

**THE STATE OF NEW HAMPSHIRE**  
**BEFORE THE**  
**PUBLIC UTILITIES COMMISSION**

**DG 23-084**

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

**Winter 2023-2024 Cost of Gas and LDAC Filing**

THE DEPARTMENT OF ENERGY’S OBJECTION TO THE OFFICE OF CONSUMER ADVOCATE’S  
“MOTION FOR REHEARING OF ORDER No. 26,900 [REGARDING THE FIXED PRICE OPTION]”

NOW COMES the New Hampshire Department of Energy (“DOE” or “Department”), pursuant to NH Admin. R. Puc 203.09, and filed this objection to the Office of the Consumer Advocate’s “Motion for Rehearing of Order No. 26,900.”<sup>1</sup> The OCA seeks rehearing in order to ask the Commission to completely eliminate Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty Utilities – Keene Division (“Liberty-Keene” or “the Company”)’s the Fixed Price Option (FPO).

In summary, and as explained in more detail below, the DOE opposes the OCA’s request because:

the OCA has failed to introduce new evidence or otherwise present argument it could not have made at hearing, suggesting that Order No. 26,900 is arbitrary or illegal. The Commission has also already considered, in docket DG 23-076 and this docket, the bulk of arguments the OCA made in its motion for rehearing;

Further, the FPO is just and reasonable; Order No. 26,898 and Order No. 26,900 both find the FPO rates just and reasonable; and past precedent establishes that the FPO is just and reasonable.

The Commission’s notice that the FPO would be adjudicated and Liberty-Keene’s notice to customers of the initial and unchanged Liberty-Keene FPO rate on September 26, 2023 was sufficient. Moreover, this docket does not include sufficient notice to the Commission or ratepayers that the FPO may be eliminated entirely, notwithstanding that the OCA seeks that outcome here.

There is inherent value to consumers in providing a choice between the non-FPO and FPO program.

---

<sup>1</sup> The DOE filed an objection in DG 23-076 on December 5, 2023; this objection is filed on December 6 due to administrative oversight.

As reported by the Company, over 10,000 Liberty customers have enrolled in the FPO program and it is too late in the winter season to eliminate a FPO rate that customers have requested, relied upon, and contracted for. Eliminating the program six weeks into the winter period would confuse them and, as Liberty-Keene asserts be costly to the utility. *See* Liberty-Keene Partial Objection (Dec 5, 2023).

In support the DOE states as follows.

## **I. PROCEDURAL BACKGROUND**

Order No. 26,900 (Oct 31, 2023) (subsequently revised with revisions not relevant here) approved Liberty-Keene's cost of gas (COG) rates, i.e., supply rates, for the 2023-2024 Winter period. *See* Order 26,900 (hereinafter "Order"). The Order explicitly identified and approved fixed price option (FPO) rates in the amount of \$1.4207 per therm for residential and C&I customers per and an adjusted, lower, FPO per therm rate for customers enrolled in the low income residential program. Order at 3-6. The FPO rates were \$0.02 higher than the non-FPO rates. Order at 3-6. The Commission explicitly found the approved rates "just and reasonable." Order at 5.

The FPO rate allows residential customers the opportunity to lock in a specific price per therm for the gas supply portion of the monthly bill from November 1, through April 30, regardless of market-price fluctuations. Order at 3.

Liberty-Keene initially proposed a residential FPO program rate of \$1.4207 per therm, which was \$0.02 higher than the non-FPO proposed rates of \$1.4007 per therm. *See* Testimony of Gilbertson, Gracia, and King at 008, 012-13 (Sept 15, 2023). The initial rate was approved in the Commission's Order without change. Liberty-Keene customers were notified of the program and potential rates on or about September 26, 2023, through a letter sent by the Company. *See* Dkt. No. DG 23-076 Exhibit 6 at 16-17 and 20-21 (Liberty-Keene Letter mailed to customers on September 26, 2023).<sup>2</sup> The Company letter indicated that the Commission review of Liberty's proposed rates would not occur until November

---

<sup>2</sup> NOTE: The OCA's attachment to its Motion for Rehearing in this, the Liberty-Keene docket seems to mistakenly include as an attachment the 2<sup>nd</sup> FPO letter Liberty mailed to its EnergyNorth FPO customers. The initial (and only) FPO letter mailed to Liberty-Keene customers is available in Docket No. 23-076, Exhibit 6 at 20-21.

1, 2023. *See id.* Liberty-Keene estimated that 13.04% of total Liberty-Keene sales volume would enroll in the FPO program. Testimony of Gilbertson, Gracia, and King at 012-13.

At the hearing in Docket No. DG 23-076, EnergyNorth’s COG proceeding, Liberty EnergyNorth identified a “significant booking error,” that required adjusted rates and resulted in changed to the EnergyNorth FPO program. No such adjustment was required for the Liberty-Keene FPO Program. *Compare* Order No. 26,898 (November 1, 2023) at 5 *with* Order No. 26,900 (Oct 31, 2023) at 5-6. The DOE Consumer Service Director and the DOE Director of the Gas Division discussed the FPO issue that arose in DG 23-076 (and therefore in DG 23-084) internally and, with regard to this docket:

determined that since there will be no change in the FPO rate for Liberty-Keene’s customers, there is no need to reissue the FPO letter or extend the [FPO] deadline. . . . [and further, that Liberty EnergyNorth and Liberty-Keene]’s FPO program should go forward for the 2022-2023 Winter Period.

*See* DOE Position Statement (filed October 26, 2023) *citing* DOE’s Technical Statement of Amanda Noonan (Oct 26, 2023) in Dkt. No. DG 23-076.

The OCA’s Motion for Rehearing of Order No. 26,900 regarding the FPO, “incorporated by reference” the argument it made in a similar motion filed in Docket No. DG 23-076. The DOE hereby incorporates by reference all arguments made by the DOE in its “Objection” to the OCA motion for rehearing in DG 23-076.

The OCA motion for rehearing in this Liberty-Keene docket also accurately notes that the Commission explicitly found that “because the program is described in Liberty’s tariff and has already been offered to customers this year, it should not be withdrawn absent further processes to consider such a change on a prospective basis.” Order at 5.

## **II. LEGAL STANDARD**

A Commission “*may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.*” *See* RSA 541:3, Puc 203.07 (f). “Good reason” may be shown by identifying new evidence that could not have been presented in the underlying proceeding or by identifying specific matters that were overlooked or mistakenly conceived by the deciding tribunal. *Public Service Company*

of *New Hampshire*, Order No. 25,239 at 4-5 (June 23, 2011). A successful motion for rehearing does not merely reassert prior arguments and request a different outcome, it identifies new bases upon which it is claimed the order is unlawful or unreasonable. *See id.* at 4-5.

As the OCA has itself recently summarized:

The standard is an intentionally broad one inasmuch as RSA 541:4 limits any issues in a subsequent appeal to the NH Supreme Court to those grounds presented to the agency via a[n] RSA 541:3 rehearing request. Essentially the purpose of RSA 541:3 is to give the Commission a fair opportunity to correct. [any] errors prior to subjecting the agency and interested parties to the rigors of the appellate proceedings.

*See* Dkt. No. DW 20-117, Response of the Office of the Consumer Advocate to Motion for Rehearing of Order No. 26,809 (May 16, 2023). Nonetheless, the OCA has failed to meet the requisite legal standard. The arguments it raises were, or could have been, raised at hearing, as demonstrated in this docket and in the pleadings and transcript in Docket No. DG 23-076. *See* DOE Obj. To OCA Mot for Rehearing (filed Dec 5, 2023 in Dkt. No. DG 23-076). In addition, the FPO is just and reasonable and was so found in the Order; notice both to the Commission and to rate payers was legally sufficient. Further policy grounds support leaving the FPO, which for Liberty-Keene customers remained unchanged from Liberty-Keene's initial filing made on September 15, 2023 and in the Company's initial (and only) letters to customers mailed on September 26, 2023., in place.

### **III. DOE ANALYSIS**

The OCA has not introduced any new evidence, or evidence that was otherwise unavailable to it in advance of hearing, in support of its motion for rehearing. *See* Oct 19, 2023 Transcript. Order at 4-5, 8-9. Therefore, the OCA's motion for rehearing should be denied as a matter of law. The OCA is also mistaken in the grounds it alleges for rehearing as explained below, and should be denied for that reason as well.

The OCA seems to assert that the Order contains no determination that the proposed FPO rate is just and reasonable. The OCA is mistaken. As cited above, the Order explicitly makes that finding. *See* Order at 5.

The OCA is incorrect in its seeming assertion that there was inadequate notice of FPO rates in the Liberty-Keene docket. The Commission’s Commencement of Adjudicative Proceeding and Notice of Hearing (Sept. 27, 2023) (hereinafter “Notice”) discussed FPO and non-FPO rates and identified among “issues presented” whether Liberty-Keene’s filing presented rates fares and charges that were just and reasonable. *See* Notice at 2. Both the reference to FPO rates, and the broader reference to all rates at issue in Liberty-Keene’s filing, provided legally sufficient notice that FPO rates were at issue. In contrast, the Notice did not indicate in any way that the FPO program was subject to elimination, the result the OCA seeks in its motion for rehearing. *See id.*

From its inception, Liberty-Keene’s filing provided notice the FPO rates would be \$0.02 higher than the non-FPO rates established by the Commission to be effective November, 1, 2023. *See* Testimony of Gilbertson, Garcia, and King at 008, 012-13 (September 15, 2023 filing); Company Letter to Customers mailed September 26, 2023 (Exhibit 6 at 016-17 and 020-21 in Dkt. No. DG 23-076. The final order continued that relationship between non-FPO rates and FPO rates, and in fact exactly the same rates identified in September 2023. To find that “adequate notice” would require Liberty-Keene to predict all final rates 30 days in advance is antithetical to the purpose of a COG hearing, which is to subject proposed rates to rigorous analysis and potential adjustment.

For the above reasons, and for the reasons DOE incorporates by reference from its objection filed in Docket No. DG 23-076, the Commission should find that denying the OCA’s motion for reconsideration is in the public interest.

#### **IV. CONCLUSION**

WHEREFORE, for the reasons stated above, and incorporated by reference from the DOE’s objection in Docket No. DG 23-076, the Department of Energy respectfully requests that this honorable Commission:

- A. FIND that the OCA failed to state “good reason” to grant its motion for rehearing because all arguments raised were raised or could have been raised at the hearing, as demonstrated in the DOE’s position statement (filed Oct 26, 2023) and in pleadings and transcript in Docket No. DG 23-076;

- B. FIND that the FPO program is just and reasonable, as explicitly stated by Order No. 26,898 at 8-9 and Order No 26,900 at 5;
- C. FIND that Liberty-Keene rate payers and the Commission were given sufficient notice that FPO rates were subject to change in the initial September 26, 2023 mailing and that those rates were unchanged as adopted by the Commission on October 31, 2023;
- D. FIND that there is insufficient notice, in the form of OCA's motion, to eliminate the FPO program,
- E. FIND that the FPO program should continue for the Winter 2023-2024 period, given that Liberty-Keene reports more than 10,000 customers are enrolled in the FPO, given that cancelation would occur after approximately six weeks of the winter period have already passed, given that there is value in choice, and given that eliminating the program would create customer confusion.
- F. FIND that the "budgeting" programs Liberty describes as equivalent to the FPO program with regard to "stabilizing" price are really only methods of extending fluctuating prices throughout the year; potentially budget friendly, yet in no way a real provision of stable winter prices; and
- G. GRANT such other relief as is just and reasonable.

December 6, 2023

Respectfully Submitted,

*/s/ Mary E Schwarzer*

Mary E. Schwarzer

Staff Attorney/ Hearings Examiner

[Mary.E.Schwarzer@energy.nh.gov](mailto:Mary.E.Schwarzer@energy.nh.gov)

#### CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2023, consistent with current Commission policy, a copy of the foregoing objection is being sent to the Service List solely in electronic format.

*/s/ Mary E Schwarzer*

Mary E. Schwarzer

Staff Attorney/ Hearings Examiner