

**STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION**

**DG 17-048**

**Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities**

**Petition for Permanent and Temporary Rates**

**Order on Rehearing**

**ORDER NO. 26,187**

**November 2, 2018**

**APPEARANCES:** Michael J. Sheehan, Esq., on behalf of Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities; the Office of the Consumer Advocate by D. Maurice Kreis, Esq., on behalf of residential ratepayers; and Paul B. Dexter, Esq., on behalf of Commission Staff.

This order resolves all pending issues raised on rehearing. In this order, the Commission approves lower distribution rates and lower LDAC rates for Liberty than were approved in Order No. 26,122. The lower rates result from new information and reductions in income tax expense following enactment of the “Tax Cuts and Jobs Act of 2017.” Further, the Commission approves Liberty’s decoupling tariff and customer education plan.

**I. PROCEDURAL HISTORY**

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities (Liberty or the Company) filed a Petition for Permanent and Temporary Rates on April 28, 2017. The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted to the Commission’s website at <http://www.puc.nh.gov/Regulatory/Docketbk/2017/17-048.html>. The Commission approved temporary rates in Order No. 26,035 (June 30, 2017) effective July 1, 2017, increasing the Company’s revenue by \$6,750,000 annually. On April 27, 2018, the Commission issued Order

No. 26,122 (the April Order) approving a permanent rate increase of \$8,060,117 and a step increase of \$4,729,953, both for effect May 1, 2018. The April Order included approval of a new rate design with significant reductions in customer charges and corresponding increases in volumetric charges. It also approved a decoupling proposal applicable to all rate classes.

On May 25, 2018, Liberty filed a Motion for Rehearing to determine whether the April Order's rate design changes were intended to go into effect on May 1, 2018. Liberty claimed that, because it implemented the rate design changes on May 1, 2018, it would collect \$3,079,391 less in 2018 than the Commission had approved. Liberty sought approval to recover this perceived shortfall through the Rate Case Temporary Rate Reconciliation component of the Local Delivery Adjustment Charge (LDAC) over an 18-month period commencing July 1, 2018.

In Order No. 26,149 (June 22, 2018) (the June Order), the Commission granted rehearing in part, and requested additional information to evaluate Liberty's claimed shortfall. *See* Order No. 26,149 at 7-9 and Appendix 1. In the June Order, the Commission clarified that Liberty would not (and should not have expected to) collect its full approved revenue requirement increase of \$8,060,117 in calendar year 2018, because the recoupment provision (designed to collect the difference between temporary rates and permanent rates) extended through 2019. June Order at 7. The Commission also requested additional information to refine the recoupment calculation approved in the April Order at Appendix 5. June Order at 8-9 and Appendix 2. Liberty filed information on July 9, 2018. Hearing Exhibit (Exh.) 83. Those materials were updated several times. *See* Exh. 87 (concerning the claimed revenue shortfall); Exh. 80 and 86 (submitted July 17, 2018); and Updated Exhs. 80 and 86 (submitted October 10, 2018) (concerning recoupment).

On June 11 and October 19, 2018, Liberty filed customer education materials related to decoupling. Exh. 91. On August 9, 2018, Liberty filed a proposal to reflect the impacts of the tax law changes in its LDAC rates. Exh. 89.

The Commission held hearings on July 17, October 19, and October 22, 2018. At the hearing on October 19, Liberty presented (and Staff supported) a distribution rate reduction to correct an error that Liberty made in calculating the distribution rates it had put into effect on May 1, 2018. *See* Exh. 88; Hearing Transcript of October 19, 2018 (10/19/18 Tr.) at 25-32. Liberty also presented (and Staff supported) approval of reduced LDAC rates that reflected, among other adjustments, a refined recoupment calculation presented on Updated Exh. 86, and several other adjustments set forth on Exh. 88 related to recoupment and the treatment of Keene revenues, the distribution rate error, recovery of audit costs, and tax expense reductions.

## **II. POSITIONS OF THE PARTIES AND STAFF**

### **A. Liberty**

#### **1. Rates**

As stated above, in its Motion for Rehearing, Liberty requested approval to increase its LDAC to collect \$3,079,391 over the remainder of 2018 and all of 2019 to address a perceived shortfall in 2018 income that Liberty believed would result from the timing of rate design changes approved in the April Order. At the July 17 hearing, Liberty reduced this claim to \$2,171,000 acknowledging that the rate design impacts would be dampened when the months of November and December 2018 were included in the calculation, because the new rate design produces increased revenues in colder months. Hearing Transcript of July 17, 2018 (7/17/18 Tr.) at 60-62.

At the July 17 hearing, Liberty also presented a second rate design theory in support of its request to collect an additional \$2 million (approximately) through the LDAC. The second theory focused on the refined recoupment calculation the Commission requested in the June Order. As directed, Liberty calculated the revenue that had been produced by the temporary rates that were in effect on July 1, 2017, through April 30, 2018, and compared that amount to the revenue that would have been received if the permanent rates had been in effect over that same period (assuming consistent billing determinants). Liberty submitted that analysis on July 9 (Exh. 80 and 83). The analysis attempted to demonstrate that Liberty would have collected \$3,293,820 more in revenues had the permanent rates been in effect over the 10-month temporary rate period. Liberty compared that figure to the recoupment amount allowed in the April Order at Appendix 5 of \$1,326,355 and concluded that the difference of \$1,967,465 should be collected through the LDAC over the remaining months in 2018 and all of 2019. Liberty attributed the large difference in these two recoupment amounts to the rate design changes ordered in the April Order as well as other items that would require more study. 7/17/18 Tr. at 86 and 99-101.<sup>1</sup>

On October 10, Liberty provided updated versions of Exhibits 80 and 86. Updated Exh. 86 showed a refined recoupment amount of \$1,661,022, compared to the recoupment amount in the April Order of \$1,326,355 (an increase of \$334,667), which Liberty stated should be recovered through the LDAC. 7/17/18 Tr. at 14.

At the October 19 hearing, Liberty proposed several other distribution rate reductions and LDAC reductions. 10/19/18 Tr. at 13-16. Regarding its distribution rates, Liberty discovered in the course of reconciling the two recoupment calculations (Exhibit 85) that it had over-stated the

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<sup>1</sup> Liberty also expressed concern that the figures presented on Exhs. 79, 80, and by extension, 86, required corrections. The Commission directed Liberty to review those exhibits and provide updated versions, which Liberty did on October 10, 2018. 7/17/18 Tr. at 99-101.

rates that were charged effective May 1, 2018. The over-statement was caused by Liberty's failure to account for sales from the end of year customers adjustment, as required by the April Order at 10. Liberty proposed to reduce distribution rates effective November 1, 2018, by \$1,070,435 (on an annual basis), and to refund \$319,660 through the LDAC to refund the amount over-collected from May through October. Exhs. 81 and 88.

Liberty's other proposed adjustments to the LDAC were shown in Exh. 88. First, Liberty added \$334,667 to the LDAC to reflect the difference between the two recoupment calculations. Second, Liberty added \$160,208 to recover a portion of the costs Liberty incurred from a Commission mandated audit. Third, Liberty deducted \$455,362 from the LDAC to ensure that Liberty did not also recoup from EnergyNorth customers the incremental revenues that Keene customers paid from July 1, 2017, through April 30, 2018, *i.e.*, the difference between Keene rates and EnergyNorth rates prior to the rate consolidation approved in the April Order at 38.

The net of the proposed adjustments to the LDAC was a reduction of \$280,147 to be passed back to customers over a 12-month period beginning November 1, 2018. Liberty stated that if the Commission approved rates that reflected all the above adjustments, that approval would fully resolve the issues raised in Liberty's Motion for Rehearing. 10/19/18 Tr. at 58.

## 2. Decoupling Tariffs

On June 11, 2018, Liberty submitted an illustrative tariff to implement decoupling, including real-time weather normalization, as directed in the April Order at 45-46. Liberty submitted an updated version on October 22, after receiving input from Staff and the OCA. At the October 19 hearing, Liberty agreed to make additional changes suggested by the Commission.

3. Decoupling Customer Education Materials (including information on Customer Bills)

Also on June 11, Liberty filed draft customer notice and education materials related to decoupling; and Liberty filed additional materials on October 17, 2018. Exh. 91. At the October 22 hearing, Liberty indicated that, based on recent conversations with Staff, it had agreed to make certain changes to the materials (some of which were already made by the October 22 hearing). Liberty further stated that it had agreed to work with Staff to develop additional customer education materials for its website, such as heating degree day information, both current and normal, as well as other materials related to the normal weather adjustment and energy efficiency.

Liberty stated that it did not support putting customer specific base load usage on its bills at this time, due to a limited amount of space available on the bill and the time and expense of required computer programming. Similarly, Liberty did not support providing information on the bill to indicate whether the customer's billing month was colder or warmer than normal. Liberty agreed to work with Staff and the OCA to refine what useful information could be included on the bill and at what cost. Hearing Transcript of October 22, 2018 (10/22/18 Tr.) at 9-15, 33-39.

4. Decoupling Programming Costs

Liberty stated that it did not view the April Order as placing a \$50,000 cap on the amount it could recover from customers related to programming costs. Liberty claimed that the \$50,000 cap was part of a settlement that the Commission did not approve and does not apply. Liberty stated that it intended to seek full recovery of the decoupling-related programming costs in its next rate case. 10/19/18 Tr. at 62-66.

## **B. OCA**

The Office of the Consumer Advocate (OCA) reiterated its support for decoupling and its expectation that Liberty would be a “champion of energy efficiency” as a result of decoupling. The OCA also cautioned against micro-managing the introduction of decoupling, which it views as Liberty’s job to do prudently. The OCA stated its opinion that the \$50,000 cap on recovery of decoupling programming expenses is in place, and requested that the Commission state in its order that the cap applies. 10/22/18 Tr. at 59-62.

## **C. Staff**

### **1. Rates**

As stated in the June Order, Staff opposed the original theory Liberty put forth on rehearing concerning the rate design impacts of the April Order. Staff maintained that the approved rates would produce the revenue intended (\$8,070,112 annually, before considering tax reform) over the intended time period (12 months beginning May 1, 2018).

Concerning Liberty’s second theory for additional recovery, Staff agrees the recoupment calculation on Updated Exh. 86 is more accurate. Staff also supports reducing the recoupment amount shown on Updated Exh. 86 by \$455,362 to prevent Liberty from recovering from EnergyNorth customers the higher revenues that were collected from Keene customers during the temporary rate period.

Further, Staff supports a reduction in distribution rates of \$1,070,435 on an annual basis to correct the error that Liberty made in calculating the rates that were implemented in May 2018. Staff agrees Liberty overstated rates because Liberty included the revenue from the end of the year customers adjustment but did not include corresponding sales volumes, as required by the April Order at 9-10; and supports the corollary LDAC reduction of \$319,660 to reverse the over-charges that occurred from May 1 through October 31, 2018. Exh. 88.

Staff also supports Liberty's proposed reduction of \$291,806 to distribution rates to pass back to customers the permanent portion of the reductions in income taxes. This reduction adjusts the tax placeholder amount of \$2,394,065 used to calculate distribution rates put into effect on May 1, 2018. Exh. 89 at 14-17. Staff agrees with Liberty's assessment (Exh. 89 at 14) that the April Order contemplated that adjustments to the tax placeholder amount would be made through the LDAC, and supports Liberty's proposal to reflect the adjustments as changes in base rates, because they are recurring tax savings. Adjustments through the LDAC would need to be made annually. By handling these adjustments in base rates, only one set of changes is needed and thus this method is more efficient.

Finally, Staff supports Liberty's request to use \$160,208 of the over-collection in tax expense between January 1 and April 30, 2018, to recover a portion of the costs Liberty incurred for the audit that followed its last rate case. Staff notes that 75 percent of the audit costs will be recovered in this fashion and the remaining 25 percent will be paid for by Liberty, and not passed on to its customers.

## 2. Decoupling

Staff indicated support for the decoupling tariffs filed on October 19, 2018, with the minor adjustments Liberty made to the tariff at the October 19 hearing. Exh. 92.

## 3. Decoupling Customer Education Materials (including information on Customer Bills)

Staff indicated general support for the customer education materials Liberty has provided so far. Staff has not yet seen other materials, including an energy efficiency awareness plan and a detailed web page on the Normal Weather Adjustment (NWA) calculation. Staff continues to recommend that Liberty include a statement on each customer's bill indicating how the weather in the recent billing period compared to normal weather.



#### 4. Decoupling Programming Costs

Staff took no position on the \$50,000 cap on decoupling programming costs.

### **III. COMMISSION ANALYSIS**

#### **A. Rates**

We reject Liberty's first theory for recouping approximately \$3 million (revised down to \$2 million) through the LDAC to make up for shortfalls that it claimed it would experience in 2018. We remain unpersuaded that we should allow additional LDAC revenues in 2018 to offset the impact that rate design shifts may have on 2018 revenues. The revenue impact of revised utility rates should be evaluated by looking at the year immediately following the date of rate implementation (in this case the 12 months beginning May 1, 2018). We asked Liberty to perform such an analysis of the approved rates. Exhibit 87 confirms that the approved (corrected) rates implemented May 1, 2018, would produce \$8,060,117 over 12 months, assuming no reduction in tax expense and assuming test year adjusted billing determinants. 10/19/18 Tr. at 59-60.

Concerning Liberty's second theory (additional LDAC recovery based on the refined recoupment method), we approve Liberty's proposal, as supported by Staff. The refined methodology more accurately calculates the revenues that would have actually been collected had the permanent rates been in effect during the temporary rate period. As such, the refined recoupment calculation accounts for the impact of the significant rate design changes that were implemented in the permanent rates. In addition, the refined recoupment calculation captures the impact of sales growth that occurred during the temporary rate period. 10/19/18 Tr. at 45-48.

We approve Liberty's proposal for handling tax reductions, including the changes to distribution rates for the permanent portion of the tax cuts (instead of LDAC reductions called

for in the April Order). We agree that one permanent change is more efficient and less confusing to customers than a series of annual LDAC reductions.

Concerning the \$1,070,435 annual reduction to underlying base rates that have been billed since May 1, we approve Liberty's approach, including the LDAC pass back of the one-time over-collection from May 1 through October 31, 2018, of \$319,660, with a final reconciliation once October sales are known.

### **B. Decoupling Tariff**

We reviewed Liberty's illustrative tariff filed on June 11 as well as the revised version filed October 22. We find that the October 22 tariff adequately describes the decoupling mechanism, including the real-time weather adjustment, and we approve it. We require Liberty to file a compliance version of this tariff within 15 days of this order.

### **C. Decoupling Education Plan**

We reviewed Liberty's education materials filed on June 11 and the additional materials filed October 17, which included a bill insert, a newsletter, and links to a decoupling web page including Frequently Asked Questions and a video explaining decoupling. We approve the materials that have been presented to us to date. We direct Liberty to work with Staff to improve these education materials as the decoupling process unfolds over the next 12 months. In addition, we require Liberty to report back to the Commission's Director of Consumer Services and External Affairs on Liberty's and its customers' experience during the first 90 days of decoupling. The report shall be filed no later than February 28, 2019, and shall include an assessment of customer reaction to decoupling. At a minimum, the report should include a tally of all customer inquiries and complaints about decoupling and how Liberty responded to those

inquiries and complaints. Liberty should also include any additional materials that were (or will be) developed to address those inquiries and complaints.

At the October 22 hearing, Liberty admitted to distributing most of the materials (bill insert, newsletter, website, and video) to its customers without Commission approval, which we specifically required. *See* Order No. 26,122 at 46. Liberty cited a lack of response by Staff and the Commission to its June 11 filing of draft materials, and the impending November 1 deadline for implementing decoupling as its reasons for distributing the materials without the necessary approval. Liberty's attempt to shift blame for its failure to meet its obligation is inappropriate and is not a valid excuse for violating an order. It was Liberty's responsibility to obtain prior approval, and Liberty should have pursued that approval more vigorously if timing were an issue. We consider Liberty's actions to have been a direct, knowing, and purposeful violation of the April Order. RSA 365:41 allows for fines in situations where a utility violates an order of the Commission. Although we opt not to issue a fine in this first instance, we will not hesitate to impose fines should Liberty disregard any other Commission order.

At the October 22 hearing, we discussed two related, unresolved items. First, we expressed an interest in having Liberty display each customer's base usage on its bill. Base usage is needed for a customer to calculate the NWA, which will be on every customer's bill. Exh. 61. Second, we expressed a desire for Liberty to include a message on each bill indicating how weather during the past billing period compared to normal weather. While Liberty did not object in concept to adding this information to customers' bills, it cautioned that such changes would take time to develop and would be costly to implement. 10/22/18 Tr. at 13-15 and 33-39. Based on the testimony, we will not require Liberty to add this information to its bills, at this time. We believe, however, that this information is necessary for customers to be able to verify

the accuracy of their bills. Accordingly, we require Liberty to work with Staff and the OCA to develop a method to make this information available on Liberty's website. Further, the next time Liberty updates its billing system or bill format, we direct Liberty to work with the Commission's Director of External Affairs and Consumer Services to determine the costs and benefits of including such information on its bills; and, if such information can be added cost effectively at that time, to do so. Prior to making such bill changes, Liberty shall report its plans to the Commission.

At the October 22 hearing, Liberty reviewed a list of decoupling communication efforts proposed by Staff and which it had agreed to undertake. The list included developing a web page to provide information about how the NWA works, including how base usage is calculated and how a customer could obtain the individualized usage needed to calculate the NWA. 10/22/18 Tr. at 12; Exh. 93. In addition to what Liberty has agreed to do, we require the Company to develop a calculator that will assist a customer in verifying that the NWA was calculated accurately. Also on the list, Liberty agreed to develop a web page showing current heating degree day information and 30 year historic (normal) information, for Keene and Manchester. We direct Liberty to indicate on this page, for each billing cycle, how the most recent monthly weather compared to normal. We direct Liberty to work with Staff to develop these web page additions and to make the additions a priority so that customers can use the information as soon as possible after decoupling goes into effect.

#### **D. Decoupling Programming Costs**

The cost of decoupling-related programming changes was raised at the October 22 hearing, which led to a discussion of whether Liberty's recovery of any such billing system upgrades and software costs was capped at \$50,000 by the April Order. To the extent there was

any question, we confirm that the cap was included in the Commission's approval of decoupling in the April Order. The Commission adopted and approved the decoupling proposal contained in the Liberty/OCA Settlement (Exhibit 29 at 11), which unambiguously contained that cap. Exh. 29 at 11 ("Any costs above \$50,000 will be absorbed by the Company"); Order No. 26,122 at 44-45. The Liberty/OCA panel testified in detail that \$50,000 should be enough to cover the programming costs if Liberty negotiates with its billing vendor, and that the cap would serve as a useful tool for helping Liberty minimize these costs. 3/23/18 AM Tr. at 49-50.

**E. Auditing the NWA**

To allow the Commission's Audit Division to verify that Liberty correctly calculates the NWA over its broad spectrum of customers, we require that Liberty, starting in December 2018 and continuing for 12-months, provide to the Audit Division two randomly selected residential bills and one randomly selected non-residential bill from each billing cycle for each of the 12 months. Liberty shall also provide sufficient information, such as base usage by customer, to allow the Audit Division to review these bills for accuracy.

**Based upon the foregoing, it is hereby**

**ORDERED**, that Liberty shall decrease its LDAC effective November 1, 2018, to pass back to customers \$280,147 for the adjustments detailed on Exh. 88; and it is

**FURTHER ORDERED**, that Liberty shall decrease distribution rates effective November 1, 2018, to pass back to customers \$1,070,435 annually for the adjustment detailed on Exh. 81; and it is

**FURTHER ORDERED**, that Liberty shall file compliance LDAC and distribution rate tariffs consistent with this Order within 15 days of this Order; and it is

**FURTHER ORDERED**, that Liberty's illustrative decoupling tariff, as updated in this proceeding, is hereby approved; and it is

**FURTHER ORDERED**, that Liberty shall file a compliance decoupling tariff consistent with this Order within 15 days of this Order; and it is

**FURTHER ORDERED**, that Liberty's decoupling educational materials submitted to date are hereby approved; and it is

**FURTHER ORDERED**, that Liberty shall continue to develop and disseminate decoupling educational materials as described on Exhibit 93; and it is

**FURTHER ORDERED**, that Liberty shall report back to the Commission's Director of Consumer Services and External Affairs about its first 90 days of decoupling, as discussed herein; and it is

**FURTHER ORDERED**, that, during the development of any updates to Liberty's billing system or bill format, Liberty shall work with the Commission's Director of External Affairs and Consumer Services to determine whether additional information related to base usage and weather can be added to the bill in a cost effective manner, Liberty shall report its determination to the Commission, and Liberty shall make such bill changes if it is cost-effective to do so; and it is


**FURTHER ORDERED**, that each month, for 12 months beginning in December of 2018, Liberty shall provide to the Commission's Audit Division two randomly selected residential bills and one randomly selected non-residential bill from each billing cycle for the previous month, as well as sufficient information to allow the Audit Division to review these bills for accuracy; and it is

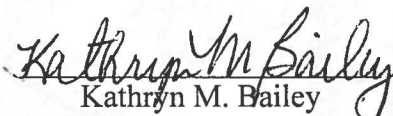
**FURTHER ORDERED**, that Liberty work with Staff and the Office of Consumer Advocate to develop a web page to provide all necessary information for customers to understand and accurately verify their individual bills as described above; and it is

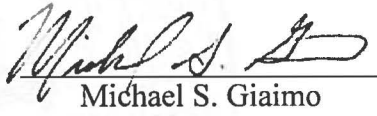
**FURTHER ORDERED**, that Liberty's obligations under IR 18-001 to file a proposal to address the effects of tax law changes have been satisfied; and it is

**FURTHER ORDERED**, that Liberty shall include in its next distribution rate case, a proposal for addressing the impact of tax law changes on its accumulated deferred income tax balances.

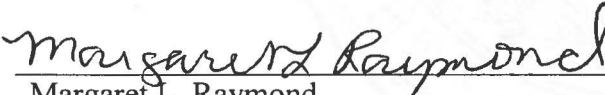
By order of the Public Utilities Commission of New Hampshire this second day of November, 2018.

  
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Martin P. Honigberg  
Chairman

  
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Kathryn M. Bailey  
Commissioner

  
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Michael S. Giaimo  
Commissioner

Attested by:

  
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Margaret L. Raymond  
Assistant Secretary