

STATE OF NEW HAMPSHIRE  
PUBLIC UTILITIES COMMISSION

Docket No. DG 20-152

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

LIBERTY UTILITIES—KEENE DIVISION

Winter 2020-2021 Cost of Gas

**COMMISSION STAFF’S OBJECTION TO LIBERTY’S MOTION FOR REHEARING  
OF ORDER No. 126,480**

Commission Staff (Staff) respectfully object to Liberty Utilities (EnergyNorth Gas) Corp. d/b/a Liberty Utilities – Keene Division’s *Motion for Rehearing of Order No. 26,480*.

In support of this motion, Staff states as follows:

1. Liberty Utilities (EnergyNorth Gas) Corp. d/b/a Liberty Utilities- Keene Division (Liberty Keene, Liberty, or the Company) is seeking a rehearing of Order No. 26,480 (May 14, 2021) (the Order disallowing historic CNG demand charges) (hereinafter the “Historic Demand Charges Order” or “HDC Order”).<sup>1</sup> See RSA 541:3; NH Admin R. Puc 203.07 (f) and 202.03 (five business days for Staff to file objection).
2. In the HDC Order, the Commission disallowed recovery for 26 months of compressed natural gas (CNG) demand charges during the period August 2017 through September 2019. During the 26 months, Liberty Keene was unable to serve CNG to a single customer. HDC Order No. 26,480 at 5. The Company does not contest the disallowance of demand charges for the ten-month period August 2017 through April 30, 2018. Liberty Keene Motion for Rehearing (Mot. Rehearing) at 3.

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<sup>1</sup> The Historic Demand Charges Order (HDC Order) is available on the Commission’s website at [https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-152/ORDERS/20-152\\_2021-05-14\\_ORDER\\_26480.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2020/20-152/ORDERS/20-152_2021-05-14_ORDER_26480.PDF).

3. According to the Company, the HDC Order's disallowance of historic CNG demand charges from May 1, 2018 through September 2019 is unreasonable, unlawful, and contrary to the evidence in the case, because the Commission's Liberty Keene Summer 2018 Cost of Gas Order, Order No. 26, 126 (May 1, 2018) (hereinafter "Summer 2018 COG Order")<sup>2</sup> found the demand charges as issue "just and reasonable" and also "prudent." *See* Mot. Rehearing at 1-2. The Company also alleges that the HDC Order itself is contradictory and unclear. Liberty Keene is incorrect. Its motion for rehearing should be denied for procedural and substantive reasons.

### **I. Background**

4. By way of background, cost of gas (COG) dockets are expedited dockets that occur seasonally. In any Liberty Keene winter COG docket, the Company proposes prospective rates for the period November, 1-April 30. In any Liberty Keene Summer COG docket, the Company proposes prospective rates for the period May 1 through October 31. The purpose of COG dockets is to allow regulatory process to adequately accommodate potential fuel cost volatility, and to provide rate continuity, stability, a reconciliation of estimated and actual gas cost and usage data, and a trigger mechanism to identify excessive over or under collection during the semi-annual period. *See* HDC Order No. 26,460 at 16-19 (history and structure of COG mechanism). The Company's proposed seasonal COG rates are a mix of reconciled incurred costs and revenues, for which it seeks recovery, and forecasted costs and revenues. *See Id.* at 18-19. Staff reviews Liberty Keene's proposal COG rates and offers commentary, and ultimately the Commission accepts, adjusts, or rejects the Company's proposed COG rate for the ensuing period. *Id.* at 16-19; DG 20-152 Hearing Transcript Oct 23, 2020 at 40-50.

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<sup>2</sup> The Keene Summer 2018 COG Order in Docket 18-052, is available on the Commission's website at <https://www.puc.nh.gov/Regulatory/Docketbk/2018/18-052.html> .

5. The Winter 2020-2021 docket is the first docket in which Liberty Keene sought recovery of the historic CNG demand charges. *See* HDC Order No. 26,480 at 5. At hearing, and in its motion for rehearing, Liberty bears the burden of proof to show that it was entitled to recovery. NH Admin R. Puc 203.25.

6. The “historic demand charges” at issue are charges that, due to the terms the Company negotiated with the CNG supplier, it was required to pay irrespective of whether CNG, the gas itself, was delivered and served to Liberty Keene customers. The Company was not able to serve CNG to its customers until October 2019. HDC Order No. 26,480 at 5. In the HDC Order, the Commission held that:

Liberty’s decision to sign the CNG contracts and risk incurring demand charges before CNG was reasonably likely to be permitted to flow was inconsistent with due diligence and a reasonable decision to mitigate financial risks.... Liberty might have mitigated its risks by including a regulatory out clause in its CNG contracts, yet did not. Liberty unreasonably overlooked what should have been foreseeable complexities and delays inherent in developing a new CNG supply. Accordingly, we disallow the 26 months of historic CNG demand charges as imprudent.

Order 26,480 at 24, 23-24 (Liberty was a utility not an end user/direct purchaser of CNG).

7. The “historic demand charges” increased over time. For example, as of May 1, 2018, the then-*historic* demand charges ran from August 2017 through April 30, 2018. The approved Summer 2018 projected rate, blending propane and CNG were hypothetical only. In contrast, as of May 1, 2019, CNG had remained unavailable to Keene customers in the preceding summer and winter seasons. Accordingly, on May 1, 2019, the then “*historic* demand charges” included demand charges from August 2017 through April 30, 2019. Liberty Keene did not reconcile, or seek recovery of historic demand costs in projected COG rates until the Winter 2020-2021 COG docket. *See* HDC Order No. 26,480 at 5, 16-19.

**II. Liberty Keene's Motion for Rehearing should be denied for procedural reasons.**

8. Liberty Keene's motion should be denied for three procedural reasons. First, as set forth below, the Company has failed to meet the applicable rehearing standard in RSA 541:3. There are no matters the Commission overlooked, and no evidence that was unavailable prior to the issuance of the underlying decision. Neither is the HDC Order unlawful or unreasonable. Liberty Keene has already argued that the Commission approved the CNG contract and the historic demand charges in the Summer 2018 COG Order, when the Commission approved *projected* rates for the Summer 2018 period. *See* HDC Order No. 26,480 at 7-8. The Commission disagreed. *Id.* at 20-21. Although Liberty Keene does present novel variations of the "Summer 2018 COG Order" argument in its motion for rehearing, the Company could have presented the same analyses in the Winter 2020-2021 hearing, but did not.<sup>3</sup>

9. Second, Liberty Keene has already raised and litigated the question of whether the Commission made prudence findings about CNG rates and service in all prior COG dockets through and including April 2020 (the end of winter COG seasons). The Company raised that question in the Liberty Keene Winter 2019-2020 Docket, Docket No. 19-153. *See* DG 19-153 Hearing Transcript October 22, 2019 at 7-9 (Commission states "We're not making any determination about whether the conversion is prudent in this docket." Liberty Keene's Representative states "Absolutely"); *but see Id.* at 17-19 (The Company witness states Keene conversion was approved by the Commission), 47-8 (Staff not seeking prudence determination) 55 (Commission reminds the parties "We have not made a prudency determination on this

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<sup>3</sup> The Winter 2020-2021 hearing in Docket No. DG 20-152 was held on October 23, 2020; November 2, 2020; and November 18, 2020 (session 1, confidential session 1 and session 2).

conversion, and we are not making it in this case.”), 62-65, 67-68 (imprudence discussed, no finding of prudence regarding economics made).

10. As summarized by the Commission in the HDC Order, Order No. 26,480 at 22, the prudence issue was previously addressed at hearing in the Winter 2019-2020 COG Order. HDC Order No. 26,280 at 22. The referenced Winter COG order stated:

At hearing, Staff stated that, because the Commission **has yet to determine whether the conversion (including the CNG supplier contract) is prudent**, it is appropriate to allow the Company to recover CNG costs through the Liberty-Keene COG blended rates<sup>4</sup> **on a provisional basis only**. Accordingly to Staff, if Liberty-Keene cannot demonstrate that its decision to convert its propane-air system to CNG was prudent, **then incremental supply costs**<sup>5</sup> resulting from the use of CNG and recovered through COG rates should be subject to refund to avoid burdening Keene ratepayers. (Emphasis added).

Order No 26,305 at 7 (October 31, 2019, Dkt. No. 19-153) (Winter 2019-2020 COG Order) at 6 (citations omitted) (emphasis added).<sup>6</sup>

11. In the Winter 2019-2020 COG Order, the Commission proceeded to rule that:

The Commission has yet to find the use of natural gas in Keene to be consistent with a least cost supply, or otherwise prudent. In marked contrast, the Commission has found that the economic viability and cost structure of Liberty’s conversion/expansion plans is unknown. The Commission has already imposed specific requirements to protect EnergyNorth’s distribution customers from potential over-capitalization and cross subsidization of the Keene Division. To date, Liberty-Keene has not sought recovery of conversion/expansion costs, provided the financial analysis to demonstrate that ratepayers are not burdened with unfair or unwarranted costs, or sought a prudence review from the Commission.

Accordingly, our approval is contingent on Liberty-Keene tracking the incremental costs associated with the use of CNG and contingent on the refund of incremental costs if Liberty-Keene’s conversion to CNG, including its CNG supply contract, is determined to be imprudent. We require this in light of the Company’s recent introduction of CNG into the

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<sup>4</sup> “Blended rate” refers to the fact that Liberty Keene’s prospective cost of gas for each up-coming season blends the projected cost of air propane (served for years) and the projected cost of CNG (in anticipation of service). This is true for all Liberty Keene rates, unless explicitly stated otherwise.

<sup>5</sup> “Incremental supply costs” are the difference between the cost of propane, (including supply and other costs such as transportation and broker’s fee) and the higher cost of CNG, (including supply and demand charges).

<sup>6</sup> The Keene Winter 2019-2020 COG Order is available on the Commission’s website at [https://www.puc.nh.gov/Regulatory/Docketbk/2019/19-153/ORDERS/19-153\\_2019-10-31\\_ORDER\\_26305.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2019/19-153/ORDERS/19-153_2019-10-31_ORDER_26305.PDF) .

Keene system, it forecasted use of CNG this winter, and a projected blended COG that exceeds the projected cost COG of using propane-air.

Order 26,305 at 7, 9 (citations omitted).

12. Liberty did not appeal the Winter 2019-2020 COG Order, Order 26,305. Thus, the Commission accurately concluded in the HDC Order at issue: “[**no prior** Commission Orders found the historic demand charges prudent.” (Emphasis added). HDC Order No. 26,480 at 20 (no prudence findings), 20-23 (no appeal from Winter 2029-2020 Order). Since Liberty Keene did not appeal the Commission’s conclusion in the Winter 2019-2020 COG Order, that conclusion constitutes a final decision on the merits that the Summer 2018 COG Order did not include prudence findings. The Company is not entitled to another bite at the apple.

13. Third, the evidence upon which the motion for rehearing relies was not in evidence in the original hearing. Company witnesses did not testify about the 2018 documents, and the Company did not follow the agreed upon process to take judicial notice of the 2018 documents referenced in its motion for rehearing at 3-5, including but not limited to: the Summer 2018 COG filing (Docket No. DG 18-052, Hearing Exhibit 1 at Bates 009, 010, 029 (prefiled testimony); and the [Summer 2018 COG] Hearing Transcript of April 25, 2018 at 39 and 50-52.

14. To the extent the Company counsel briefly referred to the 2018 hearing transcript during the DG 20-152 Hearing, counsel did not make the arguments developed in the motion for rehearing, or identify the 2018 documents. *See* DG 20-152 Hearing Transcript of October 23, 2020 at 28-30 (Commission can take administrative notice of its own orders); DG 20-152 Hearing Transcript of November 2, 2020 at 6-7 (parties ask Commission to take administrative notice of documents as discussed in witness testimony or in answers to data requests marked as exhibits in DG 20-152, when discussion occurs). Liberty may have intended to have Ms. Gilbertson testify about the 2018 documents in the DG 20-152 Docket; she did not.

15. Because the 2018 documents were not in evidence, but were available, it is inappropriate for the Company to cite them in the motion for rehearing. Similarly, there is no evidence to support why Liberty Keene did not seek reconsideration of the Winter 2018 COG proceeding, and the related portion of the Company's footnote 3 in the motion for rehearing should be stricken for that reason. The Company's hypothetical comments about what the Commission would have done in 2018 had the Company sought recovery for solo demand charges, or had there been any witness testimony stating that the Company was likely to be able to serve CNG in the Summer of 2018, is pure conjecture and should be stricken.

**III. Liberty Keene's Motion for Rehearing should be denied because the Company misunderstands the documents it references from the Summer 2018 COG docket.**

16. Assuming for the sake of argument that the Summer 2018 docket materials were in evidence, the motion for rehearing should be dismissed for substantive reasons because the Company misinterprets or overlooks information contained in the Summer 2018 COG hearing transcript and in the Company's prefiled testimony introduced at the 2018 hearing as Exhibit 1.

17. In 2018, Liberty Keene did not tell the Commission that it expected customers to cover the cost of CNG demand charges independent of CNG supply charges (actual gas) if the Company was unable to serve CNG. In fact, in 2018 Ms. Gilbertson, a Company witness, told the Commissioners **"The customers would only pay for what we use. They wouldn't pay for the CNG if we weren't using it."** Dkt No. DG 18-052, Summer 2018 COG Hearing Transcript of April 25, 2018 at 40 (emphasis added). Moreover, most recently, Gilbertson testified that she **"did not know"** if the historic demand charges at issue were prudent. *See* DG 20-152 Hearing Transcript Oct 23, 2020 at 67-68 (emphasis added).

18. Gilbert's testimony, quoted above, is of significantly greater weight than Liberty's reliance upon to her 2018 glancing reference to demand charges, incurred "two months" before Liberty Keene's 2018 "expected" service date for CNG.

19. Gilbertson's testimony also omitted reference to demand charges that had already accumulated from August 2017 through April 2018. The Company did not seek recovery of *then-historic* demand charges in the 2018 Summer COG docket. Ms. Gilbertson's Summer 2018 COG prefiled testimony also stated that demand charges would only be incurred if CNG service went forward. She testified, "**If the use of CNG is approved**, the Company anticipates allocating the demand charge on a pro-rata basis proportionate to the percentage of off-peak and peak period loads to total annual load....." Summer COG 2019 Exhibit 1 at 010 (Emphasis added). This suggested, incorrectly, that CNG costs were contingent upon the Commission's approval of CNG service as safe.

20. Liberty Keene's counsel also quotes himself, in a conversation with the then Chairman, during the 2018 hearing. Company's counsel stated he had "heard informally that it [the Safety Division's report on the safety of the Company's plan to serve CNG] is imminent." He stated it was Liberty's "hope... that the Safety Division files its report, we can respond quickly, and Staff can make a recommendation...." Mot. Rehearing at 5. However, the Summer 2018 docket did not include testimony from Staff or even Liberty Keene witnesses about when Safety might issue its report.

21. Moreover, as stated in the HDC Order, the Company did not "produce an acceptable plan for conversion of the Marketplace until February 2019, and the Commission did not approve the operational safety of converting the Marketplace until July 2019." Order No. 26,480 at 5; See DG 20-152 Exhibit 10 at 5, 10-11 (prefiled testimony of Commission Safety and



Security Director Randall S. Knepper)(Company's initial operating plan included more than 180 defects that were contradictory, lacking in detail, or that otherwise required updating).

22. Admittedly, the rules of evidence do not apply in administrative hearings before the Commission. However by longstanding practice, an attorney cannot be a witness for his own client. Staff does not suggest in any way that Company's counsel's 2018 statement were insincere. Yet, those statements, which put the reasonableness of his client's assumptions in a good light, while suggesting Safety will issue a report "imminently," contrary to the evidence in this docket, cannot be given much weight.

23. In addition, although the Summer 2018 COG Order is discussed more extensively below, it must be emphasized that the Commission stated that the Summer 2018 prospective rate "**appears** to have been calculated in a manner consistent with past practice." Summer 2018 COG Order No. 26,126 at 5. (Emphasis added). As the HDC Order holds, (and as the Commission subsequently learned post- 2018 Order) in actuality, demand charges were accruing independent of CNG supply, which was deemed imprudent. Order No. 26,480 at 24-26. One may reasonably infer that what is "imprudent" is also inconsistent with past practice. Liberty Keene cannot switch the burden of proof to the Commission, given that Liberty is in a far better position, as the contracting utility, to fully explain its choices, articulate risks, and promptly seek recovery, if and when the Company strategically chooses to do so. *See* Hearing Transcript DG 20-152 October 23, 2020 at 61 (Company did not seek recovery of historic demand charges until its DG 20-152 filing).

24. Finally, the Summer 2018 Order of Notice (OON) refers to a consideration of whether the proposed rates are "just and reasonable" see RSA 374:2 and RSA 378:7, it does not notice a

prudence review of the prospective rate pursuant to RSA 378:28.<sup>7</sup> This supports Staff's view that whether *prospective* demand charges were "prudent" in 2018 was not before the Commission. In contrast, the OON in this DG 20-152 docket includes adjudication of a prudence issue: "With the exception of CNG demand and supply costs, matters regarding the prudence of converting from propane air to natural gas in serving Keene, and the cost recovery of related costs, have been reserved for resolution in a Liberty distribution rate proceeding, or prudence review." (Citation omitted). *See* DG 20-152 Hearing Exhibit 1.

**IV. Liberty Keene's Motion for Rehearing should be denied because the Company misunderstands the HDC Order, including the key distinction between "just and reasonable" and "prudent" standards, and misunderstands the Summer 2018 Order.**

25. Liberty's motion for rehearing should be denied because Liberty Keene misunderstands the HDC Order, including the key distinction between the "just and reasonable" standard and the "prudence" standard, and when those approvals attach in COG proceedings. Liberty's motion for rehearing seems to suggest "reasonable" and "prudent" mean the same thing. Liberty also ignores that fact that it made a strategic decision not to seek recovery of any CNG demand charges until years after CNG was in service. Finally, Liberty fails to appreciate that charges cannot be prudent until after they are incurred, submitted for recovery, reconciled and *approved as prudent*. Stated another way, Liberty fails to understand that, by definition, future, i.e. anticipated COG costs are not found "prudent."

26. In utility regulation, there is a significant difference between whether a projected rate is "just and reasonable" and whether actual costs are "prudent," i.e. have been: i) subsequently incurred, ii) identified by the utility as ripe for recovery, and iii) reconciled as appropriate for

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<sup>7</sup> The Summer 2018 Order of Notice (OON) is available on the Commission website at [https://www.puc.nh.gov/Regulatory/Docketbk/2018/18-052/ORDERS/18-052\\_2018-04-06\\_OON.PDF](https://www.puc.nh.gov/Regulatory/Docketbk/2018/18-052/ORDERS/18-052_2018-04-06_OON.PDF).

including in rate base. *See* RSA 374:2; RSA 378:7 (reasonable); RSA 378:28 (prudence review); HDC ORDER No. 26,480 at 18-19 *citing* Order No. 25,694 at 9, 11 (July 15, 2014) (contract “approval” is not a prudence finding) Order No. 26,122 at 28-31 (disallowing imprudent costs); DG 20-152 Hearing Testimony of November 2, 2020 at 47,48-50 52-53

27. This distinction is in keeping with the standard review process, as described by Stephen P. Frink, the Commission’s Director of the Gas & Water Division, at hearing. Mr. Frink explained that in a cost of gas case, a utility files a supply plan, and if it appears reasonable, “everybody is on board with it.” He further explained that the Company’s 2018 supply plan inaccurately identified CNG for the first time, even though the Company had been paying demand charges for quite a while. Mr. Frink explained the supply plan incorrectly showed CNG being cheaper than propane, and explained the Company was unaware of a marketer basis charge that turned out to be applicable. DG 20-152 Hearing Transcript November 2, 2020 at 43-45. Those hidden errors made the supply plan appear reasonable. Thus, the Summer 2018 COG Order approved those prospective rates as “reasonable.” *See Id.*

28. Mr. Frink further explained that after the six month Summer 2018 period ended, the utility and Staff look at “the actual costs incurred, the actual revenues, and at that point in time calculate if there is an under or over recovery. You review those costs from the prior year and see if the utility followed its supply plan, if those costs were prudent...if there’s a problem with that, you bring it up at the next hearing, and that’s when you allow recovery of those costs. That’s when you make a prudence decision. *Id.* at 45-46. However, Mr. Frink noted, Liberty did not identify any CNG costs for the over or under recovery calculations in the Company’s Summer 2018 or the Summer 2019 filings. Liberty accurately told the Commission it remained unable to serve CNG; yet it simultaneously refrained from attempting to recovery mounting

“solo” demand charges through the COG mechanism. *Id.* at 46-48. As Mr. Frink explained, in 2018 and 2019 “there were no actual [CNG] costs in the reconciliation.” *Id.* at 48-51. Waiting to see whether a reasonable plan turns out to be appropriate in actuality is how the process works. *See Id.* at 52-53, 97-101 (discussing iNat gas); DG 20-152, Exhibit 9 at 004-0024; HDC Order 26,480 at 18 (Commission review of flawed Proportional Responsibility formula).

29. As of May 1, 2018, when the Summer 2018 COG Order went into effect, the Company had not even sought recovery of the “demand charges from May 1, 2018-September 2018.” Thus it would have been structurally impossible for the Commission’s 2018 Summer COG Order to find the future May 1, 2018-September 2019 demand charges “prudent.” (Indeed the Summer Order only projected charges through September 2018).

30. The HDC Order clearly explains that until charges, including demand charges, are submitted for recovery, and reconciled, by definition they cannot be found “prudent.” This makes the Company’s assertion that “...Liberty, Staff, and the Commission all agreed that including the demand charges in [prospective] rates was prudent beginning in May 1, 2018” blatantly absurd. *See* Mot. Rehearing at 9-10. Liberty Keene did not seek recovery for any cumulative historic demand charges in the previous summer, the Summer 2017 docket. As stated above, by definition, no historic demand charges could have been reconciled and found prudent in the Summer 2018 Order. In its motion for reconsideration, Liberty is partially correct in that it would be “unreasonable to retroactively reverse a Commission prudency finding,” *see* Mot. Rehearing at 7; however that did not happen in the HDC Order. Instead, HDC Order found the historic demand charges imprudent, after Liberty asked for recovery for the first time. *See* HDC Order No. 26,480 16-26.

31. As Mr. Frink explained, the Summer 2018 COG Order did find Liberty Keene's *proposed rates*, "just and reasonable" when the proposed rates contemplated serving CNG at a cost (including simultaneous supply and demand charges) that was less expensive than propane air.

32. It must be noted that when considering prospective rates, the Commission (and Staff in its review) gave the Company the benefit of the doubt with regard to projected rates, (recommending them as reasonable) yet also recommended that payment of actual incurred incremental costs be deferred. This is not inconsistent because prospective charges are based on projected costs (not a real marketplace); future events might create incremental savings or incremental costs. See DG 20-152 Hearing Transcript November 2, 2020 at 18-20, 49. The historic demand charges were not identified by the Company as ripe for recovery until the DG 20-152 docket, and until identified for recovery, remained prospective only in nature. *See* DG 20-152 Hearing Transcript October 23, 2020 at 61 (Liberty Witness Simek states Company has not sought recovery for historic demand charges prior to the DG 20-152 docket).

33. Irrespective of when the Company "collects" its rates, *see* Mot. Rehearing at 9, unless and until the Commission allows recovery, as for example, with the prior season's reconciled incremental costs, the Company does not keep the funds collected. *See, e.g. Order* 26,428 (December 2, 2020, Dkt. DG 20-152) (approving prospective rates and directing Company to track incremental costs, subject to refund through the COG if conversion deemed imprudent).

34. The Company incorrectly stated that "That question [question of prudence] turned on Liberty Keene's knowledge in the spring of 2018, as contained in its Summer COG filing." The question of prudence turned on what Liberty Keene "knew or *should have known*" in the spring of 2018. *See* Hearing Transcript November 2, 2020 at 91-92 (Staff and Liberty counsel agree

prudence standard is “knew or should have known”); Hearing Transcript November 18, 2020 Session 1 of 2 at 71-72 (Liberty witness Mullen agreed “prudence” includes what someone knows or should know at the time an act is undertaken).

## **V. Conclusion**

35. Liberty’s motion for rehearing should be denied for procedural and evidentiary reasons argued above.

36. If the Commission reaches Liberty’s substantive arguments, Liberty’s motion for rehearing should be denied because the Summer 2018 COG Order considered prospective rates for the ensuing six month period, including prospective 2018 CNG demand charges, *linked to supply charges*, and approved them *as reasonable*. In the May 1, 2018 Order, Summer 2018 projected rates for the ensuing six month period were not approved “*as prudent*.”

37. By virtue of the structure of the COG mechanics, prospective CNG rates (supply and demand charges) do not constitute “actual costs” and are never reconciled. In addition, Liberty did not seek to recovery/reconcile those costs until years later in the DG 20-152 docket. Therefore, by definition, the Summer 2018 COG Order cannot have found any projected rates for the period May 1, 2018 through October 2018 (or thereafter) “prudent.”

38. After the Commission issued the Summer 2018 COG Order, Liberty Keene continued to be unable to serve CNG until October 2019.

39. It was economically wasteful for the Company to pay 26 months of demand charges when customers were simultaneously unable to use CNG.

40. When Liberty Keene finally sought recovery of historic demand charges in DG 20-152, those charges (August 2017- September 2019) were appropriately disallowed because the Company acted imprudently when it: i) signed contracts in 2016 and 2017 that forced the

Company to pay demand charges without the ability to serve CNG; ii) failed to promptly file clear workable operations and procedures manuals until February 2019; and iii) otherwise failed to recognize and account for the regulatory complexities of introducing a new fuel, CNG. *See* HDC Order No. 26,480 16-26.

WHEREFORE, Commission Staff respectfully request that the Commission:

- A. Deny Liberty's Motion for Rehearing of Order No. 126,480 (May 14, 2021); and
- B. Grant such other and further relief as is equitable and just.

Respectfully submitted,

Commission Staff

Date: June 18, 2021

by: */s Mary E. Schwarzer*

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Certificate of Service

I hereby certify that on June 18, 2021, a copy of this objection has been electronically forwarded to the service list.

*Mary E. Schwarzer*

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