CHAIRMAN GOLDNER: Okay. And, then --
10 for the brief. And, then, any reply briefs would
11 be due on the 30th?

12 MS. RALSTON: Thank you.

13 CHAIRMAN GOLDNER: Okay. Okay,
14 Attorney Dexter, that's acceptable to the
15 Department?

16 MR. DEXTER: Yes. Thank you.

17 CHAIRMAN GOLDNER: Okay. Okay. Is
18 there anything else that we need to cover today,
19 before we go to close?

20 MS. RALSTON: There was just one other
21 item the Company wanted to clarify.

22 Earlier, you asked about the Draft
23 Audit Report, and I believe Attorney Dexter said
24 that "the Company's response to the Draft Audit

1 Report was going to be submitted on January
2 12th", and that's not actually correct. So, I
3 just wanted to correct that on the record, so the
4 has the full picture.

5 Excuse me, Attorney Dexter was correct,
6 we did receive the Draft Report on Friday,
7 December 29th, right before the holiday weekend.
8 And the initial request was for a response four
9 business days later, on the 5th, which was not
10 enough time to review the entire report and
11 respond. So, the Company has asked, and Audit
12 has agreed, that the response will be submitted
13 on the 19th.

14 CHAIRMAN GOLDNER: Okay. Thank you.

15 Okay. Very good. So, we can move to
16 any closing statements, beginning with the
17 Department.

18 MR. DEXTER: Thank you. We appreciate
19 the opportunity for a rehearing today.

20 We believe we've presented a legitimate
21 legal concern concerning RSA 378:29 and the
22 Commission's October 31st, 2023, order in this
23 case that needed to be addressed. It sounds like
24 the proposal that the Commission has laid out

1 will address that concern, subject to what we
2 learn in the briefing schedule.

3 We didn't -- we have said that we
4 believe that that would not violate any statutes,
5 and I think the Consumer Advocate raised a very
6 good question, it's really two questions. "Would
7 it violate any statutes?" And sitting here, I'm
8 pretty confident that it wouldn't. "Is it a good
9 idea or a good public policy or good ratemaking?"
10 I guess that's another question. That's not
11 something that we raised on rehearing. We were
12 not looking to reopen the Commission's decision
13 on the substantive implementation of the method
14 to collect the \$8.7 million that we had agreed
15 to.

16 So, as long as this proposal that the
17 Commission has laid out continues to implement
18 that \$8.7 million figure, which we believe it
19 does, seems like this would be a reasonable
20 solution to the legal question that we raised, as
21 well as the practical question.

22 But we'll reserve our final word on
23 whether or not this is good regulatory policy, to
24 the extent we have anything to say, we'll do that

1 in the reply brief.

2 Thank you.

3 CHAIRMAN GOLDNER: Thank you, Attorney
4 Dexter.

5 We'll turn now to the Office of the
6 Consumer Advocate.

7 MR. CROUSE: Thank you. The OCA
8 appreciates the opportunity to brief this issue.
9 It does seem like, on first glance, that this
10 could be a permissible way forward. But we just
11 wanted to make sure that we do our due diligence,
12 and make sure that this isn't something that
13 actually is impermissible.

14 In all other respects, we appreciate
15 the cooperation of all the parties and the
16 opportunity for this rehearing.

17 Thank you.

18 CHAIRMAN GOLDNER: Thank you, Attorney
19 Crouse.

20 And, finally, the Company, and Attorney
21 Ralston.

22 MS. RALSTON: Thank you.

23 And I'll just echo what the other
24 parties said. We appreciate the Commission's

1 time this morning, and the proposal you've come
2 up with to address our request to recover the
3 October revenues.

4 I think that Attorney Dexter had said
5 earlier that, you know, "there's no guarantees
6 that temporary rates will go into effect on the
7 date requested", and I think that's true. But I
8 also think that, when the parties engage in
9 settlement discussions, with an expected
10 effective date, and then to have the hearing
11 delayed due to procedural issues or additional
12 necessary time, there is real harm to the
13 Company. And the Company, you know, when it's
14 negotiating the settlements in good faith, is
15 anticipating a specific date. And, so, we do
16 appreciate you taking that into account in coming
17 up with the proposal.

18 We will respond to any further
19 arguments in our reply brief.

20 Thank you.

21 CHAIRMAN GOLDNER: Okay. Thank you.
22 Is there anything else that we need to address
23 today?

24 *[No verbal response.]*

1 CHAIRMAN GOLDNER: Okay. Seeing none.
2 We'll await the brief and the reply briefs. And
3 today's hearing is adjourned. Thank you.

4 ***(Whereupon the hearing was adjourned***
5 ***at 10:15 a.m.)***

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