

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 20-105

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

Petition for Permanent Rates

Order Denying Motion for Rehearing on Implementation of Step Adjustment

O R D E R N O. 26,521

September 22, 2021

I. PROCEDURAL HISTORY

On July 31, 2020, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (“Liberty”) filed a Petition for Permanent and Temporary Rates pursuant to RSA 378:27 and 378:28.

On July 8, 2020, the Office of the Consumer Advocate (OCA) filed a letter of participation in this docket pursuant to RSA 363:28.

On May 24, 2021, some of the former staff of the Public Utilities Commission, now with the Department of Energy, on behalf of the parties, filed a letter informing the Commission that a settlement in principle had been reached resolving all issues in this proceeding except for the recovery of costs associated with one project that would be separately litigated from the a settlement agreement on permanent distribution rates. On June 30, Liberty filed the settlement agreement reached between the parties on permanent distribution rates (“Settlement Agreement”). The Settlement Agreement permitted Liberty two step adjustments in its rates. Of these two step adjustments, Step 1 was capped at a \$4 million increase to annual distribution revenue and was to “reflect an increase to account for certain capital projects placed in service during calendar year 2020 and . . . be implemented on August 1, 2021.” Settlement

Agreement at 8 ¶ 5.1. The second step would do substantially the same for 2021 projects.

On July 13, the Commission held a duly noticed hearing. On July 30, the Commission issued an order approving the Settlement Agreement subject to two conditions, only the second of which is relevant to Liberty's present motion. Specifically, the Commission "accept[ed] the provision allowing for and capping [the Step 1] adjustment at \$4.0 million, [but] reject[ed] its implementation on August 1, 2021" Order No. 26,505 at 12. As explanation for this condition, the Commission provided the following:

We note the Settlement Agreement contemplates a process for review and Commission approval of the second step adjustment, while no process is provided for the first step adjustment. Implicit authorization of a company's first step adjustment through a hearing on a rate case settlement agreement is not in keeping with this Commission's recent practice, and assumes approval of the settlement agreement. Additionally, we note that subsection 5.5 affords the parties to the Settlement Agreement the ability to contest the prudence of individual investments within the step increases. Since the Commission has not reviewed the non-growth projects placed in service in 2020 (Exhibit 49, bates page 28) in detail, we cannot determine prudence of the first step.

Id. at 9–10 (citations omitted).

In its order conditionally approving the Settlement Agreement, the Commission directed Liberty not to implement the Step 1 increase until (1) it filed with the Commission specified documentation¹ on the prudence of the 2020 improvements; (2) the Commission held a hearing; and (3) the Commission determined that the 2020 improvements were prudent, used, and useful. Liberty filed this motion for rehearing on the issue of this condition of the Commission's approval of the Settlement Agreement.

¹ The specific documentation required by the Order need not be recited here, but is identical to the documentation that the Settlement Agreement requires Liberty to file regarding its 2021 capital improvements prior to implementing its Step 2 increase.

II. POSITIONS OF THE PARTIES

A. Liberty Utilities

Liberty argues that the Commission's order was erroneous in finding:

- (1) that the Settlement Agreement provided "no process" for the first step adjustment;
- (2) that the Settling Parties requested "implicit authorization" of the step adjustment;
- (3) that the Commission did not have the opportunity to review the eligible non-growth projects; and
- (4) that subsection 5.5 of the Settlement Agreement supersedes or was inconsistent with subsection 5.1, which stated that the first step adjustment "shall be implemented on August 1, 2021."

Mot. for Reh'g at 5-6 ¶ 7.

B. Office of Consumer Advocate

The OCA has not stated a position on Liberty's motion for rehearing.

C. Department of Energy, Division of Regulatory Support

The Department of Energy's Division of Regulatory Support has not stated a position on Liberty's motion for rehearing.

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)).

Liberty's first argument does not provide a basis for granting rehearing. In its order conditionally approving the Settlement Agreement, the Commission correctly observed that, although Liberty was required to submit information on its 2021 projects and receive approval prior to implementing its Step two increase, no such process was contemplated for the Step one increase. In its motion, Liberty characterizes the hearing and approval process as an acceptable alternative process for approving the 2020 projects. The information necessary for approval of that increase, however, was not filed in this docket for commissioner review. Instead, as Liberty's motion admits, that information was "subject to a thorough review process before, during, and after execution of the Settlement Agreement by the Settling Parties." Mot. for Reh'g at 6 ¶ 8; *accord Id.* at 8 ¶ 11 (noting that project information was "reviewed extensively by the Settling Parties"). The Commission correctly found that the Settlement Agreement did not contemplate a process for the Commission's independent review of the project information. Thus, the Commission did not "overlook or mistakenly conceive" this aspect of the Settlement Agreement and it cannot form a basis for granting rehearing. *Dumais*, 118 N.H. at 311.

Liberty's second argument amounts to a dispute of semantics with no bearing on the Commission's ultimate decision. Whether the approval of the Step 1 projects sought by the parties was explicit or implicit is immaterial. As already explained, the Commission was not provided with adequate information to provide either type of approval. The fact that the settling parties had access to the information is no

substitute for providing that information to the Commission itself. This argument also provides no basis to grant rehearing.

Liberty's third argument is based upon a mischaracterization of the Commission's order. The Commission's order does not state that it "did not have an opportunity" to review the Step 1 projects as Liberty's Motion suggests. Mot. for Reh'g at 10 ¶ 15. Instead, the Commission stated that it "ha[d] not reviewed the non-growth projects placed in service in 2020 . . . in detail." Order at 10. The Commission did not "overlook or mistakenly conceive" information that had been made available in the docket. Although Liberty argues that the Commission could have requested additional documents, it is the duty of the parties to file into the docket sufficient documents, information, and argumentation to support their positions. The Commission may, of course, request documents from the parties who appear before it. *See, e.g.*, RSA 365:15 and :19. But it is not the Commission's obligation to make the parties' case for them. The Commission cannot grant the motion for rehearing on this basis.

Liberty's fourth argument similarly misconstrues the Commission's order. Nowhere does the Commission's order "conclud[e] that subsection 5.5 of the Settlement Agreement prevented implementation of the first step adjustment on August 1, 2021" Mot. for Reh'g at 11 ¶ 16. The only reference to subparagraph 5.5 in the order is as follows: "Additionally, we note that subsection 5.5 affords the parties to the Settlement Agreement the ability to contest the prudence of individual investments within the step increases." Order at 10. Subparagraph 5.5 of the Settlement Agreement, in fact, states "Nothing in this Settlement Agreement shall preclude Staff or the OCA from contesting the prudence of individual investments requested for recovery within the step increases." Settlement Agreement at 10 ¶ 5.5. The Commission's order correctly and accurately restated this term of the Settlement

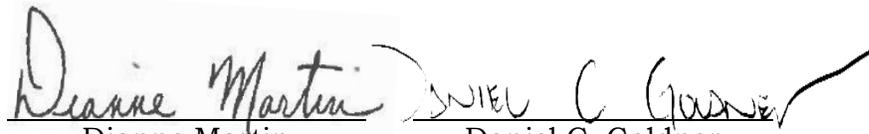
Agreement. The Commission neither overlooked nor mistakenly conceived it. It, therefore, cannot be a basis for granting rehearing.

Liberty's motion fails to demonstrate there are matters that the Commission overlooked or mistakenly conceived in the original decision. Nor does Liberty present new evidence that was unavailable prior to the issuance of the underlying decision. Having reviewed Liberty's motion under the applicable standard, the Commission has found no argument² that provides a basis to grant rehearing. The motion is, therefore, DENIED.

Based upon the foregoing, it is hereby

ORDERED, that Liberty's motion for rehearing is DENIED.

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


Dianne Martin Daniel C. Goldner
Chairwoman Commissioner

² To the extent Liberty's motion can be construed as advancing a fifth and distinct argument in paragraph 17, that argument also provides no basis to grant rehearing. In that paragraph, Liberty argues that the Commission's conditions would effect a change in the agreed-upon settlement terms. This, of course, is precisely the point of a conditional approval of the Settlement Agreement. The argument is, therefore, more akin to restating prior arguments and seeking a different outcome than it is to identifying something that the Commission overlooked or mistakenly conceived. Restating prior arguments is not a basis upon which to grant rehearing. *Public Service Co. of N.H.*, Order No. 25,970, at 4-5.

Service List - Docket Related

Docket# : 20-105

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