

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Docket No. DG 06-107

NATIONAL GRID USA AND KEYSpan CORPORATION

**Approval of the Indirect Acquisition of EnergyNorth Natural Gas, Inc. by way of the  
Merger of KeySpan Corporation with an Indirect Subsidiary of National Grid plc and  
Other Regulatory Approvals**

**Motion for Leave to File Sur-Reply**

Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty (“Liberty” or the “Company”), through counsel, respectfully requests the New Hampshire Public Utilities Commission (“Commission”) for leave to file the enclosed sur-reply in response to the Commission Staff (“Staff”) response to Liberty’s Motion for Rehearing filed on May 21, 2021, in the above-captioned docket.<sup>1</sup> Liberty’s Motion for Rehearing requested that the Commission reconsider its April 23, 2021, Secretarial Letter (the “Order”) denying recovery of \$706,838 in costs related to three storm events that occurred during 2019 based on an assertion that the events did not qualify as major storm events. The Order was issued in response to the March 23, 2021, recommendation filed by Staff based on its review of the Company’s 2019 storm costs and the recommendations of the Commission’s Audit Division in its final audit report. Staff also recommended approval of \$1,206,255 related to two pre-staging events, with appropriate carrying costs but excluding any amounts derived from capitalization of transportation depreciation through the burden rate.

In response to the Motion for Reconsideration, Staff filed a letter dated May 26, 2021, stating that, while it did not object to the Company’s request for an opportunity to be heard, it

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<sup>1</sup> Liberty acquired National Grid USA’s New Hampshire natural gas and electric businesses in 2012.

does not concede that Liberty's procedural due process arguments were valid or that the Order was improperly decided. On June 18, 2021, the Commission directed Staff to file a supplemental response with legal argument in support of its position; Staff filed its supplemental response on June 30, 2021 (the "Response").

Liberty submits this request to address Staff's arguments raised in its Response, for which the Company has not had an opportunity to respond. As detailed in the Motion for Rehearing, Liberty was not afforded an opportunity to be heard with respect to the evidence underlying the Order. As a result, the Order reached incorrect conclusions due to the lack of evidence and consideration of information and legal argument that the Company would have provided if notice and an opportunity to be heard had been afforded to Liberty.

The lack of process means that the Company has also not had an opportunity to respond to any of the arguments raised by Staff in the Response. Granting this Motion for Leave to File Sur-Reply will ensure that any further decisions regarding the Company's Storm Fund costs are based on accurate factual information and perspectives of all interests involved.

Liberty is entitled to a review on the merits of the issues raised in the Motion for Rehearing in this docket. The response filed by Staff includes new factual arguments to which Liberty should be afforded the opportunity to reply. Without this opportunity, the Commission would not be reaching a decision on the merits. By allowing the Company to file a sur-reply to the various arguments raised in the Response, the Commission will assure fairness and a complete record for its decision-making process.

In addition, this request will not cause any delays because there is no procedural schedule associated with the Company's Storm Fund cost recovery.

In support of this request to file a sur-reply, the Company states as follows:

1. Liberty submitted its Annual Storm Fund Report for calendar year 2019 on March 30, 2020, in Docket No. DG 06-107. The 2019 Storm Fund Report included the costs incurred by the Company associated with three major storm events and three pre-staging events.
2. All annual storm fund reports have been filed in Docket No. DG 06-107 since 2009 with the exception of the most recent request filed in 2021. This most recent request was filed together with a request to open a new docket consistent with a directive from Staff to do so.
3. In response to the 2019 Storm Fund Report, Staff filed its recommendation on March 23, 2021.
4. On April 23, 2021, the Commission issued the Order adopting Staff's recommendations to disallow costs associated with the three major storm events and to allow the costs associated with the prestaging events, exclusive of any amounts related to capitalizing transportation depreciation through the burden rate.
5. On May 21, 2021, the Company filed a timely Motion for Rehearing asserting that its due process rights had been violated because the Order was issued without appropriate notice or opportunity to be heard. The Company further asserted that the determinations reached in the Order were in error.
6. In response to the Motion, Staff submitted a letter on May 26, 2021, stating that it did not object to the Motion but maintaining that it did not agree with all of the

representations made by the Company in its Motion.

7. The Commission issued a letter on June 18, 2021, directing Staff to file a supplemental response to the Motion including legal arguments.
8. Staff filed its Response on June 30, 2021. Granite State has reviewed Staff's Response and finds that it does not include any legal arguments against the Motion for Rehearing but does set forth factual assertions in further support of Staff's recommendations filed on March 23, 2021. To date, the Company has not been afforded to be heard on these factual issues. The Company also disagrees with Staff's argument that Liberty was required to file a response to Staff's recommendations pursuant to any specific timeline. There are no Commission rules governing the timeline for responding to a Staff recommendation nor did the Commission issue any specific directive in this proceeding. Absent a requirement to respond by a date certain, there is no basis for the Staff's argument that the Company forfeited its right to respond or otherwise conceded the conclusions reached in Staff's recommendation.
9. Allowing this sur-reply will have no adverse impacts on the schedule for this proceeding.
10. The Commission should allow the Company to respond to the factual assertions set forth in the Response. Denying cost recovery for major storm events will be detrimental to the Company and sets a precedent for future events that should not be created absent a complete record on the evidence.

**WHEREFORE**, Liberty respectfully requests that the Commission:

- A. Grant leave for consideration of the enclosed sur-reply; and
- B. Grant such other relief as is just and equitable.

Respectfully submitted,

LIBERTY UTILITIES (GRANITE STATE ELECTRIC)  
CORP. D/B/A LIBERTY

By its Attorney,



Date: July 13, 2021

By: \_\_\_\_\_

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**Certificate of Service**

I hereby certify that on July 13, 2021, a copy of this motion has been electronically forwarded to the service list in this docket.



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Michael J. Sheehan