

**STATE OF NEW HAMPSHIRE
PUBLIC UTILITIES COMMISSION**

DG 22-041

**LIBERTY UTILITIES (ENERGYNORTH NATURAL GAS) CORP. d/b/a LIBERTY
Petition for Approval to Recover Revenue Decoupling Adjustment Factor Costs**

Order Denying Petition

ORDER NO. 27,078

November 21, 2024

In this Order, the Commission denies a petition by Liberty to recover approximately \$4 million that, Liberty asserted, was incorrectly returned to customers due to an error in the tariff implementing its revenue decoupling mechanism from 2018 to 2020. The Commission, concurring with the recommendations of the New Hampshire Department of Energy and the Office of the Consumer Advocate, finds that Liberty is not entitled to any such refund, as it has not met its evidentiary burden for higher rates under RSA 378:5 and 378:8.

I. BACKGROUND AND PROCEDURAL HISTORY

On July 6, 2022, Liberty Utilities (EnergyNorth Natural Gas) Corp. d/b/a Liberty (Liberty or the Company), a gas utility serving customers in southern and central New Hampshire, the City of Keene in western New Hampshire, and the City of Berlin in northern New Hampshire, filed a petition requesting that the Commission grant authorization for the Company to recover, through the Revenue Decoupling Adjustment Factor (RDAF) rate, the amount of \$4,023,830 that, Liberty asserted, was incorrectly returned to customers through the RDAF. This allegation was raised by Liberty in a predecessor Cost of Gas (COG) review proceeding before the Commission; pursuant to Order No. 26,535 (October 22, 2021) in Docket No. DG 21-130, the Company's 2021-2022 Annual COG review proceeding, the Commission dismissed the

Company's claim without prejudice, and granted leave for the Company to file a new petition in a separate proceeding to consider the Company's request.

The petition and subsequent docket filings, other than any information for which confidential treatment is requested of or granted by the Commission, are posted on the Commission's website at

<https://www.puc.nh.gov/Regulatory/Docketbk/2022/22-041.html>.

The Liberty petition included the pre-filed testimony of Ms. Erica L. Menard, an employee (Director, Rates and Regulatory Affairs) of Liberty Utilities Service Corp., Liberty's service-company affiliate, with supporting schedules (Menard Testimony). Hearing Exhibit 1. On July 6, 2022, the Office of the Consumer Advocate (OCA) filed a letter stating its participation in this matter. The OCA also filed a motion to dismiss Liberty's petition on July 6, 2022. On July 15, 2022, Liberty filed an objection to the OCA's motion to dismiss. On July 6, 2022, the Commission issued Order No. 26,677, denying the OCA's motion to dismiss, and a Commencement of Adjudicative Proceeding and Notice of Hearing Order, also on July 6, 2022.

Following a series of procedural motions by Liberty and the New Hampshire Department of Energy (DOE), the Commission held a pre-hearing conference in this matter on November 1, 2022. There were no intervenors. On December 1, 2022, Liberty filed a "Supplement" to its petition. Hearing Exhibit 2. During the winter of 2022-2023 and the spring of 2023, the parties propounded discovery (*see, e.g.*, Hearing Exhibit 3) and engaged in technical sessions, pursuant to a Commission-approved procedural schedule.

Following these interactions, on April 20, 2023, the DOE filed the testimony of Dr. Faisal Deen Arif (Gas Director, Division of Regulatory Support), and DOE's consultant, Mr. Mark Thompson of Forefront Economics Inc. \H. Gil Peach &

Associates of Beaverton, Oregon. Hearing Exhibit 4. (The DOE filed a correction to its testimony on May 11, 2023).

On May 23, 2023, Liberty filed the rebuttal testimony of Ms. Menard and Mr. Gregg Therrien, Liberty's consultant, of Concentric Energy Advisors of Marlborough, Massachusetts (Menard-Therrien Rebuttal Testimony). Hearing Exhibit 5. On June 5, 2023, the Commission propounded certain Record Requests regarding this matter, to which Liberty filed responses on June 12, 2023. Hearing Exhibit 6; Hearing Exhibit 8.

On June 22, 2023, the Commission held a hearing regarding the Liberty petition, at which representatives of the Company, the OCA, and the DOE appeared, and at which Ms. Menard and Mr. Therrien provided additional oral testimony in support of Liberty's petition, and Dr. Arif and Mr. Thompson provided oral testimony in support of DOE's positions. *See* Transcript of June 22, 2023 Public Hearing (Tr.), *passim*. On July 18, 2023, the DOE filed certain inadvertently-omitted schedules to Dr. Arif and Mr. Thompson's testimony. Hearing Exhibit 7.

On July 27, 2023, as ordered at the June 22, 2023 hearing by the Commission (Tr. at 239-240), the OCA filed its post-hearing brief regarding the matters considered in this proceeding. Liberty and the DOE also filed their initial briefs on July 27, 2023. Liberty and the DOE each further filed reply briefs on August 10, 2023, as scheduled by the Commission.

Since that time (August 10), no further filings were made into this docket by Liberty and the other parties. However, in the context of Liberty's currently-outstanding full distribution rate case, considered by the Commission in Docket No. DG 23-067, the Commission made an inquiry of the DOE as to whether the matters presented in this instant Docket No. DG 22-041 could be resolved via settlement, in a procedural order issued on September 3, 2024; the DOE provided a status update on

September 10, 2024, stating that a settlement in Docket No. DG 23-067 would not be expected to resolve the issues considered here.

II. POSITIONS OF THE PARTIES

A. Liberty

Through its petition, the Menard Testimony, Menard-Therrien Rebuttal Testimony, other supporting filings, and the testimony of Ms. Menard and Mr. Therrien at hearing, Liberty advocated for the Commission's approval of its petition, and the collection of \$4 million from Liberty's customers.

Liberty's filings made in this proceeding presented various complexities and assertions regarding the character of the error in question, ranging from the supposed "acceptance" of Liberty's arguments by the other parties, to supposed acceptance by the Commission itself, using phraseology such as "no debate," "universal recognition," "no party in this proceeding is contesting the quantification of this error," and the like. *See, e.g.*, Liberty Initial Brief, filed July 27, 2023 (Tab 41), at Pages 1-2.

Leaving aside these assertions, Liberty's arguments centered on three lines of argument: (1) the revenue decoupling mechanism tariff in place for Liberty for the 2018-2020 period, until "corrected" by the Liberty 2020 rate case, dispositioned in Docket No. DG 20-105 by Order No. 26,505 (July 30, 2021), contained a "latent ambiguity" that applied a "mismatch" between "revenue targets and actual revenues;" (2) Liberty was entitled to seek compensation for the roughly \$4 million refunded to its customers during the 2018-2020 period as a consequence of this "mismatch," due to the alleged status of the revenue decoupling mechanism as a "reconciling rate mechanism;" (3) such a refund, though it would be effectuated years after the conclusion of the last Liberty rate case in Docket No. DG 20-105 would not constitute "retroactive ratemaking," and was required as a matter of law, as "the amount of

\$4,023,830 remains owed to [Liberty] as an under-collection in the [revenue decoupling mechanism].” Liberty Initial Brief, *passim*.

The “latent ambiguity” in question centered on the inclusion of the low-income discount in Liberty’s rates to be included in the target rate class R-4 revenues but not in the calculation of the actual revenues collected, resulting in the alleged under-collection over the 2018-2020 period. *Id.*; *see also* Liberty Reply Brief, filed August 10, 2023 (Tab 43); Hearing Exhibits 1-3; and Hearing Exhibits 5 and 6, *passim*.

B. DOE

The DOE’s pleadings in this matter consistently presented the arguments that (1) the base-rate calculations applied in the Docket No. DG 17-048 rate case, which established the revenue decoupling mechanism in place through the 2018-2020 period in question, (per Order No. 26,122 (April 27, 2018)) fully compensated Liberty for the cost of the low-income discount, that, according to Liberty, fueled the “mismatch” in the revenue decoupling mechanism tariff that led to the alleged \$4 million deficiency; (2) there was no “latent ambiguity” in the Liberty revenue decoupling mechanism tariff, and furthermore, Liberty re-adopted this language within the context of the Commission’s proceeding in Docket No. DG 19-145, in which the Commission approved, in Order No. 26,306 (October 31, 2019), the Company’s revenue decoupling adjustment factor (RDAF) for the preceding revenue-decoupling year; and (3) Liberty had no recourse to applicable law in seeking what the DOE characterized a “retroactive ratemaking” exercise sought by Liberty. *See* DOE Initial Brief, Filed July 27, 2023 (Tab 41); DOE Reply Brief, Filed August 19, 2023 (Tab 44); *see also* Hearing Exhibit 4. On this basis, the DOE recommended that the Commission deny Liberty’s petition.

C. OCA

The OCA presented arguments generally congruent with those of the DOE, and the OCA also recommended that the Commission deny Liberty's petition considered here. *See, e.g.*, OCA Brief, Filed July 27, 2023 (Tab 40).

III. COMMISSION ANALYSIS

In Order No. 26,677, issued on September 6, 2022, in this instant docket, which denied the OCA Motion to Dismiss the Liberty petition considered herein, the Commission engaged in a line of legal analysis entertaining the potential that the Commission's authorities allowing for refund to customers of utility over-collections, under RSA 365:29, and RSA 378:4; Commission rules related to unbilled revenues (N.H. Code Admin. R. Puc 1203.05 (e) and (f)); and the Commission's general authority to fix rates pursuant to RSA 378:7, could offer Liberty the opportunity to present its case regarding its petition. Order No. 26,677 at Pages 4-7.

Having reviewed the arguments and evidence presented by Liberty, the DOE, and the OCA during the pendency of this proceeding, and upon further reflection regarding the Commission's statutory authorities, the Commission sets aside the analysis presented in Order No. 26,677, presented for the limited purpose of the considering the threshold issues of the OCA Motion to Dismiss at that time, pursuant to our authority under RSA 365:28. Instead, we rely on the burden of proof established by RSA 378:5 and RSA 378:8, which state, "[w]henver any schedule shall be filed with the [C]ommission stating new and higher rates, fares, charges or prices, which the public utility filing the same proposes to put in force, the [C]ommission may investigate the reasonableness of such proposed rates, fares, charges or prices," RSA 378:5, and "[w]hen any public utility shall seek the benefit of any order of the [C]ommission allowing it to charge and collect rates higher than charged at the time

said order is asked for, the burden of proving the necessity of the increase shall be upon such applicant.” RSA 378:8. (We note with specificity that Puc 1203.05, subpart (a), states, “[f]or purposes of this section, ‘unbilled revenues’ means under collection of approved rates resulting from failure on the part of the utility to implement the rate on its effective date.” Here, it is clear that RDAF rates for Liberty were timely applied after the issuance of Order No. 26,122 in DG 17-048, making the Puc 1203.05 (e) and (f) provisions regarding ‘unbilled revenues’ inapplicable to this petition).

In this case, we find that Liberty has not met its burden of proof of justifying a \$4 million retroactive collection from its customers of a purported “deficiency” resulting from the operation of its revenue decoupling adjustment mechanism, in place two rate-case cycles ago. We concur with the arguments presented by the DOE, and supported by the OCA, that Liberty’s base-rate mechanism established in the DG 17-048 rate case fully accommodated the low-income discount, and that the revenue decoupling mechanism tariff at issue was not ambiguous. Furthermore, it was up to Liberty to know its business requirements, including the operation of its decoupling mechanism, and Liberty’s re-adoption of the pertinent tariff language in 2019, within the context of the DG 19-145 proceeding, which included consideration of the RDAF’s operation and related refunds, aids in tipping the balance against a finding that Liberty has met the burden for justifying \$4 million in higher rates. *See* Order No. 26,306. Therefore, the Commission DENIES Liberty’s petition and REMOVES the provisionality of all Liberty rates pertaining to Dockets Nos. DG 20-105; DG 21-130; DG 22-015; DG 22-028; DG 22-041; DG 22-045; and DG 22-057; and hereby CLOSES these Dockets Nos. DG 20-105; DG 21-130; DG 22-015; DG 22-028; DG 22-041; DG 22-045; and DG 22-057.

Based upon the foregoing, it is hereby

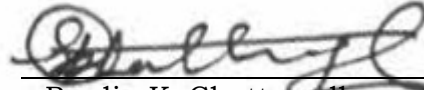
ORDERED, that Liberty's petition filed in this instant docket No. DG 22-041 is DENIED; and it is

FURTHER ORDERED, that any outstanding provisionality in the Liberty rates pertaining to Dockets Nos. DG 20-105; DG 21-130; DG 22-015; DG 22-028; DG 22-041; DG 22-045; and DG 22-057; is hereby removed, and these above-captioned dockets are to be CLOSED forthwith.

By order of the Public Utilities Commission of New Hampshire this twenty-first day of November, 2024.



Daniel C. Goldner
Chairman



Pradip K. Chattopadhyay
Commissioner

Service List - Docket Related

Docket#: 22-041

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