

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 21-130

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

Winter 2021/2022 Cost of Gas and Summer 2022 Cost of Gas

Order Limiting Scope of October 25, 2021 Hearing

O R D E R N O. 26,535

October 22, 2021

The Office of Consumer Advocate has filed a “Motion *in limine*”¹ seeking a determination that Liberty Utilities (EnergyNorth Natural Gas) Corp., d/b/a Liberty (“Liberty”) may not recover approximately \$4 million which Liberty claims was improperly refunded to residential customers. The Department of Energy (“Energy”) supports the OCA’s request or, in the alternative, requests that the Commission bifurcate the recovery issue from the present Cost of Gas (“COG”) docket. Liberty opposes the OCA’s motion and asks that its recovery request be addressed at a separate hearing.

For the reasons that follow, the Commission limits the scope of the October 25, 2021 Cost of Gas (“COG”) hearing. In addition, Liberty’s request to recover the \$4 million is dismissed without prejudice as to its right to file the same request in a separate petition, following which the Commission will open a new docket for that purpose. The OCA and Energy may renew their objections to that recovery in the newly opened docket.

¹ A “motion *in limine*,” is “in a broad sense . . . any motion . . . to exclude anticipated prejudicial evidence before the evidence is actually offered.” Wright & Miller, *Federal Practice and Procedure*, §5037.10 (quoting *Luce v. U.S.*, 469 U.S. 38, 40 n.2 (1984)). The OCA’s motion seeks a legal determination not as to the admissibility of evidence but as to whether Liberty may recover the roughly \$4 million it claims to have improperly refunded to its ratepayers. In this sense, it is more akin to a motion for summary judgment.

The COG proceeding is a docket of limited scope used to determine the cost of gas portion of a utility's rate for an upcoming period. In this case, the relevant periods are the winter of 2021/22 and summer of 2022. Because of the need for expediency in COG proceedings, the Commission has, historically, used these dockets to determine other aspects of rates, such as LDAC, that "the Commission has approved in prior dockets." *Liberty Utilities (EnergyNorth Nat. Gas) Corp. d/b/a Liberty Utilities*, No. 26,419, 2020 WL 6446110, at *2 (Oct. 30, 2020). The COG proceeding is not, however the appropriate vehicle for the Commission to approve other, not previously approved aspects of rates.

The Commission finds that the COG proceeding, including the hearing currently scheduled for October 25, 2021, must remain focused to the narrow issues of the cost of gas and any other rates or charges that the Commission has already reviewed and approved in prior dockets. Liberty's recovery of the allegedly improperly refunded rates is not within that narrow scope.

With this order, the Commission makes no finding as to the merits of Liberty's requests to recover \$4 million, nor as to the OCA's and Energy's positions related thereto.

Based upon the foregoing, it is hereby

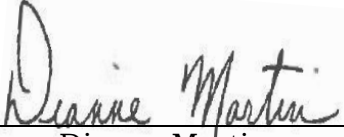
ORDERED, that the October 25, 2021 hearing in this docket is limited in scope as set forth herein; and it is

FURTHER ORDERED, that Liberty's request to recover approximately \$4 million in allegedly improperly refunded rates is dismissed without prejudice; and it is

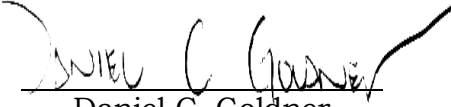
FURTHER ORDERED, that the OCA's request for a legal determination on Liberty's recovery of \$4 million in allegedly improperly refunded rates is dismissed as moot; and it is

FURTHER ORDERED, that to the extent the Liberty wishes to recover the allegedly improperly refunded rates, it may file such a request in a separate petition.

By order of the Public Utilities Commission of New Hampshire this twenty-second day of October, 2021.



Dianne Martin
Chairwoman



Daniel C. Goldner
Commissioner

Service List - Docket Related

Docket# : 21-130

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