

1 **STATE OF NEW HAMPSHIRE**
2 **PUBLIC UTILITIES COMMISSION**

3
4 **September 3, 2020 - 10:06 a.m.**

5 *[Remote Hearing conducted via Webex]*

6
7 **RE: DG 20-105**
8 **LIBERTY UTILITIES (ENERGYNORTH NATURAL**
9 **GAS) CORP. d/b/a LIBERTY UTILITIES:**
10 **Request for Change in Rates.**
11 **(Prehearing conference)**

12
13 **PRESENT:** Chairwoman Dianne Martin, Presiding
14 Cmsr. Kathryn M. Bailey
15 Cmsr. Michael S. Giaimo

16 Jody Carmody, Clerk
17 Eric Wind, PUC Remote Hearing Host

18 **APPEARANCES:** **Reptg. Liberty Utilities (EnergyNorth**
19 **Natural Gas) Corp., d/b/a Liberty**
20 **Utilities:**
21 Michael J. Sheehan, Esq.
22 Daniel P. Venora, Esq. *(Keegan Werlin)*
23 Jessica Ralston, Esq. *(Keegan Werlin)*

24 **Reptg. Residential Ratepayers:**
 D. Maurice Kreis, Esq., Consumer Adv.
 Office of Consumer Advocate

Reptg. PUC Staff:
 Paul B. Dexter, Esq.
 Lynn Fabrizio, Esq.
 Stephen Frink, Dir./Gas & Water Div.
 Al-Azad Iqbal, Gas & Water Division

 Court Reporter: Steven E. Patnaude, LCR No. 52

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P R O C E E D I N G

CHAIRWOMAN MARTIN: Okay. We're here this morning in Docket DG 20-105 for a prehearing conference regarding the Liberty Utilities (EnergyNorth Natural Gas) Petition for Permanent and Temporary Rates.

As always, I have to make the findings required, because this is a remote hearing.

As Chairwoman of the Public Utilities Commission, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic, in accordance with the Governor's Emergency Order Number 12, pursuant to Executive Order 2020-04, this public body is authorized to meet electronically. Please note that there is no physical location to observe and listen contemporaneously to this hearing, which was authorized pursuant to the Governor's Emergency Order. However, in accordance with the Emergency Order, I'm confirming that we are utilizing Webex for this electronic hearing, and that all members of the Commission have the ability to communicate contemporaneously during the hearing, and the public has access to

1 contemporaneously listen and, if necessary,
2 participate.

3 We previously gave notice to the public
4 of the necessary information for accessing the
5 hearing in the Order of Notice. If anybody has a
6 problem during the hearing, please call
7 (603)271-2431. In the event the public is unable
8 to access the hearing, the hearing will be
9 adjourned and rescheduled.

10 Okay. Let's take a roll call
11 attendance of the Commission. When the
12 Commissioners identify themselves, please also
13 state if anyone is with you, and, if so, identify
14 them.

15 My name is Dianne Martin. I am the
16 Chairwoman of the Public Utilities Commission.
17 And I am alone.

18 Commissioner Bailey.

19 CMSR. BAILEY: Good morning.
20 Commissioner Kathryn Bailey. And I am alone.

21 CHAIRWOMAN MARTIN: Commissioner
22 Giaimo.

23 CMSR. GIAIMO: Good morning.
24 Commissioner Mike Giaimo. I, too, am alone.

1 CHAIRWOMAN MARTIN: Okay. Let's take
2 appearances, starting with Mr. Sheehan.

3 MR. SHEEHAN: Good morning. Mike
4 Sheehan, for Liberty Utilities (EnergyNorth
5 Natural Gas). And, as you saw from our filing,
6 we have co-counsel helping us, Dan Venora and
7 Jessica Ralston, from the Keegan firm. They have
8 been representing our Massachusetts affiliate for
9 many years, and we have tapped into their
10 expertise.

11 CHAIRWOMAN MARTIN: Okay. Thank you.
12 Mr. Kreis.

13 MR. KREIS: Good morning, Chairwoman
14 Martin, Commissioners, everybody. I am D.
15 Maurice Kreis, doing business as Don Kreis. I am
16 the Consumer Advocate. And my role here is to
17 represent the interests of the residential
18 customers of this utility.

19 CHAIRWOMAN MARTIN: Okay. Thank you.
20 And Mr. Dexter.

21 MR. DEXTER: Good morning, Chairwoman.
22 My name is Paul Dexter, appearing on behalf of
23 the Commission Staff. And I'm joined today by
24 co-counsel, Lynn Fabrizio, as well as members of

1 the Gas Division, Steve Frink and Al-Azad Iqbal.

2 CHAIRWOMAN MARTIN: Okay. Thank you.

3 I want to raise a preliminary matter myself this
4 morning.

5 It just came to my attention that there
6 may be an issue in this case that relates to a
7 contract that I had some involvement with when I
8 was Associate Attorney General. Mr. Sheehan, you
9 may know what I'm talking about. And it sounds
10 like it may be a small part of the case, if it's
11 part of the case. But I haven't had the
12 opportunity to consider the issue and determine
13 whether -- the extent of the involvement in this
14 case and whether or not there's a conflict that
15 would require me to recuse myself.

16 And, so, I wanted to raise it now. I
17 would like to hear from you, Mr. Sheehan, on the
18 issue, as to initial thoughts on this. And, if
19 the parties do not object, and if there's no need
20 to cover that specific issue today, I'd like to
21 proceed with this prehearing conference, take
22 initial positions, to keep the docket on track.
23 But I want to hear from you first, Attorney
24 Sheehan.

1 MR. SHEEHAN: Certainly. And, of
2 course, that is related to the special contract
3 the Company had with the New Hampshire Department
4 of Administrative Services. There is a piece of
5 this case that involves sort of the end of that
6 work.

7 My position on your issue, as to a
8 conflict and possible recusal, is that we would
9 have no objection to you continuing to serve in
10 this case. I can certainly fill in counsel, you
11 know, now or at another time, what I view your
12 involvement to be, and how, again, the issues
13 that would come up in this case would have
14 little, if anything, to do with the pieces that
15 you were involved in.

16 CHAIRWOMAN MARTIN: Okay. That's good
17 to hear. My recollection of the case was that I
18 did not have involvement with the development of
19 the contract. I covered a related issue for an
20 interim period, and then it was assigned to
21 another attorney.

22 But I definitely did have involvement.
23 So, I want to take the time to look at the issue.
24 I appreciate your lack of concern about any

1 conflict, if it exists. But I would also still
2 want to look at it from my own perspective and
3 from my former client's perspective before making
4 a final decision.

5 Mr. Kreis, would you like to weigh in
6 at this moment?

7 MR. KREIS: Thank you, Chairwoman
8 Martin.

9 Only to say that I have every
10 confidence that you will make a excellent
11 decision, once you have had a chance to think
12 through the extent of your involvement and the
13 overlap between anything you did at the Attorney
14 General's Office and anything that might be
15 germane here.

16 And lacking any real sense of exactly
17 how much that involvement was, I can only just
18 accede to what I heard Attorney Sheehan say and
19 what I've heard you just say. And I don't have
20 any concerns at this time, and I doubt that I
21 will, because I'm just really sure you'll make
22 the right call.

23 CHAIRWOMAN MARTIN: Thank you. I
24 appreciate that.

1 Mr. Dexter.

2 MR. DEXTER: Thank you.

3 I was unaware of this issue until two
4 minutes ago. So, I think I will say "no comment"
5 at this point.

6 Thanks.

7 CHAIRWOMAN MARTIN: Fair enough. Does
8 anybody need to specifically address that issue
9 in their initial position?

10 MR. SHEEHAN: Not on this, other than
11 what I've already covered.

12 MR. KREIS: No. I certainly do not.

13 CHAIRWOMAN MARTIN: Okay.

14 MR. DEXTER: And Staff did not plan to
15 address the Concord Steam contract in its initial
16 comments.

17 CHAIRWOMAN MARTIN: Okay. And,
18 Mr. Sheehan, you said "no"?

19 MR. SHEEHAN: Correct.

20 CHAIRWOMAN MARTIN: Okay. So, any
21 objection to proceeding today?

22 MR. SHEEHAN: No.

23 MR. KREIS: None.

24 MR. DEXTER: No objection.

1 CHAIRWOMAN MARTIN: Okay. Great. I
2 really appreciate that. And I will definitely
3 take the matter seriously, and get back to you
4 with a decision. In the interim, I will not
5 deliberate or participate in any orders on this
6 matter.

7 Okay. Any other preliminary matters we
8 need to go over?

9 MR. SHEEHAN: If I could, there are two
10 motions pending.

11 We filed a motion to allow us to submit
12 only a redline version of the proposed tariff.
13 The rules require us to file a redline and a
14 clean copy. As a practical matter, no one looks
15 at the clean copy, because it will change a lot
16 between now and the end of this case. So, we ask
17 for a waiver not to essentially fill up the
18 in-box with unnecessary documents.

19 I heard from Staff this morning, they
20 don't object. The Commission has granted this
21 request before.

22 The other motion is for confidential
23 treatment of some executive information. This
24 was litigated a couple rate cases ago. The

1 Commission issued an order, and we have followed
2 that order carefully. And again, in the most
3 recent rate case, if not the last two, we have
4 followed the directives of that order. And
5 again, I understand from Staff this morning, they
6 do not object to that.

7 Staff did point out what they thought
8 was an error in the actual numbers in the
9 confidential attachment. We will certainly
10 address those. And, if a correction needs to be
11 made, we will file a corrected version of that
12 document, which is at Bates Page 1-120.

13 Those are -- those are the only
14 preliminary issues I have, other than to note
15 that we did publish in the newspaper and on the
16 website, as required by the Order of Notice.

17 CHAIRWOMAN MARTIN: Does anybody else
18 want to be heard on those motions? Mr. Kreis?

19 MR. KREIS: I do not.

20 CHAIRWOMAN MARTIN: Mr. Dexter?

21 MR. DEXTER: Yes. Thank you.

22 I think Attorney Sheehan summarized
23 correctly what I had communicated to him earlier
24 today, that we have no objection to the two

1 motions. But we do believe there's going to need
2 to be an updated sheet for executive
3 compensation, due to an error that we think we've
4 detected.

5 But we'll follow that up in the tech
6 session. And we appreciate Liberty's indication
7 that they will submit a corrected copy, if
8 necessary.

9 Thank you.

10 CHAIRWOMAN MARTIN: Okay. Thank you.
11 Then, let's proceed with initial positions.
12 Mr. Sheehan.

13 MR. SHEEHAN: On behalf of the Company,
14 Dan Venora is going to make our initial position.

15 MR. VENORA: Okay. Thank you. Thank
16 you, Mike. Good morning, Commissioners.

17 Just briefly, we're very pleased to be
18 here this morning to offer the Company's initial
19 position on the rate request as we begin the
20 docket. And today, with an immediate focus on
21 EnergyNorth's request for temporary rates.

22 The Company's position is set forth in
23 detail in its July 31st, 2020 initial filing.
24 And this morning, I'll just highlight a few of

1 the primary items in that filing.

2 First off, the Company is seeking new
3 permanent rates that would yield an annual
4 increase of 13.5 million, including a temporary
5 rate increase of 6.5 million that would be
6 effective as of October 1, 2020, through a final
7 determination on permanent rates in the docket.

8 The parties are currently in
9 discussions toward reaching an agreement on
10 temporary rates, so that we could focus our time
11 on the permanent rate issues. We've engaged with
12 Staff, and appreciate that very much, and look
13 forward to continuing to working with them, and
14 particularly later today in the technical
15 session.

16 The Company's filing shows a
17 distribution operating deficiency that exists,
18 primarily due to its investments since its last
19 rate case in nonrevenue-producing capital
20 projects that are necessary for the provision of
21 safe and reliable service.

22 The Company's non-operating costs --
23 non-capital operating costs have essentially
24 remained flat since 2016, since the 2016 test

1 year of the last rate case, and that is shown in
2 our filing.

3 The Company's filing also includes a
4 proposed step adjustment of approximately \$5.6
5 million to recover capital investments during
6 calendar year 2020, and two additional step
7 adjustments to recover the cost of capital
8 investments in 2021 and 2022. And those step
9 adjustments, as proposed, would provide a level
10 of interim recovery between rate cases. And
11 those are consistent with the step adjustment
12 that was allowed for the Company in its last rate
13 case, in 2017.

14 Lastly, the Company's filing includes a
15 proposed -- a proposal to implement a property
16 tax recovery mechanism, again, providing a
17 measure of interim relief between rate cases.
18 And that's consistent with RSA 72:8-d and e.

19 One other point I'll make this morning
20 is that the Commission will recall that
21 EnergyNorth previously submitted a rate case
22 filing in 2019 that was ultimately withdrawn
23 earlier this year. In that docket, which was
24 Docket DG 19-161, the Commission issued a

1 secretarial letter on February 28th, 2020,
2 approving the withdrawal, but noting a series of
3 compliance requirements for the Company to
4 address in the current filing. These included
5 compliance items from the 2017 rate case and
6 other dockets.

7 The Company took that directive very
8 seriously in this filing, and have explicitly
9 addressed all of those items. And what we've
10 done is, in the Company's initial filing, and
11 specifically Mr. Mullen's testimony, there's a
12 section addressing each of these requirements,
13 and also providing an exhibit that provides a
14 cross-reference to the various portions of the
15 current filing where those items are addressed.

16 One of the items at issue in the last
17 case -- in the last filing was the use of a split
18 test year. That has since been eliminated,
19 because the Company's current case is based on a
20 calendar year 2019 test year.

21 And with that, I'll just conclude that
22 the Company looks forward to working with Staff
23 and the OCA throughout this case, and, in
24 particular, in today's technical session to

1 explore a possible resolution of the Company's
2 request for temporary rates.

3 Thank you.

4 CHAIRWOMAN MARTIN: All right. Thank
5 you, Mr. Venora.

6 Mr. Kreis.

7 MR. KREIS: Thank you, Chairwoman
8 Martin, for the opportunity to state the
9 preliminary position of the Office of the
10 Consumer Advocate.

11 Naturally, when any utility, after just
12 two years, comes before the Commission and asks
13 for a rate increase that will affect a typical
14 residential customer to the tune of more than 9.5
15 percent hike in their monthly bill, that is of
16 concern to the Office of the Consumer Advocate.
17 And we will give the Company's request for both
18 temporary and permanent rates the deep scrutiny
19 that it deserves.

20 I note that the Company's requested
21 return on equity of 10.51 percent is well in
22 excess of similar returns that this Commission
23 and other commissions have been granting recently
24 in similar circumstances.

1 Beyond that, I would also note that
2 many of the issues that the Company has brought
3 up in their filing relate to the decoupling
4 mechanism that the Commission approved in the
5 Company's previous rate case. That is of the
6 keenest interest to the Office of the Consumer
7 Advocate, because, as you will recall, we were
8 avid proponents of decoupling in the last rate
9 case. We're pleased that the Company intends to
10 continue relying on decoupling. And we look
11 forward to working with the Company and Staff on
12 getting the decoupling mechanism right, and
13 figuring out what effects the current decoupling
14 mechanism has on the currently pending request
15 for temporary and permanent rates.

16 I do think that the property tax
17 recover mechanism that the Company has proposed
18 is overbroad, because it covers more than what
19 the recently adopted statute says it should
20 recover.

21 And I just want to note for the record
22 that the Office of the Consumer Advocate is a
23 skeptic when it comes to fee-free credit card
24 bill payment. I realize, as the Company said in

1 its filing, that consumers often tell people who
2 take surveys that they like that. That's because
3 they have been misled by the credit card
4 companies.

5 With that, I will yield the floor. And
6 I look forward to working with the Company and
7 the Staff on both the temporary and permanent
8 phase of this rate proceeding.

9 CHAIRWOMAN MARTIN: Okay. Thank you,
10 Mr. Kreis.

11 Mr. Dexter.

12 MR. DEXTER: Thank you, Chairwoman
13 Martin and Commissioners.

14 Staff has begun to review the filing
15 that's been submitted, and plans to use the
16 suspension period to thoroughly investigate all
17 aspects of the case, including whether Liberty
18 has provided the information directed by the
19 Commission in DG 19-161, the gas rate case that
20 Liberty withdrew last year.

21 At this preliminary stage, Staff has
22 identified concerns with a couple of issues that
23 I want to highlight today.

24 The first has to do with test year

1 revenues and test year revenue targets.

2 Generally speaking, the basis for a revenue
3 deficiency calculation is test year revenues,
4 with some normalizing adjustments to assure that
5 the test year revenues are representative.

6 In this case, there are three items in
7 the test year revenues that Staff has identified
8 that we believe, at this preliminary stage, may
9 need to be adjusted. One has to do with
10 decoupling. And, as Mr. Kreis -- Attorney Kreis
11 indicated, decoupling was instituted for the
12 first time as a result of the Company's rate case
13 a few years ago. And the Staff has raised the
14 question as to how that decoupling adjustment,
15 which, in the test year, passed back \$5 million
16 to customers, needs to be treated with respect to
17 test year revenues.

18 Staff has identified this issue right
19 away, and has already had a couple of informal
20 tech sessions with the Company on this, and we
21 believe we are reaching an agreement on how this
22 should be handled. But I wanted to highlight
23 that as a key issue that Staff identified from
24 the outset.

1 Secondly, with respect to test year
2 revenues, there's an existing program, the
3 acronym is the "RLIAP" Program. It's basically a
4 low-income discount program, where low-income
5 residential customers receive a discount, and
6 that discount is made up through a surcharge paid
7 by all other customers collected through the
8 LDAC, the Local Distribution Adjustment Clause.

9 Staff is questioning how that RLIAP
10 LDAC revenue is treated with respect to test year
11 revenues for purposes of calculating the revenue
12 requirement. Staff views this as essentially
13 base revenues collected through the LDAC, and
14 believe it needs to be factored into the revenue
15 requirement calculation, and we want to be sure
16 that that's done, that that's done appropriately.

17 Third, with respect to test year
18 revenues, we want to be sure that the rates
19 proposed in this case only collect the
20 distribution costs, and not indirect gas costs.
21 Indirect gas costs are gas-related costs, other
22 than the commodity cost of gas, that are
23 collected through the LDAC. Essentially, it's
24 the cost of supplemental propane and LNG

1 facilities and administrative costs associated
2 with gas purchases. These are essentially base
3 rate items that are collected through the LDAC,
4 which ensure equity between transportation and
5 sales customers. Again, Staff needs to
6 investigate to ensure that these indirect gas
7 costs are handled properly, so that they're only
8 collected through the LDAC, and not through the
9 proposed base rates.

10 We also believe, as the other parties
11 stated, that there are additional important
12 issues in this case to look at. One being
13 capital spending. Liberty states that it made
14 \$84 million in plant investments in 2018 and
15 2019. And they're projecting another 38 million
16 in gross plant in 2020 for the first step
17 adjustment. As Staff has done in recent cases,
18 we will investigate those plant investments to
19 ensure that they are necessary plant investments,
20 and are installed prudently and at least cost.

21 Staff understands that the iNATGAS
22 facility will be in rate base fully in this case.
23 We believe that that is consistent with the
24 Commission's order in 17-048, where they made a

1 one-time disallowance for that facility, but not
2 a permanent rate base exclusion, with the intent
3 of allowing the iNATGAS facility situation to
4 develop, to see if additional revenues came in to
5 offset the cost of those investments, thereby
6 returning a reasonable return to the other firm
7 customers that are paying for that facility if
8 it's in rate base. Staff will spend a lot of
9 time in this case investigating the current state
10 of the iNATGAS facility, to see what that return
11 is, and whether or not any permanent
12 disallowances are warranted based on the findings
13 that were made in 17-048, in terms of
14 construction of that facility.

15 Like the Consumer Advocate, Staff is
16 taking notice of the requested return on equity
17 of 10.51 percent. And, although it's a
18 preliminary position, and we haven't had a chance
19 to talk to outside experts about this, as is
20 typically done concerning ROE, 10.51 seems to be
21 a bit out of touch with recent returns granted in
22 similar cases before the Commission, especially
23 in this case, where the Company has asked for
24 these step adjustments, and a property tax factor

1 on top of that.

2 Staff plans to look at incentive
3 compensation, as we have in recent cases, to
4 ensure that, if ratepayers are going to cover
5 incentive compensation, that the factors that
6 determine that compensation be based on things
7 that are of benefit to the customers, such as
8 reliability and customer satisfaction, as opposed
9 to criteria that are primarily for the benefits
10 of shareholders, such as earnings per share. But
11 we will do a review of the incentive compensation
12 plan that Liberty offers, and make adjustments
13 accordingly.

14 Those are the preliminary issues we've
15 identified at this time. I'm sure there will be
16 others. We intend to use the full twelve months
17 suspension period to investigate all the issues
18 and work on a settlement, if a settlement is
19 reasonable. And, if not, we will bring the
20 Commission -- or, bring the issues before the
21 Commission in a hearing process for resolution.

22 And that concludes Staff's preliminary
23 comments. Thank you.

24 CHAIRWOMAN MARTIN: Okay. Thank you,

1 Mr. Dexter.

2 Is there anything else that anyone
3 needs to cover before the tech session?

4 *[No verbal response.]*

5 CHAIRWOMAN MARTIN: All right. Seeing
6 none. Then, we will take the two motions under
7 advisement. And this prehearing conference is
8 adjourned. Thank you, everyone.

9 ***(Whereupon the prehearing conference***
10 ***was adjourned at 10:29 a.m., and a***
11 ***technical session followed***
12 ***thereafter.)***

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