STATE OF NEW HAMPSHIRE

PUBLIC UTILITIES COMMISSION

Docket No. DG 22-041

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

Petition for Approval to Recover Revenue Decoupling Adjustment Factor Costs

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

Liberty Utilities (EnergyNorth Natural Gas) Corp d/b/a Liberty ("Liberty" or the "Company") submits this reply brief pursuant to the schedule set by the New Hampshire Public Utilities Commission (the "Commission") during the hearing conducted on June 22, 2023, in this docket. This reply brief responds to the arguments put forth by the New Hampshire Department of Energy ("DOE") and the Office of the Consumer Advocate ("OCA") in their respective initial briefs filed on July 27, 2023. Both the DOE and the OCA claim that Liberty's tariff implementing the Company's Revenue Decoupling Mechanism ("RDM"), NHPUC No. 10 ("Tariff No. 10"), that resulted in the under-collection of $4,023,830 million, was not ambiguous and was correctly implemented as written. Further, both parties state that Liberty's recovery of this amount constitutes retroactive ratemaking, based on the novel argument that the annual reconciling rates became final as a matter of law. Lastly, the DOE continues to assert the Company was not harmed by the under-recovery and instead double recovered its low-income discount as a result of the base rates set in Docket No. DG 17-048.

For the reasons described in the Company's initial and reply brief, these arguments should be rejected by the Commission. The Company has put forth an extensive amount of evidence in this proceeding and in past proceedings raising the issue of a need for recovery, outlining both the specific terms and inherent ambiguity embedded in Tariff No. 10, and how the ambiguity exists in the application of <u>all</u> the tariff terms, including the "Purpose" of the tariff, which conflicts with

some, but not all of the specific definitions, resulting in the situation where the definitions can be interpreted to accomplish the "purpose" of Tariff No. 10, or to perpetuate a "mismatch" that defeats the purpose of Tariff No. 10. Liberty has also put forth a timeline showing its various attempts to correct this issue in several different proceedings since 2018, and the reasoning why remedying a past mistake within a reconciling mechanism does not constitute retroactive ratemaking. In fact, the very nature of a reconciling mechanism allows for the correction of past over- or under-recoveries for a variety of reasons, including where an error in implementing the tariff or reconciling the rates occurs. Lastly, the Company, through rebuttal testimony, in hearing, and in its initial brief, has thoroughly demonstrated that base rates in Docket No. DG 17-048 were properly calculated and did not result in double recovery of rates, despite DOE's efforts to subvert the issue.

For these reasons, Liberty respectfully requests that the Commission grant the relief requested based on the law, the facts, and fundamental fairness. The Company should be allowed to recover $4,023,830, which was mistakenly refunded to customers due to the operation of the tariff language in Tariff No. 10 that was in place in calendar years ("CY") 2018 and 2019.

I. Liberty is Entitled to Relief on the Basis of Law.

As explained in the Company's initial brief, Liberty proposed the RDM and associated tariff at issue in its initial filing in Docket No. DG 17-048, the Company's 2017 base rate proceeding (Exh. 1, at Bates 0016). The Company proposed tariff provisions that would implement the RDM through Section 17(C.1) of the LDAC tariff with the purpose of collecting the base revenue requirement approved by the Commission, no more and no less, regardless of actual sales volumes (id. at Bates 0006). However, the RDM tariff approved by the Commission at the end of the case differed materially from what the Company had initially proposed. The approved RDM arose from a joint proposal between the Company and the OCA that was developed

during the course of the docket (id. at Bates 0007). The approved RDM tariff, Tariff No. 10, did not achieve the objective and purpose of a RDM in practice because of a mismatch embedded in the tariff language causing a latent ambiguity. Despite various attempts to resolve this issue, the Company under-collected its required revenues through erroneously refunding customers $4 million (id. at Bates 0007-0008; June 22, 2023 Tr. at 29-30).

The DOE and the OCA both argue that, as a matter of law, Tariff No. 10 was not ambiguous and was properly implemented according to its provisions in CY 2018 and 2019 (DOE Brief at 8-10; OCA Brief at 9). The DOE argues that a tariff is a "contract" and when clear tariff language appears to be inconsistent with rules or underlying orders, clear and unambiguous tariff language should be enforced (DOE Brief at 8-9). The DOE also argues the RDAF formula at issue in Tariff No. 10 has been subject to repeated scrutiny and the Commission should uphold the plain meaning of the tariff's provisions (DOE Brief at 9-10).

The DOE is accurate in that the issues within Tariff No. 10 have been questioned (Exh. 1, at Bates 0050-0052). However, the issue that the Company is raising in this proceeding has not been subject to scrutiny because the dispute was repeatedly pushed off (Exh. 1, at Bates 00043, 0050-0069; June 22, 2023 Tr. at 134, 160-162). The Company identified and targeted this issue in three separate dockets prior to this current proceeding over the last five years to no resolution. The Company then took several months to weed through all of the history and iterations of Tariff No. 10 and the creation of the mismatch to present a full and comprehensive explanation to the Commission in this case (id.). Accordingly, this is the proceeding in which the issue has been fully vetted and should be finally resolved (June 22, 2023 Tr. at 135, 160-162).

The DOE's contention that the tariff language at issue is "clear and unambiguous" is thoroughly undermined by the fact that this issue has spanned multiple proceedings and has remained unresolved since 2018 (id.). If the language in the tariff was so "clear and unambiguous,"

there would have been no dispute in the reconciliation of the first decoupling year and there would have been no need to address and correct the issue through changed tariff language in 2021, which corrections precisely targeted elimination of the mismatch issue (Exh. 1, at Bates 0070). Specifically, in the Company's 2021 base rate proceeding, Docket No. DG 20-105, a settlement was agreed to by the Company, Staff, and the OCA to new tariff language that cured the mismatch at issue here, which agreement indicated that clarifications of the sections of the Company's tariff pertaining to decoupling were necessary (id.). If the provisions of the tariff were "clear and unambiguous" when approved in the 2017 rate case, clarification would not have been required in the 2020 rate case to make the decoupling mechanism work as intended (see id.).

The DOE and the OCA also fail in their arguments attempting to demonstrate there is no ambiguity in the tariff. As the Company outlined in its initial brief, the ambiguity lies in the conflict that cannot be resolved between the plain language of the tariff, when all tariff terms are considered. For example, within the definitions in Tariff No. 10, the use of the term "Customer Class Group" was maintained from the initial proposal, but slight modifications were made to the RDM as approved to the definitions of "Actual Base Revenue" and "Benchmark Base Revenue Per Customer" to address a separate issue under discussion regarding customer counts (Exh. 1, at Bates 0039, 1292-1293). These wording changes inadvertently modified the basis of the RPC targets from "Customer Class Groups" to "Customer Class" (id.). This change in language caused the allowed revenue target (or Benchmark Base Revenue per Customer) to be set individually for the R-3 and R-4 customer classes, which thus caused the low-income discount to be included in the target R-4 revenues but not in the calculation of the actual revenues collected (id.).

This operation of Tariff No. 10 is in conflict with its "Purpose" language and other terms in the tariff not included in the definitions section. Tariff No. 10 states the purpose of the RDAF "is to establish procedures that allow the Company, subject to the jurisdiction of the NHPUC, to

adjust, on an annual basis, its rates for firm gas sales and firm transportation in order to reconcile Actual Base Revenue per Customer with Benchmarked Base Revenue per Customer" (Exh. 1, at Bates 1292). However, the definitions of Actual Base Revenue per Customer and Benchmarked Base Revenue per Customer directly conflict with this purpose and other terms within the tariff. In the definitions section of the tariff, Customer Class is "the group of all customers taking service pursuant to the ***same Rate Schedule***", which necessarily includes the group of low-income customers under R-4 **with** the low-income discount, as these customers take service pursuant to the same rate schedule (Exh. 1, at Bates 1292). Customer Class is also referred to within the definition of Actual Base Revenue as well, where the tariff states, "Actual Base Revenue is the actual revenue derived from the Company's distribution rates for a given Decoupling Year for a ***Customer Class***. The Company will use ***monthly distribution revenues*** and Actual Number of Customers to determine the Monthly Actual Base Revenue per Customer" (id.). Monthly distribution revenues also necessarily include the low-income discount, meaning a strict adherence to only the definitions in Section 4 within Tariff No. 10 **does** factor in the low-income discount for Actual Base Revenue.

However, this is changed in the terms within the formula section of Tariff No. 10 because the classification here **removes** the low-income discount completely from the equation, "[t]he Actual Base Revenue for the applicable Customer Class for the most recently completed Decoupling Year, (T-1), as defined in Section 4(D). For purposes of calculating the Actual Base Revenue, base revenues for ***Low Income rate class R-4, shall be determined based on non-discounted rate R-3***" (Exh. 1, at Bates 1295). This is a different interpretation of the same term within the tariff, namely, "Actual Base Revenue," because it does not necessarily follow the definition of the word as described previously in Section 4(a). As the Company has explained extensively, this becomes problematic because the formula for Actual Base Revenue removes the

low-income discount whereas the definition and formula for Benchmark Base Revenue includes the low-income discount throughout (Exh. 1, at Bates 0009; June 22, 2023).[1] This is in direct conflict with the Purpose of the tariff as stated above because the Actual Base Revenues ***without*** the low-income discount can never be fully reconciled with Benchmark Base Revenues ***with*** the low-income discount because these are comparing two completely different revenue amounts.

At hearings, the DOE's witness, Mr. Arif, was unable to explain any rationale behind these conflicting terms and definitions in the tariff or why certain terms should be applied while other term should not (June 22, 2023, Tr. at 219-223). When asked if the second sentence in the definition of Actual Base Revenue in Section 4(a), which necessarily includes the low-income discount, is repeated in the formula for Actual Base Revenue in Section 5(b), Mr. Arif stated, "I see difficulty in linking both of them" (June 22, 2023, Tr. at 222-223). Therefore, as Mr. Arif tacitly admitted, the language is ambiguous as it is difficult to ascertain which purpose, definition, term, or formula definition should be followed when implementing Tariff No. 10, because there are competing classifications throughout with no justification. The inconsistent language within the purpose, the definitions, and the formula results in two different ways to implement the tariff, giving rise to the ambiguity contemplated over the past several years. As explained above, this ambiguity was continuously reviewed but remained unresolved from its inception through 2021 (Exh. 1, at Bates 0050-0069; June 22, 2023 Tr. at 134; 160-162).

The DOE is correct in that the tariff is a contract, but it binds both the utility and its customers: "T]he vehicles by which utility rates are set, the tariffs or rate schedules required to be filed with the PUC, do not simply define the terms of the contractual relationship between a utility

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[1] In the definitions section of Tariff 10, Section 4(i) defines Benchmark Base Revenue per Customer as "the monthly allowed distribution revenue per Equivalent Bill for a given Decoupling Year for a given Customer Class" and the formula section of Tariff 10, Section 5(b) retains this same definition, "The Benchmark Base Revenue Per Equivalent Bill for the applicable Customer Class as determined in accordance with Section 4 (D) for the most recently completed Decoupling Year, stated on a monthly basis (T-1)". Neither of these mentions removing the low-income discount from the equation.

and its customers." Appeal of Pennichuck Water Works, 120 N.H. 562, 566, 419 A.2d 1080 (1980) (citations omitted). "They have the force and effect of law and bind ***both the utility and its customers***." Id. (emphasis added). Simply because this ambiguity solely affects the Company as a party to the contract does not mean the Company should weather the loss of the $4 million in revenues it under-collected.

Additionally, DOE's argument regarding a compulsory interpretation of the tariff and the ambiguity is misplaced. The DOE states, "when clear tariff language appears to be inconsistent with rules or underlying orders, clear and unambiguous tariff language will be enforced." As described above, this issue does not involve "clear" tariff language because it has been debated in multiple proceedings spanning several years and the tariff itself has been modified multiple times (Exh. 1, at Bates 00031-33, 000037, 00039). Further, language within a contract is ambiguous when the parties to the contract could reasonably disagree as to the meaning of that language. In re Taber-McCarthy, 160 N.H. 112, 115 (2010). In past proceedings leading up to the resolution of the tariff, several parties continuously contemplated and disagreed as to the meaning and application of the Company's RDM tariff, causing several interpretations of the tariff to be developed (Exh. 1, at Bates 00031-33, 000037, 00039; June 22, 2023 Tr. at 160-162). It was not until 2021, during the Company's most recent base rate proceeding, that all parties agreed on the correct interpretation and application of this tariff (Exh. 1, at Bates 00070). The mere fact that it took several years to resolve this issue highlights the difficulties of the ambiguity in the original RDM Tariff No. 10, since no one party could identify or pinpoint the exact problem in its application (Exh. 1, at Bates 0050-0069; June 22, 2023 Tr. at 134; 160-162).

Further, it is a well-established principle of New Hampshire law that when a contract is ambiguous it is appropriate to look to extrinsic evidence for assistance in resolving the factual question of what meaning to assign to the ambiguous language. In Re Briar Hydro Assocs., Docket

No. DE 07-045, Order No. 24,960, (Apr. 22, 2009), citing Behrens v. S.P. Construction Co., 153 N.H. 498, 500 (2006); Pub. Serv. Co. of New Hampshire d/b/a Eversource Energy, DE 15-464, Order No. 26,001, at 3 (Apr. 6, 2017). Here, the extrinsic evidence further defends the purpose and intent of the decoupling mechanism. The purpose of the RDM is to assure that the Company collects the base revenue requirement approved by the Commission, no more and no less, regardless of actual sales volumes (Exh. 1, at Bates 0006). To memorialize this purpose of decoupling, Tariff No. 10 stated, "[r]evenue decoupling eliminates the link between volumetric sales and Company revenue in order to align the interests of the Company and customers with respect to changing customer usage by establishing an allowed revenue per customer ("RPC")" (Exh. 1, at Bates 1292).

The extrinsic evidence, including testimonies and the tariff versions, defend this purpose and illustrate the intent of the parties for the Company to collect its base revenues despite actual sales volumes (Exh. 1, at Bates 00031-37). However, this was not accomplished within Tariff No. 10 due to the latent ambiguity causing confusion in the implementation and resulting in the inadvertent under-collection of $4 million (Exh. 1, at Bates 0051; June 22, 2023, Tr. at 20, 71, 127). Therefore, the ambiguities within Tariff No. 10 that persisted from 2018 to 2020 should be interpreted in light of this extrinsic evidence, and the Company should recover the under-collected $4 million since the recovery of this amount was and is the purpose and intent of the Company's revenue decoupling mechanism.

OCA claims Liberty appears to have conceded that the applicable decoupling reconciliation formula, though flawed, was clear in itself, arguing that the ambiguity arises out of an alleged inconsistency with the purpose of revenue decoupling as stated in the tariff (OCA Brief at 9). The OCA argues that Liberty's theory of the case has changed since the Company filed its initial petition in July of 2022, as Liberty has consistently referred to a "mismatch" between the operation

of Tariff No. 10 and the intended purpose of the decoupling mechanism and initially argued the tariff language was flawed (OCA Brief at 5). However, what is more important is that OCA does not dispute the fact that the Company was deprived of $4 million in recovery. The Company has continuously referred to a "mismatch" in the language and has consistently focused on the inherent inconsistencies in the tariff (Exh. 1, at Bates 0050; June 22, 2023, Tr. at 49). This "mismatch" is directly referring to the misalignment of the definitions within the formula and the purpose and intent of the RDM, which gives rise to the latent ambiguity described in this proceeding, and to the erroneous result that occurs with the language is strictly construed solely through certain isolated terms in the tariff (Exh. 1, at Bates 0050; June 22, 2023, Tr. at 61-62).

II. Allowing Liberty to Recover Lost Revenues through a Reconciling Mechanism Does Not Constitute Retroactive Ratemaking.

Both the DOE and the OCA argue the Company's proposal to recover the under-collected $4 million constitutes retroactive ratemaking (DOE Brief at 11-14; OCA Brief at 8). These parties claim that the purpose of reconciling clauses is to reconcile and bring up to date revenue collection from the prior period, i.e., twelve months, and that changes cannot be applied retroactively due to a faulty tariff (DOE Brief at 11; OCA Brief at 8). The DOE further states prudence findings on Tariff No. 10 and the over/under collection on the LDAC formula became final as a matter of law as of the Commission's final decision in those proceedings (DOE Brief at 6).

Retroactive ratemaking is impermissible because "customers of a utility have a right to rely on the rates which are in effect at the time that they consume the services provided by the utility, at least until such time as the utility applies for a change." Appeal of Pennichuck Water Works, 120 N.H. 562, 566 (1980). Reconciling mechanisms, on the other hand, exist to ensure utilities recover – and customers pay – the actual costs of certain passthrough items that are not part of base rates, such as commodity costs for gas purchases. Base rates are not set to recover such reconciling costs. Rather, for example, the Commission approves a charge that is projected to

recover the actual amount of the commodity costs for the upcoming season, and at a later proceeding the parties examine how much the Company actually recovered for its commodity costs and then proposes a new charge or refund to adjust the amount collected to the actual costs incurred. No party to this docket disputes this basic concept of a reconciling charge.

The DOE does not dispute that Liberty's calculation of the $4 million at issue and does not seem to dispute that the under recovery of the $4 million resulted from the application of a reconciling charge, which was intended to bring Liberty's actual revenues for the first two decoupling years up to the revenue requirement that the Commission approved in DG 17-048.

However, the DOE suggests that Liberty is not entitled to relief because the $4 million shortfall occurred more than twelve months ago:

> [T]he purpose of reconciling clauses is to reconcile and bring up to date revenue collections from the prior period, i.e., the prior twelve-months. Even assuming for the sake of argument that the Commission concludes that the RDAF formula in Tariff No. 10 is ambiguous and/or otherwise contains a clear error, and therefore concludes that the RDAF formula returning approximately $2.1 million to customers in the cost of gas (COG) Docket No. DG 19-135 via Order No. 26,206 (October 31, 2019) and again in the subsequent COG Docket No. DG 20-141, via Order 26,419 (October 30, 2020) was an error, allowing Liberty to correct its own business error, twenty-one and nine months after the over/under calculations became final as a matter of law constitutes unconstitutional and impermissible retroactive rate making. Liberty has the burden of proof to show, by a preponderance of the evidence that the recovery it now seeks does not constitute impermissible retroactive ratemaking.

DOE Brief at 11 (emphasis added).

The DOE cites no authority for this twelve-month rule. There is none.

The DOE ignored the clear precedent cited in Liberty's brief of the two orders where the Commission approved a large refund ($9 million) and a large charge ($900,000) to correct reconciling charges that suffered from certain accounting errors that were more than five years old, dating to the time before Liberty acquired the New Hampshire utilities (Liberty Brief at 14).

Neither the DOE nor the OCA (nor Liberty) objected to these reconciliations for being more than 12 months old or as being retroactive ratemaking. Rather, the adjustments represented all the parties' understanding that it was appropriate to correct known errors in reconciling charges, regardless of the time period involved. The Commission approved them both.

Indeed, the DOE's comfort with correcting reconciling charges well beyond 12 months was recently expressed in an Eversource docket where Eversource sought recovery of $5 million in renewable energy certificate ("REC") costs that it failed to collect form customers three years earlier. Eversource had prudently incurred those REC costs, which are recovered through a reconciling mechanism, but did not recover the $5 million due to issues not relevant her. In supporting Eversource's request to recover these costs three years after the fact, the DOE stated:

> <u>With respect to the specific issue of the $5.2 million adjustment, which is based on a prior reconciliation related to 2019 RPS compliance expenses</u>, the Department has met with Company representatives on multiple occasions in technical sessions to review detailed information regarding those expenses, as well as the reconciliation accounting for those costs. Both the Company and the Department have made an extra effort to ensure that those reported costs were accurate and properly incurred and reconciled. Based on that review, <u>we've determined that the Company has accurately reported those costs, and correctly performed the reconciliation. Therefore, we recommend that the Commission find that the adjusted Energy Service rate reconciliation, to account for and include those prior year RPS compliance expenses, is accurate and appropriate</u>.

(Transcript of June 21, 2022, hearing in Docket No. DE 22-021, at 147 (emphasis added) (also discussed at 47-51)). The OCA also supported Eversource's recovery of these old REC costs.[2] The Commission approved the requested rate adjustment, although without discussing this issue. Order No. 26,645 (June 23, 2022).

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[2] "Next, I would like to say, to Ms. Paruta, <u>that you'll be happy to know that you have worn me down about that $5.2 million adjustment. I can see that it is reasonable</u>, provided that none of the other parties have a good argument, or, that the Department, I guess, doesn't have a good argument for why it shouldn't be considered reasonable, <u>and, therefore, fairly included in the reconciliation process that is part of what we're talking about here.</u>" *Id.* at 142-143 (emphasis added).

The DOE did not claim in the Eversource docket that the three-year old REC charges were subject to a twelve-month rule. That the DOE makes the unsupported assertion of such a rule in this docket is troubling, to say the least.

Finally, the DOE's brief betrays a fundamental misunderstanding of how the decoupling reconciliation works. The DOE stated:

> Liberty alleges that it made an "error" which was memorialized in Tariff 10's RDAF formula, and which resulted in refunding $4 million to customer years ago, and now asks the Commission to allow it to increase rates to "correct" its error. Assuming current customers are identical to 2017-2019 customers, this would retroactively increase rates in a manner that is impermissible.

(DOE Brief at 13).

Liberty's revenue decoupling is implemented through an RDM, which annually reconciles actual revenues to target revenues, and the Company either recovers or returns the difference through its revenue decoupling adjustment factor ("RDAF") (Exh. 1, at Bates 00016). At the close of the DG 17-048, the Commission approved the total revenue requirement, and the Commission approved the target revenues which, when totaled from all the rate classes, yield the same approved revenue requirement. The Commission also approved the reconciling mechanism at issue here, which puts customers on notice that they are subject to future charges or refunds to ensure that Liberty precisely collects the approved revenue requirement. To say that the request in this docket "would retroactively increase rates in a manner that is impermissible" betrays DOE's fundamental misunderstanding of Liberty's revenue decoupling and its necessary reconciliation mechanism.

The Company has extensively shown why requesting an adjustment to a past RDAF calculation does not constitute retroactive ratemaking (Company Brief at 10-11). The Commission has found, in this proceeding, that retroactivity is inherent, and yet entirely acceptable, in the very nature of a Cost of Gas Adjustment Clause ("CGAC"), which is a reconciling mechanism. Order No. 26,677, at 4 (Sept. 6, 2022). The Commission concluded that where there is an allegation that

an approved reconciling mechanism resulted in an erroneous under collection of revenues and that that under collection could be remedied within the language of the formula in effect at the time, that the company should be provided the opportunity present a case for recovery, based on RSA Ch. 378 and analogous rules Puc 1203.05 (e) and (f). Id. Therefore, under the based and well-travelled concepts of reconciling mechanisms, the Company still has the ability to request recovery of its under-collected revenues.

The Company reiterates that recovering the $4 million under-collected from customers does not constitute retroactive ratemaking, but merely reconciling the revenues the Company received to the approved revenue requirement. In conjunction with its previous arguments regarding this topic, the Supreme Court of New Hampshire has found that, "[a] utility rate is constitutionally permissible if it is "just and reasonable… [a] just and reasonable rate is one that, after consideration of the relevant competing interests, falls within the zone of reasonableness between confiscation of utility property or investment interests and ratepayer exploitation." Petition of Public Serv. Co. of N.H., 130 N.H. at 274. Further, "[t]o some degree, all utility rates reflect past costs; utilities typically expend funds today (for example, constructing generation facilities), fully expecting to recover these costs through future rates. In fact, current rates often include past costs that utilities deferred in order to avoid rate increases." Transmission Access Policy Study Group, 225 F.3d at 708.

The Company's request to recover the $4 million that was under-collected from customers in 2018-2019 and 2019-2020 is entirely just and reasonable as it will allow the Company to collect the full, Commission-approved revenue requirement, by application of the Commission-approved reconciliation mechanism. The previous Tariff No. 10 was ambiguous as it did not function to achieve its stated Purpose of allowing recovery of the full revenue requirement without interpreting terms in a manner to eliminate the mismatch, and ultimately did not adequately compensate the

Company for the services rendered. As a result, the Company is eligible to receive its fair and equitable return for its services to its customers.

III. Liberty's Base Rates Set in DG 17-048 were Calculated Correctly.

The DOE argues that the under-recovery experienced by the Company was appropriate for RDAF Year 1 and 2 because both the Residential Low-Income Assistance Program ("RLIAP") clause in Liberty's LDAC and the base distribution rates approved in Docket No. DG 17-048 compensated Liberty for the discount provided to low-income customers (DOE Brief at 3). Therefore, the DOE claims Liberty was not disadvantaged by the under collection of $4 million dollars and, on the other hand, Liberty customers were disadvantaged by the base rates set in Docket No. DG 17-048 prior to the RDAF implementation (DOE Brief at 4-5).

The DOE fundamentally misunderstands or misconstrues the Company's base-rate calculations when asserting this claim. When the Company calculates its revenue requirement, this includes the amount of revenue the Company requires to serve customers, without factoring in the low-income discount (June 22, 2023, Tr. at 93). As such, the revenue requirement includes the total amount of expense, plus the return the Company requires to collect sufficient revenue from customers to continue providing safe and reliable service (id. at 94). The rate low-income customers pay is actually irrelevant to the revenue requirement calculation altogether because this equation only calculates the amount the Company needs to continue providing service to customers (id.; Exh. 5, at Bates 015-016).

The revenue requirement does not include any specific rates or discounts (Exh. 5, at Bates 016; June 22, 2023, Tr. at 94). To calculate the revenue deficiency, the Company compares the test year revenue requirement level with the calculated revenue requirement level described above (June 22, 2023, Tr. at 97). Again, neither of these include the low-income discount (id. at 114-115). Fundamentally, the low-income discount runs through the RLIAP and is ***separate and***

distinct from the Company's revenue requirement calculation because it is not factored in until the Company is determining its rate design to allocate the full revenue requirement amongst the various rate classes (id. at 114-116; Exh. 5, at 015-016, 018). Within the rate design process, for the first time the Company discounts the low-income rate class, and that money is then recovered through the RLIAP (id.).

Therefore, the DOE is incorrect in claiming that the Company double recovered the low-income RLIAP amount because it is not factored into the Company's revenue requirement **or** revenue deficiency. Once the Company has calculated its revenue requirement, it figures out the proportional cost responsibility of each customer class, ***not factoring in the low-income discount*** (Exh. 5 at Bates 018). Next, the tariffed rates collect the revenue from each rate class and the low-income customers' rates are discounted, meaning the Company receives the discounted rates in its actual revenues (id. at 018-019). The Company then collects the discounted amount through the RLIAP factor of the LDAC and does not double recover this amount through base rates (id. at 019). Additionally, the change in base rates for the step adjustment did not alter the relationship between base rates and the LDAC (or RLIAP) (id. at 017). The Company did not miscalculate its temporary rates during the recoupment period for the reconciliation of permanent and temporary rates, which was only 10 months as compared to DOE's stated 16 months (id.).

The DOE also states the Company included the low-income discount in its revenue targets to develop the final rates in Docket No. DG 17-048 but refers to the Company's Rate Design Analysis and Calculation (DOE Brief at 4). That is mixing apples and oranges. The Rate Design Analysis and Calculation only takes the revenue requirement previously calculated and allocates it to the various rate classes (Exh. 4, at Bates 186). The revenue target was already previously determined through calculating the revenue requirement, as outlined above, prior to being divided by rate class in the Company's spreadsheet "Rates 5" (June 22, 2023 Tr. at 114-116; Exh. 5, at

Bates 015-016, 018). The DOE is essentially assuming the numbers in the Rate Design Analysis and Calculation are arbitrarily produced, whereas they are determined from the entire revenue requirement – which does not include the low-income discount (id.). Therefore, the Company has not and is not double recovering the RLIAP through rates and the DOE's arguments in that regard should be rejected.

IV. Conclusion

The Company respectfully requests the Commission reject the claims put forth by the DOE and the OCA in their initial brief and allow Liberty to recover its revenue under-collection of $4 million associated with the application of the RDM tariff provisions in 2018-2019 and 2019-2020.

Notably, no party is disputing the existence or quantification of this error, nor the relevant facts in this proceeding. As Chairman Goldner summed up at hearing: "The Company is trying to collect $4 million; the Department of Energy is trying to return $2 million; and, based on the OCA's preliminary statement, the OCA believes the answer is 'zero.'" (June 22, 2023 Tr. at 40). The DOE is attempting to bring forward a completely different claim for $2 million – which is clearly an attempt at retroactive ratemaking -- and the OCA is relying on the argument that fixing this error constitutes retroactive ratemaking, an argument that would not be made by either party if the Company had over-collected from customers. However, the facts remain the same – Liberty's good faith application of Tariff No. 10 resulted in under-collection of $4 million in 2018-2019 and 2019-2020.

Therefore, in the interest of fundamental fairness, the Commission should approve the refund of the $4,023,830 revenues under-collected, consistent with the clear intent of revenue decoupling, the reconciling mechanism and Commission precedent in other instances where similar errors have been remedied to assure just and reasonable rates.

Respectfully submitted,

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<u>Certificate of Service</u>

I hereby certify that on August 10, 2023, a copy of this reply brief has been electronically forwarded to the service list in this docket.

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