

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 23-084

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP.
d/b/a LIBERTY-KEENE DIVISION**

Winter 2023/2024 Cost of Gas Filing

Order Denying Motion for Rehearing of Order No. 26,900

ORDER NO. 26,918

December 21, 2023

I. BACKGROUND

In Order No. 26,900 (October 31, 2023) (Order No. 26,900), the Commission conditionally approved Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty-Keene Division's (Liberty-Keene) Cost of Gas (COG) rates for the 2023–24 winter period. Among the rates conditionally approved were the 2023–24 winter fixed price option (FPO) program rates.

On November 28, 2023, the Office of the Consumer Advocate (OCA) filed a motion for rehearing (Motion) of Order No. 26,900.

On December 5, 2023, Liberty-Keene partially objected to the OCA's Motion. On December 6, the New Hampshire Department of Energy (DOE) objected to the OCA's Motion.

The Motion, Order No. 26,900, and related docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted at: <https://www.puc.nh.gov/Regulatory/Docketbk/2023/23-084.html>.

II. SUMMARY OF ARGUMENTS

a. OCA

The OCA seeks rehearing of the Commission's approval of the 2023–24 winter FPO program rates. According to the OCA, the FPO program rates are unjust and unreasonable, and therefore prohibited by law. The OCA argues that the Commission did not find the FPO program rates just and reasonable, and that the FPO program rates are “not just and reasonable because, in effect, it puts the utility's residential ratepayers in the position of betting against each other with regard to fixed prices versus prices that fluctuate with market conditions.” Motion at 3. The OCA also argues that the Commission's notice was inadequate because it omitted reference to the FPO program and the revised FPO program rates approved in Order No. 26,900 differed from the rates Liberty-Keene's customers received through Liberty-Keene's 2023–24 FPO program offer letter.

b. DOE

The DOE objects to the OCA's Motion. The DOE argues that the OCA has not met the standard for rehearing because the OCA's substantive grounds for rehearing are mistaken, and the OCA did not present new evidence or evidence unavailable at hearing. With respect to just and reasonable rates, the DOE points out that Order No. 26,900 did find the FPO program rates to be just and reasonable. The DOE also argues that the FPO is a longstanding component of Liberty-Keene's COG mechanism that has been found to be just and reasonable on multiple occasions, and the FPO program is required by Liberty-Keene's Commission-approved Tariff No. 11. With respect to notice, the DOE argues that the FPO program rates were noticed by reference to Liberty-Keene's filings and with the phrase “proposed rate,” and that the second FPO letter issued in compliance with Order No. 26,900 provided extended

notice of the approved rates and sufficient opportunity to withdraw to enrolled customers. The DOE further argues that there is insufficient notice to eliminate the FPO program, and that doing so at this point would cause additional customer confusion.

c. Liberty-Keene

Liberty-Keene objects in part to the OCA's Motion. Liberty-Keene takes no position on the merits of the Motion, but objects to bearing the costs of notifying customers if the Commission terminates the FPO program.

III. COMMISSION ANALYSIS

The Commission may grant rehearing or reconsideration for "good reason" if the moving party shows that an order is unlawful or unreasonable. RSA 541:3; RSA 541:4; *Rural Telephone Companies*, Order No. 25,291 (November 21, 2011); *see also Public Service Company of New Hampshire d/b/a Eversource Energy*, Order No. 25,970 at 4–5 (December 7, 2016). A successful motion must establish "good reason" by showing that there are matters that the Commission "overlooked or mistakenly conceived in the original decision," *Dumais v. State*, 118 N.H. 309, 311 (1978) (quotation and citations omitted), or by presenting new evidence that was "unavailable prior to the issuance of the underlying decision," *Hollis Telephone Inc.*, Order No. 25,088 at 14 (April 2, 2010). A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome. *Public Service Co. of N.H.*, Order No. 25,970, at 4–5 (citing *Public Service Co. of N.H.*, Order No. 25,676 at 3 (June 12, 2014); *Freedom Energy Logistics*, Order No. 25,810 at 4 (September 8, 2015)).

We do not agree that good reason to grant rehearing has been shown. The Commission's decision in Order No. 26,900 was to approve rates consistent with a longstanding Commission-approved rate adjustment mechanism that reflects


commodity costs within a market-driven framework. The FPO program is a part of this established mechanism, and is reflected in Liberty-Keene's tariff. As the DOE observed, Order No. 26,900 conditionally found the FPO program rates to be just and reasonable, and the OCA's Motion does not convince us that our determination is mistakenly conceived. Moreover, the OCA does not present new evidence or arguments that were "unavailable prior to the issuance of the underlying decision."

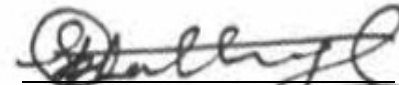
Rather, the OCA re-argues the position it took both during and after the hearing and seeks a different result. We fully agree with the DOE's sentiment that the proper forum for the OCA's arguments is a new, separately noticed docket to consider amending the COG mechanism and Liberty-Keene's tariff to eliminate the FPO program on a prospective basis. The Commission will notice and adjudicate such a proceeding based on the OCA's Motion in advance of the 2024-25 winter season.

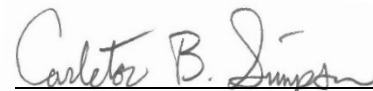
Based upon the foregoing, it is hereby

ORDERED, that the OCA's Motion for Rehearing of Order No. 26,900 is **DENIED**.

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


Daniel C. Goldner
Chairman


Pradip K. Chattopadhyay
Commissioner


Carleton B. Simpson
Commissioner

Service List - Docket Related

Docket#: 23-084

Printed: 12/21/2023

Email Addresses

ClerksOffice@puc.nh.gov
Ashrafal.Alam@energy.nh.gov
Faisal.DeenArif@energy.nh.gov
Michael.J.Crouse@oca.nh.gov
Tyler.Culbertson@libertyutilities.com
Energy-Litigation@energy.nh.gov
paul.b.dexter@energy.nh.gov
thomas.c.frantz@energy.nh.gov
Robert.Garcia@libertyutilities.com
deborah.gilbertson@libertyutilities.com
maureen.karpf@libertyutilities.com
James.King@libertyutilities.com
Molly.M.Lynch@energy.nh.gov
Alyssa.Maston@libertyutilities.com
amanda.o.noonan@energy.nh.gov
ocalitigation@oca.nh.gov
mary.e.schwarzer@energy.nh.gov
michael.sheehan@libertyutilities.com
karen.sinville@libertyutilities.com
Joshua.Tilbury@libertyutilities.com