

STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 22-045

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. d/b/a LIBERTY

Winter 2022/2023 Cost of Gas and Summer 2023 Cost of Gas

Docket No. DG 22-057

LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. d/b/a LIBERTY

Keene Division Winter 2022/2023 Cost of Gas

Motion for Rehearing of Order No. 26,737 (Nov. 30, 2022)

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty, through counsel, respectfully moves the Commission pursuant to RSA 541:3 for rehearing and reconsideration of Order No. 26,737 (Nov. 30, 2023) (the “Order”). The Order directs the Company to use the quarterly Wall Street Journal (“WSJ”) “prime rate” as defined at Puc 1202.13 when calculating over- and under-balances in these cost of gas dockets, rather than the monthly Federal Reserve rate that has always been in the Company’s tariff and has always been specifically approved by the Commission in every cost of gas order for the Keene Division since 2015 and every cost of gas order for the EnergyNorth system since 2012.

The Company thus files this motion to ask the Commission to reconsider the Order to clarify whether it intended to change the longstanding applicable interest rate, which would require tariff changes and revisions to reconciliation schedules.

In support of this motion, Liberty represents as follows:

1. DOE filed position statements dated November 22, 2022, in both Docket No. DG 22-045 (the Liberty-EnergyNorth cost of gas) and Docket No. DG 22-057 (the Keene Division winter cost of gas), to address issues discussed at hearing. DOE's letters also raised an issue not discussed at hearing: "DOE also wishes to bring forward a point of clarification regarding the definition of 'prime rate.'" DOE letters at 2. DOE noted that the most recent orders approving cost of gas rates in the above dockets contained the following provision concerning the rate to be applied to over- and under-collections: "Order No. 26,715 [and Order No. 26,726] states that 'the over-or-under collection shall accrue interest at the prime rate as reported by the Federal Reserve Statistical Release of Selected Interest Rates, [and that] the rate be adjusted monthly'" DOE letters at 2.
2. DOE then stated, incorrectly, that, "In cost of gas proceedings, it is the DOE's understanding that the prime rate for over-or-under collection has been adjusted each quarter using the prime interest rate as reported by the Wall Street Journal (WSJ) on the first date of the month preceding the first month of the quarter." DOE cited Puc 1203.13 for the source of this definition of "prime rate."
3. It appears that the Commission relied on this inaccurate statement in both DOE letters to declare that the interest rate applied in the recent cost of gas orders to be an "error" and to order Liberty to change the interest from the monthly Federal Reserve rate to the quarterly Wall Street Journal Rate:

The DOE also raised an additional issue regarding the definition of "prime rate." According to the DOE, Orders 26,715 and 26,716 erroneously referenced the Federal Reserve Statistical Release of Selected Interest Rates, when applicable Commission rules require

the prime interest rate reported by the Wall Street Journal be applied.

With respect to the “prime rate” applied to over- or under-collections, we also modify the respective ordering clauses to be consistent with N.H. Code of Admin Rules, Puc 1202.13. It appears that this error was also present in the Commission COG Orders for Liberty for at least the past five COG years, and no party brought this to the Commission’s attention prior to this year. *See* Order Nos. 26,541 at 12 (October 29, 2021); 26,419 at 9 (October 30, 2020); 26,306 at 9 (October 31, 2019); 26,188 at 8 (November 1, 2018); and 26,066 at 9 (October 31, 2017).

Order at 2, 3.

4. Liberty seeks rehearing and reconsideration because DOE was simply wrong in saying, “In cost of gas proceedings ... the prime rate for over-or-under collection has been adjusted each quarter using the prime interest rate as reported by the Wall Street Journal”
5. Every cost of gas order dating back to Liberty’s 2012 acquisition of the EnergyNorth franchise and dating back to Liberty’s 2015 acquisition of the Keene Division (and there have been 28 such orders) has stated, essentially word-for-word, that the “over- or under-collection shall accrue interest at the monthly prime lending rate as reported by the Federal Reserve Statistical Release of Selected Interest Rates.” *See, e.g.*, Order No. 25,435 (Oct. 30, 2012) (EnergyNorth’s first cost of gas order under Liberty ownership); and Order No. 25,782 (Apr. 28, 2015) (the Keene Division’s first cost of gas order under Liberty ownership).
6. This is because the monthly Federal Reserve rate has always been, and remains, in Liberty’s Commission-approved tariffs for cost of gas reconciliations:

Carrying Charges: Interest expense calculated on the average monthly balance using the monthly prime lending rate, as reported by the Federal Reserve Statistical Release of Selected Interest Rates, and then added to the end of month balance.

[Tariff No. 8](#), approved following the DG 14-180 rate case, Liberty's first after its 2012 acquisition of EnergyNorth, at Original Page 19, Section 16.1(E)(3). *See also* proposed [Tariff No. 9](#), filed at the outset of the DG 17-048 rate case, at Original Page 16 (same); [Tariff No. 10](#), approved after the DG 17-048 rate case, at Original Page 15 (same); and [Tariff No. 11](#), the current tariff approved after the most recent DG 20-105 rate case, at Original Page 16 (same).¹

7. The identical Federal Reserve rate also appears in Northern Utilities' tariff for reconciliations in cost of gas dockets and has received Commission approval over the same time period. *See* Northern Utilities' [Tariff No.12](#), at Pages 55, 60, and 60B; *Northern Utilities*, Order No. 26,713 (Oct. 27, 2022), and *Northern Utilities*, Order No. 25,162 (Oct. 29, 2012).
8. Although it is likely that there is not a significant difference between the monthly Federal Reserve rate and the quarterly WSJ rate, and although the Commission could certainly prefer one rate over the other, the Order appears to have overlooked the Commission's longstanding preference for the Federal Reserve rate, as illustrated by its approval of the

¹ After stating this definition, Liberty's tariff then specifically applies the Federal Reserve rate for over- and under-collected balances in the various accounts addressed in cost of gas proceedings: winter demand costs, Tariff No. 11 at Original Page 20; winter commodity costs, Original Page 21; summer demand costs, Original Page 22; summer commodity costs, Original Page 23; environmental surcharge, Original Page 39; rate case expense and temporary rate reconciliations, Original Page 42; and low income reconciliations, Original Page 43.

above cited Liberty and Northern tariffs and its specific inclusion of the Federal Reserve rate in *all* of the Liberty and Northern cost of gas orders.

9. The above facts demonstrate that the Commission “overlooked” important information in concluding Liberty’s use of the Federal Reserve rate was an “error” and in ordering Liberty to change the interest rate to be applied in these cost of gas dockets, warranting reconsideration. “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).²
10. Also, note that the prime rate as defined in the Puc 1200 rules, on which DOE relies, does not specifically apply to cost of gas items. By its terms that definition only applies to customer deposits held by utilities. Puc 1203.03(m)(3). The only other appearance of the quarterly WSJ rate in the Commission’s rules is in the pole attachment rules, Puc 1302.08, where the WSJ rate applies to refunds or credits the Commission may order to remedy the charging of unreasonable pole attachment fees. Puc 1303.08. The Commission rules do not require that the WSJ rate apply elsewhere.
11. The Commission has long accepted the use of different interest rates in different contexts. The Puc 1200 rules with this definition of “prime rate” were enacted in 2011, after the Commission had been approving use of the Federal Reserve rate in cost of gas dockets,

² Note that Liberty did not raise this issue prior to the Order simply because there was not sufficient time to do so. The DOE letters were filed on the afternoon of November 22, the Tuesday before the long Thanksgiving weekend, DOE did not consult with Liberty prior to raising this issue in the November 22 letters, and the Order was issued the following Monday, November 28. Liberty simply did not identify the issue raised in this motion until after the Commission issued the Order.

and the Commission never applied the WSJ rate to cost of gas docket in the following years, as illustrated below. And Liberty's tariff uses the WSJ rate in its Property Tax Adjustment Mechanism. Tariff 11, at Original Page 42. The Commission has chosen to allow different interest rates to be applied in different contexts.

12. Therefore, Liberty respectfully asks the Commission to reconsider the Order to the extent it requires Liberty to apply the quarterly WSJ rate to the over- and under-collected balances. Given the long and consistent history of using the Federal Reserve rate in cost of gas docket as described above, Liberty would prefer that the Commission confirm that the Company may continue to use the monthly Federal Reserve Rate as contained in Liberty's tariff.
13. In the alternative, should the Commission prefer the quarterly WSJ rate in cost of gas docket, Liberty respectfully asks the Commission for time to file revised tariff pages and to confirm that the new interest rate would only apply prospectively, beginning with the effective date of the new tariff language.

WHEREFORE, Liberty respectfully requests that the Commission:

- A. Grant this motion for rehearing of Order No. 26,737 and allow Liberty to continue using the monthly Federal Reserve rate for cost of gas components as contained in its tariff;
- B. In the alternative, clarify that the Commission wishes Liberty to amend its tariff to provide for use of the quarterly WSJ rate and clarify that this rate should be effective on a going forward basis only; and
- C. Grant such other relief as is just and equitable.

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

By its Attorney,



Date: December 15, 2022

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Certificate of Service

I hereby certify that on December 15, 2022, a copy of this motion has been electronically forwarded to the service list.



Michael J. Sheehan