STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION

Docket No. DG 20-105

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

Petition for Permanent Rates

Motion for Rehearing on Implementation of Step Adjustment

Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty ("Liberty" or the "Company") submits this motion pursuant to RSA 541:3 to the Public Utilities Commission (the "Commission") for rehearing and reconsideration of Order No. 26,505 (July 30, 2021) (the "Order"). In the Order, the Commission approved, with modifications, a June 30, 2021, settlement agreement on permanent distribution rates (the "Settlement Agreement") that was entered into by and between Liberty, the Commission Staff (now the Department of Energy ("DOE") Staff, and the Office of the Consumer Advocate ("OCA") (together, the "Settling Parties"), for rates effective with service rendered on and after August 1, 2021. The Settlement Agreement included a provision for a first step adjustment to be implemented concurrently with new rates to recover the cost of capital investments placed in service on or before December 31, 2020. The Order accepted the settlement provision imposing a cap on the first step adjustment at $4.0 million, but rejected its implementation on August 1, 2021, pending an additional filing by the Company and Commission review of the 2020 plant additions. The effect of the Order is to delay recovery of the Company's 2020 plant additions, which the Settling Parties agreed would begin on August 1, 2021.

In this motion, the Company requests rehearing of the Commission's decision to reject the term of the Settlement Agreement for implementation of the first step adjustment on August 1, 2021. As explained below, the Order is based on several mistaken conclusions, including that the

Settlement Agreement provided "no process" for the first step adjustment; that the Settling Parties requested "implicit authorization" of the step adjustment inconsistent with Commission precedent; that the Commission did not have an opportunity to review the evidence on the eligible project costs; and that a separate clause of the Settlement Agreement rendered inoperative the Settling Parties' explicit agreement that the first step adjustment "shall be implemented on August 1, 2021."[1]

The Company respectfully submits that the Settlement Agreement reflected a consensus agreement among the Settling Parties on the projects and overall costs contained in the first step adjustment, and an expectation that the Commission's investigation of the first step adjustment would occur at the hearing on the Settlement Agreement, which is typical of Commission practice, and not in a future proceeding. Prior to entering into the Settlement Agreement, the Commission Staff (including Audit staff) and the OCA had access to all of the relevant project documentation supporting the costs contained in the first step adjustment, which provided due process and formed the basis for agreement on the terms of the first step adjustment, including the list of eligible projects and the $4.0 million cap. Moreover, the Settling Parties agreed *unequivocally that the first step adjustment would be implemented on August 1, 2021*, which was a substantial factor in the Company's acceptance of the financial terms of the Settlement Agreement. The Order harms the Company because it materially alters the intricate balance of consideration achieved in the settlement – *i.e.*, for each month that implementation of the first step adjustment is delayed, the Company loses revenue in excess of approximately $300,000. For these reasons, the Company respectfully requests rehearing of the Order for implementation of the first step adjustment per the terms of the Settlement Agreement.

[1] Settlement Agreement (Exhibit 49) at Bates 008-009.

In support of this motion, Liberty states as follows:

Standard of Review

1. RSA 541:3 allows for rehearing of a Commission order:

> Within 30 days after any order or decision has been made by the commission, any party to the action or proceeding before the commission, or any person directly affected thereby, may apply for a rehearing in respect to any matter determined in the action or proceeding, or covered or included in the order, specifying in the motion all grounds for rehearing, and the commission may grant such rehearing if in its opinion good reason for the rehearing is stated in the motion.

2. The standard governing the Commission's review of a motion for rehearing pursuant to RSA 541:3 is well established. "The Commission may grant rehearing or reconsideration for 'good reason' if the moving party shows that an order is unlawful or unreasonable." *Liberty Utilities (EnergyNorth Natural Gas) Corp.*, Order No. 26,087 at 3-4 (Dec. 18, 2017) (citations omitted). "A successful motion must establish 'good reason' by showing that there are matters that the Commission 'overlooked or mistakenly conceived in the original decision,' or by presenting new evidence that was 'unavailable prior to the issuance of the underlying decision.'" Id. "A successful motion for rehearing must do more than merely restate prior arguments and ask for a different outcome." Id.

3. There is good reason to grant rehearing. The Order is unreasonable, is contrary to the underlying record in this case, which demonstrates the settling parties engaged in a thorough process for review of the 2020 capital projects, and is prejudicial to the Company in declining to implement the first step adjustment on August 1, 2021, which was a key provision of the Settlement Agreement. The Order overlooked or mistakenly conceived the terms of the Settlement Agreement with respect to implementation of the first step adjustment.

Background

4. The Settlement Agreement provided for a step increase to go into effect August 1, 2021, to begin recovery of specified non-growth 2020 investments, with recovery in the step adjustment capped at a revenue requirement of $4.0 million. The relevant language is contained in Section 5.1, as follows:

> The Company shall be allowed two step adjustments as follows:
>
> (a) Step 1 shall reflect an increase to account for certain capital projects placed in service during calendar year 2020 and shall be implemented on August 1, 2021. This first step adjustment reflects adjustments that have been made to the revenue requirement in order to reach settlement. The first step shall be subject to the following conditions:
>
> i. The revenue requirement for this step shall be capped at a $4.0 million increase to annual Distribution Revenue.
>
> ii. The step shall be based on the projects closed to plant in 2020, and shall exclude new business/growth-related projects.
>
> iii. The projects that may be included in the step are identified in the listing attached as Appendix 1.
>
> iv. Local property taxes shall not be included in the calculation and will be recovered through the Property Tax Adjustment Mechanism in Section 6 of the Settlement Agreement. State utility property taxes for all projects listed in Appendix 1, calculated using the statutory tax rate in RSA 83-F:2, shall be included in the step adjustment calculation, shall count toward the cap, and shall be given first priority of recovery.[2]

5. The explicit language of the Settlement Agreement allowed the Company to begin recovering through the first step adjustment a portion of its 2020 capital investments on August 1, 2021. Appendix 1 included the list of projects eligible for recovery in the first

[2] Settlement Agreement (Exhibit 49) at Bates 008-009 (emphasis added).

step adjustment, with a total annual revenue requirement of approximately $4.6 million, subject to the cap of $4.0 million.[3] The Settling Parties agreed that the first step adjustment "shall be implemented on August 1, 2021," based on these terms and contemplated no separate filing process to implement the step. The $4 million cap was also a negotiated compromise and included the ability for the Company to begin recovery of state property taxes on all the investments listed in Appendix 1 beginning August 1, 2021.

Request for Reconsideration

6. The Order, at pages 9-10, contains the following conclusion related to the first step adjustment:

> 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. *See, e.g.,* filings of May 26, 2020, in Docket No. DE 19-064 (Liberty Utilities (Granite State Electric) Corp. d/b/a Liberty Utilities concurrently filed settlement agreement and request for first step adjustment); filings of October 9, 2020, in Docket No. DE 19-057 (Public Service Company of New Hampshire d/b/a Eversource Energy concurrently filed settlement agreement and request for first step adjustment). 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.

7. The Order is erroneous in finding: (i) that the Settlement Agreement provided "no process" for the first step adjustment; (ii) that the Settling Parties requested "implicit authorization" of the step adjustment; (iii) that the Commission did not have the opportunity to review the eligible non-growth projects; and (iv) that subsection 5.5 of the Settlement Agreement

[3] Id. at Bates 028-029.

supersedes or was inconsistent with subsection 5.1, which stated that the first step adjustment "shall be implemented on August 1, 2021."

8. First, the process for determining the first step adjustment was embodied in Section 5.1 of the Settlement Agreement and reflected that Liberty had previously filed all the relevant 2020 project documentation in the discovery phase of this docket. In no uncertain terms, the capital projects underlying the first step adjustment were subject to a thorough review process before, during, and after execution of the Settlement Agreement by the Settling Parties. The project documentation was subject to investigation and review by Commission Staff (including the Audit Staff) and the OCA prior to entering into the Settlement Agreement. Given that underlying process and documentation already provided to Staff and the OCA on the 2020 capital projects, requiring Liberty to make another filing will not provide any additional benefit and causes unnecessary delay of cost recovery for capital projects placed in service before the end of 2020 and that are used and useful in service to customers.

9. Specifically, the Company provided notice in its initial filing on July 31, 2020, of its intent to seek recovery of certain 2020 project costs in a proposed first step increase: "For non-growth plant placed in service in calendar year 2020, the Company proposes a step increase to recover approximately $37.6 million of non-growth capital as provided in the revenue requirement model Schedule Step Increase – EnergyNorth, to be implemented in 2021. The Company will provide documentation during this case supporting the actual cost of these investments through the end of the 2020."[4] The supporting documentation for

[4] Exhibit 33 at Bates II-182 (emphasis added).

projects through December 31, 2020, was not available at the time of the initial filing in July 2020, and therefore was provided later in the process.

10. On April 29, 2021, the Company filed its rebuttal testimony responding to Staff's testimony, which supported only a single step adjustment to recover 2020 non-growth capital investments but no further step adjustments beyond 2020 investments. The Company's rebuttal testimony reviewed the types of projects to be recovered through the step adjustments, and responded to Staff's contention that the Company had not provided sufficient project documentation prior to Staff's testimony that was filed on March 18, 2021. The Company's rebuttal testimony identified where the relevant information had been provided:

> Staff contends that the Company did not provide sufficient documentation prior to Staff's testimony for Staff to complete its review and audit of the 2020 project costs. However, the Company respectfully notes that during the discovery phase of this docket, the Company timely responded to three sets of Staff data requests and three sets of Staff technical session data requests, which included a response to Staff TS 3-31 with the 2020 project budget in the Company's original filing, to be updated later in the process with actual spending amounts. The discovery requests did not otherwise seek information on the 2020 step adjustment projects. The Company subsequently received Staff's request for supporting documentation in an email from Staff counsel on March 3, 2021, which was the first request for such documentation. Staff's request noted the Settlement Agreement in Docket No. DE 19-064, Granite State's most recent distribution rate case, and that it would be helpful for the Company to provide data in this case in the same manner, which it did. The Company responded promptly to Staff's request and provided the requested documentation one week later, on March 10, 2021, in a supplemental response to Staff TS 3-31. The Company also notes that on March 11, 2021, the Company started to receive data requests from the Commission's Audit Staff and has been working diligently since that time to answer all of Audit Staff's questions. The Company has responded to all of Audit Staff's requests in a timely manner and has provided all requested backup data for the 2020 step adjustment projects.[5]

[5] Exhibit 48 (Rebuttal Testimony) at Bates 185 (emphasis added).

The Company also explained in its rebuttal testimony that it provided additional project documentation in support of Staff's review process where Staff observed variances between budgeted costs and actual costs. The Company stated in relevant part as follows:

> When Staff was in the process of its review, they sent the Company a list of selected projects from Staff TS 3-31 and asked for additional information. The request identified projects based on the budget-to-actual results. The Company explained the reasons why the selected projects showed variances, noting that many of the projects highlighted by Staff were blanket projects where the actual costs are driven by field conditions that are not known at the time of budget development (e.g., leaks requiring repair by capital pipe replacements, meter sets failing inspection and not able to be repaired by temporary maintenance). Notwithstanding individual project variances, the Company notes on an overall basis that its total actual project spending in 2020 was generally in line with the budget. In fact, non-growth capital spending for the year was within 0.7% of budget.[6]

The OCA received all of the same information that was provided to Staff to review the prudence of the Company's 2020 project costs. At the hearing, both the OCA and DOE expressed support for the Settlement Agreement, with DOE specifically calling out the reasonableness of the step increases.[7]

11. Therefore, the Order was erroneous in concluding that the Settlement Agreement contemplated "no process" for the first step adjustment. The project costs were reviewed extensively by the Settling Parties prior to entering into the Settlement Agreement and were listed in Appendix 1 to the Settlement Agreement. The first step adjustment was presented to the Commission as a consensus proposal in the Settlement Agreement, with an expectation that the Commission's investigation would occur at the hearing on the

---

6 Id. at Bates 186.

7 Transcript (July 13, 2021), at 118 (DOE) and 136 (OCA).

Settlement Agreement, which is typical of Commission practice, and not in a future proceeding.

12. Second, the Settling Parties did not request "implicit authorization" from the Commission of the first step adjustment. As described above, the Company provided notice in its initial filing that the first step adjustment would include 2020 project costs, and subsequently provided documentation to the parties for every completed project during the discovery phase. Therefore, the Settlement Agreement constituted explicit acceptance by the Settling Parties of the project costs and implementation of the first step increase on August 1, 2021, subject to Commission review as part of its hearing on the Settlement Agreement.

13. Specifically, the Settling Parties anticipated that the Commission would issue its approval of the first step adjustment through a hearing on the Settlement Agreement, which is consistent with the Commission's typical practice. In at least 10 recent rate orders, this has been the practice. See Order Nos. 26,122 (April 27, 2018) and 25,797 (June 26, 2015) (EnergyNorth's two most recent rate cases); Order Nos. 26,007 (April 20, 2017) and 25,214 (Apr. 26, 2011) (Unitil's two most recent rate cases); Order Nos.26,129 (May 2, 2018) and 25,653 (Apr. 21, 2014) (Northern's two most recent rate cases); Pennichuck Water Works, Order No. 26,070 (Nov. 7, 2017); Abenaki Water Company, Order No. 25,905 (June 3, 2016); Pennichuck East Utility, Order No. 25,696 (July 25, 2014); and Rosebrook Water Company, Order No. 25,613 (Dec. 23, 2013). These orders are from rate cases (including Liberty's two prior rate proceedings) where the Commission approved a first step increase "through a hearing on a rate case settlement agreement"[8] precisely as proposed in the

[8] See Order at 10.

Settlement Agreement. The process in those cases, as in this docket, represents the typical practice. The two cases cited in the Order (Docket No. DE 19-064 for Granite State Electric and Docket No. DE 19-057 for Eversource Energy) are distinguishable because the settlement agreements in those dockets required the companies to make separate filings for their first step increases (note, however, that the Granite State step increase went into effect the same day as its permanent rates).

14. Therefore, the Settling Parties did not seek "implicit authorization" of the first step adjustment. The step was included and subject to investigation as part of the Commission's approval of the Settlement Agreement.

15. Third, the Order is erroneous in concluding that the Commission did not have an opportunity to review the eligible non-growth projects. As described above, the Company had provided documentation of the 2020 plant additions to Staff and OCA for review prior to the entering into the Settlement Agreement. Similarly, the Commission had the opportunity to review these terms of the Settlement Agreement, including the project information provided in Appendix 1, at the hearing. To the extent the Commission required additional information to conduct its review, the Commission could have inquired and the Company could have provided it during the hearing process.[9] In presenting the Settlement Agreement for approval, the Settling Parties followed the typical Commission practice of including summary schedules of the agreed-upon step adjustment, and did not include as hearing exhibits all of the underlying supporting documentation for the first step increase

[9] See Tr. (July 13, 2021), at 118–119 (Mr. Mullen responding to Chairwoman Martin's questions on step adjustment).

that were provided in discovery, although all of it was available upon request.[10] The Settling Parties' approach was reasonable, administratively efficient, and consistent with past practice.[11]

16. Further, the Order is erroneous in concluding that subsection 5.5 of the Settlement Agreement prevented implementation of the first step adjustment on August 1, 2021, as required by subsection 5.1. Specifically, subsection 5.1 established the first step adjustment based on an overall dollar amount, capped at $4.0 million, for non-growth projects closed to plant in 2020. Appendix 1 identified the "projects that may be included in the step,"[12] and showed a revenue requirement for all of the eligible projects of approximately $4.6 million, which would exceed $4.0 million cap. Thus, the Settlement Agreement provided a consensus agreement on the eligible projects and overall level of the first step adjustment ($4.0 million), and implementation of the step adjustment on August 1, 2021. To the extent that the Commission may have questioned the prudence of any individual project on Appendix 1 during its review of the Settlement Agreement, the Settlement Agreement did not foreclose Staff or the OCA from contesting the prudence of such project, although neither party challenged the inclusion of any individual project listed in Appendix 1 on this basis. This concept was reflected in subsection 5.5, which states: "[n]othing in this Settlement Agreement shall preclude Staff or the OCA from contesting

---

[10] This approach was consistent with the orders cited in paragraph 13, above.

[11] As an analogy, the Order approved an increase in the Company's overall revenue requirement without requiring documentation of specific underlying cost components, recognizing that such information was produced in discovery and reviewed by the Settling Parties in negotiations leading to the Settlement Agreement. This is a reasonable approach because it avoids filing thousands of pages of supporting documents as hearing exhibits, which would undermine the administrative gains realized through settlement.

[12] Settlement Agreement (Exhibit 49) at Bates 009.

the prudence of *individual investments* requested for recovery within the step increases."[13] This provision is entirely consistent with subsection 5.1 and did not preclude implementation of the first step adjustment on August 1, 2021.

17. Lastly, as part of the Commission's condition on the first step adjustment,[14] it directed the Company to specifically "identify which projects shall be considered for prudence determinations up to but not in excess of the $4 million dollar [sic] cap…." However, such a requirement would materially and significantly alter the terms of the Settlement Agreement in that Section 5.1(a)(iv)[15]expressly stated that "[s]tate property taxes for all projects listed in Appendix 1, calculated using the statutory tax rate in RSA 83-F:2, shall be included in the step adjustment calculation, shall count toward the cap, and shall be given first priority of recovery." (Emphasis added.) To limit the projects in the step adjustment to stay under the $4 million cap would significantly reduce the Company's recovery of state utility property taxes, given they have first priority of recovery in the step adjustment. This reduction of projects and associated reduction in the amount of related state utility property taxes changes the recovery of various costs included in the step adjustment and alters the careful balance the Settling Parties achieved in the Settlement Agreement.

18. Therefore, by this motion, the Company has demonstrated good reasons for the Commission to reconsider its decision to deny implementation of the first step increase on August 1, 2021. The Settling Parties agreed unequivocally that the first step adjustment

---

13 Id. at Bates 011 (emphasis added).

14 Order at 12, 13.

15 Settlement Agreement (Exhibit 49) at Bates 009.

would be implemented on August 1, 2021, and this was a substantial factor in the Company's acceptance of the financial terms of the Settlement Agreement. The Order harms the Company because it materially alters the intricate balance of consideration achieved in the settlement – *i.e.,* for each month that implementation of the first step adjustment is delayed, the Company loses revenue in excess of approximately $300,000. For these reasons, the Company respectfully requests rehearing of the Order and implementation of the first step adjustment per the terms of the Settlement Agreement.[16]

WHEREFORE, Liberty respectfully requests that the Commission:

A. Grant this motion for rehearing;

B. Approve the first step adjustment of $4.0 million to go into effect as of August 1, 2021, per the terms of the Settlement Agreement;

C. Allow the Company to calculate the amount not recovered between August 1, 2021, and the date that the first step adjustment goes into effect, to defer that amount, and to obtain recovery of that amount at the time the second step adjustment is implemented per the terms of the Settlement Agreement; and

D. Grant such further relief as is just and equitable.

[16] In the alternative, and subject to a full reservation of rights as to the propriety of the Order, the Company will file a separate request for implementation of the first step adjustment in accordance with the terms of the Order on or before August 31, 2021. That filing will include the requested documentation in support of its 2020 project costs for recovery in the first step adjustment, including all of the material that was previously made available to the Commission Staff (including Audit staff) and the OCA during the discovery phase of this docket.

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

By its Attorneys,

Date: August 24, 2021

By: _____

Michael J. Sheehan, Esq. #6590
116 North Main Street
Concord, NH 03301
Telephone (603) 724-2135
Michael.Sheehan@libertyutilites.com

By: _____

Daniel P. Venora, Esq. #269522
Keegan Werlin LLP
99 High Street, Suite 2900
Boston, MA 02110
(617) 951-1400
dvenora@keeganwerlin.com

Certificate of Service

I hereby certify that on August 24, 2021, a copy of this Motion has been forwarded to the service list.

Michael J. Sheehan